



Appeal Decision

Site visit made on 11 October 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

Appeal Ref: APP/G5750/W/23/3318212

121A High Street, Plaistow, Newham, London E13 9HH

- 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 M Bhikhi against the decision of the Council of the London Borough of Newham.
 - The application Ref 22/02713, dated 11 November 2022, was refused by notice dated 3 March 2023.
 - The development proposed was originally described as "Retrospective planning application for the development of a dormer loft above the residential block of flats to create additional living space. Application site is 121-123 High Road Plaistow E13 9HH (not listed on planning portal) (This application is within the setting of two Grade II Listed Buildings – Coach and horses public house & Passmore Edwards library."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A dormer loft extension has been built. There is some disparity between the constructed extension and that shown on the plans. This includes differences to the roof window provision in the front elevation, the window and door arrangement at the rear and, the roof ridge slope. For the avoidance of doubt, I have determined the appeal on the basis of the plans submitted.

Main Issues

3. The main issues are:
 - The effects of the development upon the character and appearance of the host building and the area;
 - Whether appropriate living conditions would be provided for the residential occupiers of the appeal site with particular reference to their private internal and outside space;
 - Whether appropriate provision would be made for waste and recycling; and
 - The provision made for biodiversity enhancement.

Reasons

Character and appearance

4. The host building is in a mixed use with commercial units on the ground floor and residential flats within the floors above. The appeal site is located within an area of mixed character. There are many houses and flats in the local area but also a range of commercial properties.
5. Although the extended host property would still be of a height comparable with the neighbouring properties, the dormer loft extension would result in the building's roof ridge being raised in height and a large box-like extension being added to the rear of the property. This box-like extension would be almost as wide as the host property and would form a dominant addition to the roofscape. In combination, the second floor accommodation and the proposed third floor extension would exhibit both pitched and flat roofs, projecting, recessed and stepped elements and, several balustrade enclosures.
6. As a result, an unduly complex and discordant roofscape would be formed. This roofscape would be at odds with the simpler roof pitches exhibited by the adjoining properties. During my visit I noted that the roofscape of the property is visible from a number of viewpoints both closely-by to it, but also farther away in approaches towards the host building. Therefore, I cannot agree with the appellant that the development would not be noticeable nor that it would have a minimal impact on the street scene.
7. For these reasons and despite the host building being unlisted and being situated within an area of no particular designation, the development would result in unacceptably harmful effects upon the character and appearance of the host building and the area. This harm would occur regardless of the quality of materials utilised or type of windows installed.
8. For the above reasons, the development is contrary to Policies SP1, SP3 and SP5 of the Newham Local Plan 2018 (NLP) and Policy D3 of the London Plan 2021 (LP). Amongst other matters, these policies require developments to be of high quality and to deliver buildings that respond positively to local distinctiveness and contribute positively to the townscape. The development would also conflict with advice at paragraph 130 of the National Planning Policy Framework (the Framework) which states that development should add to the quality of an overall area and be sympathetic to local character, including the surrounding built environment.

Living conditions

9. At second floor level the plans show 3 flats each containing a single bedroom. The Council submit that the bedroom in each flat would have a gross internal floor area in excess of 11.5m². Each of these flats would, therefore, be 2 person occupancy. The Council further submit that one of these flats would have an internal floor area of 44m² and a second 45m². No substantive evidence before me indicates that the submissions of the Council in these regards are inaccurate.
10. Policy D6 of the LP sets out that single storey, one bedroomed 2 person occupancy flats should have a gross internal floor area of 50m². Therefore,

- 2 of the 3 flats at second floor level would be smaller than that required by Policy D6 and, that which is set out within the Technical Housing Standards – Nationally Described Space Standard (NDSS).
11. Policy D6 also states that at least 5m² of private outside space should be provided for each 2 person occupancy home. The plans show that one of the second floor flats would have no access to private outside space.
 12. Furthermore, the internal and private outside space standards within Policy D6 of the LP are minimum requirements. Given that, in the proposal, flats would be provided that would not meet these minimum requirements, I find that the development would not be delivering homes of high quality and that appropriate living conditions would not be provided for the residential occupiers of the appeal site. I cannot therefore agree with the appellant that the internal and external spaces provided are acceptable even if it is the case that occupiers declare themselves satisfied.
 13. I note that planning permission has previously been granted for 3 single bedroomed flats within the host building (planning permission reference 19/01975/FUL) and 3 such flats are shown at second floor level on the pre-existing plans. However, it has not been shown to me that the earlier planning permission has, or could, be implemented at the site. Nor has it been shown to me that the 3 flats at second floor level do not form a part of the appeal scheme. The previous planning permission is, therefore, of limited weight in my determination. I briefly return to this matter in my conclusion.
 14. For these reasons, the development is contrary to Policy D6 of the LP and Policies SP1 and SP3 of the NLP. These policies require high quality living accommodation and set out the private internal and private outside space standards which housing developments are required to meet. The development conflicts with the Housing Supplementary Planning Guidance 2016 which seeks to ensure that all new homes are of sufficient quality, are functional and fit for purpose including through adherence to the NDSS. The development also conflicts with advice within the Framework including that at paragraph 130 which states that development should function well and should promote health and well-being.

Waste and recycling

15. The host property contains both residential accommodation and commercial premises. Waste would be generated from these different uses within the building. Waste also arises in different forms, such as that which can be recycled and that which cannot. So that it can be appropriately collected, some separation of the different types of waste and from the different building users would be necessary.
16. Although 3 refuse bins are shown on the plans, no clarity is provided in respect of which units within the building they would serve. Neither is it clear to me how the different types of waste from the various building users would be stored. Furthermore, the planning application site boundary is tightly drawn around the footprint of the building. The 3 refuse bins identified on the plans are not within the planning application site boundary. I also have no substantive evidence which demonstrates that the appellant exercises any control over this land or, who may do. During my

visit I noted that there was a bin stored within a partly enclosed area beside the High Street pavement. However, this area is again not within the application site nor is it identified for such a purpose on the plans. I also noted during my visit that within the surroundings of the site there were quite substantial amounts of waste and litter. Without appropriate waste and recycling storage being put in place, the development would be likely to contribute to this issue.

17. I am mindful of the advice of the Planning Practice Guidance that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. I have identified deficiencies with respect of the waste and recycling provision. Given this and, given I have no substantive evidence which indicates to me that there is suitable land upon which appropriate facilities could be sited, I cannot conclude that there is a prospect of delivering such facilities to serve the development. Therefore, if I were minded to allow the appeal, a condition for the purposes of agreeing details of waste and recycling provision would not satisfy all the tests for condition imposition.
18. The development would not make appropriate provision for waste and recycling and, as a result, conflicts with Policy INF3 of the NLP. This policy sets out that development proposals should ensure on-site waste handling and storage meets the needs of the development and local collection arrangements. The development conflicts with advice within the Framework, including that at paragraph 130, which states that development should promote health and well-being and create a high standard of amenity for existing and future occupiers. I find no conflict with Policy SI8 of the LP which focuses upon strategic waste management and new waste management sites. The content of this policy is largely irrelevant to the specific harm I have identified.

Biodiversity

19. Amongst other matters, Policy SC4 of the NLP sets out, as a strategic principle, that all development should contribute to the achievement of biodiversity net gain. Further design and technical criteria within the policy establishes that where residential units are proposed, it should be demonstrated how the opportunity to enhance biodiversity has been maximised. Policy G6 of the LP also establishes an aim to secure biodiversity net gain.
20. The submitted biodiversity survey and report finds that the development would have minimal biodiversity impact and, identifies no protected species would be likely to be affected by it. However, no demonstration of how any biodiversity enhancements could be achieved has been made nor has any compelling reasoning been put to me as to why, in this case, the biodiversity enhancements targeted by Policies SC4 and G6 should not apply.
21. Consequently, I find that the development conflicts with Policy SC4 of the NLP and Policy G6 of the LP. In coming to this view, I note that in a previous appeal decision (reference APP/G5750/W/22/3310736) an Inspector did not find conflict with these policies. However, I have formed my own view, based on the evidence before me now and the particular

circumstances of this case. In not achieving biodiversity enhancement, the biodiversity net gains sought by the advice at paragraph 174 of the Framework are also not met.

22. The appellant submits that certain matters of sustainable design such as the installation of solar panels and provision of water recycling systems could be conditioned. Even if this were the case, such measures would not address the policy conflicts I have identified in relation to biodiversity.
23. In its relevant refusal reason, the Council have also referred to Policies G1 and G5 of the LP and Policies SC1, SC2, SC3, SC5, SP1 and SP2 of the NLP. These policies principally relate to green infrastructure, environmental resilience, energy reduction, flood risk, air quality and high quality and healthy place-making. The relevance of these policies to the failure of the development to provide for biodiversity net gain is not clear to me. Given this and the particular harm I have identified, I find no conflict with these policies insofar as they relate to this main issue.

Other Matters

24. The development that has taken place at the site may have been undertaken to increase rental income in response to challenging economic conditions and the appellant may not have been familiar with the planning permission process. However, given the harm that I have identified, these matters do not provide sufficient justification for the development. My determination is limited to the acceptability or otherwise of the appeal scheme. Any consequences of this appeal dismissal in relation to development that has taken place is a matter for planning enforcement.
25. Amongst other things, the development may not harm the living conditions of neighbouring occupiers or result in harmful increases in traffic or construction waste. However, the absence of harms in relation to these matters are neutral factors in my determination and do not outweigh the harm I have identified in the main issues. The development may comply with building regulations, however, this is a separate regime to planning permission and as such is not a determinative factor in my decision.
26. The Council refer to Passmore Edwards Library and the Coach and Horses Public House which are each Grade II listed buildings. Passmore Edwards Library exhibits some traditional and ornate architectural detailing including canted corners, stone quoins, stone plaques and a roof dome. At the time of my visit, the Coach and Horses was under some renovation and was partially obscured by scaffolding. Even so, I noted its traditional brick elevations and at ground floor some traditional pilaster and corbel features. These traditional and ornate architectural details contribute positively to the significance of both buildings.
27. Neither of the main appeal parties have indicated to me that the development would have any particular effects upon the settings of either listed building. Given the separation between the listed buildings and the appeal site, I have no reason to conclude otherwise and find that, despite the harm I have identified would be caused to the character and appearance of the host property and area, the settings of the listed buildings would be preserved.

Conclusion

28. In each of the 4 main issues I have identified harmful effects and, conflicts with development plan policies. The development would conflict with the development plan taken as a whole and there are no material considerations of sufficient weight to indicate a decision other than one in accordance with the development plan.
29. In the second main issue, I have identified that appropriate living conditions would not be provided for the residential occupiers of 2 second floor flats given their private internal and outside space. Even in a scenario whereby this second floor flat accommodation already had planning permission and was not for my determination, the harm which I have identified in the other main issues would remain and, the development would still conflict with the development plan taken as a whole with no material considerations of sufficient weight to indicate a decision other than one in accordance with it. I conclude, therefore, that the appeal is dismissed.

H Jones

INSPECTOR