



Appeal Decision

Hearing Held on 12 July 2017

Site visit made on 12 July 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 20 July 2017

Appeal Ref: APP/G5750/W/16/3159508 2A - 2B Windmill Lane, London E15 1PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Milton Development London Ltd against the Council of the London Borough of Newham.
 - The application Ref 16/01559/FUL is dated 18 May 2016.
 - The development proposed is described as 'Demolition of existing outbuildings on site and erection of 24 no. new residential units comprising 9 x 1 bedroom flats, 6 x 2 bedroom flats, 9 x 3 bedroom flats together with 2 no. car parking spaces, cycle parking provision, refuse and recycling provision, a relocated vehicular access to the service road and landscaping and associated works'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the hearing the appellant submitted late evidence in the form of drawings detailing a recently approved development to the immediate south of the appeal site. I accepted this evidence as the Council's representatives were familiar with the scheme and it had been approved after the deadline for the submission of statements. The late evidence was also relevant to my deliberations. No party has been prejudiced by this course of action.
3. I was advised at the hearing that the planning obligation - a section 106 agreement - had not been completed. However, it was confirmed by both parties that there were no remaining points in dispute and it was simply a matter of completing the formal engrossment of the document. I therefore agreed that the final document could be submitted after the close of the hearing. I received the final document on the 18 July 2017.

Background and Main Issues

4. The appeal was lodged following the Council's failure to give notice of its decision within the prescribed period. Consequently, there is no formal decision notice. Nevertheless, the Council have provided an appeal statement expressing a number of concerns with the appeal scheme. I have therefore treated this as an indication from the Council that, had it been in a position to determine the application, it would have refused it for the reasons it has set

out. Namely, that it considers the proposal would make inadequate provisions for affordable housing and that the design would be substandard.

5. However, in the interim period between the submission of the appeal and the hearing opening, there were discussions between the Council and appellant. This has culminated in the submission of an agreed Statement of Common Ground (SOCG), which was tabled at the hearing. The SOCG sets out an agreed position on the level of affordable housing that would be provided as part of the development. This amounts to the equivalent of 35.1% affordable housing comprising 33.3% on site provision and a financial contribution of £80,000. The Council's concerns in this respect have been alleviated and therefore I need not consider this matter further. Thus, the main issue in this appeal remains the effect of the proposed development on the character and appearance of the area with particular reference to the quality of the scheme's urban and architectural design.

Reasons

6. The appeal site encompasses a parcel of land at the corner between Windmill Lane and Leyton Road. The area around the appeal site has a varied appearance due to the urban morphology evident in the preceding layers of development. This includes remnants of the Victorian street pattern and buildings understood to be from that era, including the locally listed Railway Tavern Hotel to the south of the appeal site and period properties along Windmill Lane. The nearby 20th Century development, including a housing estate to the north of the appeal site, has supplanted much of the older development. More recently, the extensive redevelopment of the area triggered, in part, by the Olympics and its legacy has continued that trend.
7. The layers of development have resulted in the area around the appeal site having no single overarching character with a disjointed urban grain. On the other hand, it is not an area devoid of character, particularly as the street edges are well defined, but it is in a state of transition. Consequently, a redevelopment of the appeal site has the potential to reinforce the emerging character and provide some context for future development.
8. The appeal scheme would include the demolition of the existing structures in the appeal site and the erection of a five storey block of flats that would contain 24 homes. The building would be sited so that the western elevation is positioned at the back of the pavement and the southern elevation to Windmill Lane would be set slightly back from the site boundary, which is currently marked by a brick wall. This arrangement would lack a meaningful set back from the pavements in Windmill Lane and Leyton Road. As a consequence, the proposed building would have an oppressive presence over pedestrians due to its height and position relative to the narrow pavements.
9. This arrangement would result in the pedestrian environment around the appeal site being rather pinched and uninviting. This would diminish the site's ability to positively contribute towards a welcoming pedestrian environment. In coming to this view I accept the proposal would not diminish the existing width of the pavement, which apparently adheres to the highway standards¹. Be this as it may, the appeal scheme would not improve the way the area functions and this is a significant failing. As such, the appeal scheme would not

¹ See City of London minimum standards for Class II areas.

- strike an acceptable balance between an efficient use of the site and an acceptable design and layout.
10. The proposed siting of the building would also give the development a very hard edge with no space available to soften its presence in the street scene through landscaping. Additionally, the siting would result in an unbalanced composition in views looking west along Windmill Lane, as the proposed flats would be taller than The Railway Tavern Hotel but closer to the carriageway of Windmill Lane (due to the narrowness of the pavement).
 11. The above harmful impacts would be compounded by the uninviting, severe and defensive appearance of the building, particularly the ground floor, which would have high brick walls separating the balconies from the street. The entrance points would be ill-defined and diminutive and the recessed position of the windows behind balconies would inhibit the sense and functionality of an active frontage. This is an impact compounded by the absence of separate entrance doors to the individual flats that would otherwise encourage street life. The result of this would be a poor street frontage.
 12. The appeal scheme has been designed with a defensive ground floor to safeguard the privacy and security of future residents and as a response to traffic noise. However, houses further along Windmill Lane have windows onto the street set behind landscaped front gardens that are defined by low brick walls. This arrangement provides both defensible space and a softening of the street scene and is an indication that the appellant's approach is not necessary to secure privacy and security. Instead, the limitations I have identified are a disproportionate response to the harmful proximity of the building to the site boundaries. Substantive evidence has not been provided that the proposed design is required to mitigate traffic noise.
 13. The above limitations would be different to the recently approved hotel development to the south of The Railway Tavern Hotel, which would largely be positioned back from the site boundary providing space for tree planting and a terrace. There would also be a well-defined entrance and an active frontage with vertical subdivision that would create four 'bays' visually distinct from the southern tower. The appeal scheme would therefore contrast awkwardly with this recently approved development. As such, there is no inconsistency between my findings and this approval.
 14. In views along Windmill Lane the eastern most elevation of the proposed flats would be largely blank. The rather austere eastern elevation would result in a perception that the building had turned its back on the street scene of Windmill Lane. The brick detailing would not mitigate for this as it would not generate activity and surveillance. The inactive eastern elevation of the proposed building would be a stark, strident and thus harmful feature in the street scene of Windmill Lane. It has not been demonstrated that the insertion of windows and doors in this elevation would harm the privacy of the occupants of the terrace housing to the east of the appeal site or prevent future development. Nor has substantive evidence been presented that an active frontage in this elevation would place future residents of the development at an unusually high risk of crime.
 15. The appeal site has a dishevelled appearance but this alone is not a sound reason to permit the appeal scheme. This is because to otherwise permit the proposal, which could endure for a long time, when it is not of a sufficient

quality of design would be a failure to take the opportunity available to improve the character and quality of the area and set a positive context for potential future development.

16. The proposal would not be without merit. The brick finish could reflect the pallet of materials found locally and the Council confirmed the height would be consistent with the aspirations outlined in the Stratford Masterplan. However, these broadly positive aspects of the proposal would not outweigh or mitigate the fundamental limitations in the design derived from the siting and overly defensive appearance. Moreover, the appeal scheme has not been before a design review panel as encouraged by the National Planning Policy Framework. This is a limitation in the design process underpinning the scheme.
17. I therefore conclude that the appeal scheme would harm the character and appearance of the area and would fail to be of a sufficiently high standard of urban and architectural design. Thus, it would offend Policies 3.5, 7.1, 7.4, 7.5 and 7.6 of the London Plan, Policies S1, S6, SP1, SP2, SP3 and H1 of the Newham Core Strategy and Policy SP8 of the Newham Detailed Sites and Policies Development Plan Document. These policies seek to secure high quality development that reinforces legibility and permeability and contributes to establishing an enhanced character for the future of an area.

Other Matters

18. The biodiversity report submitted with the appeal scheme concludes that bats may be present within an existing building at the appeal site and recommends that further surveys should be undertaken to establish their presence or absence. Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by the development, is established before planning permission is granted, as otherwise all relevant material considerations may not have been addressed. It goes on to state that surveys should be undertaken before planning permission is granted and can only be required by condition in exceptional circumstances.
19. The Council suggested that the outstanding surveys could be secured through a planning condition but it was unable to provide exceptional circumstances justifying this approach. As such, I would need to see further evidence before agreeing this as an appropriate course of action. However, given my findings on the main issue it is unnecessary for me to consider this matter further.
20. It was agreed at the hearing that in order to prevent localised parking stress it would be necessary to control the access of future residents of the appeal scheme to parking permits. It was therefore agreed by the Council and appellant that a planning obligation would be necessary to secure this and that it would have to be drafted so that it goes beyond a mere requirement that future occupants of the flats would not apply for parking permits. This is because such an obligation could not be taken into account as it would not fall within the scope of s106 (1) of The Town and Country Planning Act². An obligation would also be required to ensure parking permits are surrendered if already owned by future residents or if they received them erroneously.

² As it would not restrict the development or use of the land in any specified way

21. The legal agreement before me has not been drafted in the terms discussed at the hearing as it includes an obligation that owners would not apply for parking permits. Moreover, Part 2 Paragraphs 1.2, 1.3 and 1.4 are imprecise as it is unclear when and how prospective purchasers would be informed of the obligations, what covenants would be imposed and what the management system referred to would be. I would therefore need to see further evidence as to whether the s106 Agreement includes obligations I can take into account and whether it would achieve its intended aims for the development to be 'car free'. Nevertheless, given my findings on the main issue it is again unnecessary for me to seek further representations or arrive at a conclusion on this matter.
22. I observed that the original boundary wall and part of the chimney breast of Angel Cottage, the demolished Grade II listed building that formally occupied part of the appeal site, is still present. However, the Council confirmed that the site had been de-listed and therefore these structures no longer form part of a designated heritage asset. The other buildings on site are apparently historic storage buildings, which did not form part of the listed building. They appear in a poor state of repair and there is nothing before me to suggest they are of any particular intrinsic value as part of the local built heritage. The structures on site are historic and could be considered heritage assets. However, they are of very limited significant and any harm arising from their demolition would be outweighed by the public benefits of the proposal.
23. The level of family housing proposed as part of the appeal scheme would be below that required in the development plan. Nevertheless, the Council confirmed at the hearing that this was not a concern as the shortfall would be marginal and broadly within the scope of the relevant policy. I have no reason to disagree.
24. The benefits of the proposal are a material consideration. These would include the regeneration of the site in a way that would deliver housing, including affordable and family housing³, in a position highly accessible to local services. However, this would be at the expense of the character and appearance of the area. Moreover, it is not apparent to me that the adverse impacts of the proposal are necessary as a means of delivering a housing scheme at the appeal site.

Conclusion

25. Although the appeal scheme would adhere to some aspects of the development plan it would nevertheless be contrary to the policies seeking to secure high quality design. The harm I have identified, and the conflict with the development plan that derives from this, outweighs the positive aspects of the proposal. As such, the appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

³ Both of which are in high demand in the borough

APPEARANCES

FOR THE APPELLANT

Raja Khan	Milton Developments (London) Ltd
Chris Hicks	Director, RPS CgMs
Alexandra Nahani	Graduate Planner, RPS CgMs
Nick Fell	Partner, Rapleys
Milan Babic	Milan Babic Architects

FOR THE LOCAL PLANNING AUTHORITY (LPA)

Ellen Nicholson	Principal Planner
Ben Hull	Urban Design and Conservation Officer

DOCUMENTS

1. Drawings 1324 P 2001, 1324 P 101 and street scene elevations of the approved Angel Lane hotel scheme.
2. Draft Section 106 Agreement between The Mayor and Burgesses of the London Borough of Newham, Windmill Lane Limited and Milton Developments (London) Limited.
3. Signed Statement of Common Ground between the LPA and appellant.