The Planning Inspectorate

Appeal Decision

Site visit made on 11 November 2020

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2020

Appeal Ref: APP/U5360/W/20/3256840
17-33 Westland Place, London N1 7LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Pankhania of Acre City Limited against the Council of the London Borough of Hackney.
- The application Ref 2020/1083 is dated 28 March 2020.
- The application sought planning permission for Variation of Condition 1 [development in accordance with the approved plans] attached to permission 2017/2123 dated 27/02/2019 (as amended by NMA 2019/4210 dated 10/12/19) for erection of a double basement and five storey building to accommodate an hotel (class C1) at lower ground to fourth floor level and office floorspace (class B1) at basement and ground level. Variations comprise: - Moving the position of the basement in an eastwards direction (away from the Chocolate Studios) and changes to the internal configuration of the basement – Reducing the size of the windows at the ground floor facing Chocolate Studios – Reducing the width of the skylight at the rear and raising the winter garden rooflight – Omitting the basement skylight and removing the lightwell on Westland Place resulting in an increase in the width of the pavement – Reconfiguration of the external fire escape staircase – Alterations to the sawtooth façade at 1st, 2nd, 3rd and 4th level – Change of cladding from U-channel glass to metal – Changes to cycle parking and disabled car parking arrangements – Internal layout changes to internal ground and lower ground floor including re-positioning of the main hotel entrance and staff entrance and introducing an electrical substation at lower ground floor – Internal changes to the bedroom layouts at 1st, 2nd, 3rd and 4th floor without complying with conditions attached to planning permission Ref 2019/1733, dated 14 February 2020.
- The conditions in dispute are Nos 1 and 20.
- Condition 1 states: "The development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details."
- Condition 20 states: "The development shall not accommodate more than 91 hotel rooms"
- The reason given for condition 1 is: "To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved."
- The reason given for condition 20 is: "To ensure that the hotel use will not have an adverse impact upon the amenity of neighbouring uses."

Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal which set out their objections to the proposal, and the appellant has had opportunity to comment on this statement.

3. In framing the main issues, I have therefore had regard to the statements of case of the appellant, Council and comments from third parties.

4. The application form and appeal form refer to the variation of Conditions 1 and 3, whereas the Council, on validating the application described the application as seeking to vary conditions 1 and 20. Given the wording of the conditions, I have adopted the numbering referred to by the Council.

Background and Main Issues

5. The effect of the varied conditions would be to add an additional half-depth storey to the building, allowing an additional 11 hotel rooms, with associated design changes. Conditions 1 and 20 control the compliance of the proposal with the submitted drawings and limit the number of hotel rooms. I therefore consider that the main issues are whether conditions 1 and 20 are reasonable and necessary to protect the living conditions of occupiers of adjoining properties.

Reasons

Living conditions

6. I acknowledge that the set-back proposed for the additional floor is greater than that of the lower floors, increasing the separation from the windows of the flats in the Chocolate Studios to the rear as the height increases. I also acknowledge the need, particularly in urban areas to balance the competing needs and demands of and for additional storeys and additional hotel rooms, efficient and effective use of land, and the protection of living conditions through the protection and preservation of levels of light. In my view, the extant scheme achieves that balance, and it is apparent from the committee report for the earlier application, that the Council found the same. It was also clear that this harm was carefully and finely balanced against the effect of the proposal on the Underwood Conservation Area and the benefits arising from the development.

7. From both the Daylight and Sunlight report and the commentary around it, it seems to me that the proposal tips that balance from acceptable to unacceptable. The report concludes that the change and subsequent shortfall in light levels to windows at both Chocolate Studios and 18-28 Westland Place against the BRE tests is minor, but that additional loss of light, and therefore harm, would result. However, that minor change is measured against the extant scheme. I do not consider that because a level of harm, ranging from significant to small was previously found acceptable, the additional harm from this proposal is automatically acceptable. In any event the proposal would result in a greater shortfall against well-known and widely-used metrics than previously. As such, I consider that the increased loss of light, and the likely effect on the living conditions of occupiers of surrounding properties with regard to loss of light would be unacceptable.

8. I note the comments around the height of the appeal site, and the height of buildings around it. However, the rooftop extension to Tagwright House shown on the drawings and used to justify the transition in height along Westland Place, has not yet been constructed, and the uppermost storey of 18-28 Westland Place is not readily visible from Westland Place. As such, I do not consider that the extant consent would appear unduly or incongruously short compared to surrounding buildings.

9. As such, the conditions remain reasonable and necessary to protect the living conditions of occupiers of adjoining properties.

Other Matters

10. The site lies in the Underwood Conservation Area (the CA), as such, decisions must be made having regard to the desirability of preserving or enhancing the CA. The Underwood Conservation Area Appraisal (the CAA), highlights the contribution of canyon-like nature of the immediate area to the significance of the CA.

11. The previous approval balanced the need to ensure the scale of the building was appropriate to the CA against the harm to the living conditions of occupiers of adjoining properties. I do not consider that the additional floor is required to better suit the character or appearance of the CA, but it would, as I have found above, cause unacceptable harm to the living conditions of occupiers of surrounding properties. Having regard to the great weight to be given to the conservation of the CA as a heritage asset I conclude that the proposal would have a neutral effect on its significance, so would in effect preserve the character of the CA.

Conclusion

12. For the reasons given above I conclude that the appeal should be dismissed, and planning permission refused.

S Dean

INSPECTOR