



Appeal Decision

Site visit made on 2 March 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2021

Appeal Ref: APP/U5360/W/20/3256536

374 Mare Street, Hackney, London E8 1HS

- 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 Nationwide Building Society against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2020/0481, dated 7 February 2020, was refused by notice dated 21 May 2020.
 - The development proposed is amalgamation of two units (A1 and A2) to create one large A2 unit and associated alterations to shop frontage, including replacement of windows and doors and relocation of existing ATM.
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Decision

1. The appeal is allowed and planning permission is granted for amalgamation of two units (A1 and A2) to create one large A2 unit and associated alterations to shop frontage, including replacement of windows and doors and relocation of existing ATM at 374 Mare Street, Hackney, London E8 1HS in accordance with the terms of the application, Ref 2020/0481, dated 7 February 2020, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: PA.00.LBP; EX.01.E1; EX.00.02; PR.01.E1; and PR.00.03.
 - 2) The shopfront hereby permitted shall be removed and the front elevation of the building restored to its former condition within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme, including samples, of the materials to be used on the external surfaces of the shopfront hereby permitted shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, those materials shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. The description of proposed development in the heading above is taken from the appeal form, as it is a more concise and accurate description than that used on the planning application form. My formal decision also reflects the description used on the appeal form.
3. The Council adopted the Hackney Local Plan 2033 Strategic Planning (the HLP) in July 2020 and I therefore give full weight to the relevant policies of the HLP. The Council's decision notice refers to policies of the Hackney Core Strategy and the Hackney Local Development Management Plan, which have now been replaced by the HLP and therefore have had no bearing on my decision.
4. The new London Plan 2021 (LP2021) was published on 2 March 2021. It replaces previous versions of the London Plan and can be given full weight. In terms of policies relevant to this appeal, there have been no material changes in LP2021 from those contained in the Intend to Publish (December 2019) and Publication (December 2020) versions of the plan. No party has been prejudiced by me proceeding with the appeal in light of this change in policy.
5. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the UCO Regulations), amending the Town and Country Planning (Use Classes) Order 1987 (the UCO), came into force on 1 September 2020. These regulations amend and simplify the system of Use Classes and in doing so has introduced a new Commercial, Business and Service Use Class E. As a consequence, a change between retail (Class A1) and financial and professional services (Class A2) would no longer constitute an act of development requiring planning permission. Paragraph 4 of the UCO Amendment Regulations requires that applications submitted before 1 September 2020 must be determined with reference to the UCO as it stood on 31 August 2020.
6. I observed at my site visit that work for the installation of the proposed shopfront, including new grey aluminium-framed windows and doors, has commenced. However, the proposed grey tiling and fascias had not been installed. I have considered the proposal as presented upon the plans that are the subject of the appeal and not in regard to what I observed at my site visit.

Main Issues

7. The main issues are:
 - the effect of the proposed development on the vitality and viability of the primary shopping frontage of the Hackney Central Town Centre; and,
 - the effect of the proposed shopfront alterations on the character and appearance of the host building, the primary shopping frontage and the Clapton Square Conservation Area.

Reasons

Vitality and viability

8. The appeal site is within a primary shopping frontage in Hackney Central Town Centre. The proposal seeks to amalgamate two units at No 374 Mare Street (Class A1) and No 372 (Class A2) to create one large A2 unit.
9. Policy LP33 paragraph (f) of the HLP states that A1 retail uses should be the predominant use within the primary frontages, constituting at least 60% of all units within the primary frontage as a whole. Development involving the loss of A1 uses will only be permitted where the proposal does not result in the overall proportion of A1 uses falling below 60%, and does not result in the equivalent of a group of two or more adjoining standard size shop units being in non-retail (A1) uses. There is no evidence before me to show that the proposal would comply with these criteria.
10. Policy LP33 paragraph (g) states that a change of use may be permitted if the proportion of A1 falls below 60% if it can be demonstrated through at least one year's marketing evidence in accordance with Appendix 1 that there is no realistic prospect of the unit being used for A1 retail. The appellant states that the A1 unit was marketed for a short-term lease from October 2019 to April 2020. The unit was initially leased under offer to a tenant at the end of 2019 but the new tenant missed the opportunity for Christmas trading and therefore pulled out of the lease. The unit has continued to remain vacant with no further interest.
11. The evidence before me suggests that the retail unit was marketed for a period of less than 12 months. Furthermore, the marketing information shows that the unit was only offered on a temporary basis until April 2020, which would be likely to restrict interest from retail operators. In addition, I have not been provided with any evidence to confirm that the unit was subject to formal marketing beyond April 2020. Consequently, in my judgement it has not been sufficiently demonstrated that there is no realistic prospect for the unit being used for A1 retail. The proposal would therefore conflict with Policy LP33 of the HLP.
12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 dictates that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
13. The changes introduced by the UCO Amendment Regulations mean that both the existing permitted A1 use and the proposed A2 use would now fall into the new Class E of the UCO. As the Explanatory Memorandum to the UCO Amendment Regulations notes, this is to reflect the diversity of uses found on high streets and in town centres, to provide flexibility for businesses to adapt and diversify to meet changing demands, and to support the viability of these areas now and in the future.
14. Whilst it is my responsibility to determine this appeal by reference to the use classes that applied when the planning application was submitted, the changes to the UCO have been in force since 1 September 2020 and it is a material consideration. The proposed change of use no longer constitutes an act of development and therefore the retail use could be lost without the need for planning permission. This represents a significant fallback for the appellant if

the appeal were to fail, and I am satisfied that there is a greater than theoretical possibility of this fallback option being implemented. Therefore, I give the fallback position considerable weight as a material consideration that outweighs the conflict that I have found with the development plan.

Shopfront

15. The appeal site is located within the Clapton Square Conservation Area (the CA). This part of the CA comprises predominantly 2 and 3 storey buildings with commercial uses at ground floor. I saw that most of the shopfronts are modern and there is not a consistent pattern to their design. The information before me shows that the pre-existing shopfronts at Nos 372 and 374 reflected this. No 372 was recessed with angled shopfront windows, and No 374 featured a stallriser below the main shopfront window, including an ATM, and a recessed front door. The pilasters to the sides of the shopfronts were finished in granite and tiles.
16. The proposal would re-locate the ATM to the northern side of the shopfront. Whilst I acknowledge that the panel around the proposed ATM would create an area of inactive frontage, I do not consider that this would be much greater than the pre-existing situation, and it is not unusual for this type of use. A reasonable amount of glazing would be retained to allow visibility from the street into the premises. The removal of the pre-existing recesses would assist in this respect. The proposal would therefore maintain the activity and vitality of the shopping frontage.
17. Whilst I acknowledge the Council's concerns with regard to the detailed design of the proposed shopfront, in particular the different height of the glazed panels and the alignment of the transom/fanlights, the shopfronts already had a high degree of variation and I do not consider that these aspects would cause harm. The replacement of the pre-existing granite surface and tiles with new grey tiles, along with the new grey aluminium frames and fascia panel, would provide a degree of uniformity to the shopfront. A planning condition should be imposed to require the submission of precise details of the proposed external materials for the Council's approval in order to ensure that an acceptable standard of appearance would be achieved.
18. For these reasons, I conclude that the proposed development would maintain the character and appearance of the host building and would maintain the activity and vitality of the primary shopping frontage. It would also preserve the character and appearance of the CA. The proposal would therefore accord with Policies D4 and HC1 of the LP2021, Policies LP1, LP3 and LP33 of the HLP and guidance in the Shopfront Design Guide and Hackney Central Area Action Plan. Amongst other things, these policies seek to ensure that all development provides high quality design and preserve or enhance the significance of the historic environment.

Conditions

19. I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is for the avoidance of doubt and in the interests of certainty.
20. Condition No 2 is imposed to ensure that details of the external surfaces of the proposed shopfront are submitted, approved and implemented so as to

preserve the character and appearance of the CA. There is a strict timetable for compliance because work has already commenced and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the external materials before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

21. For the above reasons, I conclude that the appeal should be allowed.

C Osgathorp

INSPECTOR