



Appeal Decision

Site visit made on 26 April 2021

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 MAY 2021

Appeal Ref: APP/E5900/W/20/3261345

Land on the eastern side of Golding Street, to the north of the railway viaduct and the southwest of Bailey Tower

- 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 Golding Street Ltd against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/19/02338, dated 18 October 2019, was refused by notice dated 28 April 2020.
 - The development proposed is the erection of a 7-storey building (plus basement) to provide 4 flats (1 x studio, 2 x 2-bed & 1 x 3-bed) with balconies and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address of the appeal site given on the application form and decision notice does not seem accurate. I have therefore amended the appeal site address with reference to the submitted evidence, and my observations on site, so as to better describe its location.
3. The London Plan¹ 2021 was published after this appeal was lodged but prior to its determination. Consequently, I contacted the Council and the appellant and sought their comments in relation to the publication and this appeal.
4. The Council has made reference to a number of policies in the London Plan 2021 which are said to be relevant to the appeal proposal. However, I must determine the appeal on the submitted evidence and copies of these referenced policies have not been provided.

Main Issues

5. The main issues are the effect of the proposal on:
 - The living conditions of future occupiers, with particular regard to air pollution, noise and vibration, daylight and sunlight, outlook, and cycle parking provision
 - The living conditions of nearby occupiers, with particular regard to natural light
 - The character and appearance of the area

¹ Spatial Development Strategy for Greater London March 2021

Reasons

6. The proposed development would be a 7-storey building containing four dwellings; a 3-bedroom unit at basement, ground and first floor level; two 2-bedroom units at second/third and fourth/fifth floor levels; and, a studio unit on the sixth floor. The ground floor flat would have access to a private external amenity space to the south of the building, whilst there would be external balconies on each of the above ground floors on the southern elevation.
7. The northern side of the building would contain the communal entrance lobby and stairwell; an externally accessed bin store would be located at the northwestern corner of the building. Two internal cycle storage spaces would be provided within the communal lobby area, with a further four cycle spaces to be provided externally, at the southwestern corner of the proposed building.
8. The proposed building would be located on a small, rectangular plot near two apartment blocks, the 14-storey Wilson Tower across Golding Street to the west, and the 8-storey Bailey Tower to the northeast. Golding Street/Berchmans Close passes beneath a railway viaduct located a short distance to the south of the appeal site, which is the equivalent of some 2.5/3-storeys in height.

Living Conditions of Future Occupiers

9. The railway viaduct contains garage-type businesses in the arches on either side of the road, including next to the appeal site. A large metal flue, seemingly linked to the garage uses, is attached to the viaduct close to the appeal site.
10. From the submitted evidence it is unclear whether this is a flue to extract fumes from beneath the viaduct or to draw air into this space. If this is an extract flue, no indication of the fumes that would be extracted has been provided. The flue would be positioned close to the opening windows on the southern elevation of the proposed building, together with the outdoor amenity spaces of the 3-bedroomed flat and the balconies of the other dwellings.
11. In light of the inconclusive submitted evidence I have taken a precautionary approach to this issue. I cannot be certain that noxious fumes would not be discharged from the flue. Given its position close to the outdoor amenity space and balconies of the proposed development, any such discharge is likely to adversely affect people using these spaces and may also be harmful to their health. I note that the appellant has offered to relocate the flue should that be considered necessary. However, the flue is outside the development site and it is not clear that its relocation would be practical. Even if an agreement were reached in principle to relocate the flue, there is no binding mechanism through which this could be achieved.
12. The appellant's noise and vibration impact assessment² (NVIA) considers the potential impacts of noise and vibrations within the proposed dwellings. This NVIA found a measured noise level of 75dBA during the daytime³ and 71 dBA during the night-time⁴. However, the report concludes that with appropriate construction methods and materials, together with a suitable ventilation

² KP Acoustics Report 19460.NVA.01

³ LAeq,16hour

⁴ LAeq, 8hour

system, there would not be any significant harm to the living conditions of future occupiers from noise or vibration within the proposed dwellings. I am satisfied that such matters could be controlled by means of appropriately worded conditions, were the appeal to be allowed.

