



Appeal Decision

Site visit made on 14 June 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2022

Appeal Ref: APP/E5900/W/21/3285678

Castle House, 129 Cadogan Terrace, London E9 5HP

- 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 Cadogan Terrace LLP against the decision of London Borough of Tower Hamlets.
 - The application Ref: PA/21/00832, dated 13 April 2021, was refused by notice dated 9 June 2021.
 - The development proposed is described as: Erection of a single storey roof extension to provide one additional 2-bed residential unit (Class C3). Relocation of existing PV panels to new roof level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Additional information on bin and cycle storage and an Ecological Site Walkover Report were submitted with the appeal. Although these were not part of the original planning application, the Council has commented on these as part of its appeal submissions and has not raised any concerns in respect of them. I do not consider that the interests of any other party would be prejudiced in accepting these additional submissions.
3. The Council has confirmed that the additional information regarding bats contained in the Ecological Report addresses the concerns that it had and that, as a consequence, the third reason for refusal set out on the Decision notice is no longer a matter in dispute.
4. As the proposal is in a conservation area, I have had special regard to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

5. The main issues in this appeal are:
 - The effect of the proposed development on outdoor open space at the site; and
 - The effect of the proposal on the character and appearance of the local area and the extent to which it would preserve, or enhance, the character or appearance of the Victoria Park Conservation Area and the setting of the adjacent locally listed buildings.

Reasons

The effect of the proposed development on outdoor open space at the site

6. Policy D.H3 of the Tower hamlets Local Plan 2020 (the Local Plan) sets out standards that will be applied to proposed residential development. Among other criteria, it states that development is required to protect, or re-provide, existing amenity space and that proposals resulting in a net loss of existing amenity space will be resisted. This includes private and communal amenity space and children's play space. The Policy also sets out minimum amenity space requirements for new development.
7. The approved drawings for the redevelopment of the site to create the current development (an extract of which is shown at Figure 3 of the appellant's Statement) illustrate that part of the roof of the building is intended as a sun terrace. This terrace area is also identified on the Existing Third Floor Plan submitted with the appeal proposal. This area is currently accessed via an internal staircase that gives access to the roof. The appeal proposal would involve building over part of this existing roof terrace and reconfiguring the internal staircase to become the access stairs to the proposed new flat. A new, private, external terrace of 40m² would be formed for the new dwelling.
8. The appellant accepts that the existing level of communal amenity space at the site was approved as part of the original planning permission for the redevelopment of the site and included the sun terrace on the roof. Neither party has identified or calculated the area of the existing roof terrace. This notwithstanding, it is clear from the submitted drawings that the area of private terrace proposed by the appeal scheme is less than that of the existing communal roof terrace.
9. Part 4 of Policy D.H3 is unequivocal in stating that that development is required to protect, or re-provide, existing amenity space and the supporting text to the Policy, which although not part of the policy sets out how it is to be implemented, confirms that Part 4 aims to ensure that all existing amenity space is protected. Even if I were to accept the appellant's contention that the existing communal space at roof level is being partly substituted within the overall quantum by private amenity space that meets and exceeds the requirements of Policy D.H3 for private outdoor space, the proposal cannot result in anything other than an overall loss of amenity space at the site. This would be contrary to the expectation of the Policy that all amenity space is protected.
10. The appellant also asserts that the amenity space provision which would remain at the site post-development, both private and communal, complies with Policy DH.3. It is common ground that the present existing development, comprising 8 flats, when taken cumulatively with the appeal proposal and a previously permitted new dwelling, currently under construction, to the rear of the appeal building would result in a development of 10 dwellings. It is also not in dispute that this would be required to provide 50m² of communal amenity space and a minimum of 10m² play space for each child.
11. The Council accept that, taken in isolation, the proposed development would provide sufficient private amenity space for the new dwelling, and it has not questioned the level of private amenity space at the existing and previously consented dwellings.

12. Appendix 5 to the Appellant's Statement illustrates that, as originally constructed, the current development would have provided 102m² of communal amenity space at ground level in addition to the communal roof terrace. It also illustrates that 42m² of the original ground level amenity space is being lost to facilitate access to the new dwelling at the rear of the site, leaving 64m² remaining, which would be available to the combined development.
13. The appellant has calculated, using the Greater London Authority Population Yield Calculator, that the development as a whole would be occupied by 21.1 persons, of whom 3.6 would be children, giving rise to a children's play space requirement of 36.2m². The appellant states that 36m² within the remaining 64m² communal area is suitable play space for young children.
14. The supporting text to Policy DH.3, makes it clear that children's play provision requirements must be provided in addition to other quantitative requirements, such as open space provision and communal space provision. This would result in a requirement for 86m² external amenity space, comprising 50m² communal space plus 36m² children's play space. The 64m² identified by the appellant therefore falls some way short of the Policy's requirements.
15. The Policy does not make allowance for a lower quantum of communal space, if private amenity space is provided, or if the private amenity space provided exceeds the minimum requirements.
16. Drawing these strands together, the appeal proposal would result in an overall reduction in the provision of outdoor amenity space at the site due to part of the current communal outdoor space provision being built over to create the new flat. In addition to this, the remaining communal outdoor space would not meet the minimum requirements for communal space and children's play space for the resulting development. Consequently, the proposal would not comply with Policy D.H3.
17. I therefore conclude that, having regard to the relevant provisions of the development plan, the proposed development would result in an unacceptable loss of outdoor amenity space at the site. It would conflict with the relevant requirements of Policy D.H3 of the Local Plan.

Character and appearance

18. The appeal building is a three storey structure with a semi-basement level. The ground floor and semi-basement are occupied by a public house and the upper two floors comprise 8 flats. The building is constructed largely in a yellow/buff brick with the ground floor and basement front elevation, and part of the return elevation to the Hertford Union Canal, constructed in grey bricks.
19. The appeal building is located at the end of a long, sinuous, terrace of mid-nineteenth century houses, generally three storeys in height with an elevated entrance floor above a semi-basement. These buildings are constructed in a yellow stock brick with a stucco or render finish to the basement level. The roofs are concealed by a parapet. Some houses retain a stucco cornice and parapet, whereas on others this has been replaced with brickwork. Amongst the three storey buildings, the terrace also contains a small number of two storey houses, following a similar design approach with an elevated entrance floor and semi-basement.

20. At one point a modern, four storey, block of flats with a carriage arch giving access to a parking court at the rear has been inserted into the older built fabric of the terrace. This building does, however, maintain the overall building height of the terrace. At its north end, the terrace is terminated by a two storey former public house that has a curved façade turning the corner to Cadogan Close. This terrace of buildings is locally listed and, as such, is a non-designated heritage asset.
21. Opposite the appeal site is a small garden centre and the entrance to a car park. Just to the north of these is a modern church and a small modern, four storey, housing development on St Mark's Gate. These are located on the edge of Victoria Park, an extensive area of formally laid out public open space that is bounded to the east by Cadogan Terrace. St Mark's Gate is one of a number of entrances to the park. Just inside the park gates is a small brick built lodge which is also a locally listed building.
22. Directly to the south of the appeal site is the Hertford Union Canal which is crossed by a road bridge. On the opposite side of the bridge, on Wick Lane, there are modern, five storey, flats faced in brickwork and timber cladding.
23. To the east of the appeal building, the A12 road runs from north to south and crosses the canal on a bridge. This road creates a distinct physical and visual barrier between the appeal site and the mixed use area of Hackney Wick beyond. To the rear of the appeal building, a new dwelling is under construction.
24. The appeal site is within the Victoria Park Conservation Area. This covers an extensive area comprising the entire park and some small groups of housing on its periphery, including Cadogan Terrace. Victoria Park itself is also a Grade II* Registered Park and Garden [List entry: 1000178].
25. From the evidence that I have, the significance of the conservation area is derived primarily from Victoria Park as an early example of a planned public park, designed on a large scale on picturesque principles. The park was laid out in the early 1840's, following a petition to Queen Victoria requesting green space in the East End, and at a similar time residential development, including Cadogan Terrace, occurred around its perimeter as London expanded eastwards.
26. The architectural and historic interest of the conservation area derives primarily from the importance of the park as a distinct urban landscape established for public recreation at public expense rather than by private subscription. The visual relationship of the park to the surrounding housing results in a high aesthetic value.
27. The appellant's Heritage Statement identifies that the nineteenth century residential terraces, that include the locally listed numbers 106-128 Cadogan Terrace, have largely retained many of their traditional architectural features. A uniform cornice line and surviving historic decoration, typical of the Victorian architectural style, contribute to a coherent and distinctive character in the area. It notes that these terraces form an essential aspect of the setting of the Registered Park and Garden. I would concur with this assessment. The terrace of houses to the east of the park also forms a frame to the Conservation Area together with the linear feature of the canal and towpath.

28. The houses on Cadogan Terrace have evidential value as examples of housing intended for middle class occupiers as part of the mid- nineteenth century expansion of London and illustrate the architectural style of the time. Within the terrace there are slight variations in design but shared architectural features and a common approach to building heights and the pattern of fenestration lead to a cohesive whole. The slight curves in the building line of the terrace, combined with the subtle changes in elevational treatment between small groups of houses within it, provide attractive sequential views and give the terrace a clear aesthetic value. Their significance is primarily derived from these factors.
29. The appeal proposal consists of the erection of a single storey roof extension to provide one additional, 2-bed, residential unit with a gross internal area of 92m². The scheme also involves the repositioning of the existing photovoltaic panels present on the current roof to the new, flat, roof of the extension and addition of four new photovoltaic panels to the existing array. The extension would be faced in zinc cladding panels and would have a green roof on those parts of the flat roof not given over to photovoltaic panels. The new dwelling would be provided with external amenity space on the remaining roof area of the host building. A powder coated metal railing would be added to the existing parapet on the front and side elevations of the current building to surround this external area.
30. The existing building has clearly been designed taking account of the design of the adjoining terrace of houses in terms of the matching parapet height; upper floor windows that match the size, proportions, and fenestration pattern of the terraced houses; and the contrasting materials on the lower levels which echoes the stuccoed/rendered semi-basements present on Cadogan Terrace
31. Whilst I noted that, at present, the appeal building has a stairway core that projects above the main roof, this is a relatively small feature and is constructed from brickwork that matches the upper floors of the main building and is a relatively unobtrusive feature.
32. The proposed extension would be a much more substantial structure than this, extending over a larger area of the roof. The appellant's evidence also indicates that the proposed extension would be approximately 0.8m taller than the existing stair core. The proposed windows on the front elevation of the extension would generally align with the windows at lower levels, and the corner window makes a visual reference to the open terraces on the first and second floors. However, the use of zinc cladding for the walls of the extension would introduce a material that is not present on the existing building, and I did not see used elsewhere on other buildings in the area surrounding the appeal building. The larger unit size and the visual profile of the standing seam panels would be in stark contrast to the small unit size of the brickwork used on the walls of the building below. Although the main building is of a contemporary design, it uses traditional building materials that are similar to those of the adjoining terrace and, as set out above, the main building has taken clear design cues from the adjoining, historic, terraced housing. As a consequence, the proposed extension, due to its size and choice of materials, would not integrate well with the design of the existing building.
33. From the footway of Cadogan Terrace, it is unlikely that the proposed extension would be visible, due to the viewing angle and the proposed extension being

set back from the front elevation, although the proposed powder coated metal railings around the parapet would be. However, I saw when I visited the site that the proposed extension would be clearly visible as a terminal feature in views to the south east from St Marks Gate and from within the park from the continuation of this route beyond the gates. There are other points within the park near St Marks Gate where the proposed extension would be visible in conjunction with the terrace, especially at times when the trees are not in full leaf. I also saw that it would be clearly visible in views north from Wick Lane and from part of the canal towpath before being occluded by the A12 bridge. In the views from the towpath the extension would be particularly prominent as the eye is drawn upwards by the stepped rear wing to the existing building and the proposed extension would be flush with the rear wall of the main building.

34. The proposed extension would increase the height of the appeal building by a full storey higher than the adjoining terrace. I observed that there are no substantial roof extensions on Cadogan Terrace visible from the roof of the appeal building and that in general the roofs of the adjacent buildings, and any features on them, are not visible from ground level. I have also noted from the addendum to the Council's Victoria Park Conservation Area Character Appraisal and Management Guidelines that the continuity of the roof line is considered an important feature of the terraces within it. The proposed extension would noticeably extend above the uniform roof line of the adjoining terrace and appear as an incongruous addition to existing building which at present forms an attractive termination to the terrace.
35. The appellant points out that, in the past, the present site of the appeal building was occupied by an earlier public house, known as The Mitford Castle, that had an elevated parapet with advertisements which provided an accent at the end of the long sequence of houses. From the provided photograph it is clear that this was, nonetheless, also a three storey building that generally followed the height the adjoining terrace. It is less clear from the photograph what materials were used for the parapet and advertising, but it does not appear to form a structural element of the building and is, in any event, considerably lower in height than the additional storey proposed by the appeal scheme. As such, I do not consider that this provides a persuasive historical precedent for a much taller building at the end of the terrace.
36. I also saw when I visited the site that it is possible to see tall buildings at Stratford over the current roof line of the appeal building but that these appear very much as vague background features despite the site visit taking place on a bright, clear, day with good visibility. As a result, I do not consider that these would form a sufficient visual backdrop to diminish the prominence of the proposed extension in the views from Victoria Park.
37. The aesthetic value of the conservation area is high and a key component of this is the visual relationship between the park and the adjacent terraces. The proposed development would be a harmful addition to the existing building in a prominent location that would be visible in a number of public views and, as such, would detract from the aesthetic value of the conservation area, thus causing harm to its significance. I do, however, accept the appellant's point that the proposal would have no real effect on the understanding of the historic value of the conservation area. Nevertheless, as set out above, taken as a whole, the proposal would result in harm.

38. The Council have not raised any specific concerns in respect of the effect of the proposal on either the setting of the registered park and garden or the setting of Morpeth Lodge, which is also a locally listed building. The appellant's evidence effectively considers the conservation area and the registered park and garden together, which is logical as the latter is a large and integral component of the former. The appellant's Heritage Statement identifies that the surrounding terraces, including Cadogan Terrace, form an essential aspect of the setting of the registered park and garden. I would agree with the appellant's assessment that the terrace, of which the appeal building forms part, performs an important visual function in terms of built form that defines and encloses the historic urban park. For the same reasons identified in respect of the effect on the conservation area, I find that the appeal proposal would cause harm to the setting of the registered park and garden.
39. Morpeth Lodge is located within Victoria Park itself, just beyond the gates. The appeal building is visible in axial views out of the park along St Mark's Gate and the lodge is visible in these same views. However, the lodge building is much more closely related, both physically and visually, with the park whilst the appeal building is very much peripheral to the setting of the lodge and is not an important component of it. Consequently, I find that the effect of the development on the setting of Morpeth Lodge is a neutral one.
40. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets, or from development within their setting, and that this should have a clear and convincing justification.
41. The Victoria Park Conservation Area is large in extent. Similarly, the setting of the registered park and garden is also extensive, following the periphery of the park. The proposed development is relatively small in scale and the harm that would result from it would be limited to the near vicinity of the appeal site. This notwithstanding, the appeal site is located in a prominent position at an entry point into the conservation area and close to an entrance to the park and, consequently, although the harm caused would be slight, it would nonetheless be noticeable and enduring and, therefore, the development would have a greater than neutral effect on both the setting of the registered park and garden and the conservation area as a whole.
42. Given the above, I find the harm to be less than substantial in this instance but, nevertheless, of considerable importance and weight.
43. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant is of the opinion that the proposal would be beneficial because it would increase housing supply and the Local Plan identifies as need for affordable family accommodation. The Framework seeks to significantly boost the supply of housing and although the proposal would increase housing supply it would only result in one additional unit. There is no indication in the evidence that the scheme has been promoted as an affordable housing unit as defined by the Framework and no mechanism is proposed to secure it as such.

However, a moderate amount of weight can be given to the provision of a new dwelling.

44. The appellant also suggests that the proposal would optimise the use of land in a highly sustainable location. Whilst Policy D3 of the London Plan 2021 (the London Plan) seeks to make the best use of land by following a design-led approach that optimises the capacity of sites, optimising should not be conflated with maximising. Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site. The design-led approach requires consideration of design options to determine the most appropriate form of development that responds to a site's context and capacity for growth. I have found that the proposal would be harmful of the appearance of the appeal building and surrounding area and that the scheme would result in inadequate amenity space at the site. There is nothing in the evidence that indicates that the continued viable use of the appeal property as flats and a public house residential dwelling is dependent on the proposal as the building has an ongoing residential and commercial use that would not cease in its absence. In this context, the appeal scheme would not result in the optimal use of the site.
45. Although the appellant describes the appeal site as being in a highly sustainable location, I have not been provided with any substantive evidence in terms of access to shops, services, employment, or leisure activities. I also note that the site has a Public Transport Accessibility Level rating of 2, which equates to poor connectivity with public transport. I did see that the site is close to an area of mixed uses at Hackney Wick to the east of the A12 and that there are some public transport links nearby, however, I have insufficient evidence before me to substantiate the assertion that the location is highly sustainable.
46. The proposed green roof on the new extension would provide some very small scale ecological benefit. The provision of additional photovoltaic panels would also provide some environmental benefits, although this would be tempered by the increased energy use as a result of the new dwelling, and I have no evidence that would indicate that any surplus energy generated is, or would be, exported to the grid.
47. The scheme may result in some local employment during the construction period and there would be some additional spending in the local economy following its occupation. Nevertheless, this would be limited by the small scale of the development and one additional household would not make a significant contribution to the local economy.
48. Whilst the harm that would result from the proposed development would be slight, I nonetheless give it considerable importance and weight. The appeal scheme would result in some modest public benefits. However, these are limited in scope and scale, and are not sufficient to outweigh the harm that I have identified. Nor do they provide a clear and convincing justification for a development that would cause harm to designated heritage assets.
49. The locally listed buildings on Cadogan terrace also have a high aesthetic value in their own right. The appeal building forms a terminal feature to this terrace and although not covered by the local listing, nevertheless, forms part of the surroundings in which the non-designated heritage asset is experienced. Due to the design approach taken and the materials used in the appeal building, the

contribution that the appeal building currently makes to the appearance of the terrace is a broadly positive one. For the reasons set out above, the appeal proposal would noticeably and permanently diminish the contribution the appeal building makes to the setting of the terrace.

50. Paragraph 203 requires that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and that a balanced judgement having regard to the scale of harm or loss and the significance of the heritage asset is required in weighing such applications.
51. The introduction of an incongruous rooftop feature would harm the character and appearance of the host building and break the largely continuous roofline of the terrace to which it is attached. The effect of this would change the contribution that the appeal building makes to the setting of the locally listed from a positive contribution to a negative one. The terrace of buildings has a high aesthetic value, and its largely unaltered state makes it very sensitive to change. As a result, I find that the proposal would result in a moderate and noticeable degree of enduring harm to the setting of the terrace.
52. Given the above, I conclude that, on balance, the proposal would fail to preserve the character or appearance of the Victoria Park Conservation Area and would cause harm to the setting of the adjacent non-designated heritage assets. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with Policy HC1 of the London Plan 2021 and Local Plan Policy S.DH3 that when read together seek, among other things, to ensure development proposals conserve or, where appropriate, enhance designated and non-designated heritage assets and their settings in a manner appropriate to their significance and appreciation within their surroundings. As a result, the proposal would not be in accordance with the development plan.

Other Matters

53. The Council has stated that the development should be secured as car free by preventing occupation of the development by persons holding a permit to park issued by the Council.
54. The appeal site is located within a Controlled Parking Zone that operates from 08:30 to 22:00 on all days and requires a permit to park on-street. The appellant has submitted a completed Unilateral Undertaking with the appeal that would prevent occupation of the development by anyone holding a Council issues parking permit with the exception of holders of a disabled person's badge issued under Section 21 of the Chronically Sick and Disabled Persons Act 1970.
55. This is not a significantly contested matter. As the appeal is being dismissed on other substantive issues, it is not necessary for me to consider the Obligation in detail given that the proposal is unacceptable for other reasons, and a conclusion either way would not affect the overall decision.
56. I have had regard to the points raised in representations made by interested parties both in respect of the original planning application and the appeal. None of the points raised would lead me a different conclusion on the proposal.
57. The appellant also suggests that the Council is underdelivering in terms of housing numbers and that the proposal should be considered in terms of the

presumption in favour of sustainable development set out Paragraph 11 of the Framework.

58. Footnote 8 to the Framework sets out that Paragraph 11 d) applies where the Housing Delivery Test (HDT) indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. The HDT, published annually, provides a measure based on the preceding three financial years.
59. The Council accepts that the 2020 HDT results published in January 2021 showed that delivery was 74%. However, the most recent 2021 HDT results, published in January 2022, show that the Council's housing delivery has improved and is now 92% of the housing requirement. In these circumstances, the presumption in favour of sustainable development is not engaged on housing delivery grounds in this case. It is not argued that the Council cannot demonstrate a deliverable five year supply of housing land or that the policies in the development plan are out of date for any other reason, in any event, I have found that the policies in the Framework relating to designated heritage assets provide a clear reason for refusing the development proposed.

Conclusion

60. I have found that the proposal would cause harm to the character and appearance of the Victoria Park Conservation Area and to the setting of the adjoining locally listed buildings. I have also found that having regard to the relevant provisions of the development plan, the proposed development would result in an unacceptable loss of outdoor amenity space at the site. As such, the proposal would not comply with a number of Policies in the development plan that are most important for determining the application.
61. These are important matters that lead me to find that the proposal would not comply with the development plan when taken as a whole, notwithstanding that the proposal may comply with other policies in the development plan.
62. In the circumstances of this case there are no material considerations to indicate that the decision should be made otherwise than in accordance with the development plan.
63. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR