



Appeal Decisions

Site visit made on 11 July 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal A Ref: APP/U5360/W/22/3309866

Innovation Studios, 4 Long Street, Hackney, London E2 8HS

- 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 H Smith Holdings Limited against the decision of the Council of the Council of the London Borough of Hackney.
 - The application Ref 2022/01983, dated 10 August 2022, was refused by notice dated 5 October 2022.
 - The development proposed is the erection of a four storey dwellinghouse (Use Class C3).
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Appeal B Ref: APP/U5360/W/22/3309862

Vacant land/car parking space between 4-6 Long Street and 8-10 Long Street, Hackney E2 8HS

- 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 L Cadman of H Smith Holdings Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2022/0411, dated 17 February 2022, was refused by notice dated 29 April 2022.
 - The development proposed is the erection of a four storey building for use as a single dwellinghouse (Use Class C3).
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. The addresses on the application forms for the two schemes differ as set out in the banner above. A combination of names have been set out as applicant and/or appellant. I have, however, used those set out in the planning application and note that 'H Smith Holdings Ltd' is consistent throughout. However, I am satisfied that they relate to similar proposals at the same site, and I have therefore determined the appeals accordingly.
4. As set out there are two appeals on this site. Both proposals involve the construction of a four-storey building to be used as a single dwelling. The planning application which led to Appeal B was submitted to the Council first and sought permission for a taller four-storey building than that set out in the planning application which led to Appeal A. From the timeline of both applications, it seems to me the Appeal scheme A was submitted to the Council as a means to overcome the refusal reason for Appeal scheme B. Appeal scheme A proposes a smaller four-storey building and omits balconies on the front elevation. I have, nevertheless considered each proposal on its individual

merits. However, as one of the main issues is the same for both appeals and to avoid duplication, I have dealt with the two schemes together, except where indicated.

Main Issues

5. A main issue for both appeals is the effect of the proposed development on the character and appearance of the area and the Hackney Road Conservation Area. Having regard to the above preliminary matter, I consider this main issue below first in respect of Appeal scheme B and then Appeal scheme A.
6. For Appeal A only an additional main issue is whether the proposed development provides adequate living conditions for future occupiers of the proposal with particular regard to outlook.

Reasons

Character and Appearance

7. The appeal site is located on Long Street. It forms a narrow gap between two buildings and is currently laid out as two car parking spaces. The rear of the site faces an area of open space on Hackney Road known as Fairchild's Garden.
8. The proposed dwelling would effectively infill the gap between 4-6 Long Street (Nos. 4-6) and 8-10 Long Street (Nos. 8-10). The buildings generally in this location have large floorplates and contain a mix of commercial and residential uses. The proposed dwelling would be four storeys in height. It would be built on one of the car parking spaces and would over sail the other. The site is located within the Hackney Road Conservation Area (HRCA).
9. Section 72 (1) of the Planning (Listed Buildings and Conservations Areas) Act 1990 places a statutory duty to have regard to the desirability of preserving or enhancing the character and appearance of the Conservation Area (CA). In considering the effect of the proposal on the CA the impact must be weighed against the harm it would have on the heritage asset.
10. The character of the HRCA is derived from its historical development during the Georgian and Victorian eras for both residential and industrial purposes. The Hackney Road Conservation Area Appraisal 2009 notes Long Street for its post-war flatted warehouses which were developed to house small businesses together in the 1950's which contribute positively to the character and appearance of the HRCA.
11. The buildings either side of the appeal site are four and five storeys in height, although building heights vary considerably in the surrounding area. The building to the righthand side of the appeal site (Nos. 4-6) has a distinctive overhanging roof design replicated across its Long Street frontage and its two side elevations.
12. Although the main façade of Appeal scheme B would be set back from the front elevation of Nos. 4-6, it would result in a built form which would, at its roof level, intersect clumsily with the metal panel-clad overhanging roof of Nos. 4-6. Whilst the Appeal scheme A would be lower, and avoid this direct intersection, it would be under the overhanging roof line. The result would be no less awkward and would compromise the primacy of the roof design of Nos. 4-6

whilst also reinforcing the inappropriate and disconnected design that would arise from both appeal schemes.