13. However, the NVIA mistakenly states that there are no external amenity areas within the proposal and so no assessment has been made of them. The aforementioned measured daytime noise level of 75 dBA would be significantly above the maximum guideline value of 55 dBA for gardens or patios⁵, and so would be similarly above the guideline value for the proposed external amenity spaces.
14. Notwithstanding the constraints of the appeal site and its proximity to the railway viaduct, no assessment of noise impacts on the external areas has been made and no measures to potentially mitigate noise have been proposed.
15. There is also an L-shaped brick wall some 4-5 metres in height on or by the southern and eastern boundaries of the appeal site. It is not shown on the submitted plans and the appellant's evidence regarding the wall is confused and somewhat contradictory⁶. Given the uncertainty regarding its status, it is unclear to me whether the appellant has control over this wall so as to be able to alter its height or appearance.
16. The NVIA included consideration of the wall, whilst the Daylight and Sunlight Assessment⁷ (DSA) and the additional assessment (AA) by the same firm of consultants⁸, did not.
17. I do not find this inconsistent approach helpful and furthermore, the consultant's explanation for why the wall was not included in the assessments of daylight and sunlight is not satisfactory at all. I can see why the wall's height 'beneath the first-floor windows' means it would be unlikely to have any effect on the floors above ground floor level. However, it would certainly be likely to have an effect upon habitable rooms at the ground floor and basement levels.
18. The annual figure of 33% sunlight for the ground floor living room referenced in the AA does not meet the BRE criteria and the figure during the winter months would be expected to be significantly lower. Consequently, it has not been demonstrated that habitable rooms at ground floor and basement levels would receive adequate daylight and sunlight, and I am not satisfied that future occupiers would, therefore, enjoy acceptable living standards⁹ in this regard.
19. All of the habitable rooms within the proposed dwellings would have a single aspect, facing south towards the brick wall, the railway viaduct, and the townscape beyond. The proposed 3-bedroomed unit in particular would have a very limited outlook as a result of its proximity to the brick wall, whilst the 2-bedroomed unit immediately above it would also have a constrained outlook as a result of the railway viaduct.

⁵ NVIA paragraph 4.4 - BS8233:2014

⁶ E.g. paragraph 5.7 of the appellant's Statement of Case and Bullet Point 6 of the appellant's final comments.

⁷ Brooke Vincent + Partners October 2019

⁸ Brooke Vincent + Partners 27 August 2020

⁹ Paragraph 123 c) of the Framework

20. Bailey Tower is set back some distance from the viaduct and so the dwellings on the lower floors of its southern elevation have a different and better outlook than those in the proposed scheme. The southern elevation of Wilson Tower is a similar distance from the railway viaduct as the proposed development's southern elevation would be, and it contains no dwellings at ground and first floor levels; the second floor dwelling above also has a somewhat constrained outlook as a result of its proximity to the viaduct.
21. Policy D.TR3 (parking and permit free) of the Tower Hamlets Local Plan 2031 (THLP) requires developments to adhere to the parking standards contained at Appendix 3. For a residential development comprising a Studio flat, two 2-bedroomed flats and a 3-bedroomed flat, a total of seven bicycle parking spaces would be required. The proposed development would have six bicycle parking spaces, two internal and four external in a storage shed. Contrary to both the Council's and appellant's assertions, this is less than the minimum required by the standards contained in the THLP. This would be to the detriment of the living conditions of future occupiers of the proposed development.
22. I note the pre-application advice provided by the Council in relation to the appeal proposal and that the scheme and the development plan have changed since this time.
23. I also note the planning history of the site, including the information provided by the appellant with their Statement of Case. Whilst I am not fully familiar with the schemes previously granted planning permission, there are similarities between the current appeal scheme and the scheme granted planning permission on 7 April 2014. However, none of the previously granted planning permissions are extant. They cannot therefore be implemented and so have no weight as fallback options.
24. Whilst the railway viaduct and the brick wall are unlikely to have changed significantly since the previous planning permissions were granted, there have been various changes to the development plan and to national policy¹⁰ in recent years.
25. It is not clear to me that the previously approved schemes would be consistent with the current development plan or national policy. In any event, each proposal should be determined on its individual merits, which is what I have done in this case.
26. For these reasons, the proposed development would adversely affect the living conditions of future occupiers, with particular regard to air pollution, noise and vibration, daylight and sunlight, outlook, and cycle parking provision. It would, therefore, conflict with Policies D.DH7 (density), D.DH8 (amenity), D.H3 (housing standards and quality), D.ES2 (air quality), D.ES9 (noise and vibration), D.ES10 (overheating), and, D.TR3 of the THLP, and with the Framework.

Living Conditions of Nearby Occupiers

27. The scale, massing and position of the proposed development means it would affect sunlight / daylight reaching certain rooms within Bailey Tower, and to a lesser extent Wilson Tower.

