



Appeal Decision

Site visit made on 8 August 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2023

Appeal Ref: APP/V5570/W/23/3317789

75A Chapel Market, Islington, London N1 9ER

- 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 Mr Eli Noe of Greatglen Estates against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/3166/FUL, dated 21 October 2021, was refused by notice dated 16 November 2022.
 - The development is retrospective application for the refurbishment of the private terraced area to the rear of the property and the installation of a new rear access door and side window opening out onto the terraced area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development in the heading above which has been taken from the application form, the development is more fully described on the decision notice and appeal form as 'retention of roof terrace, installation of a new doorway and windows and the removal of a refuse storage area on the existing rear flat roof'. The Council determined the application on that basis. I have therefore used that description in my decision. The development is in place.

Main Issues

3. The main issues are the effects of the development on:
 - the character and appearance of the host building, terrace, and the Chapel Market/Penton Street Conservation Area (the CA); and
 - the living conditions of nearby residents with regard to privacy and noise.

Reasons

Character and Appearance

4. The CA is of mixed commercial and residential character, stemming from its original development as a new residential estate and later development of Chapel Market as a thriving street market in the mid nineteenth century. The CA Design Guidelines¹ identifies that despite alterations and changing commercial requirements many of the old Georgian houses have survived. The wide variety of land use in the area is also highlighted as important to the character of the CA. Given the above, I find that the significance of the CA in

¹ Chapel Market/Penton Street (CA33) Conservation Area Design Guidelines, January 2002

part derives from its architectural and historic interest associated with the development of the area and the evidence it provides of the architectural style and building techniques of the time.

5. In the vicinity of the appeal building there is some variety in building frontages with properties having differing heights and a number of more modern buildings interspersed with the traditional terraces. However, the general uniformity of brick-built buildings with fenestration composed largely of sash windows, commercial units at ground floor fronting on to Chapel Market and residential accommodation above, provides a degree of cohesion to the street scene. The appeal building and the terrace which it sits within share some of these characteristics and make a positive contribution to the character and appearance of the CA by virtue of their scale, form and arrangement.
6. The Council's 2017 Urban Design Guide Supplementary Planning Document (the SPD) advises that the choice of materials in any new development must take account of its context and be sympathetic with the local vernacular. It goes on to state that the proposed palette of materials should not jar, inappropriately draw the eye, or otherwise undermine the local character or distinctiveness of the area, and where window replacement is sought in existing buildings, this should normally be done in the original style and materials.
7. Although the appellant's appeal statement identifies that the fence on the eastern boundary of the roof terrace has been removed, at the time of my site visit there was a fence in this location. In my judgement, fencing of an appropriate scale and design on the eastern boundary would not harm the character or appearance of the host building, terrace or CA. Had I been minded to allow the appeal, for clarity, a condition could have required further details to be submitted for approval.
8. From the submitted evidence and what I saw on my site visit, the majority of windows surrounding the appeal property at the rear have either black metal windows or heritage timber sash windows. The multi-paned nature of the uPVC windows and narrow door may be consistent with other windows nearby. Nevertheless, they lack the subtleties and visual quality of the nearby timber framed windows. The windows and door appear heavier when compared to the more elegant proportions of the traditional windows nearby and lack some of the traditional detailing such as horns.
9. Although the light-coloured render that has been used only affects part of the rear elevation of the building, and while acknowledging the appellant's stated reason for its use, it nevertheless appears incongruous when viewed alongside the other properties in the terrace which have mainly retained their London Stock brick elevations. Furthermore, it markedly differs in colour and texture to the largely unified character of the surrounding area with its broadly consistent brick elevations at the rear. I appreciate that light render has been used on part of the rear elevation of 74 Chapel Market. Nonetheless, render is not so prevalent in the locality as to be characteristic of it and is not worthy of replication in this locality for the reasons stated above.
10. The rear elevation of the property is not visible from public vantage points. Nevertheless, the rear of the building is located within the CA, and the windows, door and render has undermined the integrity of the building as a whole.

11. Consequently, I conclude that the development harms the character and appearance of the host building, the terrace and the CA. Accordingly, it would not preserve or enhance the character or appearance of the CA.
12. Given my reasoning above, I find that the harm to the CA is less than substantial in the context of paragraph 202 of the National Planning Policy Framework (the Framework). Even so, less than substantial harm does not equate to a less than substantial planning objection, especially where national policy expectations for conserving such assets have not been met. In such circumstances, paragraph 202 of the Framework states that the harm should be weighed against the public benefits of the proposal.
13. While appreciating the desire to create a more user-friendly space, and therefore an improved living environment for residents of the flat, this would not amount to a public benefit. The roof terrace has made use of an otherwise unused space. However, this is not sufficient to outweigh the less than substantial harm that would be caused to the CA. It does not represent 'clear and convincing justification' for harm to or loss of significance of the designated heritage asset, as required by paragraph 200 of the Framework.
14. For the above reasons, the development conflicts with Policies D3, D4 and HC1 of the 2021 London Plan, Policies CS8 and CS9 of the 2011 adopted Islington's Core Strategy and Policies DM2.1 and DM2.3 of the 2013 adopted Islington's Local Plan: Development Management Policies (the DMP). These require good design, and for proposals to reflect the character of the area, be sympathetic to local identity, make a positive contribution to the local character and distinctiveness of an area and conserve the significance of conservation areas, amongst other matters. The development also conflicts with the SPD as summarised above, and the advice in the CA Design Guidelines which expects a high standard of design which reflects the scale and character of the area.

Living Conditions

15. The Council is concerned about the loss of privacy for occupants of 76 Chapel Market and 32 Baron Street and have specifically referenced three windows and a door at these properties. One of the windows is very small and appears to be obscure glazed. Another window sits within the turn of the terrace and is therefore positioned at an angle to the wider part of the roof terrace as well as being at a higher level. Consequently, any potential view from the roof terrace affords a limited view of the room that is served by this window. Views of the door would be at an oblique angle and no clear views of a habitable space are afforded. In terms of these windows and the door, there would not be an unacceptable loss of privacy.
16. More direct views are possible of the other window to the west in proximity. There is no clear evidence before me to indicate whether this window serves a habitable room, and it was not possible to conclusively rule this out at my site visit. Given the lack of evidence to the contrary, and adopting a precautionary approach, it would be reasonable for me to take the position that the window serves a habitable space.
17. In a densely built central London location, residents might expect to be overlooked from neighbouring properties to some extent. In this case, privacy distances are relatively tight and there is a degree of mutual overlooking between the surrounding properties. There is also a shared open courtyard

which provides access to a number of the residential units. However, although not large, the roof terrace is of a useable area to support activities such as sitting or eating out. It therefore extends the living space of the flat and enables residents to linger upon it. Consequently, the roof terrace will involve a more prolonged and social use compared to using the shared courtyard to access properties. This will amplify the sense of being overlooked for residents of the affected property and so a reasonable visual privacy is not maintained.

18. The Council also considers that the roof terrace is likely to cause noise disturbance to nearby residents. The appellant argues that a number of the other rear yard areas belonging to neighbouring properties are used as outdoor amenity space for their respective residential units. On my site visit I observed that parts of the courtyard have been laid out with decking, planters are in place, and the area forms a pleasant outdoor space. While noting that at least part of this area has been described in correspondence as a garden, it nevertheless has a different character to the enclosed roof terrace which provides a more private outdoor space.
19. Nevertheless, I have no reason to consider that the roof terrace would be used for any purpose other than as a residential outdoor amenity area and the level of use would be restricted given its limited size. I am not therefore persuaded that it will result in an unacceptable increase in noise disturbance for nearby residents.
20. For the reasons given, I conclude that the development causes unacceptable harm to the living conditions of nearby residents with regard to privacy but not with regard to noise. It is therefore contrary to the amenity protection aims of Policy DM2.1 of the DMP.

Conclusion

21. The appeal proposal conflicts with the development plan taken as a whole. There are no material considerations of sufficient weight that would 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.

F Wilkinson BSc (Hons), MRTPI

INSPECTOR