

Appeal Decision

Site visit made on 2 December 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 23 December 2016

Appeal Ref: APP/V5570/C/16/3149909

Land at 73 White Lion Street, London N1 9PF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Garrett Peters (The Wellington Pub Company) against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice was issued on 31 March 2016 under ref. 32/2016.
 - The breach of planning control as alleged in the notice is:
"Without planning permission, the material change of use of the first, second and third floors of the premises from a licenced HMO to 5 self-contained flats."
 - The requirements of the notice are set out as follows:
 - "1. Cease the use of the Premises as 5 separate self-contained flats.
 - 2. Remove all partitions, doors, means of separation, bathrooms and wash facilities, kitchens, and any and all fixtures and fittings facilitating the use of the Premises as 5 self-contained flats, including any waste materials therefrom, so that only one kitchen and one bathroom and one doorbell remains.
 - 3. Remove all utility meters (gas, water and electricity) from the Premises so that only one meter for each utility remains."
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by deleting from the first and second requirements in Schedule 4 the text "5".
2. Subject to those variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and matters of clarification

3. The appeal site, on the corner where White Lion Street meets Baron Street, is occupied by a building that contains four storeys. The ground floor is in use as a public house known as The Three Johns. The first, second and third floors have been arranged as five self-contained flats. The parties agree that the former use for those three floors was as a large-scale house in multiple occupation (HMO), a sui generis use. The most recent HMO licence dates from
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28 May 2009 and was valid for five years. A third floor studio flat was assessed under that licence as being part of the HMO.

4. The Council's statement acknowledges that all five self-contained flats are one-bedroom units. This was also apparent at my site inspection. Schedule 3 of the enforcement notice indicates that one of the flats contains two bedrooms. Whilst this is incorrect, I see no need to correct this part of the notice.
5. However, a requirement to cease a use as five separate self-contained flats, as set out in the first requirement in Schedule 4 of the enforcement notice, presents problems. It introduces confusion as to whether it could allow use as four or six flats. The appropriate wording is to simply cease the use as separate self-contained flats. The first requirement of the notice can be altered accordingly. A consequential amendment to the second requirement is then also required. I am satisfied that such variations to the notice would not cause any injustice to the parties.

The appeal on ground (a) and the deemed planning application

Main issues

6. Focussing on the specific reasons given in the enforcement notice for its issue, I consider that in assessing whether planning permission ought to be granted for the five self-contained flats, the main issues are: whether a good mix of housing sizes has been achieved; whether there are acceptable living conditions for current and future occupants of the flats with particular regard to internal space; and whether there should be a contribution to the provision of affordable housing.

Mix of housing sizes

7. In line with the National Planning Policy Framework (the Framework) and Policy CS 12 of Islington's Core Strategy February 2011, the Council, through Policy DM3.1 of Islington's Local Plan: Development Management Policies June 2013 (DMP) operates a housing size mix policy to ensure that new housing meets the housing needs of the population, for market, social and intermediate housing, in order to create mixed and inclusive communities.
8. The Council's current housing size mix required for each housing tenure is found at Table 3.1 of the DMP. This is used to inform minor developments. Consideration will also be given to the character of the development, the site and the area according to paragraph 3.14 of the DMP.
9. In the market category of tenure, 75% of new units should be two-bedroom units and only 10% should be one-bedroom units. Thus, even in a scheme of 10 housing units there would be a need for just a single one-bedroom unit. It is clear that the development that has taken place (100% one-bedroom units) has not been informed by Table 3.1 of the DMP.
10. Having regard to the location of the site in the busy Angel town centre and the Central Activities Zone, the existence of the ground floor public house use along with an associated outdoor drinking area along the frontage to Baron Street, and the lack of outdoor amenity space, I would accept that family-sized units typically with three bedrooms or more would not be appropriate here. I note that a similar view was reached in an appeal decision in the City of

Westminster (ref. APP/X5990/W/15/3132122) supplied by the appellant. In any event, the percentage requirement in Table 3.1 of the DMP would only produce a need for 0.75 of a three-bedroom unit which demonstrates that some flexibility in interpretation is involved.

11. I accept that where smaller residential developments are being provided within existing buildings, there is less flexibility with regards to achieving a mix of housing sizes than there is with new build major residential developments. Even so, I saw nothing to suggest that a housing size mix far closer to Table 3.1 of the DMP could not have been achieved. For instance, it is not difficult to envisage a two-bedroom unit on each of the first and second floors and a one-bedroom unit on the third floor.
12. Whilst the appellant points to a need for one-bedroom units for young professionals in highly accessible locations in central London, the efficient use of a very accessible brownfield site, and the "micro-cluster flat" business model followed by the developer Pocket Living, the housing size mix policy devised by the Council has been arrived at objectively further to Islington's Local Housing Needs Assessment, which found that Islington's existing housing stock is heavily skewed towards smaller dwelling types. The housing size mix produced at the appeal site, which could be repeated too often, would undermine the Council's housing strategy.
13. There is a general housing shortage in London but it is important that the right type of housing is provided in efforts to address that shortage. I note that Policy DM3.2 of the DMP aims to resist the loss of existing self-contained housing but this cannot be sensibly applied to housing units that are unauthorised as here.
14. I conclude on this issue that the scheme has not provided a good mix of housing sizes that are needed in the borough. This conflicts with Policy CS 12 of the Core Strategy, Policy DM3.1 of the DMP and the Framework.

Internal space

15. The enforcement notice says that the flats fail to meet the recognised minimum space standards. This may have been partly based on the misunderstanding that a two-bedroom flat was part of the development. The Council has not provided any additional information on the matter of internal space or sought to dispute the floor area measurements provide by the appellant for each flat (which are said to range from 39 sq. m to 47 sq. m).
16. All of the units were evidently let as single person units according to the appellant. This is not challenged by the Council. From measurements taken at the site visit, the bedrooms range from about 7.6 sq. m to about 10.7 sq. m in floor area. This indicates to me that they should be considered as single bedrooms, notwithstanding the size of the beds I saw in those rooms. The Technical housing standards – nationally described space standard expects a double or twin bedroom to have a floor area of at least 11.5 sq. m and a single bedroom to have a floor area of at least 7.5 sq. m.
17. From the evidence available, it seems that the floor space provided in each of the flats meets the relevant standards for one-bedroom, one-person flats found at Table 3.2 of the DMP and Table 3.3 of the London Plan. Moreover, I could

not identify any problems with regard to other important matters such as aspect, outlook, daylight and sunlight. The decor, fixtures and fittings are all to a high standard and this enhances the internal quality of the accommodation provided.

18. I conclude on this issue that there are acceptable living conditions for current and future occupants of the five self-contained flats with particular regard to internal space. There is therefore compliance with Policy CS 12 of the Core Strategy, Policies DM2.1 and DM3.4 of the DMP and the Framework in this regard.

Affordable housing

19. The Council has suggested that a financial contribution of £250,000 should be made towards local affordable housing provision, based on the requirements of the Council's Affordable Housing Small Sites Contributions Supplementary Planning Document October 2012 (SPD). Subject to viability considerations, it is clear that Policy CS 12 of the Core Strategy and the SPD demand a contribution to be made towards meeting the need for affordable housing. London Plan Policy 8.2 refers to the use of planning obligations.
20. The appellant is willing to undertake a viability assessment and enter into negotiations with the Council should the appeal be upheld. This is a rather open-ended approach and could not be dealt with via a planning condition.
21. However, further to a Court of Appeal judgment issued on 11 May 2016¹, the policies outlined within the Secretary of State's Written Ministerial Statement (WMS) of 28 November 2014 should be considered as national policy outlining the specific circumstances where contributions for affordable housing and tariff-style contributions should be sought. Following the judgment, new and updated paragraphs 013-017, 019-023 and 031 have been added to the Planning Practice Guidance (PPG) section on planning obligations. Those sections make clear that contributions towards affordable housing provision should not be sought in relation to schemes of 10 units or less.
22. The WMS and the PPG post-date the Core Strategy and the SPD and indicate a change in national policy towards affordable housing and tariff-style contributions from small developments. Clearly those local documents may not have been written in the way they have, had the WMS and the PPG been in existence before they were published. Although this does not alter the status of the development plan, it is the most recent expression of national planning policy in relation to affordable housing contributions, and offers an unambiguous position with regard to the thresholds therein. I am bound to attach substantial weight to the WMS and PPG.
23. Had the matter of affordable housing provision been the sole issue of dispute between the parties I would have sought their further views on this change in circumstances since the notice was issued and the onus would have been on the Council to show that particular local circumstances exist that would justify setting aside the WMS and PPG. As my finding under the first main issue points to a decisive outcome for the appeal, irrespective of any further considerations about affordable housing, I see no need to seek further views as such and I return a neutral finding on this third main issue.

¹ SSCLG v West Berkshire District Council & Reading Borough Council [2016] EWCA Civ 441

Other matters

24. The site lies just within the Chapel Market/Penton Street Conservation Area. The Council has not objected to the development on the grounds of the site's location in a conservation area. I have no reason to disagree. I do not consider that the development has adversely affected the significance of this designated heritage asset. It has preserved the character and appearance of this conservation area.
25. There is no explicit commentary regarding the loss of the HMO in the enforcement notice, in the Council's statement of case or in the Council's planning enforcement report. The matter only arises because Policy DM3.9 of the DMP is listed in the enforcement notice. I do not know if the Council identify the loss of the HMO as a fundamental land use policy objection or if the policy was slipped in by mistake.
26. Without the Council's input, including that of its Environmental Health team, there is no evidence to show that the scheme has led to the loss of a good quality HMO (Policy DM3.9 part C). Without the Council's input, including that of its Housing Department, there is no evidence to show whether accommodation to meet an acute need was to be preferred to five self-contained flats (Policy DM3.9 part D).
27. I have noted the absence of private outdoor space but neither this matter nor the associated policy (DMP Policy DM3.5) is referred to in any of the Council's written material.

Conclusion on ground (a) and the deemed planning application

28. Having regard to all the above, my finding under the first main issue is decisive to the outcome of the ground (a) appeal and the deemed planning application. The inadequate mix of housing sizes is a serious disadvantage of the scheme that is contrary to the social dimension of sustainable development and the provisions of the development plan. I find no material considerations of sufficient weight to justify a grant of planning permission. The objections to the unauthorised development could not be satisfactorily overcome by the imposition of planning conditions. Taking into account all other matters raised in the written representations, I conclude that the appeal on ground (a) should fail and that planning permission should be refused on the deemed planning application. The enforcement notice will be upheld as varied.

Andrew Dale

INSPECTOR