



Appeal Decision

Site visit made on 20 November 2023

by G D Jones BSc(Hons) DipTP DMS MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th January 2024

Appeal Ref: APP/U5360/W/21/3270613

364 Mare Street, Hackney, London E8 1HR

- 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.
 - The appeal is made by Mr Dhruv Patel of Clockwork Pharmacy Group against the Council of the London Borough of Hackney.
 - The application Ref TM/13072/1, dated 10 August 2020.
 - The development proposed is described as demolition of infill extensions to create courtyard and mixed use redevelopment, providing a part two and part five storey building to create 5 new retail units on ground floor and net 6 additional residential units on upper floors. Alterations to 364 Mare Street including internal reconfiguration and relocation of access to existing residential units and construction of a mansard roof.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for Costs

2. An application for costs has been made by Mr Dhruv Patel of Clockwork Pharmacy Group against the Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the host building and the surrounding area, including its effect on the Clapton Square Conservation Area and the grade I listed Old Tower of Former Church of St Augustine, having particular regard to 'the established hierarchies of scale of the area', 'the original historic roof form' of the host building, and the proposed shop front;
 - The effect of the proposed development on the living conditions of neighbouring occupants, having particular regard to effects on light and appearing 'overbearing';
 - Whether or not the proposed development would provide acceptable living conditions for its occupants, having particular regard to light and layout;
 - Whether or not the proposed development would include or secure suitable carbon reduction measures;
 - The absence of a legal agreement to secure planning obligations in respect to car-free housing and affordable housing; and

- Whether any harm arising would be outweighed by other considerations.

Reasons

Character & Appearance

4. The character and appearance of the area is heavily influenced by the historic environment. This includes the site's setting within the Clapton Square Conservation Area (the CSCA) and a number of historically / architecturally important buildings. Notable amongst these is the Old Tower of Former Church of St Augustine, listed at grade I (St Augustine's Tower).
5. St Augustine's Tower is the only remaining part of the former church. Historic England, in its consultation response to the related planning application, describes this medieval bell tower as *a monument of exceptionally high significance*. Its significance as a heritage asset stems primarily from being one of the very few surviving buildings from the mediaeval / Tudor village of Hackney, offering tangible evidence of the settlement's evolution from those times to the present, and from its evident high architectural and artistic interest.
6. Other historically important features in the vicinity of the site include the neoclassical Old Town Hall listed at grade II, an 18th-century house converted to a vestry hall in 1802 and redressed in stone as a town hall in 1900, which stands adjacent to St Augustine's Tower. St John's Church, dating from the 1790s with an 1820's tower, is listed at grade II*. In its consultation response Historic England describe this heritage asset as being of *great significance*. The brick perimeter wall of St John's Churchyard is listed in its own right at Grade II in two parts.
7. Historic England's consultation response also states that *this historic townscape group, though depreciated by indifferent twentieth-century development in their settings, is of great architectural interest and tells the story of Hackney's development from medieval village to prosperous Georgian suburb absorbed into Inner London*. It adds that *the visual relationship between the church towers is notably important, as is the legibility of the historic development of the townscape*. These considerations make an important contribution to the significance of the CSCA.

Scale

8. The proposals would remove poor-quality infill development and reintegrate the lost Mermaid Yard into the Mare Street townscape as a public space, emulating the form of historic galleried coaching inns of the sort that the Mermaid Inn may have been. These qualities, acknowledge by English Heritage, would bring important benefits.
9. Nonetheless, as Historic England has identified, the proposed new building would exceed the height of the buildings on the principal historic thoroughfare on Mare Street in a way that would disrupt the hierarchy of the townscape, incongruous to this backland location. The new building would also be highly visible from the adjacent churchyard, such that it would have a significant influence on the character and appearance of the area.
10. Due to its siting and mass compared to the existing development to be replaced, combined with surrounding development that would remain, it would

also create a greater sense of enclosure to the north of St Augustine's Tower. As Historic England has identified, this would *erode the character of the churchyard, disrupt the legibility of the townscape transition from Mare Street to backland, and change the low-key visual character of the backland site as the backdrop to the tower in views from the south.*

