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# Appeal Decision

Site visit made on 22 September 2021

**by Hannah Ellison BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 October 2021**

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**Appeal Ref: APP/V5570/W/21/3276673**

**Rear of 292 Upper Street, Islington, London N1 2TU**

- 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 Jack Malnick against the decision of the Council of the London Borough of Islington.
  - The application Ref P2021/0366/FUL, dated 5 February 2021, was refused by notice dated 30 March 2021.
  - The development proposed is described as 'A new 4 storey house is proposed to sit within the rear yard of 292 Upper Street. The site is created by infilling existing rear windows in 292 Upper street and demolishing brickwork in that building and inserting new windows to naturally illuminate those existing service rooms'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) was published in July 2021. This has replaced the 2019 iteration. The main parties were given the opportunity to comment upon the implications of the revised Framework.
3. The Council's decision notice and officer report refers to policies of the London Plan 2016. The London Plan, The Spatial Development Strategy for Greater London (March 2021) (The London Plan 2021) has now been adopted. The Council's Statement of Case confirms this position and the policies that are relevant to this appeal, following which the appellant had an opportunity to respond to the modified policies at the final comments stage. I am therefore satisfied that no party has been prejudiced by my consideration of the appeal proposal against the policies of The London Plan 2021.
4. I have removed extraneous detail from the description of development for conciseness.

## Main Issues

5. The main issues are:
  - The effect of the development on the significance of heritage assets, including whether it would preserve or enhance the character or appearance of the Upper Street North Conservation Area (the USNCA) and the effect on the setting of the Cross Street Conservation Area (CSCA);

- Whether the development would provide suitable living conditions for future occupiers, with particular regard to privacy and external space;
- Whether the design would be inclusive in relation to access; and
- The effect of the development on the living conditions of neighbouring occupiers at 293 and 294 Upper Street and 71 Cross Street, with particular regard to outlook and privacy.

## **Reasons**

### *Heritage Assets*

6. The appeal concerns the rear yard of Nos 292 and 293 Upper Street. The site is located within the USNCA, which covers an extensive length of the predominantly commercial thoroughfare of Upper Street. The USNCA is lined with historic terraced properties of narrow width, varied detail and large scale, with traditional shopfronts at ground floor level and up to three storeys above. The vertical emphasis and traditional detailing of the buildings, along with the active retail nature of the area contributes to the significance of the USNCA.
7. The appeal site is, however, located beyond the main thoroughfare of Upper Street at the eastern boundary of the USNCA. It fronts Cross Street and abuts the CSCA, whose significance is largely derived from the small scale and narrow width of historic terraced buildings, in retail and residential use. The immediate stretch of the CSCA has a predominantly commercial nature, with active street frontages along the rows of terraced properties. However, unlike the USNCA, the road here is narrower, the scale of buildings is reduced and there is greater consistency in the character and appearance of properties, with the exception of limited examples of larger buildings that punctuate the generally uniform roofline.
8. The appeal site is largely undeveloped and is used as a rear yard and for access for the ground floor retail uses and the upper floor residential units at Nos 292 and 293 Upper Street. Whilst it appears as a functional space, it nevertheless makes a positive contribution to the USNCA and the setting of the CSCA as it acts as a welcome visual break that significantly assists in the legibility of the two distinct townscapes of both conservation areas.
9. The proposed dwelling would completely fill the gap in the corner return of the two terraces and it would be four storeys in scale. Due to the site's constrained size, the dwelling would appear tall and narrow compared to the Cross Street terrace. Whilst the mansard roof attempts to align with the parapet and is set back slightly, the building would nevertheless read as a full four storeys in height. It would therefore also compete with the scale of No 292 and its wider terrace. The overall height and narrow form of the proposal would draw attention to the building and cause it to appear as an obtrusive feature in the street scene.
10. The proposal would also have a strikingly modern design. It would utilise varying materials including metal shingles, interwoven herringbone brick panels, glass blocks and brick soldier courses. The windows would also be angled and narrow. Whilst elements of each may echo features of neighbouring buildings and the alternating alignment of the façade attempts to mediate the change of angle from No 292 to 71, the collective articulation across the narrow front elevation, results in an overly fussy and contrived design which

lacks meaningful reference to adjoining buildings. It would therefore be an abrupt transition which would be unsympathetic to the rhythm, scale, form and massing of both terraces.

