
Appeal Decision

Site visit made on 2 March 2022

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th April 2022

Appeal Ref: APP/E5900/W/20/3265985

244 Bethnal Green Road, London, E2 0AA

- 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 Charlton Edwards of Attenborough Jewellers Ltd against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/20/01739, dated 14 August 2020, was refused by notice dated 4 December 2020.
 - The development proposed is described as reapplication of planning permission for two storey office accommodation and reinstatement of residential accommodation granted on 23rd August 2000 by the council. Reference no: FP/00/13435/SS.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address and description of the proposed development in the banner heading above are taken from the application form. However, the appeal property comprises both Nos 242 and 244 Bethnal Green Road, originally built as two separate narrow properties but now linked together at ground floor level.
3. The description of the proposed development above is imprecise but both the decision notice and appeal form describe the development as '*Reinstatement of residential accommodation in the existing upper floors at No. 242 and 244 and construction of part two storey office accommodation to the rear of No. 244*'. This is the basis on which the Council determined the application and I have determined this appeal.
4. There is no reference to planning permission having been granted for the proposed development in 2000 in the Council's evidence but permission was granted on appeal for the reinstatement of residential accommodation in existing upper floors at No 242 and construction of two storey office accommodation to rear of No 244 in 2012 (APP/E5900/A/12/2168084/NWF). The permission was not implemented and has since expired.
5. However, since the previous appeal was determined, the Council has adopted The Tower Hamlets Local Plan: Managing Growth and Sharing the Benefits (2020) (the Local Plan). The policies in the Local Plan have superseded those policies against which the previous application was assessed. Although the appellant contends that the Council's planning guidelines have not changed since the allowed appeal, no copies of the previous relevant policies have been provided for comparison. In any event, I must determine the current appeal

against the current adopted development plan and the evidence and context before me. Therefore, although I have had regard to the previous appeal decision, I am not bound by it.

6. During the course of the appeal The London Plan The Spatial Development Strategy for Greater London (2021) was published. This replaced The London Plan The Spatial Development Strategy for London Consolidated With Alterations Since 2011 (2016) and draft versions of the new London Plan, the policies of both of which therefore are no longer relevant to my decision. Neither party has referred me to any specific policies within the published new London Plan.

Main Issues

7. The main issues are:

- i) the effect of the proposed development on the supply of employment floorspace in the Borough;
- ii) whether the proposed development would provide an even mix of dwelling sizes;
- iii) whether the proposed development would provide satisfactory living conditions for future occupiers of the proposed development, with particular regard to internal and external space;
- iv) the effect of the proposed development on the living conditions of the occupiers of No 242A Bethnal Green Road with particular regard to outlook, privacy and daylight / sunlight;
- v) whether the proposed development makes adequate provision for refuse and recycling; and
- vi) whether the proposed development makes adequate provision for cycle storage.

Reasons

Employment floorspace

8. The appeal properties are two adjacent 3 and 4 storey buildings forming part of a terrace of similar commercial buildings and comprising retail on the ground floor with office and workshop accommodation above, mostly currently used as informal storage. The Design and Access Statement and survey drawings submitted with the previous and current applications indicate that the upper floors of No 242 were or are residential.
9. However, the application form for the current proposal describes the existing use as 'retail and office accommodation'. The inclusion of 'reinstatement' in the description of the proposed development on the application and appeal forms, with specific reference to No 242 on the latter, implies that the upper floors are not currently in residential use as I confirmed during my site visit.
10. The permission granted on appeal was not implemented and no evidence has been put to me of residential use lawfully resuming in the meantime. In the absence of firm evidence to the contrary, I am not persuaded therefore that the upper floors of No 242 were last in residential use.

11. The appellant has not challenged the Council's contention in this appeal that, in combination, Nos 242 and 244 provide a total of approximately 228 m² of office floorspace. The proposed 2-storey extension to the rear of No 244 would provide approximately 124 m² to accommodate the relocated offices, workshop and ancillary uses associated with the retained retail use. In the previous appeal the Inspector found on the basis of the evidence before him that there would be an increase in the supply of employment floorspace. However, in the appeal before me the appellant has not specifically disputed the Council's contention that the proposals would result overall in the loss of approximately 104 m² of office / workshop space within the appeal properties.
12. Notwithstanding the previous Inspector's conclusions in this respect, no evidence in the form of a marketing exercise or otherwise has been provided to demonstrate that the premises are genuinely unsuitable for continued employment use due to their condition nor that reasonable options for restoring the premises to employment use are unviable. It has not been demonstrated, given the Council's concerns over the rate at which employment floorspace has been lost in the borough, that the benefits of 5 flats would outweigh the loss of offices.
13. I therefore conclude that the proposed development would adversely affect the supply of employment floorspace in the borough. Accordingly, in this respect, the proposals would conflict with Policy D.EMP3 of the Local Plan, which sets out that development should not result in the net loss of employment floorspace except in particular circumstances, none of which have been shown to apply.

Mix of dwelling sizes

14. Policy D.H2 of the Local Plan requires open market housing to provide 30% 1-bedroom units, 50% 2-bedroom units and 20% 3/4-bedroom units in accordance with local housing need. This is a change in the position from the previous appeal where the Inspector noted that 1-bedroom flats was the largest category of unit size identified as being required in the Council's Strategic Housing Market and Needs Assessment.
15. The proposed development would provide four 1-bedroom flats and a studio unit. I acknowledge the constraints of the layout of the existing properties, including the existing party wall. However, it has not been demonstrated that alternative configurations, providing a greater mix of units, would not be possible or undesirable.
16. I therefore conclude that the proposals would not provide an even mix of dwelling sizes. In this respect the proposals would conflict with Policy D.H2 of the Local Plan.

Living conditions of future occupiers

17. Policy D.H3 of the Local Plan requires development to meet with the most up-to-date London Plan space standards and provide a minimum of 5 m² of private outdoor space for 1-2 person dwellings. The standards set out in The London Plan are a minimum of 50 m² of floorspace for a new 1 bedroom, 2 person, 1 storey dwelling.
18. Two of the proposed flats would fall below this floorspace standard by approximately 7.5 m². I acknowledge the conclusion of the Inspector that

determined the previous appeal that making the best use of the available space given the constraints of the existing layout of the appeal properties outweighed this limited harm to the living conditions of future occupiers. However, with the emphasis in the more recent Local Plan on space standards and the importance of housing quality, I find that the balance tips the other way and that such a deficiency in internal floorspace is not justified.

19. The previous appeal decision did not address the matter of external private amenity space in detail, but this is a clear requirement of the current development plan. The proposals include no provision for such external space and the open landscaped area surrounding St Matthew's Church to the rear of the appeal properties would not provide private space for the occupiers of the flats.
20. I therefore conclude that the proposals would not provide satisfactory living conditions for the future occupiers of the proposed flats. The proposed development conflicts in this respect with Policy D.H3 of the Local Plan. Furthermore, the proposed development would not create places with a high standard of amenity for existing and future users as required by the National Planning Policy Framework (the Framework).

Living conditions of the occupiers of No 242A Bethnal Green Road

21. To the rear of No 242 is a 3-storey residential development comprising Nos 242A and 242B on the ground and first floors whilst to the rear of No 244 is an unused gravelled rear yard. The proposed 2-storey extension would fill the width of the yard, running alongside Nos 242A and 242B. The extension would include a small lightwell on the west elevation to afford light and an airspace to the small windows in the flank elevation of Nos 242A and 242B. The Inspector that determined the previous appeal concluded that as the windows did not serve habitable rooms, the effect of the proposed extension on the living conditions of the occupiers of these properties would be acceptable in respect of outlook and daylight.
22. However, since the previous appeal a Certificate of Lawful Development has been issued in respect of the use of the previous live/work unit of No 242A as a dwelling. The appellant has not disputed the Council's contention that one of the windows now serves a kitchen/living/dining room, which is a habitable room. I noted during my site visit that the window appeared to be obscure glazed. Consequently, the proposed extension would not adversely affect the outlook from this window nor the privacy of the occupiers of the property. Nevertheless, the height and proximity of the proposed extension to No 242A and the limited size of the lightwell would result in a significant loss of sunlight / daylight for the users of that room which is an important consideration for a habitable room.
23. I therefore conclude that the proposed development would unacceptably harm the living conditions of the occupiers of No 242A Bethnal Green Road. Accordingly, in this respect, the proposals would conflict with Policy D.DH8 of the Local Plan which protects the living conditions of the occupiers of neighbouring properties.

Refuse and recycling provision

24. Policy D.MW3 requires new development to include sufficient accessible space to separate and store dry recyclables, organics and residual waste for collection. As the proposal is for 5 flats in addition to the commercial use, the potential for waste generation is significant and it is important that satisfactory provision is made for the accommodation of bins in the interests of the character and appearance of the area and the living conditions of existing and future occupiers.
25. The proposals include no provision for refuse or recycling. However, the Council has not demonstrated that it would not be possible to provide space on the ground floor for refuse and recycling bins which could be secured through a condition as concluded by the previous Inspector.
26. I therefore conclude that the proposed development could make adequate provision for refuse and recycling. Accordingly, the proposals would not conflict in this respect with Policy D.MW3 of the Local Plan.

Cycle storage

27. Policy D.TR3 of the Local Plan requires development to comply with the parking standards set out in Appendix 3 of the Plan. The standard for cycles is 1 space for studios and 1-bedroom flats. The encouragement and facilitation of cycling is important in the interests of reducing congestion and improving air quality.
28. The proposals include no provision for cycle storage. However, again the Council has not demonstrated that it would not be possible to make such provision within the appeal properties to be secured by a condition.
29. I therefore conclude that the proposed development could make adequate provision for cycle storage. Accordingly, the proposals would not conflict in this respect with Policy D.TR3 of the Local Plan.

Other Matters

30. St Matthew's Church, to the rear of the appeal properties, is listed Grade II*. The church and its surrounding gardens lie within the Brick Lane and Fournier Street Conservation Area (the Area), the boundary of which is contiguous with the rear boundary of the appeal site. In determining this appeal I have a duty to pay special regard to the desirability of preserving or enhancing the setting of the listed building. Furthermore, the Framework recognises that development within the setting of a heritage asset can affect its significance.
31. The listing description identifies that the outstanding special interest of the church lies in its being built in 1743-6 to the designs of George Dance senior. The exterior retains much of its classical grandeur from this significant period of church-building in London, and that is the primary reason for its high grade of listing. The original interior was lost in a mid-C19 fire, and subsequently rebuilt after WWII bomb damage with works by many different artists of the period which provides further interest.
32. The Area is extensive and contains some of the most architecturally and historically significant buildings in the borough in a mixture of uses. The gardens around the church provide an intimate, quiet public space within the Area and contribute positively to its character and appearance.

33. The proposed rear extension would be visible from the front of the church, the gardens and the Area through a gap between a short modern terrace of 2-storey dwellings and a 4-storey apartment block. However, the extension would not interrupt any public views of the church or the Area nor encroach into the gardens or the Area. It would be seen in the context of and set further away than existing contemporary built development. Consequently, it would preserve the setting of St Matthew's Church and would not harm the character or appearance of the Area.

Conclusion

34. The proposals would accord with the Government's aim as set out in the Framework of significantly boosting the supply of homes. The Council accepts that the principle of additional residential accommodation on the site is supported, subject to relevant planning policy, and that the proposals would provide much needed housing within the borough.
35. However, I have found that the proposed development would conflict with the up-to-date development plan in respect of the Council's employment strategy, housing mix and living conditions. Whilst I find no conflict with policies for storage for refuse / recycling and cycles, subject to conditions were the development to be acceptable in all other respects, these policies do not positively support the proposals. I therefore conclude that the proposed development conflicts with the development plan taken as a whole.
36. There are no material considerations, including the policies of the Framework, that indicate that a decision should be made other than in accordance with the development plan. For this reason, and having regard to the other matter raised, the appeal is dismissed.

Martin Small

INSPECTOR