
Appeal Decision

Site visit made on 16 February 2021

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Appeal Ref: APP/N5090/W/20/3263256

3 Leicester Road, New Barnet, Barnet EN5 5EW

- 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 R Werth (Tapster St Properties) against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/3312/FUL, dated 21 July 2020, was refused by notice dated 21 September 2020.
 - The development proposed is described as 'change of use from office to residential'.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor and lower ground floor from B1 (office) to C3 (residential) 1 unit, at 3 Leicester Road, New Barnet, Barnet EN5 5EW in accordance with the terms of the application, ref 20/3312/FUL, dated 21 July 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The materials and window to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 3) The development hereby permitted shall be carried out in accordance with approved plan references: 494119, 494119-4, Proposed Window Shutter Bedroom 1 (dated 11/11/2020).
 - 4) The residential unit hereby permitted shall not be occupied until a shutter behind the window in bedroom 1 has been installed in accordance with approved plan reference Proposed Window Shutter Bedroom 1 (dated 11/11/2020).

Preliminary Matter

2. The Council changed the description of development to 'Change of use of ground floor and lower ground floor from B1 (office) to C3 (residential) 1 unit. Since this more accurately describes the proposal, I have used it in paragraph 1 above.

Main Issues

3. The main issues are the effects of the proposal on:
 - the vitality and viability of the Edge of Town Centre parade;
-

- the living conditions of future occupiers.

Reasons

4. Prior approval has been granted for the change of use of the appeal floorspace to residential use under application reference 20/2001/PNO dated 9 June 2020. Whilst the change of use has not taken place, the approval remains extant and, therefore, offers a realistic fall-back position in the event that this appeal were to be dismissed.

Vitality and viability

5. The appeal property fronts onto Leicester Road and abuts the rear of a shop unit which forms part of the Lytton Road retail parade. The location is regarded as an Edge of Town Centre for the purposes of the Council's Local Plan Development Management Policies 2012 (DMP). Policy DM14 states that the loss of office space will only be permitted in edge of centre locations where it can be demonstrated that the site is no longer suitable and viable for its existing or alternative business use in the short, medium and long term and that a suitable period of active marketing has been undertaken.
6. The supporting text for this policy defines 'effective marketing' as continuously actively marketed both for sale and rent for a period of 12 months at an appropriate price. The appellant advises that the property has been marketed for 6 months, but has not provided details of that exercise. On that basis, it has not been adequately demonstrated that the proposal would comply with DMP Policy DM14. However, I have already noted that the appeal property is located to the rear of the main retail parade. Uses further along Leicester Road comprise a telephone exchange and residential and, as such, do not contribute to the vitality and viability of the retail parade. The appeal property, therefore, occupies a secondary location in the parade. Nor does it have a shopfront or notable commercial presence. Consequently, I consider that the appeal property makes a very modest contribution to the vitality and viability of the retail parade.
7. No substantive evidence has been provided to show that the proposed change of use of the floorspace would lead to a shortfall in the supply of office floorspace. The appellant's evidence contends that there are reported to be 118 vacant office buildings in Barnet. Whilst limited, this evidence has not been disputed by the Council. Overall, these factors indicate that the proposal would have little effect on the vitality and viability of the Edge of Town Centre parade and limit the degree of conflict with DMP Policy DM14.
8. The first reason for refusal also alleges conflict with the London Plan 2016. No specific policy is cited, although the Council's statement does make a passing reference to Policy 4.1. That is a strategic policy setting out the Mayor's objectives for developing London's economy. There is no firm evidence to show that the appeal proposal would materially undermine those objectives.

Living conditions

9. Amongst other things, policy DM01 of the DMP requires proposals to provide adequate daylight, sunlight, privacy and outlook for potential occupiers. It also states that proposals should retain outdoor amenity space having regard to their character. Policy DM02 of the DMP requires proposals to meet the outdoor space requirements of the Council's Sustainable Design and Construction Supplementary Planning Document (SPD). London Plan Policy 3.5 seeks to

ensure that housing developments are of the highest quality internally, externally and in relation to their context and to the wider environment.

10. *Privacy* - The proposal includes the insertion of a new window serving proposed bedroom 1 in the front elevation of the property. The window would be at lower ground floor level and would be some 5.5m from the back edge of the adjoining footpath. Notwithstanding the limited screening effect offered by the existing metal railing around the basement steps, fairly close-range public views into the window would be available which would compromise the privacy of the future occupiers. Nevertheless, the window would provide other benefits to future occupiers in terms of improved outlook and natural light and ventilation in bedroom 1.
11. The appellant has suggested that privacy could be improved by the use of landscape planting in front of the window and the provision of shutters behind the window. The area between the window and footpath comprises the basement steps and parking spaces. This provides very limited opportunity to provide effective planting in front of the window which, in any event may prove difficult to maintain. However, the provision of shutters behind the window would be more practical and allow future occupiers to control the screening of views into the bedroom. Installation of the shutters could be secured by condition.
12. The shutters would also restrict the outlook from the window and the natural light reaching the bedroom. However, on balance, I consider that the provision of the window would offer better living conditions than the alternative of having no window in the bedroom, which would be the outcome of implementing the prior approval scheme.
13. *External space* - The SPD requires flats to provide 5 sqm of outdoor space per habitable room. The space should have a reasonable level of privacy and be useable. Notwithstanding the small gap to the side of the appeal property, the proposal would not provide useable, private external space for future occupiers. Nevertheless, there are examples of other residential units with no external space and these units form part of the character of the area.
14. Importantly, the fall-back prior approval scheme would not provide any external space, and for the reasons set out above, would offer less satisfactory living conditions than the appeal scheme in other regards. I also note that the internal floor area of the flat comfortably exceeds the requirement for this form of accommodation set out in the Nationally Described Space Standard. Considered in this context, the appeal proposal would provide adequate living conditions for future occupiers.

Conditions

15. The Council has suggested a list of three conditions. I find that they meet the tests set out in the Planning Practice Guidance. A condition requiring the proposed window to match the existing building is necessary to protect the character and appearance of the area. A condition specifying the approved plans is required in the interests of certainty. In addition, for the reasons set out above, a condition requiring the installation of shutters behind the proposed window is necessary.

Planning Balance and Conclusion

16. The only difference between the prior approval scheme and the appeal proposal is the insertion of the window in proposed bedroom 1. I have already concluded that this window would improve the living conditions for future occupiers with regard to outlook and natural light and, with mitigation, would not result in an undue loss of privacy. To that extent, implementation of the appeal proposal would be preferable to implementation of the prior approval scheme. The proposal would also provide an additional unit of residential accommodation and, as such, derives support from National Planning Policy Framework (the Framework) paragraph 59 which seeks to boost the supply of housing.
17. Together with the fall-back position offered by the prior approval scheme, therefore, I consider that these material considerations outweigh the limited degree of conflict with DMP Policies DM01, DM02 and DM14 and London Plan Policy 3.5. As such, they justify determining the appeal other than in accordance with the development plan.
18. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR