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# Appeal Decision

Site visit made on 2 November 2022

**by John Dowsett MA DipURP DipUD MRTPI**

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

**Decision date: 23 March 2023**

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**Appeal Ref: APP/E5900/W/22/3301775**

**570 Roman Road, LONDON, E3 5ES**

- 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 Bains Kang Developments Limited against the decision of the Council of the London Borough of Tower Hamlets.
  - The application Ref: PA/21/02429, dated 5 November 2021, was refused by notice dated 23 December 2021.
  - The development proposed is described as: Change of use from financial services (Use Class E(c)) at first floor to residential (Use Class C3), with the erection of two additional storeys to accommodate a total of 2 residential units (Use Class C3) and other internal minor changes.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appellant submitted amended drawings as part of the appeal submission which it is suggested would overcome the second reason for refusal cited on the decision notice in respect of whether the proposed development would provide suitable living conditions for the future occupiers. #
3. I have noted that a different planning application, referenced PA/22/00256/A1, and which proposed a first floor rear extension and a further single storey upwards extension to the building, in order to accommodate two flats on the upper floors, has been granted planning permission. I also have been provided with a copy of the drawings that accompanied that planning application which show a similar configuration to the first floor rear extension to that which is shown on the amended plans that have been submitted with the appeal.
4. The appeal process should not be used to evolve a scheme and it is important that what is considered at appeal is essentially what was considered by the local planning authority, and on which interested people's views were sought. I do not have any evidence that would indicate that the views of interested parties were sought on the amendment to the proposal submitted with the appeal.
5. Notwithstanding that planning permission has been granted for another scheme, I have noted that the Council planning officer's report for planning permission reference: PA/22/00256/A1, which included a similar configuration of first floor to that proposed in the amendment, does not consider overlooking of rear the of the flats in the former chapel from the window in the first floor rear extension illustrated on the drawings. Nor does it consider overlooking of

the private amenity area to the rear of number 568a Roman Road, or the potential for views into this room from the amenity area to the rear. I am also mindful that representations were made in respect of privacy from interested parties at both the planning application and appeal stage of the current proposal.

6. Within this context and having regard to the principles established in *Bernard Wheatcroft Limited v Secretary of State for the Environment & Another* [JPL, 1982. P37], I consider that the proposed amendment is sufficiently altered from the originally determined scheme that it cannot be accepted without prejudicing the interests of those who should have been consulted on the changed development. Consequently, I have determined the appeal based on the same drawings as were before the Council when it decided the planning application.
7. 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**

8. The main issues in this appeal are:
  - The effect of the proposed development on the character and appearance of the area, with particular regard to the extent to which it would preserve or enhance the character or appearance of the Roman Road Market Conservation Area; and
  - Whether the proposed development would provide suitable living conditions for the future occupiers, with particular regard to outlook.

### **Reasons**

#### *Character and appearance*

9. The appeal site is a two storey, flat roofed, building with the ground floor occupying the full depth of the plot that it occupies, and the first floor extending to just short of half of the ground floor footprint. The façade of the building is constructed in brick with a modern shopfront at ground floor level and has a wide, horizontal, window at first floor level. Between the window head and the parapet of the front elevation is a sign reading 'Old Ford House'.
10. Adjoining the appeal building to the east, on the junction of Roman Road and Cardigan Road, is a two storey, flat roofed, early to mid-twentieth century building occupied by an Iceland supermarket. The upper floor and parapet to this building sit slightly above those of the appeal building. To the west of the appeal building is a former church that has been converted to commercial premises on the ground floor with flats above. The ground floor has modern shopfronts whilst the first floor retains the gabled elevation of the church in polychromatic brickwork level with the street, but also has two, flat roofed, two storey, extensions, set back from the frontage. Two small roof terraces are present at first floor level to each side of the central gable feature. To the rear of the appeal building and the neighbouring Iceland shop, is a narrow, modern, four storey, flat roofed, building containing flats at 47 Cardigan Road.

