



Appeal Decision

Hearing held on 29 March 2023

Site visit made on 29 March 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2023

Appeal Ref: APP/U5360/W/22/3313171

2 Cremer Street / 139-143 Hackney Road, London, E2 8JL

- 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 W&R Buxton Holding Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/3524, dated 29 November 2021, was refused by notice dated 15 June 2022.
 - The development proposed is Erection of a part 2 / part 3-storey roof extension to provide 4 residential units (Use Class C3), including associated cycle storage, refuse storage and brick over-cladding to the façade of the existing building including improvement works to the shop front.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the character and appearance of the area and in particular the effect on the Hackney Road Conservation Area.
 - Whether the proposed development would result in an adequate standard of living accommodation, with particular regard to the amount of floorspace proposed in respect of Unit 4.
 - Whether the proposed development makes sufficient provision for affordable housing.

Reasons

Character and Appearance

3. The appeal site is located within the Hackney Conservation Area (the CA). Under section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am obliged to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area.
4. The CA primarily derives its significance from the historic function of Hackney Road as a main artery for traffic into London. The CA has been the subject of significant change and development over the centuries, including a great deal of modern development in the last 100 years. This patchwork of development

from different periods also contributes positively to the significance of the CA as it illustrates how this part of London has changed over time. Despite these changes, many of the historically prevailing uses along Hackney Road remain. In particular, commercial uses prevail along Hackney Road at ground floor level.

5. The appeal site comprises a 3-4 storey end-terrace building located on the corner of Cremer Street and Hackney Road (the host property). The building is part of a 3-4 storey terrace which predominantly comprises of commercial units at ground floor level and residential units on the upper floors. The scale and layout of the terrace is relatively uniform, particularly when viewed from Hackney Road, which is the buildings primary frontage.
6. Development in the surrounding area is typically characterised by a wide range of architectural styles. Shoreditch Exchange is a recent development which is located directly south-west of the appeal site, on the opposite side of Cremer Street. This development has a maximum of 8 storeys, with 6 storeys fronting Hackney Road adjacent to the appeal site. To the north-east is Fellows Court which is a 15 storey residential tower block set back from Hackney Road. In addition, there are large multi-storey buildings directly to the north and south of the appeal site. Indeed, the host property is viewed within the context of more prominent and modern development.
7. Despite this, the terrace within which the host property is located has a relatively uniform scale and there is a degree of symmetry between this terrace and another terrace located to the north-east, on the opposite side of Fellows Court. Within this context, more modern larger scale development is prevalent within the surrounding area, yet there are still older and smaller scale pockets of development which punctuate the street-scene. This results in an eclectic collection of development which makes a valuable contribution to the character of the area and the significance of the CA.
8. Indeed, the value of these terraces to the CA is reflected through their identification as either locally listed buildings or buildings of townscape merit within the Conservation Area Appraisal. Whilst the locally listed buildings in the terrace to the north-east of the appeal site are too far from the appeal site to be adversely affected by the proposal, there is a locally listed building at 155 Hackney Road, within the same terrace as the appeal site. This building derives its significance primarily from its former function as a public house and its more decorative and well-preserved appearance than many of the other buildings within the terrace. Its significance is also directly related to its role as part of a terrace of older properties of a relatively subtle and uniform scale.
9. The proposed development would visually assimilate well with the more modern development at the Shoreditch Exchange. Indeed, it would incorporate similar materials (red brick throughout and glazed brick at ground floor). Whilst it would have a smaller scale, it would incorporate six storeys, which would match the six storeys at the Shoreditch Exchange where it meets the corner of Cremer St and Hackney Road.
10. However, in contrast, the proposal would not assimilate well with the existing terrace. It would result in a stark contrast with the adjoining terrace buildings to the east, given the far more dominant scale proposed. The dominant effect of the scale would be particularly apparent when viewed from Hackney Road from the south-west where the full six storey scale of the proposal would be

clearly apparent in contrast to the far more diminutive appearance of the terrace¹. As a result, despite the setback proposed at the upper storeys, the proposal would have a harmful jarring visual impact and would detract from the existing symmetry of the terrace to an unsatisfactory degree.

