
Appeal Decision

Site visit undertaken on 4 November 2020

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

an Inspector appointed by the Secretary of State

Decision Date: 08 January 2021

Appeal Ref: APP/U5360/W/20/3249557

Flat B, 23 Montague Road, Hackney, London E8 2HN

- 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 Matthews against the decision of the London Borough of Hackney.
 - The application, ref. 2019/4472, dated 19 December 2019, was refused by notice dated 18 February 2020.
 - The development proposed is a loft conversion with rear dormer extension, proposed rear single storey extension at 1st floor level, rear window and door changes, and other internal ancillary changes.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal, the applicant in their Statement of Case (SoC) submitted revised plans¹ and has sought that I consider these as part of the appeal. The main differences from the refused application to the amended plans are the reduction in size of the extension and change in roof form. Whilst not shown in the plans, the applicant's SoC also notes of the reduction from two rooflights to one in order to overcome the Council's objections to three roof lights. In general, the appeal process is not the appropriate place to evolve the scheme; and the scheme that is considered at appeal ought to be the same one that was considered by the Council. There is no evidence that the amended plans or these further options formed part of the scheme that the Council made its decision on, or that these options have been subject to public consultation. In accordance with the 'Wheatcroft Principles',² it would not be appropriate to consider these amended plans or options of reducing rooflights as the acceptance of such would deprive those who should have been consulted on the changed

¹ Proposed upper Ground Floor Plan Dwg No.302_PR_01 RevA; Proposed 1st Floor Plan Dwg No. 302_PR_02 RevA; Proposed Loft Plan Dwg No.302_PR_03 Rev A; Proposed Roof Plan Dwg No.302_PR_04 Rev A; Proposed Section AA Dwg No.302_PR_05 Rev A; Proposed Rear Elevation Dwg No.302_PR_08 Rev A; Proposed Front Elevation Dwg No.302_PR_09 Rev A; Proposed Side Elevation (Looking from No.25) Dwg No.302_PR_10 Rev A; Proposed side elevation (Looking from No.21) Dwg No.302_PR_11 Rev A; all plans dated Oct 19 and drawn by Hardcastle Architects.

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

development or the opportunity of such consultation. As such, I will base my decision solely upon the plans that were assessed by the Council during the original planning determination.

3. In reviewing the submitted plans, there is a lack of consistency between them. The plans titled 'Proposed Rear Elevation'³ and the 'Proposed Section CC'⁴ show the roof of the proposed dormer window to the rear, inset from the ridge of the existing roof; whereas the 'Proposed Section BB'⁵, the 'Proposed Section AA'⁶ and the 'Proposed Roof Plan'⁷ show that the roof of the proposed dormer is in line with the ridge of the roof, which is supported by commentary in the Applicant's Statement. The Planning Officer's report has assessed the proposed dormer window as being in line with the ridge of the roof, and I have also made my decision on this basis.
4. The Reasons for Refusal in the Council's Decision Notice cited Policy 24 of the Hackney Local Development Framework Core Strategy (CS), and policies DM1 and DM2 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. Both parties were given an opportunity to comment on the change in policy position.⁸ The Council has supplied extracts of the adopted LP⁹ 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.

Main issues

5. The main issue is the effect of the proposed development upon
 - The character and appearance of the building and the locality, with particular regard to the St Mark's Conservation Area (CA); and
 - The living conditions of the neighbouring occupants at No.21 Montague Road, with particular regard to loss of light.

Reasons

6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, 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 CA's significance is highlighted in the St Marks CA Appraisal 2008, where relevant components of the significance in relation to the appeal site relate to the development of formally laid out speculative housing development centred around the parish church of St Mark's, during the mid-1860s. The majority of dwellings including the appeal site are buildings of townscape

³ Dwg No. 302_PR_08, Dated Oct19, By Hardcastle Architects

⁴ Dwg No. 302_PR_07, Dated Oct19, By Hardcastle Architects

⁵ Dwg No. 302_PR_06, Dated Oct19, By Hardcastle Architects

⁶ Dwg No. 302_PR_05, Dated Oct19, By Hardcastle Architects

⁷ Dwg No. 302_PR_04, Dated Oct19, By Hardcastle Architects

⁸ Email sent from Planning Inspectorate to both parties, dated 30/11/2020

⁹ Email received from Hackney Council dated 02/12/20

merit and consist of groups of terraces with small gaps between the end terraces providing glimpses between buildings to trees and greenery beyond.

