
Appeal Decision

Site visit made on 11 May 2020

by P W Clark MA(Oxon) MA(TRP) MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2020

Appeal Ref: APP/G5750/W/19/3241647

Ibis Styles London Excel, 272 Victoria Dock Road, London E16 3BY

- 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 Custom House Excel Ltd against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/01519/FUL, dated 29 May 2019, was refused by notice dated 17 July 2019.
 - The development proposed is alterations and extension to existing hotel adding new 6-storey northern wing comprising 60N^o new serviced apartments, amended parking/service yard layout and minor "tidying" to front elevation.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Notwithstanding the description of development in the headings above, which is taken from section 5 of the application form, the drawings of the proposal clearly show 62 new rooms in the building proposed as do the information in section 17 of the application form and other supporting documents. I have therefore considered this appeal on the basis that it is a proposal for 62 new serviced apartments.
3. In submitting the appeal the appellant requests that I base my decision on an amended site plan showing the provision of 10N^o short stay cycle parking spaces within the curtilage of the hotel on the Victoria Dock Road frontage, close to its junction with Freemason's Road. This proposed amendment has not been the subject of any public consultation and so, although it might appear a relatively trivial matter, susceptible to consideration as a minor amendment to any approved scheme, I cannot be sure that nobody would be prejudiced by the amendment and so I am disinclined to consider it as part of this appeal and have based my decision on the originally submitted plans.

Main Issues

4. There are four. They are the effects of the proposal on
 - The character and appearance of the area
 - The living conditions of neighbouring residents

- The demand for and provision of facilities for sustainable modes of transport
- Energy demand

Reasons

Character and appearance

5. The appellant's statement of case accepts that the existing Ibis Styles London Excel hotel building has a "less than ideal appearance". The Planning Statement accompanying both this and a previously withdrawn proposal recognises that the existing building is currently of relatively poor quality. There is, perhaps, understandable disappointment that the demolition and redevelopment of the existing building is not proposed. Nevertheless, and notwithstanding policy S1 of the Newham Local Plan 2018 which expects strategic sites to be masterplanned and promises that the Council will resist the development of sites in a piecemeal way, it is unrealistic to expect an extension which represents a volume of development less than 20% of the existing building and which would be located in a back street behind the existing structure, to make good the deficiencies of the existing edifice and its failure to integrate with the Council's aspirations for the wider public area around the Custom House transport interchange.
6. The building to which the proposal would be an extension has a utilitarian aesthetic. It is built of yellow stock brick punctuated at evenly spaced intervals with vividly blue-coloured windows on black cills and beneath red brick lintels. Other than a frontispiece of grey cladding panels and blue-coloured curtain walling at the junction of Victoria Dock Road and Freemason's Road, it has little or no architectural pretence. Its interest depends entirely on the colours of its materials. Its lengthy façade to Victoria Dock Road is mostly six storeys high, reducing to five as it turns the corner into Freemason's Road and then to four storeys at the junction with Ethel Road. At the rear, a projecting wing similarly reduces from six to five and to four storeys as it approaches the rear of a block of three-storey flats in Ethel Road.
7. The aesthetic of the proposed extension would be as utilitarian as the existing building but in a different fashion. Windows would be grey rather than vivid blue and would lack the contrasting coloured cills and lintels which give the existing building such character as it has. Instead, relief would be provided by arranging the windows in a rhythm of paired openings which, to some extent, would reflect the paired openings of existing buildings in the street and by decorating alternate interstices between pairs of windows with a rusticated pattern of brickwork.
8. There is an Energy Strategy submitted with the proposal, intended to demonstrate how the building could comply with the Council's policy for reducing energy requirements. Table 6.1 of this Strategy recommends the use of Air Source Heat Pumps both for space heating and for hot water supply, a recommendation which is endorsed in the Sustainability and Biodiversity Statement in support of the appeal. But the same table notes that these require external condenser fans.
9. The drawings do not show how or where these would be provided. Their form and location can only be speculative. No plant room is shown. The flat roof

design envisaged would not provide an enclosure for such. If the condenser fans were to be provided in the form of an individual unit for each room, they could well look like the air conditioning units which disfigure the elevation of the existing building's frontage to Victoria Dock Road, the removal of which the appellant presents as a benefit of the current proposal. The appellant suggests that this matter could be left to be dealt with by condition but such apparatus can have a significant effect on the character and appearance of such a plain building as is proposed. Therefore, I am not convinced that the submitted drawings necessarily reflect accurately what would be built, so I cannot conclude that the effect of the proposal on the character and appearance of the area would be acceptable.

