



Appeal Decision

Site visit made on 5 March 2024

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

Appeal Ref: APP/E5900/W/23/3329635

7-9 Exmouth Street, London E1 0PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Immanuel Ezekiel of Little Stow Exmouth Limited against the Council of the London Borough of Tower Hamlets.
 - The application Ref is PA/22/01487.
 - The development proposed is described on the application form as 'demolition of existing building accommodating 4no. 1 bedroom and 1no. 3 bedroom flat. Construction of a 7 storey building accommodating 16no. flats, adaptable (Use Class E) communal amenity space, cycle store, refuse and recycling store, basement.'
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Decision

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

Preliminary Matters

2. The appeal is against the Council's failure to give notice of its decision within the prescribed period. The Council's case and its putative reasons for refusal are set out in the statement of case.
3. During the course of the appeal the appellant submitted a draft section 106 agreement and a signed unilateral undertaking, which seek to secure various financial contributions and other obligations, including towards child play space, and to prevent future occupiers from applying for on-street residents' parking permits. The Council have had the opportunity to comment on these legal agreements and I have taken the comments received into account. I return to this matter below.
4. Following the submission of the appeal the revised National Planning Policy Framework (Framework) was published in December 2023. The parties have had the opportunity to comment on this as part of their submissions.

Main Issues

5. The main issues are whether the development proposed would provide satisfactory living conditions for future occupiers with particular regard to communal amenity space and external child play space; and the effect of the proposal on the character and appearance of the area.

Reasons

Communal amenity space and child play space

6. The appeal site relates to an existing two storey building on Exmouth Street to the north of Commercial Road. The existing building was historically used as a public house but it has since been converted into flats. The area in and around Exmouth Street is of predominantly residential character, with a variety of non-residential uses on Commercial Road. The appeal proposal relates to the demolition of the existing building and the redevelopment of the site with a seven storey building incorporating a Class E unit on the ground floor, 16 flats occupying the floors above, and associated works.
7. For developments of 10 or more residential units, Policy D.H3 of the Tower Hamlets Local Plan 2031 (adopted 2020) (Local Plan) sets out that the size of the communal amenity space should be a minimum of 50m² for the first 10 units plus a further 1m² for every additional unit thereafter. Therefore, the appeal scheme would require 56m² of communal amenity space.
8. The original plans proposed 76m² of communal amenity space at roof level. However, a number of changes were made to the scheme following discussions with the Council. The latest revised plans upon which the appeal is to be determined removed the communal amenity space and it is upon these plans that I have based my reasoning.
9. Whilst I acknowledge that the site is accessible to off-site open spaces nearby, such as those that serve the existing residential blocks, this would not provide communal space at the site itself. Therefore, whilst each flat would be served by private balconies of adequate size, the development would not include communal amenity space for the use of future occupiers, contrary to the requirements of Policy D.H3 of the Local Plan.
10. Policy D.H3 of the Local Plan also sets out that, for major developments, a minimum of 10m² of high quality play space should be provided for each child occupying the development. This requirement is reflected in Policy S4 of the London Plan (2021). The child yield calculator indicates that at least three children would likely be accommodated within the development, which would equate to a minimum requirement of 30m² of child play space. That estimate is a reasonable one on the basis that some families with young children would be likely to occupy the development, which includes two and three bedroom units.
11. In the absence of any child play space within the development, I agree with the Council's approach that a financial contribution towards child play space off-site would be appropriate in accordance with the Planning Obligations Supplementary Planning Document (2021). The submitted draft section 106 agreement and unilateral undertaking include a child play space contribution of £34,258 towards the improvement of play facilities in the local area. I consider that such a contribution is necessary to make the development acceptable in planning terms, it is directly related to the development and would be fairly and reasonably related in scale and kind. However, whilst the terms of the section 106 agreement have been agreed with the Council, it has not been signed by three of the relevant mortgagees and is incomplete. Consequently, the agreement would not secure the contribution towards child play space, or the other financial and non-financial contributions contained therein, and I do not attach any weight to it.

12. A planning obligation is enforceable by the local planning authority against the person entering into the obligation and any person deriving title from that person. It follows that an obligation will not be enforceable against successors in title of those who were not a party to it. Given that the mortgagees are not included in the executed unilateral undertaking, it would not bind their interests. Consequently, I cannot be satisfied the unilateral undertaking is enforceable and capable of securing the contribution to child play space.
13. The Planning Practice Guidance (PPG) is clear that no payment of money or other consideration can be positively required when granting planning permission, but that 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, such as in the case of particularly complex development schemes. However, the PPG states that this is unlikely to be appropriate in the majority of cases and ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed.
14. The appellant has referred to a condition used by Hackney Council to address car parking permits, but that condition related to non-financial obligations, and it is therefore not comparable to the case before me. The proposal is not a 'particularly complex' one. There is no substantive evidence before me to indicate that delivery of the development would otherwise be at serious risk and it is open to the appellant to submit a new planning application. Accordingly, there are no exceptional circumstances that justify use of a Grampian style condition in place of a completed planning obligation.
15. The Council suggest that, had I been minded to allow the appeal, a period of grace could be given following the decision, for a section 106 agreement to be completed, which would enable the appellant to arrange for the mortgagees to be joined as parties. Based on the evidence before me, including the mortgagee responses provided, it is not sufficiently clear to me that the legal agreement can be completed within a reasonable period of time.
16. For the above reasons, I conclude that the proposed development would fail to make adequate provision for communal amenity space and external child play space. Therefore, it would not provide satisfactory living conditions for future occupiers. Accordingly, the proposal would conflict with the requirements of Policy S4 of the London Plan and Policy D.H3 of the Local Plan, which relate to housing standards and quality and the provision of play space.

Character and appearance

17. There are a range of building sizes and styles in the area, ranging from two and three storey buildings on Exmouth Street and Brayford Square, to the four storey Stepney Green Telephone Exchange to the south and six storey blocks of flats to the north, north-west and north-east. The existing building on the site is dwarfed by these neighbouring taller buildings. Therefore, building heights in the surrounding area vary considerably, as demonstrated by the appellant's local building height analysis.
18. While the height of the proposed development would rise significantly above the two storey buildings around Brayford Square, the site is more closely

aligned to the six storey apartment block on Cornwood Drive to the north and the telephone exchange to the south, which in addition to four storeys has further bulk visible to its roof due to the ancillary rooftop structures. Although the overall height of the proposal would be greater than the telephone exchange and the existing apartment blocks, it would not be significantly so when taking into account the rooftop structures on the neighbouring buildings. Seen in the context of these neighbouring buildings and the wider area, which includes a variety of building heights, the proposal would not appear uncharacteristically tall.

19. Furthermore, the scale and height of the building would be mitigated to some extent by the two upper floors being set in slightly on all sides, together with the use of visually lightweight cladding to the upper floors, which creates a subordinate relationship to the floors below. The first five storeys would have a more substantial visual mass due to the use of brickwork and this would be of similar height to the telephone exchange and nearby apartment blocks. The rooftop plant and machinery would be set back from the sides of the roof such that these would not be readily visible from street level. The proposal would not be harmful to the character of Commercial Road as it would be set well back and substantially screened by the telephone exchange. Viewed from Brayford Square it would be seen alongside the existing tall buildings and would not be unduly imposing in this context.
20. Therefore, given the mixed character and appearance of the surrounding area and the variety of roof forms and heights, I do not find that the proposal would be an unduly dominant structure within the streetscape. As such, I find that the proposed development would be appropriate for this area and its character would not be adversely affected. In reaching this conclusion, I have also taken into account other recent developments in the wider area, including the five, six and seven storey development on Jubilee Street, which demonstrate that differing roof heights of buildings are a feature of the area and can be successfully integrated into the streetscape.
21. Although the proposal would almost fill the plot and would lack soft landscaping, this is not an uncommon feature of buildings in this densely built up area. The development would retain roads on two sides and Brayford Square to the east and would therefore maintain a sense of space around the site. Therefore, taking the context of the area into account, I do not consider that the footprint of the proposal would give the impression of overdevelopment. While the Council are concerned that the new building lines would create corners and overhung spaces, I am not persuaded that this would create a more visually hostile environment or attract anti-social behaviour, particularly as the proposed flats would be likely to increase natural surveillance of the surrounding area.
22. The detailed design of the proposal, including fenestration, would be sympathetic to the surrounding area. While the Council raise concerns that there is a lack of detail on the external materials, the elevations indicate the use of high quality brickwork, metal cladding and large glazed openings which I consider to be acceptable in principle. Had I been minded to allow the appeal, a planning condition could have been imposed to require submission of precise details/samples of the materials.

23. For the above reasons, I conclude that the scale, height, massing, bulk and form of the proposed development would be acceptable. Consequently, it would not be harmful to the character and appearance of the area. Therefore, the proposal would comply with Policies D3, D4 and GG2 of the London Plan, Policies S.DH1 and S.DH2 of the Local Plan, and the Tower Hamlets Central Area Good Growth Supplementary Planning Document (2021). Amongst other matters, these policies and guidance require development to meet the highest standards of design and layout which respects and positively responds to its context, townscape and public realm. It would also comply with the Framework, where this seeks high quality development that is sympathetic to local character.

Other Matters

24. Following fire damage to the interior, I understand that the existing building, which was formerly Grade II listed, was de-listed by Historic England in 2019. One of the reasons for refusal of a previous application for redevelopment of the site referred to the loss of a non-designated heritage asset. However, there is no evidence before me to suggest that the building is on an adopted Local List. Nevertheless, the building does retain some interesting design and materials detailing such as the Victorian public house facade and fenestration pattern. That said, I note that the Council did not object to the current redevelopment proposal on heritage grounds and I concur with that view based on the evidence and my observations at the site.
25. In addition to the child play space contribution, the submitted legal agreements also contain other financial and non-financial contributions, including in relation to carbon offsetting and parking permit restrictions. For the reasons that I have set out above, the agreements would not secure these contributions. However, as I am dismissing the appeal for the reasons given above, it has not been necessary for me to consider this matter further.
26. The appellant says that the Council has not met its housing delivery target over the past three years. However, the published Housing Delivery Target results in 2022 show that in the last three years the council achieved a delivery rate in excess of the requirement. It has not been suggested that the Council is unable to demonstrate a deliverable five year supply of housing land. Therefore, on the basis of the evidence before me, I consider that paragraph 11(d) of the Framework is not engaged in this instance.
27. Nevertheless, I acknowledge that the development would offer social and economic benefits in terms of providing 16 flats in a sustainable location. High quality accommodation would be provided to meet the housing needs in the Borough, which is in accordance with the general aims of the Local Plan and aligns with the objective of significantly boosting the supply of homes, as set out in the Framework. It would make effective use of previously developed land and provide a new Class E unit, which would create employment opportunities, as would the construction phase of the development. Future residents would support the local economy by spending in the area. Given the scale of the development, I attach moderate positive weight to these matters.
28. The Council has raised no objections in relation to the effect of the proposal on the living conditions of neighbouring occupiers or highway safety, and I have no reason to find otherwise based on the evidence and my observations on the

site. However, compliance with the development plan in respect of these, or other matters, carries neutral weight.

Conclusion

29. I have identified that the proposal would not cause significant harm to the character and appearance of the area. However, it would fail to provide satisfactory living conditions for future occupiers with particular regard to communal amenity space and external child play space. This harm would be long lasting and is worthy of significant weight. I have attached moderate weight to the benefits of the scheme. Having taken all matters into account, I conclude that the benefits would not outweigh the significant harm resulting from the development.
30. The proposal does not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with the development plan. For the reasons given, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR