



Appeal Decision

Site visit made on 10 July 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2024

Appeal Ref: APP/E5900/W/24/3336451

21 Redmans Road, Tower Hamlets, London E1 3AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Redmans Property Ltd against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref is PA/23/00356.
 - The development proposed is the demolition of the existing warehouse building and site clearance, and the erection of two buildings up to four and a half storeys in height plus basement, to provide student accommodation with ancillary facilities, wheelchair accessible car parking spaces, bicycle parking, refuse storage and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to visiting the site I noted the submitted planning obligation was provided as counterparts, despite Government guidance¹ on planning obligations being explicitly against such an approach. Upon first raising this with the parties, the Council indicated it was content to disregard this Government guidance and noted there was nothing wrong in law for agreements to be executed as counterparts. However, on 1 July 2024 the appellant advised that a single obligation would be produced and submitted, which I received on 19 July 2024. I have considered this obligation in determining the appeal.
3. The appellant has submitted revisions to their proposal from that refused planning permission by the Council to try and address concerns raised. Government guidance² is clear that 'the appeal process should not be used to evolve a scheme...It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and by interested parties at the application stage'.
4. I have considered the position of the appellant as to why such revisions should be accepted in this case, including with regard to the substantive and procedural tests from the *Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)* judgement. Given the appellant is content the proposal refused planning permission by the Council is

¹ [Planning obligations: good practice advice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/planning-obligations-good-practice-advice)

² [Procedural Guide: Planning appeals – England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/procedural-guide-planning-appeals-england)

acceptable, I see no exceptional reason why such revisions should be accepted in this case.

5. Furthermore, the appeal site is located in a conservation area and, amongst other things, the revised proposal would result in a different external appearance to the development and there would also be considerable change to the layout, number and type of units within the proposed development. I consider these to be substantial changes.
6. Interested parties were consulted on the appeal by the Council in a letter dated 20 March 2024. This letter states that all previous representations made on the planning application were forwarded to the Planning Inspectorate and would be considered by the Inspector in determining the appeal.
7. However, the letter makes no reference to the revisions to the proposal made at appeal stage. I do not share the appellant's view that the appeal consultation '...will ensure that interested parties are aware of the limited amendments...'. Interested parties who made representations on the application, and which they were informed would be considered in determining the appeal, may not have reviewed the proposal again and so would be unaware of the revisions. It is not clear, therefore, that accepting the revisions would be procedurally fair.
8. I am not satisfied there are any exceptional reasons for accepting the revisions or that these would pass the substantive or procedural tests. I have, therefore, determined this appeal on the basis of the proposal refused planning permission by the Council.
9. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework), including draft text for consultation, as well as other proposed changes to the planning system. The Secretary of State also made a written ministerial statement (WMS) entitled "Building the homes we need".
10. Neither the consultation nor the draft Framework constitute Government policy or guidance. However, the WMS is an expression of Government policy. I have had regard to the views of the parties on this matter and I have also had appropriate regard to these documents as material considerations in determining this appeal.

Main Issues

11. The main issues are the effect of the proposal on:

- Employment land provision;
- The living conditions of future occupiers, with particular regard to the design and layout of the accommodation, natural light and privacy;
- The significance of the Stepney Green Conservation Area;
- Public safety; and,
- Energy provision, local infrastructure capacity and student accommodation.

Reasons

Employment land provision

12. The appeal site comprises two buildings and adjacent land. The main building faces onto Redmans Road and has basement and ground floor levels comprising some 920sqm of floorspace, with the ground floor of the building raised above the level of the surrounding land. The building was constructed as a warehouse and is currently used for the storage of leather goods with a limited ancillary office use.
13. The smaller building is located next to some commercial buildings at the northeastern corner of the site and is currently disused and in a semi-derelict condition.
14. The land to the front and side of the main building is used for the parking of vehicles, with the hardstanding land to the side said to be used as informal car parking associated with the use of the main building, and for a vehicle repair / storage use.
15. The site is not in a designated employment location, and is located in what I consider to be an area of mixed uses. Opposite the site, on the southern side of Redmans Road is a primary school. Whilst there is a considerable amount of residential accommodation nearby, there are also a significant number of light industrial uses in the immediate area³.
16. The proposal would result in the loss of all employment space at the site where, at the time the planning application was made, ten people were employed on a full-time basis.
17. Part 2 of Policy D.EMP3 (loss of employment space) of the Tower Hamlets Plan 2031 (THP) states that there should not be a net loss of viable employment floorspace at sites such as this, except under one of two scenarios.
18. Firstly, where evidence of active marketing (for employment use) over a continuous period of at least 24 months at a reasonable market rent is provided; or secondly, a robust demonstration that the site is genuinely unsuitable for continued employment use due to its condition, that reasonable options for restoring the site to employment use are unviable, and that the benefits of alternative use would outweigh the benefits of employment use, is made.
19. The appellant does not consider there to be a conflict with Policy D.EMP3 on the basis that the current employment floorspace is not viable. However, very little substantive evidence has been provided to support this position and I do not find it at all compelling.
20. From the Written Employment Land Statement (February 2023) (WELS), the current owners acquired the property in the early 1980s, and the business changed from leather goods manufacture to the storage of imported leather goods around 2000, more than twenty years ago.
21. The current occupier is said to be the owner and not to pay to use the space; the WELS states the occupier is understood to operate at a loss on this basis.

³ Including as referenced in the appellant's undated 'Loss of Employment Land Policy Position' document.

The vehicle repair and storage business is said to be sub-let to the owner. However, no details of any of this are provided.

22. Without evidence of the operation, costs and income of the current businesses, it is impossible for me to conclude that the current floorspace, which has been used for employment purposes for many years, is not viable and that Policy D.EMP3 Part 2 is not engaged, regardless of the assertions of the appellant, or the content of the WELS.
23. The appellant has not provided any evidence the site has been marketed for employment uses for a continuous period of at least 24 months and so the proposal would conflict with the first scenario of Policy D.EMP3 Part 2.
24. In terms of the second scenario of Policy D.EMP3 Part 2, all the specified criteria must be met. I do not consider the appellant has demonstrated that the site is genuinely unsuitable for continued employment use due to its condition. The WELS raises general concerns about the age, configuration, energy performance, accessibility and condition of the main building. However, a building survey and the estimated cost of addressing any identified issues is not in the evidence before me. Furthermore, the current business appears to operate with the building in its current condition and has done so for some time, whilst another business is said to operate from the hardstanding.
25. The WELS also raises concerns about the attractiveness of the site to certain types of employment use, given the nearby residential uses, the primary school and the traffic calming and emission restricting measures that are in place in the area. However, I note there are a significant number of light industrial uses in the vicinity of the site. The WELS does not demonstrate that similar light industrial employment uses of the site would be genuinely unsuitable and the site has operated in employment use for many years.
26. As there are current employment uses operating at the appeal site, reasonable options for *restoring* the site to employment use do not arise.
27. In terms of the benefits of the proposed development, there would be the provision of a considerable number of student dwellings, including affordable units and accessible units. However, as set out below, I have found that there would be an adverse effect on the living conditions of future occupiers of these units in a number of respects.
28. Notwithstanding the interesting architectural and historical features of the main building, which, as set out below, contribute to the historical significance of the Stepney Green Conservation Area (SGCA), the redevelopment of an under-used site in a sustainable location would be beneficial in urban design terms. There would also be short-term social and economic benefits from the construction of the proposed development.
29. However, from the evidence, I am not satisfied the benefits of the proposed development would outweigh the harm caused by the loss of employment land that currently provides full time work for ten people and which, in the same general configuration, has previously provided work for around forty people.
30. I note the assessment of market trends, demand and land availability contained in the WELS. However, the THP was no doubt informed by such evidence and forms part of the development plan for the area. I also note the Council's

comment that more recent evidence⁴ demonstrates that Tower Hamlets now has low industrial land vacancy rates. No compelling case has been made that the THP is out of date in this regard, that this land is no longer needed for employment purposes or cannot be used in this way.

31. For these reasons, the proposed development would adversely affect employment land provision in the area. It would, therefore, conflict with Policy D.EMP3 of the THP.

Living conditions of future occupiers

32. The proposed development would provide purpose-built student accommodation (PBSA) units in a range of sizes and designs sufficient for 99 students to live there. A letter of support from the intended operator, CRM, has been provided by the appellant.
33. The accommodation would be within two buildings that would be linked at basement level via communal amenity space, containing windows and a doorway that face towards a communal garden area between the buildings, also located at basement level. Whilst natural light and outlook would be limited in the basement garden and the internal communal amenity space, I do not consider this would cause unacceptable harm to future occupiers.
34. The 25 'Dudio' units would offer private bedrooms and shared washing and cooking areas for two students. Similarly, the 3 'Trudio' units would offer private bedrooms and shared washing and cooking areas for three students. However, in the 'Dudio' units, the proposed cooking area would be small for two people and would be located away from the external elevation of the unit and so would receive no natural light or ventilation. The kitchens in the proposed 'Trudio' units would also be similarly positioned away from natural light and ventilation.
35. In terms of natural light to bedrooms or studios, 11 rooms would not achieve the minimum BRE guideline levels for daylight. In terms of sunlight, a much higher proportion of units fail to achieve the minimum BRE guideline levels, largely as a result of their north-facing outlooks, or their position on the lower levels of the proposed development.
36. I accept that a significant number of habitable rooms would meet or exceed the minimum BRE guideline levels for daylight and a considerable number would meet or exceed the minimum BRE guideline levels for sunlight. I also note that these are guidelines not mandatory standards. Nevertheless, this would be newly built accommodation and the six studios at basement and ground floor level in proposed building B, and all of the 'Dudio' and 'Trudio' units would have unacceptably low levels of natural light.
37. Windows of habitable rooms in the northern units of proposed building A and the southern units of proposed building B would face each other across the garden and the void space above it.
38. The separation distance between the units would be some 8-9 metres, substantially less than the indicative acceptable distance of 18 metres referenced in the supporting text to Policy D.DH8 (amenity) of the THP. Whilst at the lower levels there could be a degree of screening from vegetation, this

⁴ London Industrial Land Supply Study 2020 (2023)

would not be the case for all rooms, and in the upper levels this would be substantially less, if at all. I am also mindful that the presence of screening vegetation is likely to further reduce natural light (and outlook) in habitable rooms at lower levels.

39. I do not find the appellant's comments regarding the likely pattern of use of the PBSA would address these issues. Whenever students are awake in their living space, and I consider it would be likely to be for significantly more time than the appellant assumes, the very low levels of natural light in many units, and the great likelihood of intrusive overlooking from facing habitable rooms, would cause unacceptable harm.
40. Even if I had accepted the appellant's amendments to the layout of the proposal made at appeal, there would still have been two 'Dudio' units that would have had unacceptable kitchen areas in terms of natural light and ventilation. Furthermore, the amended scheme would have had no effect on natural light to the aforementioned studio units at ground and basement levels or on harmful overlooking between facing units in buildings A and B. The amended scheme would still have caused unacceptable harm to future occupiers in these regards.
41. In terms of bicycle parking, two ground floor storage areas are proposed. I note the Council's concerns with regard to the size and operation of the parking areas. However, I am satisfied that a policy compliant level of bicycle parking could be provided and the details addressed through a suitably worded planning condition attached to any grant of planning permission, were the appeal to be allowed.
42. For these reasons, the proposed development would adversely affect the living conditions of future occupiers, with particular regard to the design and layout of the accommodation, natural light and privacy. It would, therefore, conflict with Policy H15 (purpose-built student accommodation) of the Spatial Development Strategy for Greater London 2021 (the LP) and Policy D.DH8 of the THP.

Significance of the Stepney Green Conservation Area

43. The appeal site is located within the SGCA, which is focused on the busy commercial street of Mile End Road and the quieter, largely residential street of Stepney Green, and encompasses nearby land that is connected to these thoroughfares. The area has a mixed character, and contains a range of different uses and architectural styles. Insofar as it relates to this appeal, the significance of the SGCA stems from its historical development, together with the associated buildings, streets and spaces to be found there.
44. The appeal site includes two buildings, the main building was formerly used as a warehouse, said to be associated with the now defunct distillery business to the north, and a semi-derelict and disused building. The latter is not readily visible from the public realm and does not make an obvious contribution to the character or appearance of the SGCA.
45. The former warehouse building has been subject to various alterations since its construction in the early 20th century. Nevertheless, it is still recognisable as a warehouse building and much of the original form remains apparent. Within the building there are clear architectural links to the former uses, in particular the

- vaulted ceilings and the red-painted, cast-iron support columns of the basement, and the setts on the ground by Redmans Road.
46. There are also secure metal containers within the building at ground floor level, which are said to have been used for the secure storage of valuable leather goods in the 20th century. Despite alterations, this building makes a positive contribution to the historic significance of the SGCA.
47. The area of hardstanding is bounded by a tall, corrugated metal fence by Redmans Road, which has been informally decorated with graffiti. Some of this area was used in association with the warehouse building, and the position of the historic vehicular access from Redmans Road, in the same general position as the existing accessway, is still appreciable. However, at the present time, and overall, this part of the site detracts from the visual character and appearance of the SGCA.
48. The proposal would entail the demolition of all of the buildings on the site and the construction of two contemporary, brick-faced buildings linked together internally at basement level. There would be accommodation on six different levels, including private studios and shared space units and clusters, as well as communal amenity spaces and associated storage areas. The buildings would be 4-4/5 storeys in height above ground level.
49. The access into the site would be maintained via an undercroft through the building fronting Redmans Road, leading to a communal external space at ground level and with a sunken communal garden by the western boundary between the two buildings.
50. The appeal development would be most noticeable from Redmans Road. The terrace to the west of the appeal site contains 3-5 storey buildings of different designs which, nevertheless, sit comfortably in the streetscene. To the east of the site the streetscene is more varied, and is interrupted by Assembly Passage, a narrow cobbled street linking Redmans Road and Mile End Road, whilst opposite the site, the visually imposing 4-5 storey primary school stands alone.
51. The scale and massing of the proposed development would not be out of keeping with the area, and the use of brick cladding, with zinc cladding above would not be unacceptable in this location. I do not consider building A to be top-heavy and the horizontal articulation of the front elevation provides some visual interest and prevents it from appearing overly dominant. The inclusion of a vehicular access through building A, as currently exists at the site, also helps in this regard.
52. The demolition of the warehouse building would be detrimental to the historic significance of the SGCA. However, the removal of the fenced hardstanding, which detracts from the character and appearance of the SGCA would be beneficial. Furthermore, the external appearance, scale, and massing of the proposed buildings would respond to the context of the site, and overall, the proposal would not adversely affect the character or appearance of the SGCA.
53. For these reasons, the proposed development would not detract from the significance of the SGCA. It would not, therefore, conflict with Policies D1 (London's form, character and capacity for growth), D3 (optimising site capacity through the design-led approach), D4 (delivering good design), and

HC1 (heritage, conservation and growth) of the LP; with Policies S.DH1 (delivering high quality design) and S.DH3 (heritage and the historic environment) of the THP.

Public safety

54. The proposed development would include a shared vehicular/pedestrian access from Redmans Road through building A, which would lead to a shared space courtyard at ground floor level containing three car parking spaces for people with disabilities, three waste and recycling stores, one within the undercroft, access to a bicycle storage area, and a servicing/delivery drop off area. Pedestrians and wheelchair users would have priority in these shared spaces.
55. There would be a total of twenty-four bedrooms in building B, including six wheelchair accessible studios at ground and basement level. The main entrance to building B would be from the courtyard and a studio flat would have direct access to the courtyard. The Design and Access Statement indicates that Building B is intended to be accessed from Redmans Road via the shared accessway through building A.
56. The shared access would be gated and would include both vehicular and pedestrian gates. However, these gates would be open during 'operational hours', proposed to be 07.00 – 11.00, when deliveries and servicing would be expected to be focused. However, deliveries and servicing may occur outside this time, and there is also likely to be significant pedestrian/wheelchair user activity during 'operational hours', with students travelling to morning lectures.
57. There are alternative pedestrian/wheelchair user routes: through the main entrance of building A and through a series of doors to the eastern side of the courtyard; and, an even more circuitous route through building A, the communal basement space and into building B. Notwithstanding the alternative routes, and that guidance would be provided advising students of these routes, I think it is very likely that students living in or visiting Building B would choose to use the direct undercroft accessway, both during and outside 'operational hours', for reasons of convenience.
58. Even with a generally low level of vehicular movement, the absence of a segregated route through the undercroft accessway and across the courtyard means there is a likelihood of conflict between vehicles and pedestrians/wheelchair users, and consequently for accidents. I do not consider this approach to be acceptable for a new and purpose-built development.
59. The overall level of vehicles using the accessway would generally be low, although there are likely to be periods of considerable activity associated with the arrival and departure of students each term. I note the intention for a booking system to be established for the arrival/departure of students during term time. However, no details of this are provided and it is likely that vehicles would arrive outside of their booked slots, particularly if they are travelling some distance.
60. The appellant has also not shown where vehicles could safely wait, off the highway, for the gates to open, or if the courtyard is already in use for servicing or delivery purposes, or if the undercroft is being used by pedestrians/wheelchair users. I note the Council's view that this could be controlled by way of conditions attached to any grant of planning permission.