8. The dwellings themselves have many of the same design elements, with most being two bays wide with a forward protruding canted bay window with stone dressings around fenestration and plain entablature around main entrance doors. The dwellings have the appearance of three storeys with an exposed basement. The use of traditional materials such as timber, brick and slate along with the similar designs reinforce a uniformity and authenticity which creates a formal picturesque townscape along with vegetated front gardens and street trees give a spacious, leafy and distinctive character. To the rear the leafy character continues with well vegetated rear gardens, and dwellings originally being constructed with two storey rear wings with lean-to roofs where the wings are the bookend with the neighbouring property sharing half of a pitched and gabled rear projection. This characteristic bookend rear wing is referred to as 'dogtooth elements' in the Hackney Residential Extensions and Alterations Supplementary Planning Document (SPD).
9. The appeal site displays a number of positive qualities of significance to the CA, being a high quality terraced building which is noted as a building of Townscape Merit and a positive element which contributes to the character and appearance of the area. It is noted that to the rear the appeal exhibits the traditional two storey rear wing, however the neighbouring No.21 has altered their rear wing to a flat roof which no longer is experienced as the bookend to the appeal property. There are also a number of properties along the terrace who have constructed rear extensions to the existing rear wing so that both dwellings share the same 'dogtooth elements.'
10. In undertaking extensions to buildings within CAs, Policy LP1 of the LP seeks that design responds to the local character and context, including the urban grain; and also preserves and enhances the significance of heritage assets. This policy is supported by the SPD which gives further guidance on appropriate design. The requirement to consider established local character of buildings and the rhythm of historic form is also detailed in Policy LP3 of the LP. The proposal contains three main elements, which will be discussed in turn.
11. With regards to the proposed rooflights, the front roof planes of terraces in Montague Road are uncluttered and authentic to their architectural integrity with unaltered roof planes being the dominant characteristic of the area. There are limited examples of small rooflights placed to the front roof plane, but these are not part of the dominant characteristics of the area and are limited to one or two and which are small in size and do not project from the plane of the roof or cause large areas of roof clutter. The proposed three roof lights, whilst appropriate in terms of their lack of projection from the roof and overall size individually; when combined, the width of the proposed roof lights take up much of the width of the roof plane. The SPD shows that within a CA that a maximum of two roof lights of an appropriate size and projection would be sufficient and typically not cause excessive clutter to the roof form. The proposed three roof lights would be excessive and which would not only cause increased clutter to roof forms which results in a detrimental impact to the street scene, but would be an alteration that would

be detrimental to the architectural authenticity and integrity of the existing dwelling.

12. Turning to the proposed rear extension, this would extend the small rear wing up an additional level, however the extension would maintain the lean-to roof pitch which maintains an element of authenticity, whilst presenting an honest approach in the use of zinc cladding for the walls and roof to distinguish the new from the old. Whilst not leaving a full storey gap as per the SPD, the extension would also leave a large gap between the eaves of the main roof which would ensure its subservience. I note comments from the Planning Officer's report with regards to the SPD guidance 'not supporting the provision of extensions over outriggers' however this statement is not specifically detailed in the SPD.
13. For rear extensions, whilst the SPD states that extensions to existing rear wings 'may have limited capacity to be further extended' the SPD does not preclude them. Instead, the SPD seeks that they are considered on a case by case basis, taking into account their form and surrounding context. Whilst the principle of the extension which maintains the same lean-to roof plane as historically authentic, elements of the proposed rear extension are inappropriate such as the roof which is dominated by large rooflights and has a poor and cluttered appearance; and the depth of the extension which extends for almost the entire roof plane which removes much of the historic roof plane which would be contrary to the guidance given in the SPD.
14. The applicant has drawn my attention to a planning appeal decision¹⁰ that was submitted in the nearby Clapton Square Conservation Area for a rear extension to the existing dwelling which was overturned on appeal. The submission of this appeal aims to provide justification for the proposed extension of the appeal site. Whilst in a different conservation area, this dwelling did not have a traditional rear wing as the rear elevation had been previously altered. This was taken into account in the determination of the existing site context. As discussed previously, the detailed design of the proposed rear extension within this particular context is problematic and is not analogous to the determination made in the attached appeal decision. As such, the attached appeal does not provide convincing justification to the appropriateness of the proposed scheme.
15. Moving to the last element of the appeal relating to the proposed dormer roof extension to the rear, the main contention from the Council is with regards to the roof of the dormer projecting from the ridge, rather than being setback from the ridge as advised by the SPD. The applicant states that the reasoning for this is to allow sufficient internal roof height within the loft of the building for the proposed loft conversion. Despite this, one of the common ways in order to ensure subservience from roof extensions is to inset the dormer so that it projects from the original roof plane, rather than significantly altering the nature and form of the apex and existing roof. Whilst the dormer is inset from the sides of the roof plane, the loss of the apex of the roof is a significant loss to the authenticity and integrity of the existing building.