11. This harmful visual impact is exacerbated by the width of the host property which is approximately double that of any of the other buildings in the terrace. Given that the proposal does not taper down in height towards the terrace, there would be a prolonged and pronounced increase in massing which would drastically and harmfully alter the symmetry of the terrace, diminishing its distinctive character.
12. In this context, I do not completely dismiss the prospect of an upwards extension in this location. However, the proposal fails to provide a sensible and sympathetic transition in scale and appearance between the more modern Shoreditch Exchange and the older terraced building. Indeed, I find that it reflects the character of the Shoreditch Exchange far more than that of the terrace. The design should however pay more regard to the prevailing character of the terrace as a priority. This is particularly important, given the positive contribution of the terrace to the significance of the CA.
13. That said, the proposal would lead to many improvements to the host property. The host property stands out in terms of its bland appearance in contrast to the other buildings in the terrace. This appearance would be improved to the extent that brick cladding would provide more visual interest with updated glazing and brick detailing. The shop fronts would also be improved significantly with more attractive glazed bricks proposed, reduced signage and re-positioning of shutters. A green wall is also proposed to the rear of the building, which would update the currently blank elevation to provide more visual interest.
14. However, these benefits are not quite enough to offset the harmful visual impact of the proposal caused by the over-dominant and disproportionate scale and bulk when viewed in conjunction with the existing terrace. Indeed, the existing juxtaposition between the older terrace and the surrounding modern development currently contributes positively to the significance of the CA. The proposal would harmfully erode this contribution and would thus harm the significance of the CA.
15. Within the context of Framework Paragraph 202, the proposal would lead to less than substantial harm to the CA. For the same reasons there would also be harm to the locally listed building at 155 Hackney Road, to the extent that its significance is intrinsically linked to the appearance of the terrace within the street scene.
16. Whilst there are examples of similar development nearby (notably at 132 Kingsland Road and 28 Cremer Street) these are all located within differing contexts and are not wholly reflective of the unique juxtaposition of development prevalent in the immediate vicinity of the appeal site. For this reason, these examples carry very little weight as material considerations and they do not provide a justification for the proposed development.

¹ As illustrated in the 3D visualisation at 7.1 of the submitted design and access statement.

17. For the reasons outlined above, the proposed development would conflict with Local Plan² policies LP1, LP3, LP33 and London Plan (2021) Policies D3 and HC1. Together these policies seek to ensure that new development is in keeping with local character and that it preserves conservation areas and other designated heritage assets.
18. London Plan Policy D4 is a plan-making and procedural policy and there would not therefore be a conflict with it.

Standard of Accommodation

19. The Council contends that the total floorspace proposed in respect of Unit 4 would be inadequate and that the proposal would fail to meet the requirements set out within the Technical Housing Standards – Nationally Described Space Standards (March 2015) (the ‘Technical Standards’).
20. Unit 4 is a three-bedroom four-person flat. At the hearing both the Council and the Appellant agreed that the flat comprised a single storey. On this basis the Technical Standards require a minimum gross internal area (GIA) of 74sqm. The appellant has calculated the GIA as 83sqm. During the Hearing the Council’s Officer indicated that he considered the total floorspace of the unit to measure 70sqm. However, this excluded the hall and stairs. These are parts of the unit which the standards explain should be included in the GIA calculation. On this basis I concur with the appellant’s calculation and it is clear that Unit 4 far exceeds the minimum requirements set out under the Technical Standards.
21. For these reasons, the proposed development would provide an adequate standard of living accommodation for future occupiers. The Council cited Local Plan Policy LP17 within the reasons for refusal. This policy states that ‘the Council will expect all homes and extensions to existing properties to be of high quality design and meet the internal and external space and accessibility standards set out in the London Plan, GLA Housing SPG and Hackney’s Housing SPD’.
22. However, none of these documents were referred to by the Council in relation to this main issue. Instead, the Council relied on the Technical Standards (which are a material consideration as opposed to part of the development plan). As such, it is not possible to determine whether the proposal complies with Local Plan Policy LP17. The development does however comply with the Technical Standards, to which I attribute significant weight.
23. Local Plan Policy LP1 is not directly relevant to the standard of accommodation provided to future occupiers (other than in terms of accessibility, which is not relevant to this main issue).
24. Neither party referred to any relevant London Plan Policies in relation to the standard of accommodation proposed.

Affordable Housing

25. The Council’s second reason for refusal in relation to affordable housing is supplemented by an informative on the decision notice which indicates that the appellant agreed to pay the requisite contribution towards affordable housing

² Hackney: A Place for Everyone – Hackney Local Plan 2033 (July 2020)

during the determination period of the planning application. The informative also suggests that this matter can be addressed by Unilateral Undertaking.