13. I appreciate that when walking along the street the proposal would be viewed obliquely. However, the appeal site is also viewed from the building opposite on the street and also from within Fairchild's Garden and from Hackney Road beyond, from which the proposals would appear at odds with the buildings surrounding the appeal site. Whilst the roofline of Appeal A is lower than that proposed in Appeal B it nevertheless would appear as an incongruous feature below the large overhang of the roof of Nos. 4-6. Moreover, even when viewed obliquely from the north the incongruous relationship of the appeal schemes with the roof of Nos. 4-6 would be evident.
14. Appeal B includes three semi-circular projecting balconies. These would be similar in projection and appearance to the semi-circular feature on the façade of Nos. 4-6. In that respect they would not appear out of place within the street scene. Nevertheless, projecting balconies are otherwise a feature which is absent from this part of the street, where there are balconies further north in the street, they are lightweight structures with metal or glass balustrades rather than the solid and cumbersome structures proposed in appeal scheme B. Furthermore, the balconies would serve to accentuate the vertical appearance of the proposal jarring with the horizontal emphasis of the building in this part of the street. Appeal scheme A would remove balconies from the front elevation and would be more in keeping with the forms of upper floors in the street.
15. Both schemes involve oversailing a car parking space which is outside of the appellant's control. Appeal scheme A includes gates across the car parking space and the front door at ground floor. The Council is concerned that the appeal A scheme would result in the lack of an active frontage. However, the car parking space is outside of the appellant's control. From my observations the ground floors of both Nos. 4-6 and Nos. 8-10 includes several solid or louvred service doors and opaque glass windows along the street. Given the narrow frontage of the appeal site, the opportunity to provide an active frontage is restricted.
16. The Council do not object to the principle of an infill development at the appeal site and, thus, the loss of the gap between the buildings. However, small gaps between the buildings in the street create interest and provide glimpses of spaces beyond, these provide visual relief and interest between the high, large floorplate buildings which front the street. I appreciate that the appeal site may not provide a great deal of visual interest in its own right, but this is not a reason in itself to remove the gap between the buildings. Although not determinative in its own right, this adds weight to my conclusions in respect of the relationship of the proposed building designs to those around it.
17. Buildings within the street are constructed of a variety of materials including London stock brick. Nevertheless, the use of other brick colours is also prevalent in the surrounding area and adjacent buildings. Even if I were to agree that London stock brick was the only appropriate brick this is a matter which could be controlled by condition. As would the finish to the proposed balcony railings. This does not, however, outweigh the harm that I have found on this main issue.

18. For the reasons set out above the proposal would fail to preserve or enhance the character or appearance of the HRCA. As such the proposal would cause harm, albeit that harm would be less than substantial.
19. Paragraph 202 of the National Planning Policy Framework (the Framework) states that where the harm is less than substantial, this harm should be weighed against the public benefits that would be provided by the proposal. The proposal would provide an additional unit of residential accommodation in an area where there is housing need and would represent an efficient use of land.
20. Additionally, the proposals would result in a modest economic benefit during construction, and once complete a small on-going spend in the local economy. Overall, the public benefits are of limited public benefit and therefore attract little weight. Consequently, when giving great weight to the special attention I must have to the desirability of preserving or enhancing the character or appearance of the HRCA, the harm that arises from either appeal scheme would not be outweighed by the limited public benefits identified. Accordingly, there would be a conflict with paragraph 202 of the Framework as the harm to a designated heritage asset would not have a clear and convincing justification. This attracts great weight.
21. The proposals would therefore have an unacceptably harmful impact on the character and appearance of the area and would fail to preserve or enhance the character or appearance of the HRCA. As such the proposals would be contrary to policies D3, D4 and HC1 of the London Plan (2021) and policies LP1 and LP3 of the Hackney Local Plan (2020) which seek to ensure that development is of a high quality and respects the historic environment.
22. The Council have referred to the Hackney Road Conservation Area Appraisal 2009 in their refusal reason, however, this document does not form part of the statutory development plan for the Borough and does not include policies against which proposals can be assessed. Whilst I have had regard to the document in assessing this main issue it has not been determinative.

Appeal A only – Living Conditions for Future Occupiers

23. The windows on the eastern (rear) elevation of the proposal would be fitted with small projecting fin-style screens. Although they would restrict views northwards and prevent overlooking of the building directly to the north of the appeal site, I have not been presented with any compelling evidence that the outlook of future occupiers of the building would be otherwise unduly restricted so as to cause demonstrable harm to their living conditions.
24. I therefore find no harm to the living conditions of future occupiers of the building with regard to outlook, consequently there would be no conflict with London Plan policies D3 and D4 and HLP policies LP1 and LP17 which seek to deliver appropriate outlook and privacy in new developments.
25. The Council refer to London Plan Policy D4 in relation to this main issue, but as this relates to masterplans and design scrutiny it has, therefore, not been a determinative factor in coming to my decision on this main issue.

Other Matters

26. Representations have been made which raise a number of matters including the ownership and access to the car parking space which would be over sailed. Ownership and legal access issues are a private matter between the relevant parties and not within my jurisdiction. Accordingly, issues relating to land ownership have not had any material bearing on my assessment of the planning issues in this appeal.

Planning Balance and Conclusion

27. Based on the evidence before me and from my knowledge dealing with other recent appeals within the Borough, I am aware that the Council cannot demonstrate a 5-year housing land supply. In accordance with paragraph 11d) i) of the Framework, the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development, for which the policies of the Framework have not been met. Consequently, the test set out in the Framework does not apply.
28. As the development would harmfully affect the character and appearance of the HRCA and would have an adverse effect upon its significance, the proposed development is contrary to the development plan and the Framework taken as a whole, and the aims of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There are no other considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

K L Robbie

INSPECTOR