
Appeal Decision

Site visit made on 25 October 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 OCTOBER 2021

Appeal Ref: APP/Z5060/W/21/3267675

Red Lion House, 66 North Street, Barking IG11 8JD

- 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 Taylor of Modernmix Limited against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 19/01816/FUL, dated 27 November 2019, was refused by notice dated 11 September 2020.
 - The development proposed is change of use of part of ground floor to provide 4 No self-contained flats.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A new London Plan (LP) was published in March 2021. This forms part of the development plan for the area and post-dates the Council's refusal notice. I have had regard to the policies in the LP as part of the determination of this appeal and the main parties were afforded the opportunity to comment on the implications of the LP from the point of view of determining this appeal. I have also taken it into account.
3. The National Planning Policy Framework was revised in July 2021 (the Framework) and this post-dates the Council's refusal notice. The main parties were afforded the opportunity to comment on the implications of the Framework from the point of view of determining this appeal. I have also taken it into account.
4. The evidence indicates that the Council is reviewing its development plan in the form of the Draft consultation Regulation 19 Local Plan 2037, dated September 2020 (DLP). As it has not yet reached a very advanced stage, I am unable to afford its policies significant weight in decision making terms having regard to paragraph 48 of the Framework. However, the policies are still material considerations to weigh in the planning balance. The Council's refusal notice refers to policies in an earlier version of the DLP. Clarification was sought from the Council about this matter and I have had regard to the more up to date policies in the DLP.
5. While the description of development in the banner heading above refers to change of use, the proposed plans also include external alterations to the building. I have therefore determined the appeal on the basis of a change of use and external alterations proposal.

Main Issues

6. The main issues are the effect of the proposal on (i) the loss of a community facility; (ii) the mix and type dwellings in the Borough; (iii) the living conditions of occupiers of the flats in respect of outlook and light, and (iv) whether the development would constitute good design and its effect on the character and appearance of the area.

Reasons

7. The appeal site falls within a town centre location and is positioned on the corner of George Street and North Street. It was originally a public house with residential space above. Following consented alterations, its upper floors are now in residential use and the ground floor part of this building, which is the subject of this appeal, was last used in 2018 as a medical facility in accordance with a 2006 planning permission¹.
8. The appeal building is in an area of mixed uses including a BT office complex and a multi-storey car park on the opposite side of George Street. The other buildings and land surrounding the appeal site are residential.
9. It is proposed to use the ground floor of the appeal building as three one-bedroom flats and one studio flat. External alterations are proposed, as outlined above, and it is also proposed to undertake internal alterations including a lowered ground floor and the provision of mezzanine floors.

Loss of community facility

10. While the appeal building was originally a public house, it is understood that it was last lawfully used in 2018 as a medical facility. The Council contend that the proposal would result in an unacceptable loss of a community use and that insufficient marketing activity has taken place to justify the loss of such a use.
11. Reference is made by the Council to policy CM1 of the Council's Core Strategy 2010 (CS). It is acknowledged that this policy states that '*development should meet the needs of new and existing communities*', but it does not specifically protect or control community facilities. In terms of the principle of using the appeal building for residential purposes, I do not find any specific conflict with policies CM1 and CM2 of the CS in terms of the loss of a community use. None of these CS policies specifically prohibit the loss of community facilities.
12. Policy CC2 of the CS is, however, of direct relevance to the appeal. It states that '*the loss of community facilities will only be allowed in exceptional circumstances*'. The policy does not define what is a community facility, although I consider it reasonable to take the view that this could include a medical type use. Policy SP4 of the DLP also seeks to '*protect existing social and cultural infrastructure facilities in accordance with policy DMS1*'.
13. There is scope to use the appeal building for social and cultural uses given the aforementioned 2006 planning permission. Policy DMS1 states that the loss of such facilities will be resisted unless there is no longer an identified need or demand for the existing use of the facility and robust evidence is provided in respect of active marketing over a continuous 24-month period of time for alternative forms of social and cultural infrastructure on the site, taking into

¹ Planning permission 06/00268/FUL dated 5 September 2006

account the needs of the future local community, including if the facility was refurbished and/or multi-functional and demonstrating that the loss of the facility would not lead to a shortfall in provision for the specified use for the population that it serves.

