
Appeal Decision

Site visit made on 15 June 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

Appeal Ref: APP/U5360/W/22/3302308

53 Laburnum Street, Hackney, London E2 8BD

- 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 Russell Gray of Shiva Ltd against the Council of the London Borough of Hackney.
 - The application Ref 2022/0816, is dated 29 March 2022.
 - The development proposed is retention and alterations to rooftop railings situated on the single storey north west building.
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Decision

1. The appeal is allowed and planning permission is granted for the retention and alterations to rooftop railings situated on the single storey north west building at 53 Laburnum Street, Hackney, London E2 8BD in accordance with the terms of the application, Ref 2022/0816, dated 29 March 2022, and the plans submitted with it, subject to the following condition:

1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; 2021PD-HX05; 2022-SHK-01; 2022-SHK-02; 2022-SHK-03; and 2021PD-HX04.

Procedural Matters

2. The appeal was lodged against the failure of the Council to determine the application within the statutory time frame. This expired on 24 May 2022 and the appeal was lodged on 1 July 2022. Notwithstanding this, the Council issued a 'decision notice' on 19 July 2022. I have used this as the basis of the Council's case.
3. The description of development on the Council's 'decision notice' differs from that on the application form. Notwithstanding that the appeal form uses the description on that 'decision', there is no evidence to show that a change in the description was agreed. Therefore, I have used the description from the application form in my header.
4. This is one of a number of appeals at the site that I am determining. Whilst in each there are themes that are common to more than one of these cases, they are determined individually on their own merits. I carried out the site visit for all of these cases on the same day.
5. The parties were consulted on the changes made by Government to its National Planning Policy Framework ('the Framework') on 19 December 2023. Neither

party found the changes to be of any consequence to the appeal and made no further comment on the matter. I have taken the changes into account in my decision.

Main Issue

6. The main issue is the effect of the development on: the character and appearance of the area, in particular the Regent's Canal Conservation Area ('RCCA') and the host building; and the setting of the Grade II listed Haggerston Bridge.

Reasons

7. The appeal site identified in red on the site location plan submitted with the application, is a complex of buildings that are bounded by Laburnum Street to the south, Haggerston Road to the west, Regent's Canal to the north and relatively recent residential development to the east. The fence that is the subject of this appeal would be erected around the flat roof of the building that lies at the northwest end of the site.
8. Whilst this building is accurately described as having a single storey, its height is akin to that of a two-storey building due to its previous commercial use. It has a flat roof that is, in the main, covered in wooden decking. When I visited, there were, amongst other things, various quite large art exhibits, tables and benches on this roof.
9. The Regent's Canal cuts through North London, running from the Grand Union Canal at Paddington to the Thames at Limehouse. The length that runs through Hackney has been designated as the Regent's Canal Conservation Area ('RCCA'). In the vicinity of the site, its boundary follows both banks of the canal quite closely, save for where it wraps around the appeal site and the residential development on its east side.
10. Decision-makers have a statutory duty¹ to pay special attention to preserving or enhancing the character or appearance of conservation areas.
11. The Regent's Canal Conservation Area Appraisal, October 2007, describes the varied townscapes in sections of the RCCA along the length of the canal within Hackney Borough. The section from Queensbridge Road Bridge to Kingsland Road, in which the site lies, is described as being more mixed in character with surviving industrial wharves to both the south and north banks. These include Brunswick and Columbia Wharves. However, save for a photograph of Brunswick Wharf as it was then, there is no description of the site. Its list of 'Buildings of Townscape Merit' does not include the collection of buildings at the wharves.
12. In his decision into appeals² against enforcement notices following a Public Inquiry, ('the enforcement Inquiry'), the Inspector refers to a Conservation Area Review, published by the Council in 2017. Although I was not supplied with a copy of this, he quotes from it in his decision. Those quotes identify that the earliest buildings are at the east side of the site and that those at the western end of the site are "of little historical merit". It is a site that the Review

¹ Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

² APP/U5360/C/19/3242430 and APP/U5360/C/20/3260019

describes as being “semi derelict” and identifies it as having potential for new uses and or redevelopment.

13. I found that the buildings at the west end of the site are unprepossessing and lack architectural or historic interest. However, although suffering from graffiti like others in the area, I did not find them to be semi derelict.
14. The RCCA is a designated heritage asset of great significance. As the enforcement Inquiry Inspector put it, the significance of the RCCA lies in its industrial character and appearance. The canal, with its surviving towpath, locks and bridges, cuts through a densely developed area of the city. It provides an important and well-used recreational area that has a distinctive ambience and a built form that provides echoes of its heyday. The earliest buildings on the site, at its eastern end, contribute to this significance. Conversely, those at the western end where the fence is proposed contribute very little.
15. Haggerston Bridge, a Grade II listed structure, is described in the statutory list as having a single span elliptical arch built of brick with stone. The bridge is a feature that adds much to the townscape, especially when seen from the canal; it is a designated heritage asset of much significance. There is a statutory duty³ for decision-makers to have special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess.
16. The fence is proposed to be erected at the edges of the building that face onto Haggerston Road and the canal. Presently, there is fencing here of various designs. Some of this is higher than that which is proposed and some lower. That which is higher is at the northern extremity of the building, above the canal. It consists of metal uprights linked by two horizontal metal bars. The horizontal members are unequally spaced, and it appears that there were diagonal members in the larger upper spaces that have been removed. The lower fence on the building has black metal uprights and horizontal bars.
17. It was this mixture of designs and forms that led to the enforcement Inquiry Inspector to describe the fence as “incongruous” in his decision on the enforcement notice Inquiry. It is described as being ‘ad hoc’ by the Council’s design officers, and was held by the enforcement notice Inquiry Inspector to be harmful to the RCCA.
18. It is proposed to erect a metal ‘post and rail’ fence of a similar design to the lower fence that is on the roof, with a uniform height of 1100mm to accord, I am told, with Building Regulations’ requirements. Its purpose is to provide safety to people on the roof and it is designed to reflect the 1960s warehouse and office building on which it would be erected.
19. The two-storey element of the building on the corner of Haggerston Road and Laburnum Street has a strong horizontal emphasis by reason of its alternate window and brick wall design. The proposed fence would run along much the same plane as the first-floor windows and would be seen as a continuation of this horizontal theme. Its utilitarian design would reflect that of its host building, which would not be harmed by the addition of the fence.

³ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

20. It would read as a sympathetic and appropriate feature in the townscape when seen from the principal public vantage points on Haggerston Road and along the towpath. As such, the character and appearance of the RCCA would be preserved and, thus, the statutory test would be met.
21. The glossary to the Framework defines the setting of a heritage asset as "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."
22. Due to its position and small size, the setting of Haggerston Bridge is restricted. In an east-west perspective, this is limited to the canal-side area between the B108 road bridge and the Overground railway bridge, though its significance decreases as one moves away to the east and west. Its north-south setting is limited to its immediate area on Haggerston Road.
23. The east-west setting is most important, as it displays its functional and historic relationship between the bridge and the Regent's Canal. As there is no visual link with the canal until one is practically on the bridge, when travelling north or south along Haggerston Road, one only appreciates that relationship in a small area of this road.
24. The fence would lie within the setting of the bridge and would be seen from it. It would also be seen in views along the canal to the bridge, most especially looking from the east. However, due to its scale, position above the canal and suitability to its host building, it would have no ill-effects on this setting.
25. The enforcement notice Inquiry decision informs me that planning permission had been granted in the past for, amongst other things, a fence on this roof. The Officer report for that proposal stated that as it would have been set-back by 1100mm the fence would not be visible from street level. In this context, street level could only mean Haggerston Road.
26. The point made by the Officer is not wrong, if set back less of the fence would be seen. However, this depends on where one would be standing. If one were on the footway immediately adjacent to the building, even a very small set-back would mean the fence would not be seen. However, even an 1100mm set-back would not have entirely hidden that fence were one walking along the footway on the other side of Haggerston Road. The lower part of the fence would be screened, otherwise it would have been seen.
27. Although I cannot be sure of the scale and position of the fence, shown in the computer-generated images produced by the Appellant for this proposal, to my mind they give a fair impression of what the case would be. The proposed fence would be clearly seen from Haggerston Road and from the canal side towpath.
28. Overall, whilst it would be clearly seen, I do not find that the proposed fence would be highly prominent and incongruous, nor that it need be moved back from the edge of the building. I agree that it would be unobjectionable, as was the view of the Central and South Hackney Conservation Area Advisory Committee, even "dull but acceptable", as was the view of the Hackney Society – both of which were consulted by the Council.

29. For the above reasons, the proposed development would preserve the character and appearance of the RCCA and preserve the setting of Haggerston Bridge, in accordance with the statutory tests and the guidance in the Framework. These are reflected in the terms of Policy HC1 of The London Plan, March 2021 ('LP') and Policy LP3 of the Hackney Local Plan 2033 ('HLP'), adopted July 2020. It is of a design that is appropriate to its canal-side setting and the building on which it would be erected. As such, it accords with the terms of LP Policies D3, D4 and SI 17, and HLP Policies LP1 and LP52.
30. The Council's 'decision notice' also refers to LP Policy D8 that relates to the public realm. Its supporting text defines this as "All the publicly-accessible space between buildings, whether public or privately-owned...including ...London's waterways". Applying this definition, the site is not public realm and, thus, the policy is not relevant to the proposal.

Conditions

31. The Council suggested two conditions. The first of these requires the permitted development to be removed in its entirety within 9 months, with the reason given as 'To safeguard the character and appearance of the area'. No reference was made to the application being made on a temporary basis, and there is no justification for the condition given in the Council statement. As such, I have not attached this. The second condition it proposes requires compliance with plans and documents. In principle, this is reasonable and necessary and I attach a slightly altered one that makes reference to drawing numbers. As both parties agree that the proposed development is partially retrospective, I need not attach the statutory time limit condition.

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed subject to conditions.

Roy Curnow

Inspector