



Appeal Decision

Site visit made on 31 January 2023

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/E5900/W/22/3290593

225 Mile End Road, 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 Nural Islam against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref: PA/21/01714, dated 26 July 2021, was refused by notice dated 3 November 2021.
 - The development proposed is described as: Construction of mansard roof to provide 1-bedroom, 1 person flat. Minor alterations to existing second floor flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of their appeal submissions the appellant provided two amended drawings. Whilst the appeal process should not be used to evolve a proposal to overcome the reasons for refusal, the amended drawings included within the Appellant's submissions do not change the physical attributes of the proposal but have added annotations to the previously submitted drawings to indicate those parts of the proposal where it is stated that the floor to ceiling height meets or exceeds the minimum requirement set out in the Technical housing standards – nationally described space standard 2015 (the Standard). Although there is no indication that these amended drawings were consulted on, because the amendments are to provide clarification and do not physically alter the scheme from that which was determined by the Council, I do not consider that any party's interests would be prejudiced by accepting these drawings. The Council had the opportunity to comment in respect of these drawings as part of its Statement of Case and whilst it notes the amended drawings, the Council nonetheless maintains its overall objection in respect of the standard of accommodation that would be provided.
3. Reason for refusal 4 on the decision notice issued by the Council, which relates to cycle parking, cites conflict with Policy D.TR2 of the Tower Hamlets Local Plan 2031, which was adopted in January 2020 (the Local Plan). This Policy relates to the effects of development on the transport network and does not refer to cycle parking provision. The Planning Officer's report, which does not set out the wording for the reasons for refusal in the copy that I have been provided with, refers to Local Plan Policy D.TR3 which, amongst other matters, requires that new development complies with certain parking standards for vehicles and bicycles. I have proceeded on the basis that the policy referred to

on the decision notice is a typing error and have determined the appeal having regard to Local Plan Policy D.TR3 in respect of this matter.

4. On 19 December 2023 the Government published a revised version of the National Planning Policy Framework (the Framework). Whilst this made certain revisions to aspects of national planning policy, generally only very minor alterations have been made to the provisions most relevant to this appeal in the sections relating to effective use of land, the historic environment, and design. The revisions did, however, add to Paragraph 124 e) of the 2023 Framework (previously Paragraph 120 e) that mansard roof extensions should be allowed on suitable properties where their external appearance harmonises with the original building, including extensions to terraces where one or more of the terraced houses already has a mansard. None of the other revisions are fundamental to the determination of the appeal. In determining this appeal, I have had regard to the most recent version of the Framework.

Main Issues

5. The main issues in this appeal are:
 - Whether the proposed development would provide suitable living conditions for future occupiers, with particular regard to outdoor amenity space;
 - Whether the appeal proposal makes suitable provision for cycle parking;
 - The effect of the proposed development on the character and appearance of the area, with particular regard to Carlton Square Conservation Area; and
 - The effect of the proposed development on the operation of the public house at 213-223 Mile End Road, with particular regard to overshadowing of amenity space.

Reasons

Living conditions of the future occupiers.

6. It is common ground that the proposed new flat would meet the required gross internal area of 37m² for a one bedroom, one person, flat with a shower room. Based on the amended drawings submitted with the appeal, the Council accepts that 85.8% of the gross internal area of the proposed flat has a ceiling height above the minimum required standard of 2.5m. Nonetheless, the Council continues to argue that the proposal is unsatisfactory due to restricted headroom. The plans show some areas under the roof planes where the headroom would be less than 2.5m, however, no substantive evidence has been submitted which would indicate how these limited areas would render the accommodation sub-standard. The proposal exceeds the requirement in Policy D6 of the London Plan 2021 (the London Plan) that a minimum floor to ceiling height of 2.5m is provided for at least 75% of the gross internal area of the dwelling. This requirement exceeds the 2.3m over at least 75% of the gross internal area minimum which is set out in the Standard.
7. Local Plan Policy D.H3 expects development to demonstrate that as a minimum it meets the most up to date space standards in the London Plan. Section 1 a. of Policy D.H3 appears on its face to require a minimum of 2.5m floor to ceiling height across the entire dwelling as it does not contain a reference to 75% of the gross internal area. However, the planning officer's report states that a

2.5m floor to ceiling height is required over 75% of the gross internal area and the council does not argue in its appeal submissions that its local policy differs from the requirements of London Plan Policy D6 in having stricter requirements. I therefore do not find any conflict with this aspect of Policy D.H3.

8. It is not argued that the proposed new flat would either not have a satisfactory outlook, or would not receive adequate daylight or sunlight. From what I have read and from what I saw when I visited the site, I have no reason to find differently. The proposal would comply with the relevant requirements of Local Plan Policy D.DH8 which seeks to ensure that habitable rooms in new development have an acceptable outlook and new residential development would receive adequate levels of daylight and sunlight.
9. The Council's principal concern is in respect of lack of private outdoor amenity space. It is not proposed to provide any outdoor amenity space as part of the proposed development. The appellant's position is that, due to the constraints of the site, it is not possible to incorporate outdoor amenity space into the scheme. I have also noted that the existing flats within the building do not have any external amenity space.
10. Policy D6 of the London Plan sets out that, unless higher local standards are set out in the borough Development Plan Documents, a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings. This requirement is echoed by Local Plan Policy D.H3. Neither policy, nor their supporting text, indicates that there are any exceptions to this requirement.
11. The Mayor of London's Housing Supplementary Planning Guidance (the SPG) does, however, set out that in exceptional circumstances, where site constraints make it impossible to provide private open space for all dwellings, a proportion of dwellings may instead be provided with additional internal living space equivalent to the area of the private open space requirement. In this case the principal constraint on the site is that the footprint of the building at roof level is insufficient to accommodate an extension to provide a dwelling which would meet both the minimum gross internal area requirement and the minimum requirement for private outdoor amenity space.
12. The proposed new flat would have a gross internal area of 40m², which exceeds by 3m² the minimum requirement for a 1 bedroom, 1 person, flat set out in the Standard and the development plan policies. However, this falls short of the 5m² required by the SPG to be equivalent to the external amenity space. That the appeal site is not physically large enough to accommodate both the requirements for internal and external space does not, in the absence of other practical or technical constraints, constitute an exceptional circumstance.
13. Although the existing second floor flat does not have any external amenity space, as the Council point out, this flat exceeds the minimum required gross internal area by 7m² and, as such, would meet the required current standards, albeit that planning permission for this flat was granted prior to the requirement being introduced.
14. My attention has also been drawn to a recent planning permission at 122 Mile End Road for the conversion of an existing building into three self-contained flats. I have been provided with a copy of the planning officer's report for the

listed building consent in respect of this proposal, which appears to also cover planning matters. The report does not set out what the gross internal area of the proposed flats would be, beyond stating that they would comply with the minimum internal space standards. With regard to external amenity space, the report does not set out what, if any, external amenity space would be provided and merely notes that all three flats fall short of the policy requirement. No plans or drawings for this proposal have been provided.

15. From the information provided, I cannot, therefore, be certain that the circumstances in this case are analogous to those in the proposal before me. In addition to this, it is clear that number 122 Mile End Road is a listed building which imposes additional constraints on development due to the requirement to have special regard to the desirability of preserving the building, or any features of special architectural or historic interest which it possesses, and which may be a material consideration which justifies deviating from other policy requirements. This is not the case with the current appeal building, which although it is within a conservation area, is not listed.
16. Consequently, I can give little weight to this point, and, in any event, each planning application and appeal must be considered on its own merits.
17. Due to the lack of provision of private outdoor amenity space, I find that the proposed development would not provide suitable living conditions for the future occupiers. It would not comply with the relevant requirements of Policy D6 of the London Plan, Policy D.H3 of the Local Plan, or the SPG which require new residential development to provide a minimum level of private outdoor amenity space.
18. The Council have also cited conflict with Local Plan Policy S.H1. This policy addresses meeting housing needs. However, none of the requirements of the policy relate specifically to the living conditions of existing or future residents or to the standard of accommodation. I therefore do not consider that it is relevant to this issue.

Whether the appeal proposal makes suitable provision for cycle parking.

19. The appeal scheme does not propose the provision of any cycle parking. Local Plan Policy D.TR3 requires that for a 1 bedroom flat, 1 cycle parking space is to be provided.
20. The appellant argues that it is not possible or practical to incorporate dedicated cycle storage within the building. The appellant also points out that there are cycle stands provided by Transport for London nearby, that the appeal site is close to Stepney Green underground station, and that there are frequent bus services on Mile End Road resulting in the area having a Public Transport Accessibility Level (PTAL) rating of 5 which indicates very good access.
21. In respect of this issue, my attention has also been drawn to the development at 122 Mile End Road which was permitted without dedicated cycle storage. From the Planning Officer's report in respect of that proposal it is clear that site constraints, including the internal configuration of the building and its listed status led to this exception being made and that the developer also offered to fund additional cycle stands.
22. The submitted drawings do not show a great deal of detail in respect of the ground floor of the building. However, they do indicate that access to the

upper floors is via a short, narrow, corridor leading to a flight of stairs and that there is no access to the rear of the building at ground floor level from this access. Given this, there would be inadequate space to provide internal cycle storage without obstructing access to the upper floors of building.

23. Policy D.TR3 is clear that new development is required to comply with the parking standards for vehicles and bicycles set out in the plan in order to facilitate sustainable travel patterns and address congestion. The policy does not make allowance for exceptions, although it does make allowance for a financial contribution to be made towards publicly accessible cycle hire scheme docking stations. This notwithstanding, no mechanism has been put to me as part of the appeal submissions to either provide an additional on street cycle stand, or to contribute to cycle hire scheme docking stations.
24. The Council has suggested that in the event that the appeal were to be allowed a condition should be imposed to the effect that details of secure cycle storage for the development should be submitted for approval prior to occupation of the dwelling. It is, however, not clear where such secure cycle storage could be located and whether in practical terms it would be possible to satisfactorily discharge such a condition.
25. Given the above, I find that the proposed development would not make suitable provision for cycle parking and, as such would not comply with Local Plan Policy D.TR3.

Character and appearance

26. The appeal building is a three storey, end of terrace, building comprising a commercial unit with a modern shop front on the ground floor and residential accommodation above. The front elevation of the building is finished in an off white render and features three simple pilasters rising from above the shop front fascia to the level of the parapet, which divide the façade into two bays. The exposed side elevation of the building is finished in a grey/brown pebble dashed render and terminates in a low parapet upstand. The building has an inverted pitch, or “butterfly”, roof with hipped ends, which is concealed in street level views by the front and side parapets.
27. The building is located on Mile End Road, a busy thoroughfare to and from central London. It is part of a short terrace of buildings. There is considerable architectural variety in this terrace with the buildings ranging from two to five storeys in height, with no two alike except number 241-243 which appears to be two buildings that have subsequently been combined into a single unit. There is also considerable variation in frontage widths and several more recent buildings have been inserted into the terrace. The neighbouring building at 227 Mile End Road has had a mansard roof added, as has number 241-243. Number 229, a two storey building, also has the appearance of having a mansard roof, although the aerial imagery included in the Council’s Statement of Case and in the Design and Access Statement suggests that this may be a cosmetic design addition to improve the appearance of a third storey with a large flat roof rather than being a true mansard roof.
28. At the end of the terrace containing the appeal building a covered passage provides access to Mile End Place, which comprises two terraces of two storey, traditionally constructed, houses running perpendicular to Mile End Road.

29. To the west of the appeal building is an external seating area associated with The Half Moon public house. Adjoining this external seating area is a four storey contemporary building forming an extension to the older building occupied by the public house. Beyond the public house is a continuous terrace running up to the junction with Globe Street, comprising three storey buildings with commercial uses at ground floor level. These are predominantly nineteenth century buildings except for the Co-op supermarket with flats above, which is a mid to later twentieth century insertion into the terrace. A mansard style roof extension has been added to one of the buildings forming this terrace, number 199 Mile End Road.
30. Opposite the appeal site, beyond a wide grass verge containing well established tree planting, is a substantial block of six storey modern flats. To the rear of the appeal building is part of a now closed cemetery, with terraced houses beyond this on Alderney Road.
31. The appeal site is also located on the edge of the Carlton Square Conservation Area. The conservation area is relatively compact in extent and focused around Carlton Square and Gardens. It is predominantly residential in character with commercial uses restricted to the Mile End Road frontage. Public buildings in the form of hospital buildings and a library are located on Bancroft Road. A large proportion of the interior of the perimeter block formed by Mile End Road, Globe Road, Alderney Road and Bancroft Road is occupied by two closed Jewish cemeteries enclosed by high brick walls to Alderney Road and Frimley Way. These are Listed at Grade II.
32. From the evidence, the area began to become developed along Mile End Road in the later seventeenth century. A Spanish and Portuguese Jewish community was present in the area from the earliest period of its development and there was further Jewish immigration during the nineteenth century. By the early part of the nineteenth century Mile End Road had become increasingly commercial in character and in the mid-nineteenth century the residential streets to the north of Alderney Road began to be developed. The Carlton Square Conservation Area Character Appraisal and Management Guidelines 2008 sets out that much of the nineteenth century housing development was to provide cheap and sanitary housing for the working classes. In the later part of the nineteenth century, the area to the south of Alderney Road, between it and Mile End Road, was developed.
33. The residential terraces that make up the majority of the buildings in the conservation area are generally two or three storeys in height, built in a buff brick with stucco detailing around the window openings and doorcases. Many of the houses have inverted pitch roofs which are concealed by parapets. Some houses on Alderney Road and Bancroft Road have traditional pitched roofs, although this is only evident where the gables are exposed at the end of terraces as the presence of front parapets, combined with the height of the buildings in relation to the width of the street, results in the roof planes not being readily apparent in views from street level.
34. Although there are some differences in detailed design between the individual terraces, within the terraces there is an internal consistency and, overall, the conservation area has a very uniform appearance derived from the houses having materials and architectural details in common. The only exceptions to this consistent appearance are the terraces fronting Mile End Road, including

the terrace containing the appeal building. In these, the ground floor commercial uses and more recent interventions result in a more visually diverse street scene. This is particularly evident in the terrace containing the appeal building where there is the greatest variety of building heights present.

35. From the submitted evidence, the significance of the conservation area, in so far as it is relevant to this appeal, is derived from its evidential value as an earlier settlement on a main route to and from London dating back to the initial late seventeenth century expansion of the city beyond the city walls, which has evolved over time and grown during the nineteenth century expansion of London to accommodate the growing working population. It provides evidence of the type of housing prevalent at the time for working people and the building techniques and materials used. It has architectural value arising from the survival of relatively unaltered Victorian terraced houses and aesthetic value derived from the appearance and uniformity of the terraces and the relationship of the buildings to the streets and spaces that they enclose. It also has substantial historic interest arising from the presence within it of the oldest Jewish burial ground in England.
36. The appeal proposal would result in the removal of the whole of the present main roof structure and its replacement with a new level of accommodation comprising a 1 bedroom flat accessed by a new staircase inserted into the current floorplan of the building. The glossary to the Framework defines a mansard roof as a type of roof that is characterised by two slopes, the lower steep and the upper shallow. The proposed roof extension has the general appearance and characteristics of a mansard roof although, due to the large flat central section, it is not technically a true mansard roof. Nonetheless, this approach is not dissimilar to that taken on number 229 Mile End Road which has the appearance of a mansard roof when viewed from street level.
37. The current roof of the building is not readily visible from any view points in the public domain and its form is disguised on the exposed end elevation by a raised parapet, beyond which the taller parapet wall of number 227 is visible. The appeal proposal would have a greater visual presence in views from Mile End Road because of the increased height and massing at roof level. From this viewpoint the proposed extension would have the appearance of a mansard roof and would resemble the appearance of the roofs of the neighbouring buildings at 227 and 229 Mile End Road. The proposed new roof would be of a similar height to the roof of number 227 and whilst the proposed dormer windows on the front elevation would be a different shape and size to that in the single dormer at 227, they would be consistent in shape and size with, and aligned with, the windows on the elevation of the appeal building. Although the exposed gable of the building is visible in oblique views along Mile End Road, the shape of the proposed roof extension would be concealed by the increased height of the gable parapet wall.
38. I saw when I visited the site that there are glimpsed views of the appeal building from a gap in the buildings on Globe Road to west and from Frimley Way. However, these are extremely limited and not views which would fall readily into the sightlines of people moving through the public domain in an ordinary manner. The principal public views of the building are from Mile End Road and in these views, the proposed extension would have the appearance of a traditional mansard roof.

