



Appeal Decision

Site visit made on 22 May 2023

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 July 2023

Appeal Ref: APP/U5360/W/22/3305433

362-364 Old Street, Hackney, London EC1V 9LT

- 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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Sefton Commercial Ltd and Neon City Ltd against the London Borough of Hackney.
 - The application Ref 2021/3709 is dated 13 December 2021.
 - The application sought planning permission for installation of a new passenger lift to internal courtyard without complying with a condition attached to planning permission Ref 2021/0567, dated 27 September 2021.
 - The condition in dispute is No. 2 which states that: *The Development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.*
 - The reason given for the condition is: *To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved.*
-

Decision

1. The appeal is allowed and planning permission is granted for installation of a new passenger lift to internal courtyard at 362-364 Old Street, Hackney, London, EC1V 9LT in accordance with the application Ref 2021/3709 dated 13 December 2021, without compliance with condition number 2 previously imposed on planning permission Ref 2021/0567 dated 27 September 2021 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: SITE PLAN 100 rev P.01; 300 rev P.04; 400 rev P.05; 500 rev P.05; 501 rev P.05.
 - 2) All new external facing and roofing materials in respect of all the works hereby approved shall match those of the existing building in respect of materials used, detailed execution and finished appearance.

Applications for costs

2. An application for costs was made by Sefton Commercial Ltd and Neon City Ltd against the London Borough of Hackney. This application is the subject of a separate decision.

Background and Preliminary Matters

3. The application form states that the proposal is for *Variation of condition 1 (development in accordance with the approved plan) of planning permission*

2017/0417 granted on 02/05/2017 for the erection of a two storey roof extension to provide 1 x 2 bedroom self-contained dwelling (use class C3). The effect of the variation would be to add a glazed canopy above the existing entrance at ground floor level. However, both main parties agreed to the following amended description, which also reflects that within the appeal form: Variation of condition 2 (development in accordance with the approved plan) of planning permission 2021/0567 granted on 27/09/2021 for the Installation of a new passenger lift to internal courtyard. The effect of the variation would be to extend and accommodate lift permitted separately to serve existing floors under ref. 2021/0567. I have dealt with the appeal on this basis.

4. The appeal relates to a failure to determine the application within the prescribed period and the Council has not provided a statement of case to accompany their supporting documents; nor has it indicated whether or not the application would have been approved. They do however suggest a number of conditions in the event of an allowed appeal. On this basis, I am satisfied there is enough evidence for me to reach a decision on the merits of the case without prejudicing the main parties.
5. There is an extant planning permission for a two-storey roof top extension under reference 2017/0417, amended by application reference 2019/2215. The appellant now wants to vary the approved plans of a lift that was granted planning permission under reference 2021/0567, by increasing its height to serve the roof top extension that has not yet been completed. Additionally, the appellant has submitted a signed Unilateral Undertaking to seek to ensure that the developments would be carried out at the same time, if necessary.

Main Issue

6. From the submitted evidence the main issue is whether the proposed development would preserve or enhance the character or appearance of the South Shoreditch Conservation Area (CA).

Reasons

7. The appeal site is within the CA where there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area; and where great weight should be given to the asset's conservation. The significance of the CA is derived from its historic mix of grand buildings that line the main thoroughfares in combination with lower-scale buildings set behind the main frontages.
8. Although the development would marginally exceed the highest part of the roof of the approved roof top extension, it would only cover a very small area of that overall roof. It would also be of a similar height to existing adjoining buildings. Consequently, the development would not appear out of place within the context of the existing or surrounding roofscapes, regardless of whether the approved roof top extension was completed, or if the appellant's submitted Unilateral Undertaking secured the joint delivery of both schemes. Furthermore, the development would be positioned in a screened corner of the building furthest away from the street and as such, it would not be readily visible from public vantage points or neighbouring properties within the wider CA.

9. Therefore, I conclude on the main issue that the development would preserve the character or appearance of the CA. As such, it would comply with policies D3, D6 and HC1 of the London Plan March 2021 and policies LP1, LP3 and LP17 of the Hackney Local Plan July 2020 which, together in this respect, seek to promote adaptably designed developments that preserve and enhance heritage assets and that are compatible with the existing townscape. The proposal would also accord with the Council's Supplementary Planning Document Residential Extensions and Alterations April 2009, which in respect of roof alterations advises that additions to the roof form will be acceptable where they are in scale with and proportionate to the existing roof.

Conditions

10. The Council has suggested a number of conditions which I have considered against advice in the National Planning Policy Framework and Planning Practice Guidance. I have made such amendments and omissions as necessary to comply with those documents.
11. For clarity, it is necessary to require compliance with the submitted plans. I am not imposing the Council's suggested swift box condition as it is not sufficiently precise. Furthermore, I have not been provided with any substantive evidence to demonstrate why this is now required. A materials compliance condition is necessary in order to protect the character and appearance of the CA.

Conclusion

12. For the reasons given, I conclude the appeal should be allowed for the grant of a new planning permission with varied conditions as set out in the formal decision.

J Hills

INSPECTOR