



Appeal Decision

Site visit made on 24 May 2022

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 21st June 2022

Appeal Ref: APP/E5900/W/21/3285441

185 Commercial Road, London E1 2DA

- 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 ABC Aldgate LLP against the decision of London Borough of Tower Hamlets.
 - The application Ref PA/21/01159, dated 19 May 2021, was refused by notice dated 28 July 2021.
 - The development proposed is part single and part double storey upward extension together with conversion of upper floors from storage (B8) to create 4 x self-contained flats (C3), plus basement and ground floor infill extensions.
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Decision

1. The appeal is dismissed.

Main Issues

2. During the appeal the Council indicated that the sixth reason for refusal set out in the decision notice with respect to insufficient information and louvres has been overcome. From the evidence I see no reason to disagree. Therefore, the main issues are:
 - whether the proposal would provide an adequate financial contribution towards affordable housing;
 - whether the proposed development would provide a suitable living environment for future occupiers with particular regard to outlook and privacy;
 - the effect of the proposed development on the living conditions of neighbouring occupiers with regard to privacy;
 - whether the proposal would provide adequate facilities for cycle storage; and
 - whether the proposal would provide adequate facilities for waste and recycling storage.

Reasons

Affordable housing

3. Policy S.H1 of The Tower Hamlets Local Plan 2031 Adopted January 2020 (THLP) requires the provision of affordable housing contributions on sites providing 2 to 9 new residential units against a sliding scale target (subject to viability).

4. THLP Policy D.H2 provides further detail regarding the provision of affordable homes and sets out that exceptional circumstances may apply and payments in-lieu will be considered.
5. The Appellant provided a Viability Report as part of the appeal which indicates that the provision of affordable homes would result in the proposal being unviable. An updated Viability Report was also provided by the Appellant in March 2022 which both parties have commented on.
6. There is a modest difference in the residential Gross Development Value (GDV) figures provided by the parties. The figure provided by both parties lies in the region of around £2 million. The figures for commercial GDV are roughly £870,000 and £950,000
7. The construction cost provided by the parties is also largely in agreement. The Residual Land Value put forward by the parties lies in the region of between £850,000 and £1,000,000.
8. However, there are a number of areas disagreement between the main parties with respect to the viability calculations. The primary area of dispute between the parties is the Existing Use Value (EUV). The Appellant's figure lies in the region of £1,400,000 whereas the Council's figure is around £680,000. As such, the Council consider that the development could provide a contribution towards affordable housing.
9. The Appellant has set out a number of rental rates for other commercial properties in the area which formed the basis of their EUV calculations. Apart from New Road these appear to lie some distance from the appeal site and are generally smaller than the appeal property. As such it is unclear whether these properties are comparable to the appeal site. Although the Appellant has provided passing rent figures for the existing commercial unit, there is little evidence to substantiate this. Furthermore, given the unit's awkward shape and limited usability of the basement space, there is little justification for the commercial rent figure used for the basement.
10. Furthermore, the appellant has applied a 25% premium to the EUV figure where the Council has not. The Planning Practice Guidance (PPG) states that the premium should provide a reasonable incentive for a landowner to bring forward land for development while allowing a sufficient contribution to fully comply with policy requirements. The PPG also states that the premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. Other than the evidence regarding GLA guidance, no substantial justification has been provided for the 25% premium figure used in the Appellant's calculations.
11. Therefore, there has not been a demonstration that the Benchmark Land Value has been informed by market evidence of current uses, costs and values, as required by the PPG. As such, there has not been a demonstration that the proposal is unviable.
12. Consequently, the proposed development would not provide an adequate financial contribution towards affordable housing. Therefore, it would conflict with THLP Policies S.H1 and D.H2 and Policies H4 and H6 of The London Plan The Spatial Development Strategy For Greater London March 2021 (London

Plan) and the Planning Obligations SPD (2021) which together seek affordable housing contributions.

Living environment

13. The outdoor terrace for Flat 1, is the only private amenity space for this dwelling. Together with the proposed sunshade over part of the terrace, the proposed tall privacy screening/balustrade would result in a poor outlook for users of the terrace.
14. The bedroom for the proposed Flat 1 would be served by the outdoor terrace with tall privacy screen/balustrade. While this would restrict the outlook from the bedroom to a degree, since this space would be likely to be used for a limited period during the daytime, the outlook of future occupiers would not be unduly affected in this particular respect.
15. The proposed sunshade for the terrace of Flat 1, would partially screen views of the terrace from the bedroom of Flat 3 above. While there may be some views of the rear part of the terrace of Flat 3, these would be limited such that there would not be an undue effect on privacy. Therefore, the proposal would not result in undue overlooking in this particular respect.
16. The terrace for Flat 3 would be enclosed on two sides by tall privacy screening. However, one side would have railing. As such, the terrace would benefit from some outlook, albeit towards the buildings opposite. As such, the outlook of future occupiers of the terrace of Flat 3 would not be unduly affected in this respect.
17. The terrace of Flat 2 would have a balustrade approximately 1.3m high along its northern boundary. Therefore, future occupiers would have views to large areas of the terrace of Flat 3 at close proximity. However, the submitted drawing indicates that privacy panelling would be fitted for each specific view. Moreover, given the size of the terrace, I see no reason why a suitably worded condition could not require privacy screens along the northern boundary of the terrace of Flat 2 without unduly affecting the outlook of future occupiers. Therefore, there would not be undue overlooking towards the terrace of Flat 3 in this respect.
18. The terrace of Flat 4 would also have railings around 1m high. However, the distance towards the terrace of Flat 3 would be significant such that there would not be undue overlooking in this respect.
19. Consequently, the proposed development would not provide a suitable living environment for future occupiers with respect to the outlook of the occupiers of the terrace of Flat 1. Therefore, the proposed development would conflict with THLP Policies D.DH8 which requires, among other things, that development protect or increase the extent of the amenity on new and existing buildings.
20. THLP Policy D.H3 and London Plan Policy D6 relate to housing standards and are therefore not directly relevant to this main issue.

Living conditions

21. The proposed roof terrace would have a 1m high balustrade along the western, southern and eastern sides. The Council has indicated that this would affect the

privacy of future occupiers of a scheme for the neighbouring property which benefits from extant planning permission.

22. Since there is no dispute that the neighbouring site benefits from planning permission, it appears likely that the scheme will be implemented. However, there is little detailed evidence before me regarding the extant permission other than that provided in the Design and Access Statement. As such, there has not been a demonstration that the proposal would not result in harm to the living environment of future occupiers of that scheme.
23. Consequently, the proposed development would harm the living conditions of the neighbouring occupiers with regard to privacy. Therefore, it would conflict with THLP Policy D.DH8 which requires, among other things, that development protect or increase the extent of the amenity on new and existing buildings.
24. Since London Plan Policy D4 does not relate specifically to living conditions, it is not directly relevant to this main issue.

Cycle storage

25. The submitted drawings do not indicate any provision for cycle storage for the commercial unit. As such, while I note the evidence regarding pre-application advice and willingness to provide cycle storage, the proposal would fail to provide adequate cycle storage.
26. Consequently, the proposed development would not provide adequate cycle storage provision. Therefore, it would conflict with THLP Policies D.TR3, S.TR1 and London Plan Policies T4, T5 and T6 which together seek development that meet the parking standards for vehicles and cycles, prioritise the needs of pedestrians and cyclists and provide cycling facilities.
27. THLP Policy D.TR2 relates to impact on transport network and London Plan Policies T6.1 and T7 relate to car parking deliveries and services and construction. Therefore, they are not directly related to this main issue.

Waste and recycling

28. The submitted drawings do not indicate any separate provision for waste and recycling storage for the commercial unit. Although I acknowledge the willingness of the Appellant to correct the omission, no updated drawings have been provided with the appeal.
29. Consequently, the proposed development would not provide adequate facilities for waste and recycling storage. Therefore, it would conflict with THLP Policy D.MW3, the associated Appendix 4 and London Plan Policy SI 7 which seek sufficient accessible space to separate and store recyclables and waste.

Other Matters

30. The Appellant has drawn my attention to planning permission at 92 Commercial Road, 78 Commercial Street, 146 Commercial Road, 152-152A Commercial Road and 187-189 Commercial Road. These schemes appear to have been determined on the basis of a previous development plan. The concerns raised with respect to these schemes appear to largely relate to internal space standards, outlook from within the buildings or overlooking to the internal spaces. I also note reference to two schemes at Lower Sydenham which were determined at appeal. In any event, limited detailed information is before me

regarding these proposals to enable a direct comparison to be made with this appeal which must be determined on its individual merits.

31. I note the evidence regarding the accessibility of the location. The proposal would contribute four dwellings to the local housing supply and there would be temporary economic benefits during the construction phase and future occupiers would be likely to contribute to the local community. However, given the lack of affordable housing contribution, harm with respect to living environment of future occupiers and living conditions as well as lack of waste and cycle storage provision, the benefits do not override the harm identified.

Conclusion

32. For the reasons given above the proposed development would conflict with the development plan as a whole and in the absence of material considerations to indicate otherwise, the appeal is dismissed.

R Sabu

INSPECTOR