
Appeal Decision

Site visit made on 17 January 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 06 February 2017

Appeal Ref: APP/C5690/W/16/3159318
225-229 Lee High Road, London SE13 5PQ

- 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 Philip Young, Koala Furnishings against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/096798, dated 24 May 2016, was refused by notice dated 12 August 2016.
 - The development proposed is to convert existing shop into two shop units and change of use for three one bedroom flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether sufficient marketing evidence has been provided to demonstrate demand or otherwise for the existing retail unit; and
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to outlook and ventilation.

Reasons

Marketing evidence

3. The appeal relates to the ground floor and basement of Nos 225-229 Lee High Road, which is currently occupied by Koala Furnishings and forms part of a parade of shops. The main shop area is provided within the combined units of Nos 227 and 229. No 225 is presently used for storage as is the basement beneath No 229. The remaining basement area beneath Nos 225 and 227 is currently subject to on-going building works.
4. DM¹ Policy 16 requires the retention of Class A1 shops located in a local shopping parade in order to preserve or enhance the local character and support the provision of essential daily goods and services; that is, unless an applicant can demonstrate that a number of criteria are met, including that reasonable attempts have been made to market vacant shop units for more than 12 months. The policy also states, amongst other matters, that a change

¹ Lewisham Local Development Framework Development Management Local Plan

- of use to residential at ground floor will only be permitted at the end of a row of a retail parade, in order to preserve the continuity of retail frontage.
5. The appeal proposal would largely reconfigure the existing retail space to provide residential accommodation at the rear part of the premises and two separate retail units across its frontage. The retail function would therefore be partly retained and as such no visual fragmentation to the retail frontage would arise and the local character would be preserved. In this regard the requirements of DM Policy 16 would be partly met. However, the quantum of retail floor space would be substantially reduced and the associated basement storage facilities and rear serving opportunities would be lost.
 6. Whilst it is stated that the business is no longer viable or sustainable, I have no evidence to this effect and, in any case, the business was clearly trading at the time of my site visit. Both aspects therefore significantly limit the weight I am able to give to the appellant's assertions regarding viability. Also, as the property is currently trading, it does not comprise a vacant unit for the purposes of assessing compliance with DM Policy 16, or any line of argument relating to any adverse effects arising from vacancy.
 7. In terms of marketing, the letters provided from various estate agents essentially offer terms and conditions for acting for the appellant but do not confirm agreement of the same to proceed with the sale. I do though accept that the sales particulars from Harpers Co show that the appeal site has been actively marketed, but I have no details of when this took place or the duration. Similarly, whilst the John Payne marketing details are dated September 2016, no details are provided as to when this marketing commenced. I cannot therefore confirm that the retail unit has been up for sale or lease for 10 years as suggested or even the 12 month requirement of Policy DM 16.
 8. Although it is stated that the marketing produced no interest from a single user, I have no evidence to confirm this from the relevant estate agents. Even if I were to accept that there is no demand for a retail unit of this size, I have no evidence to demonstrate that a reasonably flexible approach has been applied which would allow for the sub-division of the unit into two or three smaller units, as was previously the case. This approach would be consistent with the appellant's assertion that the successful businesses on Lee High Road are frequently smaller units.
 9. Whilst it is stated that the proposal would bring two retail units to the site, which in turn would enhance the viability of the parade, no evidence is provided to support this assertion and I am not convinced that the same could not be achieved by the continued use of the existing premises or by the premises being sub-divided into two or three units. Moreover, I have no evidence that the shape and relatively small size of the units proposed would be attractive to retail operators or that the proposed units would require greater levels of staffing as suggested.
 10. I sympathise with the appellant that efforts were made to try and establish from the Council precisely what marketing information would be required in support of the application and that clarification may not have been forthcoming. In this regard, I note that the Council has subsequently made reference to a 'Local Information Requirements List'. However, I have not been

provided with a copy of the list or its justification, thereby limiting the weight I can attach to the requirements set out in the Council's evidence.

11. Nevertheless, on the basis of the information currently before me, I conclude that it has not been satisfactorily demonstrated that there is insufficient demand for the retail floor space and that the proposal would not threaten the viability of the wider shopping parade, contrary in overall terms to DM Policy 16.

Living conditions

12. The proposal would provide for three, one bedroom flats. The bedroom, bathroom, kitchen and dining area for each of the flats would be provided at basement level. The lounge and access to the flats would be provided at ground floor level.
13. The scheme would provide no outlook from the proposed kitchen and dining room areas other than towards the back wall of the relatively small and shallow glass pavement light in Flats 1 and 3. Due to the proposed internal configuration, there would be no pavement light to Flat 2. The outlook from the bedrooms would be limited to a relatively narrow strip of opaque high level, north-facing windows. Even if the windows were transparent and viewing angles were achievable, the views would be immediately onto the access steps and a car and cycle parking area. This would amount to a particularly oppressive sense of confinement and an unduly constrained and poor outlook from these habitable rooms.
14. I appreciate that the units have been designed so that the void area around the spiral staircases would throw light into the basement areas. However, the oppressive sense of confinement would be exacerbated due to the lack of opportunity to provide natural ventilation at basement level as the pavement lights would be fixed and I have no information to suggest that the high level windows would be openable or capable of being so given their position against the access stairs. The ability to open windows at ground floor level would provide some mitigation, such that the harm would not be sufficient on its own to warrant refusing planning permission. Nevertheless, it does add to my significant concerns regarding the poor outlook which would be provided at basement level.
15. I accept that the living room area would be at ground floor level and that the Council's presumption against single aspect, north facing flats, as set out in DM Policy 32, would be avoided by providing windows in the east facing recesses of Flats 1 and 2 and the west facing recess of Flat 3. Nevertheless, being positioned in the side elevation of a small recess area does not materially improve levels of outlook. Moreover, such an approach also creates a privacy issue as the respective side windows of Flat's 2 and 3 would directly face each other at very close proximity. Consequently, an acceptable level of privacy for the occupants of either flat would not be provided.
16. My attention has been drawn to what are described as identical developments at No 231 Lee High Road and at Unit 1 The Cube. In the case of No 231, I note that the plan provided by the Council shows that the approved basement flat included floor to ceiling glazing to the basement and openable patio style doors. With regard to development known as The Cube, the Council has advised that the scheme did not include any basement accommodation and no

evidence is provided by the appellant to the contrary. Moreover, the Council has clarified that both schemes were approved in 2003 and 2011 and therefore were assessed against a different planning policy framework, which the Council state was not prohibitive of single aspect north facing units and contained different, less stringent, requirements in terms of the standard of residential amenity.

17. I have also been referred to an appeal decision² relating to No 118 Hither Green Lane but I note that that development did not involve the conversion of a basement and did not turn on matters relating to the privacy or outlook for future occupants. It is therefore materially different to the appeal proposal currently before me. Accordingly, none of the schemes put forward can be considered as precedents sufficiently analogous to merit any weight being apportioned to them in support of the appeal proposal. In any case, I have determined the appeal on its own merits.
18. I therefore conclude on this main issue that the proposed dwellings would provide unacceptable living conditions for future occupants, contrary to Policy 3.5 of the London Plan (2016), DM Policy 32 and the London Housing Supplementary Planning Guidance (2016), which seek to ensure high quality housing provision.

Other matters

19. I acknowledge that the appeal proposal would make a modest contribution to housing supply, however, I have found that the accommodation would not meet the reasonable expectations of future occupants.
20. I also acknowledge that the scheme would meet minimum internal space standards and that the Council has not objected to the lack of outdoor amenity space provision. In addition the proposal would not be harmful to the character and appearance of the area or to the living conditions of neighbouring residents, or raise concern regarding highway safety. However, these are neutral factors in the planning balance and therefore cannot mitigate the material harm I have identified in respect of the living conditions of future residents. The urban context of the appeal proposal would not justify this harm.

Conclusion

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

Richard S Jones

INSPECTOR

² Appeal Ref: APP/C5690/W/16/3150229