26. The appellant has submitted a Unilateral Undertaking with this appeal, which includes provision for a financial contribution in lieu of providing on-site affordable housing. This contribution would total £200,000 and has been derived from the Council's Hackney Housing SPD and Planning Contributions (S106) SPD.
27. During the Hearing, the Council confirmed that this payment would be policy compliant and would address the reason for refusal in relation to the provision of affordable housing. For this reason, the proposed development would accord with Local Plan Policy LP13, which (for residential development of between 1 and 9 dwellings) requires payments in lieu of affordable housing in accordance with the Hackney Housing SPD and Planning Contributions (S106) SPD.

Other matters

28. A local resident raised concerns pertaining to the effect of the proposed development on the positioning of existing boiler flues on the roof of the host property. The interested party highlighted that this may necessitate the re-positioning of his boiler and that this would potentially be unsatisfactory. This is a matter which could be addressed through a separate regulatory regime under Building Regulations requirements. In any case, whilst I note the concerns raised, it is not necessary for me to consider this matter further given that I am dismissing the appeal for other reasons.

Planning Obligation

29. The appellant provided the Council with a draft planning obligation well in advance of the hearing. Unfortunately, the Council failed to comment on the obligation until the date of the Hearing itself. The Council has subsequently provided a late response in relation to further revisions to the unilateral undertaking.
30. Nonetheless, given that I am dismissing this appeal for other reasons it is not necessary for me to consider whether the planning obligation meets the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
31. However, in terms of considering the benefits of the proposed development I will assume that it does meet the tests, which represents a best case-scenario for the appellant. I have therefore taken into account the affordable housing contribution as a benefit in my consideration of the planning balance. The other contributions contained within the Unilateral Undertaking are aimed at off-setting the impacts of the development and are not therefore benefits for the purposes of the planning balance.

Planning Balance

32. Framework Paragraph 202 requires that less than substantial harm is weighed against the public benefits of a proposal including, where appropriate, securing the heritage asset's optimum viable use.

33. The proposed development includes social and economic public benefits resulting from the increase in housing stock and a financial payment in respect of affordable housing.
34. The appellant has referred to the Council's past record on housing delivery. Yet this is clearly improving, and the most recent figure in respect of the Housing Delivery Test indicates that 96% of the annual housing requirement for 2020-2021 was delivered, meaning there are no consequences arising (action plan or engagement of Framework Paragraph 11d). The appellant has asserted that the Council is unlikely to be able to demonstrate a 5-year housing land supply. However, no substantive evidence has been provided by either main party to demonstrate what the current HLS position is.
35. Nonetheless, even if there were an extensive shortfall (which is a purely hypothetical assertion), only a small number of dwellings would be provided as a result of the proposed development. Whilst I recognise that small windfall developments such as this are important in contributing to housing supply, and that they make an efficient use of land, the benefits would be modest given the small number of units proposed.
36. There would potentially be some economic benefits arising from the enhancement of the shop fronts but no substantive evidence has been advanced to indicate how these benefits should be quantified. Indeed, they are likely to be minor given the limited scale and primarily aesthetic nature of the improvements.
37. There would also be minor environmental benefits associated with biodiversity enhancement and a reduction in CO2 emissions of approximately 35%.
38. In summary, the public benefits are modest and as such they can only be afforded moderate weight. Conversely, the less than substantial harm to the Conservation Area should be afforded great weight, in line with the provisions of Framework Paragraph 199. As a result, the modest public benefits of the proposed development would not outweigh the less than substantial harm.
39. As such, given that the policies in the Framework provide a clear reason for refusing development, Paragraph 11Dii is not engaged even in the event that there is a shortfall in housing land supply.

Conclusion

40. The proposed development would comply with the development plan with regard to the provision of contributions to affordable housing. In addition, the amount of floorspace proposed for the residential units would comply with the Government's Technical Standards.
41. Nonetheless, there would be less than substantial harm to the Conservation Area and this harm would not be outweighed by the public benefits of the development.
42. There would also be harm to the setting of the locally listed building at 155 Hackney Road. The proposal therefore conflicts with the development plan taken as a whole.
43. There are no material considerations of sufficient weight to indicate that a decision should be made other than in accordance with the development plan.

44. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ben Murphy	Planner at BPTW
Nazar Sayigh	Director at Glas Architects
Birute Raglyte	Senior Architect at Glas Architects

FOR THE LOCAL PLANNING AUTHORITY:

Michael Garvey	Planning Officer
Matt Payne	Design Officer

INTERESTED PARTY:

Andrew Barker	Local Resident
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