



## Appeal Decision

Site visit made on 19 October 2023

**by P Storey BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 January 2024**

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**Appeal Ref: APP/U5360/W/23/3318030**

**Partly Complete Hotel, 17–33 Westland Place, London N1 7LP**

- 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 Kamal Pankhania of Acre City Ltd against the decision of the Council of the London Borough of Hackney.
  - The application Ref 2022/2396, dated 29 September 2022, was refused by notice dated 29 January 2023.
  - The development proposed is 5th floor extension to provide an additional eleven rooms in the approved and partly completed hotel.
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### Decision

1. The appeal is dismissed.

### Applications for Costs

2. An application for costs has been made by the Council of the London Borough of Hackney against Acre City Ltd and is subject to a separate decision.

### Background and Main Issue

3. The appeal site benefits from planning permission for the erection of a hotel. At the time of my visit the external structure of the hotel was largely complete, extending 5 floors above ground level with plant and ancillary equipment at roof level. The development to which the appeal relates seeks to increase the overall height by extending above the consented roof level.
4. The main issue is therefore the effect of the increased massing on the living conditions of the occupiers of neighbouring residential units at Chocolate Studios and 18-28 Westland Place, with specific regard to daylight and sunlight.

### Reasons

#### *Daylight*

5. The appeal site lies in a dense urban location. There are a variety of uses in the surrounding area and the appeal site has a close relationship to neighbouring buildings on all sides. Residential units at Chocolate Studios sit a short distance to the west within a building slightly taller than the existing hotel. To the east is 18-28 Westland Place, a residential building of similar height to the hotel that is separated by the narrow street of Westland Place.
6. A daylight and sunlight report (the DSR) was submitted in support of the planning application to which the current appeal relates. The DSR uses the consented scheme as the baseline position to measure the changes that would

result from the proposed scheme. Based on the evidence provided and my observations on site, I do not dispute the scope of the DSR.

7. The DSR advises that it was prepared to accord with the Building Research Establishment Report, *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice*, 2nd Edition, 2011 (the BRE Guide). I note the BRE Guide was revised following the preparation of the DSR. However, I have no reason to doubt that the DSR and BRE Guide remain relevant considerations for the purposes of this scheme.
8. The DSR sets out the results of a Vertical Sky Component (VSC) assessment for affected windows on neighbouring properties. The only windows that would fail the test set by the BRE Guide are within the block of 18-28 Westland Place, to the east of the appeal site. The existing VSC values for many windows within this building are low, with a significant proportion falling below the expectation of the BRE Guide for conventional windows.
9. Because some of the affected windows are set within recessed balconies, the daylight they are afforded is further limited by their design. As such, the existing VSC values for these windows are generally even lower than most other windows on the building. Nevertheless, the proposed development would have a profound effect on the already limited daylight afforded to these windows. The BRE Guide advises that proposals should ensure a VSC value of at least 0.8 times the former value should be retained for affected windows. In this case, several would fall significantly below this figure, with one particular window being as low as 0.15 times the former VSC value.
10. It appears from the submitted evidence that the recessed balconies serve living areas. These rooms appear to be open plan and contain kitchens that are served by another window on the opposite elevation. However, the rooms are large, with the balcony windows appearing to provide the main source of daylight for the living areas. As such, even though the rooms may be dual aspect, the proposal would have a significant adverse effect by reducing the daylight afforded to the balcony windows.
11. The DSR notes no specific conflicts in terms of VSC with regard to Chocolate Studios when assessed against the baseline position. However, the existing VSC values, particularly for the lower floors, are generally low. As such, although the proposal would only result in a slight reduction to the baseline VSC values, further erosion of this would have a disproportionate effect on the living conditions of occupiers.
12. The Daylight Distribution (DD) assessment, using the No Sky Line (NSL) method, as set out in the BRE Guide, indicates the points in rooms of adjoining properties which can and cannot see the sky. Using this method, the diagrams submitted with the DSR illustrate that based on the consented development, the daylight afforded to the lower floors of 18-28 Westland Place is very limited, whilst the highest floor is unaffected by development.
13. It is acknowledged that the rooms served by recessed balconies may also be served by windows on the opposite elevation, which would affect this assessment. However, whilst the precise use of each room is not known, the submitted floorplans indicate it is likely that the majority would serve single-aspect bedrooms where such mitigation would not exist.

14. The proposal would have no effect on the highest floor. In purely numerical terms, the rooms on the third floor would appear to be the most severely affected, with a significant proportion of the available daylight being eroded. Even considering that the existing baseline demonstrates that many windows are afforded limited daylight under the NSL method, the proposal would reduce this further still, which would further compromise the living conditions of occupiers.
15. The proposal would appear to have a limited effect on the NSL area for the majority of rooms of Chocolate Studios. One room would breach the BRE Guide figures, and whilst the breach would not be significant, it would add cumulatively to the adverse effects felt elsewhere.

### *Sunlight*

16. The Annual Probable Sunlight Hours (APSH) analysis, forming part of the DSR, sets out that of the 143 windows assessed, 14 would fall short of the requirements set by the BRE Guide. All of these windows would be located within 18-28 Westland Place.
17. The baseline position establishes that the existing sunlight afforded to 18-28 Westland Place, particularly for the lower floors, is limited. The first-floor windows would not be greatly affected by the proposal. However, the effects of the proposal on the already limited sunlight afforded to several of the second-floor windows would be significant, with the annual sunlight afforded to some windows being halved.
18. It is acknowledged that several of these windows serve bedrooms, which the BRE Guide acknowledges to be less important in sunlight terms than living areas. There are also some design limitations to the windows serving living areas, including the recessed balconies. However, the figures demonstrate that the proposed development alone would have a significant effect on the sunlight afforded to these properties. Without even considering any existing effect of the consented development on these properties, this demonstrates that the proposed development alone would have a harmful effect on the living conditions of occupiers.

### *Conclusion on main issue*

19. The BRE Guide, the National Planning Policy Framework (the Framework) and the development plan are clear that a flexible approach should be taken with regard to matters of daylight and sunlight, particularly in dense urban locations such as the appeal site. The evidence available to me, including the existing levels of daylight and sunlight afforded to neighbouring properties, indicates that whilst the consented scheme may not have strictly accorded with all relevant tests outlined in the BRE Guide, this was interpreted flexibly. I have considered the current appeal in the same flexible terms. However, in this case, even without considering the existing effects of the consented development, the shortfalls against the BRE Guide values when assessed against the baseline position alone are so significant that I conclude the impacts would be unacceptable.
20. For the above reasons, the proposal would create an unacceptable loss of daylight and sunlight to occupiers of neighbouring properties, resulting in harm to their living conditions. This would conflict with Policies LP2 and LP25 of

'Hackney A Place for Everyone', Hackney Local Plan 2033 Strategic Planning, Adopted July 2020 (the HLP), and Policy D6 of the London Plan – March 2021, which together seek, among other objectives, to ensure no significant adverse impacts on the amenity of occupiers and neighbours, including providing sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context.

### **Other Matters**

21. An update to the Framework was published on 19 December 2023 but there are no material changes relevant to the substance of the appeal.
22. The appeal site is within the Underwood Street Conservation Area (the CA). Accordingly, the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area.
23. The CA is relatively compact and covers an area comprising the frontage to the busy A501 City Road and the streets behind it to the north. Dense, street-fronting blocks of traditional 3 to 4 storey brick buildings are interspersed with contemporary development of varying height and materials. The significance of the CA is derived predominantly from the dense, historic street layout and the relationship between traditional and contemporary forms of development.
24. The proposed development would not disrupt the traditional street layout and would be of a scale and form that would be compatible with the wider characteristics of the CA. Based on the details before me, the character and appearance of the CA would be preserved.
25. I have been provided with a previous appeal decision relating to the appeal site that was dismissed in December 2020. This sought to vary conditions of the original planning permission for the erection of the hotel. I understand there are some similarities and also some differences between the current and previous schemes, although I am provided with limited substantive details of the previous proposal. As such, the previous appeal is of limited weight in my assessment, with the evidence submitted in relation to the current scheme forming the main basis for my assessment.
26. It is acknowledged that the proposed development would deliver some benefits through the provision of additional visitor accommodation and associated employment and economic benefits. This is supported by development plan policy including HLP Policy LP25. However, Policy LP25 also requires that development does not cause an unacceptable level of disturbance to, or loss of amenity to, occupiers of surrounding premises. Given the considerations above, the proposed development would not comply with this requirement, resulting in overall conflict with the policy. As such, the benefits would not overcome the identified harm.

### **Conclusion**

27. For the reasons given above I conclude that the appeal should be dismissed.

*P Storey*

INSPECTOR