



Appeal Decision

Site visit made on 27 September 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/E5900/W/23/3315060

201A Mile End Road, Tower Hamlets, London E1 4AA

- 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 Ahmet of AS Prop UK Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/22/00923, dated 18 May 2022, was refused by notice dated 21 July 2022.
 - The development proposed is change of use from use class C4 HMO to 2 no. self-contained flats, including improvement to the external elevations, new windows and erection of a mansard roof extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is within the Carlton Square Conservation Area (the CA). Accordingly, the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) applies, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the host building and the area, and whether it would preserve or enhance the character or appearance of the CA.
 - Whether the proposed development would result in the loss of a family sized dwelling, thereby reducing the Borough's stock of family sized accommodation.
 - The effect of the proposed development on the living conditions of occupiers of the neighbouring property at No 199 Mile End Road, with specific regard to daylight and sunlight.

Reasons

Character and appearance

4. The appeal site is a 3-storey mid-terrace building with a basement, located close to Stepney Green underground station. It contains commercial uses at ground and basement level with a residential unit occupying the upper floors. It sits within a shopping parade formed predominantly of ground floor commercial

uses and opens directly on to a wide pavement, which in turn fronts the busy Mile End Road. The area fronting Mile End Road on the opposite side predominantly comprises residential development.

5. The site lies within but on the southern edge of the CA, with Mile End Road forming its boundary. The CA is formed predominantly of traditional 2 and 3 storey terraced dwellings, many of which are of similar appearance featuring 'butterfly' style roofs. An area of formally laid out public open space and an area of open grassland are located near the centre of the CA, forming its focal points. The CA also includes 3 adjoining listed cemeteries, the closest to the appeal site being the Grade II listed Jewish Cemetery. These cemeteries are contained by tall boundary walls. Although they sit close to the residential areas, there is a strong degree of functional and visual segregation from the remainder of the CA.
6. The appeal site and its neighbouring buildings incorporate commercial uses and are generally taller than the predominantly residential development found elsewhere in the CA. Although this part of the CA includes some greater variation in architectural style and some later, less attractive buildings, it broadly reflects the period and detailing found elsewhere. The significance of the CA as a whole is derived from its role as a traditional community of terraced dwellings set around formally laid out recreation areas, and a strongly defined service frontage along the main thoroughfare of Mile End Road.
7. Although the adjoining property of No 199 Mile End Road features a roof level mansard extension similar to that proposed, this is the only example of such development in this terrace. The roof parapets on the front elevation of the terrace are generally of similar scale and appearance, and whilst there is some slight variation, they give the terraced row a simple yet characteristic flat-roofed appearance when viewed from street level. In this regard, the existing mansard extension at No 199 stands out as an anomaly in the streetscape. The roof height of the proposed development would be taller still, which would exacerbate this effect.
8. The area to the rear of the buildings is largely utilitarian and comprises a hard surfaced area used for parking and servicing. The appeal property and its neighbouring buildings to the east, up to the public house, all feature similar butterfly roofs, and the upper floor rear elevations follow a relatively uniform pattern of construction that appears largely original. In contrast, and in addition to its mansard roof, No 199 follows a different pattern of construction and does not appear as an inclusive part of the terrace in the way that the appeal site does. Whilst the appeal site and many of the immediate neighbouring buildings feature some unsympathetic alterations to the rear, the uniform and largely unaltered roofscape in this part of the CA makes a positive contribution to its significance.
9. Taken as a whole, the proposed development would fail to reflect the traditional proportions of the host building and its neighbouring properties and would disrupt the characteristic uniformity of the upper floors of the terrace. This would fail to preserve the character or appearance of the CA, resulting in harm to its significance. Although the harm would be less than substantial, paragraph 199 of the National Planning Policy Framework (the Framework) directs that great weight should be given to the conservation of designated heritage assets, irrespective of the level of harm to its significance.

10. The Framework directs that in cases of less than substantial harm, this should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The building appears to have been altered over the years to introduce some unsympathetic facing materials and detailing, such as windows and servicing paraphernalia, that fail to reflect its historic character. The proposals seek to remove redundant service equipment, undertake repairs and restoration to the elevations, and reinstate some of its original publicly visible features to improve the building's appearance and contribution to the CA. The proposals would also provide good quality living accommodation for potential occupiers of the property.
11. Accordingly, the proposals would deliver some public benefits under the terms of the Planning Practice Guidance. However, given the harm previously identified and the great weight that the Framework directs must be given to the conservation of the CA, these public benefits would not outweigh the identified harm.
12. With regard to potential effects on the setting of nearby listed buildings, the listed cemetery has been noted in the evidence submitted by both parties, but it is not cited in the Council's reasons for refusal. The appeal site is well separated from the listed cemetery, with significantly more dominant pre-existing development sited closer, including a mid-20th-century 4-storey flat-roofed block of flats that directly overlook the cemetery. Although there may be some distant views of the development from the listed cemetery, the aforementioned flats would sit in the foreground of such views. The appeal site therefore forms a very limited part of the setting of the listed cemetery, and the proposals would have a neutral effect on its significance.
13. For the reasons above, the proposed development would be harmful to the character and appearance of the host building and area and would fail to preserve the character or appearance of the CA, resulting in harm to its significance. The proposals would therefore conflict with policies S.DH1 and D.DH2 of the Tower Hamlets Local Plan 2031 – Adopted January 2020 (the THP), which together seek, among other objectives, for development to meet the highest standards of design that positively responds to its context and contributes to the public realm. The Council's decision notice also refers to Policy D.DH3, which I have not been provided a copy of. I have, however, been provided a copy of policy S.DH3 of the THP, which seeks to ensure proposals preserve or enhance heritage assets in a manner appropriate to their significance, and which the development would also conflict with.

Loss of family sized accommodation

14. There appears no dispute between the main parties that the existing property is a house in multiple occupation (HMO). Whilst not specifically referenced in the Council's reason for refusal on this matter, Policy D.H7 of the THP seeks to resist the loss or self-containment of good quality HMOs unless the proposal meets at least one of two criteria. The first criterion is, if it can be demonstrated that the accommodation is incapable of meeting the relevant standards for HMOs.
15. The officer report notes that the existing HMO is below current HMO licensing standards, in terms of room sizes and facilities offered, and would require a reduction in the number of bedrooms to comply. The Council agrees that the continued use of the property as an HMO would not be viable. I am provided

with no substantive evidence to reach a different conclusion on this matter, and accordingly the proposals would comply with Policy D.H7.

16. However, the main issue cited in the Council's reason for refusal is whether the proposal complies with THP Policy D.H2 in terms of the loss of a family sized dwelling. Policy D.H2 states that development which involves the conversion of family homes will only be permitted where a 3-plus bed unit is retained in the new development.
17. It is agreed that the existing property has more than 3 bedrooms, and the supporting text to Policy D.H2 clarifies that family homes are those with 3 or more bedrooms. However, the policy's supporting text states that the conversion to other residential uses, including HMOs, will be resisted. As such, the policy draws a clear distinction between family housing and HMOs. It therefore appears to me that, because the existing property is an HMO, it cannot also be considered a family dwelling.
18. The evidence refers to a planning permission granted at the site in April 2022 for the proposed change of use from HMO to a 3-bedroom dwellinghouse. Whilst I have not been provided with full details of the approved scheme, I acknowledge the consent appears to remain valid. However, I have no evidence to suggest this permission has been implemented, or any sufficiently persuasive reasons why I should consider the site to currently be a 3-bedroom dwellinghouse. This permission therefore holds limited weight in my decision.
19. Accordingly, for the above reasons, the proposed development would not result in the loss of a family sized dwelling and would not reduce the Borough's stock of family sized accommodation. It would therefore accord with Policy D.H2 of the THP which seeks, among other objectives, to prevent the loss of family homes.

Living conditions

20. The Council's concerns relating to daylight and sunlight are limited to the east-facing window in the roof mansard at the adjoining property of No 199 Mile End Road. A Daylight, Sunlight and Overshadowing Assessment (the DSOA) has been submitted in support of the appeal. This was not provided as part of the planning application. Whilst the DSOA assesses some windows in the adjoining property, it does not assess the window in question.
21. The appellant has signed a declaration stating that the owner of No 199 has confirmed that the relevant window serves a corridor measuring approximately 2 metres by 2 metres. Based on the size and location, the declaration asserts that the room is not capable of providing habitable living, sleeping or dining space. In the absence of any evidence to refute these claims, I give some weight to this declaration.
22. The DSOA states that it follows the guidance in "*Site layout planning for daylight and sunlight*" – third edition 2022, prepared by the Building Research Establishment (the BRE Guide). The BRE Guide sets out that it should be used flexibly and should not be seen as an instrument of planning policy. Similarly, paragraph 125 of the Framework advocates a flexible approach in the application of policies and guidance relating to daylight and sunlight. Paragraph 8.89 of the THP, which forms part of the supporting text to Policy D.DH8, explains that where proposals are subject to sunlight and daylight

assessments, they should follow the methodology set out in the most recent version of the BRE Guide and the British Standard Code of Practice for daylighting, which the DSOA also seeks to follow.

23. The DSOA has not assessed the window in question because it deems it to serve a 'non-habitable room'. Neither the BRE Guide nor the development plan contain any strict definition of what comprises a habitable room. However, Figure C3 of the BRE Guide advises that corridors need not form part of the assessment grid when calculating levels of daylight in accordance with the relevant British Standard. In the absence of any evidence to persuade me of an alternative approach, I find the approach taken by the DSOA to be appropriate.
24. The assessment tables in the DSOA find the proposals would have no effect on the daylight or sunlight afforded to the other windows at roof level at No 199. Based on my observations on site, I have no reason to dispute these findings or consider that any additional windows should have been assessed.
25. As such, in the absence of any evidence to dispute the appellant's declaration regarding the status of the east-facing window in the neighbouring roof mansard, the proposals would not adversely affect the daylight or sunlight afforded to No 199 Mile End Road. The proposals would therefore comply with Policy D.DH8 of the THP, which seeks to ensure development does not result in an unacceptable material deterioration of the sunlight and daylight conditions of surrounding development.

Other Matters

26. The proposed development would deliver additional residential floorspace in a sustainable location, and the subdivision into two self-contained units would make a small contribution to the supply of housing. However, any such benefits in this regard would carry limited weight and would not outweigh the harm previously identified.

Conclusion

27. Although I find no harm in terms of the effects on the Borough's stock of family housing or the living conditions of neighbouring occupiers, the proposed development would conflict with the development plan as a whole and there are no material considerations that would lead me to a decision other than in accordance with the development plan. Accordingly, for the reasons outlined above, the appeal should be dismissed.

P Storey

INSPECTOR