



Appeal Decision

Inquiry held between 12-14 and 18 April 2023

Site visits made on 13 and 14 April 2023

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/E5900/W/22/3312335

Morrison Flats North, 35A Commercial Road, London E1 1LB

- 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 Gamuda Yoo Development Aldgate S.a.r.l against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/22/00600, dated 25 March 2022, was refused by notice dated 11 July 2022.
 - The development proposed is demolition of the existing building and redevelopment of the site to provide a 10-storey building with basement, comprising 115 shared living units and associated communal amenity spaces (Use Class sui generis) together with a roof terrace, refuse and cycle storage and other associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal a number of issues in dispute between the main parties have been resolved through discussion or the submission of additional information. These include the effect of the development on the living conditions of neighbouring occupiers in respect of sunlight and daylight (second reason for refusal) and outlook (part of the third reason for refusal).
3. Matters relating to impacts on infrastructure and associated policy requirements (fourth reason for refusal) have also been agreed between the main parties. A draft legal undertaking to secure financial and non-financial obligations addressing these matters was discussed at the inquiry, and a completed version submitted shortly afterwards. I comment on these obligations later in my decision.
4. The Mayor of London published draft London Plan guidance on large-scale purpose-built shared living for consultation purposes in January 2022. The appellant is amongst those making representations. The guidance has not been progressed any further. Given its draft status I give it little weight.

Main Issues

5. Having regard to the above, the remaining main issues are the effect of the development on:
 - The provision of housing stock, in particular that relating to self-contained housing

- The living conditions of neighbouring occupiers of 37 Commercial Road (the Dryden Building) in respect of privacy.
6. It is also necessary to consider the benefits of the scheme, and the weight to be given to these and other determining issues. I do this as part of the planning balance.

Reasons

Housing stock

7. Policy S.H1 of the Tower Hamlets Local Plan 2031 (the Local Plan) seeks to meet housing needs by securing the delivery of new homes across the borough. As well as securing new homes, the policy also seeks to secure particular types of homes to meet identified local needs. A requirement of relevance in this case is that given at Part 1(b) of Policy S.H1 which is to ensure development does not undermine the supply of self-contained housing – in particular family homes.
8. The site currently accommodates 34 self-contained residential flats. These would be lost as a result of the development. Although the 115 co-living units that would replace them would provide an alternative form of residential accommodation, they would not be self-contained. There would therefore be a loss of self-contained housing on the site.
9. There is also an extant planning permission¹ on the site for a scheme of 44 self-contained flats, 8 of which would be family homes². The supporting text to Policy S.H1 indicates that Part 1(b) applies equally to safeguard the future supply of self-contained housing, and development for non-self-contained units will not be supported where it utilises land identified for self-contained housing through a current planning permission.
10. The appellant argues that the appeal scheme would free up accommodation based on the 1.8:1 ratio used in paragraph 4.1.9 of the London Plan 2021 (the London Plan). This would result in 64 self-contained homes being freed up, which is more than the number of existing self-contained flats that would be lost as a result of the development or those contained in the extant planning permission. Such freeing up could include properties currently used as houses in multiple occupation (HMOs), which may then return to the housing market as self-contained homes.
11. I am not persuaded by those arguments. The ratio in the London Plan is intended as a means of monitoring net housing provision. It provides an equivalence between non-self-contained and self-contained housing for the purposes of calculating overall housing provision but is not intended to suggest that these differing forms of housing provision meet the same needs. The ratio is derived from the Government's Housing Delivery Test Measurement Rulebook, which calculates an average number of adults per household based on the Census. It says nothing in qualitative terms about the types of housing those occupiers live in.
12. Given that co-living is a relatively new type of accommodation there remains uncertainty as to what type of accommodation future occupiers would be drawn

¹ PA/10/00676, which has commenced.

² Defined as houses and flats which contain 3 or more bedrooms (Local Plan Appendix 1).

from and what effect it would have on the housing market generally. While co-living is likely to appeal to some of those who would otherwise share or use accommodation in traditional HMOs, future occupiers may also come from other types of housing. Where future occupiers are diverted from traditional HMOs, there is no evidence that those properties would revert to self-contained housing rather than be backfilled by occupiers who prefer traditional HMOs to co-living units, be that for financial or other reasons. Although there would be an increase in the gross supply of housing, there would still be a net loss of self-contained accommodation overall.

13. Criticism was made of the quality of the existing self-contained accommodation and the extent to which it should count as part of the housing stock. It is true to say that it does not meet some of the standards by which new residential accommodation is judged. That includes standards relating to disabled access, internal and external space, and daylight. It is also the case that the proposed co-living accommodation would meet these and other modern standards and would therefore be of higher quality than that which it replaced.
14. However, that is not to say that the existing flats are unfit for their intended purpose. There is no policy requirement that existing residential accommodation must meet current standards in order to be considered suitable. Although the existing flats may not meet the needs of some disabled people and have less space and/or light than is now considered desirable, they provide all the facilities needed for independent living. Some would benefit from updating but they function adequately as self-contained units. Those units that have been refurbished indicate that a good standard of living accommodation can be achieved within the existing building. I am satisfied that the existing units continue to provide adequate living accommodation.
15. The appellant argues that Policy S.H1 of the Local Plan may be seen as conflicting with Policy H8 of the London Plan. I do not consider that to be the case. Alongside the requirement of replacing existing housing by new housing at existing or higher densities with at least the equivalent level of overall floorspace, is the requirement of not undermining the supply of self-contained housing. The first is a London-wide strategic aim and therefore included in the London Plan, while the second is a locally specific aim appropriate for inclusion in the Local Plan. Those requirements are not mutually exclusive, nor does the achievement of one necessarily prevent the achievement of the other when looked at borough-wide. The weight to be given to each is a matter of judgement to be weighed in the planning balance.
16. The benefit of increasing the overall supply of housing, and demand for co-living accommodation, are matters that I address later. However, in so far as it relates to protecting existing and safeguarding the future supply of self-contained housing, I conclude that the development would conflict with Policy S.H1 in that it would undermine the supply of self-contained housing through the loss of the existing 34 flats, without any specific re-provision of self-contained accommodation either on or off site.

Privacy

17. Policy D.DH8 of the Local Plan requires development to maintain good levels of privacy and avoid an unreasonable level of overlooking. Supporting text to the policy suggests that a distance of approximately 18m between habitable room windows is acceptable to most people and should be applied as a guideline

depending upon the design and layout of the development. Further advice in supplementary planning guidance cautions against adhering rigidly to that measure as it can limit the variety of urban spaces and housing types in the city, and can sometimes unnecessarily restrict density. The degree of harm on adjacent properties should be assessed drawing on broadly comparable residential typologies within the area³.

18. The flank elevation of the proposed building would face across Adler Street towards 37 Commercial Road (the Dryden Building) with a separation distance of some 10.3m. That is considerably less than the 18m suggested in the supporting text to Policy D.DH8. However, the narrow street pattern where buildings have historically faced one another across short distances (including the existing buildings), and the aspiration of the Local Plan to increase densities in this city fringe area, point towards a more flexible approach being taken in this instance.
19. The proposed scheme provides some mitigation to overlooking in that the windows would be staggered in relation to those on the Dryden Building, and the window reveals at 300mm (including projecting surround) would reduce the field of vision to an extent. Nevertheless, given the number of windows in both the appeal scheme and the Dryden Building, direct window-to-window overlooking would still occur. That would be exacerbated by the single-aspect nature of the co-living units, with the windows to each of the units being the only source of outlook for their occupiers.
20. That having been said, the windows in the Dryden Building look out onto Adler Street, which is a public thoroughfare, and are therefore already subject to a degree of intervisibility with members of the public using that street, as well as occupiers of the existing building which contains side windows on all floors. My attention was also drawn to other building relationships in the area. While some of these can be distinguished on the grounds of different uses, designs or orientations, others are broadly comparable in having habitable room windows directly facing one another at distances similar to that proposed on the appeal site, and in relatively modern developments. That includes residential units to the rear of the Dryden Building along Coke Street, and those still under construction along Stable Walk.
21. In tight urban environments such as that found around the appeal site, space between building facades is generally dictated by the width of the streets and forms part of the character of the area. Separation distances between habitable windows are shorter than in less dense areas and occupiers necessarily should expect a greater degree of mutual intervisibility than will be the case in more suburban locations. Occupiers can always make use of blinds or net curtains to provide privacy while retaining a view out even where close relationships exist. Having regard to all of the above factors, I conclude that in this case the loss of privacy is not so great as to materially conflict with Policy D.DH8 of the Local Plan.

Other Matters

22. The Council considers the existing building to be a non-designated heritage asset. Although it is not included on the local list of such buildings, I accept that it does have some historical and architectural interest both as an early

³ Mayor of London, Housing supplementary planning guidance, March 2016, paragraphs 1.3.46 and 2.3.36

example of social housing and through building details such as the inset balconies with ornamental railings and pedimented window surrounds. In accordance with paragraph 203 of the National Planning Policy Framework (the Framework), its loss needs to be taken into account in determining the appeal. In this case, it is common ground between the main parties that the quality of the design of the proposed replacement building is sufficient to outweigh any harm caused by the loss of the existing building. I agree with that assessment.

23. There are also 3 listed buildings close to the appeal site. These consist of Saint Boniface German Roman Catholic Church, John Walker & Sons Ltd Warehouse, and Gunmakers Company Hall and Proof House, all listed grade II. Although from certain directions these listed buildings and the appeal site would be seen in the same views, the design and massing of the proposed building is such that I am satisfied that it would not have a detrimental impact on the settings of the listed buildings.
24. A completed legal undertaking under S106 of the Town and Country Planning Act 1990 was submitted shortly after the close of the inquiry. This contains obligations to contribute towards disabled parking bays, carbon offset, construction training, cycle hire, development co-ordination, energy monitoring, employment, use of local goods and services during construction, parking permit restrictions, highway works, code of construction, minimum length of occupancy requirement, and early and late stage reviews for affordable housing purposes.
25. Other than the code of construction, I am satisfied that these obligations are necessary, related to the development in addressing direct or indirect effects on the locality or in meeting policy requirements as set out in the Council's compliance statement, and fairly and reasonably related in scale and kind. I have consequently taken them into account in reaching my decision. I acknowledge the benefit of having a code of construction but consider this could be secured through a condition as a preferable means of control, in accordance with paragraph 55 of the Framework.

Planning Balance

26. In terms of benefits, the development would increase the density and overall floorspace of residential accommodation on the site compared to both the existing building and extant planning permission. While it may not be a large scheme compared to some of the residential redevelopments that have or are being built in the city fringe area as suggested by the Council, it would still significantly enhance the contribution the site makes to the overall housing stock, and as such gains support from Policy H8 of the London Plan and supports the objective of significantly boosting the supply of homes as set out in paragraph 60 of the Framework.
27. Co-living is a new form of housing. Evidence presented at the inquiry shows that there has been a strong uptake where it is available and that there is justification to believe that would be the case with the appeal scheme. I do not doubt that would be so and that the concept of co-living would appeal to a proportion of those seeking to live in the area. Although future occupiers do have other forms of housing accommodation they could use, large-scale purpose-built co-living space would expand the types of residential accommodation available. I consider that to be beneficial and give it moderate weight.

28. Paragraph 134 of the Framework gives significant weight to development that reflects local design policies and government guidance on design. Although not outstanding or innovative in the sense used in that paragraph, the proposed scheme is well designed and would contribute positively to the character and appearance of the area. While that does have to be tempered by the loss of the existing building as a non-designated heritage asset, it is also the case that the building is now looking tired and somewhat under-scaled in comparison to the larger, taller buildings that are developing in the city fringe area. Its replacement with a well-designed building of greater scale would therefore be of net benefit, as would the improvements to the quality of the accommodation.
29. Some economic benefit would arise during the construction period and afterwards due to a greater number of occupiers spending on goods and services in the area. However, these would also accrue from any redevelopment of the site. The Council has demonstrated that, subject to good design, it has no objection in principle to a redevelopment of the site at a higher density. Accordingly, I give these benefits only limited weight.
30. Obligations secured through the legal undertaking are also of limited benefit or neutral in the planning balance in that they are required to address impacts on the environment, additional demands on public services arising from the development, or respond to policy requirements. The issue of privacy is also a neutral consideration in the planning balance.
31. I have concluded that the development would undermine the supply of self-contained housing in the locality and as a result conflict with Policy S.H1 of the Local Plan, to which I attach significant weight. This conflict nevertheless has to be weighed against the benefits of the scheme, in particular that relating to increasing the supply of housing overall.
32. The Council is able to demonstrate that there is over 5 years of housing land supply in the borough. Its most recent housing delivery test result at 92% is below the desired target but only slightly. Neither trigger the 'tilted balance' in paragraph 11 of the Framework. Indeed, the Council is doing better in achieving housing growth largely in line with its development plan than many other local planning authorities.
33. Within that context I consider the policy requirement to ensure development does not undermine the supply of self-contained housing weighs more heavily than that for increasing the overall supply of housing. The development would lead to the direct loss of 34 self-contained flats, which would significantly reduce a form of housing which the Local Plan identifies as important in meeting a specific local need. Increasing the overall supply of homes, beneficial though that would be, is not essential in order for the Council to continue to provide a 5-year housing land supply and meet its overall housing requirements. The greater weight given to protecting existing and safeguarding the future supply of self-contained housing leads me to conclude that the proposal would conflict with the development plan when taken as a whole.
34. I further conclude that the conflict with the development plan is not outweighed by the other considerations set out above. Co-living as a new housing product would increase choice in the housing market, which I recognise as a benefit. However, the Council is not opposed to the principle of co-living housing where it does not conflict with other objectives of the plan

and therefore it is possible that it will become available in due course in the borough. Good design, tempered by the loss of a non-heritage asset, is also a benefit but I have no reason to believe that a similarly well designed scheme for development on the site, that was also policy-compliant, could not come forward in the future.

Conclusion

35. The proposal would conflict with the development plan when taken as a whole. There are no material considerations that are sufficient to outweigh that conflict. Accordingly, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Reuben Taylor KC, counsel for the appellant, who called:

Lizzie Breckner MA MRICS
Dav Bansal BA (Hons) DipArch RIBA
Richard Ward BA (Hons) DipTP MRTPI
Paul Jess BA (Hons)

Associate, Knight Frank LLP
Partner, Glenn Howells Architects
Director, DP9
Senior Development Manager, Society
by Yoo

FOR THE COUNCIL:

Hugh Flanagan, counsel for the local planning authority, who called:

Adam Hussain MA (Hons)

Senior Planning Officer, LB Tower
Hamlets

Jed Holloway, Associate at Town Legal LLP for the appellant and Ian Austin, Principal Planning Solicitor for the Council took part in the round table session on the legal undertaking and conditions.

DOCUMENTS

Received during or after the inquiry:

1. Appellant's opening statement
2. Council's opening statement
3. Interim version of legal undertaking
4. Final draft version of legal undertaking
5. Addendum to CIL compliance statement
6. Council's closing statement
7. Appellant's closing statement
8. Copy of completed legal undertaking