14. The appellant has made efforts to market the property with a firm of chartered surveyors in order to gain interest in using the property for community use purposes as permitted by the 2006 planning permission. Limited information has been provided by Dobbin and Sullivan, chartered surveyors, in terms of actual marketing efforts. It is claimed that '*dentists, veterinary firms, training academies and small school/after school clubs*' have been contacted without interest being shown. However, I have not been provided with actual details or communications relating to these contacts or indeed any responses. Furthermore, I have no details of the rent that would be charged.
15. Policy DMS1 of the DLP also states that the Council would expect marketing to include advertising on local and national commercial property websites and visible display boards being displayed at the site. There is no evidence before me to indicate that any of this has happened. While I understand the appellant's desire to attract tenants with '*good quality covenants*' and who can offer a '*trustworthy arrangement*', this does not reasonably obviate the need to undertake more robust and evidenced marketing efforts over a continuous 24-month period.
16. I do agree with the appellant that some forms of religious use of the building may not be compatible with residential use of the wider building from a potential noise and disturbance point of view. However, that does not mean that all religious uses in the building would be unacceptable and, furthermore, the evidence is that there is a planning permission for the building that would permit a range of other community type uses.
17. In this case, I do not consider that the evidence demonstrates that an exception can be made to the normal policy of retaining a community use as outlined in policy CC2 of the CS. I acknowledge that the DLP is not at an advanced stage, but I nevertheless afford it some weight as a material planning consideration as part of the determination of this appeal. I consider that policy DMS1 of the DLP does provide a reasonable basis by which to determine the level of marketing activity required and to assist in establishing whether there are exceptional circumstances relating to the loss of a community facility.
18. In addition to the above, the appellant has not provided me with any actual objective evidence to demonstrate that there is no need for the building to continue to be used as a community facility. While policy DMS1 of the DLP is not adopted development plan policy, it is nevertheless a material planning consideration which has some weight as part of the determination of this appeal. It specifically states that '*applicants*' must also '*provide robust evidence to demonstrate that the loss of the facility would not lead to a shortfall in provision for the specified use for the population that it serves*'. As such evidence from the applicant is not before me, this is also a matter which weighs against allowing the appeal.
19. For the collective reasons outlined above, I find that the proposal would result in the loss of a community facility without exceptional justification. I am therefore unable to conclude that the proposal would fully accord with the

community and social infrastructure requirements of policies CM1, CM2, CC2 of the CS; policy S1 of the LP; policies SP4 and DMS1 of the DLP and paragraph 93 of the Framework which states that decisions should *'guard against the unnecessary loss of valued facilities and services'*. The Council's reason for refusal in respect of this main issues includes policies S2, GG4, GG5, H1 and H2 of the DLP and policy BP10 of the Borough Wide Development Policies DPD 2011 (BWDP DPD). However, these policies are not directly relevant to this main issue as they relate to *'new'* social and health care facilities, the delivery of homes, increasing housing supply, growing the economy and housing density.

Mix and type of dwellings in the Borough

20. The evidence is that there is a need for additional homes in the area. This is supported, in particular, with reference to policies CG4, GG5, H1 and H2 of the LP and policy BP10 of the BWDP DPD with an emphasis on increasing housing supply and the delivery of homes. None of these policies stipulate that only family housing should be provided on the appeal site or that flats would be unacceptable in this location. Furthermore, the proposal would make efficient use of a brownfield site in an accessible location suitably meeting the density requirements in the LP, policy BP10 of the BWDP DPD and policy GG5 of the DLP.
21. Paragraph 6.1.2 of the reasoned justification to Policy CC1 of the CS states that Barking and Dagenham is *'not currently succeeding in providing sufficient new family housing, particularly for larger households'*. Family housing is defined in the reasoned justification as a *'self-contained dwelling capable of providing at least three bedrooms'*. While there may be a need for family housing in the Borough, policy CC1 of the CS actually states that *'major housing developments (10 units or more) will generally be expected to provide a minimum of 40% family accommodation, (i.e. three bedroom, four bedroom or larger units)'*.
22. It is a moot point as to whether this proposal should be considered in isolation from other residential development associated with the building and hence whether it is or is not a major housing development. However, this is not determinative as policy CC1 also states that *'not all sites will be suitable for family sized accommodation. For example, in town centre locations where the size and form of the site is too tight, and where it would not be possible to provide a satisfactory environment for young children, particularly in respect of access to external amenity space'*. In this case, the appeal site is within a town centre location, cannot offer private amenity space for residents and some of the rooms would be single aspect making such space less suitable, in my view, for family occupation. On this basis, I am therefore satisfied that there would be no conflict with policy CC1 of the CS.
23. For the above reasons, I conclude that a lack of family housing on the site would not cause harm to the balance and mix of types of residential properties in the area and there would be no conflict with the housing and density requirements of policy CC1 of the CS; policies CG4, GG5, H1 and H2 of the LP; policy BP10 of the BWDP DPD and the Framework. In fact, the proposal would seek to boost the supply of homes in the area which is a positive matter to weigh in the overall planning balance.

Living conditions

24. The proposed development would be acceptable in terms of the overall size of each flat. Indeed, this is not disputed by either of the main parties.
25. To an extent, the proposed mezzanines would have the effect of reducing levels of light and outlook to parts of some of the flats at ground floor level (i.e. flats 1 and 2). However, they would be positioned well back from main windows and, on this basis, I consider that the proposal would be acceptable in so far as enabling enough light to penetrate rooms both at ground floor and mezzanine levels.
26. While outlook at ground floor levels for the aforementioned flats would to some extent be compromised, there would be alternative areas in such flats where reasonable levels of outlook could be provided for future occupants.
27. On balance, I therefore conclude that all of the proposed flats would provide an acceptable level of outlook and light for occupiers and hence the proposal would accord with the amenity requirements of policy D6 of the LP and paragraph 130(f) of the Framework. In respect of this main issue, the Council has referred to policy BC2 of the BWDP DPD but this is not directly relevant as it relates to accessible and adaptable housing.

Design

28. As part of my site visit, I was able to consider the appeal building in the context of the immediate locality. Despite some alterations to the original appearance of this building, it does nonetheless continue to have strong architectural merit when seen within the street-scene. It continues to have the appearance of a traditional public house and, in particular, the contrasting brickwork and consistency of the position, proportions and appearance of the arches, windows and sills, as well as the imposing castellated corner parapet, add positively and distinctively to the character and appearance of the area.
29. While the new proposed entrance door and frame would not in itself cause material harm to the overall design of the appeal building, as it would be similar in appearance and proportions to another entrance door to the building, the alterations proposed to the North Street elevation in respect of different sill and window proportions and positions would materially depart from the otherwise consistency and symmetry afforded to the window proportions and sills within the wider building. Indeed, from particular public areas the North Street and George Street elevations are read together by passers-by. From these areas, such an external change would have a deleterious impact on the design of the building to the detriment of the overall character and appearance of the area.
30. I therefore conclude that the proposal would not represent good design and hence there would be specific conflict with paragraph 126 of the Framework which requires the creation of a high quality, beautiful and sustainable buildings and places. Furthermore, and to this extent, the proposal would also fail to accord with the design, character and appearance requirements of policies D4 and D5 of the LP; policy CP3 of the CS and policy BP11 of the BWDP DPD and policies SP4 and DM11 of the DLP.
31. It is not clear whether the appeal building appears on a Council local list as a non-designated heritage asset. The appellant has commented that it does not

at paragraph 3.33 of his appeal statement. However, the appellant has provided me with an appeal decision², dated January 2020, where the Inspector commented that *'the Council has indicated that the former public house is a locally listed building'*. It has not been necessary for me to reach a definitive view on this matter as I have found that significant harm would be caused to the appeal building in design terms. In other words, the failure of the proposal to achieve good design is a matter of overriding concern and whether the building is locally listed or not would not alter or outweigh such a finding.

Other Matters

32. I recognise that the proposal would have the effect of increasing the supply of housing in the Borough and London more widely, and that more efficient use would be made of a brownfield site in an accessible location. There would therefore be associated social and economic benefits arising out of the creation of four flats. However, in this case the benefits associated with what would be the provision of a relatively modest number of flats would not outweigh or alter the significant harm that would be caused to the character and appearance of the area arising from unacceptable design alterations to the North Street elevation and the development plan policy conflict arising from the loss of a community facility.

Planning Balance and Conclusion

33. In this case, the evidence is that the proposal would not cause harm to the balance and mix of housing in the area, and I am satisfied that the proposal would be acceptable in respect of its effect on future occupiers of the flats from an outlook and light point of view. Furthermore, the development would boost the supply of homes in the area leading to some social and economic benefits.
34. However, significant harm would be caused to the character and appearance of the area arising out of some of the external alterations to the building. In addition, there is insufficient evidence and justification to permit the loss of a community use. These two matters are of overriding concern and outweigh the identified benefits of the proposal. I therefore conclude that the appeal should be dismissed.

D Hartley

INSPECTOR

² Appeal Ref APP/Z5060/W/19/3238929