

Appeal Decision

Site visit made on 27 September 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 7th October 2016

Appeal Ref: APP/Y5420/W/16/3152548

174 Philip Lane, Tottenham, London N15 4JN

- 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 Muzammal Ahmad against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2016/0627, dated 29 February 2016, was refused by notice dated 26 April 2016.
 - The development proposed is described as "conversion of property from two to three self-contained flats (1x2 bed and 1x studio and 1x1 bed flat) with erection of loft conversion with 3x roof lights with reference to previous planning application ref: HGY/2015/2218."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has made reference to policies within the emerging Haringey Development Management DPD Pre-Submission Version 2016 (DMDPD) which has undergone examination in public. With regard to Paragraph 216 of the National Planning Policy Framework (the Framework), those policies are a consideration which can be afforded weight. Nevertheless, the plan is still to be adopted and thus cannot carry the full weight of development plan policy.
3. On 11 May 2016, the Court of Appeal upheld an appeal¹ against a High Court judgement of 31 July 2015 relating to the Written Ministerial Statement (WMS) of 28 November 2014 and subsequent revisions to the Planning Practice Guidance (PPG) in respect of affordable housing and tariff based contributions. As a result of the judgement, Government policy in respect of these matters is now a material consideration. This judgement post-dates the Council's decision. Nevertheless, as I intend to dismiss the appeal for other reasons, I have not invited further comments from the Council.

Main Issues

4. The main issues are:
 - Whether the proposal would provide satisfactory living conditions for future occupiers with particular regard to internal living space.

¹ *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* [2016] EWCA Civ441

- Whether the proposal should make a contribution to the provision of affordable housing and if so, whether a satisfactory contribution is proposed.

Reasons

Living Conditions

5. Policy 3.5 of the London Plan² states that housing developments should be of the highest quality internally. Table 3.3 of Policy 3.5 sets out the minimum space standards for new housing. It also indicates that a minimum ceiling height of 2.5m is required for at least 75% of the gross internal area of a dwelling.
6. Proposed Flat C would be split over the first floor and the loft space of the building. The loft space would contain the bedroom and bathroom of the flat. The parties agree that Flat C would achieve the minimum floor space standards of Policy 3.5. I see no reason to disagree. Nevertheless, the loft space would only achieve an internal height of around 2.2m at its highest point. The dormer window extension would have an internal height of 2.1m. The loft space would therefore fall below the minimum height standards of Policy 3.5 and the minimum 2.3m standards of the Nationally Described Space Standards.
7. Furthermore, the bedroom of Flat C would be an irregular shape and would offer little functionality. Indeed, I note that a bed has not been annotated on the drawings unlike Flat A and it would be difficult, in my view, to accommodate one within the proposed layout of the room. As a result, I consider the proposed flat would provide oppressive and cramped living accommodation for future residents.
8. I note the appellant's view that the required ceiling heights can be difficult to achieve in loft spaces and that Building Regulations requires lower heights. However, the loft space in this instance would contain the bedroom and the bathroom of Flat C – a significant proportion of the overall accommodation in what would be a new dwelling. This would not be, in my view, comparable to the creation of additional accommodation in the loft space of an existing dwelling. There is therefore no sufficiently compelling evidence before me that would outweigh the conflict with the requirements of Policy 3.5 in this instance.
9. On the first floor, Flat B would be 37m² in size. It would, therefore, fall marginally below the 39m² standard required in Policy 3.5 of the London Plan. However, the standards allow for a unit with a shower room to have a floor space of 37m², which Flat B would achieve. The Council claims that the floor space would actually be 36.57m² but has not provided any evidence to support this calculation. In any event, the difference would be largely immaterial.
10. The Council has indicated that the bath annotated on the drawings for Flat B would be sub-standard in length. However, it would only be so marginally and I see no reason why future residents would be precluded from installing a shower rather than bath. I am satisfied, therefore, that the bathroom of Flat B would provide an acceptable standard of accommodation. Consequently, the layout of the flat would be acceptable for future residents.
11. The ground floor flat, Flat A, would be 92.5m² in size. The Council indicates that the annotation on the plan is incorrect and that the floor space would

² The London Plan: The Spatial Development Strategy for London Consolidated with Alterations Since 2011, 2016

actually be 74.8m². Notwithstanding which is the correct figure, the floor space of the ground floor flat would exceed the required 70m² in Policy 3.5 of the London Plan. The space would, therefore, provide acceptable conditions for future residents.

12. Nevertheless, whilst I am satisfied that satisfactory accommodation would be provided for future occupiers of Flats A and B, the proposal would fail to provide adequate accommodation for occupiers of Flat C. That is the prevailing consideration.
13. I conclude, therefore, that the proposal would not provide satisfactory living conditions for future occupiers with particular regard to internal living space. The proposal would, as a result, conflict with Policy 3.5 of the London Plan and Policy SP2 of the Haringey Local Plan Strategic Policies 2013-2026, 2013 (LP) which states that excellence in design quality will be required in all homes. It would also conflict with emerging Policy DM12 of the DMDPD which states that all new housing should meet the internal space standards of the London Plan.

Affordable Housing

14. Policy SP2 of the LP states that housing developments below a ten unit threshold are required to provide 20% affordable housing on site, based on habitable rooms or alternatively, provide financial contributions towards off-site affordable housing.
15. The Council considers it would be impractical to provide affordable housing on site in this case and a financial contribution is therefore sought. The Council's Planning Obligations Supplementary Planning Document 2014 (SPD) sets out the rate of contribution sought. The appeal site would be subject to a rate of £224 per sqm of new floor created. The proposal would not provide a contribution towards affordable housing and would conflict with Policy SP2.
16. However, as a result of the Court of Appeal judgement of 11 May 2016³, Government policy relating to affordable housing and tariff style contributions as expressed in the WMS and PPG is an important consideration. The PPG⁴ advises that contributions should not be sought from developments of 10-units or less. This clearly establishes that Government policy does not require contributions to be sought in cases such as the appeal proposal. This change in policy post-dates Policy SP2 of the LP. The policy must therefore be viewed in that context, having regard to Paragraph 215 of the Framework.
17. The proposal would fall below the threshold set out in the PPG and WMS indicating that affordable housing and tariff-style planning obligations should not be sought in this instance. This is a material consideration which, in my view, would significantly outweigh the conflict with Policy SP2.
18. I conclude, therefore, that the proposal should not make a contribution to the provision of affordable housing and that such a contribution would not be necessary, directly related, and fairly and reasonable related in scale and kind to the proposed development, in accordance with CIL Regulation 122, and Paragraph 204 of the Framework.

³ *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* [2016] EWCA Civ441

⁴ Planning Practice Guidance – 23b-031-20160519

Other Matters

19. Planning permission (Ref HGY/2015/2218) was granted in October 2015 for the conversion of the property from two to three self contained flats (1x 2 bed and 2x studio). The appellant indicates that the layout of the appeal proposal is the same as the previously approved scheme and that the only change would be the introduction of the dormer window. There is no reason to conclude that the scheme would not be implemented in the event that this appeal is dismissed. It seems to me therefore that there would be a genuine fallback position available.
20. I note that the appeal proposal would provide more floor space for Flat C. However, as set out above, I have found that the loft space of the appeal proposal would provide oppressive and cramped accommodation for future occupiers. Moreover, the appellant indicates that the loft space within the approved scheme would contain a bathroom and storage only. In contrast, the loft space in the appeal proposal would also include a habitable room in the form of the bedroom. This would therefore result in poorer standard of accommodation for future residents than the previously approved scheme.
21. On the evidence before me, I consider the appeal proposal would be more harmful than the previously approved scheme. Consequently, the existence of a genuine fallback position would not be sufficient justification for the harm arising from the appeal proposal in this instance.
22. I note the relatively sustainable location of the appeal site and that it would make a contribution towards boosting the supply of housing in the area. However, that contribution would be relatively modest and such benefits would not outweigh the harm I have identified.
23. The appeal site is located within the Clyde Circus Conservation Area. The proposed roof lights would be suitably designed, in keeping with the surroundings and the rear extension would appear subservient to the existing property. As a result, the proposal would preserve the character and appearance of the Clyde Circus Conservation Area.
24. The appellant has referred to other dormer conversions within the area. Whilst I have only limited detail of those cases, it seems to me that several of those relate to works to existing dwellings. This would be in contrast with the creation of a new dwelling, as is the case here. In any event, I have considered this appeal on its own merits.

Conclusions

25. I have found that the proposal should not make a contribution to the provision of affordable housing and that the proposal would provide satisfactory living conditions for future occupiers of proposed Flats A and B. I have, however, found that the proposal would fail to provide satisfactory accommodation for future occupiers of proposed Flat C. The harm arising from that failure is the prevailing consideration here. I conclude, therefore, for the reasons given above and with regard to all other matters, the appeal should be dismissed.

Jason Whitfield

INSPECTOR