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# Appeal Decision

Site visit made on 13 June 2022

**by Andrew Smith BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30<sup>th</sup> June 2022**

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**Appeal Ref: APP/V5570/W/21/3289507**

**137-139 Essex Road, Islington, London N1 2SN**

- 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 Patel Taylor Investments Limited against the decision of London Borough of Islington.
  - The application Ref P2021/2365/FUL, dated 9 August 2021, was refused by notice dated 7 October 2021.
  - The development proposed is demolition and replacement of front and rear facades (including roofing) and erection of a two-storey extension fronting Essex Road, and two-storey extension fronting Astey's Row (with glass box above) to accommodate 6x new residential units (2 no. 1-bedroom unit [2 person] x 2no. 2-bedroom units [3 person] x 1no. 2-bedroom units [4 person] x 1no. 3-bedroom unit); refurbishment of existing ground and first floor and creation of part basement level to provide office floorspace, and retention of part ground floor retail unit fronting Essex Road.
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## Decision

1. The appeal is allowed and planning permission is granted for demolition and replacement of front and rear facades (including roofing) and erection of a two-storey extension fronting Essex Road, and two-storey extension fronting Astey's Row (with glass box above) to accommodate 6x new residential units (2 no. 1-bedroom unit [2 person] x 2no. 2-bedroom units [3 person] x 1no. 2-bedroom units [4 person] x 1no. 3-bedroom unit); refurbishment of existing ground and first floor and creation of part basement level to provide office floorspace, and retention of part ground floor retail unit fronting Essex Road at 137-139 Essex Road, Islington, London N1 2SN in accordance with the terms of the application P2021/2365/FUL, dated 9 August 2021, subject to the conditions set out at the end of this decision.

## Preliminary Matters

2. A signed Unilateral Undertaking (the UU) dated 26 May 2022 is before me, which seeks to secure carbon offset and affordable housing contributions, and car-free development by virtue of future occupiers of the development being unable to be issued with parking permits. The Council has had the opportunity to make observations. I shall return to the UU later.
3. One of the submitted proposed section drawings<sup>1</sup> would appear to incorrectly depict the scheme at fourth floor level to the Essex Road side of the site. For this reason, I have considered it for information purposes only. I am content that the remaining suite of plans satisfactorily illustrate the scheme for the purposes of determination, and I shall consider the appeal on this basis.

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<sup>1</sup> 450-PT-20-SEC-PL-2002 PL3

## **Main Issue**

4. The effect of the proposed fourth floor extension upon the character and appearance of the host building and the surrounding area.

## **Reasons**

5. It is first relevant to note that planning permission<sup>2</sup> was granted at the site in June 2020 for a not dissimilar mixed-use redevelopment of the site comprising office and retail space with five residential flats above. It included a two-storey extension (with glass box above) fronting Astey's Row and a one-storey extension fronting Essex Road (the road). The June 2020 permission remains capable of implementation and represents a realistic fallback position should this appeal fail. Accordingly, consistent with the Council's reason for refusing planning permission, my considerations in a character and appearance sense shall focus upon the effect of the additional storey (the fourth storey) and consequent extra residential flat now intended to front the road.
6. The appeal property makes up part of a long linear terrace that fronts the road and that is comprised of buildings of varying heights and styles with differing roof designs and architectural characteristics. A range of uses are in existence, with a strong commercial presence observable at street level with residential accommodation often situated above. A mixed and compact urban character and appearance is identifiable along the road local to the site.
7. The fourth storey would occupy a setback position relative to the road and would be stepped back from the site's boundary with No 135 Essex Road. These are factors that would assist in moderating bulk and visual prominence, including when experienced from Greenman Street opposite to the site. Furthermore, in-part owing to its proximity to the road, the fourth storey would not represent a noticeable addition where experienceable from potential public or private vantage points to the rear of the site.
8. Being principally comprised of laminated glass with accompanying dark metallic framing, the fourth storey would read as a lightweight contemporary addition that would complement the brick-built bulk of the storeys beneath. It would not over dominate its surroundings nor appear as visually jarring. This is even when acknowledging the proximity of ornate traditional detailing to other properties. Furthermore, the intended full height would broadly assimilate with the heights of multiple buildings within the same terrace.
9. For the above reasons, the proposed fourth floor extension would not cause harm to the character and appearance of the host building or the surrounding area. The scheme satisfactorily accords with Policies D1 and D4 of the London Plan (March 2021), Policy CS8 of Islington's Core Strategy (February 2011) (the CS), Policy DM2.1 of Islington's Development Management Policies (June 2013) (the DMP) and the Islington Urban Design Guide Supplementary Planning Document (January 2017) (the UDG) in so far as these policies and guidance require that all forms of development make a positive contribution to the local character and distinctiveness of an area.

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<sup>2</sup> P2018/4159/FUL

## Other Matters

10. The site abuts the Canonbury Conservation Area (the CA) to the rear. Its significance as a designated heritage asset is drawn, in part, from its array of historic buildings and traditional materials. The proposal acceptably respects the typical scale and composition of built form fronting Astey's Row. Furthermore, the intended glass box at roof level would be of modest size setback from the street. It must also be noted that the principle of adding two stories to the building's Astey's Row frontage (with a glass box above) has previously been established via the June 2020 permission referred to above. I furthermore find that, particularly when factoring in the typical heights of neighbouring buildings, the scheme would not unduly overshadow the Astey's Row Rock Garden that runs adjacent to the site. The proposal, whilst bringing forward development within the CA's setting, would preserve the CA's character and appearance. Meanwhile, no unacceptable effect upon existing flora or fauna would be caused.
11. There are other designated heritage assets located locally, including a Grade II\* Listed building at 161-169 Essex Road. By virtue of the limited scale of development being considered and the separation distances involved, I am satisfied that the proposal would avoid causing any loss of special interest or heritage significance via bringing forward development within the setting of any nearby listed asset.
12. As regards the scheme's effect upon neighbouring living conditions, it is the case that a Daylight and Sunlight Report (April 2021) has been produced that offers a comprehensive assessment of the proposal's effects upon daylight and sunlight amenity for neighbouring residential occupiers. It logically benchmarks effects against the scheme consented in June 2020 and concludes no material increase in daylight and sunlight effects. Indeed, the fourth storey would be sensitively positioned to avoid any unacceptable loss of light for sensitive residential receptors. I am accepting of the Report's conclusions.
13. An interested party has referenced the 45-degree rule. Consistent with guidance contained within the UDG, this rule typically applies to rear extensions to single dwellings. The proposal instead incorporates upward extensions above existing commercial premises. Nevertheless, following my own on-site inspection at second floor roof terrace level whilst having regard to the broad objectives of the 45-degree rule, I am satisfied that the proposed extensions would be suitably designed and positioned to avoid any undue loss of light or unacceptable sense of enclosure for neighbouring occupiers. This includes at third floor level adjacent to the northernmost corner of the site.
14. There is also no clear reason to consider that the introduction of six residential units would lead to undue noise or disturbance to the detriment of existing living conditions, nor to any unacceptable loss of privacy. Indeed, the provision of on-site external spaces would guard against development of unduly high density whilst the residential roof terrace that is proposed would not be excessively sized. It is also relevant to note that upper-floor residential uses are characteristic of the local urban area and, as a result, some degree of mutual overlooking is already commonplace.
15. Notwithstanding the narrow nature of Astey's Row, I am content that safe access arrangements for delivery and emergency vehicles would realistically avail. Moreover, various possible stopping places exist close to the site

(including upon Essex Road). In summary, the proposal accords with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

### **Planning Obligations**

16. The UU secures that the site shall not be occupied by any occupant who has a permit to park in the Borough, unless specified exceptional circumstances apply. This approach, which accords with the requirements of Policy DM8.5 of the DMP in so far as it sets out that all additional homes shall be car free, would be in the interests of promoting sustainable transportation choices and guarding against any potential prejudice to highway safety.
17. A carbon offsetting contribution of £6,000 is also secured via the UU. This corresponds with a requirement of Policy CS10 of the CS, which requires financial contributions towards measures that shall reduce carbon emissions from the existing building stock. I understand that the amount has been calculated in accordance with relevant supplementary guidance.
18. A £300,000 affordable housing contribution is also secured. This has been calculated in accordance with the Affordable Housing Small Sites Contributions Supplementary Planning Document (October 2012), which sets out that a commuted sum of £50,000 per unit is required. This contribution shall go towards the costs of providing affordable housing units on other sites within the Borough.
19. I am satisfied that the various provisions/contributions secured through the UU are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind. I am also content that, from the evidence before me, the UU is fit for purpose.

