



Appeal Decision

Site visit made on 12 February 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2021

Appeal Ref: APP/P5870/W/20/3260205

122A Church Hill Road, North Cheam SM3 8NA

- 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 David Robinson against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2019/02031, dated 1 December 2019, was refused by notice dated 27 April 2020.
 - The development proposed is described on the application form as "conversion of existing retail unit into habitable accommodation".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was submitted by Mr Mike Summers. However, the applicant for the planning application was Mr David Robinson. Mr Summers has confirmed in writing that he is Mr Robinson's agent and that the appellant is Mr Robinson. I have dealt with the appeal on that basis.
3. Notwithstanding the description of development in the banner heading, the description of development from the Council's decision notice which is "Change of use of ground floor unit from A1/A2 (Retail/Financial And Professional Services) to C3 (Residential) to provide 2 self-contained units and external alterations including demolition of existing rear shed" more accurately and precisely describes the proposal based on the submitted plans. Therefore, I have determined the appeal on that basis.
4. The appellant has submitted a set of revised plans with the appeal. The revisions would alter the internal layout of the proposed flats and would provide additional floorspace at the rear of the building with a single storey extension, which would provide a shower room.
5. The appeal process should not be used to evolve a scheme and 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. For the avoidance of doubt, I have not had regard to the revised plans as part of the determination of this appeal.

Planning Policy

6. The London Plan 2021 (the 'LP 2021') was published by the Mayor of London on 2 March 2021. The LP 2021 comprises the spatial development strategy for London and forms part of the development plan. The LP 2021 supersedes the London Plan of 2016.
7. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis. The main parties have had an opportunity to address this matter as part of the appeal process.

Legislative Changes

8. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 'UC Regulations') came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the 'UCO'). These Regulations amend and simplify the system of Use Classes.
9. The amendments to the UCO revoke Class A (shops) and Class D (non-residential institutions and assembly & leisure) and create a new 'Commercial, business and service' use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes. Uses such as gyms, nurseries and health centres (previously in use classes D1 Non-residential institutions and D2 Assembly and leisure) are also within Class E. It also includes "any other services which it is appropriate to provide in a commercial, business or service locality."
10. Paragraph 4 of the UC Regulations provides that: "If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes".
11. In this instance, the application was submitted to the local planning authority on 1 December 2019. Therefore, I must determine this appeal with reference to the use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31 August 2020.

Main Issues

12. The main issues are:
 - whether the development adheres to the Council's strategy to protect the vitality and viability of local shopping facilities, in the context of adopted policy; and
 - whether the proposed development would provide acceptable living conditions for future occupiers, in respect of the amount of internal space, and the provision of outlook and daylight.

Reasons

Local shopping facilities

13. The appeal property is a mid-terraced ground floor commercial unit located within a local shopping parade on Church Hill Road. The local shopping parade comprises of a variety of commercial uses on either side of Church Hill Road including retail units, hot food takeaways and a café.
14. The parties agree that the existing ground floor use falls within Use Class A1/A2 (Retail/Financial and Professional Services), as specified by the Schedule to the Use Classes Order on 31 August 2020.
15. Criterion (b) of Policy 19 of the Sutton Local Plan 2016-2031 (the 'LP') states that "The council will not grant planning permission for the change of use from A1 uses (particularly those involving cold food sales, newsagents, chemists and post offices) to other uses unless it is demonstrated that: (i) An A1 use providing similar goods is easily accessible to serve local residents. (ii) The shop unit has been marketed at a reasonable market rent with a recognised agent for 12 months. (iii) Proposals will not lead to an over-concentration of single uses".
16. The supporting text to Policy 19 explains that the policy would contribute to several of the LP's strategic objectives, including strategic objective No 11, which is "to ensure the Borough's centres and parades have a good range of high-quality shops".
17. No evidence has been provided by the appellant to demonstrate that the shop unit has been marketed at a reasonable market rent with a recognised agent for 12 months. Therefore, the proposal would conflict with the requirements of criteria(b)(ii) of Policy 19 of the LP. Moreover, no supporting information has been provided to demonstrate that the proposal would satisfy the requirements of criteria(b)(i) and (b)(iii) of Policy 19 of the LP.
18. The appellant states that approximately 20% of the original ground floor commercial units along the local shopping parade have already been converted into residential use, whilst many of the other commercial premises have changed use to hot food takeaways. These figures have not been disputed by the Council. However, the Council explain that the residential conversions have been undertaken as permitted development, or where planning permission has been granted it has concerned commercial properties located at the end of a terrace or where a change of use would allow for a continuation of other residential uses within the parade.
19. Whilst I recognise that the proposed flatted units would be located adjacent to existing residential development at No 120 Church Hill Road, the proposal would result in the further erosion of the existing shopping facilities available to the local community.
20. In the absence of specific details to demonstrate compliance with the aforementioned requirements of Policy 19 of the LP, I am unable to conclude that the proposal would ensure that the local shopping parade would retain a good range of high-quality shops. Therefore, I conclude that the proposal would not accord with the Council's strategy to protect the vitality and viability of local shopping facilities.

21. In respect of this main issue, the second reason for refusal on the Council's decision notice refers to Policy 17 of the LP. However, this policy relates to the Council's spatial strategy for the delivery of a variety of types of commercial development within the Borough's District and Local Centres over the plan period. Given that the proposal concerns the loss of an existing commercial unit, I consider Policy 17 is not applicable in respect of the appeal proposal.

Living conditions of future occupiers

22. The proposed development would provide two flats, which would consist of a one-bedroom, one-person unit accessed from the front of the property, and a two-bedroom, three-person unit accessed from the rear.
23. Criterion (d) of Policy 9 of the LP states that "The council will not grant planning permission for new residential development, including conversions, which does not meet the internal space standards set out in the London Plan (or any successor document)".
24. Policy D6 of the LP 2021 states that housing development should be a high quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose. Table 3.1 of the LP 2021 sets out the minimum internal space standards for new dwellings. Table 3.1 sets out that the minimum internal space standard for a one-bedroom, one-person unit is 39(37)¹ sqm (gross internal floor area – 'GIA'). Whereas the minimum standard for a two-bedroom, three-person unit is 61 sqm GIA.
25. The Council explain that the GIA of both of the respective units would fall below the minimum internal space standards set out within Table 3.1 of the LP 2021. This has not been disputed by the appellant. Therefore, I conclude that the proposal would provide an unduly small and cramped standard of accommodation, which would result in unsatisfactory living conditions for future occupiers of the proposed development.
26. In addition to the above, the proposed floor plans² show that none of the bedrooms in either of the respective flats would be served by an external window. Such an arrangement would create an oppressive living environment devoid of any form of outdoor outlook for future occupiers of the proposed flats, who would be dependent on artificial lighting most of the time, including during daylight hours.
27. The appellant argues that residential units within an adjacent property have a poor outlook. Whilst this may be the case, this does not provide a compelling reason to grant planning permission for a substandard form of residential accommodation.
28. For the reasons set out above, I conclude that the proposed development would fail to provide satisfactory living conditions for the future occupiers in respect of the amount of internal space, and the provision of outlook and daylight. As such, the proposal would not accord with Policies 9 and 29 of the LP and Policy D6 of the LP 2021, which, amongst other things require new development to meet the minimum internal space standards for new dwellings and protect the amenity of future occupiers.

¹ Where a studio / one single bedroom one person dwelling has a shower room instead of a bathroom, the floor area may be reduced from 39 sq.m. to 37 sq.m, as shown bracketed.

² Dwg no: CHR 01 REV C

Other Matters

29. The appellant argues that the proposal would provide low-cost accommodation, which he would be willing to rent to tenants who were being housed by the Local Housing Authority. Whilst this may be the case, I have found that the proposal would fail to provide satisfactory living conditions for future occupiers. Consequently, the provision of such accommodation would not overcome or outweigh the very weighty conflict with the identified development plan policies as outlined above.

Conclusion

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

Christopher Miell

INSPECTOR