39. Three of the eight buildings in this terrace have mansard style roofs and a fourth has a set back, top storey, penthouse. Where the rear of the terrace is visible from the public domain it does not have the appearance of a continuous run of butterfly roofs. The terrace to the west, whilst also having a varied rear elevation, has a more complete continuous run of butterfly roofs in its central section, which are visible from Globe Road and Frimley Way. Whilst the historic roof form of the appeal building would be lost, the roof is presently not especially visible from public view points and as such contributes little to the overall appearance of the conservation area.
40. In addition to its concerns regarding the loss of the butterfly roof, the Council's other principal concern is in respect to the uniformity of the terrace. The built frontage to Mile End Road between Globe Road and the boundary of the conservation area is, however, not a continuous terrace. There is an obvious break in the frontage at the outdoor seating area for The Half Moon public house and a narrower break where Mile End Place passes through the covered passage between number 241-243 and number 245.
41. I accept that there is a fairly uniform parapet line to the section from the junction with Globe Road to The Half Moon, although this is broken by the upward projecting party walls and mansard style roof extension to number 199. However, the section of the terrace which contains the appeal building is much less regular with considerable diversity in building heights, designs and ages. The appeal building does have a common parapet height with the adjoining building at 227, but the roof extension to this building with its upward projecting party walls to each side results in it currently appearing taller. The proposed roof extension would not exceed the height of the roof of the adjoining building at 227 Mile End Road and, overall, would not be as tall as numbers 235 and 237.
42. The heterogeneous nature and appearance of this section of the terrace does not necessarily detract from the appearance of the conservation area and, in part, reflects the fact that development on Mile End Road began earlier and was, historically, more commercial in character. Nevertheless, it is distinctly different from the uniform residential terraces to the north that are a significant defining feature of the conservation area as a whole.
43. The contemporary extension to The Half Moon public house is taller than the appeal building at present. From the submitted drawings, post-extension the appeal building would very slightly exceed the height of the extension to the public house. This notwithstanding, the visual relationship in terms of height between these two buildings to either side of the outdoor area of the public house would not be significantly altered. The Council point out that the extension to the public house has a parapet which is visible from the road and suggests that this forms a pairing with the appeal building. Whilst the appeal building has a façade terminating in a parapet, there is a clear visual break between the two terraces, which is evident even in long axial views along Mile End Road. This break in the built form becomes more evident in closer proximity to the appeal site. The appeal building also has a relatively narrow frontage and beyond this the built form of the terrace breaks down into disparate elements. The combination of the break in the street frontage with the varied built form of the terrace containing the appeal building results in any contribution that the appeal building makes to the perception of a continuous terrace being, at best, minimal.

44. The proposed extension would undoubtedly alter the appearance of the appeal building. However, in the light of the above, there is no persuasive evidence that this alteration would be harmful to the visual composition of the street frontage seen as a whole. The proposed development would not compromise the understanding of the historical function of Mile End Road as a commercial hub that developed on along a main route out of and into London. No other compelling evidence been put to me which would indicate that any elements of special interest or significance of the conservation area would be adversely affected by the appeal proposal. The effect of the proposal on the significance of the conservation area would consequently be a neutral one.
45. I therefore conclude that the proposed development would not be harmful to the character and appearance of the area, with particular regard to the Carlton Square Conservation Area. This would satisfy the requirements of the Act, paragraph 203 of the Framework, and would not conflict with Policies D4 and HC1 of the London Plan and Policies S.DH1 and S.DH3 of the Local Plan. When read together, these policies expect new development to be of a high standard of design which has regard to its context and which preserves or, where appropriate, enhances those elements which contribute to the special character or appearance of conservation areas.

The effect on the neighbouring public house

46. The Half Moon public house occupies a building just to the west of the appeal building. Between the public house and the appeal building is an external seating area which is enclosed on two sides by the public house and on a third by the appeal building and a boundary wall. To the Mile End Road frontage, it is enclosed by a tall metal railing and gates.
47. The appeal proposal would result in the gable end of the building at 225 Mile End Road being increased in height to extend the parapet wall above the height of the new roof extension. Local Plan Policy D.DH8 sets out that new development must not result in an unacceptable material deterioration of the sunlight and daylight conditions of surrounding development.
48. The Council also refer to Local Plan Policy D.CF4. This policy relates to development proposals which involve either the direct loss of a public house, the replacement of a public house, or development within the curtilage of a public house. The appeal proposal is none of these and this policy is, consequently, not relevant to the decision.
49. The supporting text to Policy D.DH8, which does not form part of the policy but which sets out how it is expected to be implemented, states that all major planning applications should be accompanied by a sunlight and daylight assessment, as should smaller schemes where adverse effects on daylight and sunlight levels are anticipated. The appeal proposal is not a major development.
50. The appeal proposal was accompanied by a shadow study which compared the effect of the proposed development with the present situation at both the summer and winter solstice. This shows no change to the level of shadowing within the external seating area of the public house and only a very minor effect on the public house building itself in the morning. The open side of the external seating area is broadly south facing and is presently enclosed on the other three sides by buildings of three storey height or equivalent. At the time

of the site visit, in the mid-afternoon on a bright day in late January, I saw that the external area was in full shade at ground level but was, nevertheless, being used by a number of patrons. Although the submitted evidence is limited in its scope, combined with my observations at the site visit, it does not suggest that the appeal scheme would be likely to have a significant adverse effect on overshadowing of the public house and its external seating area such that a full daylight and sunlight assessment would be warranted for a small scale development such as the appeal proposal.

51. From what I saw when I visited the site, I would concur with the appellant's assessment that, due to the current degree of enclosure to the external seating area, the increase in height of one part of this which would result from the appeal scheme would not be particularly noticeable to patrons of the public house using the external seating area. Nor do I consider that the appeal proposal would make the external seating area a less pleasant place to be.
52. The Council has not submitted any substantive technical evidence which would gainsay the shadowing study carried out by the appellant. Similarly, there is no substantiated evidence before me that would indicate that the viability of the public house would be affected as a result of a minor change to the degree of enclosure to the external seating area or, indeed, that the continued viability of the public house is dependent in any way on the presence of the external seating area.
53. I therefore find that the proposed development would not adversely affect the operation of the public house at 213-223 Mile End Road, with particular regard to overshadowing of amenity space. It would comply with the relevant requirements of Local Plan Policy D.DH8.

Other Matters

54. Although it has not been cited as a reason for refusal by the Council, Local Plan Policy D.TR3 requires that new residential development is permit free in terms of on-street car parking and that all parking associated with new development is required to be located off-street. It is not proposed to provide any off-street car parking as part of the appeal scheme, mostly due to the nature of the site making it not possible to do so.
55. The appeal site is located within a controlled parking zone where parking is restricted to permit holders between 8:30am and 5:30pm on Monday to Friday. In the vicinity of the appeal site, Mile End Road is a Red Route with a dedicated cycle lane and there are only limited opportunities for on street parking on Globe Road and White Horse Lane near to the appeal site. The appeal site does, however, have good access to public transport links, as reflected in its high PTAL rating, and there is a range of shops and facilities on Mile End Road within easy walking distance of the site. Consequently, occupiers of the proposed new dwelling would not necessarily be dependent on a private vehicle for their day to day transport requirements. Nonetheless, this does not necessarily mean that a resident would not wish to own a vehicle and park it close to the appeal site for use when other means of transport are not practical or desirable.
56. I saw when I visited the site that in those nearby streets where on-street parking is provided for permit holders, the available spaces were well used. Whilst I recognise that this is just a snapshot of the conditions at the time of

my site visit, I have no reason to believe it was not representative and it is also likely that there would be a higher demand for on-street parking in the evenings and at weekends. If the flat proposed by the appeal scheme were unrestricted, then this would have the potential to increase congestion and competition for the finite number of parking spaces available nearby.

57. The appellant has not addressed this point in their submissions other than to state that no car parking can be provided and that there are good public transport links to and from the site. The appellant has not put forward any mechanism which would ensure that the proposed development would be, in effect, car free. The Council did raise this point in the Planning Officer's report but, ultimately, did not refuse planning permission on this ground. Nevertheless, if this point is not addressed, the proposal would not comply with a requirement of Local Plan Policy D.TR3.
58. The Council has suggested that, in the event of the appeal being allowed, a condition should be imposed requiring a scheme to be submitted setting out the arrangements that have been or are to be made to ensure that the development would be car free. The Council state that this would effectively amount to a condition which would require the submission of a planning obligation to discharge it.
59. The Planning Practice Guidance (the PPG) sets out that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. The PPG notes that this may apply in the case of particularly complex development schemes.
60. The PPG also sets out that where consideration is given to using a negatively worded condition of this sort, the heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency. I do not have any heads of terms before me. The wording of the Council's suggested condition also seeks to control the actions of occupiers of the dwelling rather than to regulate the use or development of land.
61. In these circumstances, on the evidence put to me, I cannot be certain that any scheme that may subsequently be presented would satisfactorily address the matter of ensuring that the development was car free or that the terms of any obligation submitted would not be *ultra vires*.
62. Notwithstanding the above and the other issues in this appeal, the appeal proposal itself is not inherently complex either in terms of its concept, or its execution and implementation. From what I have read and from what I saw when I visited the site, it is necessary to ensure that the development is car free in order to avoid additional congestion and parking stress and to comply with the terms of Local Plan Policy D.TR3.
63. As this matter is not the sole issue where the proposal is in conflict with the development plan, the question of whether there is clear evidence that the delivery of the development would otherwise be at serious risk is intrinsically

linked to whether or not the appeal should be allowed. If the appeal can be allowed, an appropriately worded condition could be used to achieve a car free development.

Planning balance

64. I have found that the proposed development would not cause harm to the character and appearance of the area, or the significance of the Carlton Square Conservation Area, and that it would not have any adverse effects on the outdoor seating area or the viability of the neighbouring public house. However, I have also found that due to the complete lack of private external amenity space and cycle parking facilities, the proposal would not provide suitable living conditions for the future residents or make suitable provision for cycle parking. Additionally, the proposal does not include any mechanism to secure the development as car free. As a result, it would conflict with Policy D6 of the London Plan, and Policies D.H3 and D.TR3 of the Local Plan. The proposal would, therefore, not comply with the relevant requirements of the development plan when it is read as a whole. Significant weight has to be given to the conflict with the development plan policies.
65. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
66. It is not argued that the Council is unable to demonstrate a deliverable five year supply of housing land, or that the Council is failing to meet its housing targets. Nor is it suggested that the policies in the development plan which are most relevant to determining the appeal are out of date.
67. The appellant relies heavily on the point that the constraints of the site prevent the provision of outdoor amenity space and secure cycle storage. Taken in isolation, failing to provide storage/parking for one bicycle would not make the scheme as a whole unacceptable or harmful, given the availability of public transport nearby and the proximity of local shops and facilities. Nor would it prejudice the modal shift towards more sustainable modes of transport. Although it would not comply with the development plan, on its own, this would not be fatal to the scheme.
68. In terms of amenity space, it is not uncommon for upper floor flats in older properties to not have access to external amenity space. However, in many cases these flats have been created through sub-division, or small scale extensions to buildings, and many of these would have been created before current policies requiring the provision of external amenity space were adopted. I am mindful that the existing flats within the appeal building do not have access to any external amenity space. Nonetheless, as set out above, from the evidence provided in respect of the second floor flat, the gross internal area of that flat exceeds the minimum floorspace requirement by more than the requirement for external amenity space, which the SPG indicates is an acceptable alternative. Although the appeal proposal also exceeds the minimum gross internal area, it does not exceed this by the required 5m².
69. Constraints imposed by the form of a building or site can be a reason to relax standards, particularly in the case of listed buildings where any proposals have

to preserve the significance of the building, although the latter is not the case here. In addition to this, the Framework seeks to increase the supply of housing and, to make effective use of land, encourages the use of the airspace above existing residential and commercial premises to provide new homes where the development would be consistent with the prevailing height and form of neighbouring buildings and the overall street scene.

70. The revisions to the Framework are supportive of mansard roofs on suitable buildings. The glossary to the Framework sets out that these should be part of a terrace of at least three buildings and be at least two storeys tall with a parapet running the entire length of the front façade. Although the terrace containing the appeal building is varied in height, the lowest buildings are two storey and the appeal building has a parapet to the front façade. However, the glossary also defines a mansard as a type of roof characterised by two slopes, the lower steep and the upper shallow. The appeal proposal does feature two roof slopes to the front and rear, however, these do not meet at a single ridge and the appeal scheme features a significant section of flat roof between the sloping sections. As set out above, this is not a true mansard roof. Nonetheless, the proposal does gain some support from the Framework as it would be using the airspace above the building to provide a new home, creating a further small dwelling in an area with good public transport connectivity and access to local shops and services.
71. The Framework also expects new development to be of a high standard of design that will function well over the lifetime of the development, and which promotes health and well-being and provides a high standard of amenity for existing and future users. In purely visual terms, the appeal proposal would not be harmful to the appearance of the building or the surrounding area. However, the Framework considers design holistically and, due to the lack of external amenity space which is not compensated for by a commensurate increased gross internal area, the appeal proposal falls short of providing the high standard of design and amenity which is sought by the Framework and the space standard requirements in the development plan.
72. Making efficient use of land should not be conflated with maximising the use of land, nor is increasing the supply of housing an objective that should be pursued at any cost. Whilst I accept that alterations to existing buildings can be subject to site specific constraints, the appeal building, although it is within a conservation area, is not listed and not subject to the strict requirement for development to preserve the architectural and historic interest of the building. Ultimately, the appeal site is simply not large enough to provide a dwelling that meets the required internal and external space standards. In the absence of any evidence that there is a shortfall in housing land supply or delivery, the provision of one small, one person, dwelling is not sufficient to indicate that permission should be granted for a scheme that does not comply with the development plan policies. For these reasons, the appeal must fail.
73. The lack of any mechanism as part of the proposal to secure the development as car free results in the proposal not complying with part of Policy D.TR3. Although the Council have suggested a condition requiring a scheme to be submitted to address this, the PPG makes it clear that such a condition should only be used in exceptional circumstances.

74. Had the proposal complied with the relevant policies in all other respects, then it is likely that exceptional circumstances would exist, as although not a major or complex scheme, the delivery of the development would have been at risk. However, I am dismissing the appeal for other reasons and no other exceptional circumstances have been identified. The failure to secure the development as car free consequently also weighs against the proposal.
75. Whilst the proposal complies with some of the requirements of the development plan, it does not comply with London Plan Policy D6 or Policies D.TR3 and D.H3 of the Local Plan. The proposal therefore does not comply with the development plan taken as a whole and, as set out above, none of the other material considerations indicate that planning permission should be granted.

Conclusion

76. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR