



Appeal Decision

Site visit made on 9 March 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th April 2021

Appeal Ref: APP/V5570/W/20/3252875

438-440 Holloway Road, Islington, London N7 6QA

- 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 H Company 6 Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/2382/FUL, dated 2 August 2019, was refused by notice dated 22 November 2019.
 - The development proposed is change of use of part ground, first, second and third floor from Class A1 (retail) to Class C3 (dwellinghouse) to provide 3x3 bedroom flats. Minor alterations to ground floor frontage and replacement windows to front and rear elevations.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of part ground, first, second and third floor from Class A1 (retail) to Class C3 (dwellinghouse) to provide 3x3 bedroom flats. Minor alterations to ground floor frontage and replacement windows to front and rear elevations at 438-440 Holloway Road, Islington, London N7 6QA in accordance with the terms of the application Ref P2019/2382/FUL dated 2 August 2019 subject to the conditions in the attached schedule.

Procedural Matters

2. The development description in the banner heading above is taken from the application form. At Part E of the appeal form, it is stated that the description of development has not changed, but a slightly different wording has been entered. Although this reflects the description stated on the decision notice, neither of the main parties has provided written confirmation that a revised description has been agreed. Accordingly, I have used the one given on the original application.
3. The appeal submission includes revised plans showing that part of the roof would be utilised to provide communal amenity space at first floor level. I am mindful that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council, and on which interested people's views were sought. While it would not be widely visible from the surrounding area, the amenity space would introduce additional activity in close proximity to occupiers within nearby buildings. As I have no certainty that these neighbours have had the opportunity to comment upon these revisions, I consider that potentially interested parties could be disadvantaged if I were to consider the amended proposals. With regard to the Wheatcroft principles [Bernard

Wheatcroft Ltd v SSE [JPL 1982 P37], I have therefore determined the appeal based on the plans which were before interested parties and the Council at the time of its decision.

4. The appeal also includes a Viability Assessment Report (VAR) which concludes that the proposal could not viably support a requested small sites contribution towards affordable housing. The Council raises a number of concerns with the VAR, including in relation to the inputs used and assumptions made. Nevertheless, its own assessment also indicates that the development could not viably provide the required contribution, and the Council has therefore confirmed that it is not contesting the appeal on viability grounds. From the information before me, I have no reason to reach a different conclusion on the viability of the proposal, and I have therefore confined my assessment of this appeal to the remaining matters in dispute.
5. I have had regard to representations submitted in response to an invitation to the main parties to comment on the London Plan 2021 (LP) which was published on 2 March 2021. The LP supersedes policies of the London Plan - The Spatial Development Strategy for London Consolidated with Alterations Since 2011 that were cited within the Council's decision, and I therefore make no further reference to the policies of this previous plan within my decision.
6. The Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force on 1 September 2020 and amend the Town and Country Planning (Use Classes) Order 1987. However, I have determined the appeal by reference to use classes specified in the Schedule to the Use Classes Order as at 31 August 2020 in accordance with Regulation 4 of the Regulations.

Main Issues

7. The main issues are:
 - i) the effect of the proposal on the retail function, vitality and viability of the Nags Head Town Centre; and
 - ii) whether or not living conditions for future occupiers of the proposed dwellings would be acceptable with particular regard to the provision of amenity space.

Reasons

Retail Function, Vitality and Viability

8. The appeal site includes a pair of four-storey buildings with additional basement levels. These are currently in retail use at ground floor level, and form part of a Primary Frontage within the Nags Head Town Centre as defined within Islington's Local Plan: Development Management Policies 2013 (DMP). As well as a change of use of the upper floors of the buildings to provide 3 flats, the appeal includes alterations at ground floor level to provide an entrance, circulation space and refuse and cycle storage for the flats above. While the ground floor retail area of 440 Holloway Road would not be affected, there would as a result be a reduction in the area of the ground floor retail unit at 438 Holloway Road.
9. However, the front part of No 438 would remain predominantly in retail use, and I have not been provided with substantive evidence to support the Council's assertion that the reduction in floorspace could impact on the viability

