

Appeal Decision

Site visit made on 25 April 2017

by A J Mageean BA (Hons) BPI PhD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6th June 2017

Appeal Ref: APP/U5360/W/17/3168239

12-30 Milborne Street E9 6RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Bird against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2016/3683, dated 17 October 2016, was refused by notice dated 14 December 2016.
 - The development proposed is the erection of conjoining single storey extensions at second floor level across the entire row of terrace houses at Milborne Street E9. This will extend the use of the houses to create viable 3- or 4- bedroom family homes as opposed to the current 2 bedroom units, creating 264 sq metres of new living space.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Richard Bird against the Council of the London Borough of Hackney. This application will be the subject of a separate Decision.

Main Issues

3. The main issue is the effect of the proposal on the character and appearance of the terraced row and local area.

Reasons

4. The appeal site comprises a modern two storey terrace block of 10 properties located within a predominately residential area. The appeal terrace is seen as part of the distinctive buff brick development wrapping around to Elsdale Street and Well Street. Whilst the terrace fronting each road has a different height, there is unity of height and appearance within each section. The wider area around the appeal site is of more varied character, though with some uniformity at roof level.
5. The appeal follows the refusal of a previous application for a roof extension to No 12 Milborne Street¹ on the grounds that it *would appear incongruous within its surrounding context*. The appellant states that the current application and appeal is essentially a resubmission of this proposal, taking into consideration additional pre-application advice.

¹ 2014/3837

6. In the current proposal roof extensions across all 10 properties would be set behind a raised parapet wall, have a render finish and a mono-pitch roof falling from around 2.8m at the front to around 2.2m at the rear. The Council has indicated that the additional height and basic design of the proposal would be acceptable, though expresses reservations regarding design details, suggesting that such matters could be addressed by condition. As such the impact of the completion of the proposal across the entire terrace, and its resulting appearance as a three storey row of houses would not be unacceptable. Given that the terrace is presently of relatively low height in comparison with its surrounds I have no reason to take a different view.
7. Turning to the deliverability of this scheme, as these properties are in private ownership, and in the absence of a mechanism to secure the construction of this proposal in its totality, it is probable that an approval in this case would result in piecemeal development along the terrace. I note the appellant's reference to the effect of market forces and the suggestion that as such an investment in property would make sound financial sense the property market would ensure a full build out in due course. I am also aware that a previous Inspector has accepted a similar argument in relation to an appeal at Reedholm Villas, though note the proposed roof extensions in this case related to an area characterised by a wide variety of design approaches to roof extensions.²
8. In the present case there is no evidence of the intention of any owner other than the appellant, the owner of No 12, to construct a roof extension on their property. Therefore, whilst I acknowledge that market forces and the demand for property are strong in this part of inner London, I am not persuaded that this scheme would progress other than in a disjointed fashion. In this respect the impact of the partial construction of this scheme must be considered.
9. The terrace is of modest appearance with shallow mono-pitch roofs and plain buff brick facades and simple door and window detailing. It is slightly stepped to accommodate a gradual change in gradient. Overall it has a strongly uniform appearance which is consistent with the design coherence of this and the wider Elsdale Street/Well Street development. The application drawings demonstrate that a uniform appearance would be maintained if the development was completed in its entirety.
10. However partial construction, involving the additional height of around 2.8m incrementally across the frontage, would result in an uneven and inconsistent appearance that would undermine the strong lines, design integrity and coherent appearance of this grouping. This likely outcome, including the appearance of isolated single or grouped extensions, has not been represented in the application drawings. Furthermore, this assessment is consistent with the refusal of the previous application relating to a roof extension to No 12.
11. The appellant expresses frustration about the Council's reference to the raised parapet wall amplifying the harm caused by a piecemeal approach to the development, noting that this element of the design was incorporated following pre-application advice. However it is clear that such advice was given to support the assimilation of substantial roof additions constructed across the terrace as a whole, and not in relation to the partial completion of the development.

