The Planning Inspectorate

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: 5 July 2017

Appeal Ref: APP/V5570/W/17/3171820
74-76 St John Street, Islington, London EC1M 4DZ

- 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 David Rogers, Venaglass Haymarket Limited against the decision of the Council of the London Borough of Islington.
- The application Ref P2016/4605/FUL, dated 22 November 2016, was refused by notice dated 6 February 2017.
- The development proposed is change of use of part ground floor, basement and lower basement from Use Class B8 (storage) to flexible commercial use within Use Classes A1/A2/A3/A4/B1/D1/D2) Use, replacement of ground floor façade and entrance doors and fenestration to enclose existing ramp.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr David Rogers, Veneglass Haymarket Limited against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:

   - Whether the loss of the business floor space is justified;
   - Whether the proposal would harm the vitality and viability of neighbouring town centres; and
   - The effect of the proposal on the living conditions of existing occupiers.

Reasons

Loss of Class B8 (Storage or Distribution)

4. The appeal site comprises two levels at lower ground floor and basement level within a seven-storey office on St John Street. The site is situated within an Employment Priority Area (General). The ground floor is used for access, the first basement level for car parking and the lower basement level is currently vacant, but previously used for storage. The surrounding area is characterised by a mix of 3-7 storey buildings in a range of uses, typically with ground floor retail, café and showroom uses and office and residential uses on the upper floors.

5. Criterion B of Policy CS13 of the Council's Core Strategy 2011 seeks to safeguard existing business spaces throughout the Borough by protecting against change of use to non-business uses, particularly in the Central Activities Zone (CAZ). The supporting text explains that there is continuing pressure on employment floor space from other uses.

6. Criterion A i of Policy BC8 of the Finsbury Local Plan (FLP)–Area Action Plan for Bunhill and Clerkenwell 2013 states that within the Employment Priority Areas (General and Offices) no net loss in business floor space will be permitted, either through change of use or redevelopment, unless exceptional circumstances can be demonstrated, including through the submission of clear and robust evidence which shows that there is no demand for the floor space. This evidence must demonstrate that the floor space has been vacant and continuously marketed for a period of at least two years.

7. In addition, the loss of business floor space will only be permitted where the proposal would not have a detrimental individual or cumulative impact on the area's primary business role and would not compromise economic function/growth, or it can be demonstrated that the site is no longer suitable for the provision of similar uses. Appendix 11 of the Council's Development Management Policies sets out the evidence which is required to adequately demonstrate marketing and market demand.

8. The approach set out in Policy CS13 of the Core Strategy and Criterion A i of Policy BC8 of the FLP is consistent with paragraphs 18 and 19 of the National Planning Policy Framework (the Framework) which seeks to support sustainable economic growth. Furthermore, the approach provides the flexibility required by paragraph 22 of the Framework which seeks to avoid long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose, subject to the submission of evidence. I can, therefore, attach significant weight to those policies in my Decision.

9. The site includes a car park at 262m^2; however, the application form indicates the established use is B8 (storage) of some 585m^2. The appellant indicates that the basement levels have been under-used for many years and that the owners have marketed the premises without success. An email from the commercial agent stating that the premises has been marketed from June 2014 and that during the marketing campaign there were numerous viewings, mainly from the gym sector. A handful of offers from Gym users were received but they did not materialise.

10. The marketing particulars are also included which shows that the premises were marketed for all uses at a rent in excess of £130,000 per annum exclusive. In addition, it is stated that details were initially sent to those parties with a suitable requirement and then to all active London agents. The property was on the agent's website and periodically sent to all London agents. A 'sample' of parties that viewed the property is also included.

