
Appeal Decision

Site visit made on 12 August 2016

by Elaine Gray MA(Hons) MSc IHBC

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

Decision date: 29 September 2016

Appeal Ref: APP/X5990/W/16/3151014

1 Marylands Road, London W9 2DU

- 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 Lowfield Developments Ltd against the decision of City of Westminster Council.
 - The application Ref 15/09350/FULL, dated 7 October 2015, was refused by notice dated 15 January 2016.
 - The development proposed is change of use of ground floor to residential (Use Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. It appears from the submitted plans that part of the ground floor has been converted for use as a bedsit, although there appears to be no certificate of lawfulness for this use. I note the appellant's contention that council tax has been paid on the bedsit since around 2008. The appellant further states that the retail unit was last used as an estate agent, which would fall into Class A2 usage. Nonetheless, in the absence of certificates of lawfulness for either of these uses, I have considered the appeal on that basis the last lawful use of the ground floor was Class A1.
3. The description of the development varies between the application form and subsequent documents. In view of my finding above, I have used the description on the appeal form, as it omits reference to the bedsit use on the ground floor.

Main Issue

4. The main issue is the effect of the proposed development on the vitality and retail function of the shopping parade.

Reasons

5. The appeal site is located within a parade of shops on Marylands Road, close to the commercial area on Harrow Road, and within the Harrow Road Local Shopping Centre. The parade comprises five units in addition to the appeal site, including a wine shop, an estate agent, and a restaurant.
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6. The unit at 7 Marylands Road has prior approval for conversion to residential use, although it appears that this was as a result of an error on the Council's part. The unit at 3 Marylands Road is currently vacant, but remains within Class A1 usage. I agree that the rest of Marylands Road is predominantly residential in character. Nonetheless, there is a clear transition between the residential area and the commercial functions at the Marylands Road/Harrow Road junction.
7. The parade does not form part of a Core Frontage, and therefore Policy SS 7 of the City of Westminster Unitary Development Plan (UDP, January 2007) applies. Outside the Core Frontage, Policy SS 7(C) permits the change of use from Class A1 to other uses, subject to a number of specified criteria.
8. Of the six units in the parade, there are currently three A1 uses and three non-A1 uses. The proposed development would further increase the proportion of non-retail uses in the parade, undermining the balance of Class A1 to non-Class A1 uses. The parade would be dominated by non-Class A1 uses, which would materially harm the function, vitality and viability of the Local Centre, contrary to criteria (4) of UDP Policy SS 7(C). I note the appellant's assertion that the wine shop has survived only because it is a specialist shop, but there appears to be no reason why the appeal site could not fulfil a similar role.
9. I accept that the scheme would not require physical alterations to the shopfront. However, it is highly likely that occupiers of the new residential unit would wish to screen the tall shop windows in some way to ensure privacy, either with curtains or blinds, or the use of one-way or obscure glazing. These measures would result in the frontage becoming blank and 'inactive', which would detract from the visual quality and liveliness of the parade. This would be contrary to criteria (1) of UDP Policy SS 7(C), which seeks to protect the character of the centre.
10. Policy S21 of the Westminster's City Plan: Strategic Policies (SP, November 2013) states that existing A1 retail uses will be protected throughout Westminster, except where the Council considers that the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let.
11. The appellant states that the retail function on Marylands Road has been in decline for many years, that footfall in the area is limited, and that the units within the parade are no longer viable. However, they have not put forward any substantive evidence in support of this position. The parade is on a side road within a very short walk of Harrow Road, which has good transport links, and so it is not a location that would rely on passing vehicular traffic for trade. The units are on a direct route between the Maryland Road residences and the wider shopping area. On my site visit, I noted a fairly steady flow of pedestrians passing the parade.
12. Although the restaurant at No 5 was shut at the time of my visit, there is no evidence to support the appellant's assertion that it is barely operating. I have also taken into account the letters of objection to the proposal, which suggest that there is local support for the continued commercial function of the parade.
13. The appellant confirms that no marketing exercise has been carried out, and they have not presented any other substantive evidence to show that the unit is not viable as an A1 use. In the absence of such evidence, I have no reason to set aside Policy S21 in this instance. Taking these factors in combination, I

conclude that the proposal development would materially harm the vitality and retail function of the shopping parade. It would therefore conflict with UDP Policy SS 7(C) and SP Policy S21. It would further conflict with paragraph 23 of the National Planning Policy Framework (NPPF), which seeks to ensure the vitality of town centres.

14. The appellant contends that the Council's policies are out of date because of the NPPF's emphasis on encouraging housing in town centres. However, in my view, the policies relevant to this case are consistent with the NPPF's aim of supporting local shopping centres. There is no implication that the policy aim of encouraging housing in this context should be at the expense of existing shopping facilities.

Other matters

15. My attention has been drawn to a planning permission granted for a change of use for residences at the Neeld Arms Public House. I do not have the full details of this case before me, although the Council states that this permission related only to the upper floors of the building. This case therefore does not lend support for the appeal scheme.
16. I have been also referred to the planning application for the change of use of No 3 for residential use, which was refused. The Council states that no significant supporting evidence of marketing was provided in connection with that application, although the appellant disputes this. Moreover, as the full circumstances of that case are not before me, I cannot be certain that it represents a direct parallel to the appeal proposal.
17. The appellant further refers to the circumstances at 6c Marylands Road in support of their case. However, this property appears to have a complicated planning history, and there is insufficient detail before me to allow a comparison with the appeal scheme. In any case, I have considered the appeal on its own merits.
18. The contribution of one unit to the housing supply is to be given weight, and I note that the proposal would meet the relevant residential standards. I accept that the quality of the existing bedsit, as shown on the plans, would be improved. However, these modest benefits would not outweigh the harm I have identified above.
19. The appellant contends that the commercial use at No 1 makes up a small percentage of the ground floor. Whilst that would be the case if the use of the bedsit area were lawful, the relevant policies do not stipulate a minimum floor area. This factor has therefore not led me to a different conclusion.

Conclusion

20. For the reasons above, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Elaine Gray

INSPECTOR