The Planning Inspectorate

Appeal Decision

Site visit made on 22 October 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2020

Appeal Ref: APP/C5690/W/20/3254272
Flat C, 305 Stanstead Road, Catford, London SE23 1JB

- 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 J Gutstein (Tangier Estates Ltd) against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/20/116133, dated 11 March 2020, was refused by notice dated 27 May 2020.
- The development is described as "Following the Inspector's Decision 3217341 application to Retain the flat as amended".

Decision

1. The appeal is dismissed.

Procedural Matters

2. The submitted floor plans show a staircase within the retail unit leading down to an existing basement level with a lightwell at ground level in front of the building. Based on the evidence before me, it is unclear whether such works benefit from planning permission. In any event, such works fall outside of the scope of the planning application, which relates solely to the retention of the existing ground floor flat at the appeal property. For the avoidance of doubt, I have determined the appeal on that basis.

3. I have been appointed to determine two appeals on this site. The other appeal reference is APP/C5690/W/20/3257267. I have considered each proposal on its individual merits and prepared separate decision letters.

4. The Council's statement refers to the Draft London Plan (the 'DLP') and states that 'some weight' may be given to the DLP as a material consideration. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. I have been provided with no relevant policies from the DLP, nor have I been provided with any substantive details of the status of this emerging plan. Consequently, I attribute the plan and policies very limited weight as a material planning consideration.

5. The appellant has submitted an amended floor plan[1] with the appeal. The appellant explains that the plan is a measured survey of the ground floor which

[1] Drawing nos: 305SR-BC-02a Rev D

was undertaken when the construction works were completed. Whilst this may be the case, it is important that I determine this appeal on the basis of what was considered by the local planning authority, and on which interested people's views were sought. Therefore, I have not had regard to this plan as part of the determination of this appeal.

6. The appellant has submitted a location plan with the appeal. As the submitted plan does not evolve the scheme, and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I determine the appeal in accordance with this plan. For the avoidance of doubt, I have had regard to the location plan in the determination of this appeal.

Background

7. The appeal property is a three-storey building which comprises of a ground floor retail unit and three self-contained flats. Planning permission[2] was granted by the Council in March 2014 for the retention of the retail unit, a rear extension, external alterations and the change of use of the property to provide two self-contained flats on the upper floors. The approved extension was supported by posts at the rear of the building with a void space below the first floor for use by occupants of the flats.

8. However, the development as built includes a ground floor extension, which infills the void space, and has enabled the creation of an additional self-contained flat at the appeal property. The creation of the self-contained flat has also resulted in a reduction to the size of the retail unit when compared to the approved plans.

9. The Council issued an enforcement notice on 11 October 2018 for a breach of planning control, which alleged that the ground floor extension and the additional ground floor flat did not have planning permission. The enforcement notice was upheld at appeal[3] by an Inspector on 28 November 2019 with a variation to the requirements of the notice, which required the residential use of the ground floor to cease and for the development to be altered so that it accords with the original planning permission. In addition, the Inspector refused planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

10. At my site visit, the unlawful ground floor extension remained in situ and the ground floor of the property comprised of a commercial unit and a self-contained flat. However, the proposed mirrored glass had not been installed. Consequently, I am determining this appeal on a part-retrospective basis.

Main Issues

11. The main issues are:

- whether the development provides satisfactory living conditions for the occupiers of the ground floor flat with regard to light and outlook.

- whether the development adheres to the Council's strategy to protect the functionality and viability of local shopping facilities, in the context of adopted policy.

[2] Council Ref: DC/13/084142
[3] PINS Ref: APP/C5690/C/18/3217341

Reasons

Living conditions

12. The existing ground floor flat is a one-bedroom unit with a single aspect layout. The living room/kitchen is served by a window that faces into part of the rear yard, which is an area used by the occupiers of the upper floor flats for access. The bedroom window also faces the rear yard. Due to the close proximity of the existing windows to the yard area, users of the yard have direct views into the living room/kitchen area and bedroom of the flat. Such overlooking causes a lack of privacy for the occupiers of the property. Indeed, the previous Inspector noted that "to protect privacy, it is highly likely that the occupier would keep the curtains closed."

13. In determining the previous enforcement appeal, the Inspector concluded that "the lack of natural light, combined with the poor outlook and measures to mitigate the lack of privacy associated with the rear windows, results in a dark and oppressive living room. The occupants would be reliant on artificial lighting during the daytime, which is unsatisfactory." Based on the evidence before me, which includes my site observations, I agree with the Inspector's conclusion.

14. The appeal seeks permission to retain the existing ground floor flat, as built. However, to overcome the privacy issues, the appellant proposes to install one-way mirrored glass within the existing window openings. The appellant contends that the mirrored glass would prevent overlooking from users of the rear yard. He explains that this would result in the occupiers of the flat not keeping their curtains drawn-in to protect their privacy and avoid overlooking from users of the yard area, which in turn would ensure more natural light enters the property.

15. Whilst I recognise that the installation of mirrored glass would safeguard the privacy of the occupiers of the existing flat, it would not improve the existing poor outlook from the flat, nor would the proposal increase the size or number of window openings. Whilst it is reasonably likely that the occupiers of the flat would no longer need to keep their curtains drawn-in to protect their privacy, which I acknowledge would provide some limited benefit in terms of the availability of natural light, the flat remains a single aspect property with northward facing ground floor windows that have limited access to natural light. Indeed, on my site visit, I observed that the living room/kitchen area of the flat was a dark and oppressive living environment, which is likely to be dependent on artificial lighting most of the time, including during daylight hours.

16. The main parties dispute the amount of floor space provided by the flat. The Council have concluded that the flat is of an 'inadequate size', whilst the appellant contends that the property meets the minimum space standards for new dwellings set out within Policy 3.5 of the London Plan. Even if I were to accept the appellant's position, it would still be necessary to assess the proposal against the requirements of DM Policy 32 of the Lewisham Local Development Framework: Development Management Local Plan (the 'LP'), which requires new residential development to provide a satisfactory level of privacy, outlook and natural lighting for its future residents.

17. For the reasons set out above, I conclude that the proposed development would not provide satisfactory living conditions for the occupiers of the ground

floor flat due to a poor outlook and lack of natural light. As such, the proposal would not accord with DM Policy 32 of the LP. Moreover, the proposal would not accord with Policy 3.5 of the London Plan and the Housing Supplementary Planning Guidance of the London Plan which, amongst other things, seek to secure high quality housing development.

18. In respect of this main issue, the reason for refusal on the Council's decision notice refers to Policy 1 of the Lewisham Local Development Framework: Core Strategy (the 'CS'). However, this policy relates to the Council's spatial strategy for housing delivery in the Borough, as opposed to housing design and the living conditions of future occupiers. Consequently, I consider that the policy is not applicable in respect of the appeal proposal.

19. The appellant explains that due to a shortage of suitable accommodation within the Borough, the Local Housing Authority are in the process of securing a tenancy agreement with the property's landlord to allow the existing occupants to remain at the property. Whilst this factor weighs positively in favour of the development, it is not significant enough to alter or outweigh my conclusions on this main issue and it does not provide a compelling reason to grant planning permission for a substandard form of residential accommodation.

Local Shopping Facilities

20. The appeal site is located within a local shopping parade on the northern side of Stanstead Road. The local shopping parade comprises of a variety of commercial uses including retail, hot food takeaways, restaurants/cafes and a public house.

21. The Council explain that the approved plans show a retail unit with a gross internal floor area of approximately 27m², which included an ancillary toilet to the rear of the unit. However, due to the unlawful rear extension and subdivision of the ground floor to provide a retail unit and self-contained flat, they state the gross internal floor area of the existing retail unit is approximately 16m². The appellant has not disputed the Council's calculations.

22. Policy 6 of the CS establishes the Council's retail hierarchy and provides a policy framework for maintaining, managing and enhancing local and neighbourhood shopping within the Borough.

23. Criterion 2c of Policy 6 states that the Council will protect local shopping facilities from change of use or redevelopment where there is an economic demand for such services; in neighbourhood local centres and parades, change of use and contradiction of the shopping facilities will be considered if evidence is established that there is no economic prospect of such uses continuing.

24. DM Policy 16 of the LP requires the retention of Class A1 shops located in a local shopping parade or operated as a corner shop, in order to preserve or enhance the local character and support the provision of essential daily goods and services, unless an applicant can demonstrate: a) the availability of similar alternative shopping facilities within a comfortable walking distance; b) a balance to the number and type of units within the parade; c) that reasonable attempts have been made to market vacant shop units, for more than 12 months, at an appropriate rent; and d) the replacement use will result in no harm to the amenity of adjoining properties.

25. Whilst I recognise that the development as built provides a ground floor retail unit on the local shopping parade, a consequence of retaining the existing ground floor flat would be that the existing retail unit would retain a gross internal floor area of approximately 16m². The ground floor plan shows that the existing retail unit has no provision for ancillary storage or staff facilities such as a toilet or kitchen. Given the small floor area of the retail unit, I consider it to be very unlikely that such facilities could be provided.

26. The appellant has put forward no substantive evidence to demonstrate that the amount of retail floor space provided would be functional or viable. In the absence of specific details to demonstrate that the retention of the smaller retail unit, which is significantly smaller than the size of the retail unit shown on the approved plans and has no provision for ancillary facilities i.e. storage, I am unable to conclude that the development would protect local shopping services from redevelopment where there is economic demand for such services. Moreover, I am unable to conclude that the development would support the provision of essential daily goods and services in the local shopping parade. As such, I cannot conclude that the proposal would accord with Policy 6 of the CS and DM Policy 16 of the LP.

Planning Balance

27. I have had due regard to the rights conveyed within the Human Rights Act 1998, which ensures that everyone has the right to respect for his private and family life, his home and his correspondence. Dismissal of this appeal would, in all likelihood, require the occupants of the existing flat, which includes a child, to vacate the site, which is their home, without any certainty of alternative accommodation being available. This would represent an interference with their home and family life. However, these rights are not unfettered and can be interfered with by a public authority in accordance with law in a number of circumstances.

28. In addition to the above, Article 3(1) of the United Nations Convention on the Rights of the Child is a relevant consideration and it provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. In this instance, the retention of a stable home would be in the child's best interests, together with all that brings including educational opportunities. Nevertheless, Article 3 does not make the best interests of any child determinative such that no decision can be taken other than one in conformity with those interests.

29. Consequently, whilst I have taken account of the personal circumstances of the appellant and afforded the best interests of the child substantial weight as a primary consideration, all of which weighs positively in favour of the development, I conclude that these are not matters which outweigh the significant harm that would be caused by the proposal in respect of my previous conclusion on the main issues.

30. Therefore, a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring that development provides satisfactory living conditions for current and future occupiers, which includes a child, and protects the functionality and viability of local shopping facilities. Indeed, the protection of the public interest cannot be achieved by means that are less interfering of the human rights of the appellant.

Conclusion

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

Christopher Miell

INSPECTOR