



Appeal Decision

Site visit made on 1 September 2020 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: 8 October 2020

Appeal Ref: APP/V5570/W/20/3250203

103 Newington Green Road, Islington, London N1 4QY

- 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 L and T Baskin of L and T Property Company Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/2448/FUL, dated 9 August 2019, was refused by notice dated 13 November 2019.
 - The proposed development is erection of a rear lower ground floor extension and alterations to ground floor shopfront, to facilitate the change of use of the lower ground floor level from ancillary A1 to residential (use class C3) comprised of 1no. 1bed/2person self-contained unit.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. The description of the proposed development as included on the application form does not state that the proposal would involve the loss of ancillary A1 retail floorspace. As the description of the proposed development set out within the decision notice does make reference to this loss of A1 floorspace, it is more comprehensive and descriptive. As such, for clarity and precision, the description included in the above banner heading has been taken from the decision notice.
 4. As part of their statement of case, the appellant provided an alternative front elevation which is different to the proposed front elevation that was submitted as part of the application. The appeal process should not be used to evolve a scheme, and it is important that I base my recommendation upon the scheme that was initially considered by the Council, as well as neighbouring residents who may not have had the opportunity to comment on the amended proposal. As such, I have not taken this alternative front elevation into account as part of my recommendation, but have provided a recommendation solely on the basis of the drawings submitted as part of the application.
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Main Issues

5. The main issues are:

- i) whether the proposal would preserve or enhance the character or appearance of the Newington Green Conservation Area (the NGCA),
- ii) whether the proposal would provide acceptable living conditions for future occupants, with particular regard to outlook and light, and
- iii) the effect of the proposal on the vitality and viability of the Newington Green Local Shopping Area (the NGLSA).

Reasons for the Recommendation

Character and appearance

6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that with respect to development affecting buildings or other land in a conservation area, "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."
7. The appeal site comprises a three-storey mid-terrace building with accommodation in the roofspace and a lower-ground floor level. The ground- and lower ground-floor levels are associated with an A1 retail use, while upper floors are used as residential accommodation. The appeal property forms part of a distinctive curved terrace which features ground-floor commercial units and lies within the NGLSA. The site is situated within the NGCA. The Newington Green Conservation Area Statement 2014 (the NGCAS) states that the special interest of the NGCA is largely derived from the scale and materiality of its buildings and their relationship to the historic central green. The NGCAS also states that original and historic shopfronts make a positive contribution to the NGCA and should be retained. As seen from the street, the front elevation is primarily characterised by the traditional appearance of its shopfront at ground-floor level. The site occupies a prominent corner location near the junction of Newington Green Road and Beresford Road and so is highly visible within public views.
8. While the existing shopfront features some modern elements such as a box shutter and a Dutch-style awning, it has the overall appearance of a traditional shopfront due to the proportions and materiality of its glazing, mullions and stallrisers. This existing arrangement contributes positively to the character and appearance of the appeal property, as well as the wider shopping parade and the significance of the NGCA. As part of the proposal, most of the stallrisers' fabric would be removed to facilitate the insertion of glazed panels. Though the proposal would reinstate a traditional panelled style stallriser, the amount of glazing within the resultant shopfront would have a distinctly contemporary appearance and so would undermine its traditional appearance. Contrary to the conclusion of the appellant's heritage statement, the impact of the alteration would be harmful not positive. As the alterations would erode the original proportions and detailing of the existing shopfront, it is considered that the proposal would result in the loss of its traditional appearance, to the detriment of the character and appearance of the appeal site and its contribution to significance of the wider NGCA.

9. The appellant has suggested that a condition could be attached to ensure the removal of the more modern elements from the existing shopfront. However, I do not consider that any such measures would sufficiently mitigate the identified harm to the fabric of the building that would result from the proposal.
10. The appellant has drawn my attention to two examples of shopfronts shown within the Shopfront Design Guide 2003. However I am not aware of the context of these and so cannot fully attest the degree to which they are comparable. Furthermore, the general guidance in this document (which is repeated in the Council's Urban Design Guide Supplementary Planning Document 2017) is more instructive and applicable to the development, clearly stating that *'proposals to remove sections of stallriser to provide glazed openings to light a basement floor will generally not be permitted'*.
11. For the above reasons, I conclude that the proposal would fail to preserve the character and appearance of the NGCA and so would cause unacceptable harm to its special interest as a designated heritage asset. It would therefore conflict with Policies 7.4 and 7.6 of the London Plan 2016 (the London Plan) and Policy DM2.1 of the Local Plan: Development Management Policies 2013 (the DMP), which state, amongst other things, that development should have regard to local character and be designed to the highest standard. It would also conflict with Policy 7.8 of the London Plan, Policy CS9 of the Core Strategy 2011 (the Core Strategy) and Policies DM2.3 and DM4.8 of the DMP which, amongst other things, state that development affecting heritage assets such as conservation areas should conserve or enhance the significance of those assets and that proposals affecting existing shopfronts must demonstrate a high quality of design. Similarly it would also conflict with the National Planning Policy Framework 2019 (the NPPF), which states that great weight should be given to preserving the significance of heritage assets.
12. The proposal would also conflict with the NGCAS, which states that traditional shopfronts should be retained, and the Shopfront Design Guide 2003 and Urban Design Guide Supplementary Planning Document 2017 as set out above.

Living Conditions of Future Occupants

13. The proposed dwelling would be contained entirely within the lower-ground floor of the appeal property. Outlook from the bedroom would be limited to a small external courtyard that would be enclosed on either side by the closet wings of both the appeal property and No 101. Within this constrained, low-level arrangement, occupants would have an unacceptably poor level of outlook from the bedroom. From the kitchen, occupants' outlook would be limited to views onto the adjacent pavement through the translucent glazing panes of the proposed shopfront, which themselves would only be visible through a narrow strip of glazing installed overhead at ground-floor level. Under this unorthodox arrangement, future occupants would have very poor levels of outlook from the kitchen. Furthermore, having had regard to both the daylight and sunlight analysis submitted as part of the application and the supplementary report submitted at appeal, it is clear that the kitchen would also be very poorly lit by natural light, instead relying on artificial light. As the resulting kitchen would be dark and enclosed, it would fail to provide future occupants with acceptable living conditions with regard to outlook and light.
14. Irrespective of the urban setting of the appeal site, the density of the surrounding area or the extent to which other kitchens across London depend

on artificial lighting, it is clearly stated within Policy DM3.4 of the DMP that residential development should be designed to ensure that habitable rooms are well provided with natural light. As Appendix 13 of the DMP states that a habitable room is any room used or intended to be used for sleeping, cooking, living or eating, a kitchen is therefore considered to be a habitable room.

15. The appellant states that a similar “jeweller’s window” arrangement exists at No 4 Ferntower Road. However, as I am not aware whether this section of glazing is used to provide light or outlook to a habitable room at lower-ground floor level, I cannot consider it to be comparable to the proposal.
16. I accept that the proposed dwelling would comply with minimum space standards and would provide occupants with sufficient outdoor amenity space. Nonetheless, for the above reasons, I conclude that the proposal would fail to provide acceptable living conditions for its future occupants, with regard to outlook and light. It would therefore conflict with Policy 3.5 of the London Plan, Policy CS12 of the Core Strategy and Policy DM3.4 of the DMP which state, amongst other things, that housing developments should be of the highest quality internally, provide residents with a good quality of life and provide acceptable accommodation designed with due consideration to outlook and light.
17. The proposal would also conflict with the London Plan Housing Supplementary Planning Guidance 2016, which states that new housing development must be to a high standard in terms of architecture, urban design and residential quality.

Change of Use

18. During my site visit, I saw that the basement was completely empty and that the existing retail unit was fully operational without any apparent need for it. I accept the appellant’s point that there is no pressing need for the existing retail unit to retain any storage space within the basement, given that next-day deliveries from wholesalers can easily be ordered online when stocks run low. Moreover, I consider that a variety of other A1 uses which are based upon providing services rather than selling products such as a travel agent, a real estate agent or a hairdressers, could most likely successfully operate within the ground-floor of the proposed retail unit without any need for ancillary storage at lower ground-floor level. I therefore consider that the loss of the lower ground-floor level ancillary floorspace, the rear garden area and a marginal portion of the ground-floor retail floorspace would not prejudice the viability of the existing A1 retail unit, and so the proposal would not cause unacceptable harm to the vitality and viability of the NGLSA.
19. The Council makes reference to No 101 Newington Green Road. However, contrary to the Council’s assertions, the vendor operating from the existing retail unit at the appeal site has not operated from No. 101 for some time, as confirmed within the appellant’s Statement of Market Evidence and Opinion, dated 17th March 2020. Indeed, I saw during my site visit that the vendor was not operating from the adjacent unit at No 101. This suggests that the current vendor has no need for additional floorspace either within the lower ground-floor of the appeal property or within the ground-floor of No 101 for them to operate effectively. Furthermore, there is no reason why the future viability of No 101 would be harmed by the proposal.

20. Policy 4.6 of the DMP and its supporting text states that applications which seek to change the use of ground-floor retail units in Local Shopping Areas will need to be supported by at least 2 years of marketing evidence. However, as the existing retail unit would be retained at ground-floor level, with no impact on its viability resulting from the proposal, there is no need for any marketing evidence to be provided.
21. For the above reasons, I conclude that the proposal would have an acceptable effect on the vitality and viability of the NGLSA. The proposal would therefore comply with Policy CS14 of the Core Strategy, as the ground-floor retail unit would be retained, thereby retaining the primacy of shops in one of the borough's shopping areas. The proposal would also comply with Policy DM4.6 of the DMP, which states that ground-floor retail units in local shopping areas will be protected from change of use. However, I find that Policy 4.7 of the London Plan quoted in the reason for refusal has little bearing on the development as this policy concerns new retail and town centre development rather than changing retail floorspace to other uses.

Other Matters

22. I note the appellant's claims that the proposal would bring the appeal property into its optimum use. However, due to the limited scale of the development this matter carries little weight.
23. During the course of the appeal, the appellant provided two signed unilateral undertakings which seek to guarantee the payment of affordable housing contributions to the Council. One would ensure a contribution of £50,000, which is the amount sought by the Council and which was initially agreed by the appellant. The second would ensure an alternative payment of £20,000.
24. However, the appellant has also provided viability assessment to demonstrate that providing any contribution would make the development unviable. The Council have provided their own which demonstrates the contrary. A 'compromise' version produced by the appellant accepts many of the Council's figures, but still calculates that the development would be unviable. I consider the compromise figures to be reasonable, notably in terms of the construction costs for the different parts of the proposal, and the percentage of developer's profit (which aligns with that in paragraph 3.20 of the Council's Small sites affordable housing contribution - Viability Study' (dated April 2019) and the Council's Development Viability SPD (2016) as quoted by the Council). As such it is considered that the requirement to provide contributions to affordable housing would make the development unviable, and therefore the obligations can be disregarded.

Planning Balance, Conclusion and Recommendation

25. I have found that the proposal would cause harm to the special interest of the NGCA, although it is less than substantial. While the proposal would provide an additional unit of accommodation to add to the Council's supply of housing, in an accessible location and would secure a more effective use of the site, I do not consider that this would outweigh the identified harm that would be caused to the significance of the NGCA given the great weight which I give to the conservation of designated heritage assets.

26. I have found that the proposed development would not cause unacceptable harm to the vitality and viability of the NGLSA, but this carries neutral weight. The poor living conditions that would be provided to future occupants with particular regard to outlook and light also weighs against the proposal.
27. Overall, for the reasons given above 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

28. 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