However, it is not clear that there is sufficient space off the highway for vehicles to wait safely, particularly at peak times and I do not share the Council's view in this regard.

61. For these reasons, the proposed development would adversely affect public safety. It would, therefore, conflict with Policy T4 (assessing and mitigating transport impacts), of the LP and with Policies S.TR1 (sustainable travel), D.TR2 (impacts on the transport network) and D.TR4 (sustainable delivery and servicing) of the THP.

Energy provision, local infrastructure capacity and student accommodation

62. I note the Council's concerns regarding the submitted Energy Strategy, and in particular the lack of certainty as to whether gas boilers would be needed, and if so, the carbon that would be released as a result.
63. I am satisfied that a condition attached to any grant of planning permission were the appeal to be allowed, requiring an updated and definitive Energy Strategy to be submitted prior to the commencement of development, would address the uncertainty. I am also satisfied that the inclusion of a carbon offsetting formula within a s106 planning obligation could be an adequate means of addressing residual carbon emissions.
64. The absence of a legal agreement to secure financial and non-financial contributions including for employment, skills, training and enterprise, and transport matters was a reason the Council refused planning permission. A legal agreement would also be required to control the use of the proposal for student accommodation and to control the affordable student accommodation units, on-site parking and on-street parking permit prohibition.
65. The submitted planning obligation is based on 89 PBSA units, with 45 units to be affordable units. This would accord with the policy requirement for 50% of units to be affordable for the amended scheme proposed at appeal.
66. However, I have already stated that I have determined the appeal on the basis of the proposal refused planning permission by the Council, which was for a total of 99 units. Consequently the planning obligation does not control all of the units as student accommodation, and does not adequately control affordable student accommodation, which would be less than the 50% required to achieve policy compliance.
67. I am not, therefore, satisfied from the evidence that the submitted obligation would make the development acceptable in planning terms, and so it does not accord with the requirements set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010.
68. In any event, the planning obligation states that the site forms part of land registered at the Land Registry with title absolute under title number NGL489774. The owner is said to be the registered proprietor of the site.
69. However, the submitted planning obligation does not include any evidence of title. Consequently, there is no substantive evidence before me that the owner is the registered proprietor of the site.

70. With reference to Government guidance⁵ and the proposed development, I am not, therefore, satisfied the obligation is legally sound or complete and so it carries no weight in my determination.
71. For these reasons, the proposed development would not be acceptable in terms of energy provision, local infrastructure capacity and student accommodation. Consequently, it would conflict with Policies SI 2 (minimising greenhouse gas emissions), DF1 (delivery of the plan and planning obligations), T4, T6 (car parking) and H15 of the LP and with Policies D.ES7 (a zero carbon borough), D.SG5 (developer contributions), S.TR1, and D.TR2 of the THP and with the Tower Hamlets Planning Obligations Supplementary Planning Document 2021.

Conclusion

72. Whilst the proposed development would be acceptable in terms of its effect on the significance of the SGCA, the harm that would be caused to employment land provision, the living conditions of future occupiers, public safety; energy provision, local infrastructure capacity and student accommodation would, individually and collectively, outweigh this.
73. I note the importance the Government attaches to the delivery of housing and to the use of brownfield land such as the appeal site to achieve this. However, the proposal would cause extensive harm and would conflict with the development plan, as set out above. There are no material considerations that would cause me to determine this appeal otherwise than in accordance with the development plan⁶.
74. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

⁵ [Planning obligations: good practice advice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/planning-obligations-good-practice-advice)

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.