



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: 14 December 2020

Appeal Ref: APP/E5900/W/20/3249172

11 Dock Street, London E1 8JN

- 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 James Pitayanukul against the decision of the London Borough of Tower Hamlets.
 - The application Ref PA/19/01559, dated 17 July 2019, was refused by notice dated 22 October 2019.
 - The development proposed Change of use from a 6 bedroom House in Multiple Occupation (HMO) (Use Class C4) to a large HMO (Sui Generis) with the construction of a single storey side extension and associated roof terrace, two storey rear extension at first and second floor levels, expansion of basement level and other associated internal alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It is noted that the Reasons for Refusal in the Council's Decision Notice cited the Tower Hamlets Core Strategy 2010 (CS) Policies SP05 and SP10; and Policies DM14, and DM22, DM27 of the Managing Development Document 2013 (MDD). During the appeal process, the Tower Hamlets Local Plan 2031 (LP) was adopted by the Council on 15 January 2020, superseding the policies of the CS and MDD. The Council has also referenced emerging policies of the LP which has now been adopted. I have therefore made my decision on this basis and have only referred to the adopted policies of the LP in this decision.
3. The planning application also concerns alterations and extensions to a Grade II listed building. For the avoidance of doubt this appeal relates to the planning application only and does not relate to any other consent required under the Planning (Listed Building and Conservation Areas) Act 1990 (PLBCA).

Main Issues

4. The main issues are:
 - The effect of the proposed development upon the significance of the Grade II listed building known as 'St. Pauls Vicarage and area railings, 11 Dock Street' and the character and appearance of the Wiltons Music Hall Conservation Area (CA);
 - The effect of the proposed development upon the living conditions of the future occupants, with particular regard to access to light and privacy;

- Whether there is adequate provision of bin storage to cater for the proposed development; and
- Whether there is adequate provision of cycle storage to cater for the proposed development.

Reasons

Listed building and conservation area considerations

5. Section 66 of the PLBCA prescribes a duty upon a decision maker to give special regard to the desirability of preserving the significance of a listed building or its setting. Additionally, Section 72(1) of the 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.
6. The applicant has submitted a heritage statement¹ which shows that a number of different elements of heritage value contribute to the significance of the listed building, with relevant components to this appeal being the intactness and authenticity of the materials and construction of the existing building which are evidence of its former form and function as a Vicarage and its association with the collection of historic buildings in the locality. Whilst there have been historic extensions to the rear of the appeal building, these extensions by reason of their form and design are subservient to the existing building.
7. In relation to the CA, the appeal building is experienced amongst a number of historic buildings which have an association and relationship to the mariners community, the St. Paul's Church, whilst also providing a positive aspect to character and local distinctiveness of the CA. These values, amongst others contribute to the local character and distinctiveness of the locality and of the CA.
8. The proposed rear extension would be two storeys tall and have a very modern and modular appearance which aims to present an honest approach to distinguish old from new. Whilst modern extensions may be an acceptable approach in principle for historic buildings, the proposal is taller than the eaves of the existing building and would have an awkward and uncomfortable juxtaposition as a result. The height would not be subservient to the listed building and would be a discordant addition which is unsympathetic and would cause detriment to the architectural integrity and authenticity of the historic building.
9. For similar reasons the proposed extension would not be an appropriate and sympathetic extension which would also be detrimental to the character and appearance of the CA where the appeal site is an element which contributes positively to the experience of the conservation area in this location. Whilst I note comments in the applicant's appeal statement that there are properties '*which are dominated by extensions and additions which are an established feature and contribute greatly to the character of the conservation area,*' I have not been presented with any such evidence within the appeal documents, nor did I experience such similar extensions on my site visit.

¹ 11 Dock Street, London Heritage Statement, By Fuller Long, FL11204, 08/07/19

10. The proposed extension would present as an unsympathetic and incongruous extension to the existing building which would be contrary to LP Policy S.DH3 which seeks that alterations, or extensions to heritage assets should be of an appropriate design, height, scale and form.
11. I note comments in the applicant's Statement as well as within the heritage statement that because the extension is to the rear and that it is not highly visible from Dock Street, that the proposal would not result in harm to the CA or to the Listed Building. However, I disagree with these opinions as an assessment of harm to heritage assets is not limited to what can be seen from the public realm and needs to consider both intangible and intangible values which contribute to significance.
12. Although serious, the harm to the listed building and the CA in this case would be 'less than substantial,' within the meaning of the term in paragraph 196 of 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.
13. The applicant's Statement of Case does not advance any public benefits which are to be balanced against the harm caused, however benefits would likely to be limited to short term employment opportunities and the continued use of the historic building, and the socio-economic benefits from expenditure of future occupants. However, these benefits would also be present in a more suitable extension and therefore these benefits would be afforded limited weight.
14. Consequently, these public benefits would not outweigh the harm to the listed building or 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, the proposed development would cause less than substantial harm to the significance of the CA and the listed building to which S66 and S72 of the PLBCA requires special regard to be paid. It has not been shown that public benefits would outweigh this harm and so the proposal would conflict with the development plan.

Living conditions with regards to access to light and privacy

16. The appeal property would contain a number of separately rented rooms under a House of Multiple Occupation (HMO) where rooms are provided within the basement, ground and first and second floor levels. Policy D.DH8 of the LP seeks that new development should not result in material deterioration of sunlight and daylight. The accompanying text to the Policy recommends that new development submit a daylight and sunlight assessment which follows the methodology from the Building Research Establishment (BRE) publication '*Site layout planning for daylight and sunlight*'.

17. The applicant has submitted a daylight & sunlight report² which is based on the BRE guide. The BRE guidance is not itself policy, and acknowledges that the criterion and guidance are to be applied flexibly and to help rather than constrain design. The numerical guidelines and technical advice in the BRE publication are purely advisory and should be considered in the context of other site layout constraints.
18. The BRE guidance details the Average Daylight Factor (ADF) which is a measure of reasonable assumptions to the interior daylighting of a room which can be used to give sufficient understanding of the likely quality of light. The ADF is expressed as a ratio percentage where for bedrooms they should achieve a percentage of 1%, whereas kitchens should achieve 2% and living rooms 1.5%.
19. The submitted daylight and sunlight report shows that for the basement level, the windows labelled W1 (bedroom to unit 3); W3 (study) and W4 (Bedroom to Unit 5) would be 0.46, 0.32 and 0.95 respectively, falling below the guidelines. It is also noted that the window to the kitchen on the ground floor level also falls short of the guideline with a percentage of 0.7. Whilst I appreciate comments in the daylight & sunlight report that the appeal site is within an urbanised environment and the BRE Guidelines are to be applied flexibly, the report does demonstrate that there will be an unacceptable level and quality of daylight to existing habitable room windows. Given the proposed use as a HMO and that some of the windows in question are the only source of natural light, the failure to achieve adequate levels of daylight is significant.
20. The other component of this matter relating to living conditions is with regard to privacy, with the main contention of the ability of overlooking between Units 2 and 5 where windows for each unit face opposite each other within a lightwell with a space of approximately 5 metres. The windows to each unit are the sole windows for these habitable spaces and given the close proximity of the windows which directly overlook each other, would amount to significant overlooking between each unit to the detriment of the proposed occupier's privacy. I appreciate comments within the Applicant's appeal statement that conditions could be utilised to control overlooking, however in this case it would be unreasonable to seek measures such as opaque glazing given the already unsatisfactory levels of light received with these windows being the sole point to gain access to natural light.
21. Consequently, in conclusion of this matter, the proposal would result in an unacceptable level of daylight, overlooking and loss of privacy which would materially harm the living conditions of the future occupants. As such, the proposed scheme would conflict with LP D.DH8 as described previously.

Provision of waste facilities

22. Policy D.MW3 of the LP seeks that all development include sufficient accessible space to separate and store recyclables and waste in accordance with the methods and standards as per Appendix 4. The proposed HMO would have eleven separate units, with proposed floor plans showing that the ground floor could cater for a small area for waste storage. The plans do not indicate the

² Daylight and sunlight report for Proposed Development at 11 Dock Street, By Anstey Horne, Rev, Dated 2 July 2019.

sizes of proposed waste receptacles and whether there would be a sufficient amount of space to store waste to cater for the proposed units.

23. The applicant's statement does not provide any additional information with regards to compliance with the waste guidelines, but references examples on Dock Street where there are different examples of waste disposal arrangements where some sites are storing large bins outside of premises and that such matters could be dealt with via condition.
24. In order to be dealt with via condition, there must be sufficient comfort that that an acceptable amount of storage could be provided in the first place. This has not been demonstrated. Whilst I am unaware of the circumstances for the waste receptacles on neighbouring properties in Dock street to be outside the premises, this arrangement presents a poor appearance to the street scene and does not justify such arrangements for the subject site, particularly given the prominent position of the appeal site within a sensitive historic environment with the setting of a number of listed buildings and the CA. I am also made aware of the arrangement of having a bin store and cycle store which share the same space which would not be an acceptable arrangement.
25. In conclusion of this matter, the proposed waste provision is unjustified and would be contrary to LP Policy D.MW3 as described above.

Provision of cycle storage

26. The proposal would result in the provision of 6 cycle spaces to cater for eleven units and would share this space with the proposed waste storage. The details of the proposed cycle storage is not well detailed with there appearing to be an open canopy, which leads into the bicycle and waste storage area. The applicant argues that there is a wide variety of travel forms such as a cycling docking station, bus stop and train station in close proximity which would compensate for the lack of adequate provision within the site.
27. Whilst there is a range of different sustainable modes of transport nearby, the cycle storage should also meet guidelines in terms of being safe, secure and convenient to use. Without sufficient details, the storage is under-provided, would not be secure or convenient with the added problems related to the sharing of the space with the waste storage. In conclusion on this matter, whilst there may be suitable grounds for the applicant to argue a reduction in the number of cycle spaces, the current provision is substandard and would not comply with Policy D.TR2 which seeks to provide appropriate transport infrastructure for new developments.

Other Matters

28. The applicant's appeal documents contain a structural report³ which lists a number of structural cracks to the appeal building which require rectification. These issues are not part of this planning application and would typically form part of a Listed Building Consent application. This matter has not been incorporated into this appeal.

³ Report on structural inspection of 11 Dock Street, By Osborne Edwards, dated June 2019

29. The applicant's appeal documents contain five examples of planning applications that have been approved by the Council.⁴ It is unclear what relevance these permissions have and which matter 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 buildings such as whether these buildings are listed buildings and within the Conservation Area, and whether considerations regarding these proposals involved matters such as similar land uses, overlooking, waste and cycle storage, impact to heritage assets, and living conditions. Despite this, I have made my decision based upon the evidence presented in the appeal.

Conclusion

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

J Somers

INSPECTOR

⁴ Tower Hamlets Planning Ref: PA/19/01639 Aldgate Hostel, 7 Dock Street; PA/19/01020/S Florin Court, 8 Dock Street; PA/19/01639 Aldgate Hostel, 7 Dock Street; PA/18/03198/NC Aldgate Hostel 7 Dock Street; PA/19/00003/NC 11B-11C Dock Street.