
Appeal Decision

Site visit made on 30 July 2019

by M Harris BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2019

Appeal Ref: APP/V5570/W/19/3226781

5 Elthorne Road, Islington, London N19 4AB

- 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 Hershy Greenberg (Elthorne LLP) against the decision of the Council of the London Borough of Islington.
 - The application Ref P2018/1403/FUL, dated 23 April 2018, was refused by notice dated 25 October 2018.
 - The development proposed is the demolition of existing building with office use at No.5 Elthorne Road, and construction of new mixed use development to consist of 9no. residential units from first floor to fourth floor inclusive and 2no. commercial units at basement and ground floor, along with separate refuse areas for residential and commercial use, bicycle storage and associated site works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted plans showing proposed revisions to the scheme in response to some of the Council's reasons for refusal; these are addressed within my reasoning on relevant main issues.

Main Issues

3. The main issues are:
 - Whether the loss of D1 floorspace would be appropriate;
 - The design of the proposal including the impacts on the character and appearance of the street scene and a non-designated heritage asset together with the potential for crime and anti-social behaviour;
 - Whether the proposal would prejudice the development potential of the neighbouring site;
 - The impact on occupants of neighbouring properties; and
 - The impact on future occupiers of both the residential and basement commercial elements of the proposed development.

Reasons

4. The appeal site is currently occupied by a three-storey building fronting the north western side of Elthorne Road. When viewing the site from the road, to the left is a vacant site beyond which is a two-storey building. To the right, attached to the appeal site is No 7 Elthorne Road, a two-storey red and yellow brick building. To the rear, the site boundary is shared with the rear gardens of properties on Boothby Road. A locally listed building is opposite the site at No 4-6 Elthorne Road.

Loss of D1 floorspace

5. The current use is stated within the application documents and the Council's Officer report and appeal statement as a learning and community centre/office falling within a D1 non-residential use. This was established via previous planning permissions, the refusal of a certificate of lawfulness for B1 office use (in 2014) and evidence from the Valuation Office Agency.
6. The appellant submits that the building has been vacant since 2017 however it is clear from my site visit that the building is in use as temporary communal residential accommodation, whether lawfully or otherwise. The appellant does not dispute that the building lawfully falls within the D1 use class.
7. The proposal would result in the loss of the D1 use. Policy DM4.12 of the Islington Local Plan: Development Management Policies 2013 (the Local Plan) seeks to protect against the loss of social infrastructure and cultural uses unless they are replaced, or the existing use is no longer required. The appellant confirms that efforts to find tenants for the current use have been unsuccessful.
8. However, this effort is not substantiated by evidence demonstrating a lack of demand or that the loss would not lead to a shortfall of D1 use elsewhere in the local catchment and as such it is not possible to consider whether the wider area, and the facilities within it, would be able to absorb the loss. Whilst the appellant has indicated that they were not requested to submit this, Policy DM4.12 is clear in expecting proposals to be supported by such evidence.
9. In light of this, the loss of D1 floorspace has not been justified and is contrary to Policy DM4.12 of the Local Plan insofar as it requires suitable justification for loss of floorspace.

Design

10. A range of building types and scales are present on Elthorne Road ranging from two through to four storeys. Batavia Mills (No 4-6 Elthorne Road) is a locally listed (Grade B) red brick four-storey 9 bay industrial building, characterised by the Council as of robust character. To the south west, the immediate neighbour is the vacant New College Site beyond which is a multi-bayed red brick modern two storey building. To the north east, No 7 Elthorne Road is a yellow and red brick, tile roofed two storey building described as Queen Anne revival-inspired. Beyond the site, terraced, three-storey properties on Boothby Road form the north east boundary of the site.
11. The proposal would significantly increase the developed extent of the site, taking built form to all boundaries and increasing the height to five storeys. Fronting Elthorne Road at the ground floor, the building would be limited to

- entrances to the commercial unit and general entrance lobby together with a staircase to the basement. Floors one and two present windows and balconies before stepping back over floors three and four. At the rear, the building would present as five storeys of blank elevation to the rear boundaries of Nos 1 and 2 Boothby Road.
12. The consequence of the ground floor arrangement is that there is limited opportunity for natural surveillance of and activity on the street owing to the spaces adjacent to the street principally being a lobby, refuse store and entrance. The glazed frontage to the commercial unit is set back, limiting the potential interaction. Furthermore, despite the upper level setback, the scale of the building as it appears to Elthorne Road would dominate over neighbouring properties and would, by virtue of the scale and proximity, have a dominant effect on the rear gardens of properties on Boothby Road.
 13. Whilst non-designated heritage assets do not benefit from statutory protection, the National Planning Policy Framework (the Framework) notes at paragraph 197 that the effect of proposals on such assets should be taken into account in determining applications. As a result of the scale of the existing neighbouring buildings on the north west side of Elthorne Road being lower than the proposals (and Batavia Mills), the introduction of a five-storey building in this location would appear as a dominant and overbearing structure within the street scene and have a negative impact on the setting of the non-designated heritage asset.
 14. The proposals represent poor design when considering the context and as such have a detrimental impact on the character and appearance of the street scene, fail to provide active frontage with natural surveillance suitable to discourage the potential for crime and anti-social behaviour together with an unacceptable impact on a non-designated heritage asset by virtue of the dominant and overbearing form.
 15. For these reasons, the proposals are contrary to Policies: 7.3 (reducing the opportunities for criminal behaviour), 7.4 (responding positively to the existing built environment), 7.6 (avoid harm to surrounding land and buildings) and 7.8 (protect heritage assets and their setting) of the London Plan (2016); CS8 (reflecting Islington's character) and CS9 (protecting and enhancing the built and historic environment) of the Islington Core Strategy (2011) (the Core Strategy); DM2.1 (design) and DM2.3 (heritage) of the Local Plan; The Islington Urban Design Guide SPD (2017); and the Framework in respect of non-designated heritage assets.

Impact on future development of neighbouring sites

16. The proposed development would extend to the boundary of the adjacent vacant New River College site, the south west boundary of the appeal site. This elevation would have no windows at ground floor. Across floors one to four a number of windows are proposed, serving bedrooms, in addition to balconies with setback windows, on the first, second and third floors. These would gain their outlook and natural light from the undeveloped New College Site. On the fourth floor there would be a communal roof terrace.
17. Whilst I have no details before me as to any potential future development, it is not unreasonable to consider that it might have such potential and that the

current proposal would significantly limit that as a result of the degree to which it relies on the site being currently undeveloped for outlook and daylight.

18. The appellant has not responded in detail to this reason for refusal other than noting that they consider that the Council should have engaged during determination. Notwithstanding this, the proposal would prejudice the development potential of the neighbouring site contrary to the principles set out in Policy DM2.1 of the Local Plan insofar as it expects proposals to not unduly prejudice the satisfactory development or operation of adjoining land.

Impact on neighbouring properties

19. On the north east boundary, the building would present as a five-storey elevation without windows, clearly visible from the rear gardens of some properties on Boothby Road. The scale of development from these properties would be significant and as such would have an enclosing effect.
20. During my site visit I entered No 4 Boothby Road, from which I was able to view the appeal. From here there would be an approximately 90-degree view of the rear, north west elevation of the building (which has windows and balconies) and it is therefore possible that from the upper floors of the proposal there would be potential for oblique overlooking of the garden spaces and rear windows of No 4. However, I agree with the Council that as they are not direct views, there is only a limited likelihood of overlooking of a degree that would be significantly detrimental to the occupiers of No 4.
21. The appellant has provided a Daylight & Sunlight Assessment in support of the proposals which considers the potential impact on daylight reaching neighbouring properties. This notes that five of the seventeen windows tested would fail to accord with the Building Research Establishment recommendations that the Vertical Sky Component (VSC) should be no less than 27, or where reduced below this to no less than 80% of the existing value. All of the windows failing the VSC test are in the rear elevation of Nos 1 and 2 Boothby Road.
22. The appellant's consultants have responded to the appeal, acknowledging the results and indicating that the BRE guidelines are one element to be considered when making a wider planning judgement. I recognise this point however consider that in this instance, when combined with the increased sense of enclosure arising from the scale of development on the boundary, the loss of light to Nos 1 and 2 Boothby Road would have an unacceptable impact on the occupants of the neighbouring properties and as a result the proposal would be contrary to Policy 7.6 of the London Plan (2016) in respect of avoiding unacceptable harm to surround buildings in relation to overshadowing and Policy DM2.1 of the Local Plan regarding loss of daylight, over-dominance and sense of enclosure.

Impact on future occupiers

23. The proposal includes two separate B1 commercial office spaces at ground floor and basement levels. The latter would be accessible from within the building via the central stair and also directly from the street via an external stair to a courtyard area facilitated by a cut out from the floor plate at ground floor level.
24. The courtyard would be the only source of natural light to what is a large and deep floorplate. The potential for light to enter this space is limited as the void

creating the courtyard is enclosed on three sides (at ground floor level) and from the underside of the first floor. No evidence has been submitted to demonstrate the predicted levels of light within the basement nor to rebut the Council's position.

25. On the basis of the limited natural light available the proposal would have an unacceptable impact on the future occupiers of the basement commercial space, contrary to Policy 2.1 of the Local Plan in respect of the provision of sunlight and daylight together with avoiding a detrimental sense of enclosure.
26. Turning to the residential elements of the proposal, the plans show nine flats of between one and three bedrooms across floors one to four. Of these, all are dual aspect except for flats two and five which have windows in the south west elevation only (fronting the New College Site). All flats would have private balcony space and access to a communal roof terrace on the fourth floor.
27. Flats one and four were considered by the Council to fall short of the minimum size standards set out in the London Plan and the Council's own Development Management Policies. The appellant has provided amended drawings to address the concerns of the Council and they have subsequently indicated that the size standards are met.
28. Notwithstanding this, the layout of the floor plans is such that flats two and five are single aspect only with a deep plan which would result in the primary living space failing to receive adequate day/sunlight. The same issue is relevant to flats three, six and eight due to the internal arrangement of space. Finally, flat seven appears from the plans to lack adequate privacy to the shower room, primary living space and bedroom by virtue of access to the flat roof on the third floor. Flat nine would have inadequate levels of privacy due to the communal roof terrace being immediately adjacent to windows serving a bedroom and the bathroom.
29. For these reasons, the proposal would result in poor living conditions and have an unacceptable impact on future occupiers, contrary to Policies CS12 of the Core Strategy, Policy DM3.4 of the Local Plan and the London Plan Housing Supplementary Planning Guidance (2016) insofar as they deal with matters of design and detailed space standards, outlook and privacy.

Other Matters

Planning obligation

30. The absence of a planning obligation was not cited as a reason for refusal however was referenced within an informative by the Council on its decision notice. This stated that an Affordable Housing Small Sites contribution of £450,000 would have been required had planning permission been granted or subsequently granted on appeal. The informative confirmed that the applicant had agreed to enter into an agreement.
31. An unexecuted obligation making provision to pay the Affordable Housing Contribution has been submitted with the appeal. However, owing to the uncompleted status, I cannot take this into account in my consideration of the appeal. In any case, whilst a completed contribution would represent a positive benefit, and notwithstanding the status of the obligation, I do not consider that it would outweigh the harm found in relation to wider matters.

32. For the reasons set out above, and having had regard to all other relevant matters, the appeal is dismissed.

M Harris

INSPECTOR