



Appeal Decision

Site visit made on 16 September 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2022

Appeal Ref: APP/E5900/W/22/3292969

311 - 313, Bethnal Green Road, Bethnal Green, London E2 6AH

- 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 Carl Hellen of Bethnal Green Road Ltd against the decision of London Borough of Tower Hamlets.
 - The application Ref PA/21/01758/A1, dated 27 June 2021, was refused by notice dated 2 December 2021.
 - The development proposed is to construct 2no. 1 bed flats at third floor level.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are 1) whether or not the proposed development would provide acceptable living conditions for future occupants with regard to internal space, 2) the effect of the proposed development on the character and appearance of the area, 3) the effect of the proposed development on the living conditions of occupants of 309 Bethnal Green Road with specific regard to privacy, and 4) whether or not the proposed development would provide acceptable refuse storage and cycle storage.

Reasons

Living conditions – future occupants

3. The proposed development involves the creation of two one-bedroom flats, one measuring 42sqm, and the other 44sqm. One of the flats would have a 5sqm balcony and the other would have no outdoor amenity space. Policy D6 of The London Plan (2021) sets out that the minimum gross internal floor area for a one-bedroom flat is 39sqm for single person occupancy, and 50sqm for two-person occupancy. This same policy also requires that there should be a minimum of 5sqm of private outdoor amenity space for each 1-2 person dwelling. These requirements are also made in Policy D.H3 of the Tower Hamlets Local Plan (2020).
4. Despite the Council's view to the contrary, there is nothing substantive before me to confirm that the proposed dwellings would be occupied by two persons. Each unit would provide the necessary internal space for single occupancy and thus accord with the requirement of Policy D6 and Policy D.H3 in this regard.
5. In terms of outdoor amenity space, one of the units would have a 5sqm balcony and thus comply with the policy requirement. The other unit would

have no private outdoor amenity space and thus would be contrary to the requirement of the policy.

6. In this case, however, two of the existing units in the building that currently do not have any outdoor amenity space would be provided with balconies, and thus improving the living conditions for occupants of these existing units. In the event the appeal was to be allowed, the provision of these balconies could be secured by a planning condition. Therefore, although there would be a conflict with the policy requirement, given that two existing units would be provided with outdoor amenity space where there is currently none, justifies departing from the requirement in this case.
7. In a previous appeal¹ at the site for a similar form of development to that currently proposed, the Inspector considered that the proposed development would provide satisfactory living conditions for future occupants with regard to internal space and outdoor amenity space. Although I am not bound by the previous Inspectors findings and have considered the appeal proposal on its own individual merits, the decision and its findings are a material consideration which I have given significant weight to and find no reason or evidence before me to form a different view on this issue. The previous appeal was not considered against the current London Plan; however the Inspector considered the matter of amenity space, and I have acknowledged and addressed the minor conflict with the policy outlined above.
8. Therefore, although there would be a minor conflict with Policy D.H3 of the Tower Hamlets Local Plan (2020) and Policy D6 of The London Plan (2021) in terms of the provision of outdoor amenity space, when considered as a whole, the proposed development would provide acceptable living conditions and meet the minimum internal space standards as set out.
9. The Council's reason for refusal on living conditions for future occupants states that the proposed development would be contrary to Policy D7 of The London Plan. This policy relates to accessible housing and there is no detailed analysis or substantive evidence put forward to demonstrate a conflict with this policy.

Character and appearance

10. The appeal building is a three-storey building located on a terrace of properties of a similar height. On my site visit I observed that in the wider street-scene there are various building forms including dormer windows and mansard roofs. Although the roofscape of the terrace on which the appeal building is located is relatively unaltered, in the wider street-scene varied roofscapes are prevalent.
11. At the front elevation of the building a mansard roof is proposed. It would sit within the parapet walls that delineate each side of the property. In the previous appeal, the Inspector considered that the size and number of dormers on the front elevation, which would occupy almost all of the roof slope, would cause harm to the character and appearance of the area. In the current proposal, the dormers on the front elevation have been reduced in size so that they do not take up as much of the roof slope, and they broadly align with the window positions of the first and second floor.
12. Having regard to the make up of the surrounding area, the previous appeal decision, and the scheme before me, I consider that the proposed front

¹ APP/E5900/W/20/3261305

alterations would not have an unacceptable impact on the character and appearance of the area.

