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## Appeal Decision

Site visit made on 18 July 2017

**by Richard Aston BSc (Hons) DipTP MRTPI**

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

**Decision date: 23<sup>rd</sup> August 2017**

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**Appeal Ref: APP/E5330/W/17/3173053**

**95 Thames Street, Greenwich SE10 9BY**

- 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 Cobalt Equity Management Ltd against the decision of Royal Borough of Greenwich Council.
  - The application Ref 16/3734/F, dated 4 November 2016, was refused by notice dated 1 February 2017.
  - The development proposed is demolition of existing vacant public house and construction of part six, part seven storey building which comprises flexible commercial floorspace (Classes A1, A2, A4 and B1), storage and services at ground floor and eight residential units on upper floors.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. A Unilateral Undertaking ('UU') dated 11 July 2017 was submitted during the course of the appeal to replace the UU dated 24 May 2017. I gave the Council a further opportunity to comment and I have had regard to this agreement in my determination of this appeal. It is a matter to which I return to below.

### Main Issues

3. The main issues are:
  - The effect of the proposal on the living conditions of existing and future occupiers, with particular regard to privacy and outlook.
  - Whether the loss of the existing building would be acceptable.

### Reasons

#### *The appeal site and surroundings*

4. The appeal site is located on the western edge of Greenwich Town Centre on the corner of Norway Street and Thames Street. The site is occupied by an existing 3 storey building which was formerly in use as 'The Thames' public house but on the evidence before me has been vacant since the 1990's.
5. The wider area comprises a mix of commercial and residential uses. These include Ballard House, a 5 storey block of flats to the rear which is part of a larger residential estate. I saw at the site visit that a number of flatted developments are being, or have been, completed in close proximity to appeal

site including 7 to 11 storey modern residential blocks that are part of the mixed use Capital Quays development.

*Living conditions*

6. The Mayor of London Housing Supplementary Planning Guidance March 2016 ('SPG') provides the design standards for new housing in Greater London. The standards set out the minimum level of quality and design that new homes should meet. Standard 28 stipulates that proposals should demonstrate how habitable rooms within each dwelling are provided with an adequate level of privacy in relation to neighbouring property, the street and other public spaces
7. The appellant contends that *'where potential overlooking and loss of privacy issues are present, windows are obscurely glazed to remove this risk'*<sup>1</sup> and that private balcony areas are inset to the facades. I find that the submitted Design and Access statement and evidence does not provide a clear and robust justification that alternative approaches have been considered and instead seeks to rely on use of obscure glazing in the eastern facing elevation and to justify the proposal by reference to other recent approvals by the Council.
8. Although I have not been referred to any minimum standard by the Council the Council do refer to a shortfall from the standard of 18-21m within the SPG and whilst this is past guidance it provides a useful starting point. Nevertheless, I find such a distance is not determinative in such a design led approach and share the appellant's view that each case must be judged upon local characteristics and merits of the development<sup>2</sup>.
9. Despite changes during pre-application discussions, the combination of the siting of the building on the back edge of the footway, its height and the presence of large living room and bedroom windows that serve the duplex flats, in addition to the balconies, would result in substantial mutual overlooking and a perception of being overlooked to and from properties within Jubilee Court on the opposite side of Thames Street and moreover, to and from units in the upper floors of Harwood House on the opposite side of Norway Street, which also appeared to be single aspect.
10. It would be unreasonable to provide obscure glazing to such primary windows which also appear to be the principal source of light to some of the rooms<sup>3</sup> and in any event, direct overlooking from the balconies would still occur. To my mind, it is even more important in such densely developed urban areas to ensure that such effects on privacy do not take place or have been appropriately mitigated, which I find not to be the case here.
11. In terms of outlook, in such close proximity to one another, in particular to existing units in Hargood House, outlook from these units and the proposal would be somewhat oppressive and overbearing given the distances between such substantial amounts of built form. This would create an undue sense of enclosure for existing and future occupiers, in particular from the living/dining areas of the duplex flats.
12. My attention has been drawn to what the appellant contends are similar proposals, including development approved by the Council with what appears

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<sup>1</sup> Page 33 of Design and Access Statement.

<sup>2</sup> Paragraph 6.29 of Appellant's statement.

<sup>3</sup> Living/dining areas of Flats 1-7 and bedroom 2 of flats 2 and 4

to be similar distances between habitable room windows<sup>4</sup>. It may well not be uncommon for closely facing windows in facades exist across what are often narrow and densely developed streets, flanked by tall buildings.

13. However, they appear to be for much larger schemes which are likely to have required different considerations and judgements to be made. I also do not have the benefit of being provided with the full details and I note that Land between Creek Road/Bardsley Lane and what the appellant refers to as Greenwich Quay<sup>5</sup> were approved prior to the adoption of the development plan.
14. The most comparable case appears to at Horseferry Place, close to the appeal site. However, the form and design of that building and its relationship to adjoining buildings is different. I also note that in that case the Council refer to the windows being primary but would face bedrooms which are not 'main habitable rooms', a conclusion which I do not share. In the absence of a single legal definition its use and meaning is subject to context and in my view, whilst bedrooms are predominantly used for sleeping, they are also used for other activities and it is reasonable to expect that future occupiers would spend a significant amount of time within them, especially given the size of the proposed units.
15. Overall, I am not persuaded that the examples given are directly comparable to the appeal proposal before me. In any event, simply because a development is considered to be reflective of existing spatial character does not in itself justify repetition as each case is determined on its own merits. Quality of design is about more than visual appropriateness and in this particular case I am not persuaded that the proposal would be a high quality of design.
16. For these reasons, the proposal would cause significant harm to the living conditions of the occupiers of neighbouring properties in terms of privacy and outlook. It would conflict with Policies DH(b) and H5 of the CS and the SPG insofar as they require development to not cause an unacceptable loss of amenity to adjacent occupiers by reducing the amount of privacy or resulting in an un-neighbourly sense of enclosure and is consistent with the SPG.
17. This approach is consistent with the National Planning Policy Framework ('the Framework') and it would therefore also conflict with one of the core principles of the Framework, which is to always seek to secure a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings.

#### *Loss of existing building*

18. The building is of a traditional London stock brick construction and there is no doubt that given its location in an area that is largely devoid of its historic built environment it is an example of one of few remaining Victorian buildings in this part of the borough and is included on historic mapping going back over a century. It contains brick quoining, chamfered corner profiles, incised stonework and diaper strong courses along with what appear to be a full set of original windows. In architectural terms the building is reflective of a style of architecture that is not prevalent in the locality and does have some cultural and social significance as a former dock workers public house.

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<sup>4</sup> Table in paragraph 6.31 of appellant's statement.

<sup>5</sup> 13/0364/F approved on 18 November 2013 and 05/1386/F.

19. The definition of heritage assets, as set out in the Framework, includes buildings, sites and places as having a degree of significance meriting consideration in planning decisions, because of their heritage interest. Heritage assets include designated heritage assets and non-designated heritage assets ('NDHA') identified by the local planning authority.
20. The Planning Practice Guidance ('PPG') sets out that local authorities may identify non-designated heritage assets. Local lists are given as one useful way of identifying these assets but it is clear that not being on a list would not preclude a building from being considered. Such assets have a degree of significance due to their heritage interest that merits consideration in the planning process. Despite comments from the Council's Conservation officer that it would be 'likely to fulfil the criteria for local listing' the Council have not placed the building on a local list of buildings of special or architectural and historic interest in the borough.
21. I observed at my site visit that internally the condition of the existing fabric is very poor and had clearly suffered from a lack of maintenance and repair. Externally the windows were boarded up, the signage had aged and some paint was peeling but despite some cracks in the building it did not appear to be derelict. However, survey investigations have identified significant structural issues with the building that are beyond economic repair and in any reasonable assessment the building, to be used once more as a public house requires extensive renovation works.
22. I have also had regard to the appellant's viability report<sup>6</sup> and note that the Council have not submitted any substantive evidence to the contrary regarding this or the building's condition. The viability report concludes that due to a lack of annual operating profit, there is no prospect of the building being renovated and used as a public house. On the evidence before me, I have no reasons to disagree. I am however mindful that permission was granted for the refurbishment of the ground floor for public house use and change of use of the first and second floors to residential in July 2015 which has not been implemented, although this does not necessarily mean that the scheme before me is the only available option or approach.
23. The original townscape within which the building would have been set within has been long since eroded and it does not possess the importance, visual influence or distinctiveness to act a landmark in the context of much taller and considerably bulkier built form that surrounds it. The set-back of the top storey of the proposal together with the use of contrasting London stock brick, recessive elements, bays and distinctive fenestration and brick patterns would all help provide articulation to the facades.
24. The result would be a striking building with considerable presence in the streetscene and whilst its narrow flanks would draw the eye to the proposal, in particular from Norway Street, the appearance could not be said to out of keeping or incongruous to the prevailing appearance of the streetscene or wider area.
25. Paragraph 135 of the Framework requires a balanced judgement which seeks in weighing applications that affect directly non-designated heritage assets assessing the scale of any harm or loss and having regard to the significance of

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<sup>6</sup> Davis Coffey Lyons dated 17 October 2016

the heritage asset. The proposal would result in the total loss of the building but overall the significance of the building, whilst of some local heritage interest, does not weigh solely in favour of its retention.

26. For these reasons, the loss of the building would be acceptable and the proposal would comply with Policies H5 and DH1 of the Royal Greenwich Local Plan Core Strategy with Detailed Policies 2014 ('CS') and Policies 7.4, 7.6 and 7.8 of the London Plan 2016 ('LP') insofar as these require new residential development to respect the character of the surrounding environment and have an understanding of local characteristics.

### **Other Matters**

27. The parties agree that due to the location of the appeal the site the proposal, if allowed, should be car free and the UU also provides for a financial contribution to the Council to be used to secure delivery of carbon dioxide savings. The Council's third reasons for refusal also relates to a lack of adequate provision being demonstrated for adequate servicing and storage of refuse and recycling facilities.
28. However, given my findings in relation to the first main issue if the circumstances leading to a grant of permission had been present, I would have given further consideration to these matters. However, as I am dismissing the appeal I have not found it necessary to consider such matters any further because even if I were to find in the appellant's favour they would not alter my decision. I also accept there may be some frustration on behalf of the appellant given pre-application discussions. However, the Council's administration and determination of the proposal are not matters for me to address as part of this appeal.

### *Planning balance and conclusion*

29. Although the appellant refers to the presumption in favour of sustainable development set out in paragraph 14 of the Framework, on the submissions before me the development plan is not absent, silent or relevant policies are out of date and the policies cited are consistent with it. As such, the presumption in favour of sustainable development is not engaged.
30. The proposal would provide benefits in terms of the regeneration of a long term vacant brownfield site, albeit that it would result in the loss of a building of some limited local historic interest. The proposal would also provide a modest contribution to the range of smaller unit sizes in an area of opportunity<sup>7</sup>. Although there would be economic and social benefits during construction and from future residents in the local economy, given the nature of the proposals these would be minimal and attract little weight. The absence of harm in terms of normal development management considerations such as sustainable drainage, internal space standards, energy efficiency, the car free obligations and infrastructure contributions only weighs neutrally in the planning balance.
31. Although I have found that the loss of the building would be acceptable, the proposal would cause significant harm to the living conditions of existing and future occupiers of both neighbouring properties and the appeal proposal in terms of privacy and outlook. In my view, this is the prevailing consideration

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<sup>7</sup> Deptford Creek/Greenwich Riverside Opportunity Area.

and although the proposal would accord with some aspects of the development plan, I give greater weight to this conflict and overall, the proposal would conflict with an up to date development plan, when read as a whole and the Framework. It would not therefore be sustainable development.

32. Material considerations do not indicate that the decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

*Richard Aston*

INSPECTOR