10. The proposal would link the four storey end of the return frontage to Freemason's Road with the four storey end of the rear wing projecting towards Ethel Road but, in contrast to both those wings and in contrast to the neighbouring two, three and four storey buildings in Ethel Road, it would be six storeys high. Also in contrast to the neighbouring buildings in Ethel Road, it would rise from the back edge of the pavement and would not be set back, as they are, behind small areas of curtilage. As a consequence of its position, height and plain aesthetic, it would have a somewhat formidable appearance in the otherwise domestic Ethel Road street scene.
11. I note the appellant's contention that properties in Ethel Road are to form part of a redevelopment area. Indeed, on my site visit, I saw that many of the properties in Ethel Road to the north and east of the site are boarded up but I have no information about what is proposed to happen to them. In the absence of such information, I cannot know that the proposal would satisfactorily integrate with the neighbourhood in future years.
12. What I can be sure of is that its height, position and aesthetic would harm the character and appearance of Ethel Road as it presently exists and I so conclude. The proposal would therefore conflict with London Plan policies 7.1B, 7.4B and 7.5B which, amongst other matters, require the layout of development to interface with surrounding land and to reinforce or enhance the character of the neighbourhood, for development to have regard to local pattern, and grain, orientation, scale, proportion and mass and to provide public art or greening. (Although the submitted Sustainability and Biodiversity Statement asserts that the development will incorporate planting and urban greening, with reference to green roofs and green walls, none such is shown on the drawings, nor do they appear to allow any scope for their provision).
13. Although I do not conclude that the austere aesthetic of the proposal would contravene Newham Local Plan 2018 policy SP1 which requires a high quality of design, responding to topography, views and vistas, heritage, edges and local features, it would conflict with policies SP3 (1)(e) referencing local character and SP4 (1)(b) requiring tall buildings to have an appropriate effect on streetscape.

Living conditions of neighbours

14. The proposed building would extend along the southern side of Ethel Road, rising sheer from the back edge of pavement. Opposite, on the northern side of the road, from west to east are located the narrow end façade of a four storey block of maisonettes (numbers 43-55 and 63-75 (odd) Ethel Road), the long front façade of a four storey block of maisonettes (numbers 37-41 and 57-

- 61 Ethel Road), a double-fronted, Edwardian, house, two storeys high (number 35) and the gable end of a row of two storey terraced houses running at right angles to the street (number 33 Ethel Road).
15. For a previous application, the appellant has commissioned a report of its effects on the sunlight and daylight received at these properties. The previous application is understood to have proposed additional storeys to the Freemason's Road wing of the hotel, which would be omitted from the current proposal but the proposed new wing fronting Ethel Road would be common to both applications. The appellant's Statement of Case for the current appeal asserts that the Daylight and Sunlight Assessment undertaken for the previously withdrawn application 18/0155/FUL still represents an appropriate benchmark of assessment for the current scheme. I agree, in that the additional floors on the Freemason's Road wing of the hotel would have had a relatively marginal impact on the sunlight and daylight received at the buildings on the opposite side of Ethel Road compared with the effect of the block lying along Ethel Road which remains proposed in the current appeal.
 16. The assessment shows very high proportional reductions in the amount of daylight received at the buildings on the north side of Ethel Road, when measured both in terms of Vertical Sky Component (VSC) and in terms of No Sky Line (NSL). The reductions exceed the level at which, according to commonly accepted expert advice¹, occupants will notice the reduction in the amount of daylight. There are similar findings in the analysis for sunlight.
 17. The appellant points out, and I accept, that high proportional reductions in daylight received are likely to be a result of high absolute values for daylight currently received because of the absence of development on the appeal site. As a consequence, any, even acceptable, development of the appeal site is likely to fail that particular criterion.
 18. I agree with that contention but what leads me to conclude that this particular proposal should not be accepted is that, in addition to very high but relative impacts on daylight received, the outcome in terms of absolute measures of daylight which would continue to be received at properties on the north side of Ethel Road is also very low, falling below the 27% figure for VSC used as a threshold in the BRE guidance. BRE guidance is at pains to point out that its numerical values are purely advisory and that different criteria may be used based upon the requirements for daylighting in an area viewed against other site constraints. But no different criteria to show that daylighting would in fact be acceptable are, in fact, advanced in this particular appeal.
 19. Moreover, the BRE advice points out that another important issue is whether the existing building is itself a good neighbour, standing a reasonable distance from the boundary and taking no more than its fair share of light. As noted above, the existing buildings on the north side of Ethel Road are of modest height and stand back a reasonable distance from the back edge of pavement. They are therefore good neighbours. By contrast, the proposed building would not only be defined as a tall building but would also extend laterally and would rise from the back edge of the pavement and so, would not be a good neighbour. It would be either too tall, or too wide, or placed too close to the boundary, or all three, to be a good neighbour.

¹ Site Layout Planning for Daylight and Sunlight, a Guide to Good Practice, Paul J Littlefair, BRE Trust 2nd edition 2011.

20. As with the character and appearance issue discussed earlier, I note the appellant's contention that properties in Ethel Road are to form part of a redevelopment area. It is conceivable that a building such as that now proposed in the current appeal could form part of a comprehensively designed redevelopment area through which its adverse characteristics could be accommodated. But, that is not what is proposed. Whether the buildings on the north side of Ethel Road are to be refurbished or replaced is not information before me. What is clear is that, if they are to be retained, their occupants would suffer harm from the development proposed in this appeal and that, if they are to be demolished, the development now proposed would adversely affect their site and so place an unacceptable restraint on what should replace them.
21. I therefore conclude that the proposal would have an unacceptable effect on the living conditions of either existing or potential future residents of land on the north side of Ethel Road. It would be contrary to London Plan policy 7.6B(d) which, amongst other matters, requires buildings and structures not to cause unacceptable harm to amenity in relation to overshadowing and to Newham Local Plan 2018 policies SP4b and SP8 (2)(a)(xii) which, amongst other matters requires tall buildings to be appropriate in relation to daylight and sunlight and all development to ensure adequate access to daylight and sunlight.

Sustainable modes of transport.

22. Originally submitted drawings show provision for long stay cycle parking and for short stay cycle parking in sheltered areas in undercrofts of the existing building. These locations were thought by the Council to be remote from the entrance to the hotel, giving discouragement to cycle users in comparison with other modes of transport but, in fact, the short stay cycle parking would be immediately adjacent to the demarcated pedestrian route across the car park leading to the rear entrance to the hotel reception and so as close to the entrance to the hotel as many of the car parking spaces provided.
23. During the course of the appeal, the appellant has requested that I entertain the substitution of an amended site plan showing a different location for the short stay cycle parking. For reasons given earlier, I do not do so but I observe that the exposed position suggested does not appear to offer any greater proximity to the entrance to the hotel and offers less shelter and security so would not necessarily be preferred in any event.
24. Outside the hotel, double yellow lines on three of the roads surrounding the hotel and a Monday-Saturday daytime permit holders parking zone in Ethel Road would ensure that no less sustainable mode of transport could legitimately park in a much more convenient location than that proposed for short stay cycle parking. I therefore conclude that the proposal would have an acceptable effect on demand for and provision of facilities for sustainable modes of transport. It would comply with London Plan policies 6.1A(b), 6.9 and 6.13D(c) which, amongst other matters, require the provision of at least a certain quantity of secure, integrated, convenient and accessible cycle parking.

Energy demand

25. The Energy Strategy originally accompanying the application incorrectly quotes Newham Local Plan policy SC1 as requiring a BREEAM Assessment rating of

“very good”. The appellant’s Statement of Case reports that the application was originally accompanied by a BREEAM Pre-Assessment to demonstrate how the proposal could achieve a “very good” rating.

26. In fact, Newham Local Plan 2018 policy SC1(3)(a) requires a BREEAM rating of “Excellent”. The appeal is accompanied by a revised Sustainability and Biodiversity Statement dated 10 September 2019 enclosing a BREEAM Pre-Assessment showing how a rating of “Excellent” can be achieved.
27. It needs to be understood that a BREEAM rating is not a measure of a tangible characteristic of the development proposed. It is a composite score of nine environmental issues and a tenth category, innovation. Energy is only one of the categories. Although there is a minimum score which has to be achieved within each category, high scores in one category can be balanced against low scores in a different category to achieve the overall rating. Several of the categories are “soft” management categories, not “hard” physical qualities, so the scoring system allows for management processes to compensate to a degree for deficiencies in the physical characteristics of what is proposed to be built. Furthermore, a pre-assessment is not measuring an actual proposal; it is a theoretical exercise the recommendations of which need to be secured by condition if the actual development is to perform as rated.
28. In places, the submitted material is confused and contradictory. The Acoustic Report advises that the most exposed facades of the new development may require a laminated glazing option so as to get the acoustic environment of rooms in the development below the Lowest Observed Adverse Effect Level (LOAEL) and that this would require mechanical ventilation. On the other hand, the Energy Strategy informs me that the development has been designed to use passive natural ventilation so as to save energy. Other passages in the submitted documentation refer to consideration being given to Air Source Heat Pumps, green walls and green roofs, overhangs and shading, the inclusion and orientation of windows, rainwater harvesting and greywater recycling, adoption of which would, in some cases, result in a building of quite a different appearance and possibly even form, to that shown on the application drawings.
29. I accept the appellant’s argument that the purpose of the supporting material is to help determine whether the proposals could achieve an Excellent BREEAM rating and that the BREEAM pre-assessment report demonstrates that there is a sufficient buffer and flexibility in the score to achieve a BREEAM rating of excellent. However, there is so much uncertainty about what would actually be employed to achieve that BREEAM rating that I am not convinced that the submitted drawings can be relied upon as an accurate representation of what is proposed or that the Council’s suggested condition (simply requiring pre-occupation certification that it has been achieved) is reasonable. I am unable to devise conditions to secure that rating which would be enforceable, precise and reasonable in all other respects. Without such a condition or conditions, I cannot be certain that the effects of the proposal on energy demand would be acceptable and, in consequence, I cannot be certain that the proposal would comply with policies 5.2 and 5.3 of the London Plan which require developments to make the fullest contribution to minimising CO₂ emissions and to make sustainable design standards integral to the proposal, or the related requirements of Newham Local Plan 2018 policies SC1 and SC2.

Other matters

30. In addition to the policies specifically referenced in this decision, the Council's reasons for refusal refer to further policies in the London Plan and the adopted Newham Local Plan 2018. Whilst I have taken these into consideration, I am not convinced of their relevance or applicability to the development in question. The Council's reasons for refusal also refer to policies in the Draft London Plan and the emerging Newham Local Plan. These do not yet form part of the statutory development plan. Although I have taken them into account as material considerations, they do not lead me towards any conclusion other than that reached by consideration of the statutory development plan.

Conclusion

31. Of the four issues raised by this appeal, I find that the proposal would harm the character and appearance of Ethel Road as it presently exists. It would have an unacceptable effect on the living conditions of either existing or potential future residents of land on the north side of Ethel Road. Although it would have an acceptable effect on demand for and provision of facilities for sustainable modes of transport it is not possible to be sure that the effects of the proposal on energy demand would be acceptable.
32. Whilst recognising that the proposal would be located in a highly accessible location where intensification of development would accord with policy S4 of the Newham Local Plan 2018 and that the proposal would contribute to the provision of visitor and cultural attractions in town centres in accord with Newham Local Plan 2018 policy SP6(2)(c) and that there is a measure of decluttering the main frontages in accordance with Local plan policy SP7(3c), I find that the proposal would not accord with the development plan overall and so I dismiss the appeal.

P. W. Clark

Inspector