



Appeal Decision

Hearing held on 13 October 2015

by David Smith BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 November 2015

Appeal Ref: APP/E5900/W/15/3129245

Silwex House, 1-9 Quaker Street, London, E1 6SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Premier Inn Ochre Ltd against the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/14/01897 is dated 9 July 2014.
 - The development proposed is demolition of the roof and part side elevations, the retention and restoration of the southern and northern elevations and the construction of a 3 storey roof extension to provide a new hotel (Class C1) development comprising approx 250 bedrooms over basement, ground and 5 upper floors with ancillary café space and servicing on the ground floor, associated plant in the basement and roof, improvements to the front pavement and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was revised during the application process to retain the north wall of the existing building. As a consequence the number of hotel bedrooms was reduced from 290 to 250. In addition, revised drawings have been submitted in respect of the dormer design. This was reported to the Development Committee in September 2015. In the light of their relatively modest nature I am satisfied that no prejudice would be caused to any party in considering the amendments made to the size and detailing of the dormers.
3. A planning obligation has been completed between the appellant company and the Council which includes financial contributions, a sum towards Crossrail and the Community Infrastructure Levy and provisions relating to employment initiatives, a travel plan and coaches.

Main Issues

4. Based on the evidence presented and the reason that the Council would have refused permission had it been able to do so, the main issues are:
 - Whether the proposal would preserve or enhance the character or appearance of the Brick Lane and Fournier Street Conservation Area including the existing non-designated heritage asset at Silwex House and whether it would preserve the setting of adjoining listed buildings at Braithwaite Viaduct and Bedford House; and

- If any harm would arise to the significance of designated or non-designated heritage assets whether it is outweighed by any public or other benefits of the proposal.

Reasons

Conservation Area, non-designated heritage asset and setting of listed buildings

5. The significance of a heritage asset may be archaeological, architectural, artistic or historic according to the National Planning Policy Framework and derives not only from its physical presence but also from its setting. Silwex House was built in 1888 as a stable for the Great Eastern Railway. It is a non-designated heritage asset and has been empty since early 2014. Prior to that it was used for a variety of low-key commercial and other uses.
6. It has a trapezoidal shape and long brick elevations to both Quaker Street and towards the railway line to the north. Whilst it may not be remarkable the building is attractive with a line of 7 repeating gables each containing round windows under red brick arches and recessed niches. Overall it is highly decorated with typical Victorian detailing and a strong, robust appearance. Its significance lies in its aesthetic value and also as a reminder of the historical transportation improvements undertaken in the vicinity.
7. The property lies at the edge of the extensive Brick Lane and Fournier Street Conservation Area. At its heart this contains some of the most architecturally and historically significant buildings in the Borough. The Conservation Area Appraisal also records the major transport infrastructure works undertaken nearby from the mid nineteenth century onwards. The influence of this is reflected in surviving buildings. There is also a tight urban grain which originates from the eighteenth century street plan before it was pierced by the railway and Commercial Road to the west.
8. Quaker Street is largely residential in character. Other buildings near the appeal site are modern and undistinguished. However, the consequence of this is that Silwex House assumes a greater importance that it might otherwise have done. Indeed, it makes a positive contribution to the significance of this part of the designated heritage asset and to the Conservation Area as a whole.
9. To the rear of the site on the opposite side of the railway line is the grade II listed Braithwaite Viaduct. This was constructed between 1839 and 1842 to carry trains into the terminus of Shoreditch station. The surviving 260m long section is a very early and rare example of this kind of structure and is of an unusual and individual design. Bedford House is a handsome late Victorian brick building with Dutch gables on the corner of Wheeler Street and Quaker Street and is also listed as grade II. Silwex House forms part of the setting of both of these listed buildings.
10. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 establishes that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In addition, Section 66 of the Act sets out a general duty to have special regard to the desirability of preserving listed buildings or their settings. These are both matters of considerable importance and weight.

11. When considering the impact of a proposed development on the significance of a designated heritage asset, the National Planning Policy Framework provides that great weight should be given to the asset's conservation. In Conservation Areas opportunities should also be sought to enhance or better reveal their significance. For non-**designated heritage assets a "balanced judgement"** is required as set out in paragraph 135.
12. The proposal would retain and restore the main elevations. A good proportion of the west elevation would be lost but this is well concealed and so the impact would be insignificant. The roof would be removed but it is not a main feature and this has been accepted by virtue of the previous permissions given in 2007 and 2011. Although undertaking a full survey has not been possible the intention is to keep the northern elevation as far as possible. Some re-building may be required but could be covered by condition to ensure this is minimised. The proposed extension would support the wall and any proposals to re-use the building would also have to address its poor state. The further explanation **given at the hearing allayed the Council's misgivings** in this respect.
13. The main part of the proposed development is a 3-storey extension above the existing building. Facing Quaker Street this would take the form of a roof that **both slopes back and has a series of 'folds' along its length**. It would be finished in grey cement tiles and punctured by a series of dormers in a regular **'checkerboard' pattern**. **Similar** components would be used on the northern side but the extension would be vertical and step back gradually on each floor with a similar arrangement of dormers.
14. The proposal has been designed as a reinterpretation of the existing and seeks to introduce a new roof form that reflects the rhythm of the gables in a subtle way. The repetition that marks the existing building would be perpetuated and the joints in the extension precisely follow the bays. However, devices such as shaping the roof to give an undulating silhouette and creating angled dormer lines to follow the diagonals of the parapets are unlikely to be appreciated. Whilst the main external material would provide a restrained backdrop to complement Silwex House the overall impression would be of an addition that is bold and striking compared to the historic building below.
15. Reference is made to examples of developments that have extended above an existing building in a different style to their hosts. However, those solutions were adopted having regard to their individual contexts. Whilst planning decisions should not stifle innovation, originality or initiative it is proper to seek to promote or reinforce local distinctiveness according to the Framework.
16. Because of the narrowness of Quaker Street it would not be possible to take in the entire elevation from any single viewpoint. Longer angled views of the proposal would be gained from either end of this section of the road. However, it would be readily apparent from the opposite pavement in front of the building. The appellant has sought to demonstrate that the proportions of the extension would be commensurate with the existing with a ratio of at least 1:1.4. Effectively, though, the height of the existing would be doubled.
17. Although the **'saw tooth'** profile of the gables would be kept their sharp outline against the sky would be lost. The previous permissions have nevertheless accepted this as a matter of principle. However, the scale of the proposed extension in relation to the existing building would compete with and diminish the importance of the fine detailing of the existing Victorian façade.

Furthermore, the multiplicity of dormers would take the eye and divert attention from the qualities of the original late nineteenth century railway building. Overall a combination of the siting, size and design of the proposal would detract from the visual significance of Silwex House. Its value would be obscured rather than reinforced or revealed. Given that the existing building would largely be kept its historical function would still be appreciated although the understanding of this would be somewhat impaired.

18. The rear elevation is less prominent in public views due to its position and the height of the wall along the railway bridge. Its visibility would increase if plans to use the top of the viaduct as a public park as part of the Bishops Gate Goodsyrd development come to fruition. However, the proposal would be read as part of a run of buildings of different character on the other side of the line. Furthermore, because of the jack arches below, the height of the existing building is greater and the relationship between old and new more balanced. Some of the criticisms above apply to the extension rising like a 'wall' above the jagged gables below but not to the same extent.
19. Having regard to the above factors and the significance of the existing non-designated heritage asset I consider that this would be harmed. In turn, the proposal would detract from the aesthetic and historic value of both this part of the designated heritage asset and of the Conservation Area as a whole.
20. The setting of a heritage asset is defined as the surroundings in which it is experienced. **Historic England's** publication *The Setting of Heritage Assets* states that the importance of setting lies in what it contributes to the significance of the heritage asset. The appeal site is not within the immediate setting of Bedford House although it can be seen from it. However, there is no clear or immediate relationship between the two so that the proposal would not adversely impinge on its value.
21. The proposed extension would be in close proximity to the Braithwaite Viaduct although the railway line forms a major dividing feature. This piece of railway infrastructure is substantial and distinct in its own right so that its qualities would not be eroded by the taller building proposed. The two buildings face each other and have clear links in terms of former function as well as a shared use of stock brick. Whilst the history of Silwex House would be affected by the proposal the retention of the north elevation ensures that the past connections with the viaduct would be maintained. Overall the appreciation of this listed building would not be reduced to the extent that its setting would be spoilt.
22. My overall finding is therefore that the proposal would have a negative effect on the significance of the non-designated heritage asset at Silwex House and the Brick Lane and Fournier Street Conservation Area. It would fail to preserve the character and appearance of the Conservation Area. In the words of the Framework this would lead to less than substantial harm. The setting of the listed buildings at Braithwaite Viaduct and Bedford House would be preserved.
23. Nonetheless the proposal would not accord with Policy SP10 of the Core Strategy or Policies DM24 and DM27 of the Managing Development Document which are concerned with protecting heritage assets and place sensitive design more generally.

Public or other benefits

24. Paragraph 134 of the Framework indicates that the harm in this case should be weighed against the public benefits of the proposal, including securing its optimum viable use. For non-designated heritage assets it was agreed that the balanced judgement should take account of the factors listed in paragraph 131 which refer to putting assets to viable uses consistent with their conservation and the positive contribution that this and new development can make.
25. From a heritage perspective there would be advantages in restoring and upgrading the existing elevations, bringing a vacant building back into use and eliminating the risk of longer-term deterioration and decline. All of these outcomes in themselves would be in line with the aims of the Framework.
26. The Planning Practice Guidance gives further guidance about viable uses. It indicates that if there is only one viable use then that is the optimum viable use but if there is a range of alternatives then the optimum use is the one likely to cause the least harm to the significance of the asset¹. The appellant has shown through an undisputed assessment that reducing the extension to 2-stories in height would reduce profit on costs from about 8% to 5%. It is contended that this would be an unrealistic return on risk even for an owner-occupier. However, no consideration has been given to other potential uses including residential, as mentioned by the Council. In these circumstances it is not possible to say that the proposed development would secure the optimum viable use.
27. The comings and goings associated with the hotel and the introduction of a café would increase footfall along Quaker Street and engender a sense of liveliness and a better interaction with Silwex House. The presence of the hotel would also provide passive surveillance of the street and as part of the works the front pavement would be improved. All of these would enhance the public realm by creating a safer and more inviting environment along Quaker Street. Biodiversity **would be enhanced by a 'brown' roof** in line with relevant development plan policies but the value of this would be small as it would be limited to the perimeter of the extension.
28. **The hotel would be operated as a new and contemporary 'hub'** concept offering budget boutique accommodation. The proposal would therefore assist in meeting the aim of The London Plan, 2015 to achieve additional bedrooms in the capital. Moreover, it would add to the range in this part of London and so increase its attractiveness as a destination.
29. As a result of the development, contributions would be made via the planning obligation towards skills training and to support other employment initiatives including employee training, procurement and apprenticeships. Payments would also be made towards Crossrail and under the Community Infrastructure Levy. The sums involved are considerable. To a degree these arise from the application of generic policies and are necessary to mitigate the impacts of the development. However, whether they would arise as a result of any other form or types of development is uncertain and therefore they are matters that **support the proposal. In addition, there would also be likely to be 'knock-on'** economic advantages from the hotel as it would generate about 60 full-time equivalent jobs and be likely to encourage visitor expenditure.

¹ ID: 18a-015-20140306

30. The appellant explained at the hearing that the company sees itself as having a long-term presence in the area and is committed to becoming integrated with the local community. It provides training beyond NVO Level 2 and 50% of recruited staff are usually young local people who are not in education, employment or training. These matters **cannot be 'captured' by any formal planning mechanism**. Equally there is nothing to cast doubt on the seriousness of the intent which is based on previous experience and practice. What can be said is that the developer is in a position to proceed now and that there is no other option on the table for the appeal site.
31. The appellant maintains that the 2011 permission for a 2-storey extension is extant following non-material amendments to conditions and commencement of preliminary works. This is not challenged by the Council. That permission was for apartment hotel accommodation **which is not part of the appellant's business model** and so it would not be taken forward. However, there is no evidence as to whether it would be viable for another operator to do so. **Therefore the potential for this scheme to be a legitimate "fall back" position** should not be discounted. Whilst lesser in scale the material provided does not persuasively indicate that the proposed 'box' would be successful in terms of general design and in meeting heritage objectives. Precluding this option from being completed is therefore something that favours the proposal.
32. At the heart of the Framework is a presumption in favour of sustainable development and its three dimensions provide a useful basis on which to undertake the final balance. As described the proposal would contribute to the economic role of the planning system by securing growth to create jobs and prosperity. There would be less of a social impact although the hotel would be a useful community facility and employment would be likely to meet local needs and aspirations. Environmentally the outcomes would be mixed with some aspects of the scheme protecting and enhancing the historic environment and others having the opposite effect.
33. Bringing matters together whilst the proposed extension is novel and ingenious it would not conserve heritage assets in a manner appropriate to their significance. This is one of the core planning principles of the Framework. Furthermore, the failure to adhere to the statutory tests is a matter of considerable weight and importance. The cumulative positive aspects of the scheme are nevertheless wide-ranging and significant. Whilst similar benefits could arise from a different use of the building including an upward extension there is no certainty that this would occur. However, I attach significant weight to the fact that it is not possible to say that the proposed development would secure the optimum viable use.
34. At the end of the day the less than substantial harm to the significance of the designated heritage asset is not outweighed by the public benefits of the proposal. The overall consequences for the non-designated heritage asset would also be harmful. For similar reasons the proposal would conflict with the development plan and the material considerations are insufficient to indicate that the appeal should not be determined in accordance with it.

Other Matters

35. I have taken the provisions of the planning obligation into account in the above balance. However, the deed is conditional upon the grant of permission and so it will not take effect if the appeal is dismissed. There is therefore no need for

me to indicate whether its provisions are necessary to make the development acceptable in planning terms or to meet the other tests in Regulation 122 of the Community Infrastructure Levy Regulations and the Framework.

36. I am aware that the appellant company and its advisors have had lengthy discussions about the scheme with Council officers. This culminated in a recommendation to approve and has coloured the approach taken. However, the appeal has to be determined on the basis of the evidence before me.

Conclusion

37. For the reasons given above the proposed development is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms N Forster	Director, Porta Planning
Ms J Fisher IHBC	Donald Insall Associates
Mr P Eaton BSc BArch (Hons)	Allies and Morrison
Mr R Rixson	Endurance Land
Mr O Ellender	Whitbread
Mr A Lee	BNP Paribas

FOR THE LONDON BOROUGH OF TOWER HAMLETS:

Ms K Harrison	Planning Officer
Ms B Eite	Team Leader
Ms V Lambert	Heritage and Design Officer

DOCUMENTS

- 1 Signed Statement of Common Ground
- 2 Plans and Design and Access Statement for planning permission PA/11/00364
- 3 **E-mail dated 12 October 2015 from Council's Planning Lawyer**
- 4 Draft planning obligation signed by appellant
- 5 **Council's Supplementary Planning Document on Planning Obligations**
- 6 Revised draft Supplementary Planning Document on Planning Obligations
- 7 Policy SP12 of the Core Strategy
- 8 Policy DM7 of the Managing Development Document