
Appeal Decision

Site visit made on 30 June 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2020

Appeal Ref: APP/E5900/W/19/3242637
811 Commercial Road, London E14 7HG

- 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 A Shaid against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/19/01754, dated 8 August 2019, was refused by notice dated 9 October 2019.
 - The development proposed was described as "the conversion of shop A1 into hot food takeaway A5."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In determining this appeal involving a listed building located within a Conservation Area and the setting of listed buildings, I have had regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. The new London Plan is at an advanced stage. I have given significant weight to policies that are not subject of a direction by the Secretary of State contained within the "Intend to Publish" version.
4. During the course of the appeal, the Tower Hamlets Local Plan was adopted. I have based my decision on that new Local Plan.
5. The Town and Country Planning (Use Classes) Order 1987 was amended during the course of the appeal. Uses within class A have been revoked and a new class E has been created that incorporates a number of previous classes including A1, A2, A3 and B1. Use class A5 is now outside a use class such that it is defined as "sui generis". I allowed the parties to comment on that and have taken their responses into account in coming to my decision.
6. On my site visit, I noted that there is an alcove in the side elevation of the building that is not shown on the drawings. The flue proposed to be installed appears to be located in the position of that alcove.

Main Issues

7. 811 Commercial Road is listed Grade II and located within the St Anne's Church Conservation Area that contains a number of other listed buildings. Therefore, a main issue is whether the proposed works and development would

preserve the special architectural and historic interest (or significance) of the listed buildings, preserve the settings of nearby listed buildings and whether the character or appearance of the Conservation Area would be preserved or enhanced.

8. In addition, the other main issue is the effect of the change of use on the vitality and viability of the area. I shall deal with this main issue first.

Reasons

Vitality and viability of the area

9. 811 Commercial Road is located within Burdett Road South Neighbourhood Parade. Policy D.TC5 of the Local Plan relates to food, drink, entertainment and the night-time economy in order to support the vitality and viability of centres, including neighbourhood parades. It supports provision of hot food takeaway uses only in certain circumstances. Within Neighbourhood Parades, it states that there should be no more than one hot food takeaway unit. However, within this parade there are already a number of hot food takeaway uses.
10. For these reasons, I conclude that the proposed change of use of the unit to a hot food takeaway use would harm the vitality and viability of the neighbourhood parade. As such, it is contrary to Policy D.TC5 of the Local Plan.
11. I understand that the property has been marketed for a period in excess of six months and a tenant has not been found for use as a retail shop. Limited evidence has been submitted to demonstrate what marketing has taken place in order to assess its effectiveness, nor whether the period of marketing is sufficient to demonstrate whether or not a retail occupier could be found. Consequently, this would not outweigh the conflict with development plan policy in this instance.
12. My attention has also been drawn to Policy D.TC3 of the Local Plan that seeks to retain retail shops outside shopping centres. However, as the site is within a neighbourhood parade, this policy does not apply to this area.

Heritage matters

13. 811 Commercial Road is located within the St Anne's Church Conservation Area. This Conservation Area was designated to safeguard the visual setting of St Anne's Church that is Grade I listed, a short distance along Commercial Road from no. 811. It includes a number of other listed buildings, in particular no. 811 itself and the terrace of nos. 795-807 that are all Grade II listed. Buildings along Commercial Road vary in form, scale, style and use. They line this busy and historic commercial route between the City of London and the docks. It is the mixture of commercial uses of varying form, scale and style lining the main streets within the setting for St Anne's Church that provides the significance of the Conservation Area as a heritage asset.
14. 811 Commercial Road dates from the early or mid-19th Century. It is a two storey building with black painted Victorian shop front and a bay window above to the front elevation. There is a parapet roof over the front of the building. There is a narrow path between it and no. 809 that is a more modern building of three storeys with a parapet roof. The significance of the building lies principally with its front elevation, including shop front along with its relationship and contribution to the area's historic commercial past.

15. 795-807 Commercial Road contain shops and a public house on the ground floor and two further floors above, with varied character and appearance. 799-807 in particular have ornate and imposing elevations fronting the road that contribute to the historic commercial route through Limehouse and the Conservation Area. It is this that results in their significance as heritage assets. These elevations contrast with the more modest and restrained character and appearance to no. 811, and it is this that results in the contribution of no. 811 to the setting of these buildings.
16. The proposal would result in the change of use of the existing building from a shop to a hot food takeaway. No physical changes are proposed to the building other than the installation of a flue on the side elevation. It was previously in use as a shop and with its shopfront would change the historic retail use of the building. Whilst there would be no changes to the front elevation, I conclude that the change of use would affect the significance of the listed building as a heritage asset and its contribution to the significance of the Conservation Area.
17. The proposed flue would provide ventilation. It would extend out of the top of the alcove in the side elevation of the building, altering the fabric of the listed building. It would extend up the wall to vent above the eaves. As it would be in the narrow passage between buildings, this would be a discreet location with limited visibility from the street. Nevertheless, the flue would be substantial and constructed in modern materials such that it would have a utilitarian appearance. As a result, it would appear out of place against the historic fabric of this listed building within the Conservation Area and the setting of other listed buildings.
18. For these reasons, I conclude that the proposed change of use and flue would not preserve the special architectural or historic interest of the grade II listed building at 811 Commercial Road. Nor would they preserve or enhance the character and appearance of the St Anne's Church Conservation Area. The change of use and flue would not preserve the setting of other listed buildings. Consequently, it would harm the significance of the listed buildings and Conservation Area as heritage assets.
19. The change of use and installation of the flue would, therefore, be contrary to Policies 7.4, 7.6 and 7.8 of the London Plan, Policy S.DH3 of the Local Plan and the National Planning Policy Framework (the Framework) that seek to preserve and enhance heritage assets, safeguarding their significance including their settings, character and fabric.
20. The harms identified would be less than substantial, a matter to which I accord considerable importance and weight. No public benefits are before me sufficient to outweigh that harm, including the provision of a hot food takeaway unit to serve the needs of the local population and providing a use to a building that is currently vacant.

Conclusion

21. For the reasons set out above, I conclude that on balance the proposed development would not accord with the Local Plan. Thus, having had regard to all other matters raised the appeal should be dismissed.

AJ Steen INSPECTOR