

Appeal Decision

Site visit made on 5 June 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 22nd June 2017

Appeal Ref: APP/V5570/W/17/3171108

315 City Pavilion, 33 Britton Street, Islington, London EC1M 5UG

- 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 Laura Kalacheva against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/5002/FUL, dated 19 December 2016, was refused by notice dated 14 February 2017.
 - The development proposed is change of use from C3 to C1 (short-term let).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - Whether the loss of the residential unit is justified;
 - Whether the location of the proposal is acceptable having regard to the development plan; and
 - The effect of the proposal on the living conditions of existing occupiers in terms of noise and disturbance.

Reasons

Loss of a residential unit

3. The appeal property is a third floor two bedroom residential flat in C3 (Dwellinghouses) use within a six storey residential building situated within the Clerkenwell Green Conservation Area. It is proposed to change the use of the flat from C3 to self-serviced visitor accommodation to be let on an unrestricted short-term basis throughout the calendar year for a temporary period of five years.
 4. The Council consider that the proposed use would not be a C1 Use Class which includes hotels, boarding and guest houses but would instead be 'sui generis'. The appellant considers that the proposal would be a C1 Use Class and points to paragraph 4.58 of the Development Management Policies (DMP) 2013 which states that apart-hotels may be considered as C3 Use Class or C1 Use Class depending on their characteristics.
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5. Section 25 of the Greater London Council (General Powers) Act 1973 (the 1973 Act) restricts the use of residential premises in London as temporary sleeping accommodation by making the use of temporary sleeping accommodation of the premises a material change of use for which planning permission is required in order to protect London's existing housing supply.
6. Section 44 of the Department of Communities and Local Government Deregulation Act (2015) (the 2015 Act) created a new section 25A of the 1973 Act which provides that the use as temporary sleeping accommodation of any residential premises in Greater London does not constitute a change of use if certain conditions are met. The first condition is that the sum of a) the number of nights use and b) the number of nights of any previous use of the same premises as temporary sleeping accommodation in the same calendar year does not exceed ninety nights. As the appeal unit would be let for a period exceeding 90 days in any calendar year it would result in a material change of use, regardless of whether it would be a C1 Use Class or 'sui-generis'.
7. Policy CS12 of the Council's Core Strategy 2011 states that the Council will meet its housing challenge to provide more high quality, inclusive and affordable housing by, amongst other things, ensuring Islington has a continuous supply of housing by identifying sites in Islington's five, ten and fifteen year housing supply (part B). Proposed developments which result in the reduction of land supply for conventional housing will be refused.
8. Policy DM3.2 of the Development Management Policies (DMP) 2013 states that the loss of existing self-contained housing, including affordable housing, will be resisted unless the housing is replaced with at least equivalent floor space.
9. The appellant contends that as the use would be temporary, the proposal would not result in the loss of a residential unit. The Planning Practice Guidance (PPG) states that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. I consider that the period exceeds that which would be required for a trial run. In any event, the proposal would result in the loss of a residential unit to the housing stock for at least a period of five years thus undermining the Council's ability to maintain a five year supply of housing land. Furthermore, no re-provision is proposed as required by the Policy. Clear conflict, therefore, arises with Policy CS12 of the Core Strategy and Policy DM3.2 of the DMP.
10. For the reasons stated, I conclude that the proposal would result in the loss of an existing residential unit which is not justified. It would, therefore, be contrary to Policy CS12 of the Core Strategy and Policy DM3.2 of the DMP.

Location

11. Part A of Policy DM4.11 of the DMP states that hotels and other visitor accommodation are generally appropriate in the locations specified in the hierarchy including designated town centres or areas within the Central Activities Zone that are within the designated City Fringe Opportunity Area or are in close proximity to national railway hubs.
12. The supporting text explains that given the proximity of Islington to central London, the borough has the potential to increase the capital's supply of hotels.

However, while hotels can create jobs and support the visitor economy, it is important to ensure that hotels do not limit the achievement of other priorities, including housing and economic growth, securing a balance of uses, protecting residential amenity and addressing local impacts. Proposals will be resisted where they would result in an over-concentration of hotels and similar uses. Notwithstanding whether the proposal is considered to be a C1 Use Class or sui-generis, I consider that the proposal would be classed as visitor accommodation within the context of Policy DM4.11 and the glossary of the DMP.

13. Whilst the appeal site is not within a Designated Town Centre, it is within the Central Activities Zone and is situated only a few minutes' walk from Farringdon Station, a national railway hub and thus the locational criteria of Part A (2) of Policy DM4.11 of the DMP would be met. For the reasons stated above, I conclude that the proposal would be situated in an appropriate location.

Living conditions of existing occupiers

14. The proposed change of use to a short-term let would enable a continuous change in occupiers and consequently, would result in a significant increase in the nature and intensity of the use of the unit.
15. The appeal property is surrounded by other residential units. The proposal would result in a change in terms of the pattern of arrivals and departures; intensification in the numbers of comings and goings; people arriving back late at night; a potential increase in party activity; staying up late; and a potential lack of consideration for existing occupiers. The intensification of the use of the unit would, therefore, result in potential noise and disturbance, possibly late at night for existing occupiers. Whilst the appellant maintains that the vetting of occupiers would address this concern it would not be possible to secure or enforce this by way of a planning condition.
16. The appellant also seeks to rely on new section 25B of the 1973 Act which states that a local authority can direct that the right to short-term let without planning permission for up to 90 nights in a year is not to apply to particular residential properties or to residential premises situated in a specified area. However, section 25B only relates to the exception created by Section 25A of the 1973 Act. The appeal proposal constitutes a material change of use and does not, therefore, constitute an exception.
17. For the reasons stated, I conclude that the proposal would have a harmful effect on the living conditions of existing occupiers in terms of noise and disturbance. There is no evidence before me that any such noise would be attenuated. The proposal would, therefore, be contrary to criterion B iii of Policy DM4.11 of the DMP which states that proposals for new hotel and visitor accommodation will only be supported where they do not result in adverse impacts on residential amenity, including cumulative impacts. Furthermore, conflict arises with part A, criterion x of Policy DM2.1 of the DMP which seeks to provide a good level of amenity including consideration of noise and the impact of disturbance and hours of operation.

Planning Balance

18. The proposal may have some benefits to the economy in terms of supporting local businesses and also to the appellant in terms of providing additional income. However, I consider that these benefits would be outweighed by the public policy disadvantage of the loss of a housing unit and the harm which I have identified to the living conditions of existing occupiers. The proposal would, therefore, be contrary to the development plan as a whole.

Conclusion

19. For the reasons stated and taking all other matters into consideration, the appeal should be dismissed.

Caroline Mulloy

Inspector