² APP/U5360/W/15/3110377

12. I accept that as a cul-de-sac Milborne Street does not receive much passing traffic and that it is viewed in the context of taller buildings. I also accept that views of the appeal terrace are slightly obscured as it is set behind modest front gardens and the building on Elsdale Street to the south west, and that public views of the rear of these buildings are limited. The fact that a local amenity society has not objected to the partial completion of the development does not in isolation indicate its acceptability. These matters, and the fact that this area does not contain any heritage assets, do not negate the need for design matters to be carefully considered in accordance with policy.
13. Relevant policy includes the Hackney Core Strategy 2010 (CS) which at Policy CS24 requires development to enrich and enhance the built environment, with design involving the assessment of the height and bulk of buildings and respecting local character. The Hackney Development Management Local Plan 2015 (LP) at Policy DM1 states that design should respect visual integrity and the established scale, massing and rhythm of groups of buildings, or the street scene of which they form a part. Finally the guidance in the Supplementary Planning Document: Residential Extensions and Alterations (SPD) states that in relation to roof extensions these should be designed to complement the house and street scape and should not depart from the existing roof form, including eaves and ridges. Whilst I accept that full implementation of this development would not conflict with policy, partial construction would not support the retention of the design integrity of the terrace.
14. The appellant states that the SPD does not deal with this type of contemporary architecture, though the guidance acknowledges that development in the borough ranges from early Victorian to the recent years and does not seek to differentiate the application of design principles. The appellant also references ad hoc roof extensions and frontages with more varied roof lines in the locality and further afield which, it is suggested, set a precedent for the partial completion of the current scheme. Whilst I do not have the full details of the design or circumstances of these examples before me, it is not demonstrated that they relate to buildings with the degree of uniformity displayed in the appeal terrace, and therefore parallels in terms of the degree of harm cannot be drawn.
15. The appellant also refers to paragraph 65 of the Framework which states that planning permission should not be refused for buildings which promote high levels of sustainability because of concerns about incompatibility with the existing townscape. Whilst I accept that this part of inner London is a reasonably sustainable location and that the overall design of this scheme has been deemed to be acceptable, the particular concerns of this case relate to the deliverability of a significant proportion of it and the harm which would result. However, paragraph 64 of the Framework which states that planning permission should be refused for development of poor design is also relevant. In this case it has not been demonstrated that anything more than partial and disjointed development resulting in a harm to the local street scene would be the outcome of planning approval.
16. The Council makes it clear that in order to secure the completion of the development in its entirety a suitable legal obligation committing the owners of these properties to this scheme would be required. This requirement is in line with paragraph 203 of the Framework which states *that Local planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or obligations.*

17. An obligation has not been provided, with the appellant challenging its reasonableness, and noting that such a requirement undermines the viability of this scheme. I have carefully considered these arguments alongside the National Planning Practice Guidance (NPPG) which states that *planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.*³
18. I have demonstrated that, due to the harm caused by the partial construction of the development, such an obligation would be necessary to ensure its completion so that it would be acceptable in planning terms. It would also be directly related to the proposed development which encompasses the whole terrace row. Whilst I share the appellants concerns that the suggested 5 year timescale to secure completion may not be reasonable, it is possible that an obligation could be drafted that would be fairly and reasonably related in scale and kind to this scheme.
19. Therefore, although I accept that securing the commitment of ten individual owners to such an obligation would be challenging and may threaten the viability of this scheme overall, it would nonetheless be commensurate to the scale of development proposed in this case.
20. My Inspector colleague in the Reedholm Villas case reached a different conclusion on the requirement for either an obligation or condition. In that case the Inspector found that the harm caused by the partial completion of the roof extensions would not lead to a significant visually intrusive or harmful form of development. As such an obligation was not required to make the development acceptable. The appellant suggests that other equivalent schemes have been allowed to progress without planning obligations, for example in London Lane and Mentmore Terrace, though the full circumstances of these particular cases are not presented to enable comparison.
21. The appellant argues that this matter should be dealt with by condition rather than legal obligation. In most circumstances conditions are preferable, with the Framework noting at paragraph 203 that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. I accept that in situations where it may be possible to overcome a planning objection to a development equally well by imposing a condition or by entering into a planning obligation, a condition would be preferable as this would represent the most straightforward approach. However, as the 10 appeal properties are in individual ownership, a condition requiring the completion of the development in its entirety would not in my view be enforceable and would therefore fail one of the six tests set out in paragraph 206 of the Framework.
22. The appellant refers to the NPPG which states that conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve.⁴ However, I have already accepted that a condition would not be a suitable mechanism in this case. I have also accepted that given the nature of the proposal and the harm identified without a mechanism to secure its

³ Paragraph: 001 Reference ID: 23b-001-20161116

⁴ Paragraph: 005 Reference ID: 21a-005-20140306

completion, an obligation would pass the tests of being necessary, directly related, and fairly and reasonably related to it in scale and kind.

23. Finally, the appellant's argument that a principle that is unnecessary and unreasonable as a condition remains unreasonable and unnecessary as an obligation is not supported by the guidance or legislation on these matters.
24. I therefore conclude that in the absence of a legal obligation to secure the completion of the scheme as a whole the proposal would have a harmful effect on the character and appearance of the terraced row and local area. It would therefore conflict with the CS Policy CS24, the LP Policy DM1, the London Plan Policy 7.4 and the SPD which, taken together, require a high standard of design that makes a positive contribution to local character.

Other Matters

25. The proposal would enable the addition of up to two further bedrooms in what are currently two bedroom houses, and in this respect would support local policy which encourages the creation of family accommodation. The appellant also points to the presumption in favour of sustainable development set out in the Framework. Whilst such considerations do weigh in favour of the fully completed scheme, as no evidence has been presented to demonstrate the intention of the majority of the owners of these properties to complete roof extensions, I afford them limited weight overall.
26. I note the appellant's frustration regarding the discrepancy between the versions of the officer report on the Council's website and that supplied with the appeal documentation. However, this anomaly does not alter my conclusion on the main issue in this case.

Conclusion

27. I have accepted that if this development were to be completed in its entirety it would be acceptable in planning terms. However on the basis of the evidence before me, and in the absence of a suitable legal agreement, it has not been demonstrated that such an outcome is likely. Therefore the balance of probability is that harm would result to the character and appearance of this terrace and local area.
28. Other material considerations, including the provision of additional family accommodation, do not outweigh this harm, or suggest that I should conclude other than in accordance with the development plan taken as a whole. Therefore the appeal is dismissed.

AJ Mageean

INSPECTOR