- of the unit and its status as Primary Frontage. At my visit, I noted units of varying sizes in the vicinity of the site which add to the diversity of the Town Centre. The proposed ground floor trading area of No 438 would not in my view be unusually small for a retail unit, and it would be a practical shape and layout, including provision for some ancillary facilities at the rear.
10. I accept that the proposal would additionally mean that ancillary space to the upper floor levels of the buildings would no longer be available to the ground floor retail units, and there would as a result be a substantial reduction in the total retail floorspace on the site. Nevertheless, I saw at my visit that the first floor level above No 440 and the whole of the second and third floor levels were not in any active use. From the visibly very poor condition of these areas, I am also in little doubt that they have been vacant for some considerable time, and could reasonably be described as redundant space which does not support or contribute to the viability or function of the ground floor retail in any meaningful way.
 11. The first floor level above No 438 was in use for storage and to provide ancillary facilities. However, the proposal includes alterations to the access to the basement level of the building. Although the basement is existing, it was also evident that this area has not been in active use for some time. The proposal would significantly improve the convenience of the access to the basement, providing more usable and attractive space which I find would be a notable benefit for occupiers in comparison to the existing constrained narrow staircases to reach both the basement and first-floor levels of the building. Notwithstanding the reduction in area, I therefore find that the effect of the proposal on the retail use of the unit would be broadly neutral when it is taken as a whole. The basement level to No 440 would similarly offer ancillary space to the ground floor retail unit should it be required.
 12. Given the above factors, I see no reason that the reduction in retail space on the site would in this case make continued retail use impractical or unfeasible, or that the units would be unattractive to potential future operators. Accordingly, the retail function of the ground floor of the buildings and Primary Frontage would not be harmed, and there would be no reduction in the number of units on the site, nor in the proportion of Town Centre units in retail use. I also note the appellant's comments that the proposal would ease the financial burden on ground floor retail tenants who have rights over and pay rates on the upper floors but do not use this space, supporting their viability. Additionally, I am satisfied that the very modest scale of the proposed residential entrance within the front elevation of the buildings would not interrupt or form an appreciable break in the continuity of the overall retail frontage. The predominantly retail function and character of the Town Centre and its vitality and viability would not therefore be adversely affected.
 13. The Council refers to criteria for proposals to change the use of retail premises within Primary Frontages within Policy DM4.5 of the DMP, and suggests that it would be reasonable in this instance to require marketing evidence for the retail space on the site as requested by part A.iii) of the Policy. This provision refers to premises that have been vacant for at least 2 years and requires marketing evidence in order to demonstrate that there is no realistic prospect of the unit being used for retail purposes. However, the Council accepts that the emphasis of Policy DM4.5 is on the protection of retail premises. Given also the use of the terms 'premises' and 'unit' within the policy, I am not persuaded

from the evidence before me that the requirement for marketing evidence extends to floorspace within units, and the upper levels of the buildings are not accessible independently of the ground floor levels. With regard to my findings that the ground floor retail units on the site would be retained, and that the retail function, vitality and viability of the Primary Frontage within the Town Centre would not be undermined, I do not find that there would in this case be a requirement for further marketing evidence to satisfy Policy DM4.5.

14. For these reasons, I conclude on this main issue that the proposal would not harm the retail function, vitality or viability of the Nags Head Town Centre, and I find no conflict with Policies DM4.4 or DM4.5 of the DMP, Policy CS14 of Islington's Core Strategy 2011 (CS). Together, these policies broadly seek to promote and manage Town Centres, and include requirements for development that is appropriate to the scale, character and function of Town Centres and which contributes positively to their vitality and viability. For similar reasons, I find no conflict with the National Planning Policy Framework (the Framework) which requires a positive approach to the growth, management and adaptation of town centres and that their long-term vitality and viability is promoted.

Living Conditions

15. A patio at ground floor level would provide outdoor amenity space for the dwellings. With an area of around 8sqm, the patio would be some way smaller than the 24sqm amenity space which the Council confirms would be sought under the requirements of Policy DM3.5 of the DMP. The Council has also clarified that concerns within the reason for refusal referring to the mix of housing and an over-provision of family accommodation stem from the inability to provide the required outdoor space, and has not argued that the dwelling mix would in itself be contrary to relevant policies on housing sizes to be provided as part of development. I have considered the appeal accordingly.
16. The appellant refers to guidance within the Mayor of London's Housing Supplementary Planning Guidance 2016 advising that where site constraints make it impossible to provide private open space for all dwellings, a proportion may instead be provided with additional internal living space of equivalent area. However, the revised plans submitted at appeal stage indicate potential provision of additional outdoor space at first floor level. While I have found in the interests of fairness that it would not be appropriate to determine the current appeal on the basis of these revised plans, I am therefore unable to conclude with any certainty that site constraints make it impossible to provide private open space for all dwellings.
17. Be that as it may, there is no dispute between the parties that the internal area of each dwelling would exceed requirements established by Policy DM3.4 of the DMP, and I note that the quantum of internal floorspace over and above requirements would exceed the shortfall in private outdoor space. The dwellings would also be dual aspect, with well-proportioned rooms which I consider would offer adequate levels of light and outlook. As a result, I find that they would offer a good overall standard of internal accommodation.
18. Moreover, even if there is a general deficiency in the level of open space within the borough, the site would be within reasonable walking distance of a number of parks. These would not offer a substitute for private amenity space for the

exclusive enjoyment of residents, but would nevertheless enable some access to further outdoor space to supplement that provided on the site.

19. Given these factors, I find that the shortfall in provision of outdoor amenity space would cause only modest harm to the living conditions of future occupiers of the proposed dwellings. Nevertheless, the shortfall would result in some conflict with Policies DM3.4 and DM3.5 of the DMP which, amongst other things, require good quality private outdoor space and provision for play, amenity and garden space. There would also be some limited conflict with the Framework which includes a requirement for a good standard of amenity for existing and future users.

Other Matters

20. My findings above reflect the specific circumstances of the appeal site. I have had regard to concerns raised by interested parties that the proposal could encourage landlords of other buildings to pursue changes of use of commercial space to dwellings and displace existing tenants, but no directly similar sites have been put forward. Each application and appeal must be determined on its individual merits, and I do not therefore consider that a generalised concern of precedent would justify withholding permission in this case.

Planning Balance

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.
22. The shortfall in private outdoor space to serve the dwellings would result in some conflict with Policies DM3.4 and DM3.5 of the DMP. However, I have found that harm to the living conditions of future occupiers would be fairly limited as a result of the quantum and quality of internal space provided, and some access to public open space in addition to space available on the site. I have also found no harm to the retail function, vitality or viability of the Nags Head Town Centre.
23. The Framework seeks to significantly boost the supply of housing to meet needs, and advises that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. Delivery of housing is a key objective within the LP, and the CS and DMP similarly highlight the need for homes within the borough, as well as the significant role of small windfall sites in delivering these homes. I also note results of the Housing Delivery Test (HDT) indicating that housing delivery in the borough has been below requirements over the previous 3 years, and requiring the Council to prepare an action plan in response.
24. The Council asserts that the appeal scheme constitutes inefficient sub-optimal development, and that a scheme which did not reduce ground floor retail and provided a more efficient and balanced residential mix would have an improved viability profile able to support an affordable housing contribution. However, I have no firm details of any such scheme. While the proposed flats would be fairly large, they would not be excessively so, and there is little evidence to demonstrate how they would be oversized. It also seems to me that they would represent an appropriate practical response to the internal layout of the buildings. Furthermore, I have no firm evidence to show that

suitable access to any residential development on the upper floors could be achieved while maintaining a significantly greater ground floor retail area than would result under the appeal scheme. I am therefore far from certain that the Council's suggested scheme would in practice represent a realistic alternative to the appeal proposal.

25. In any event, a considerable proportion of floorspace on the site is currently vacant, with its condition indicating that it has been so for a significant period. I have found that the proposal would not prejudice the viability of the retail units, and alongside the retained ground floor retail use, it would deliver 3 additional dwellings. The DMP advises that the existing stock of housing in the borough is heavily skewed towards smaller dwelling types resulting in overcrowding issues, and as larger properties the dwellings would add to the range of homes available.
26. Against this background, I am satisfied that the appeal proposal would make much more effective use of the significantly under-utilised buildings on the site to contribute positively to the overall supply and mix of housing locally. The dwellings would benefit from a highly accessible location with good access to local services and public transport links. These are facets which are strongly supported by the Framework which in common with the LP further recognises that residential development often plays an important role in ensuring the vitality of centres.
27. The scale of the development means that the contribution towards the supply of housing would be small. Nevertheless, with regard to the advice within the Framework and the past undersupply of housing indicated by the HDT results, I give great weight to this benefit. Retrofitting and upgrading of the building fabric would also provide for a reduction in carbon emissions, albeit that the overall effect would be limited. In this context, I find in this instance that the benefits of the proposal would together clearly outweigh the conflict with Policies DM3.4 and DM3.5 of the DMP, as well as the modest harm to the living conditions of future occupiers of the dwellings. Accordingly, there are material considerations which indicate that the appeal should be allowed, notwithstanding the conflict with the development plan.

Conditions

28. I have considered suggested conditions having regard to the tests set out at paragraph 55 of the Framework. As a result, I have amended some where necessary, or for the sake of consistency, brevity or clarity.
29. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. A condition to control external materials is necessary in the interests of the character and appearance of the area, and I have included details of the relevant plans identifying the materials to be used for the sake of clarity. The Council's appeal statement comments that section drawings of replacement windows would be requested. However, no such condition has been suggested, and given the surrounding context and details already shown on the plans, I see no reason that further details would be necessary in this case.
30. The appeal site is located on a busy road and is constrained somewhat by neighbouring buildings. Notwithstanding the fairly small scale of the development, I therefore consider that details of the management of

construction works are necessary in the interests of highway safety and convenience and to safeguard the living conditions of nearby occupiers. I have however amended the Council's suggested condition to avoid unnecessary prescription and duplication. I am also not persuaded that wheel washing would in this case be reasonably necessary given the nature of the proposal and the lack of space around the existing buildings within the boundaries of the site. To ensure that they are effective, details of relevant measures would be required prior to the commencement of development, and the appellant has provided written agreement to this condition being imposed.

31. I have attached conditions requiring storage for cycles and for refuse and recycling to promote sustainable travel and to ensure suitable provision is made. In the interests of the environmental sustainability of the development, I have also included a condition to require that it takes place in accordance with measures outlined within the submitted Sustainable Design and Construction Statement.
32. No parking is proposed on the site in accordance with requirements within the LP and Policy DM8.5 of the DMP that additional homes will be car free. Linked to this, the appellant had initially indicated that a planning obligation would be prepared. However, at a late stage during the appeal, the main parties proposed instead a planning condition purporting to remove the entitlement of residential occupiers to resident's parking permits other than residents with disabilities who are Blue Badge Holders. Irrespective of the mechanism, the Council's appeal statement makes no mention of vehicle parking or a requirement for restrictions at all. While I noted there are Controlled Parking Zones on roads surrounding the appeal site, there is no firm evidence before me to show that parking is under stress or to otherwise demonstrate why the development would result in harm so that a restriction on parking permits would be justified or necessary. Moreover, whether or not occupiers are eligible for permits ultimately rests with other parties unconnected to the site and development, and it seems to me that a condition seeking to impose restrictions on these parties would be unreasonable and unenforceable. Notwithstanding the aims of development plan policy, I am not satisfied that the evidence before me adequately demonstrates that the suggested condition would be necessary, reasonable or enforceable in this case, and therefore I have not imposed it.

Conclusion

33. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 0500, 0501, 1000, 1001, 1002A, 1003A, 1004A, 1005 (Attic Plan), 1005A (Roof Plan), 1100, 1101, 1200,

1201, 2000A, 2001A, 2002C, 2003C, 2004B, 2005A, 2006B, 2100B, 2101B, 2200B and 2201B; and the Sustainable Design and Construction Statement prepared by eight associates dated 16 May 2019, Planning Statement prepared by Rolfe Judd dated August 2019, Retail Planning Statement prepared by WYG dated May 2019, Air Quality Assessment prepared by Hawkins Environmental dated 26 April 2019, and Noise Assessment prepared by Hawkins Environmental dated 8 May 2019.

- 3) The external surfaces of the development hereby permitted shall be constructed in accordance with the materials as shown on plan Nos 2100B, 2101B, 2200B, 2201B, 2002C, 2003C and 2004B, and shall be maintained as such thereafter.
- 4) Notwithstanding the details submitted with the application, a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The CEMP shall include details and arrangements regarding:
 - i) notification of neighbours with regard to specific works;
 - ii) advance notification of any access way, pavement, or road closures;
 - iii) parking, deliveries and storage including details of the routing and access to the site, loading, off-loading, parking and turning of delivery and construction vehicles and the accommodation of all site operatives', visitors' and construction vehicles during the construction period;
 - iv) waste storage within the site to prevent debris on the surrounding highway and a scheme for recycling/disposal of waste resulting from demolition and construction works;
 - v) any construction compound including the siting of any temporary site office, toilets, skips or any other structure;
 - vi) proposed hours and days of work (with reference to the limitations of noisy work which shall not take place outside the hours of 0800 - 1800 Monday to Friday, 0800 -1300 on Saturdays, and not at all on Sundays or Bank or Public Holidays;
 - vii) any proposed external illumination and/or floodlighting during construction, including positions and hours of lighting;
 - viii) environmental and amenity impacts including, but not limited to, noise, air quality, smoke and odour, vibration and TV reception;
 - ix) measures to prevent noise disturbance to surrounding residents;
 - x) measures to minimise the impacts of the construction process on air quality;
 - xi) dust mitigation and measures to prevent the deposit of mud and debris on the public highway;
 - xii) access and security measures proposed to prevent security breaches at the existing entrances to the site, to prevent danger or harm to the neighbouring residents, and to avoid harm to neighbour amenity caused by site workers at the entrances to the site; and
 - xiii) any further measures to limit and mitigate the impact of construction upon the operation of the highway and the amenity of the area.

The CEMP shall assess impacts during all phases of the development works on the surrounding roads, together with means of mitigating any identified impacts. The report shall also identify other local developments and highways works, and demonstrate how vehicle movements would be planned to avoid clashes and/or highway obstruction.

The development shall thereafter be carried out in accordance with the approved CEMP.

- 5) The dwellings hereby permitted shall not be first occupied until details of storage for 9 cycles have been submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be provided in accordance with the approved details prior to first occupation of the dwellings, and shall be maintained as such thereafter.
- 6) The development hereby permitted shall not be first occupied until details of storage for refuse and recycling have been submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the approved details prior to first occupation of the development, and shall be maintained as such thereafter.
- 7) The development hereby permitted shall not be occupied until the measures outlined within the Sustainable Design and Construction Statement prepared by eight associates dated 16 May 2019 have been implemented in full, and these measures shall be maintained as such thereafter.