13. At the rear, the building sits evidently deeper than its neighbours, exposing a large section of its side elevation. The rear of the building is highly visible from Squirries Street and the health centre to the rear of the site. This results in the appeal building, in its current form, appearing relatively prominent when viewed from the rear. The roof slope at the rear would effectively be removed to accommodate an upward continuation of the building that would have a flat roof. Due to its overall scale, mass and design, the proposed extension to the rear would appear bulky and incongruous. It would be of a markedly different form to the roof slopes of the buildings either side and appear harmfully disruptive and out of context.
14. I acknowledge that the rear extension was included on the previous appeal scheme. In that appeal the Inspector found that the proposed development as a whole would adversely affect the character and appearance of the area. The reasoning is however silent on the rear extension. Although the current appeal relates to a very similar form of development, it is nevertheless a separate application. In the current appeal the Council consider that the rear extension causes harm, and it is therefore necessary for me to consider this in the current appeal. Therefore, whilst having regard to the previous appeal decision, I have made my own planning judgement on this aspect of the development, having regard to the material considerations before me.
15. The appellant has referred to the requirement of the National Planning Policy Framework (the Framework) that planning decisions should, amongst other things, support opportunities to use the airspace above existing residential and commercial premises for new homes. I acknowledge that the proposed development would comply with this aim, however I do not consider that this overrides the harm I have identified would be caused, and the conflict with the requirement in the Framework for the creation of high-quality, beautiful buildings.
16. I therefore conclude that the third-floor extension to the rear of the property would cause significant harm to the character and appearance of the area. It would be contrary to Policy S.DH1 of the Tower Hamlets Local Plan (2020) and Policy D4 of The London Plan (2021) which require, amongst other things, that development is of a high standard of design, being of an appropriate scale, mass, bulk and form in its site and context. It would also be contrary to the Framework.

Living conditions – existing occupants

17. The proposed development includes the provision of three balconies to the rear elevation. The Council consider that these would result in a loss of privacy to the occupants of 309 Bethnal Green Road.
18. I observed on my site visit the existing level of overlooking that is possible from the rear windows of the existing units that are closest to 309 Bethnal Green Road, where it is currently permissible to view directly onto a small area of amenity space that is to the rear of the property.
19. The proposed balconies would project further from the rear elevation of the existing building. With the introduction of screens to the sides of the balconies,

as suggested by the appellant, which could be secured by condition, the angle of view would be narrowed to the extent that there would not be an unreasonable level of overlooking. With appropriate screening, the resulting overlooking would be to a small proportion of the amenity space, closest to the rear boundary, which in this dense urban area where there is an existing level of overlooking, is not unreasonable.

20. The proposed development would therefore not cause unacceptable harm to the living conditions of the occupants of 309 Bethnal Green Road with regard to privacy. It would comply with Policy D.DH8 of the Tower Hamlets Local Plan (2020) and Policy D6 of The London Plan (2021). These policies require, amongst other things, that developments protect the amenity of existing buildings and their occupants, including by maintaining good levels of privacy and avoiding unreasonable levels of overlooking.

Refuse storage and cycle storage

21. There are no dedicated refuse storage facilities proposed. Long-term storage of refuse internally is generally unlikely to be acceptable due to the impact of odours on living conditions, and any external storage on the public highway would be unacceptable.
22. Policy D.TR3 of the Tower Hamlets Local Plan, and Policy T5 of The London Plan set out the requirement for cycle parking to be provided in developments. This is in the interests of promoting sustainable travel choices. No dedicated cycle storage is proposed for either proposed dwelling.
23. In the previous appeal, the Inspector acknowledged the constraints of the site in providing appropriate facilities. In terms of refuse storage, the Inspector acknowledged that although the intended arrangement by way of residents taking refuse out of their properties for collection is not ideal, it was the only practical manner to manage waste arrangements. The Inspector took the view that the lack of such facilities would not unduly compromise the living conditions of future occupants. The Inspector also noted that in relation to cycle parking, the location of the appeal site in a local centre and the availability of sustainable travel choices. The Inspector took a balanced judgement that the social and economic benefits of two dwellings outweighed the absence of such facilities.
24. The previous appeal was determined against the former London Plan. The Council also highlight that since the previous appeal, they have adopted the Reuse, Recycling and Waste Supplementary Planning Document (SPD) (2021). It is therefore necessary to consider the proposed development against the current London Plan and the SPD, whilst giving weight to the previous appeal decision.
25. I have nevertheless found conflict with Policy D.MW3 of the Tower Hamlets Plan (2020) and the SPD which requires that new development has acceptable waste storage and collection. Also, due to the lack of appropriate cycle parking, the development would fail to promote sustainable travel and would be contrary to Policy D.TR3 of the Tower Hamlets Plan (2020) and Policy T5 of the London Plan (2021). This conflict would cause minor harm and weighs against the proposed development in the planning balance.

Other Matters

26. The Council have commented that the proposed development would be unacceptable due to the lack of a legal agreement to secure an affordable housing contribution.
27. The appellant has confirmed that they would have no objections to entering into the necessary legal agreement, although they have not undertaken a viability assessment. There is not, however, a completed legal agreement before me.
28. However, as I am dismissing the appeal for other reasons the presence of a completed agreement could not, in any event, lead to a different decision. There is therefore no need for me to reach a finding on this matter.

Planning Balance and Conclusion

29. The Government's objective as set out in the Framework is to support sustainable housing growth. The proposed development would result in a small increase in the Council's overall housing number and would be in a sustainable location. It would also bring a 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.
30. However, the significant harm that the proposed development would have on the character and appearance of the area, combined with the minor harm due to the less-than-ideal refuse and cycle storage, attracts significant weight that outweighs the benefits associated with the proposed development.
31. The proposed development would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.
32. 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