



Appeal Decision

Site visit made on 11 August 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2022

Appeal Ref: APP/U5360/W/21/3283251

Land adjacent to 148-150 Mare Street, Hackney, London E8 3SH

- 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 3SG Mare Street Limited against the decision of London Borough of Hackney.
 - The application Ref 2020/3993, dated 14 September 2020, was refused by notice dated 24 March 2021.
 - The development proposed is described as the creation of 2no. one-bedroom duplex dwellings together with communal roof terrace via a four-storey extension, plus modifications to service core and entrance to existing/host building, together with the provision of 2 x safe and secure cycle space and refuse storage.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 20 July 2021, the Government published its revised National Planning Policy Framework ('the Framework'). It replaces the previous version published in February 2019. The Framework represents the Government's up-to-date planning policies for England and how they should be applied. The timescales are such, that both main parties have had the opportunity to consider the proposed development against the revised Framework. I have had regard to the Framework in reaching my decision.

Main Issues

3. The main issues are whether or not the proposed development would, 1) preserve or enhance the character and appearance of the Mare Street Conservation Area (MSCA), 2) provide acceptable living conditions for its future occupants, with specific regard to its internal living space, 3) provide an appropriate mix of dwellings, with specific regard to the need for family housing in the borough, 4) make adequate provision for affordable housing, and 5) make adequate provision towards carbon offsetting.

Reasons

Character and appearance of the MSCA

4. The appeal site sits adjacent to an existing seven-storey building which comprises a retail unit at the ground floor and residential units above. The adjacent building, onto which the proposed development would be attached, is a modern design with contrasting horizontal brickwork across each floor with a

dominant terracotta brick section facing Mare Street. It has two grey, what appear to be, stairwells at each end. The building turns to reflect the curve in the street moving between Mare Street and Well Street. It is located within the Mare Street Conservation Area (MSCA) which is characterised by the dominant Mare Street which is a key historical route in Hackney containing a number of commercial and residential properties of various building styles, heights and sizes.

5. The appeal site is in a prominent corner position between the junction of Mare Street and Well Street. The surrounding area contains a vast variation of building designs and styles most of which are joined to other buildings.
6. The proposed development would involve the construction of a four-storey extension to the side of the existing building, 148-150 Mare Street. The proposed development would accommodate 2no. one-bedroom flats. The proposed development would be joined to the shorter curved section of the building, as opposed to the larger, more dominant block facing Mare Street. The result is that for the most part it would be seen in conjunction with the lower buildings of Well Street.
7. The proposed design reflects the curvature of the site and the host building. Although it would be of different materials and height, the contrast would not be unacceptably harsh and would be commensurate with the wide variety of building styles in the surrounding townscape, including where buildings of different designs and heights are joined.
8. It is acknowledged that the appeal site is currently surrounded by unattractive metal fencing and that it does not positively contribute to the character and appearance of the MSCA. For the reasons given above, the proposed development would not cause harm, and would thereby preserve, the character and appearance of the MSCA.
9. The proposed development would therefore comply with Policies LP1 and LP3 of the Hackney Local Plan (2020) and Policies D3 and HC1 of The London Plan (2021). These policies require, amongst other things, that developments should be of high-quality design, responding to local character, and preserve or enhance the significance of the historic environment.

Living conditions – future occupants

10. The proposed development would accommodate 2no. one-bedroom flats. These would provide accommodation over two floors including some low-level internal stairs between some rooms giving split-levels. The evidence outlines that flat 1 has an internal area of 51 square metres, and flat 2 has an internal area of 46.4 square metres.
11. The minimum internal space standards for new dwellings as outlined in The London Plan do not have a value for a single person dwelling over two storeys. The Council suggest that this is likely because such a unit would not be considered to be a satisfactory arrangement for future occupants. However, this suggestion is not inferred in the policy, and I find no reason why a single person dwelling over two storeys would automatically be deemed to provide an unsatisfactory arrangement and thereby unacceptable living conditions. The proposed units would no doubt be somewhat unconventional in their

arrangement, however I do not find harm simply due to them being over two floors with split levels.

12. The Council consider that given the amount of storage space provided in the bedrooms, the dwellings should be considered as two-person units. Policy D6 of The London Plan sets out that a built-in wardrobe counts towards the Gross Internal Area and bedroom floor area requirements. The Council set out that the bedroom to the larger unit is 9.5 square metres, however when combined with the storage area would create a two-bedspace bedroom. I have not been provided with any cumulative floor area, and there is no compelling evidence to dispute the Council's suggestion.
13. For a one bedroom, two persons dwelling over two storeys, Policy D6 of The London Plan requires that a minimum gross internal floor area of 58 square metres is required. Were the proposed units, based on their bedroom sizes (including built in storage) to be two person units, both the proposed dwellings measuring 51 square metres and 46.4 square metres respectively, would thus not meet this requirement.
14. In light of the lack of evidence pertaining to the bedroom sizes, including storage, and whether the units would constitute one person or two person dwellings, I cannot be certain that the requirements of Policy D6 have been fulfilled.
15. It therefore follows that due to its size, the proposed development would fail to provide acceptable living conditions for future occupants. The proposed development would therefore be contrary to Policy LP17 of the Hackney Local Plan (2020) and Policies D6 and D7 of The London Plan (2021). Collectively, these policies require, amongst other things, that new homes provide acceptable living conditions including having regard to internal space.

Dwelling mix

16. The proposed development would provide 2no. one-bedroom flats. Part A of Policy LP14 of the Hackney Local Plan sets out the dwelling size mix that the Council will seek to provide in residential developments. There is no suggestion that the proposed dwellings would be social/London affordable rent or intermediate as referred to in the policy, and they are therefore considered to form market dwellings.
17. In this regard, part A of the policy requires that the development should provide, for 1 bed units, a lower percentage than 2 bed should be provided, for 2 bed units a higher percentage than 1 bed units should be provided, and that 33% should be 3 or more-bedroom units.
18. The proposed development would fail to provide the mix as outlined in part A of the policy. Part C of the policy does however outline that the Council will consider variations to the dwelling size mix if this can be justified based on a number of factors, including site location, the area's characteristics and design constraints.
19. The appeal site is located on a busy corner junction in a predominantly commercialised area. The site constraints are such that there is limited opportunity to provide meaningful private outdoor amenity space that would be expected in family housing. Additionally, the majority of residential properties in the immediate area appear to be smaller sized flats.

20. I therefore consider that due to the site location, the area's characteristics and the design constraints of the site it would not be appropriate in this case to provide the dwelling mix as outlined in part A of Policy LP14 of the Hackney Local Plan (2020) and thus there would not be harm to the provision of family housing in the borough. The proposed development would comply with part C of Policy LP14 as referred to above, and the requirements outlined in Policy H10 of The London Plan (2021).

Affordable housing

21. Policy LP13 of the Hackney Local Plan outlines that for residential developments which fall below the 10-unit threshold, they will be required to provide on-site provision or payments in lieu up to the equivalent of 50% of housing delivered as affordable housing, subject to viability. The contribution is set out in the S106 Planning Contributions Supplementary Planning Document (SPD) (2020). No on-site provision is proposed, and the appellant disputes the requirement on both policy and viability grounds.
22. The above policy does, however, pre-date the Framework which says that provision of affordable housing should not be sought for residential developments that are not major developments. The Framework, which was published after the Council's decision is a very recent expression of government policy and is a material planning consideration to which I afford significant weight. This part of the Framework was however unchanged from the 2019 version which was in place at the time of the local plan adoption.
23. The supporting text to Policy LP13 does however outline that approximately 47% of all new homes delivered in the borough over the last decade have been on small sites with developments of less than 10 units. Prior to the plan, these are developments where the Council has been unable to secure the delivery of affordable housing. On this basis, I consider that seeking affordable housing from minor developments is critical to address the identified needs in the borough. Therefore, although significant weight should be given to the Framework, it does not outweigh development plan policy in this case. This includes the conflict with The London Plan which covers a greater geographical area.
24. The appellant has referred to the stance taken in the London Borough of Lambeth in relation to affordable housing provision, however this is a different borough where different circumstances are likely to apply. I give this limited weight.
25. Therefore, having regard to section 38(6)¹ the material considerations do not indicate that the proposed development should be determined other than in accordance with the development plan and the development would therefore conflict with the requirement of Policy LP13.
26. The requirement for an affordable housing contribution as set out in Policy LP13 is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework.

¹ Planning and Compulsory Purchase Act 2004

27. The appellant considers that the necessary affordable housing contribution of £100,000 would render the scheme unviable. The appellant has submitted a Viability Outline Cost Plan (July 2021) and correspondence outlining the expected sale price. These figures show a resultant profit of £116,900, that being a 15% return.
28. The assessment has not presented any detailed analysis of how the gross development value has been arrived at. Other than correspondence from an estate agent outlining the recommended asking price, there is no market evidence provided. Given the lack of detail, I therefore cannot be certain that the scheme would be unviable were the affordable housing contribution to be paid.
29. Therefore, the proposed development would be contrary to the requirements of Policy LP13 as outlined above.

Carbon offsetting

30. Policy LP55 of the Hackney Local Plan sets out that all new residential development should meet a zero-carbon emissions target emission rate in line with the London Plan energy hierarchy and Sustainability and the Built Environment SPD.
31. An energy statement was submitted with the application. It shows that there would be a shortfall of 2.88 tonnes CO₂/year. Referring to the figures in the S106 Planning Contributions Supplementary Planning Document (SPD) (2020), the Council outline that this would result in a payment of £8,208 towards the carbon offset fund. This figure is later referred to as £2000 presumably in reference to the requirement in the SPD for a contribution of £1000 per flat in residential developments failing to achieve zero carbon emissions.
32. The requirement for a carbon offset contribution as set out in Policy LP55 and the SPD is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework.
33. Annex N of the Procedural Guidance - Planning Appeals – England (January 2020) is clear that any form of planning obligation should be submitted with the appeal documentation. Although the appellant has submitted a completed agreement to pay fees and to sign a Unilateral Undertaking for Affordable Housing and/or Carbon Offsetting small sites contributions and outlined their intention to submit a 'unilateral obligation', no agreement or undertaking is before me.
34. Therefore, without any mechanism before me which would secure the payment of this contribution, I am not satisfied that the proposed development would make adequate provision towards carbon offsetting. The proposed development therefore fails to comply with Policy LP55 of the Hackney Local Plan (2020) in this regard.

Other Matters

35. The Council have referred to the requirement for a legal agreement to secure, amongst other things, the development as car-free housing and details of construction management. The securing of such matters can in some cases be

achieved through the imposition of appropriately worded planning conditions, which could be imposed were I to allow the appeal. Regardless, as I am dismissing the appeal for other reasons, the presence of a completed agreement for these matters would not, in any event, change the outcome of the appeal.

Planning Balance and Conclusion

36. The Government's objective as set out in the Framework is to support sustainable housing growth. The proposed development would result in a slight increase in the Council's overall housing number and would be in a sustainable location. It would also bring a small number of additional residents to the area who would contribute to the local economy. Collectively, I give these matters moderate weight in favour of the proposed development.
37. However, the harm that I have identified that would be caused by failure to provide acceptable living conditions and a contribution towards affordable housing and carbon off-setting attracts significant weight that outweighs the benefits associated with the proposed development.
38. The proposed development would therefore conflict with the development plan and there are no identified other considerations that outweigh this conflict.
39. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR