
Appeal Decisions

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 A Ref: APP/U5360/W/23/3317065

53 Laburnum Street, Hackney London E2 8BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ('the Act') against a refusal to grant planning permission.
 - The appeal is made by Mr Russell Gray of Shiva Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2022/1606, dated 28 June 2022, was refused by notice dated 22 August 2022.
 - The development proposed is Erection of a single storey habitable rooftop pavilion ancillary to the existing uses of the site for a temporary period of three years together with permanent installation of perimeter safety railings located on top of the south west corner building.
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Appeal B Ref: APP/U5360/W/23/3317105

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 2022/2290, is dated 21 September 2022.
 - The development proposed is Increase in height of parapet wall at roof level by 3.6m and erection of temporary single storey structure (enclosed pavilion) at rooftop.
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Decisions

1. Appeal A - The appeal is dismissed.
2. Appeal B - The appeal is allowed and planning permission is granted for Increase in height of parapet wall at roof level by 3.6m and erection of temporary single storey structure (enclosed pavilion) at rooftop at 53 Laburnum Street, Hackney London E2 8BD in accordance with the terms of the application, Ref 2022/2290, dated 21 September 2022, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans, save where changes are required in accordance with the conditions below: Site Location Plan; Drawing Numbers: 2022-CPR-02, 2022-CPR-03, 2022-CPR-04, 2022-CPR-05, 2022-CPR-06, 2022-CPR-07 and 2022-CPR-08.

- 3) Full details, including physical samples, of all the materials to be used on the external surfaces of the development, including, but not limited to new bricks, window and door frames, and details of fenestration, windows and doors at 1:10 shall be submitted to and approved by the Local Planning Authority, in writing, before they are applied to the external faces of the development. The development shall not be carried out otherwise than in accordance with the details thus approved.
- 4) Detailed drawings /full particulars of the proposed development showing the matters set out below must be submitted to and approved by the Local Planning Authority, in writing. The development shall not be carried out otherwise than in accordance with the details thus approved.

Details of secure covered storage for at least 2 bicycles for the residential unit; and

Details of refuse storage arrangements for the residential unit.

The details shall be implemented in full prior to the first occupation of the residential unit hereby approved and thereafter retained.

- 5) The single-storey dwelling hereby approved shall not be occupied until the increase in height of the parapet wall has been completed in accordance with the approved drawings and any condition that is relevant to it.
- 6) Notwithstanding the details shown on Drawing 2022-CPR-05, prior to the commencement of the development hereby approved, full and appropriate details of the internal layout of the dwelling hereby approved shall be submitted to, and approved in writing by, the local planning authority. The works shall be carried out in accordance with the approved details prior to the occupation of the dwelling and not thereafter changed without the prior written consent of the Council.

Procedural Matters

3. These are two 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.
4. Appeal A is lodged against the Council's refusal to grant planning permission. Appeal B is lodged against the Council's failure to determine an application for planning permission within the statutory time frame.
5. On 24/11/2022 the local planning authority issued notice that it had declined to determine the application in Appeal B through the exercise of its discretionary power under section 70C of the Town and Country Planning Act 1990, as amended. This gives local planning authorities the power to decline to determine retrospective applications. S70C(1) states "A local planning authority may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control".

6. This decision was the subject of judicial review made by Shiva Ltd. It has since been agreed between the Appellant and the Council that this decision be set aside. In its statement of case, the Council set out the reasons it would have given for refusing the application, had it determined the application.
7. The parties were consulted on the changes made by Government to its National Planning Policy 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 Issues

8. A main issue in both appeals is whether, by reason of the unauthorised use of the site as a whole, planning permission could not be granted for the developments.
9. The main issues in Appeal A are the effects of the development on: the character and appearance of the Regents Canal Conservation Area ('RCCA') the setting of the Grade II listed Haggerston Bridge; and the living conditions of the occupants of nearby residential buildings by way of an overbearing effect.
10. The main issues in Appeal B are the effect of the proposed development on: the character and appearance of the RCCA; and the living conditions of future occupants of the proposed dwelling.

Reasons

The Proposals

11. The building that is proposed to be erected is the same in both appeals. It would be erected on the flat roof of the highest element on Brunswick Wharf.
12. The drawings describe it as a 'Prototype House'. It would have a rectangular plan form with its walls and almost flat roof being clad in copper panels. The walls on its eastern elevation would be punctuated by windows and a door, with windows on its western elevation. The floor plan has little detail, save that three 'habitable rooms' are shown. One would have an area of 39sqm and two others with floor areas of just under 16qsm. Accessed from the latter would be en-suite wc-shower rooms. Externally, the flat roof would be landscaped with various planters and seating. Access would be via a stairwell from a ground floor entrance.
13. In Appeal A, the roof at this level would be surrounded by perimeter safety fencing. In Appeal B, it is intended to erect brick walls enclosing the proposed dwelling, in a manner to match the exterior of the existing building.

Unauthorised use of the site

14. One of the appeals that I have determined along with this one is APP/U5360/X/22/3309275, which related to a proposal for a certificate of lawful existing use of the land across the whole of Brunswick and Columbia Wharves. In that appeal, which was the subject of a Hearing, the Council set out its case in detail that that non-compliance with condition 5 attached to the decision made by the Inspector in appeal APP/U5360/C/20/3260019 ('the enforcement Inquiry'), meant that the site had a 'nil use'. As the parties in the appeals before me and the enforcement Inquiry are the same, it causes no prejudice for me to refer to it here. My finding on the matter, in that decision,

after listening to the arguments from both sides, was that the Council's argument was mistaken. There has been a breach of condition 5, but this does not mean that the whole of the property has a nil use. As such, this provides no reason to dismiss the appeals before me.

Description of the site and the Character and Appearance of the RCCA

15. The Regents Canal runs from Paddington in the west, through North London to Limehouse in the east. The RCCA is a linear designation that follows the route of the canal and its various basins in the Borough. In the vicinity of the site, its boundary follows both banks quite closely, save for where it wraps around the appeal site and the residential development to its east.
16. It is clear from the evidence that the Appellant has a long-standing antipathy to the inclusion of the wharves in the RCCA, and has challenged the Council to justify this. Be that as it may, it is a matter of fact that the site lies within the RCCA. Therefore, I have to assess the proposals in the light of the statutory duty¹ to pay special attention to preserving or enhancing the character or appearance of the RCCA.
17. The Regent's Canal Conservation Area Appraisal, October 2007, describes the various 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 that form the appeal site.
18. In his decision, following an Inquiry into enforcement notices² issued by the Council, 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 to the east side of the site, on Columbia Wharf and that those at the western end of the site are "of little historical merit". The Review describes the latter as being "semi derelict" and identifies it as having potential for new uses and or redevelopment. I found that the buildings at the west end of the site are unprepossessing and lack interest. However, whilst suffering from graffiti like others in the area, I would not describe them now as being semi derelict.
19. The RCCA is a designated heritage asset of great significance. As the Inspector on the enforcement Inquiry 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 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.
20. The building at the western end of the site, on which the proposals would be built, dates from the late 1950s-early 1960s and is made up of a number of flat-roofed elements. Save that its commercial design provides echoes of the commercial and industrial past of the canal, it contributes very little to the

¹ Section 72(1) Planning and Listed Buildings Act 1990

² PINS reference numbers APP/U5360/C/19/3242430 and APP/U5360/C/20/3260019

RCCA. The element on which both developments are proposed to be sited is the highest part of the building, which lies at the junction of Haggerston Road and Laburnum Street. Notwithstanding that there are higher buildings in the area, including the Ark Academy immediately across Haggerston Road, this part of the building is prominent in the area's townscape.

21. Presently, there is a similarly sized building to those proposed on the roof, though it has a pitched roof. This is known as the 'Beach House' and it was the subject of three appeals³, that were decided in April 2017. One related to an enforcement notice requiring, amongst other things, its removal, and the other two related to proposals for its retention. All were dismissed, with the Inspector finding that it caused harm to the character and appearance of the building complex and those of the RCCA. I, too, find it to be a jarring feature in the townscape. However, the Inspector in those appeals found that there would be no harm to the setting of Haggerston Bridge. These decisions are material considerations in the appeal, and I agree with the Council that the presence of the Beach House should not be seen as setting a precedent for the appeals proposals. These should be assessed on their own merits, in the light of the development plan and other material considerations.
22. In both appeals, reference has been made to a planning permission granted under the Council's reference 2016/1551 for a rooftop pavilion. I have not, however, been given a copy of the decision or plans for that scheme. Notwithstanding this, the evidence before me shows that the 2016/1551 scheme involved the enclosure of the rooftop pavilion through the raising of the walls in a manner akin to those proposed in Appeal B. The Appellant states that this provides a precedent for his proposals.

Appeal B

Character and appearance

23. The Council states that the proposed scheme would preserve the appearance of the RCCA. Nonetheless, given the site's position within the RCCA, this is a matter that I have a duty to assess.
24. New walls would be constructed around the majority of the roof on which the proposed building would be constructed. These would use materials that matched those in the rest of the building and its design, with a strong horizontal emphasis of solid brick wall and windows, would also mirror the building. Although the walls would not protrude above the stairwell that gives access to the roof, there would be an increase in the building's massing.
25. However, given that a number of buildings close-by are high and of considerable mass – for example, the Ark Academy across Haggerston Road - I, too, find that the proposed development would not cause harm to the character and appearance of the RCCA.
26. The Council's objection relates to the proposed residential use in a commercial building which, it says, would be contrary to the character of the host building and the wider area.
27. Given that there are already two unrestricted flats in the building, as a result of the enforcement Inquiry decision, I do not concur with the Council's position

³ PINS Refs: APP/U5360/C/16/3149327, APP/U5360/W/16/3155988 and APP/U5360/W/16/3160494

that the proposed residential use of the proposed building would be contrary to the character of the host building and the wider area. The mix of commercial and residential uses, which the Council says would result, already exists.

28. For the above reasons, I find that the development that is proposed in Appeal B would preserve the character and appearance of the RCCA. It would thus pass the statutory tests and accord with the terms of the Framework. Their content is reflected in the terms of Policy HC1 of The London Plan, March 2021 ('LP') and Policy LP3 of the Hackney Local Plan adopted July 2020, with which the proposal also accords.

Living Conditions

29. The Council's case is that, given the lack of separation between the residential and commercial entrances, there would be a detrimental effect on the occupiers of both the commercial space and the residents of the proposed dwellings. In support of this, the Council states that Supplementary Planning Guidance ('SPG') produced by the Mayor of London requires entrance lobbies to be clearly identifiable and accessible from the public domain.
30. Although I was not given a copy of the SPG, I found the access from the street to accord with what I am told of its requirements. A door from the street led to a ground floor lobby. This gave pedestrian access to the commercial premises, as well as to flats at first floor level via a stairwell. The latter would also be the route to the proposed dwelling. The route would be clear to future occupants of the dwelling and I could not see how this shared arrangement would have an adverse effect on the living conditions of any existing or future occupants.
31. The Council agrees that the proposed residential units would meet space standards and potentially have suitable layouts. There is a lack of information on the drawings as to how rooms might be used and how furniture might be laid out, which I am told is a requirement of the SPG. However, as the accommodation would reach the required space standard, I have no reason to find that a suitable layout would not be achieved and that furniture could be accommodated.
32. In the circumstances, attaching a condition to my decision requiring details of the layout to be submitted and approved is necessary to ensure that the building has an appropriate layout. When consulted on this, neither party objected to the use of the condition. I have attached it to my decision.
33. On this issue, I find that the developments proposed in Appeals A and B could provide high quality internal and external space giving appropriate living conditions for future occupiers. This is, of course, subject to my condition regarding layout. The developments would have no ill-effects on other occupiers of the building. As such, the proposals would accord with the terms of HLP Policy LP17 that refer to this.
34. As the access and layout arguments are germane to both appeals, my findings here can be applied to Appeal A, notwithstanding that this was not given as a reason for refusal in that case.

Conclusion on Appeal B

35. For the above reasons, I find that the proposal would not cause harm to the character of the RCCA given that there are already lawful residential units in

the building. Furthermore, I find that the development would provide appropriate living conditions for the dwelling's future occupants.

Appeal A

Effect on the host building and the RCCA

36. In this appeal, a metal fence with uprights joined by five horizontal bars would be erected around the outer edge of the roof, rather than the wall in Appeal B. The prototype house would be erected in the same position as in Appeal B.
37. The Council's case evolved between the issuing of the decision and the appeal. In the former, the arguments related to its height, bulk, scale and inappropriate materials. In its statement of case its argument evolved to one that states that the proposal would not represent good quality design that would successfully harmonise with the design, character or appearance of the building or the wider RCCA. As the Appellant had the opportunity to, and did, comment on the Council's case, I have taken the latter position into account.
38. As will be seen from my findings on Appeal B, I am not of the view that the rooftop of the building must be free of development. Each proposal has to be considered on its individual merits.
39. In much the same way as the Beach House is, the dwelling would be clearly seen and would appear as an incongruous feature in its prominent second floor position. It would not be appropriate to the host building, appearing as an incremental addition that paid very little attention to the form of its host. The choice of materials would draw attention to the building, exacerbating the harm it would cause. Although I find that the existing commercial building adds little to the area, additions made to it should be appropriate or the result would be the diminution of the area's townscape. This proposal would harm the host building and the wider appearance of the RCCA.
40. Although the application was for the erection of a building for a temporary period, this does not justify the harm that would result.
41. The harm to the RCCA would be, in the words of the Framework, less than substantial. In these circumstances, the question as to whether the harm would be outweighed by public benefits needs to be addressed. The addition of a small dwelling to the housing stock would present a minor public benefit. However, this would not outweigh the harm that I have identified. The Appellant has not put forward any benefits that would arise, and I can see none but that I have mentioned.
42. Reference has been made to an addition that has been approved by the Council to Haggerston Baths, which lies quite close-by on Laburnum Street. I have not been given a copy of the approved scheme, but, in any event, each application has to be assessed on its individual merits. Here, I have identified that harm would arise to the host dwelling and the wider RCCA.
43. As a result, I find that the proposal would fail the statutory test and would be contrary to LP Policies D3 and D4 that require good design, and HLP Policy D1 that has the same aim.

Setting of the listed Haggerston Bridge

44. The Council's position is that the development would result in harm to the setting of Haggerston Bridge. This dates from the early 1800s, and the statutory list describes it as having a single span elliptical arch, that is built of brick with stone. It is a feature that adds much to the local townscape, and is a designated heritage asset of much significance. I have a statutory duty⁴ 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.
45. 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."
46. The bridge is best appreciated from the towpath and water. The elliptical nature of the arch, referred to in the listing, can only be seen from these vantage points. One can, however, appreciate the bridge on Haggerston Road from the rise and fall as the canal is crossed, and its parapet walls. Given its position, form and function, I find that its setting extends some way east and west along the canal, but is more limited north and south along Haggertson Road.
47. The site for the development is at the southern edge of the setting of the bridge on Haggerston Road. The proposed development and the bridge would be experienced together in views of the bridge from the north and in wider views of the bridge as one approaches along the canal from the east. However, due to the distance between the bridge and the proposed dwelling, and the form of the latter, neither the setting of the bridge, nor its significance, would be adversely affected. Both proposals would have a neutral impact.
48. Therefore, the setting of the listed Haggerston Bridge would be preserved, and the statutory test would be met. The scheme would accord with LP Policy HC1 and HLP Policy LP3, which mirror the statutory test, and the guidance in the Framework.

Living conditions of the occupants of nearby residential properties

49. In this respect, the Council refers to the dwellings on the south side of Laburnum Street, in a 4- and 5-storey residential building. That building has a number of windows looking north towards the appeal site. Both the appeal site and the residential building are set back from the road behind footways, so there is an appropriate distance between the two. Although the proposed building would appear as an incongruous feature when seen from the flats opposite, given its flat-roofed design, it would not have a great mass and would not result in an increased sense of enclosure for the occupants of the flats.
50. The relationship that would result is not uncommon in inner city areas. In this respect, I note the relationship between what appear to be two relatively new developments in Laburnum Street, the Ark Academy and a 4-storey flats development opposite. The Ark is higher and of significantly greater mass than

⁴ Section 66(1) of the Planning Listed Buildings and Conservation Areas Act 1990

what would result if the appeal proposal were allowed and sits a similar distance from the flats. There, the relationship between the developments is one that might be expected in a densely developed area as would be the case in the proposal before me.

51. For the above reasons, I find that in respect of this issue the development would accord with the design terms of LP Policy D4 and HLP Policy LP1, and would protect residential amenity in line with the terms of HLP Policy LP2.

Conclusion on Appeal A

52. Although I find that the proposal would not harm the setting of the listed Haggerston Bridge, nor the living conditions of neighbouring residents, it would cause significant harm to the character and appearance of the RCCA.

Conditions – Appeal B

53. The Council suggested 4 conditions. The Appellant has not commented on these. In addition to the statutory time limiting condition, a condition requiring adherence with the submitted plans and any changes to these that might occur through compliance with conditions is required. I have amended the wording to include the numbers of the drawings before me, to clarify matters.
54. I agree, given the site's sensitive location, that details and samples of external materials and surfaces would need to be approved prior to their application to the development. I have moved the requirement for window and door details to the condition regarding materials, as this makes more sense. I also agree that details of cycle storage and refuse bin provision are required. However, in respect of the latter, I have omitted reference to the commercial units. This is a permission for an additional dwelling, and it would not be reasonable to use it to place requirements on the existing commercial uses. I have not been provided with substantive reasoning of the need for measures to safeguard the amenities of residential and commercial occupiers in respect of the shared access, neither did I see a need for this at my site visit. I have not included this element of proposed condition 4.
55. The 'materials condition' is necessary, though I have amended it, including changing 'building' to 'development' to clarify that it also applies to the walls to be erected.
56. I have already referred to the necessity for a condition regarding the internal layout of the dwelling, in my reasons.
57. The Council did not include a temporary condition in its schedule. In an email dated 12 September 2023, the Appellant stated that the temporary status of the pavilion would allow meaningful interim use of the rooftop while the appellant contemplates wholesale redevelopment of the site in the medium term. He went on to say that the perimeter parapet wall could be permanent allowing it to be incorporated into potential future development.
58. Notwithstanding that the description of development sought permission for a temporary period and the submissions made by the Appellant, it would not be reasonable to grant a temporary planning permission for what is a fairly considerable building operation. The Council did not include a temporary condition in its schedule, and I agree that this is not necessary, as the development is acceptable and accords with the Council's policy guidance.

Overall Conclusions

59. Appeal B - For the reasons given above, the appeal is allowed subject to conditions.
60. Appeal A - Although I have found that the scheme would cause no harm to the setting of the listed Haggerston Bridge, nor would it result in adverse living conditions for existing and future occupants of the building, it would lead to harm to the character and appearance of the RCCA. Notwithstanding that this harm would be less than substantial, it is not outweighed by public benefits. I therefore conclude that the appeal should not succeed.

Roy Curnow

Inspector