



Appeal Decision

Site Visit made on 12 July 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/E5900/W/21/3268596

12-14 Duke of Wellington, Toynbee Street, London E1 7NE

- 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 Mendoza Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/20/01717, dated 11 August 2020, was refused by notice dated 23 November 2020.
 - The development proposed is described as, "The erection of a 2 storey extension on 1st and 2nd floor providing additional hotel (Class C1) space with existing outdoor space retained and new ground floor planters presenting to Toynbee Street".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the site visit, I observed that there were some differences between the existing appeal plans and what was present on site. Nevertheless, for the avoidance of doubt, this appeal decision only relates to the submitted appeal plans.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published, which replaced the February 2019 version. The parties were provided with an opportunity to comment on its relevance to this appeal, and I have taken the comments received into account in my determination of this appeal.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the host property, with particular regard to its conservation area location;
 - the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to outlook;
 - the effect of the proposal on the viability of the public house; and
 - whether the proposal makes adequate provision for waste and recycling facilities and collection and also cycle storage.

Reasons

Character and appearance

5. The appeal site comprises a 3-storey 19th-century building which contains a public house (pub), situated on a corner between Toynbee Street and Brune Street. To the side of the pub is a paved outdoor space, which is used in connection with the pub. The site is within the Wentworth Street Conservation Area (conservation area). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s72(1) that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
6. The significance of the conservation area, as a whole, as a designated heritage asset is derived predominantly from its varied assortment of properties which exhibit a high standard of architectural design and materials and which generally have a consistent scale, and its mixed-use character with historically-significant commercial areas.
7. The site contributes to the significance of the conservation area primarily by the traditional architectural features present on the appeal property, which include its attractive brickwork. The elegant frontage of the pub complements the vernacular style of the building as a whole. Additionally, the function of the appeal property as a pub on this prominent corner location, including its paved outdoor space, contributes to the meaning and experience of the conservation area, and hence its historic interest.
8. The proposed extension at first and second floors over the pub's outdoor space would incorporate a bold and contemporary design. I observed all the 'local reference' buildings referred to in the appellant's Design & Access Statement, and I observed the development at 11-31 Toynbee Street and 67-69 Commercial Street, which was under construction at the time of my site visit. In this regard, I recognise that buildings with contemporary designs have been successfully integrated with historic architecture in the vicinity. However, whilst a variety of styles and forms exists within Toynbee Street and the conservation area, the primary relationship of the proposal is with its host property.
9. In this respect, the proposed extension would bear very little resemblance to the architectural style of its host property, or indeed many of the other buildings on Toynbee Street. Although the maximum height of the proposal would be lower than the parapet level of the host property and the ridge level of No 16 Toynbee Street (No 16), and appropriate materials would be used, it would still be a structure of considerable size and bulk, with a 'box-like' design which, in this prominent location, would severely detract from the architectural interest of its host property. In particular, it would appear out-of-sync with its host property with respect to its wide elevations and window placement.
10. Furthermore, the existing gap above ground-floor level to the side of the pub serves to mitigate the presence of built form in this densely built-up area. Although the proposal would allow for views into the paved area, thereby promoting animation and activity onto Toynbee Street, the proposal would remove much of the gap above the ground floor, which would undermine the site's contribution to the character and appearance of the area. Whilst the ongoing development at 11-31 Toynbee Street and 67-69 Commercial Street

will change the context of the street, that is a large-scale development, with several different architectural styles incorporated, meaning that it is markedly different from the proposal. Accordingly, it offers little support for the proposal and it does not change my findings.

11. Although it has been suggested that the quality of the proposed materials could be controlled via a planning condition, this would not adequately mitigate the planning harm identified. In contrast, the design detail of the railings and planters could be controlled by condition, thereby reducing their deadening visual effect on this part of the street.
12. In light of the above, the proposal would undermine the traditional architectural features present on the appeal property. As such, it would harm the immediate significance of the appeal property. In this case, the appeal property makes a valuable and positive contribution to the locality, and the scale of the harm caused would be such that the proposal would be unacceptable in this respect.
13. Taking account of the above, as the proposal would undermine the presence of high quality architecture in the locality, the proposal would also be harmful to the significance of the conservation area. As the harm would be localised, the proposal would cause less than substantial harm to the significance of the conservation area, but nevertheless this harm is of considerable importance and weight. The Framework advises that such harm should be weighed against the public benefits of the proposal.
14. Based on the existing plans, the proposal would make the outdoor space more visible to passers-by, and the newly-covered paved area would allow the space to be used throughout the year and in the evening.
15. The Framework makes clear that great weight needs to be given to designated heritage assets' conservation. I give moderate weight to the benefits of the proposal and find that they do not, either individually or cumulatively, amount to public benefits which outweigh the harm that would be caused to the significance of the conservation area.
16. I therefore find that the proposal would have an unacceptable and harmful effect on the character and appearance of the host property and the conservation area, and that it would neither preserve nor enhance the character or appearance of the conservation area. Thus, the proposal would conflict with Policy S.DH3 of the Tower Hamlets Local Plan 2031 (adopted 2020) (Local Plan) which provides that, amongst other things, proposals must preserve or, where appropriate, enhance the borough's designated and non-designated heritage assets in a manner appropriate to their significance.
17. The proposal would also conflict with paragraph 126 of the Framework, which provides that, amongst other things, the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, and with paragraph 134 of the Framework which provides that, amongst other things, development that is not well designed should be refused.

Living conditions of neighbouring occupiers

18. The east elevation of Carter House contains a number of windows which face towards the appeal site. Whilst representations from interested parties indicate

that some of these windows facing the site are not all bedrooms, on the information before me it appears likely that the windows are secondary windows serving habitable rooms.

19. As the existing boundary wall and toilet block would remain unchanged via the proposal, the proposal would have little material effect on the outlook from the ground floor windows on the east elevation of Carter House. The proposal would incorporate a narrow alleyway between the appeal site and No 16, and the side elevation of the nearest new bedroom at first floor level would be set-in from the southernmost first floor window on the east elevation of Carter House. The nearest rear elevation on the second floor of the proposed extension would be set-back somewhat from the southernmost second floor window on the east elevation of Carter House. Thus, the southernmost windows would not be materially affected by the proposal, with respect to outlook.
20. The existing outlook from the northernmost first and second floor windows on the east elevation of Carter House is already somewhat constrained by the presence of the appeal property and No 16. In this context, whilst the parties disagree as to the separation distances that would result between the windows on the east elevation of Carter House and the proposal, in my view the introduction of the substantially-sized proposed extension in close proximity to those windows would materially reduce the outlook from those windows. As such, even though they may be secondary windows, the substantial reduction in outlook caused by the proposal would likely make the relevant rooms in Carter House less pleasant to use.
21. Although the appellant has referred to a 2015 scheme, little details have been provided. As such, a meaningful comparison cannot be made with the proposal and accordingly this matter does not change my findings.
22. I therefore find that the proposal would have an unacceptable and harmful effect on the living conditions of certain occupiers of Carter House, with particular regard to outlook. It would conflict with Policy D.DH8 of the Local Plan which provides that, amongst other things, development is required to protect and where possible enhance or increase the extent of the amenity of new and existing buildings and their occupants.

Viability

23. Policy D.CF4 of the Local Plan provides that, amongst other things, proposals within the curtilage of a public house must demonstrate that the continued operation and viability of the public house would not be compromised. I note that neither Part 3 of Policy D.CF4, nor its supporting text, requires any particular financial information, comparables, or precedents.
24. The proposal would cover over the majority of the outdoor paved area, as shown on the existing plans, and would add enclosed refuse stores within it. The Council have referred to the lack of screening / odour mitigation with respect to the location of the proposed refuse stores. However, I consider that this matter could be resolved by a suitably-worded condition.
25. Although the floorspace of the outdoor area would not be reduced via the proposal, covering the outdoor area would remove the benefits that it offers patrons of the pub with respect to their experience and enjoyment of the open

air, sunlight, and their wider surroundings. In this respect, covering the outdoor area in the manner proposed may reduce its attractiveness for some customers.

26. However, taking account of the letter provided by the operator of the pub, I consider that it is likely that this factor would be outweighed by patrons of the pub being able to use that space throughout the year and particularly on colder days. Moreover, I consider that the railings proposed adjacent to the footway would not be so imposing as to deter customers from using the pub. The Council has referred to the extensive planning history for the site, but as little details have been provided, this does not change my findings on this matter.
27. Although a copy of part of The Smoke-free (Premises and Enforcement) Regulations 2006 has been provided, on the information before me it is not possible to confirm whether or not the proposal would result in the displacement of smokers. I have taken account of the evidence provided with respect to previous occasions when smokers were not able to use the outdoor area. However, the pub as a whole, including its outdoor space, is fairly modest in size and therefore I consider that even if smokers were displaced, it would be unlikely that so many smokers would be displaced at one time so as to harm the amenity of surrounding properties.
28. Overall, based on the evidence before me, I find that the proposal would have an acceptable effect on the viability of the pub. Thus, it would comply with Policy D.CF4 of the Local Plan, which provides that, amongst other things, proposals within the curtilage of a public house must demonstrate that the continued operation and viability of the public house would not be compromised. Similarly, it would also comply with Policy HC7 of The London Plan (published 2021) which provides that, amongst other things, development proposals for redevelopment of associated accommodation, facilities or development within the curtilage of the public house that would compromise the operation or viability of the public house use should be resisted.

Waste and recycling facilities and collection and cycle storage

29. The appeal proposal has no cycle parking provision to serve the increase in the hotel rooms proposed. However, appropriate provision could be controlled through a planning condition, with the cycle spaces being located either at ground floor or at basement level.
30. The proposal would incorporate refuse storage areas. Considering the number of hotel rooms involved in the proposal, and the size of the proposed refuse storage areas, in my view the proposal would have an adequate capacity for waste storage. Details relating to appropriate waste management and collection could be controlled by planning conditions.
31. I therefore find that the proposal would make adequate provision for waste and recycling facilities and collection and also cycle storage. Thus, it would comply with Policy D.TR3 of the Local Plan which provides that, amongst other things, development is required to comply with the parking standards for bicycles set out in Appendix 3 of the Local Plan, and with Policy D.MW3 of the Local Plan which provides that, amongst other things, all new development must include sufficient accessible space to separate and store dry recyclables, organics and residual waste for collection, both within individual units and for the building as a whole.

Conclusion

32. Whilst I have found the proposal to be acceptable in terms of viability and waste and recycling facilities and collection and also cycle storage, this does not overcome the conflict with the development plan in relation to matters of character and appearance and the living conditions of neighbouring occupiers. Thus, for the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR