



Appeal Decision

Site visit made on 19 April 2023

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2023

Appeal Ref: APP/U5360/W/22/3301661

2-4 Orsman Road, Hackney, London, N1 5QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Basin Properties Ltd against the London Borough of Hackney.
 - The application Ref 2021/3301 is dated 5 November 2021.
 - The development proposed is erection of part three- and part four-storey building to provide 526sqm of office floorspace (as per planning permission 2019/4090), and erection of 2 storey roof extension to existing building to provide 5no. residential flats, and ancillary refuse and cycle storage and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. The appellant has made an application for an award of costs against the Council. This is the subject of a separate Decision.

Preliminary Matters

3. As the appeal site includes land subject to permission 2019/4090 for an office building, and development has not commenced, the current proposal includes seeking a new permission for this office development. The new part to the proposal involves the removal of a pitched roof to an industrial-style building and the erection of a 2 storey upward extension that would in part be set in from existing front, rear and western side elevations.
4. The Council comments that had it determined the application, permission would have been refused for two reasons relating to the character and appearance of the area and to housing mix.
5. The appellant contends that the housing mix is acceptable in relation to the Council's policies but without prejudice to this has submitted amended plans showing an alternative housing mix to address the Council's objections.
6. The Council considers the alternative housing mix plans would overcome its second reason for contesting the appeal and can be accepted without prejudice to any interested party.
7. The appellant has submitted a Unilateral Undertaking to make commitments to provide payment in lieu of affordable housing, a carbon offset payment and for a car-free development.

Main Issues

8. The main issues therefore are:

- (a) the effect of the proposed alterations and extension on the character and appearance of the existing industrial-style building and surrounding conservation areas,
- (b) whether the submitted housing mix is acceptable in relation to Council policies, and if not, the acceptability of the alternative housing mix, and
- (c) the necessity for the submitted Unilateral Undertaking as mitigation to offset any harm arising from the proposal.

Reasons

Character and appearance

- 9. The proposed commercial building would be constructed in an open yard at the western end of the appeal site. Much of the remainder of the site is covered by a 3-storey building abutting a footway on the northern side of Orsman Road the top floor to which is recessed on its western part. The building is in mixed commercial and residential use but its profile and large critical windows to front and rear inform of former industrial and warehouse uses.
- 10. The surrounding area is of mixed character. To the west on the northern side of Orsman Road are some modern redevelopment sites rising to 5 and 6 storeys. The southern side of Orsman Road comprises mainly older industrial buildings not generally exceeding 3 storeys. The site backs on to the Regents Canal with residential building of 4 and 5 storeys on the northern side facing the appeal site and Kingsland Basin. To the east, Kingsland Road comprises shops and other commercial uses in buildings of varying size. A bridge over the canal affords views of the appeal site. The site is within both the Regent's Canal Conservation Area (RCCA) and the Kingsland Conservation Area (KCA).
- 11. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires in respect of any land in a conservation area that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 12. The RCCA is linear, from east to west. Its character changes along its various stretches. Close to the appeal site, its significance derives from the well-used public open space along the canal, an important environmental landscape and from the heritage of surviving industrial buildings and structures. The appraisal document also notes the presence of new higher, predominantly residential buildings as part of its character. The KCA is also linear, from south to north, and comprises several distinct zones showing the history of development along the corridor. The significance of its Canal Zone, within which the appeal site is located, is the diversity of employment uses and buildings several of which reflect its industrial heritage.
- 13. The building to be upwardly extended is one of those remaining industrial and warehousing buildings relating to the canal. Its form and detailing are a reminder of that industrial heritage. The building makes a positive contribution to the character and appearance of the area and to the significance of the RCCA and the KCA both of which refer to that industrial heritage.

14. The RCCA Appraisal (2007) comments that Orsman Road contains some important buildings. It highlights Acme Studios, nos. 11-33, diagonally opposite the appeal site, a 1930s Art Deco building with sweeping front bays and distinctive fenestration. This together with 283 Kingsland Road, on the corner with Orsman Road and Kingsland Road Bridge are locally listed buildings. The Appraisal states, *"Overall, Orsman Road has a tight narrow enclosed feel and is full of interesting smaller industrial units and factories, many of which have been restored for studios"*. The KCA Appraisal (1998) comments in relation to the Canal Zone that *"the character of this part of the conservation area is very distinctive as the urban sense of enclosure falls away and the larger more industrial sites and buildings of lower height predominate"*.
15. The proposal is supported by a detailed Design and Access Statement (D&AS) which explains the design approach's evolution and by a Heritage Townscape and Visual Impact Assessment (HT&VIA) examining the site's context. The D&AS sets out how the brickwork on the Orsman Road frontage would be repaired and redecorated to match the new extension and existing windows replaced with similar style crittal windows. These works would refresh the present tired looking frontage and help unify new and existing elements. The new third floor would wrap around the consented commercial building and be set back from Orsman Road. The HT&VIA demonstrates that the extension would be largely screened by the new commercial building when viewed from the west along the canal and that the additional floors would not be prominent from certain vantage points along Orsman Road.
16. However, the massing of the additional floors would be conspicuous from the opposite side of the canal and from the Kingsland Road bridge and would be apparent from closer positions to the west of the site along Orsman Road. The building's profile and shallow pitched roof, which speak to its industrial past and reflect gable end pitched roofs along Orsman Road, would be lost. The top floor, whilst recessed, would nonetheless exceed the height of the consented commercial building, and interrupt the line of falling rooflines from the high modern blocks to the west towards lower development fronting Kingsland Road. There is a contrast between these high buildings to the north side of Orsman Road and lower three storey older buildings to the west of the appeal site but parts of this are outside the conservation areas. Nearer to Kingsland Road, Orsman Road becomes narrower and more intimate in scale and character. The two additional floors would disrupt and unbalance the tighter urban grain in this part of Orsman Road.
17. The appeal building has not been identified by the Council as a *"Building of Townscape Merit"* in their appraisal documents. Notwithstanding this, overall, the proposal would be harmful to and detract from the positive contribution that the building makes to the character and appearance of the two conservation areas. This would result in less than substantial harm to the significance of the conservation areas. Paragraph 202 of the National Planning Policy Framework (the Framework) requires such harm to be weighed against the public benefits of the proposal.
18. The proposal would refresh the current neglected appearance to the Orsman Road frontage which would improve the public realm. The provision of 5 additional dwellings in this sustainable location would also be a public benefit. However, in my judgement, these benefits would not outweigh the harm that would arise to the RCCA and KCA through the extension's design and massing.

19. As such there would be conflict with Policies D3, D4 and HC1 of the London Plan (2021) which advocate a design-led approach to optimising site capacity that requires proposals to be sympathetic to the significance of heritage assets and their surroundings. The proposal would not be compatible with Policies LP1 and LP3 of the Hackney Local Plan 2023 (adopted 2020) (HLP) which collectively require development to be of high design that complements historic character, and respects designated heritage assets in a similar way to the requirements of the Framework.

Housing mix

20. Policy LP14 of the Hackney Local Plan (adopted 2020) (HLP) specifies for market-led schemes, one third of the units should be suitable for families, with three or more bedrooms, and with a higher proportion of two-bed units than one-bed units. The policy rests on the evidence base of the local plan which has identified a need for family housing across all housing types and tenures.
21. As submitted, the proposal would provide five two-bedroom duplex units, with the bedrooms on the new third floor and living accommodation on the fourth floor. The absence of any three bedroom units would not meet the aspiration for at least one family sized unit. However, the specification is referred to as a "preferred" dwelling mix; it is not mandatory. Section C to the policy states, *"The Council will consider variations to the dwelling size mix sought if this can be justified based on the tenures and type of housing proposed, site location, area's characteristics, design constraints, scheme viability"*.
22. In my judgement, having regard to the constraints imposed by the location of the residential units on upper floors above commercial and smaller units with a long access via staircases and corridors and with limited outdoor play space, that the site is not particularly suited to family accommodation. Only a single three bedroom unit would be needed to satisfy the policy aim. The absence of the single unit in this instance would not make a significant difference to the supply of new family units or undermine the thrust of Policy LP14.
23. Therefore, it will not be necessary for me to examine the alternative layout submitted by the appellant to address the Council's concerns. The proposal would not be contrary to Policies LP1 and LP14 of the HLP in relation to design and dwelling size mix. Similarly, it would be compatible with Policies D4 and H10 of the London Plan (2021) in relation to design influencing housing size mix.

Unilateral Undertaking

24. The appellant has submitted a signed and dated Unilateral Undertaking (UU) to pay an affordable housing contribution, a carbon offset contribution and a monitoring contribution in accordance with the requirements of Policies LP13 and LP55 of the HLP. The UU would also enable the proposal to be a car free development with future occupiers precluded from being able to apply for an on-street parking permit within the surrounding controlled parking zone.
25. In my opinion the UU would satisfy the tests for planning obligations set at Regulation 122(2) of the Community Infrastructure Levy Regulation (2010) (CIL Regs) in that it would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

26. The Council has objected to the drafting of clause 14.7.1 timing the payment of the affordable housing contribution to the sale or occupation dates of the units. It asserts that payment be triggered on implementation of the development to ensure its delivery and to prevent completion of the development without the housing element being made available for occupation. The Council's suggested change is reasonable to my mind. If the appeal were to be allowed, I would have afforded limited time for amendment to an otherwise satisfactory planning obligation.

Other Matters

27. Representations have been received from occupiers of flats at 1a Orsman Road in relation to loss of light. The appellant's Daylight and Sunlight Assessment (D&SA) has erroneously referred to the flats as 1b Orsman Road but concludes that there would only be a marginal loss of daylight to the second floor flat and that the development would adhere to the vertical sky component to the British Research Establishment guidelines. The form and massing of the extension would be set back from the edge of the existing building so increasing the distance from the windows in habitable rooms to adjacent developments from the distances that already exist. A third floor level balcony would be provided affording views to Orsman Road. My judgement is that there would not be a significant loss of amenity to occupiers at 1a Orsman Road; nevertheless, the additional height to which objectors refer has been found to be unacceptable in relation to other considerations.
28. Representations on loss of light have also been made in respect to flats at Baltic Place on the opposite side of the canal and to the ecological interests of the canal itself. The development would be to the south of the canal and so the additional height would cast a longer shadow in this direction. The D&SA confirms that in view of the distances involved that there would not be any substantive loss of light or overshadowing to either the flats at Baltic Place or to the canal. The impacts of the commercial part of the proposal have previously been found to be acceptable.

Conclusion

29. The proposal would result in benefits of additional dwellings in a sustainable location and refurbishment of the existing building to enhance its appearance in the Orsman Road street scene. But these benefits would not outweigh the harm that would arise to the character and appearance of the area and to the significance of both the RCCA and KCA through the extension's design and massing.
30. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR