

Appeal Decision

Site visit made on 17 May 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 27 June 2017

Appeal Ref: APP/V5570/W/17/3169519

17 Westbourne Road, Islington, London, N7 8AN

- 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 Ajay Kara against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2102/FUL, dated 23 May 2016, was refused by notice dated 25 November 2016.
 - The development proposed is external and internal alterations and modernisation of the existing lower ground and ground floor flat.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposal on the vitality and viability of the local shopping parade;
 - Whether the accommodation proposed would provide acceptable living conditions for future occupiers, with particular regard to provision of outdoor space, outlook and daylight;
 - Whether the proposal would make appropriate provision for affordable housing.

Reasons

Vitality and viability of the shopping parade

3. Policy DM4.7 of the Development Management Policies (DMP) refers to dispersed shops. In particular it seeks to protect shops that are located outside of designated town centres and local shopping areas, such as the appeal building. For a change of use of a ground floor to residential to be permitted it requires the premises to have '*...(i) been vacant for a continuous period of at least 2 years and continuous marketing evidence for this 2 year vacancy is provided which demonstrates that there is no realistic prospect of the unit being used in its current use or to provide an essential service to residents in the foreseeable future; and (ii) there is accessible provision of essential daily goods within short walking distance (within 300m)*'.
 4. There is a general store opposite the site. In addition the grounds of appeal identify that a wide range of shops and services are available nearby in Holloway Road and Caledonian Road with further local shops in Mackenzie Road and Roman Way. In this regard part (ii) of the policy would be met with daily goods being available from the nearby general store and other nearby shops.
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5. The site is on the edge of but not within a defined local shopping area which the appellant advised is comprised of Nos 4 to 10 Westbourne Road. This is not disputed and the last known lawful use of the basement and ground floor of the building is given as a shop. The appellant submits that the premises have not been used as a retail premises since 2002. In the intervening period the unit was either vacant or used as a music studio/dwelling, albeit without planning permission.
6. It has been drawn to my attention that a number of units in the immediate area have already been converted to residential use at ground floor. In particular I have been referred to an appeal decision for one of the units opposite, No 6, where an appeal was allowed¹ for the change of use to residential at ground floor. This decision was considered against the policies of the then Unitary Development Plan. In addition the decision refers to an 'active marketing campaign' for premises in that case.
7. In this case the only evidence I have regarding 'marketing' of the premises is reference to a relatively recent letter from an estate agent which gives the view that it would be hard to find a tenant for '*...a retail unit in this location...*'. Therefore whilst the unit may have been vacant for two years or more I have no detailed information that would fulfil the requirements for continuous marketing as required by part (i) of the policy. The policy clearly requires both elements to be fulfilled and as such the absence of this information places the proposal in conflict with policy DM4.7. I therefore conclude that the scheme as submitted would have a harmful effect on the vitality and viability of this group of shops.

Living conditions

8. The scheme would provide a new residential unit over the ground and basement levels. This would create a three bedroom dwelling. The lower ground floor would contain the kitchen and two bedrooms. These rooms would be reliant upon light wells for daylight into them. At the rear the layout would be restricted by the provision of an outdoor area for the unit and the associated boundary treatments that the plans show would be put in place.
9. The kitchen would be deep. This large and key habitable room would be reliant upon the internal layout above. This shows the set back of the living area to utilise light from the front window to provide daylight into this space. Overall given the layout and size of the room I have concerns about the amount of daylight it would receive.
10. The bedrooms would have outlook into the light well, which would in effect be onto a wall with the enclosure of the outside area above. The kitchen area would not have any external openings. There would be an internal opening up into the void created at the front. In both cases the restrictions on daylight and limited outlook would not create rooms that would be pleasant to use.
11. The Council's policy requirement is that all dwellings should provide for direct sunlight to enter main habitable rooms for a reasonable period of the day. Further it sets out that living areas, kitchens and dining space should where possible receive direct sunlight. In this case I have no substantive evidence or expert information to demonstrate the proposed design solutions would ensure that this would be the case for the new unit.

¹ APP/V5570/A/12/2187680

12. Policy DM3.5 is clear that new residential development and conversions should provide good quality outdoor space. It sets out a variety of ways in which that could be undertaken and gives a minimum amount for ground floor units. There is no dispute that with no provision the three bed unit would be in conflict with this policy. I understand that, being a conversion, the available space for a garden area is limited. However, the policy applies equally to conversions. Further the unit would be family sized. The area that would remain once the light well is taken into account, whilst private, would not be sufficient for a family.
13. The appellant suggests that the proximity to open space within 400m of the site would compensate for the absence of outdoor space. However, I do not have the detail of the location of these spaces relative to the appeal site. The supporting information to the policy sets out that *'Given the high density built form and low level of open space in Islington, private outdoor space is an important factor in providing good quality housing within the borough.'* Furthermore, use of a space remote from the dwelling would not be a private setting for eating a meal, drying clothes or sitting out.
14. It is submitted that residential accommodation has existed for a number of years and that one of the bedrooms has no natural light at all. I was able to see this at the site inspection. Nevertheless there is no evidence that confirms this is lawful; as such I give it very limited weight. Therefore, I agree with the Council that it does not justify permitting a scheme that would create poor quality accommodation for future occupants.
15. I therefore conclude that the scheme would not provide acceptable living conditions for future occupiers, with particular regard to provision of garden space, outlook and daylight. It would be in conflict with DMP Policies DM3.4 and DM3.5 and policies CS8 and CS9 of the Islington Core Strategy (CS) which amongst other things require new developments to provide good quality outdoor space, high quality dwellings with direct sunlight to main habitable rooms for a reasonable period of the day. The proposal would also conflict with a core principle of the Framework that seeks a high quality design and good standard of amenity for all existing and future occupants of land and buildings.

Affordable housing

16. Policy C12(G) of the CS requires sites below the threshold of 10 units to provide a financial contribution towards affordable housing elsewhere in the borough. The application of the contribution is clarified in the Affordable Housing Small Site Contributions Supplementary Planning Document (SPD). This sets out that *'For avoidance of doubt the required contribution applies to new build units, conversions of existing buildings resulting in the creation of new units, and subdivision of existing residential properties resulting in net additional units'*.
17. The Council point to the fact that a large proportion of housing delivery in Islington comes from sites of ten units or fewer due to the dense built up nature of the borough. I am also mindful of the submissions made regarding high house prices in the Borough and the prevalence of families on low incomes. I do not disagree either with the findings of the Council that indicates a requirement that 50% of all new housing that will be built in the Borough over the Plan period should be affordable. This is set against the background of high private rental levels and higher rental values than those across the Greater London Area.

18. The appellant has referred me to the more recent Court of Appeal decision which overturned a legal challenge to the Written Ministerial Statement (WMS) of 28 November 2014. The WMS indicates that because of the disproportionate burden of developer contributions on small-scale developers, for sites of 10 units or fewer, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought. The Planning Practice Guidance (PPG) has since been amended to reflect the approach in the WMS. Neither of these documents alters the statutory basis of the development plan. Nevertheless, the PPG is a material consideration of substantial weight.
19. The appeal scheme would involve the conversion of the existing basement and ground floors to a single dwelling. I understand that the appellant considers that there is already a dwelling on these floors and that the appeal scheme would merely represent an enlargement of this and not a 'net increase'. However there is no firm evidence before me that the residential use is lawful. As such I consider that the policy would apply in this case.
20. The SPD acknowledges that there may be site specific circumstances where viability issues might arise. In such situations it requires the submission of a viability assessment. A submission has not been made in this case. The purpose of the WMS and PPG in applying an exemption is to avoid a disproportionate burden of developer contributions on small scale developers. However, the appellant has not claimed that the proposal would not go ahead or be unviable if the contribution had to be made. In this regard there is no evidence that a disproportionate burden would result.
21. On the evidence before me relating to affordable housing, the contribution sought would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Accordingly, the contribution would meet the tests set out in Regulation 122(2) of The Community Infrastructure Levy Regulations 2010.
22. Overall the scheme would be in conflict with the policies of the development plan. I attach substantial weight to this. In addition the lack of evidence of a disproportionate burden reduces the weight applied to the WMS and PPG in this case. I therefore conclude that in the absence of a unilateral undertaking to make the required contribution the scheme would be in conflict with CS policy CS12 and would not make appropriate provision for affordable housing.

Other matters

23. The site is located within the St Mary Magdalene Conservation Area (CA). The scheme would involve limited external changes. These would have a neutral effect within the CA. Therefore the scheme would preserve the character of the CA.

Conclusion

24. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR