



Appeal Decision

Site visit made on 7 January 2020

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 27 January 2020

Appeal Ref: APP/V5570/W/19/3239414

24 Highgate Hill, Islington, London N19 5NL

- 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 Tony Bartolo against the decision of the Council of the London Borough of Islington.
 - The application Ref P2018/1202/FUL, dated 4 April 2018, was refused by notice dated 3 May 2019.
 - The development proposed is conversion of single dwelling from class use C4 as an HMO to building use class C3 as three separate flats, therefore the addition of two new units.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of a single dwelling from class use C4 as an HMO to building use class C3 as three separate flats, therefore the addition of two new units, at 24 Highgate Hill, Islington, London N19 5NL in accordance with the terms of the application Ref P2018/1202/FUL, dated 4 April 2018, and the plans submitted with it subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The appellant's name was stated differently on the planning application form in error. The above spelling has been confirmed as correct.
3. The plans used in determining the application included a large study as part of Unit Three which the Council treated as a third bedroom due to its size. Different layouts were submitted with the appeal documents Plans Ref PL-110 Rev E and PL-112 Rev E. The appellant confirms these are background documents only. Accordingly I have determined the appeal based on the plans accompanying the planning application as listed by the Council.
4. The development as described by the Council on the decision notice refers to windows and extensions but the appellant confirms that the roof extension and dormer have been granted planning permission reference P2016/1317/FUL (the existing permission). I have considered the appeal on this basis.
5. In their Statement of Case Paragraph 2.1 the Council says the appeal is against refusal of planning permission and listed building consent. However, in Paragraph 3.2 the Council states that the building is not listed or within a conservation area; the Questionnaire indicates that the development does not affect a listed building; and there is no such appeal before me.

Background and Main Issues

6. Number 24 Highgate Hill is a terraced building. Part of the ground floor is in commercial use as a café. This is not part of the appeal proposal. The evidence indicates the appeal site part of the property was most recently used as a House in Multiple Occupation.
7. There would be a slight shortfall of floor space for two of the flats against the Housing Standards expected by Policy DM3.4 of Islington's Local Plan: Development Management Policies 2013 (the DMP). The Council considers the shortfall would not be sufficient to warrant refusal and I find no reason to think otherwise. The floor to ceiling requirements would be met.
8. The main issues for this appeal are: whether the proposed mix of unit sizes would be appropriate or not; whether the proposal would provide satisfactory living conditions for existing and future residents; and whether appropriate provision would be made for affordable housing.

Reasons

Mix of unit sizes

9. Policy DM3.1A of the DMP requires new development to provide a good mix of housing sizes. Policy DM3.1B seeks that new development reflects local housing need. The associated supporting text identifies that the existing housing stock is heavily skewed towards smaller dwelling types and Table 3.1 sets out a required percentage mix of different house sizes. The proposal would provide a mix of sizes, as required, but would not fully provide the housing mix preferred for open market housing set out in Table 3.1.
10. Policy DM3.3 of the DMP seeks to retain a supply of larger homes to meet Islington's housing needs. This is consistent with the National Planning Policy Framework (the Framework) which supports the creation of sustainable, inclusive and mixed communities and which expects local planning authorities to plan for a mix of housing based on the needs of different groups in the community and to identify the size, type, tenure and range of housing that is required, reflecting local demand. Policy DM3.3 also provides for the conversion of larger residential units into smaller ones in certain circumstances. There would be conflict with the requirements of Policy DM3.3 Ai) in terms of providing a one person-sized unit and with Policy DM3.3 Aiii) in failing to provide at least one three bedroom and one two bedroom unit unless exceptional circumstances can be demonstrated.
11. Number 24 is a terraced property and there is a commercial use on the ground floor. Due to the shape and size of the floors within the building it would be very difficult to incorporate larger units without further physical extensions beyond those already granted under the existing permission. Indeed the Council refused permission for a mix including larger units planning reference P2017/3085/FUL partly due to the layout and substandard internal living environment of the then proposed larger dwellings. Moreover, the need for roof lights to serve the ground floor limits the possibility of extensions to Unit Two and the commercial premises limits the possibility of expansion of Unit One.
12. The above factors together, contrary to the Council's view, seem to me to indicate that a policy compliant mix cannot be satisfactorily achieved. Given these constraints I conclude that despite the conflict indicated above the

proposed mix of unit sizes would not be inappropriate in this case. Moreover, the site is in an area of high density development where Policy 3.4 of the London Plan 2016 (the LP) seeks to optimise housing potential and I find no conflict with this.

Living conditions

13. Policy DM3.5 of the DMP seeks good quality outdoor space for all new residential development. The only outdoor space proposed would be the rear courtyard of some 28 sqm. This would serve the ground floor unit exclusively and would exceed the requirement for outdoor space for 1-2 person dwellings set out at Policy DM3.5 C. It would be large enough to contain planting as well as have space for sitting out. Contrary to the policy requirements there would be no outdoor space for the two upper Units.
14. It appears that the Council does not always apply the outdoor space policy requirement rigidly, but recognises the scope for relaxation in some circumstances¹. Given the constraints of the site, balconies and roof gardens would not appear to be practical and would also be out of character with the local area. In addition the appeal site is close to Waterlow Park which, although not private, provides a large and attractive outdoor amenity for local residents.
15. Policy DM3.4 D of the DMP and CS9 F of the CS require dual aspect accommodation but where this would be impossible or unfavourable the design must demonstrate how a good level of natural ventilation and daylight would be provided. Unit One would have a single aspect due to constraints imposed by the commercial unit at the front of the building. As shown on Plan PL-112 Rev E there would be two double patio doors facing the garden area as well as three skylights giving sufficient ventilation.
16. The Daylight Report September 2019, submitted with the appeal, concludes that the level of daylight provision should be regarded as acceptable in this case. The Council broadly queried the results of this but in the absence of detailed evidence to the contrary I find insufficient evidence to discount its accuracy. Upon inspection on a gloomy day, I found Unit One was not dark, cold or gloomy. The spaces have reasonable ceiling heights and proportions. I conclude adequate daylight would be provided for future occupiers.
17. Although the garden area is not large the outlook towards a white painted wall and across the low side boundary walls is acceptable in a high density area. There would be a view of the sky from the skylights and, in this instance, I conclude that the access to the garden area would outweigh the less than desirable single aspect outlook for future occupiers of Unit One.
18. I have found that the proposal would not provide private outdoor space for the two upper Units and Unit 1 would be single aspect. However, for the reasons set out above I conclude that, on balance, the proposal would provide adequate living conditions in accordance with Policy DM3.4 of the DMP. Nor do I find conflict with Policy 3.5 of the LP and Policy DM2.1 of the DMP in respect of design and living conditions or Policy CS8 of the Core Strategy 2011 in respect of impact on the character of the area.

¹ For example Appeal Decision APP/V5570/W/15/3009013

Affordable housing

19. Policy CS12(G) of the CS requires that all schemes below a threshold of ten or more units provide a financial contribution towards affordable housing provision elsewhere in the Borough. This is so the Council can provide more affordable homes. The Affordable Housing Small Sites Contributions Supplementary Planning Document 2012 (AHSPD) supports the Council's approach in explaining that the need for affordable housing is a major issue in the Borough. Both of these recognise the requirement is subject to a financial viability assessment, the availability of public subsidy and individual circumstances on the site.
20. This approach is also supported by Policy H2A of the emerging London Plan 2019 which recognises the significant unmet need for affordable housing in London and the role played by contributions from small sites in meeting that need. Whether or not that Policy is deleted from emerging London Plan the examining Inspector noted that its deletion would not preclude individual boroughs from bringing forward small sites policies where justified but also recognised that viability considerations are more pronounced for small developments.
21. Tension exists between Policy CS12(G) and Paragraph 63 of the Framework as the latter states that affordable housing should not be sought for non-major residential developments other than in designated rural areas. The appeal scheme is not a major development. Even so, existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Applications for planning permission must also be determined in accordance with the development plan, unless material considerations indicate otherwise.
22. The appellant does not dispute the Council's evidence in regard to the need for affordable housing or the role that sites with fewer than ten units can play in contributing to the overall supply of housing in the Borough. On the basis of the available evidence nor do I². However, the appellant considers the scheme would not be financially viable with a contribution towards affordable housing. Guidance for carrying out assessments of viability is set out in Islington's Development Viability Supplementary Planning Document 2016; the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance 2017; the Framework and the national Planning Policy Guidance (the PPG).
23. Both Parties have retained experts to address the question of viability by comparing a calculated Residual Land Value against an appropriate Benchmark Land Value. Following a number of exchanges during consideration of the planning application, the disputed input assumptions remaining when the appeal was submitted related to assumed build costs; the net to gross adjustment assumption in respect of floor space (for the purposes of calculating build costs); and the sales values of the proposed residential units.
24. As part of its Statement of Case the Council updated its assessment in respect of Community Infrastructure Levy and construction costs. As a result the small sites contribution sought was reduced from £100,000 to £81,000.

² No conflict with the appeal cases quoted in the Council's extensive Appendices

25. In response to the Council's Statement of Case the appellant, as part of the Final Comments, submitted at Appendix 2 an Appeal Stage Viability Update December 2019 v2 (the VUv2). This removes the net to gross adjustment assumption; adopts the Council's build costs; and adopts the Council's sales estimate of £600,000 for the largest flat. The outcome indicates that the scheme would not be viable with a contribution towards affordable housing.
26. The Parties continue to disagree as to the sale value of the two smaller units. Up-to date evidence of actual sales examples within the evidence is somewhat dated and limited in extent. The examples provided by the Council to justify their estimates appear to rely predominantly on the asking price of properties on the market, and which may not be achieved. The appellant has provided more examples of actual sale prices and has provided sales valuations for the appeal properties from local estate agents which are based on a combination of the professional judgement of local experts as well as reference to comparable schemes.
27. On the basis of the evidence it appears that prices achieved have been falling and the latest sale price for a one-bedroom two person flat in August 2019 is stated as £390,000³. Although the Council advises this is in a purposes built local authority housing block, and notwithstanding the difficulties of identifying sufficiently comparable properties, I consider the appellant's value of £700,000 ascribed for the two smaller units in the VUv2 to be more likely to accurately reflect market conditions.
28. To conclude on this matter, I find that it has not been satisfactorily demonstrated that the findings of the appellant's Viability Report are not robust. Therefore, it is likely that there would be no surplus to fund the affordable housing contribution which would, in turn, affect the viability of the scheme. Although I have found that the Framework does not outweigh local planning policy in this case, I am satisfied that there are site-specific circumstances in the form of viability constraints. Consequently, a contribution towards the provision of affordable housing elsewhere in the Borough has not been justified in line with Policy CS12 of the Core Strategy, and the guidance contained in the Council's AHSPD.

Planning Balance and Conclusion

29. I have found that, on balance, the proposal would provide satisfactory living conditions for existing and future residents. I have also found that there are site-specific circumstances in the form of viability constraints that preclude a contribution towards affordable housing elsewhere in the Borough. Although the proposal would not conform to the preferred mix of unit sizes set out in the DMP there are constraints within the property that would make it very difficult to do so. The proposal would have a range of sizes and would make a small contribution to the range of housing available in the Borough.
30. Planning Policies can pull in different directions. Whilst there would be a degree of conflict with parts of the Development Plan as set out above, I conclude that, on balance, the benefits of the proposal for three re-furbished self-contained units would out-weigh this conflict. The appeal should succeed.

³ 29a Bredegar Road

Conditions

31. I have considered the conditions proposed by the Council in the light of the Framework and the PPG. Where appropriate I have amended the wording to reflect the circumstances of the case.
32. Since the appellant has confirmed the development has already begun, the statutory condition relating to time limits is unnecessary. A condition is imposed to ensure that the development is carried out in accordance with the approved plans. Such a condition is necessary for the avoidance of doubt and in the interests of proper planning. In the interests of the appearance of the area it is necessary to ensure the materials specified on the plans and in the Design and Access Statement are used for any external works.
33. In the interests of health and safety the provision of appropriate waste storage is necessary.
34. A condition rendering the development 'car-free' is imposed to further the interests of sustainable development. A condition requiring full details of cycle storage facilities; provision; and retention of them is necessary to provide an alternative to reliance on use of a private vehicle.

S Harley

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be carried out in accordance with the approved plans: Site Plan; Design and Access Statement; PL102; PL103; PL104; PL105; PL106; PL107; PL108; PL109; PL110 rev C; PL111 rev C; PL112 rev C; PL113 rev C; PL114 rev C; PL115 rev C; PL116 rev C; PL117 rev C; PL118; rev C; PL119 rev C; Deverill Jenkins Daylight/sunlight letter and the MES Building Solutions Internal Daylight Report dated 9 September 2019.
2. The development shall be constructed in accordance with the schedule of materials noted on the approved plans and within the Design and Access Statement and shall be maintained as such thereafter into perpetuity.
3. No future occupants of the flats hereby permitted shall be eligible to obtain an on-street residents' parking permit other than disabled persons or a resident who currently holds a residents' parking permit issued by the London Borough of Islington and who has held the permit for a period of at least a year.
4. Within three months of the date of this permission details of the layout, design and appearance (shown in context) of the bicycle storage areas, together with a timetable for their provision, shall be submitted to and approved in writing by the Local Planning Authority. The storage shall be covered, secure and provide for no less than five cycle spaces. The bicycle storage areas shall be provided strictly in accordance with the details so approved, and shall be retained as such thereafter for use in connection with the flats hereby permitted.
5. Within three months of the date of this permission details of proposed refuse/recycling storage, together with a timetable for its provision, shall be submitted to and approved in writing by the Local Planning Authority. The refuse/recycling storage shall be provided in accordance with the details so approved and shall be retained as such thereafter for use in connection with the flats hereby permitted.

End of Schedule