11. These combined effects would result in net harm, having taken account of the benefits referred to above, to the historic townscape causing less than substantial harm to the significance of the CSCA. The setting of St Augustine's Tower would also be affected. As Historic England identifies, it stands at *a transitional point in the Hackney townscape, between civic and commercial Mare Street and the verdant churchyards to the east and north, and the height of the proposed building risks making this transition of scale, massing and character illegible in its townscape setting.*
12. Indeed, rather than consolidating the backdrop of built form when viewed from the south, the new development would create a visually prominent form of excessive mass, incongruous and harmful to the setting of St Augustine's Tower. The associated net harm, having again taken account of the benefits referred to above, to the significance of this listed building would be less than substantial.
13. For the foregoing reasons, therefore, the proposed development would harm the character and appearance of the area, including in respect to the established hierarchies of scale. In doing so it would fail to preserve or enhance the character and appearance of the CSCA and have a harmful effect on the significance of the grade I listed St Augustine's Tower, via its effect on setting.
14. Consequently, in these respects, it would be contrary to Policies D3 (Optimising Site Capacity Through the Design-Led Approach), D4 (Delivering Good Design) and of the London Plan 2021, and Policies LP1 (Design Quality and Local Character) and LP3 (Designated Heritage Assets) of the Hackney Local Plan 2020 (the HLP), as well as with the guidance contained within Hackney Residential Extensions and Alterations SPD 2009 (the SPD).

Roof Form

15. The host building is neither listed nor locally listed. The proposed roof form would not alter the setting of the surrounding listed buildings, primarily due to intervening buildings, both existing and as proposed as part of this development. Although the rear alterations would be reasonably substantial and result in marked change, they would be very much in character with the immediate contemporary context, both existing and proposed.
16. In contrast the front elevation, to Mare Street, would present a fairly conventional mansard roof extension. While it is unclear from the evidence whether the current arrangement is, or is at least close to, the original roof form / profile, it seems most likely that it has been much changed from when originally constructed. On this and the foregoing basis, bearing in mind that there are comparable roof forms in Mare Street that sit comfortably with the character and appearance of the CSCA, the proposed roof extension at large would be in keeping with its context. I am also mindful that the National Planning Policy Framework (the Framework) indicates that mansard roof

extensions should be allowed *on suitable properties where their external appearance harmonises with the original building.*

17. Therefore, subject to the use of sympathetic materials, the proposed roof extension would not have a detrimental effect on the character and appearance of the area and host building, thus preserving the character and appearance of the CSCA. Consequently, in that regard, the appeal scheme would accord with Policies D3, D4 and HC1 (Heritage conservation and growth) of the London Plan 2021 and Policies LP1 and LP3 of the HLP, as well as with the guidance contained within the SPD.

Shop Front

18. The proposed shopfront to Mare Street could be improved upon, notably in terms of including a stallriser in keeping with the age of the original building and with the surrounding CSCA. Nonetheless, as the Council's conservation and heritage officer observed, beneath the cornice level the existing shopfront is of no interest.
19. The proposed shopfront would be a small improvement on the existing arrangement, primarily due to the use of a timber frame to Mare Street. Accordingly, this aspect of the appeal scheme would have a positive effect on the character and appearance of the area and host building, thus enhancing the CSCA's character and appearance, albeit in a small way. Consequently, in that regard, the appeal scheme would accord with Policies D4 and HC1 of the London Plan 2021, and Policies LP1 and LP3 of the HLP, as well as with the guidance contained within the Hackney Shopfront Design Guide.

Living Conditions

Neighbouring Occupants - Light & 'Overbearing'

20. Taking account of the information within the evidence regarding whether a window serves a residential habitable room and if a room is served by more than one window, the *Daylight and Sunlight Report (Neighbouring Properties)* for the appeal scheme indicates that the proposed development would have an acceptable effect on light to neighbouring properties.
21. For instance, the report indicates that *windows 94, 99 and 100* serve non-domestic properties. In any event, *window 99* would seem to be bricked up. *Windows 9, 17, 20, 31, 32, 39, 40, 43, 44, 49, 52, 57, 59, 60, 90 and 91* appear to be to rooms that are also served by a further window, such that the rooms concerned would continue to be served by acceptable light levels.
22. While the evidence does indicate that the proposed development would not fully comply with Building Research Establishment (BRE) recommendations, including in respect to sunlight and to outdoor amenity space, areas of non-compliance would be limited and not unusual in an urban location such as this. The BRE guidance is also clear that its numerical guidelines should be interpreted flexibly, given that natural light is only one of many factors in site layout design.
23. For the foregoing reasons, therefore, any effects of the proposed development on light and sense of 'overbearing' would be limited such that it would be unlikely to have a significant effect on the living conditions of neighbouring

occupants. Accordingly, in that regard, the appeal scheme would not conflict with Policy LP2 (Development and Amenity) of the HLP.

Residents of the Development - Light & Layout

24. *The Daylight and Sunlight Report (Within Development)* for the appeal scheme indicates that all proposed habitable rooms would comply with the minimum Average Daylight Factor Targets and thus satisfy the BRE daylight standard in that regard. The report indicates that while most of the proposed living rooms would comply with the sunlight hours test, three would not. Of these three proposed units, only one would have only north facing windows.
25. Bearing in mind the BRE guidance referred to in the evidence, particularly the example layout where 1 out of 5 apartments have only north facing windows, the proposed arrangement appears to be reasonable in terms of offering acceptable natural light. The overall internal and external layout does not appear to be unreasonable or inappropriate in a dense urban context such as this, in terms of providing acceptable living conditions for occupants of the development.
26. The proposed development would, therefore, provide acceptable living conditions for its occupants, having particular regard to light and layout. Consequently, in that regard, the appeal scheme would not conflict with Policy D6 (Housing quality and standards) of the London Plan 2021 and Policies LP1 and LP17 (Housing Design) of the HLP.

Carbon Reduction Measures

27. The Appellant's response to the seventh reason for refusal refers to agreement to pay *a carbon offset contribution in the amounts stipulated* by the Council. Although there is a draft unilateral undertaking, there is no completed legal agreement, nor any other mechanism, before me that would secure such proposed mitigation were the appeal to be successful and planning permission granted.
28. On this basis, the proposed development would not include or secure suitable carbon reduction measures contrary to Policies SI 1 (Improving air quality), SI 2 (Minimising greenhouse gas emissions) and SI 4 (Managing heat risk) of the London Plan 2021, and Policies LP54 (Overheating and Adapting to Climate Change) and LP55 (Mitigating Climate Change) of the HLP.

Wider Legal Agreement Matters

29. As outlined in the foregoing subsection, there is no finalised legal agreement before me. It appears that it was also the intention of the appellant for the planned legal agreement to address the eighth reason for refusal regarding car-free development. In the absence of a completed legal agreement or other mechanism to deliver the intended mitigation, there can be no certainty that the development would be car-free. Consequently, if the appeal development were to proceed it would be likely to lead to the use of non-sustainable modes of transport and contribute to air pollution and congestion contrary to Policy LP45 (Parking and Car Free Development) of the HLP.
30. Regarding affordable housing, the appellant maintains, with reference to a viability report submitted with the appeal planning application, that the appeal scheme would be unviable with any affordable housing included. On this basis

the proposed scheme would accord with HLP Policy LP13 given that it requires affordable housing provision subject to viability. I have, nonetheless, misgivings over this matter, particularly bearing in mind the considerable passage of time since the viability assessment was undertaken. I return to this matter, along with some of the foregoing considerations, in the following subsection.

Other Considerations and the Planning Balance

31. As the appeal development would cause less than substantial harm to the significance of the CSCA and of the grade I listed Old Tower of Former Church of St Augustine, there are two balancing exercises to be done. The first is that set out in para 208 of the Framework, in the context of the statutory requirements of s66(1) and s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The second is the more common balancing exercise under s38(6) of the Planning and Compulsory Purchase Act 2004 having regard to other material considerations, including the Framework. The former is dealt with first as its outcome has the potential to affect the operation of the latter.
32. The proposed development would bring a number of public benefits as identified in the evidence. These include the provision of new housing and enhanced retail floor space in a sustainable location, the benefits associated with the construction process and additional residents, biodiversity and planting benefits, the provision of good quality publicly accessible space and enhancements to the built environment, the opening of new public views, including to St Augustine's Tower, and improvements to the character and appearance of the area that would be brought about by the removal of unsympathetic existing development that has a detrimental effect on the character and appearance of the CSCA and the setting of St Augustine's Tower.
33. While not its principal source, St Augustine's Tower's wider setting, including the appeal site, makes a considerable contribution to the significance of this designated heritage asset. Although that contribution is modest in comparison to the other factors that contribute to its significance, it is nonetheless valuable. As a listed building, St Augustine's Tower is of national importance. Moreover, as a grade I listed building, it is of exceptional interest, with only around 2.5% of listed buildings being at grade I.
34. The totality of the benefits would be weighty. However, they are not collectively sufficient to outbalance the identified less than substantial harm to the significance of the listed St Augustine's Tower alone given that such harm should be given considerable importance and weight and bearing in mind the national importance and exceptional interest of this heritage asset. Of course, the identified less than substantial harm to the significance of the CSCA would also weigh against the public benefits. Therefore, the combined harm to these heritage assets would very comfortably outweigh the suggested benefits in the terms of para 208 of the Framework.
35. In coming to this conclusion, I have taken into account that the benefits directly associated with the development, such as the delivery of housing and retail floor space, and investment associated with the development and new uses, would be commensurate to the reasonably modest scale of development. Any weight resulting from the creation of new public views of St Augustine's

Tower would be limited given that they would be comparable to existing views currently available from within the churchyard.

36. Given the outcome of the Framework para 208 balance as outlined above, even if there were no harm to the character and appearance of the area and associated identified development plan policy conflict, when undertaking the s38(6) planning balance there would be insufficient additional weight in favour of the appeal development, including in respect to *rising material and labour costs putting a strain on all building projects* and calls for *the densification of urban centres*, to outweigh the harm to the significance of St Augustine's Tower and of the CSCA as heritage assets.
37. In other circumstances, I might have sought an update from the main parties as to the progress of the planned legal agreement and the matters relating to the fourth and fifth 'main issues' discussed above. However, bearing in mind the outcome of the foregoing balancing exercises, I have opted not to do so on the basis that the proposed non-provision of affordable housing and potential securing of mitigation in respect to carbon reduction and car-free housing could, at best, have carried no more than limited, non-determinative weight in favour of the proposed development.

Conclusion

38. While in some respects the proposed scheme would contribute positively to sustainable development objectives as set out in the Framework, particularly in terms of housing delivery, it would not be sustainable development in the terms of the Framework such that there is no presumption in its favour.
39. Moreover, it would conflict with the development plan taken as a whole and there are no material considerations that have led me to conclude that the decision should be made other than in accordance with the development plan. Indeed, notwithstanding the development plan, there are significant material considerations related to the identified harm to Clapton Square Conservation Area and to the grade I listed Old Tower of Former Church of St Augustine that indicate that planning permission should not be granted.
40. Accordingly, the appeal should be dismissed and planning permission refused.

G D Jones

INSPECTOR