11. The appeal building is located within the Roman Road Market Conservation Area. The conservation area is relatively small in extent, taking a generally linear form along the section of Roman Road, from St Stephens Road to Parnell Road, where markets are held. It also includes the east side of Cardigan Road and a group of buildings in a block delineated by St Stephens Road, Wrights Road, and Beale Place, including the Grade II Listed Church of St Paul with St Stephen [List Entry: 1241988]. The only other listed building within the conservation area is the Grade II Listed Passmore Edwards Public Library [List Entry: 1241675] at 564 Roman Road, a short distance to the west of the appeal building.
12. Buildings within the conservation area generally range from between 2 and 4 storeys in height and, with a few exceptions, consist of commercial uses at ground floor level with other uses, including residential, on the upper floors. Roman Road is partially pedestrianised in order to facilitate holding the market. The buildings are predominantly finished in brick or render and many of the shop fronts are modern replacements. Other than the more elaborate public buildings such as the Passmore Edwards Library, Church of St Paul with St Stephen, and the converted former chapel adjacent to the appeal building, the buildings within the conservation area have fairly simple detailing. Roof forms are a mix of pitched roofs, flat roofs, and butterfly roofs, with the latter two often concealed by a parapet. In places, mansard roofs have been added to provide an additional floor of accommodation to older buildings. Roman Road is a bustling and lively commercial street which contrasts with the residential character of Cardigan Road.
13. From the evidence before me and from what I saw when I visited the site, the significance of the conservation area, in so far as it relates to this appeal, is derived from the evidential value and historic value from being home to a traditional street market within a high street serving the surrounding residential area that developed as part of the eighteenth and nineteenth century expansion of London. The buildings within the conservation area provide the context for market which is by framed by domestic scale, mixed use, buildings, and the resulting streetscape has an aesthetic value as a result. It was clear from my site visit that the area beyond the conservation area boundary has been extensively redeveloped, although the east side of Cardigan Road provides evidence of the type of housing present in the area before twentieth century redevelopment altered the surrounding streets.
14. The Roman Road Market Conservation Area Character Appraisal and Management Plan (CACA&MP) identifies that the character of Roman Road is fragile, that it has been eroded in the past by unsympathetic alterations and re-building, and that further attrition of this character must be prevented. The CACA&MP also notes that rising land values are fuelling applications to extend the low-rise properties on Roman Road and that the Council will seek to protect the existing character of this East End Street.
15. The appeal proposal seeks to replace the existing shopfront with a new shopfront, with glazing framed by glassfibre reinforced concrete cladding, incorporating a new entrance door to provide access to the upper floors. It is also proposed to extend and convert the existing first floor of the building to create a 2 bedroom flat, and to build an additional two storeys above the extended first floor to create a 3 bedroom maisonette. The extensions to the

- building would be constructed in brickwork with the front elevation framed in glassfibre reinforced concrete cladding.
16. The extended first floor rear extension would effectively cover the whole footprint of the floor below, although it would incorporate a small lightwell/roof terrace area towards the rear of the building. The proposed new upper floors would be set back from the current front façade with the proposed third floor also set back from the front elevation of the second floor. The set back would allow for the formation of small terrace areas at the front of the building. The third floor terrace would be enclosed by a perforated brick screen wall to the front of the terrace facing Roman Road. The rear elevation of the proposed second and third floors would be approximately level with the rear of the extensions that have been added to the neighbouring former chapel.
  17. Due to the set back in the front elevation of the proposed upward extension and the width of Roman Road, there would be limited visibility of the new works from street level when directly in front of the building. In oblique views along Roman Road at very short range from the west, and in short to medium range views from the east, the new upper floors would be seen and there would also be views from the upper floor windows of the buildings opposite. Similarly, the proposed extensions would not be visible from the rear, due to the narrow width of Guglielmo Marconi Mews, and the four storey building at 47 Cardigan Road and the high wall to the rear of the former chapel intervening. There would, however, be some visibility from the upper floor flats in Clement Atlee House to the rear.
  18. The design of the proposed new shopfront is not, of itself, inherently objectionable and whilst of a contemporary design would represent a visual improvement over the current shopfront on the building. The upper floors, however, introduce design elements and materials that are not characteristic of buildings in the conservation area, in particular large area of glazing framed by cladding panels that would give the upper floors of the building a distinctly different solid to void ratio to other buildings in the conservation area. The different proportions of the window openings on each floor would be markedly different from the more regular pattern of fenestration on both historic buildings and the more recent insertions into the street scene. The result would be a building façade that is not as visually coherent as those of the surrounding buildings.
  19. In addition to this, whilst the set back to the upper levels would potentially reduce the perceived height of the resulting building, recessive elements are not characteristic of buildings in the conservation area where linear facades define and enclose the street. I recognise that the additions to the former chapel are set back from the building frontage, but these are exceptions rather than the general rule and do not reflect the historic built form of the street.
  20. The Iceland supermarket building located on the junction of Roman Road with Cardigan Road is two storeys in height. The proposed increase in height to four storeys of the appeal building, in combination with the narrow 4 storey infill at 47 Cardigan Road, would have the effect of visually undermining the corner of Roman Road and Cardigan Road by diminishing the perceived height of the building at the junction.

21. I would also concur with the Council's position that the proposed upward extension would blur the boundary between the appeal building and the converted Chapel, and lead to a cluttered roofscape.
22. The Heritage Statement submitted with the application suggests that, on the basis of map evidence, the appeal site was previously occupied by a building of similar height and massing to the extant buildings at the other end of the terrace (numbers 566 & 568 Roman Road) which are three storey structures, and that the proposed extension would result in a similar height of building. The appellant re-iterates this argument in their Statement of Case. However, this is contradicted by a photograph included in the comments of the Council's conservation officer on the proposal which shows that the sites now occupied by the appeal building and the Iceland supermarket previously contained two storey buildings. This further weakens the arguments in favour of the upward extension to the appeal building.
23. Whilst I have found that the proposed new shopfront would represent an improvement over the current shopfront at the building, taken as a whole, due to the increased height and massing of the building that would result from the proposed extensions, the extended building would not sit comfortably in its surroundings and would, consequently, be harmful to the character and appearance of the conservation area. This would cause harm to the significance of the conservation area through the detriment to the street scene which gives it its aesthetic value and provides the context to the traditional street market.
24. Given the above, I find that the proposal would fail to preserve the significance of the conservation area. Consequently, I give this harm considerable importance and weight in the planning balance of these appeals.
25. Paragraph 199 of the National Planning Policy Framework (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 and harm to, or loss of, the significance of a designated heritage asset requires a clear and convincing justification. Although the proposed development is relatively small in scale and the harm that would result from it would be most notable in the near vicinity of the appeal site, the conservation area is not large and, as noted by the CACA&MP, its character is fragile. In this context, the proposal would be harmful to the conservation area taken as whole. However, due to the small scale of the development, I find the harm to be less than substantial in this instance but, nevertheless, of considerable importance and weight.
26. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant suggests that the proposal would be beneficial for a number of reasons including: optimising the sites development and use and the utilisation of airspace above the building; provision of two new dwellings including a family sized unit, delivering a well-designed scheme which improves the commercial floorspace; providing a financial contribution towards the provision of affordable housing; providing car free development; and environmental benefits from the provision of green roofs and photovoltaic panels as part of

the development. A number of references to the proposal being in accordance with the Framework are made in connection with these.

27. Optimising site capacity should not be conflated with maximising site capacity, nor is mere compliance with policy a benefit, rather it is a requirement. I have been provided with a draft planning obligation in the form of a Unilateral Undertaking (UU) which makes provision for contributions towards affordable housing and seeks to make the development car free. However, the UU is neither signed nor dated and, in addition, contains no reference to this planning appeal or any decision that may be made on it. Consequently, because the UU is flawed and incomplete, I cannot be certain that these matters would be delivered. In any event, the provision of a contribution towards affordable housing is a requirement of Policy S.H1 of the Tower Hamlets Local Plan adopted in 2020 (the Local Plan) and Local Plan Policy D.TR3 requires new residential development to be car free.
28. There is nothing in the evidence that indicates that the current format of the commercial part of the building is not fit for purpose, or that it would not be possible to use it as a commercial premises if the proposed development were not to proceed. As set out above, I have found that the proposal when taken as a whole would be harmful to the character and appearance of the area.
29. The provision of a three bed family sized unit is a benefit of the scheme but is limited to just a single family sized dwelling, with the overall scheme only providing two dwellings in total. No substantive evidence has been submitted by either party in respect of housing need or supply in the area and, consequently, I can give only little weight to this. The proposal would provide a small scale environmental benefit from the green roof elements and photovoltaic potential but again, due to its small scale the weight that can be given to this is limited. Whilst there are some small scale benefits that would arise from the scheme these are not sufficient to outweigh the harm that I have identified and to which great weight has to be given.
30. Given the above, and in the absence of any significant public benefit, I conclude that, on balance, the proposal would fail to preserve the character or appearance of the Roman Road Market Conservation Area. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with the relevant requirements of Policies D4 and HC1 of the London Plan 2021 (the London Plan), and Policies S.DH1 and S.DH3 of the Local Plan which when read together seek, among other things, to ensure that new development is of a high standard of design that is appropriate to its context, and which preserves or enhances the significance of heritage assets. As a result, the proposal would not be in accordance with the development plan.

#### *Living conditions of the future occupiers*

31. London Plan Policy D6 expects, amongst other matters, new development to be of a high standard of design and to provide adequately sized rooms with functional layouts which are fit for purpose. Policy D.DH8 of the Local Plan seeks to ensure, also among other matters, that new habitable rooms have an acceptable outlook.
32. The Council do not have concerns in respect of the outlook from the maisonette which would be accommodated in the upward extension. Whilst the outlook from the rear windows of this unit would be partially occluded by the blank rear

wall of 47 Cardigan Road, the four storey element of this building does not project across the entire width of the appeal site and some longer views would be afforded.

33. The proposed rear extension to the first floor of the building, to facilitate its conversion to a flat, would accommodate a stairwell and two bedrooms accessed by a passageway. The two bedrooms would be arranged to either side of a small roof terrace. Although both bedrooms would feature a patio door accessing the roof terrace, these would directly face each other across the shallow depth of the roof terrace. The roof terrace would be enclosed on three sides by elements of proposed extension. The fourth side facing towards the former chapel would be partially enclosed by a lower wall, or balustrade (the submitted drawings are not clear in this respect).
34. As a result of this configuration, there would be very little in terms of outlook from either of these windows with only oblique views to the blank wall at the rear of 47 Cardigan Road or to the rear wall of the side addition to the converted chapel, respectively. In addition, as the two bedroom windows would directly face each other in very close proximity, this would result in mutual overlooking and compromise the privacy of occupiers of these rooms.
35. The submitted drawings also show that the living room/kitchen of the first floor flat would be located behind an enclosed terrace at the front of the building. This space is shown on the drawings as having walls to each side and a skylight above. The proposal retains the existing window at first floor level in the front elevation, but the drawings show a new wall located behind this window containing either a window and door as shown on the floor plan (Drawing number: 026-SBA-XX-XX-XX-DR-A-04001) or a patio door as shown on the sectional elevation drawing (Drawing number: 026-SBA-XX-XX-XX-DR-A-05002). Regardless of which detail is correct, in either case, the result would be that the outlook from the principal living space of the flat would be through another wholly enclosed space within the building. Although there would be views to the street beyond, these would be filtered by the intervening distance and the window and wall beneath within the retained front elevation of the existing building.
36. Taking Unit 1 as a whole, the outlook from every window of the unit is compromised in some way and would result in the dwelling being claustrophobic and not a pleasant place to live. Although the appellant submitted revised drawings with the appeal in an attempt to overcome this, as set out above, it is not the function of the appeal process to facilitate further iterations of the scheme, and for the reasons previously given I have not considered this amendment.
37. It is common ground between the parties that the proposed flats would meet the required standards for internal floorspace and external amenity space, and that both flats would receive adequate natural light. I have had regard to this, but do not consider that either individually, or collectively, these facts overcome the very poor outlook that there would be from Unit 1.
38. I therefore conclude that the proposed development would not provide suitable living conditions for the future occupiers, with particular regard to outlook. It would not comply with the relevant requirements of London Plan Policy D6 and Policy D.DH8 of the Local Plan.

## Other Matters

39. I have noted that the Council have not raised any objections in principle to the proposed change of use of the existing first floor of the building to from a commercial use to residential and that it is not considered that the loss of a small amount of commercial floorspace would be harmful to the vitality of the area. From what I have read and from what I saw when I visited the site, I have no reason to find differently. However, this does not lead me to a different conclusion on the principal disputed matters.
40. I have had regard to the representations which have been made by interested parties in respect of the proposal which raise concerns in respect of loss of privacy, loss of daylight and sunlight, and disruption during the construction period. Whilst the windows in the rear elevation of the proposed new upward extension would face towards Clement Atlee House, due to the presence of the building at 47 Cardigan Road, these views would be largely oblique and due to the separation distance between the buildings, I am satisfied that any loss of privacy that may occur would be minimal and would not, of itself, warrant withholding planning permission. From the submitted drawings, the position of the proposed rear roof terrace to Unit 1 may provide some opportunities for casual overlooking of windows located on the rear of the side additions to the former chapel next door. However, any such views would be at a very acute angle, and I have no evidence that would indicate what spaces within the neighbouring building these windows serve. I am also mindful that neither of the representations received were from occupiers of this building. In this context, I do not consider that any overlooking that may occur would be so severe as to justify refusing permission on this ground alone, although it does add to my concerns regarding the overall design of the proposal.
41. Due to the configuration of the proposed extensions, none of the proposed new windows would directly overlook the private amenity spaces of adjoining residential properties. There would be the potential for a degree of overlooking of the amenity space to the rear of the former chapel from the new roof terrace serving the proposed first floor flat and vice versa. Within dense urban areas, there is inevitably some mutual overlooking of amenity spaces and gardens. From the information that I have, it appears that the outside space to the rear of the former chapel is a communal space and, consequently, the degree of privacy it affords to users is perhaps less than may be expected of a wholly private garden or terrace area. Conversely, the communal space to the rear of the former chapel also provides opportunities to overlook the proposed first floor rear terrace at the appeal building and due to its shared nature is likely to be used by larger numbers of people. Whilst this latter point would not of itself make the scheme unacceptable given its urban context, it again adds to my concerns regarding the overall design of the appeal scheme.
42. The proposal was accompanied by a Daylight and Sunlight Assessment which concluded that the proposal would not have any significant adverse effect on daylight or sunlight received by neighbouring properties. In the absence of any evidence to the contrary, I have no reason to not accept the conclusions of this assessment. I also note that this has not been raised as a concern by the Council.
43. With regard to disruption from construction activities, there is invariably a degree of noise, dust, and general disturbance from any construction project.

Had I been minded to allow the appeal, this matter could have been addressed by way of a condition requiring a construction management plan to be submitted for approval and subsequently implemented, in order to minimise any disruption that may be caused.

44. As set out above, a draft Unilateral Undertaking addressing financial contributions to affordable housing and securing the development as car free was submitted with the appeal. However, as also noted above, the UU is neither signed nor dated, and does not make reference to the present appeal, or any decision that may be made on it. An obligation must be complete before it can take effect.
45. As the matters covered by the UU were not in dispute and the appeal is being dismissed on other substantive grounds, it is not necessary for me to make a finding on whether the UU would be required and is fit for purpose. Had the UU been completed and free from error, it would have made provision for a financial contribution towards the provision of affordable housing, which would have been a factor in the schemes favour when considered overall. Nevertheless, as this would be required to make the scheme policy compliant and the small scale of the development would only generate a very modest financial contribution, this would not overcome the other harms that have been identified and would not have led me to a different overall conclusion.

## **Conclusion**

46. The proposal would harm the significance of the Roman Road Market Conservation Area and would not provide suitable living conditions for the future occupiers of Unit 1. These are important matters and, as such, the proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*John Dowsett*

INSPECTOR