### **Conditions**

20. A list of potential planning conditions agreed by the main parties is before me, which I have considered against advice in the National Planning Policy Framework (July 2021) and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes.
21. In the interests of certainty, a condition specifying the approved plans is required. In the interests of protecting the character and appearance of the area, a condition requiring full details and samples of the external facing materials to be used is reasonable and necessary. The boundary treatment elements of this condition would also be in the interests of safeguarding privacy for existing and future residential occupiers.
22. In the interests of protecting the privacy of neighbouring and future residential occupiers, a condition to secure full details of the opaque glazing to be installed is reasonable and necessary. Further, to guard against undue overlooking of neighbouring habitable room windows, a condition to ensure that the flat-roofed area permitted at third floor level is not used as an external amenity area is also reasonable. For the same reason, it is necessary to apply the same restriction to approved green roof areas.
23. An Acoustic Design Statement to include sound insulation and noise control measures is reasonable and necessary to secure via condition in the interests

of safeguarding the living conditions of neighbouring and future occupiers. For the same reason (specific to the construction phase) and to promote that highway safety is not prejudiced, a condition securing the submission and implementation of a Construction and Environmental Management Plan is necessary. I note here that the routing of construction vehicles upon the public highway, if covered by planning condition, would be unable to be enforced effectively.

24. In the interests of protecting the general amenities of the area and future living conditions, a condition to secure full details of the storage and collection arrangements for waste and recyclables is reasonable. In the interests of promoting sustainable travel choices, full details of the cycle storage facilities to be installed is also reasonable to require.
25. To achieve a suitably accessible development for all, measures to include compliance with the relevant Lifetime Homes Standard are reasonable to secure. To ensure a water efficient development, the installation of water efficiency measures is also reasonable to secure via condition. Further, to promote a carbon efficient development, commensurate reductions in carbon emissions when compared to relevant Building Regulations standards are reasonable to secure.
26. In the interests of visual amenity and promoting biodiversity, a landscaping scheme and related future maintenance is reasonable to secure via condition. To also encourage biodiversity, a condition to control the specification and future use of green roof areas to be installed is reasonable and necessary, as is a condition to secure the provision of appropriately located bird and bat boxes.
27. In the interests of structural soundness, a condition requiring basement level monitoring by a structural engineer has been agreed to by the appellant and is reasonable and necessary. To promote a safe/secure development, measures to achieve Secured by Design accreditation are also reasonable to attain.
28. As the stretch of Essex Road that contains the appeal site forms a designated retail frontage and recognisably functions in this capacity, I am satisfied that a condition restricting the use of part of the building's ground floor to retail operations is reasonable. Similarly, whilst the Framework sets out that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so, the removal of future rights to change the use of on-site commercial floorspace to create additional dwellings is justified in the interests of safeguarding the not insignificant retailing and employment opportunities offered by the proposal. I note that the appellant has not challenged such restrictions being imposed.

## **Conclusion**

29. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

*Andrew Smith*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall be begun not later than the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 450-PT-20-LXX-PL-2001 PL3; 450-PT-20-ELE-PL-2001 PL3; 450-PT-20-ELE-PL-2002 PL4; 450-PT-20-L00-PL-2001 PL4; 450-PT-20-L01-PL-2001 PL3; 450-PT-20-L02-PL-2001 PL4; 450-PT-20-L03-PL-2001 PL4; 450-PT-20-L04-PL-2001 PL4; 450-PT-20-LB1-PL-2001 PL2; 450-PT-20-LRF-PL-2001 PL4; 450-PT-20-SEC-PL-2001 PL4; 450-PT-20-SEC-PL-2003 PL3; 450-PT-20-SEC-PL-2004 PL3; 450-PT-20-SEC-PL-2005 PL3; 450-PT-20-SEC-PL-2006 PL3.
- 3) Prior to the commencement of the development hereby permitted, a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall refer to Islington's Code of Practice for Construction Sites (2018) and comprise details and arrangements regarding the following:
  - a) the notification of neighbours with regard to specific works;
  - b) advance notification of any access way, pavement, or road closures;
  - c) details regarding parking, deliveries and storage including details of the loading, offloading, parking and turning of delivery and construction vehicles and the accommodation of all site operatives', visitors' and construction vehicles during the construction period;
  - d) details regarding the planned access to the site for demolition and construction vehicles;
  - e) details regarding dust mitigation and measures to prevent the deposit of mud and debris on to the public highway. No vehicles shall leave the site until their wheels, chassis and external bodywork have been effectively cleaned and washed free of earth, mud, clay, gravel, stones or any other similar substance;
  - f) details of waste storage within the site to prevent debris on the surrounding estate and the highway and a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - g) the proposed hours and days of work (with reference to the limitations of noisy work which shall not take place outside the hours of 0800-1800 Monday to Friday and 0800-1300 on Saturdays, or at any time on Sundays or Bank Holidays);
  - h) details of any proposed external illumination and/or floodlighting during construction, including positions and hours of lighting;
  - i) details of measures taken to prevent noise disturbance to surrounding residents;
  - j) information on access and security measures proposed to prevent security breaches at the existing entrances to the site, to prevent danger or harm to the neighbouring residents, and to avoid harm to neighbour amenity caused by site workers at the entrances to the site;
  - k) details addressing environmental and amenity impacts (including (but not limited to) noise, air quality, smoke and odour, vibration and TV reception);
  - l) details as to how safe and convenient vehicle access will be maintained for all existing vehicle traffic at all times, including emergency service vehicles;



