



Appeal Decision

Site visit made on 25 June 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th August 2019

Appeal Ref: APP/N5660/W/18/3218316

Ground Floor, 20 Milkwood Road, London SE24 0HH

- 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 Mrs Kyriacou Kokkinos against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/02703/FUL, dated 27 December 2017, was refused by notice dated 23 October 2018.
 - The development proposed is Change of use from a Chicken takeaway shop to a residential flat.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are;
 - The effect of the proposed change of use on the vitality and viability of the commercial parade,
 - The effect of the proposal on the living conditions of future occupiers, with respect to outlook; privacy; access to daylight; and size,
 - The effect of the proposal on the character and appearance of the host property, the shopping parade and the surrounding streetscene,
 - Whether the proposal would provide an adequate provision of affordable housing, and
 - The effect of the proposed use on highway parking.

Reasons

Vitality and viability of the local centre

3. The site the subject of this appeal is a ground floor commercial unit currently in use as a hot food takeaway. It is within a small parade of five commercial units, including another hot food takeaway and a betting shop. During my visit the parade appeared to be relatively vibrant. The site is in the centre of the five units and includes a basement area used for storage.
4. Policy ED10 of the Lambeth Local Plan 2015 (LP), seeks to protect the vitality and viability of local centres and only allow a change of use when the proposed use would result in an active frontage. The proposal would place a living room

window on the front elevation, set back around one metre from the footway. Living adjacent to a parade, future occupiers would be likely to add privacy blinds or netting to secure some privacy from passers-by. Consequently, the proposed use would contrast with the type of use that would be naturally active. Therefore, the proposal would have a deadening effect on this commercial group. This would hamper the ongoing commerciality of the parade as a whole and be contrary to the objectives of the development plan.

5. Furthermore, the proposal would interrupt the continuity of the group of commercial units. The vitality of the group would be stronger with the commercial use in place. Customers would be able to obtain a greater range of goods and services enabling joined up travel patterns. Conversely, the proposed use would not contribute towards the vitality of the parade. Furthermore, any future residential occupier could only make a small contribution towards trade for the four remaining commercial units. This would therefore be unlikely to offset the impact of the loss of the commercial unit from the parade.
6. The appellant has stated that the lease lapsed in December and the premises will now close. However, insufficient evidence has been submitted to illustrate that the unit would be unviable to alternative commercial activity. Furthermore, the unit appears to retain the required furniture and equipment to reopen with limited outlay. Subsequently, the commercial unit still has the capability of making a positive contribution towards the vitality and viability of the parade. Its loss is therefore not supported for the above reasons.
7. Consequently, the proposal would be contrary to policy ED10 of the LP, which seeks amongst other things to protect and support the role of local centres.

Living conditions

8. The proposal would include a kitchen, bedroom and lounge at ground floor and a large bedroom in the basement. The lounge would be at the front and the basement bedroom would make use of the lightwell also at the front. The private courtyard to the rear is enclosed and of a reasonable size for limited outdoor activity. However, access to the basement is awkward due the width and height of its stairwell. Also, the basement has a relatively low-level ceiling and would require substantial work to its floor and walls to create a habitable space.
9. Policy 3.5C of the London Plan (2016) relates to the quality of housing development. This states that it should be of the highest quality and meet the minimum space standards. The footnote of Table 3.3 of this policy seeks a minimum of 75% of the floor area to have a minimum ceiling height of 2.3m, with 2.5m being strongly encouraged.
10. A section drawing has not been provided to indicate the final ceiling height of the basement. Hence, the evidence fails to illustrate how it would meet a reasonable minimum height. Although the proposed basement bedroom is only around 25% of the total area, this would be the largest room in the proposed dwelling. This room would consequently make a significant contribution to the functionality of the dwelling as a whole. Therefore, its need to achieve an adequate ceiling height requirement is paramount. Furthermore, in terms of privacy the lounge and main bedroom would be at the front of the property and adjacent to the public realm. This would have a fundamental impact on the

privacy available to an occupier especially as rooms to the rear would be secondary spaces. Furthermore, the outlook from the basement bedroom window would be especially poor, with a retaining wall one metre from the window. Also, this room would gain limited daylight due to its subterranean nature. Consequently, the dwelling would be poor quality and fail to provide a decent standard of accommodation.

11. As a result, the proposal would fail to provide adequate outlook, privacy, daylight or ceiling height in the basement. These failings would result in the creation of a poor-quality form of accommodation that would be harmful to the living conditions of future occupiers.
12. Therefore, the proposal would be contrary to policies H5, H6 and Q2 of the LP, which seek new dwellings to accord with the principles of good design, provide high quality accommodation and that would result in adequate outlook, privacy and gain adequate access to daylight. Furthermore, the proposal would fail policy 3.5 of the London Plan, which seeks housing development to be of high quality.

Character and appearance

13. The appeal site is within a row of connected buildings of various architectural styles. A central group includes a parade of five retail units and is otherwise surrounded by residential use. The block includes relatively decorative features especially above ground floor level. Some of the ground floor properties appear to have been converted to residential use. These seem to have retained the pilasters and facias, of a former commercial use, and include a set-back of around one metre to create separation to the footway. These conversions are relatively successful due to the use of matching brick, window form and aspect that follows design themes from the first floor and includes a single front door. In contrast, the site retains brick pilasters, but the existing shopfront is otherwise utilitarian and unremarkable. Consequently, the site makes a neutral contribution to the character and appearance of the area.
14. The proposal would remove the fascia and replace the shopfront with a domestic frontage. The ground floor elevation would be set back to create a lightwell to the basement area and include a wide single window with two front doors. The design would pay only limited regard to the design of the first floor of the building and remove key features of the existing shopfront. The window would bear no architectural relationship to the three decorative windows above, being wide and plain by comparison. This would visually contrast to the more considered design of ground floor residential uses elsewhere in this block. Moreover, the frontage especially including two front doors would be an incongruous addition. The proposal would also be in the centre of the retail group thus creating a harmful juxtaposition between different frontages. Subsequently, the proposed design would be out of character with the host building, the parade and the surrounding streetscene.
15. The proposal would not therefore comply with policies Q5, Q11 and Q16 of the LP, which seek development that would reinforce local distinctiveness and would positively respond to the local character, be subordinate to the host building and to sympathetically incorporate features of interest. Furthermore, the proposed dwelling would not accord with policy 7.4 of the London Plan, which seeks development to build on the positive characteristics of an area.

Affordable housing

16. Affordable Housing is sought through policy 3.12 of the London Plan (2016). Furthermore, policy H2 of the LP requires a financial contribution towards affordable housing for development on sites providing fewer than 10 units. However, the Framework states that affordable housing should not be sought for residential development that are not major developments. Nevertheless, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
17. The Council's Affordable Housing document for small sites¹ explains that there is an acute shortage of affordable housing in the Borough, with demand remaining very high for the next 10-15 years. This is based on the analysis undertaken in the Local Housing Needs Assessment 2012 and Strategic Housing Market Assessment 2017. These have found the need for affordable housing in the borough to be significant. Consequently, the evidence adequately justifies the need to secure affordable housing provision on small sites to partly address the need. The Council's submitted evidence is substantive and provides an undisputed case. Moreover, five recent appeal decisions² have also concluded that the evidence of local demand for affordable housing is compelling and that policy H2 is of greater weight than the Framework. Therefore, although the Framework is a significant material consideration it would not outweigh policy H2 of the development plan in this instance.
18. The proposal is without a legal mechanism to secure a planning contribution towards affordable housing or a viability appraisal to illustrate making such a payment would render the proposal unviable. Subsequently, it would fail policies D4 and H2 of the LP, which seeks to secure affordable housing and requires a financial contribution for sites of fewer than 10 units. Furthermore, the proposal would not accord with policy 3.12 of the London Plan which seeks the maximum reasonable amount of affordable housing to be secured.

Parking pressure

19. The proposal makes no provision for on-site parking. The site is adjacent to a highway with parking restrictions, including directly in front of the parade of shops allowing a 20 minutes maximum stay. Furthermore, many local roads include single yellow parking restrictions and the site is within a controlled parking zone.
20. Policy T7 states that development should be car free particularly in areas where public transport accessibility is high. The site is within a public transport access level (PTAL) 3 area, enabling 'moderate' access to sustainable travel. Consequently, the PTAL measure is not sufficiently high to require the development to be car free and therefore engage the requirements of policy T7. Furthermore, although the appellant has not provided a parking survey to assess the availability of on-street parking, the level of parking generated

¹ Lambeth Local Plan Small Sites Affordable Housing Policy: considerations for planning decision makers 2017

² Planning Appeal Decisions: APP/N5660/W/18/3198397; ../3192507; ../3205413; ../3206605; ../3211080.

would be negligible or zero. Consequently, a legal agreement requiring the appellant to prevent future occupants from applying for a resident parking permit, is not necessary or reasonable. Therefore, in this case, this requirement would not pass the test of the CIL Regulations³.

21. As such, the proposal would accord with policy 6.13 of the London Plan, which seeks to encourage cycling, walking and public transport use. Furthermore, the proposed use would accord with policies T6 and T7 of the LP, which seek development to have an acceptable impact on on-street parking and for minimal parking to be provided in areas of good public transport accessibility. Having found a negligible impact on parking pressure, policy D4 of the LP would not be relevant as this seeks planning obligations to mitigate identified impacts.

Other Matters

22. Planning permission was given in 2002⁴ for the unit to be changed to a dwelling, which expired unimplemented. However, the details of the approved scheme and the commercial context of the parade at the time is not in evidence before me. In any event, different local and national policies have been adopted since that time and I must primarily pay regard to the current policy context.
23. The appellant informs that the site is within a 400m radius of two nearby schools. She also identifies that policy ED7 of the LP seeks to encourage food and drink in town centres and Central Activity Zones and not within 400m of schools. This policy is not before me, but it is recognised that there may be some policy support for proposed hot food takeaway uses to be located away from schools. However, there is no evidence before me that would support the elimination of the existing commercial use.

Conclusion

24. The National Planning Policy Framework seeks to significantly boost the supply of housing. The proposal would provide a two-bedroom flat which would not significantly affect local parking pressure. However, the harm identified to vitality, character and appearance, future living conditions and affordable housing provision would be substantial. As a result, the benefits of the proposal would be outweighed by the harm identified to the development plan.
25. For these reasons, and having had regard to all matters raised, the appeal is dismissed.

Ben Plenty

INSPECTOR

³ Community Infrastructure Levy Regulations 2010, Regulation 122(2)

⁴ Planning Application Reference: 01/2920/FUL