



Appeal Decision

Site visit made on 20 July 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/Y5420/W/20/3258988

Basement Flat, 63 Hornsey Lane, Haringey N6 5LE

- 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 Akiva Grossnass of AEG Estates against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/0603, dated 28 February 2020, was refused by notice dated 24 April 2020.
 - The development proposed is the conversion of an existing 1-bedroom basement flat to 2x self-contained 1-bed studios.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice, and both parties' appeal statements, referred to policies of the London Plan 2016. This was superseded by the London Plan 2021, which was published and became part of the development plan on 2 March 2021. I sought comments from both parties on the relevant policies of the 2021 London Plan, and in my reasons section below I have referred to policies of the 2021 London Plan where relevant, rather than those of the 2016 plan originally referred to in the decision notice.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. In this case, the amendments to the Framework have not had a significant bearing on the most relevant issues in this appeal. I am therefore satisfied that there is no requirement for me to seek further submissions on the revised Framework, and that no party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issue

4. The main issue is whether or not the proposed development would provide acceptable living conditions for future occupiers, with particular regard to outlook, daylight, sunlight and natural ventilation.

Reasons

5. 63 Hornsey Lane is a four-storey terraced property, subdivided into a number of self-contained flats and HMO rooms. At present a one-bedroom flat occupies the entire basement level, which the appellant wishes to convert into two self-contained studio flats, "Flat A" at the front of the building and "Flat B" at the rear. Each would be single aspect, with Flat B facing approximately north west. The ground level rises from the front of the appeal site to the rear, and the windows serving Flat B would open onto a lightwell wall around 1-1.2m high, with a steep bank rising above this to the level of the shared rear garden.
6. The appellant submitted a Daylight and Sunlight Report based on the Building Research Establishment's guidance in *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice* (2011) ("the BRE guidance"). It concluded that "the proposed development design achieves a relatively high level of compliance with the BRE recommendations" in terms of the Average Daylight Factor ("ADF"), the depth of daylit rooms, and the position of the "no sky line". The BRE guidance, with reference to BS 8206-2 Code of practice for daylighting, recommends an ADF of 5% for a well-daylit space and 2% for a partly-daylit space, and gives minimum values of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. It advises that with an ADF of below 2% a room will look dull, and electric lighting is likely to be turned on.
7. The Daylight and Sunlight Report showed that Flat B would have an ADF of 1.6%. While this is above the recommended minimum for a bedroom, and just above the recommended minimum for a living room, it would fall well short of the minimum level which the BRE guidance describes as partly-daylit. As a studio flat has to perform all of the functions of bedroom, living room and kitchen, and is increasingly likely to be a working space too for at least some of the time, I consider that the level of daylight within Flat B would be inadequate. I note also that none of the windows serving Flat B would receive any sunlight at all, and I saw on my site visit that from most points within Flat B the outlook would be severely restricted by the retaining wall of the lightwell at the rear and the earth bank above it. Even if levels of daylight and sunlight were to be higher, the very limited outlook from the rear lower ground floor of the appeal property means that it is not, in my view, suitable for conversion to a single-aspect dwelling.
8. The layout of the proposed studio flats means that both would have limited passive ventilation. While both would have opening windows, and Flat B would have an external door, each flat would open on a single elevation of the building and natural cross ventilation would be limited. I accept that a system of mechanical ventilation or, as the appellant has suggested, trickle vents could be secured by an appropriately worded condition, if the proposal were to be acceptable in all other respects. However, addressing this matter would not overcome my concerns about Flat B's lack of natural light and outlook.
9. The appellant has referred to there being other single-aspect north-facing flats within the same building. However, as they are on higher floors they are likely to receive more daylight, and to have a considerably less constrained outlook, than the proposed Flat B on the lower ground floor. Similarly, the appellant insists that "in the context of a proposed studio unit that is compliant with the appropriate space standards accepted by the LPA, and against which no fundamental objection has been raised on privacy grounds, it is for potential

future occupiers to exercise their choice in relation to the studio unit in question". However, in my view the proposed Flat B would be a gloomy and enclosed place, with daylight, sunlight and outlook falling well short of the standards which a future occupier should reasonably be able to expect. Neither the presence nearby of other flats with limited daylight and outlook (whether in the same building or elsewhere) nor the "choice" which a future occupier may or may not be able to exercise amounts to an adequate justification for permitting the development of unsatisfactory accommodation.

10. Taking all of these points together, I conclude that the proposed development would not provide acceptable living conditions for future occupiers, with particular regard to outlook, daylight, sunlight in Flat B at the rear of the building. The proposal therefore conflicts with Policies SP2 and SP11 of the 2013 Haringey Local Plan (Consolidated with alterations since 2017), Policies DM12 and DM16 of the 2017 Development Management DPD, and Policy D6 of the 2021 London Plan. Together these policies seek to ensure that new residential development is of a high quality design, and offers comfortable and functional accommodation which provides satisfactory living conditions, including in respect of daylight and outlook.
11. The proposed development would also fail to comply with several requirements of the Framework; notably paragraph 125 which, while it advises decision makers to take a flexible approach in applying policies or guidance relating to daylight and sunlight, nevertheless requires the provision of acceptable living standards; paragraph 126 which seeks to create high-quality buildings and places; paragraph 130 which seeks to ensure that development provide a high standard of amenity for existing and future users; and paragraph 134, which states that development what is not well designed should be refused permission.

Other Matters

12. The appellant's evidence addressed matters of the amount of amenity space which would be provided, and the potential for overlooking Flat B at the rear. These did not form part of the reasons for which the planning application was refused permission, but were referred to in the Council's officer report and appeal statement.
13. Flat B would have access to the garden at the rear of 63 Hornsey Lane. While this would be shared between the proposed Flat B and the existing rear ground floor flat, there would be a total of around 76m² of amenity space available for the use of occupiers of the two flats. While not entirely private, the space would comfortably exceed the quantitative requirement of the development plan. There would be some potential for overlooking of the rear windows of Flat B, from an occupier of the rear ground floor flat using the rear garden. However, while this would be less than ideal it would be unlikely, given the limited access to the rear space, to amount to a significantly harmful intrusion for the occupiers of Flat B. I am therefore satisfied that the proposed development would provide acceptable living conditions in respect of amenity space and privacy, although this does not outweigh the other harm I have found.
14. The appeal site is within the Highgate Conservation Area. I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage

assets are irreplaceable, the Framework states that they should be conserved in a manner appropriate to their significance (paragraph 189). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 200) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 201). As the proposal would not involve external alterations to the building, the Council was satisfied that the character and appearance of the Conservation Area would be preserved. None of the evidence before me or what I saw at the time of my site visit leads me to a different conclusion in this respect.

Planning Balance and Conclusion

15. Section 38(6) of the Planning & Compulsory Purchase Act 1990 and the Framework state that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
16. The Housing Delivery Test results were published on 19 January 2021, showing the Council met approximately only 60% of its housing delivery requirements over the past 3 years, representing a significant shortfall. Therefore, the most important policies for determining the appeal should be considered out of date, and the presumption in favour of sustainable development set out in paragraph 11d) of the Framework applies. As such, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
17. Although there would be no increase in the housing floorspace within Haringey as a result of this scheme, the proposed development would result in a net increase of one market dwelling, well located for access to shops, other services and transport links. This would represent a modest social and economic benefit. However, I have found that the proposed development would be poorly-designed and would provide substandard living conditions for a future occupier of Flat B. The proposal would therefore conflict with the specific requirements of paragraphs 125, 126, 130 and 134 of the Framework, for the reasons which I have set out in paragraph 11 of this decision. Overall, the harm from the development significantly and demonstrably outweighs the benefits when assessed against the Framework taken as a whole. Therefore, the proposal would not amount to sustainable development in the terms set out in the Framework.
18. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector