
Appeal Decision

Site visit made on 4 November 2020

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/U5360/W/20/3249607

18 Ellingfort Road, Hackney London E8 3PA

- 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 Avtone Property Limited against the decision of the London Borough of Hackney.
 - The application Ref 2019/2466, dated 4 July 2019, was refused by notice dated 25 August 2019.
 - The development proposed is the erection of part single storey, part two-storey roof extension at third and fourth floor level; to facilitate the provision of two self-contained residential units at fourth floor level ; to provide ancillary residential floorspace to two existing units at third floor level and including regularisation of alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the Council's description of development as noted on the Decision Notice for this appeal given that this description more accurately describes the individual elements of the proposed development. I note that the applicant's Statement of Case (SoC) also accepts this change in description.
3. The Reasons for Refusal in the Council's Decision Notice cited Policies 24 and 25 of the Hackney Local Development Framework Core Strategy (CS), and policies DM1 and DM28 of the Hackney Development Management Local Plan (DMLP). During the appeal process, the Hackney Local Plan 2033 (LP) was adopted by the Council on 22 July 2020, superseding the policies of the CS and DMLP. The Council has supplied extracts of the adopted LP policies and I have therefore made my decision on this basis and have only referred to the adopted policies of the LP in this decision.
4. During the course of the appeal, the applicant submitted 2 floor plans¹ and has asked me to consider both plans as part of this appeal. The applicant states that the plans submitted during the planning application contained an error in that a stairwell was incorrectly inserted into one of the approved 3 bedroom apartments on the second floor, effectively changing this into a two bedroom property. These plans were assessed by the Council as resulting in the loss of a previously approved family dwelling of 3 bedrooms which formed reason for refusal No.2. Whilst I note that the notation on the plan that the Council assessed was also changed to indicate '2 bed apartment,' the additional stairwell would effectively mean that the 'B1 office space' on the first floor

¹ Proposed First Floor Plan Drawing No.GHA-PR-02-DR-A-0001 Revision P02; and Existing Second Floor Plan Drawing No.GHA-PR-02-DR-A-0001 Revision P02; Both plans Dated 19/07/2019 and Drawn by SG

would be connected within the floorspace of this apartment on the second floor, so would not be a logical change.

5. I have assessed each of the interested party responses and note that there is no comment with regards to the loss of a family unit. The Council have submitted a SoC where they have chosen not to comment on this aspect of the applicant's statement where the error is clearly highlighted. In accordance with the 'Wheatcroft Principles'² in this particular case I am persuaded that an error has been made and that the acceptance of these plans would not deprive those who should have been consulted on the changed development or the opportunity of such consultation. With this in mind, the proposed scheme would not result in the loss of a 'family unit' of 3 bedrooms, and Reason for Refusal No.2 from the Council's Decision Notice with regards to housing mix would fall away. I have therefore not considered this matter any further.

Main Issue

The main issue is the effect of the proposed development upon the character and appearance of the locality, including the appeal building and the Mare Street Conservation Area (CA).

Reasons

6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA), in respect of development affecting conservation areas, states that special attention shall be paid to the desirability of preserving or enhancing the character and/or appearance of the area.
7. The Mare Street CA is named after its namesake, which consists of a main street which intersects the CA. A number of historic buildings which appear to be from the nineteenth and early twentieth centuries align Mare Street where many of the commercial and retail services with a higher density, scale and status through their detailing, design and massing are present. A railway line runs parallel to Mare Street and infilling Mare Street and the Railway are smaller streets are infilled with factories, residential dwellings. Along with their design, massing and materials these values, amongst others contribute to the local character and distinctiveness of the locality and of the CA.
8. Ellingfort Road has a number of qualities which contribute to the local distinctiveness of the area with a row of three storey Victorian terraced dwellings to the south of the street which may have linkages to the railway which lies close by at the end of the street. The appeal site lies on the northern side of Ellingfort Road and is a recent construction along with two further apartment blocks adjoining the appeal site on the north side of the road. Whilst there is the 16 storey tower within the background along Ellingfort Road which does cause some distraction to the experience of the character of the street. I acknowledge the applicant's comments that the appeal site along with the adjacent apartment complexes are relatively new constructions, however they do create a consistent building line and height along the street with a two storey façade with zero setback to the street, and third and fourth storeys stepped back from the façade.
9. The setback and change in material palette allows subservience to the new construction and assists in breaking up the massing and visual bulk and

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

contributes to the uniformity of the street and its height and massing which is a positive attribute that is congruous to the Victorian terrace opposite. The uniformity of height is also experienced to the rear of the appeal site from communal spaces for development behind such as Hacon Square

10. The experience along the street is of a lower scale and status to Mare Street, with a consistency in scale, uniformity in massing, and a height that allows the Victorian terrace to play a positive and dominant role within the street scene. The appeal proposal would add an additional level to the existing building with a chamfered corner to the roof which would be a discordant addition along this particular street. The proposal would break the uniformity of the buildings along the street and would over-complicate the roof form and add additional bulk and massing which would appear top-heavy, rather than subservient. Consequently, the proposed extension would be a discordant addition when experienced within this context and would be detrimental to the positive characteristics of the CA as defined previously.
11. I note comments that the appeal site would be limited in views, and that the only views that the applicant considers relevant are those from a public realm perspective. The consideration of a CA's character and appearance and resultant impacts caused by development is not solely gained from the public realm and that there are tangible and intangible elements which may be from a private realm which contribute to its significance. Whilst the proposal would be setback from the storey below, I disagree that it would only be minimally visible given the resultant change to the uniformity of the buildings along this street which is a positive component of the experience along this street.
12. Consequently, the scheme would not reinforce the qualities of local character and distinctiveness and would be harmful to the character and appearance of the CA. This would be contrary to LP Policy LP1 (which amongst a number of design principles seeks that development be compatible with the existing townscape and preserve or enhance the significance of heritage assets). There would also be conflict with London Plan 2016 Policies 7.4 (which seeks development to have regard to the local character of an area); Policy 7.6 (which seeks architecture that is high quality which is appropriate to its context); and Policy 7.8 (which seeks that development should conserve the significance of London's heritage assets).
13. Although serious, the harm to the CA in this case would be 'less than substantial,' within the meaning of the term in paragraph 196 of the National Planning Policy Framework (The Framework). Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
14. The benefits of the scheme would include the provision of 2 dwellings, making the effective use of urban land by upwards extensions which seek to optimise housing provision; as well as the short term employment opportunities through the construction of the dwellings as well as socio economic benefits in terms of expenditure to the area from future occupants. However, these public benefits would not outweigh the harm to the CA. The scheme therefore conflicts with the Framework, which directs, at paragraph 193, 'that great weight should be given to the asset's conservation ... irrespective of whether any potential harm

amounts to substantial harm, total loss or less than substantial harm to their significance’.

15. In conclusion on this matter, I consider the proposed development would cause unacceptable harm to the significance of the CA. It has not been shown that public benefits would outweigh this harm and so the proposal would conflict with the development plan, including the London Plan.

Other Matters

16. The applicant’s appeal documents contain several photographs³ showing buildings in the area which have taller buildings and double height set back roofs whereby the applicant seeks to apply similar determination as to the justification of this appeal decision. Having looked through each of the examples, I do not see similarities to the considerations regarding the appeal building or how these examples align with the similar characteristics and uniformity with this particular street scene along Ellingfort Road. Whilst there may be different examples in the greater area, this does not provide adequate justification to increase the height of the appeal site. Consequently, the considerations and circumstances to these example buildings are not analogous to the considerations of the appeal site. As such, I have made my decision based upon the evidence presented in the appeal.
17. A number of comments are raised from interested parties to the appeal with regards to living conditions, such as loss of light, privacy, and overlooking. The Council in their planning officer report has deemed that the proposal would not result in adverse impacts to living conditions. Given this opinion from the Council and the inappropriateness of the proposal with regards to its impact upon the CA and the character of the locality, I have not needed to delve into these matters with regards to living conditions.
18. I note comments from interested parties and within the appeal statement with regards to changes occurring to permitted development rights and that there is a fallback position that would enable the development of two further stories should the appeal fail. Comments within the applicant’s statement and from the interested parties were written prior to the changes in permitted development rights, where the new regulations⁴ enable the extension of a detached block of purpose built flats by 2 stories under the prior approval process. The appeal building is a mixed use property and is not a purpose built block of flats, or is detached for that matter. As such this fallback position is not present and I therefore afford no weight to this position in the case that the appeal would fail.

Conclusion

19. For the reasons given above, I conclude that the appeal be dismissed.

J Somers

INSPECTOR

³ Mentmore Terrace junction with London Lane; London Lane (in Conservation Area) x 2; Gransden Avenue (in Conservation Area); London Lane; Mentmore Terrace, junction with Lamb Lane x 2; Mentmore Terrace junction with Sidworth Street; Sidworth Street

⁴ The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020