
Appeal Decisions

Hearing Held on 9 July 2019

Site visit made on 9 July 2019

by Nicola Davies DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

Appeal A Ref: APP/U5360/W/19/3225209 **35 London Lane, Hackney, London E8 3PR**

- 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 Intex Properties Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2018/4174, dated 1 November 2018, was refused by notice dated 22 January 2019.
 - The development proposed is described as "*Demolition of existing building and reconstruction of Mentmore Terrace and London Lane elevations and new 4 storey rear return over basement. Comprising 9 residential flats (Use Class C3) with commercial floorspace (Use Class B1) with ancillary cycle parking and refuse storage*".
-

Appeal B Ref: APP/U5360/W/19/3221706 **35 London Lane, Hackney, London E8 3PR**

- 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 Intex Properties Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2017/4763, dated 6 December 2017, was refused by notice dated 22 August 2018.
 - The development proposed is described as "*Demolition of existing building and construction of a 6 storey building over 2 basement levels comprising 7 residential flats (Use Class C3) with employment floorspace (Use Class B1) together with ancillary cycle parking and refuse storage*".
-

Decision

1. Appeals A and B are dismissed.

Applications for costs

2. Applications for costs have been made by Intex Properties Ltd against the London Borough of Hackney. Those applications are the subject of a separate Decision.

Preliminary Matters

3. As set out above there are two appeals on this site and this decision letter deals with both appeals. The differences between proposals relate to the number of units proposed and approaches to development design. Given both

proposals relate to 35 London Lane, London, I have dealt with both proposed developments in this single decision letter. I have considered each proposal on its individual merits and restricted myself only to the matters of dispute in each case. To avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.

4. The descriptions of development I have used have been taken from the planning application forms, although I note that the description of the developments differs on other documents.
5. In relation to Appeal B, that scheme was amended during the course of the planning application consideration by the Council. The revised scheme reduced the number of units proposed from 9 to 7. The revised proposal was subject to public consultation and the Council's determination related to the 7 unit scheme. For this reason, I have considered Appeal B on the basis of the revised 7 unit proposal on which the Council made its determination and have amended the description of proposed development in the banner heading above to 7 units in recognition of the revision.
6. The appellant has put forward a revised plan, drawing number 1609A-ALS-20-DR-A-1000_P4. The additional information shows a revised floor plan and unit mix for the second storey of the development proposed relating to Appeal B. This additional information does not materially alter the proposal. In accepting this drawing, I do not consider the interests of parties who might wish to comment would be prejudiced. For this reason, I have had regard to this plan.
7. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning applications were determined by the Council. I have had regard to the revised Framework in reaching my decision.

Main Issues

8. The main issues raised in respect of these appeals are:
 - (a) The effect of the proposed developments upon a non-designated heritage asset;
 - (b) The effect of the proposed developments upon the character and appearance of the area;
 - (c) The impact of the proposed developments upon the supply of commercial floorspace within the Priority Employment Area (PEA) and the Borough generally;
 - (d) The impact of the proposed developments upon housing mix and delivery of appropriate housing within the Borough; and
 - (e) The impact of the proposed development upon trees (Appeal B only).

Reasons

Non-designated heritage asset

9. A considerable amount has been said about the building that previously occupied this site. However, subsequent to the appeal being lodged and statement of cases submitted by parties, that building has been lawfully demolished under the Prior Approval procedure. Whilst the Council contend

that regard should still be made to that building, demolition has drawn the life of that building to a close. I have no substantive reason before me that would lead me to conclude that new development at this site should replicate the past development that occupied the appeal site.

10. The demolition of the building has removed any potential conflict with Policy 7.8 of the London Plan, Policy 25 of the Hackney Local Development Framework Core Strategy (the Core Strategy) and Policy DM28 of the Hackney Development Management Local Plan (the Local Plan).

Character and appearance

11. Appeal A has arisen as a result of the Council's concerns surrounding the loss of the non-designated heritage asset building that occupied the site. The Council is concerned that the proposed redevelopment proposal would be a poor reproduction replacement. I accept that the proposed development has been designed to pay homage to the appeal site's former building but given that circumstances at the site have changed, I do not consider the appearance of the new development would be unacceptable taken on its own merit.
12. The Council advised at the hearing that if this had been a site that had not hosted a building of significance there would be no objection to a modern approach to development at this site, much like that of other recent developments in the area.
13. Turning to Appeal B, this proposal seeks to create a 5-storey building fronting London Lane with a 4-storey element to the rear fronting Mentmore Terrace. Considering the immediate context of the site the existing development at London Lane adjacent the appeal site is 2-storey and rises to 3 along the street frontage but the upper third storey is, by design, subservient to the host property. This 2-storey with subservient third storey is replicated along Mentmore Terrace adjacent to the appeal site.
14. I saw at my visit that the recent development opposite is 6-storey high at the corner of London Lane and Mentmore Terrace and that there are other tall developments within the wider area. Notwithstanding this, I consider a corner development of 5 storeys and a development of 4 storeys along Mentmore Terrace would appear overly tall and out of keeping within the immediate context of those development that abut the appeal site. For this reason, the proposed development would be visually harmful.
15. For the above reasons, the Appeal A proposal would not have a harmful effect upon the character and appearance of the area. However, I conclude the Appeal B proposal would have a harmful effect upon the character and appearance of the area. This would, therefore, bring the proposed development of Appeal B into conflict with Policies 7.4 and 7.6 of the London Plan, Policy 24 of the Core Strategy and Policy DM1 of the Local Plan. These policies seek, amongst other matters, development to respect the scale, proportions and mass of surrounding buildings.
16. The appellant has directed me to Policies GG2 and H2 of the emerging London Plan, however, given that Plan has yet to be adopted it holds very limited weight as a material planning consideration.

Commercial floorspace

17. The appeal site is located in the Mare Street PEA and the Council identifies the site as being within a core economic growth area. Core Strategy Policy 16 seeks to address unemployment and facilitate access to jobs by increasing the employment offer in the Borough. Core Strategy Policy 17 indicates that in PEAs Business (B1), Hotels (C1) and Non-residential (D1) Institutions will be the preferred uses. Local Plan Policy DM14 indicates that when considering the redevelopment of sites, the applicant must firstly consider the commercial opportunities and potential of that land and floorspace and demonstrate in the first instance that the maximum economically feasible amount of employment land and floorspace possible has been examined through the submission of marketing evidence. Local Plan Policy DM17 states that B1, B2 and B8 uses are appropriate uses within PEAs and where C3 uses form part of mixed use schemes the commercial use is the primary use, in that the majority of the floorspace should be for such use. In this policy context, employment (B Use Classes) should be the dominant use within these proposed developments.
18. The commercial floorspace within both appealed schemes is proportionally skewed strongly in favour of residential floorspace against that of commercial floorspace and would, therefore, not comply with the above policies. The appellant's representative at the hearing confirmed that the proposals put forward represent optimising development of the appeal site that would satisfy other development plan policies for housing provision. Whilst this may be so, this does not set aside those policies relating to the PEA and which apply to this site's location.
19. Planning Policy Guidance makes it clear that it is the responsibility of the site promoters to take into account any costs including their own profit expectations and risks and ensure that the proposals for development are policy compliant.
20. Appeal proposal A has been supported by an 'Assessment of Economic Viability' that provides an assessment of the economic viability of the proposed scheme. There are a number of disagreements between parties, however the main one centres around the appellant's benchmark land value (BLV). Both parties have calculated the BLV with the building in place with a difference of £214,000 between parties.
21. The appellant considers the BLV assumed by the Council to be unrealistic. The appellant has provided a list of sites to assist consider comparable land transactions that have taken place in less desirable and lower value areas to back up their promoted BLV. I accept there will only likely be a relatively small sample of sites of a similar nature to that of the appeal site which could be a comparison. However, on the information available to me I cannot be certain that those land transactions listed by the appellant related to land within the PEA. Furthermore, it is not clear whether those land transactions pertained to schemes that would result in policy compliant developments or just merely what a person or company was prepared to pay for those sites. The list also includes advertised sites but again it is not clear whether those sites are located within the PEA. An update as to whether any of those sites had been sold, and if they had, at what price, was not available at the hearing. It, therefore, appears to me that the Council's assumed BLV should not

necessarily be considered to be unrealistic and this raises uncertainty in relation to the appellant's viability assessment for the site.

22. I note the Council raises other concerns in relation to the appellant's viability appraisal, including construction costs, notably in relation to creating a basement. Discussion also took place at the hearing relating to other viability variables without parties reaching agreement. With the uncertainties around the BLV, as well as construction costs and other issues, I cannot be certain that the appellant's viability assessment can be relied upon. Nonetheless, whether or not the viability appraisal put forward by the appellant stacks up, that viability assessment relates to the optimising development proposed for this site and not to one that would be policy compliant. On the basis of the evidence before me I cannot be certain that a policy compliant development could not be achieved at this site that would provide an appropriate level of return to the landowner that would be commensurate in relation to a policy compliant proposal.
23. Appeal proposal B has also been supported by a viability report and the Council indicate that it has identified a number of areas of disagreement, most notably the BLV. The appellant has adopted the same BLV as for Appeal A. Given my uncertainties set out above, I cannot say with any degree of certainty that the appellant's viability assessment in respect of Appeal B could be considered sound.
24. Turning to the quality of commercial floorspace proposed within the basement, the Council considers the employment space pertaining to both proposed schemes would have poor outlook, natural light and ventilation. Marketing evidence provided by the appellant indicates there would be a market demand for basement floorspace in this location. The appellant has also directed me to other examples of basement employment uses that have been created. Whilst the basement employment space would not have a conventional outlook, it does not appear to me that the space provided would be poor quality and/or be unattractive to potential commercial occupiers. The spaces are open plan that would provide flexibility in regard to accommodation requirements and could be fitted with kitchen and bathroom facilities. Notwithstanding the quality of the commercial floorspace, both proposals remain heavily balanced in favour of residential development.
25. For the above reasons, I conclude that both proposed Appeal A and B developments would have a harmful impact upon the supply of commercial floorspace within the PEA and the Borough generally. The proposal would, therefore, conflict with Policies 4.1 and 4.2 of the London Plan, Policies 16, 17 and 18 of the Core Strategy and Policies DM14 and DM17 of the Local Plan. These policies seek, amongst other matters, to protect employment land and require the majority of floorspace within PEAs to be for B1, B2 and B8 Use Classes in order to address unemployment and facilitate access to jobs within the Borough.

Housing mix

26. Policy DM22 of the Local Plan indicates that a third of the new housing proposed should be suitable for family occupiers, that is, accommodation with 3 or more bedrooms. Appeal A does not provide any family sized units within the proposal. It has been said that providing sufficient amenity space for 3-bed units would be challenging within the available floorspace, but I have not been

provided with any substantive details that would demonstrate this to be the case. The appellant's representative at the hearing advised that changing the housing mix would reduce the sale value of the units and this would impact upon the viability of the proposal. Notwithstanding this, given my uncertainties around the appellant's viability assessment, I cannot conclude with certainty that appeal scheme A could not potentially incorporate some family sized units within the proposed development.

27. The proposed third floor layout relating to Appeal B demonstrates that it could accommodate a 3-bed and a 1-bed unit. The appellant's amended plan provided in support of this appeal also shows that this unit arrangement could be achieved at second floor. It appears to me that this scheme could accommodate a higher number of 3-bed units within the scheme in line with policy.
28. For these reasons, the Appeal A proposal would have a harmful impact as the development would not provide an acceptable housing mix and delivery of appropriate housing. The proposed development would, therefore, conflict with Policy 3.8 of the London Plan, Policy 19 of the Core Strategy and Policy DM22 of the Local Plan that seek, amongst of the matters, development to provide the different sizes and types of dwellings that have been identified as necessary to meet the Borough's current and future housing needs and demands.

Trees

29. This reason for refusal relates to Appeal B scheme only. However, information that was submitted in relation to the planning application for Appeal A has served to overcome the Council's concerns in relation to trees at or close to the appeal site. The Council has confirmed that it has withdrawn refusal reason 3 relating to Appeal B. I have no substantive reason before me to come to a different view to the Council in relation to the trees.

Other Matters

30. I accept that each residential unit within both proposed developments would meet the National Technical (internal) Space Standards and the London Plan external space and cycle provision standards and improve the public realm around the site. The proposed developments are in an accessible location within PTAL6a and are close to London Fields station, as well as services and facilities at Mare Street. Whilst these are moderate benefits relating to the schemes, these do not overcome my concerns above or justify the proposed development.
31. Interested parties have raised additional objections to the proposal, including aspects of the proposal that could impact upon nearby residents living conditions. However, given my findings in relation to the main issues, there is no need for me to address these in the current decision.

Conclusion

32. Having regard to the above findings, Appeal A should be dismissed.

33. Having regard to the above findings, Appeal B should be dismissed.

Nicola Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Barry Murphy, DWD Property and Planning
Emma Penson, DWD Property and Planning
Hanna Thomas-Davies, DWD Property and Planning
Michael Lynas, Studio 21
Ignus Froneman, Heritage Collective
Graham Newton, Applicant

FOR THE LOCAL PLANNING AUTHORITY:

Tim Walder, London Borough of Hackney
Louise Smith, London Borough of Hackney
Matt Payne, London Borough of Hackney
Graham Callam, London Borough of Hackney
Harry Watkett, London Borough of Hackney

INTERESTED PARTIES:

Natasha Coakley, DWD
Nick Fennel, DWD
John Taylor
Mike Wall
Etienne Clement
Gala Carr
Chris Harding
Jason Groves

DOCUMENTS SUBMITTED AT THE HEARING

1. Hackney Council's photographs of the former building at 35 London Lane.

DOCUMENTS SUBMITTED AFTER THE HEARING

2. A Unilateral Undertaking relating to Appeal A and one relating to Appeal B.