



Appeal Decision

Recommendation by C Brennan BAE (Hons) M.PLAN MIPI

Decision by Andrew Owen BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2020

Appeal Ref: APP/V5570/W/20/3245275

1A Sudeley Street, Islington, London N1 8HP

- 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 Jacob Kenedy against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/0164/FUL, dated 11 January 2019, was refused by notice dated 28 October 2019.
 - The proposed development is a change of use of the first and second floors of the existing public house from ancillary residential accommodation (Use Class A4, Drinking Establishments) to create a self-contained 3 bedroom flat.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. A recommendation by an Appeals Planning Officer is set out below, to which the Inspector has had regard before deciding the appeal.
3. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a recommendation based on the information already available. Both the appellant and the Council have been consulted on this approach and neither has objected to the appeal proceeding on this basis.

Main Issue

4. The main issue is whether a financial contribution towards the provision of affordable housing would be necessary.

Reasons for the Recommendation

5. Firstly, it is necessary to consider whether the proposal would create an additional housing unit. The existing living accommodation is ancillary to the A4 use. The existing accommodation therefore does not already constitute a separate residential unit. Indeed, it was on this basis that no contribution to affordable housing provision was required under Ref P2015/1015/FUL which facilitated the use of the upper floors of the building as ancillary living accommodation. The appellant has drawn my attention to two applications which are allegedly similar to the proposal as the Council considered there to be no increase in the number of residential units. However, the full details and circumstances of these cases are not before me to consider, and so I cannot
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discern whether they are directly comparable to or set any justifiable precedents for the proposal. Regardless, each case must be considered on its own merit.

6. As the proposal would create a new residential unit, it is then necessary to assess whether a contribution towards affordable housing would be necessary. Policy CS12(g) of the Core Strategy (2011) requires that all development proposals which provide less than 10 units must provide financial contributions towards affordable housing provision elsewhere in the borough. This policy and the Council's Affordable Housing Small Sites Contributions Supplementary Planning Document (2012) (the 'SPD') conflict with paragraph 63 of the National Planning Policy Framework (2019) ("the NPPF" hereafter) which states that affordable housing provision should not be sought for minor residential developments of less than 10 units.
7. However, the Council have explained that this position is necessary given that around a third of new housing development in Islington is provided on small sites due to the built-up nature of the borough. The Council also state that payments towards affordable housing generated from the development of small sites make an important financial contribution towards affordable housing delivery in the borough, with £9.8m received and a further £14m secured on schemes not yet implemented, as of 2018. Such contributions help to address the acute need for affordable housing within the borough. Consequently, the SPD states that all minor residential developments in this part of the borough are required to provide a commuted sum of £50,000 per unit towards the provision of affordable housing.
8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any proposal must be determined in accordance with the development plan unless material considerations indicate otherwise. The Council indicate that the development plan policy reflects local circumstances within the borough, including the acute need for affordable housing, and the conflict with national policy is not a material consideration of sufficient weight that should indicate the decision should not be made in accordance with the development plan. I agree that there is adequate justification for seeking an affordable housing contribution in this case, contrary to paragraph 63 of the NPPF unless it can be demonstrated that such a contribution would make the proposal unviable. Moreover, such a contribution would accord with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). The Council has directed me to numerous recent appeal decisions where Inspectors have accepted the Council's approach, and this supports my view.
9. As the proposal would be eligible for a contribution to affordable housing, it is now necessary to consider whether the financial viability assessment submitted as part of the application satisfactorily demonstrates that such a payment would render the development unviable.
10. The Council state that viability assessments should be transparent and standardised, and this reflects the advice in the National Planning Practice Guidance (PPG) and the NPPF. The SPD states that viability appraisals must be sufficient to enable an independent viability expert to review the appraisal. In this case, the Council state that the submission of a viability assessment was not warranted and, in any case, as it does not follow a standard approach it should be disregarded.

11. The proposal is unorthodox in that the residential unit would be created without any build costs, such as those set out in section 5.3 of the viability assessment. Consequently, the assessment could not be expected to be wholly standard. I also understand that the intention is for the unit to not be sold on the open market; instead remaining to be occupied by the appellant in addition to the pub, which also would not be a usual consequence of development. Nonetheless, although I recognise the unusual circumstances of the proposal may not render a standardised assessment appropriate, without any independent expert's analysis of the contents, I cannot be sure it is robust.
12. Notwithstanding this, from my assessment of the viability assessment, it appears that the proposal would result in an increase in the value of the property of roughly £18,000. Paragraph 6.0.3 of the SPD advises that applicants will need to robustly demonstrate if a full contribution is not viable and that they would be required to sign a unilateral undertaking to make a contribution in line with the findings of the review of the viability assessment. Therefore, even if the submitted viability assessment were to be found robust by an independent expert, I see no reason why a payment of around £18,000 would not be possible without causing harm to the viability of the proposal. Though this is not the full contribution required by the SPD, the SPD does not preclude partial contributions and I see no reason why the development would not be liable for a proportion of the full contribution to be paid. No undertaking to provide any contribution has been provided.
13. While I understand the proposal might provide the appellant with a greater choice of loan options to support the future viability of the A4 use without putting their home at risk, this consideration does not justify the lack of a financial contribution to affordable housing provision for reasons set out above. Also, paragraph 6.0.6 of the SPD accounts for situations where there would be no immediate sale of the unit, by requiring a legal agreement to be entered into which would require the payment to be made prior to any future sale.
14. For the above reasons, I cannot be satisfied that a financial contribution towards the provision of affordable housing would be unnecessary. Therefore, in the absence of a completed undertaking, I cannot conclude that the proposed development would accord with Policy CS12 of the Core Strategy (2011) and the SPD (2012) as detailed above. However, I do not consider that the proposal would conflict with the Environment Design SPD (2012), as this document does not relate to affordable housing.

Conclusion and Recommendation

15. For the above reasons and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

C Brennan

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Andrew Owen

INSPECTOR