11. Additional information has been submitted which includes details of completed deals between 1 June 2014 and 30 June 2016. This shows that the majority of lettings (45 of 50) secured higher rental incomes than £34 per sq ft per annum. Rents ranged from approximately £20 per sq ft to £67.50 per sq ft. The average (median) rental income secured in these lettings was £48.23/sq ft. Thus the rent sought for the appeal property was at the lower end of the rates expected in this location. Further information relating to current 'market comparables' has also been submitted which shows that the rental rate of £34 per sq ft per annum would

be below the rates asked in the EC1M postcode. However, this information does not amount to a professional valuation from at least three agents to confirm that the asking price is reasonable. Furthermore, the submitted information does not include any basement offices or any B8 spaces as there were none available for comparison. Consequently, I cannot be certain that the property was marketed at a reasonable price which takes account of the basement location and the nature of the premises.

12. Furthermore, the value of offers, the reasons why any offers fell through, why it was not possible to agree terms and why offers were refused are not included. Also no details are included as to why the property is 'not of interest'. Consequently, the evidence falls short of that required by Appendix 11 of the DMP. Due to the limited evidence before me, I cannot, therefore, be certain that the property has been marketed on appropriate terms at a reasonable asking price which reflects the nature of the property.

13. I have had regard to the fact that the property is currently vacant and as such there would not be the loss of an actual B8 or business use. However, there would be the loss of business floor space which Policy BC8 of the FLP seeks to protect.

14. The appellant draws attention to paragraph 11.1.3 of the FLP and suggests that the term business use is widely defined and covers all of the uses proposed. However, whilst Policy BC8 seeks to achieve a balanced mix of uses, including a wider range of employment generating uses, Criterion A i specifically refers to business floor space. Business floor space/buildings/development/uses are defined in the glossary as activities or uses that fall within the B-Use Class (i.e. offices, industry, or warehousing). Furthermore, there is insufficient evidence before me to conclude that there would be no demand for B8 or other business uses either now or in the future.

15. The appellant also suggests that the proposal is consistent with the underlying purpose of policy which is to promote employment growth and jobs. However, paragraph 3.47 of the Core Strategy states that the principle will be to continue to protect a variety of spaces and to achieve this, the Core Strategy protects specific types of business floor space where appropriate (B-use classes) within the more general definition of employment floor space. Criterion A i of Policy BC8 seeks to protect business floor space as part of a balanced mix of uses.

16. Attention is also drawn to Criterion B which states that within the Employment Priority Area (general) the employment floor space component of a development or change of use proposal should not be unfettered commercial (B1a) uses, but where appropriate must also include retail or leisure uses at ground floor alongside. Nonetheless, given the flexible nature of the proposal it may be implemented within a single use class resulting in the loss of all the business floor space which would be contrary to Criterion A i of the Policy.

17. For the reasons stated, there is insufficient evidence before me to conclude that the loss of business floor space is justified. The proposal is, therefore, contrary to Policy CS13 of the Core Strategy and Policy BC8 of the FLP.

Vitality and Viability of Town Centres

18. Policy DM4.4 of the DMP seeks to maintain and enhance the retail and service function of Islington's four town centres. Part B states that applications proposing more than $80m^2$ of floor space for uses within the A Use Classes, D2 Use Class and for Sui Generis main town centre uses within the Central Activities Zone, must

demonstrate that the development would not individually or cumulatively with other development have a detrimental impact on the vitality and viability of Town Centres within Islington or in adjacent boroughs, or prejudice the prospect for further investment needed to safeguard their vitality and viability; the proposed uses can be accommodated without adverse effect on amenity; and the proposal would support and complement existing clusters of similar uses within or adjacent to the Central Activities Zone, particularly important retail frontages.

19. Criterion B of Policy CS7 of the Core Strategy relating to Bunhill and Clerkenwell states that there are a number of local centres within the area which are a foci for shops, facilities and/or the evening economy, including amongst others, St. John Street. It goes onto say that these centres will be protected and enhanced in a manner that ensures their vitality and vibrancy, whilst safeguarding the amenity of residential uses. However, the appeal site is not situated within a designated town centre or a defined local centre allocated for retail purposes as defined in appendix 3 of the DMP. Criterion c of Policy 2.11 of the London Plan 2016 states that retail capacity will be focused on the CAZ frontages. However, St John Street is not allocated as a Central Activity Zone frontage as defined in Annex 2 of the London Plan.

20. The proposed A1 retail element and the D2 Assembly and Leisure element are classed as main town centre uses by the Framework. The proposal could accommodate 615m^2 of A1 retail floor space which would be equivalent to a large 'express/local' supermarket and could, therefore, have an impact on neighbouring town centres, in particular Angel Town Centre.

21. At the time the application was determined retail impact and sequential assessment had not been undertaken. Consequently, the Council considered that insufficient evidence had been submitted to demonstrate that the proposal would not have an impact either individually or cumulatively on nearby Town Centres, in particular Angel Town Centre.

22. A brief Retail Impact Assessment (RIA) has been submitted in support of the appeal. The RIA includes an assessment of Angel Town Centre which draws heavily on the Islington's Town Centres: Review and Health Check (Health Check) (2012) which found that Angel Town Centre was performing very strongly overall due to a combination of a high number of A1 units, alongside complementary vibrant cultural and entertainment uses. The Health Check also found a diversity of uses and a low vacancy rate. On the basis of my site visit, I have no reason to disagree with this assessment.

23. The RIA suggests that the appeal site is relatively small, equating to approximately 1% of the total floor space of 51,496m^2 of total retail, leisure, financial and business services floor space within Angel Town Centre and concludes that no significant impact is likely as a result of the proposal. Attention is also drawn to the forecast retail sales (2021) set out in the Islington Retail Study Update 2008 which shows the combined turnover of both convenience and comparison goods of £401.6m.

24. It is acknowledged that the proposed retail or D2 floor space would be a small percentage of the total commercial floor space within Angel town centre. However, the proposed floor space of 615m^2 is significantly above the Council's threshold of 80m^2 and whilst a brief qualitative analysis has been undertaken, there is no quantitative analysis. In the absence of such analysis, including information such as the turnover of the proposed use, surplus expenditure in Angel

Town Centre and the extent of any trade draw, it is not possible to determine whether the proposal would harm the viability of Angel Town Centre or prejudice the prospect for further investment needed to safeguard its viability.

25. Attention is drawn to paragraph 4.27 of the DMP which states that proposals for retail, services, entertainment, assembly and leisure uses within the CAZ may be appropriate where these would not detrimentally affect the vitality and viability of town centres. It goes onto say that proposals involving these uses (especially those of a small scale) are unlikely to result in detrimental impacts and that the Policy, therefore, takes a flexible, judgement based approach as to whether a full impact assessment is required should be applied. However, in setting a threshold of $80m^2$, the Council clearly considers that proposals above this threshold may have the potential to impact on other centres. The proposal would be larger than the majority of retail units in the street and would be significantly above the threshold set out in Policy DM4.4. Given the scale of the proposal, I consider that in this case a quantitative assessment should be required.

26. Attention is drawn to an appeal decision[1] in which the inspector commented that it is difficult to see how the vitality and viability of Nags Head could be threatened given that it provides a much greater of variety of outlets of greater size and as the Sainsbury's Local outlets are planned with a 500m catchment in mind. This case was not in the CAZ and thus engaged Part A of Policy DM4.4 of the DMP. Nevertheless, the floor space threshold set out in part A of the Policy is the same. I note that this case is significantly smaller than the appeal proposal and that the inspector concluded that an impact test would be required. Furthermore, the proposal in this case was for convenience retailing which would be likely to have a local catchment. The flexible nature of the appeal proposal could result in $615m^2$ of comparison retailing which would likely have a wider catchment and could, therefore, have an impact on the viability of Angel Town Centre. This case is not, therefore, directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.

27. There is dispute between the parties as to whether a sequential assessment would be required to support the proposal. However, even were a sequential assessment required, in the absence of a quantitative retail assessment, I am unable to determine whether the proposal would have a detrimental impact on the viability of Angel Town Centre.

28. For the reasons stated, I conclude that there is insufficient evidence to determine whether the proposal would harm the vitality and viability of Angel Town Centre. The proposal is, therefore, contrary to Policy DM4.4B of the DMP. This conflict weighs against the scheme.

Living conditions of existing residents

29. The range of flexible uses proposed would permit occupiers such as a café, restaurant, drinking establishment, concert hall, dance hall, gymnasium and indoor sports or recreation. Such a range of uses could lead to potential noise, disturbance or odour for the occupiers of surrounding residential uses.

30. There is an existing void at the rear of the main building which sits adjacent to the rear of the residential properties at 66 St John Street. Indeed a number of objections have been received from occupiers of those units in terms of potential

[1] Appeal reference: APP/V5570/A/13/2210830

noise and disturbance. There are also residential properties above commercial units along St John Street.

31. Criterion ii of Part B of Policy DM4.4 of the DMP requires that proposed uses can be accommodated without adverse impact on amenity. Policy DM4.3 of the DMP states that proposals for cafes, restaurants, drinking establishments, off-licences, hot food takeaways and other such uses will be resisted where they would result in negative cumulative impacts due to an unacceptable concentration of such uses in one area; would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area.

32. The Council considers that on the basis of an A3 use survey, the evidence suggests that there are no discernible clusters of A3 units in the area. Given the nature of the Central Activities Zone and the suitability of night time economy uses, overconcentration on a purely quantitative basis is considered unlikely. I noted on my site visit that A3 and A4 uses were well distributed along the street interspersed with office and commercial uses at ground floor level. However, this does not preclude the need to assess any potential effects arising from the proposal itself.

33. The nature of the proposed uses, in particular the A3 (restaurants and cafes), A4 (drinking establishments) and D2 (assembly and leisure) use classes, have the potential to adversely affect the living conditions of nearby residents by virtue of noise arising from congregations of customers, music and any extraction equipment. Odour caused by cooking inside the premises may also be an issue. There may also be noise and general disturbance caused by customers and delivery vehicles coming and going outside the premises. Such effects can be particularly intrusive when they take place late into the evening when other background noise levels generally diminish. Proposed uses falling within D1 use class may also have the potential for traffic generation, although I note that highway safety is not included as a reason for refusal.

34. Paragraph 4.21 of the DMP states that in assessing the likely impacts of a proposal, regard will be had to the type of use, proposed hours of opening, size of premises, operation and servicing and measures to mitigate odour and noise from the premises. I have regard to the conditions proposed by the appellant and also the Council. I consider that conditions relating to opening hours, submission and approval of extract and ventilation equipment, noise arising from music, customers or ventilation and extraction equipment, the timing of deliveries etc, potentially tailored to each specific use could have been imposed to address concerns had I decided to allow the appeal.

35. For the reasons stated above, I, therefore, conclude that with the suggested conditions, the proposal would not have a harmful effect on the living conditions of neighbouring occupiers. The proposal would not, therefore, be contrary to Criterion ii of Part B of Policy DM4.4 of the DMP or Policy DM4.3 of the DMP.

Other matters

36. The proposal is situated within the Clerkenwell Green Conservation Area and adjacent to Nos 72, 78 and 80 St John Street, which are grade II listed buildings. The existing frontage of the appeal property is largely blank and does not make a positive contribution to the street scene. The proposal would involve the creation of a new facade, entrance and aluminium framed window which would result in a more active and positive frontage. The proposal would not, therefore, harm the

character or appearance of the Conservation Area or the setting of neighbouring listed buildings. The Charterhouse Almhouse lies to the rear of the site and is a grade II listed building. No alterations are proposed to the rear and consequently, the proposal would not harm the setting of this listed building.

Planning Balance

37. I have identified that with conditions, the proposal would not have a harmful effect on the living conditions of neighbouring residents. Furthermore, the proposal would have some benefits in terms of improving the frontage of the site, bringing a vacant, underused unit back into use, promoting a car-free development and contributing to the local economy. However, these benefits could be achieved by other means. I have identified that the proposal would result in the loss of business floor space and have the potential to harm the vitality and viability of Angel Town Centre. I consider that the totality of this harm would outweigh the benefits of the proposal.

Conclusion

38. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector