

Appeal Decision

Site visit made on 14 January 2020

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2020

Appeal Ref: APP/V5570/W/19/3236194

**The Paperworks, Rear of 71-73 Upper Street, 1 St Alban's Place,
London N1 0NX**

- 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 Grays Road Investments Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/1249/FUL, dated 18 April 2019, was refused by notice dated 24 July 2019.
 - The development proposed is the demolition of an existing commercial unit and the erection of a three storey plus basement level building comprising ground and lower floor office floorspace and 4 residential units above. The proposed mix of units is 2 x 2 bed units and 2 x 1 bed units.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Following the decision of the Council, the appellant has submitted amended drawings which show the removal of the proposed security gate at the junction of the alleyway with St Alban's Place. They suggest that this alteration to the scheme should be considered in the appeal decision, as such an arrangement would be no different to that which exists at present, despite the differences between the existing and proposed development.
3. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the Wheatcroft Principles, the degree of engagement of all parties with the issue of the gate, the comment from the council that these issues are fundamental to the proposal and the interests of fairness. I have therefore determined the appeal on the basis of the plans that were before the Council when it made its decision and on which parties were consulted.

Main Issues

4. The main issues are i) whether or not the proposal would provide suitable living conditions for future occupiers with regard to design, layout and quality of accommodation, ii) whether or not the proposal is compatible with the existing uses of the alleyway and the character of those uses, iii) the effect of the proposal on the living conditions of the existing occupiers of 71 to 74 Upper Street with regard to loss of outlook and an increased sense of enclosure, and

iv) whether or not the proposal would make appropriate contributions towards affordable housing and carbon dioxide offsetting.

Reasons

Living conditions for future occupiers

5. The appeal site, which lies within the Angel Conservation Area (the CA), is an irregular shaped, pitched roof commercial building, which faces onto a relatively narrow alleyway accessed from St Alban's Place. The site lies to the rear of Upper Street. The rear boundary of the site follows the rear of the commercial properties on the ground floor, and there are flats with associated terraces above which face across the site. A number of the businesses on Upper Street use St Alban's Place for deliveries, refuse storage, emergency exits and apparently for staff breaks. An alleyway runs along one side of the building, accessing a number of exits, stairways and a substantial amount of plant and extraction equipment associated with the commercial uses on Upper Street. A separate fire exit and rear door lies to the other side of the site.
6. There are windows capable of being opened on opposite, external walls of each unit, albeit on different floors. As such, the layout of the proposed residential units does in my opinion meet the dual aspect definition and requirements of both Policy DM3.4 of Islington's Local Plan: Development Management Policies, June 2013 (the DMP) and Standard 29 in the Mayor of London Housing Supplementary Planning Guidance, March 2016 (the Housing SPG).
7. Whilst the indoor space proposed for each unit would meet the numerical requirements for floorspace required by the development plan, I am concerned over the quality of that internal space as a result of the design and layout of the proposal. I note that outlook from the principal proposed bedrooms is unencumbered owing to their location on the second floor, facing away from Upper Street. However, the second bedrooms in the larger units would have a restricted outlook owing both to the sloping ceilings proposed and the proximity of the windows to the rear screen wall on the terrace. I am also concerned over the likely quality of outlook and internal environment which would be provided in the living/kitchen/dining rooms of all of the units. These rooms, where one might reasonably expect occupiers to spend most of their time when not asleep are on the first floor of the building behind the terraces and the stylised brick curtain-wall. Their outlook would therefore be restricted by the distance between the windows and the openings in the curtain-wall and the curtain-wall itself.
8. Each unit also includes two areas of outdoor amenity space. One terrace to the rear on the upper level facing the properties on Upper Street, but screened from them by a tall screen, and a terrace to the front on the lower level, set between the windows of the living/kitchen/dining rooms and the stylised brick curtain-wall to the front elevation. Due to the way in which these terraces have been enclosed I do not consider that they would provide outdoor amenity space of the quality required by the development plan policies.
9. I acknowledge that these outdoor spaces are numerically sufficient, offer a choice of outdoor space for future occupiers to use, and are relatively generous given the dense, urban location of the proposal. However, given the nature, and scale of the screening which surrounds them, I consider that they would feel unduly enclosed and would fail to offer a suitable outlook.

10. On balance therefore, I conclude that although the proposal meets the numerical space standards for development of this type, it would not provide suitable living conditions for future occupiers with regard to design, layout and quality of accommodation. This would conflict with Policy DM3.4 and DM3.7 of the DMP, and Policy 3.5 of the London Plan. These policies seek, amongst other things to deliver and maintain high housing standards, ensuring acceptable shape, layout, functionality and usability of spaces, and to ensure the highest quality internally and externally for housing developments in the city.
11. The proposal would also conflict with the aims of the National Planning Policy Framework (the Framework) to achieve well designed places with a high standard of amenity for future users.

Compatibility of uses

12. As originally proposed and determined by the Council, the appeal proposal includes a gate at the end of the alleyway next to St Alban's Place, to create a private access, control access and reduce potential anti-social activity which could affect the proposed residential units. The principle of the proposed gate was also supported by the Crime Prevention Officer, particularly in light of the proposed ground-floor loggia.
13. There are however objections from third-parties and the Council over the practicality of such a gate, given the breadth of uses which take place in the alleyway and the number users. The appellant has suggested that this could be subject to a management condition but provided no wording. They also suggest that the gate be removed from the proposal in the alternative. I have addressed the principle of amending the scheme in my Procedural Matter above.
14. In light of my observations on site, and the comments made on the detailed design elements of the proposal, I consider that some sort of access control would be important to secure a safe, secure and appropriate frontage along the alleyway. Particularly to control any potential for anti-social behaviour, or at the very least behaviour incompatible with the proposed residential use associated with the existing uses and the proposed loggia.
15. Balanced against that need, there are practical considerations around the use and control of such a gate which do not appear to be fully addressed and on which I do not have sufficient information to be certain that they would be capable of resolution through the imposition of a condition as suggested by the appellant. I also have reservations about the enforceability of such a condition, and the burden that it would place upon the Council.
16. In any event, the proposed gate would not control or limit the other existing uses and users of the alleyway and their impact on the appeal proposal in terms of noise and disturbance.
17. The appellant has drawn my attention to previous appeals which addressed the effect of noise in the alleyway on the appeal proposal. The appellant suggests that in both the 2016¹ and 2018² appeals, the Inspectors agreed that as surrounding commercial uses would be complying with, or at least subject to the control of other legislation, no harm to future occupiers would arise in

¹ Reference APP/V5570/W/17/3182082

² Reference APP/V5570/W/15/3136930

relation to noise. Whilst that is indeed the case, both of those previous appeals also expressed concerns over the effect of the other human activity associated with other uses and users. These uses include the moving, using and filling of bins, particularly those used for bottles, deliveries and collections associated with those commercial uses, use of the space for staff breaks, parking and emergency exits from the kitchens and commercial units. From my site visit, it was clear that all of these uses are still active and would remain so if the development were to go ahead. I do therefore consider that these uses and their associated activities would be likely to have a harmful effect on the living conditions of future residents of the proposed units as a result of noise and disturbance associated with them, particularly late at night and early in the morning.

18. The two appeals cited by the appellant above also both discussed the effect of the substantial amount of plant and extraction equipment which lies between the rear of the Upper Street properties and the proposed development. In both of those decisions, and consistent with my observations on site, the Inspectors noted the proximity of the existing plant and equipment to the proposed development and considered the effect of this on the living conditions of future occupiers. I accept that odour and noise emissions from this equipment are controlled by other legislation, and I accept that in urban areas, such as this, levels of ambient external noise may be higher than elsewhere. However, it was clear from my site visit that there is a level of noise and odour associated with this plant which would have what I consider to be a harmful effect on the external space proposed.
19. In order to achieve satisfactory internal noise levels, the proposal relies on a closed-window solution, and I consider that this requirement is incompatible with the requirement for development proposals to ensure high quality internal and external spaces. This is particularly the case here where the proposal relies on there being opening windows on both sides of the building in order to achieve appropriately dual-aspect accommodation and sufficient ventilation.
20. Taking all of the above into account, I do not consider that the proposal would be compatible with the existing uses of the alleyway and the character of those uses. As such, the proposal conflicts with Policy CS12 of Islington's Core Strategy February 2011 (the Core Strategy), Policies DM2.1, DM3.4 and DM3.7 of the DMP, Policies 3.5, 7.2, 7.3 and 7.5 of the London Plan. These policies seek, amongst other things to provide secure, high quality homes which provide a good quality of life, good levels of amenity and protection from noise and disturbance, adequate ventilation and separation from sources of noise.
21. The proposal also therefore conflicts with the overarching aims of the Framework to achieve well-designed places that are safe, with a high standard of amenity for future users and where crime, or fear of crime to not undermine quality of life.

Living conditions for neighbouring properties

22. The proposal would in my view, appear substantially taller and closer than the existing building to the residential units on Upper Street which, in spite of their urban location and the density of the built form around them currently have relatively open rear aspects. To my mind, the increased height of the proposal would, despite the pitched roof and terrace arrangement, appear much closer to the rear of the properties on Upper Street than the existing building. This

would lead to an increased sense of enclosure and loss of outlook, which I consider would be harmful, particularly in light of the internal arrangement of those flats and their apparently regular use of the terraces which face the appeal site.

23. The appellant has drawn my attention to and provided copies of previous appeal decisions relating to previous iterations of development proposals on this site. In particular they draw my attention to a decision³ in which the Inspector concluded, on the basis of no objection from the Council that the proposal would not harm the living conditions of neighbouring residents with respect to any overlooking to such a degree as to justify withholding permission for that reason alone. However, despite the similarities between that proposal and the one before me, in this case, the Council did object to the proposal on the basis of its effect on the living conditions of neighbouring occupiers, specifically with regard to loss of outlook and an increased sense of enclosure. A number of third-party representations were received on that same point.
24. I note the importance of consistency in appeal decisions and for like cases to be decided in a like manner. In this case, the decision of the Council directs me to consider the effect of the proposal on the living conditions of occupiers of neighbouring properties with specific regard to outlook and enclosure, which was not the case in the previous appeal. I have found above that the proposal would cause harm to their living conditions with regard to outlook and enclosure. I do not therefore consider that those findings conflict with the previous findings of the previous Inspector with regard to the harm that it is alleged would arise from the development.
25. I therefore consider that the proposal would harm the living conditions of existing occupiers of 71 to 74 Upper Street with regard to loss of outlook and an increased sense of enclosure. As such, the proposal conflicts with Policy DM2.1(x) of the DMP which seeks to ensure that development provides a good level of amenity, taking into account amongst other things enclosure and outlook.
26. The proposal would also conflict with the aims of the Framework to achieve well designed places with a high standard of amenity for future users.

Contributions

27. The Framework sets out that the provision of affordable housing should not be sought for residential developments of the scale set out in the appeal proposal. However, Policy CS12 of the Core Strategy sets out that one of the ways the Council seeks to meet its housing challenge is through the delivery of affordable housing. In order to do that, the Council requires schemes of less than 10 units to provide a financial contribution towards affordable housing provision elsewhere in the Borough. The Council has provided evidence on the need for such affordable housing within Islington, which sets out the high value, high demand nature of the housing markets, that housing costs are very high relative to income and how the number of small sites within the Borough requires such a policy to be in force.

³ Reference APP/V5570/W/17/3182082

28. Policy CS10 of the Core Strategy seeks to minimise Islington's contribution to climate change, and as part of that policy requires development to both minimise emissions and make a contribution towards offsetting any remaining emissions.
29. Having reviewed the evidence, I am satisfied that the contributions are required, meet the tests in the Planning Practice Guidance (the PPG) and the Framework, and that the evidence supporting the development plan policy is sufficient to outweigh the conflict with the Framework identified above.
30. The appellant has indicated that they are willing to make the contributions required by the Core Strategy policies. However, at the time of my decision, no agreement or unilateral undertaking under section 106 was before me to secure these contributions.
31. The proposal does therefore conflict with Policies CS10 and CS12 of the Core Strategy, which seek to ensure the delivery of affordable housing and the offsetting of carbon dioxide emissions associated with development in the Borough.

Other Matters

32. As noted, the site is within the CA. Islington's Conservation Area Design Guidelines January 2002 note that the significance of the CA lies in the survival of buildings across the 17th to 20th centuries and the variety of height and design at roof and parapet level, as well as the lively mixed-use character of the area. I consider that any effect on the significance of the CA would be neutral, and as such the proposal would preserve the character and appearance of the area. In reaching this conclusion I have had regard to the nature of the proposal and its location, and the great weight which should be given to the conservation of the significance of the CA.
33. I acknowledge that the proposal offers an opportunity to deliver additional dwellings which would assist in meeting the housing targets of the Borough and the City, and offers potentially increased range, choice and opportunity within the housing market. I also acknowledge the themes within the Framework seeking more efficient use of land, with high density development and that the development could regenerate part of the alleyway which it addresses.
34. However, none of these benefits are of such weight to outweigh the harm I have found above or the conflicts with the development plan or the Framework which occur as a result. There are therefore no material considerations which indicate a decision should be taken other than in accordance with the development plan.

Conclusion

35. For the reasons given above I conclude that the appeal should be dismissed.

S Dean

INSPECTOR