
Appeal Decision

Site visit made on 14 July 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/N5090/W/20/3247164

75 The Tavern, Cricklewood Lane, Cricklewood, London NW2 1HR

- 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 Ayoub Rofail against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/5178/FUL, dated 23 September 2019, was refused by notice dated 18 November 2019.
 - The development proposed is the demolition of existing rear outbuildings, structures and extensions, change of use from Public House (Class A4) to Restaurant (Class A3) at basement and ground floor levels, plus a part single, part two, part three storey side and rear extension and new mansard roof with alterations to the layout of the existing 5no. residential units including formation of 1no. additional flat to provide a total of 6no. self-contained flats, and associated amenity space, refuse storage and cycle parking.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on:
 - the living conditions of future or neighbouring occupiers, particularly with regard to noise pollution and air quality;
 - car and cycle parking and the resultant effect on the highway;
 - the character and appearance of the area as a result of the proposed side extension, and in particular the effect on the locally listed building; and
 - highway safety, particularly in relation to pedestrians.

Reasons

Living conditions

3. The proposed development would provide a restaurant to the lower floors and residential units to the upper floors, placing sensitive receptors in close proximity to a potentially noisy use which could also cause air quality and odour pollution.
4. The appellants' Noise Impact Assessment (NIA) measured breakout noise from the proposed restaurant area to the nearest flat as well as taking into account existing background noise, primarily from the road. The NIA recommended window specifications to the proposed residential units and a management plan

for the proposed restaurant, to include limits to the volume of music, the location of speakers, and a 22:30 closure of outside seating areas. These measures are reasonable and necessary and could be controlled by condition.

5. The appellant's Air Quality Assessment (AQA) assesses the effect of the proposal and its construction on air quality. It also assesses the current background levels of air pollution and recommends mitigation measures in relation to the ground floor, restaurant floorspace in order to mitigate air pollution from the road, including the provision of air filters and creating an air tight area with air intakes away from the primary sources of air pollution. These measures are reasonable and necessary and could be controlled by condition.
6. However, no assessment in either document has been made regarding noise pollution, odour pollution, or in relation to air quality, in relation to the extract flues and other mechanical fans or related equipment that are depicted on drawings Refs CL-01 to 07 inclusive. Assessment of these factors cannot be the subject of conditions because without understanding what the effect would be from the flues and related equipment, it is not possible to understand what mitigation measures may be required or what form this might take, eg attenuation measures, or changes to the specification and route of any flues. I note that the flue is proposed to travel directly through the bathroom to flat B1 and would be very close to the windows of several other flats. It is not therefore clear if any mitigation measures would be achievable or what the effect of achieving them would be, both in technical and design terms.
7. Without this information, it has not been demonstrated if the proposal would suitably protect the living conditions of future or neighbouring occupiers, particularly with regard to noise and odour pollution, and air quality. Consequently, the proposal fails to comply with Policy DM04 of the DMP which, amongst other criteria, resists development that would generate unacceptable noise levels close to sensitive receptors and seeks that development does not contribute to poor air quality. It also fails to comply with Paragraph 127 of the Framework which, amongst other criteria, seeks a high standard of amenity for existing and future users.

Car and cycle parking

8. The site lies within a Controlled Parking Zone. It is proposed to provide one additional flat and 4 additional bedrooms. There would therefore likely be an uplift in car ownership by residents compared to the existing situation, albeit limited. No information has been provided regarding the existing parking saturation within residents permit bays within acceptable walking distance of the site. I cannot therefore be sure if there would be capacity to absorb any potential uplift in car ownership. I have also not been provided with information on whether the existing residents on the site have the ability to apply for parking permits. It has therefore not been demonstrated that a car-free scheme is necessary. Equally, it has not been demonstrated that it is not necessary.
9. Irrespective of the above, the appellant has indicated their agreement to enter into a s106 planning obligation, either now or to be conditioned to be entered into following the grant of permission, in order to prevent future residential occupiers from apply for parking permits. However, a s106 planning obligation has not been provided with the appeal. In this case, it is not appropriate to use

- a condition to secure a future s106 planning obligation because the Planning Practice Guidance directs me to only do so in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk, which is not the case with the appeal proposal.
10. The existing use of the basement and ground floors of the building is as a pub. It is proposed, albeit with a small reduction in floorspace, to retain this area and change the use to a restaurant. No evidence has been provided of what effect this would be likely to have on car parking, both in terms of numbers and distribution across peak times, nor in relation to existing on-street parking capacity to absorb any increase, if there would be any.
 11. Consequently, the effect of the proposed residential floorspace to on-street car parking is ambiguous, and the necessity of a car-free scheme has not been proved. Even if it were found to be necessary, the mechanism to secure a car-free scheme has not been secured. There is no information on what the effect of the proposed change of use of the commercial floorspace would be to on-street parking and the resultant effect on the highway. The proposal therefore fails to comply with the relevant parts of Policy DM17 of the DMP which, amongst other criteria, requires it to be demonstrated that there is insufficient capacity for on-street parking and, if so, that a car-free scheme be secured.
 12. Nine cycle parking spaces are proposed within the rear garden, for use by the future residential occupiers of the proposal, which meets the policy standards set out in the Greater London Authority Housing SPG 2016, Standard 20, and Policy 6.9 and Table 6.3 of The London Plan 2016 (the LP), as cross-referred to in Policy DM17 of the DMP (the Standards). It is common ground between the parties that this provision is acceptable and I see no reason to disagree.
 13. It is also common ground between the parties that the 9 short-stay cycle parking spaces required by the Standards in relation to the proposed restaurant use cannot be accommodated on-site and that instead a contribution is required towards the provision of short-stay cycle parking facilities on the highway in the vicinity of the site. I see no reason to disagree with the principle of this. However, a s106 planning obligation has not been provided with the appeal to secure this. Three long-stay spaces in relation to the proposed restaurant use are also required to be provided, as set out in the Standards. The provision of the spaces is necessary in order to meet the Policy 6.9 aspiration to bring about a significant increase in cycling. However, it is not clear where these could be accommodated and no on-site or off-site locations have been suggested by either party.
 14. Consequently, no short-stay cycle parking for the restaurant use would be provided and nor has adequate mitigation been secured, and no suitable locations for long-stay cycle parking for the restaurant have been secured. The proposal would therefore fail to comply with Policy DM17 of the DMP which, amongst other criteria, requires development to provide cycle facilities on site or to fund improvements off site. It also fails to comply with Policy 6.9 of the LP which, amongst other criteria, requires cycle parking facilities to be provided in line with the minimum standards.