¹⁰ APP/U5360/D/16/3152011, 23 St John's Church Road

16. The Applicant has supplied photographs of a buildings within the local area¹¹, along with an appeal decision¹² for dormer roof extensions which intend on providing justification for the appeal site. I have not been supplied with the individual details behind each of the alterations, or whether any went through the consent process, however the Council notes that many of the roof extensions are historic and were made before the designation of the conservation area in 2008. I also note the 2013 appeal decision for a property on the opposite side of the road where the Inspector considered that as the dormer was not highly visible, however this is not the case on the appeal site. To the rear of the appeal site the extension would be visible from the appeal site from along Sandringham Road, and it is also noted that over the past 5 years, a number of new guidance has been published with regards to assessing significance and harm to heritage assets. Guidance along with case law has made it clear that harm to a conservation area is not limited to purely visual impacts and that any assessment of harm needs to understand the tangible and intangible elements which make up the significance and experience of a CA which may be from both a public or private perspective. That said, I am not persuaded that the circumstances to each of the examples given is analogous to the determination of the appeal site.
17. Taken as a whole, the proposed alterations to the appeal dwelling would cause unacceptable harm to the architectural authenticity and integrity of the existing building and the character and appearance of the CA. Consequently, the proposal would be contrary to the LP Policies LP1 and LP3 as described previously, which is supported by the SPD. The proposal would also be contrary to London Plan 2016 policies 7.4 (local character); 7.6 (Architecture); and 7.8 (Heritage Assets and Archaeology).
18. I therefore disagree with the applicant's Statement of Case that no harm would be caused. 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.
19. I note that the benefits of the scheme would deliver larger residential accommodation for the existing dwelling, as well as result in short term employment opportunities in the construction of the extension. However, these benefits may also be present in a more appropriately designed scheme.
20. That said, I therefore find that the 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

¹¹ No.s 1, 3, 6, 14, 17, 29, 31, 33, 37, 42, 50, 51, 53, 56, 58 & 60 Montague Road

¹² APP/U5360/A/13/2208598 50A Montague Road;

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

21. In conclusion on this matter, I consider the proposed development would cause less than substantial 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.

Living conditions, with regard to light to No.21 Montague Road

22. The proposed extension would project in line with rear windows to the adjacent No.21 Montague Street. According to the applicant’s SoC the nearest window of the neighbouring property is to a stairwell, whilst the furthest window is to a habitable room which is located approximately 3.7 metres from the extension. A daylight and sunlight report has not been submitted to support the applicant’s opinion that the levels of light would not be compromised with the Council contending that the scheme does not pass the 45 degree rule as suggested in the SPD. Whilst this may be the case, the lack of adherence to the 45 degree rule does not necessarily result in an adverse reduction in light levels to the rear window of the neighbouring property.
23. Without any supporting evidence, to me, the extension would likely reduce light to the neighbouring property, however the setback of the proposed extension would appear adequate to not result in an adverse loss of light. Consequently, on the basis of the information before me, the proposal would be in accordance with LP Policy LP2 (which seeks that development not result in adverse impacts to the amenity of occupiers and neighbours). The proposal would also be in accordance with London Plan 2016 Policy 7.6 (architecture, which seeks that design not cause adverse impacts to amenity of surrounding occupiers)

Conclusions

24. I have found in the appellant’s favour with regards to a main issue that the site would not result in adverse detriment to living conditions as a result of loss of light. However, this is insufficient to outweigh the other matter which related to design of the proposed scheme and the harm caused to the character and appearance of the conservation area. The proposal would therefore be contrary to the development plan when considered as a whole.
25. For the reasons given above the appeal is dismissed.

J Somers

INSPECTOR