- m) details of any construction compound including the siting of any temporary site office, toilets, skips or any other structure;
- n) details of any further measures taken to limit and mitigate the impact of construction upon the operation of the highway and the amenity of the area;
- o) details of measures taken to minimise the impacts of the construction process on air quality, including NRMM registration;
- p) details of measures taken to deal with any form of asbestos during the demolition of the existing garages.

The CEMP shall assess the impacts during the preparation/demolition, excavation and construction phases of the development on the surrounding roads, together with means of mitigating any identified impacts. The development shall thereafter be carried out in accordance with the approved details and measures.

- 4) Prior to the commencement of the development hereby permitted, details of refuse/recycling storage and collection arrangements shall be submitted to and approved in writing by the Local Planning Authority. The approved storage and collection arrangements shall ensure that storage bins do not obstruct the public highway and shall be provided prior to the first occupation of the development hereby permitted and retained at all times thereafter.
- 5) Prior to the commencement of the development hereby permitted, details of how the development achieves Secured by Design accreditation shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out strictly in accordance with the approved details.
- 6) Prior to the commencement of superstructure works, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include the following details:
  - a) a biodiversity statement detailing how the landscaping scheme maximises biodiversity;
  - b) existing and proposed underground services and their relationship to both hard and soft landscaping;
  - c) soft plantings: including grass and turf areas, shrub and herbaceous areas;
  - d) topographical survey: including earthworks, ground finishes, top soiling with both conserved and imported topsoil(s), levels, drainage and fall in drain types;
  - e) enclosures: including types, dimensions and treatments of walls, fences, screen walls, barriers, rails, retaining walls and hedges;
  - f) hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible paving, unit paving, furniture, steps and if applicable synthetic surfaces;
  - g) any other landscaping feature(s) forming part of the scheme.All landscaping in accordance with the approved scheme shall be completed/planted during the first planting season following practical completion of the development hereby permitted. The landscaping shall be subject to maintenance/watering provisions for two years following planting, whilst shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased

within five years of completion of the development shall be replaced with the same species or an approved alternative to the satisfaction of the Local Planning Authority within the next planting season. The development shall be carried out strictly in accordance with the approved details.

- 7) Prior to the commencement of superstructure works, details and samples of all facing materials shall be submitted to and approved in writing by the Local Planning Authority. The details and samples shall comprise:
  - a) final colour, type and sample panel for the main elevations;
  - b) window and door treatment (including sections and reveals);
  - c) terrace glazing;
  - d) balustrading;
  - e) all boundary treatments and screens including podium level boundary treatments;
  - f) any other materials to be used.The development hereby permitted shall be carried out strictly in accordance with the approved details, and any approved boundary treatments or screens shall be erected prior to first residential occupation and retained at all times thereafter.
- 8) Prior to the commencement of superstructure works, full details of the extent and specification of opaque glazing to be installed shall be submitted to and approved in writing by the Local Planning Authority. The development hereby shall be carried out strictly in accordance with the approved details, and the opaque glazing to be installed shall be retained as such at all times thereafter.
- 9) Prior to the commencement of superstructure works, full details of bat and bird boxes to be installed shall be submitted to and approved in writing by the Local Planning Authority. The details shall include investigation of the most suitable location(s), and boxes for swifts. The development shall be carried out strictly in accordance with the approved details.
- 10) Prior to the first occupation of the development hereby permitted, details of the layout, design and appearance (shown in context) of the bicycle storage area(s) for the site shall be submitted to and approved in writing by the Local Planning Authority. The storage area(s) shall be secure and provide for no less than 11 cycle spaces for the residential units and 12 spaces for the commercial floorspace hereby permitted. This provision shall be provided strictly in accordance with the approved details, erected prior to the first occupation of the development and thereafter retained at all times.
- 11) Prior to the first occupation of the development hereby permitted, details showing how the development shall achieve the water efficiency requirements (95 litres/person/day) of Part G to Policy DM7.4 of the Islington Development Management Policies (June 2013) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out strictly in accordance with the approved details.
- 12) Prior to the first occupation of the residential accommodation hereby permitted, an Acoustic Design Statement following the guidelines of ProPG Planning and Noise guidance and including a scheme for sound



insulation and noise control measures shall be submitted to and approved in writing by the Local Planning Authority. Sound insulation and noise control measures shall achieve the following internal noise targets: Bedrooms (2300-0700 hours) 30 dB LAeq, 8 hour and 45 dB Lmax (fast); Living Rooms (0700-2300 hours) 35 dB LAeq, 16 hour; Dining rooms (0700-2300 hrs) 40 dB LAeq, 16 hour. The sound insulation and noise control measures shall be carried out strictly in accordance with the approved details and retained at all times thereafter wherever feasible to do so. Should the development require mechanical ventilation, the Acoustic Design Statement shall pay reference to the AVO guidance on ventilation and overheating and the ProPG Planning and Noise guidance.

- 13) The flat roof area to the northernmost corner of the site at third floor level, as depicted upon approved plan 450-PT-20-L03-PL-2001 PL4, shall not be used as an amenity or sitting out space of any kind whatsoever and shall not be used other than for essential maintenance or repair, or escape in the case of emergency.
- 14) The Chartered Structural Engineer (MI Struct.E) certifying the Structural Method Statement dated April 2021 submitted to support the development hereby permitted shall be retained (or a replacement person holding equivalent qualifications shall be appointed and retained) for the duration of development to monitor the safety of the construction stages and to ensure that the long term structural stability of the existing buildings and other nearby buildings are safeguarded, in line with the supporting Structural Method Statement. At no time shall any construction work take place unless a qualified engineer is appointed and retained in accordance with this condition.
- 15) The areas of biodiversity green roof hereby permitted shall be:
  - a) biodiversity based with extensive substrate base (depth 80-150mm);
  - b) planted/seeded with a mix of species within the first planting season following the practical completion of the building works (the seed mix shall be focused on wildflower planting, and shall contain no more than a maximum of 25% sedum);
  - c) laid out and retained in accordance with approved plan 450-PT-20-LRF-PL-2001 PL4 and the full requirements of this condition.
 The areas of biodiversity green/sedum roof hereby permitted shall not be used as amenity or sitting out spaces of any kind whatsoever and shall only be accessed in the case of essential maintenance, repair, or escape in the case of emergency.
- 16) The residential units hereby permitted shall be constructed to incorporate Lifetime Homes Standards and be Part M4(2) Building Regulations compliant in so far as it relates to the internal layout inside each flat.
- 17) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, the ground floor retail space as illustrated upon approved plans 450-PT-20-L00-PL-2001 PL4 and 450-PT-20-SEC-PL-200 PL4 shall be used only for Retail purposes (Class E(a)) (or the equivalent use within any amended/updated subsequent Order), and for no other purpose (including any other use falling within Class E of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987, as amended, or any provision equivalent to that Class in any

statutory instrument revoking and re-enacting that Order with or without modification.

- 18) Notwithstanding the provisions of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modifications), no change of use of the refurbished and extended floorspace hereby permitted (at basement, ground and first floor levels) from Class E (Retail, commercial, business and service) to a use falling within Class C3 (dwellinghouses) shall take place without an express grant of planning permission.
- 19) The development hereby permitted shall be constructed to achieve a 19% reduction in regulated CO2 emissions, compared to compliance with the Building Regulations 2015 and an on-site reduction in regulated CO2 emissions of at least 25% in comparison with regulated emissions from a building which complies with Building Regulations Part L 2010 (equivalent to Code for Sustainable Homes level 4), unless it can be evidenced that such provision is not feasible.

-----END OF SCHEDULE-----