¹⁰ Including the National Planning Policy Framework 2019 (the Framework)

28. The appellant's comments regarding the adequacy of the design of Bailey Tower in terms of daylight are noted. However, the merits or otherwise of the design of Bailey Tower do not concern me greatly. There is no dispute that Bailey Tower has planning permission and that people currently live in it. I am, therefore, concerned with the effect of the proposed development upon the people who live there.
29. The Council did not accept the appellant's 'mirror image' or 'no balconies' tests in relation to Bailey Tower. The evidence shows that some of the rooms within Bailey Tower have low VSCs and that the proposed development would reduce this further for a number of them. Notwithstanding some positive results from the AA¹¹ I am not satisfied that *acceptable living standards* would be achieved in Bailey Tower as a result of the proposed development.
30. Whilst the impact of the appeal proposal on sunlight / daylight reaching rooms within Bailey Tower may be less severe than the impact of a previously approved scheme, it would still be significantly adverse.
31. Furthermore, the previously approved scheme has lapsed, cannot be implemented and so is not a genuine fallback, whilst the development plan and national policy have both changed in recent years. In any event, as previously stated, each proposal should be determined on its individual merits, which is what I have done in this case.
32. For these reasons the proposed development would adversely affect the living conditions of nearby occupiers, with particular regard to natural light. It would, therefore, conflict with Policy D.DH8 of the THLP and with the Framework, in this regard.

Character and appearance

33. The scale, massing and position of the proposed development would make it a visually prominent feature within the streetscene. However, in views along Golding Street the proposal would be seen in the visual context of the railway viaduct as well as the vertical emphasis of Bailey Tower and Wilson Tower, and of other tall buildings to the south of the railway viaduct.
34. The position of the proposed building would be set forward of Bailey Tower, with only a small strip separating it from the footpath on Golding Street. However, there is not a clearly defined building line along the eastern side of the road. Whilst the position and juxtaposition of buildings would be somewhat cramped, this would not cause unacceptable harm, particularly given the constraints of such a small plot of land.
35. I note the Council's concerns regarding detailing and the proposed palette of materials, which is not considered sympathetic to the area. Given the variety of the existing buildings, structures, and spaces around the appeal site I do not consider the design or materials to be unacceptably incongruous.
36. On balance, the proposed development would not have an unacceptable impact on the character and appearance of the area. It would, therefore, accord with Policies S.DH1 (delivering high quality design) and D.DH2 (attractive streets, spaces, and the public realm) of the THLP and with the Framework, in this regard.

¹¹ Including in relation to the ADF and APSH

Other Matters

37. At several places within their evidence the appellant suggests alterations to the appeal proposal, such as to remove the external amenity space or vary the materials and or the design of elements. Government guidance¹² is clear that the appeal process should not be used to evolve a scheme. I have considered the proposal that was refused planning permission by the Council in determining this appeal.
38. Various policies within the previous version of the London Plan¹³ are referenced by the Council on its decision notice to refuse planning permission. However, these policies are no longer part of the development plan and so I have not had regard to them with reference to S38(6) of the Planning and Compulsory Purchase Act 2004 as amended.
39. Few substantive details have been provided regarding the proposed bicycle storage shed, which would be located partly within a clearly defined 'No Build Zone' by the railway viaduct. Whilst Network Rail has not objected to the proposal, the drawings that they refer to do not match the submitted drawing reference numbers. It is not, therefore, clear that Network Rail considered the proposed shed in reaching this view and I cannot be certain that the proposed shed, would not adversely affect the future maintenance of the railway viaduct.
40. The submitted drawings show that the proposed entrance door to the building and the proposed door to the bin store would both open outwards over or towards established pedestrian routes.
41. The submitted drawings also show the southern elevation of the proposed ground floor lightwell would comprise a glass panel, the size and position of which would allow people using the proposed external bicycle store to see into parts of the ground floor and basement of the 3-bedroomed dwelling, adversely affecting the privacy of future occupiers.
42. Were I to allow the appeal, these are matters that I would need to consider further. However, as I am dismissing the appeal for other reasons, there is no need for me to do so in this case.

Conclusion

43. Notwithstanding the acceptable impact of the proposal on the character and appearance of the area, this would be outweighed by the harm to the living conditions of future and nearby occupiers.
44. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is dismissed.

Andrew Parkin
INSPECTOR

¹² Procedural Guide Planning Appeals – England (March 2021) Annexe M

¹³ The Spatial Development Strategy for London consolidated with alterations since 2011, published in March 2016.