

Appeal Decision

Site visit made on 31 August 2021

by C J Ford BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2021

Appeal Ref: APP/E5900/W/21/3273914

410A Commercial Road, London E1 0LB

- 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 H Ali against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/20/01841, dated 29 August 2020, was refused by notice dated 27 October 2020.
 - The development proposed is extension to property to create two additional flats.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Revised versions of the London Plan and the National Planning Policy Framework (the Framework) were published in March and July 2021 respectively, and the main parties were given the opportunity to submit comments. The 2021 versions of the London Plan and the Framework are referred to in the decision.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of 406, 408 and 410 Commercial Road, and the Albert Gardens Conservation Area;
 - whether there would be acceptable living conditions for the future occupants of the proposed development with regard to the provision of internal space and private outdoor space;
 - whether there would be acceptable living conditions for the future occupants of the proposed development and the existing occupants of neighbouring properties with regard to outlook and privacy; and
 - whether the proposed development would make adequate provision for cycle and waste storage.

Reasons

Character and appearance

4. As the site is located within the Albert Gardens Conservation Area (CA), a designated heritage asset, there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The significance of the CA primarily derives from the quality and arrangement of the nineteenth century development found therein. The buildings are largely centred around the two open spaces of Arbour Square Gardens and Albert Gardens but they also front part of Commercial Road, a busy thoroughfare that effectively divides the CA.
5. The appeal building is to the south side of Commercial Road. Along with Nos 406 and 408 Commercial Road to the west, it forms a group of three buildings which are locally listed in the 2009 Albert Gardens Conservation Area Character Appraisal. The appraisal aptly describes these non-designated heritage assets as being three storeys, in late Georgian style, with stock brick masonry walls and London roofs set to the rear of a parapet. It is also apparent that above the ground floor level, the facades of the appeal building and No 408 display common architectural features and appear as a pair of properties in the street scene. Consequently, the important contribution that the buildings make to the character and appearance of the CA is not solely derived from their distinctive form and design amongst some markedly taller buildings with mansard roofs. In the case of the appeal building and No 408, it also derives from their architectural integrity and balance as a pair.
6. While the proposed mansard roof extension would partly be screened behind the front parapet wall, it would project fairly close to the plane of the front elevation and a large proportion of the additional bulk would be visible in public views from the north side of Commercial Road. The additional bulk would disrupt the simple three storey frontage form of the group of locally listed buildings. Moreover, it would adversely impact the architectural integrity and balance of the appeal building and No 408 as a pair. The proposed development would therefore cause significant harm to the character and appearance of Nos 406, 408 and 410, and it would fail to preserve or enhance the character or appearance of the CA.
7. Given the limited scale of the proposed development in the context of the CA as a whole, the arising harm to the significance of the CA would be less than substantial. Paragraph 202 of the Framework sets out that where a proposed development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal. Paragraph 199 also sets out that great weight should be given to the conservation of designated heritage assets, irrespective of whether any potential harm is less than substantial.
8. The public benefits of the proposed scheme include the provision of two additional dwellings in a sustainable location. There would also be economic benefits associated with the construction works and subsequent occupation of the dwellings, including spending at shops and services in the area. Nevertheless, given the small scale of the proposal, it would only make a

limited contribution to the housing supply and the local economy. Accordingly, the public benefits only attract moderate weight.

9. With the above in mind, and having regard to the great weight that should be given to the conservation of designated heritage assets, the public benefits would not outweigh the harm to the CA. Consequently, the proposed development would conflict with Policy S.DH3 of the 2020 adopted Tower Hamlets Local Plan 2031 (LP). Amongst other things, the policy specifies that proposals must preserve or, where appropriate, enhance the borough's designated and non-designated heritage assets in a manner appropriate to their significance. It would also conflict with paragraph 197 of the Framework which sets out how account should be taken of the desirability of sustaining and enhancing the significance of heritage assets, and the protection of non-designated heritage assets afforded by paragraph 203.

Space standards

10. Amongst other things, Policy D.H3 of the LP requires development to meet, as a minimum, the most up to date London Plan space standards. The minimum internal space for new dwellings set out by the London Plan is 37 sqm which relates to a studio/one bedroom, one person dwelling, that would have a shower room rather than a bathroom. Given the two proposed one bedroom flats would have gross internal floor areas of around 36 sqm and the studio flat only around 30 sqm, they would fail to meet the minimum standard, with the studio flat falling short by a significant margin.
11. That policy also requires the provision of a minimum of 5 sqm of private outdoor space for 1-2 person dwellings and none would be provided on the site. While the units would be unattractive to families given their size and location, any future occupants would positively benefit from such outdoor space provision. Furthermore, while there are several public open spaces nearby, these would not afford the same benefits as space that is directly accessible from the building.
12. Accordingly, there would not be acceptable living conditions for the future occupants of the proposed development with regard to the provision of internal space and private outdoor space. As such, the proposal would conflict with Policy D.H3 of the LP.

Outlook and privacy

13. One of the 'Existing view' photographs in Appendix A of the submitted Design and Access Statement shows the area between the rear elevations of Nos 408 and 410, and Steel's Lane to the south, as devoid of a built form above the ground floor level. However, the space is now largely occupied by a pair of three storey houses that were granted permission in 2011 and are numbered 23 and 25 Steel's Lane¹.
14. There is an existing degree of overlooking between rear windows at the appeal site and the rear windows which appear to serve habitable rooms at Nos 23 and 25. However, the respective windows are separated by a combination of the space located above the ground floor flat roof at the appeal site and a set

¹ Council Ref: PA/10/02519

back of around 1m from the boundary at Nos 23 and 25². The proposed development would result in the rear windows serving the living/dining/kitchen areas of the first and second floor flats only being sited around 1m away from the rear elevation of No 25. Owing to such a minimal separation distance, the occupants of the two flats and No 25 would experience a poor quality outlook and strong sense of enclosure, and there would be an unacceptable degree of inter-visibility at close quarters between the windows.

15. Consequently, there would not be acceptable living conditions for the future occupants of the proposed development and the existing occupants of neighbouring properties with regard to outlook and privacy. As such, the proposal would conflict with Policy D.DH8 of the LP. Amongst other things, the policy requires development to ensure new and existing habitable rooms have an acceptable outlook and that an unacceptable increase in the sense of enclosure is avoided. It also requires development to maintain good levels of privacy and to avoid an unreasonable level of overlooking.

Cycle and waste storage

16. As Policy D.TR3 of the LP requires one cycle space to be provided per studio and one bedroom unit, the proposed development should provide storage for three cycles. Similarly, Policy D.MW3 specifies that 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.
17. No specific details about such cycle and waste storage facilities have been put forward, with the appellant suggesting they could be dealt with by conditions. However, before any such conditions may be imposed, there should be a reasonable prospect the facilities could be suitably provided on the site. Given the assessment above has found the proposed development would result in units that have substandard internal space and which lack any private outdoor space, it has not been demonstrated that there is a reasonable prospect the facilities could be properly provided. In this context, the imposition of conditions would be inappropriate and the development would conflict with Policies D.TR3 and D.MW3.

Planning Balance

18. As previously noted, the proposed development would provide two additional dwellings in a sustainable location and there would be associated economic benefits. Nevertheless, given the small scale of the proposal, these benefits only attract moderate weight. The development would not bring into beneficial use the upper floors of the building as they already accommodate a flat.
19. The benefits are insufficient to outweigh the harm to the designated and non-designated heritage assets, the unacceptable living conditions for future occupants and neighbouring occupants, and the likely further harm with regard to inadequate storage for cycles and waste.
20. While the main parties have not clarified the Council's housing land supply situation, even if paragraph 11 d) of the Framework were to be engaged, the policies in the Framework which seek to protect designated heritage assets

² A distance given in paragraph 3.6 of the Council's statement of case, which is not specifically disputed by the appellant.

provide a clear reason for refusing the proposal and as such the presumption in favour of sustainable development would not apply.

Conclusion

21. The proposal would conflict with the development plan as a whole and there are no material considerations, including relevant parts of the Framework, which indicate that the decision should be made otherwise than in accordance with it. The appeal is therefore dismissed.

C J Ford

INSPECTOR