Character and appearance

15. The appeal building is at the end of a row of terraced properties which are of a similar period and are built up to the road frontage. There is a gap between the

appeal building and the other properties to the upper floors and it is only linked to the terrace at ground floor level. Although showing some wear and tear, the building retains attractive architectural detailing, such as tiling to the ground floor, and the detailing to the parapet and window surrounds to upper floors. It is particularly prominent because of its location on the corner of Cricklewood Lane and Douglas Mews. The building is locally listed and as such is a non-designated heritage asset.

16. It is proposed to demolish most of the rear and side parts of the building and to erect an extension to the side and rear, and a mansard roof. The primary front and side elevations would remain largely as existing, save for minor works of detailing. The proposed side extension would infill the gap at upper floors to the neighbouring properties, as well as continuing the additional mansard roof extension. It would be recessed from the front elevation but its parapet height would be higher than the neighbouring building, even before taking into account the mansard roof extension.
17. The building is primarily prominent and significant due to its location on a corner plot and its architectural detailing. Neither of these elements would be altered by the appeal proposal. The existing gap is an historic feature and helps to further accentuate the prominence of the locally listed building. However, this is of lesser importance and, importantly, the proposed recess would allow for the building to be differentiated from the terrace, mitigating this loss.
18. The proposed side extension would reflect the window rhythm and style of the existing building to upper floors along the front elevation. The proposed mansard element would also respect this window rhythm and that of the proposed mansard roof extension to the main part of the building. Overall, the proposed side extension would not be subordinate, as such, to the existing building as retained and extended, but it would sit comfortably with it as a proposed architectural solution when considered as a whole.
19. I have been directed by both parties to consider the Council's Residential Design Guidance SPD 2016. However, this guidance primarily relates to extensions to residential dwellings and does not provide directly relevant guidance to the works proposed and I place limited weight on this document. I have also taken into consideration the previously dismissed appeal Ref APP/N5090/A/14/2222148 at the appeal site. The previous appeal also included a side extension but it had a smaller recess, especially the balconies which were proposed to be flush to the main building's front elevation, and also a detailed design less in-keeping with the architectural style of the existing locally listed buildings.
20. The proposal would not therefore harm the character and appearance of the area or the locally listed building. Consequently, it complies with the relevant parts of Policy CS5 of the Core Strategy 2012 (the CS) and Policies DM01 and DM06 of the Development Management Policies 2012 (the DMP) which, amongst other criteria, seek high quality design and to protect locally listed buildings. It also complies with Chapter 12 and Paragraph 197 of the National Planning Policy Framework (the Framework) which, amongst other criteria, require high quality design and the taking into account of the significance of a non-designated heritage asset such as a locally listed building.

Highway safety

21. There have been 7 accidents in the 5-year period between 2014 to 2018 resulting in injury, all within the short section of Cricklewood Lane leading either side of the site to Gillingham Road and Greenfield Gardens. All 7 accidents involved pedestrians. Although there would likely only be a modest uplift in occupation of the site from the one additional flat and four additional bedrooms, the proposed development would likely increase crossing demand and consequently accident risk in the vicinity of the site. Given this and the relatively poor safety record for pedestrians along this part of Cricklewood Lane, it is necessary to mitigate the effect of the development. The Council has suggested that this be achieved through a double yellow line, tactile paving, and reinstatement of the footway at the corner of Douglas Mews and Cricklewood Lane adjacent to the site. These are necessary and reasonable measures.
22. The proposed works would be off-site on a public highway. They would therefore require the appellant to enter into an agreement with the Council under s278 of the Highways Act 1980, which could be secured by a Grampian condition. Subject to this condition, the proposal would not likely harm pedestrian or highway safety and would comply with the relevant parts of Policy CS9 of the CS and Policy DM17 of the DMP which, amongst other criteria, seek to secure highway safety, particularly with regard to vulnerable users.

Planning Balance and Conclusion

23. The proposal would not protect the living conditions of future or neighbouring residential occupiers in relation to air quality and noise pollution. It not been demonstrated what the effect of the proposal would be to on-street car parking and the resultant effect on the highway. It has not been established that suitable long-stay cycle parking could be provided to service the proposed restaurant use. In the absence of a suitable s106 planning obligation, adequate mitigation of the lack of short-stay cycle parking for the proposed restaurant use has not been secured.
24. The design of the proposed side extension would not harm the character and appearance of the area. Highway safety would be maintained if the proposed works to the corner of Douglas Mews and Cricklewood Lane were secured by a combination of a Grampian condition and a subsequent s278 agreement. These factors weigh neutrally in the planning balance. The proposal would result in an increase of one flat and 4 bedrooms. This would bring add to the Council's housing stock and would bring long-term economic benefits to local services when occupied. However, these benefits are limited because only one additional dwelling is proposed. Construction of the proposal would also provide temporary economic benefits.
25. The harm I have identified outweighs the neutral and positive factors of the proposal.
26. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward

INSPECTOR