
Appeal Decision

Site visit made on 14 November 2017

by Rachel Walmsley BSc MSc MA MRTPI

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

Decision date: 15 January 2018

Appeal Ref: APP/E5900/W/17/3180542

Land rear of 129 Cadogan Terrace, London E9 5HP

- 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 R Tomkins against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/16/02795, dated 21 September 2016, was refused by notice dated 30 May 2017.
 - The development proposed is demolition of existing walls and erection of a two storey building to provide a café and offices.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are:
 - (i) whether the proposal would be in a suitable location with particular regard to the development plan;
 - (ii) the impact of the development on the living conditions of neighbouring occupiers, with particular regard to privacy and outlook;
 - (iii) the effect of the development on the character and appearance of the area and the Victoria Park Conservation Area;
 - (iv) whether the development would make acceptable provisions for waste collection and cycle parking; and,
 - (v) the effect of the proposal on highway safety, with particular regard to servicing and deliveries.

Reasons

Location of development

3. Policy SP01 of the Core Strategy¹ defines the town centre hierarchy within the borough, supported by policy DM1 of the Local Plan² which directs uses such as retail, banks and cafes to town centre locations as well as Central Activity Zones and Activity Areas. The proposed development would be outside these

¹ Tower Hamlets Local Development Framework, Core Strategy (Adopted 2010)

² Tower Hamlets Local Plan, Managing Development Document (Adopted 2013)

areas and being a development for a café and offices would therefore be in an unsuitable location with regard to the development plan.

4. There is an acknowledgement within the supporting text to policy DM1 and section 5 of policy SP01 of the Core Strategy that proposals for main town centre uses should, as far as possible, be located in existing town centres as a priority, then edge of centre and lastly out of centre locations, subject to the use being well integrated with the existing centre and public transport or being local in nature and scale. There is nothing before me to indicate that the café would be well integrated with centres nearby or with public transport.
5. The café would be modest in nature and scale and would benefit the visitor economy in this part of the borough, not least because of its location close to the canal. It would also enhance people's experience of the Green Grid which, together with the benefits to the visitor economy, would be in the spirit of policy 4.5 of the London Plan³ which supports the growth of London's visitor economy. The development would also be supported by policy SP06 of the Core Strategy which encourages the small and medium enterprise sector. However, there is a café which is part of the development of No 129 Cadogan Terrace. There is nothing within the evidence before me to indicate that another café in the location proposed is required to realise the benefits mentioned, at the expense of the use being outside the town centre hierarchy.
6. In all, therefore, I find that the proposal, being outside of a centre or Activity Area would not be in a suitable location with particular regard to the development plan. The development would, therefore, be contrary to policies SP01 of the Core Strategy and DM1 of the Local Plan.

Living conditions

7. Occupiers of the office area proposed, to include the balcony, would overlook the living space at No 129 Cadogan Terrace. As a result the privacy of the occupiers of No 129 would be invaded causing harm to their living conditions. The appellant suggests that the windows to the office could be obscure glazed. If the appeal was allowed, a condition to secure obscure glazing would be reasonable and would overcome any problems of overlooking from the office space proposed. However, the obscure glazing would not overcome problems of overlooking from the balcony.
8. The Council raise concern that the kiosk proposed would create a sense of enclosure when seen from the living space at No 129 Cadogan Terrace. The kiosk would be within proximity of the living space and to a height in excess of two metres. Together with the prevalence of glazing to the living area, the development would restrict the outlook from No 129 and therefore create a sense of enclosure which would result in the living space feeling oppressive to be within. The appellant suggests that this relationship would be no different to what has already been approved via the application to redevelop No 129. However, the evidence before me does not show this to be the case; there is no evidence of a building being within equal proximity of No 129.
9. The development would abut the boundary with the garden to No 128 Cadogan Terrace. The garden is long and the point at which the development would abut the boundary would be a distance from the living spaces of the host

³ The London Plan (March 2016)

building, such that the development would not create a sense of enclosure from the living area to cause harm to occupier's living conditions by way of outlook.

10. In all, therefore, whilst I find that the development would not have a harmful impact on the living conditions of the occupiers of No 128 Cadogan Terrace, the development would be harmful to the living conditions of the occupiers of No 129, with particular regard to privacy and outlook. As such the proposal would be contrary to policy 7.6 of the London Plan and SP10 of the Core Strategy which seek development that does not cause unacceptable harm to local amenity.

Character and appearance

11. No 129 Cadogan Terrace is situated at the end of a row of terraced properties which are a defining feature of the area, their uniformity and long rear gardens contrast with a more varied arrangement of buildings and spaces in the area. The rear gardens support a wealth of mature trees and landscaping. These trees are appreciated most from the adjoining A12 road, although there are other trees within the vicinity of the site which add to the verdant character of the area.
12. Being at the end of a terraced row the land to the rear of No 129 adjoins the towpath to the Hertford Union Canal. Together with the recent redevelopment of No 129 with a building that contrasts in form and scale to the terraced properties, No 129 and the land behind it is appreciated as a separate entity to the terraced properties. The proposed development would respond to this context by addressing the canal and creating an active front to it. This would help No 129 to turn the corner and therefore address both Cadogan Terrace and the canal. This arrangement would also respond to the layout of the building on the other side of the canal which addresses the waterfront in a similar way.
13. The building proposed would occupy the entire site which the Council suggests would constitute a cramped form of development. However, in responding the way the development would to No 129 and the canal, a building with the floor area proposed would not be an inappropriate response to its surroundings nor would it appear cramped.
14. Related to the redevelopment of No 129 Cadogan Terrace, a landscaping scheme was approved by condition which included tree planting. If the appeal was allowed, a number of the trees proposed could not be realised. Furthermore, with the building occupying the entire plot there would be no space for alternative planting. This reduction in trees would be harmful to the verdant character of the area. The appellant has submitted with the appeal a landscape plan which proposes the replacement of large mature trees with small and medium sized ornamental planting to the rear of No 129. However, the replacement trees, being smaller, would not compensate for the loss of larger mature trees, nor, therefore, overcome the harm found to the character of the area.
15. The appeal site is within the Victoria Park Conservation Area (VPCA). Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that '*special consideration shall be paid to the desirability of preserving or enhancing the character or appearance of the area.*' Paragraphs 132 and 133

require a proposed development to be assessed against the significance of the conservation area and with regards to an assessment of harm.

16. The character and significance of the conservation area derives principally from Victoria Park although other features including terraced properties and trees are noted within the Character Appraisal and Management Guidelines⁴ as contributing positively to the conservation area's character. The VPCA notes the contribution tree-lined roads and landscaped front gardens make to the park setting and the role that mature planting and landscaping in public and private gardens have in creating the high quality and open character of much of the area.
17. The mature trees between the rear of Cadogan Terrace and the A12 road are largely obscured from views from within the conservation area and therefore contribute little to the character and appearance of the conservation area overall. Together with the appeal site being a small part of and at the far edge of the conservation area, the appeal site also makes a limited contribution to the significance and character and appearance of the VPCA.
18. The lack of trees proposed, therefore, would not have a discernible effect on the character of the conservation area. The proposal would therefore leave the character of the conservation unharmed; that is to say preserved and as such the development would not be contrary to policies DM27 of the Local Plan and 7.8 of the London Plan which seek development that conserves and enhances the significance of heritage assets, nor paragraphs 132 and 133 of the Framework. This is neutral in the planning balance.
19. The lack of harm found to the VPCA does not outweigh the harm found to the character and appearance of the area. The proposal would, therefore, be contrary to policy 7.4 of the London Plan and policy SP10 of the Core Strategy which seek development that makes a positive contribution to the character of a place.

Waste collection and cycle parking

20. Policy 6.9 of the London Plan outlines the minimum standards for cycle parking and appendix two of the Council's Managing Development Document (MDD) indicates that cycle parking should be provided in the form of Sheffield Stands. The proposed development demands four cycle parking spaces which translates into two Sheffield Stands. The appellant suggests that the cycle parking currently proposed on the ramp would be replaced with two Sheffield Stands within the public highway. I have no doubt, following my observations on site, that there would be sufficient space within the highway for two stands. However, these would be some distance from the development proposed and therefore the likelihood that people would make the connection between the two is limited. On this basis the development is unlikely to benefit from the cycling provision proposed and therefore would not meet the requirements of policy 6.9 of the London Plan and appendix two of the Council's (MDD) which requires development to be supported by an adequate provision of cycle parking that is integrated, convenient and accessible.
21. Policy DM14 of the Local Plan requires development to demonstrate how it will provide appropriate storage facilities for residual waste and recycling. A

⁴ London Borough of Tower Hamlets, Victoria Park Conservation Area, adopted 4th November 2009

private waste collection team will service the development, moving refuse by hand along the canal towpath to the highway for collection. The evidence before me suggests that the Canal and River Trust's consent could be obtained to use the towpath for this purpose, should planning permission be given. Bins moved to the highway would be within a reasonable distance for collection and if planning permission was awarded, the method for waste collection described could be reasonably secured by planning condition.

22. I have therefore found that the development would make appropriate provisions for waste management, but not cycle parking. As a result the development would be contrary to policy 6.9 of the London Plan and appendix two of the Council's (MDD) for the reasons stated.

Highway safety

23. The development, being to the rear of No 129, would be served from Cadogan Terrace which has double yellow lines. It is estimated that one HGV and four smaller vans would serve the café and offices per week. Loading and unloading is permitted on double yellow lines, provided there is no obstruction. There is nothing within the evidence before me to suggest that vehicles loading and unloading from Cadogan Terrace would cause an obstruction. It was apparent from my observations on site that when a delivery is taking place, there is sufficient road space for vehicles to pass. The free flow of vehicles would therefore be maintained, avoiding harm to highway safety.
24. The Council raised concern that, in the absence of a tracking plan to demonstrate that a vehicle would be able to leave the site in a forward gear, the proposed development would have an adverse impact on highway safety. However I find no evidence of the intention to allow vehicles to access the site and therefore I do not find this a credible concern.
25. With particular regard to servicing and deliveries, the proposal would not be harmful to highway safety and therefore would not be contrary to policies DM20 of the Local Plan and policy 6.13 of the London Plan which seek development that provide for the needs of business for delivery and servicing with no unacceptable impacts on the safety and capacity of the transport network.

Other matters

26. I recognise the benefits of the scheme, not least a well-designed proposal that would contribute to local tourism and leisure opportunities and introduce a modestly scaled enterprise into the area. However, in the absence of any specific or substantive evidence to indicate that these benefits would address a pertinent need within the area, they do not justify allowing development which is found to be otherwise harmful.
27. The appellant refers to the presumption in favour of sustainable development which is set out in the Framework at paragraph 14. The presumption requires approving development proposals that accord with the development plan without delay, and where the development plan is absent, silent or relevant policies are out of date, granting permission unless the conditions at the fourth bullet point of paragraph 14 would be satisfied. There is nothing within the evidence before me to suggest that the development plan is absent, silent or

relevant policies are out of date. Having found that the development would be contrary to the development plan, paragraph 14 does not apply.

Conclusion

28. I have found that the development would not have an adverse impact on the character and appearance of the conservation area and would make acceptable provisions for waste collection and servicing and delivery. Nonetheless, this would be outweighed by the harm as a result of the development being in an unsuitable location, harmful to the character and appearance of the area, affecting the living conditions of neighbouring occupiers, with particular regard to privacy and outlook, and making inadequate provisions for cycle parking.
29. It is on this basis that I find that the appeal proposal would fail to accord with the development plan when taken as a whole. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal is dismissed.

R Walmsley

INSPECTOR