11. I acknowledge that historic maps suggest that the appeal site was once occupied by a building, thus connecting the two terraces. However, the detail before me is limited and I cannot ascertain the scale of any historic built form or its relationship with the adjoining properties. This matter does not therefore overcome the harm I have identified above.
12. I note the example of the contemporary building with roof terrace opposite the appeal site. Whilst I do not know the full details of that property or the circumstances which may have led to its approval, it appears to relate well to the adjoining properties in terms of scale, massing, materials and design, unlike the appeal proposal for the reasons noted above.
13. There is currently a view of St Mary's Church through the appeal site when viewed from Cross Street, within the boundaries of the USNCA. St Mary's Church and spire is identified as a local landmark in this area and the USNCA and the Council seek to protect views of it. The proposed development would block the existing view. However, the view is limited to a narrow viewpoint and only appears as a glimpse. I therefore consider that this is an incidental view and fuller, more impressive views of the church and its spire can be gained a short distance from the appeal site on Upper Street. Accordingly, the proposal would not result in an unacceptable adverse impact in this regard.
14. The Council has identified 292 and 293 Upper Street and 71 Cross Street as locally significant shopfronts with identified features which include timber fascia's, timber or brick stallrisers, stone pilasters and other ornate detailing. I observed that some of these features have been altered however, notwithstanding this, the proposed development would not interfere with any of the special features and qualities of the shopfronts.
15. Taking all the above into consideration, and given the scale of the development in context, the proposal would cause less than substantial harm to the USNCA. The Framework is clear that irrespective of the level of harm, great weight should be given to the asset's conservation and, where a proposal would lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal.
16. The proposal would provide a new dwelling in an accessible location and there would be some accompanying benefits associated with the investment and employment in the construction of the dwelling, from the spending in the local area and from future occupants. However, due to the small scale of this proposal these public benefits would be limited. It has also been suggested that the proposal would enhance natural surveillance to the street and result in added security to the rear of existing properties. I have not been provided with any substantive evidence to indicate that there is an existing problem in this regard. Nevertheless, taken both individually and cumulatively, this proposal would result in limited public benefits which would not therefore outweigh the identified harm to the USNCA, which carries great weight.
17. Accordingly, this proposal would harm the setting of the CSCA and would neither preserve nor enhance the character or appearance of the USNCA. It would therefore conflict with Policy D4 of the London Plan 2021, Policies CS 8

and CS 9 of Islington's Core Strategy (February 2011) (the CS), Policies DM2.1 and DM2.3 of Islington's Local Plan: Development Management Policies (June 2013) (the LP), the Urban Design Guide, Supplementary Planning Document (January 2017), the Upper Street North Conservation Area Design Guidelines, the Cross Street Conservation Area Design Guidelines and the Framework. Collectively, these policies and guidance seek to ensure that developments reflect and respond positively to the character of the area and conserve or enhance the historic significance of heritage assets and the historic environment. I have taken into consideration the letters of support and endorsements from practitioners, however they do not alter the conclusion I have reached.

#### *Living Conditions of Future Occupiers*

18. Due to the constraints of the appeal site, the minimum required external space at ground floor would be difficult to achieve. The private external space for the proposed dwelling would therefore consist of two balconies on the third floor. Together, these would fall below the minimum requirement as specified in Policy DM3.5 of the LP. Whilst the overall shortfall would be marginal, by virtue of their dimensions and shape, both balconies would be limited in size and neither would provide sufficient or satisfactory space for the proposed total number of occupiers to relax, enjoy meals around a table or socialise with visitors. The outside space would therefore be of a poor quality.
19. The proposed rear windows would be within very close proximity to neighbouring windows at the rear of 71 Cross Street and the flank elevation of Flat 1, 294 Upper Street. In terms of No 71, whilst its rear windows are within close proximity to the rear bedroom windows of the proposed dwelling, the angle is oblique enough to prevent occupiers from achieving an easy view into the proposal. The hooded window reveals and angled relationship between windows would also prevent occupiers of Flat 1 from gaining views into the proposed dwelling.
20. Consequently, although I consider there would be no harm in terms of privacy, the proposed development would not provide satisfactory external space for future occupiers. It would therefore conflict with Policy D6 of the London Plan 2021, Policy CS 12 of the CS, Policies DM3.4 and DM3.5 of the LP and the Framework. Collectively, these seek to ensure that future occupiers have a good quality of life with good provision of outdoor space.

#### *Inclusive Design*

21. The proposed dwelling would have step-free access and there would be a toilet on the ground floor. However, there are no habitable rooms at entrance level; the main living space would be on the third floor. It is acknowledged that the proposal is a small-scale infill development and a degree of flexibility may be applied given the constraints of the site. However, the proposed lift would not accommodate a wheelchair and the narrow layout of the proposal would restrict the ability to adapt the dwelling over its lifetime. The proposed arrangement would not therefore be convenient for everyone and has not been designed with diversity in mind.
22. Accordingly, the proposal would not promote inclusive design, thus it would be contrary to Policy D7 of the London Plan 2021, Policy DM2.2 of the LP and the Inclusive Design in Islington, Supplementary Planning Document (February

2014) which together have a collective aim to ensure that developments provide for ease of and versatility in use and create places and spaces that are convenient and enjoyable to use for everyone.

### *Living Conditions of Neighbouring Occupiers*

23. The three first floor windows on the flank elevation of Flat 1, No 294 Upper Street, appear to serve a bedroom which the evidence before me suggests has large doors leading onto an external terrace, which would provide good levels of light within and outlook from this room. In terms of privacy, whilst the windows are within close proximity to the appeal site, the rear windows on the upper floors of the proposal would have deep, tapered hooded reveals and the angle would be oblique enough so as to prevent direct overlooking into the neighbouring property.
24. Similarly, whilst the proposed rear facing windows would be sited close to rear windows on 71 Cross Street, they would be angled slightly away from them, through the gap between the terraces, and the aforementioned design of the windows would ensure privacy levels at No 71 are maintained.
25. There is a further south facing window on the third floor of the proposal however due to its height above and perpendicular relationship with the windows on the flank elevation of Flat 1, this would not create opportunities to overlook neighbours.
26. The design of the rear third floor balcony, with a brick parapet wall and frosted glazed screen, which could be controlled via a condition, would prevent overlooking to neighbouring properties.
27. The proposal also includes the blocking up of windows on the rear of 293 Upper Street which serve stair landings and bathrooms and thus are not habitable rooms. Nevertheless, the proposal includes a lightwell, which could be accessed for maintenance from the first floor stairwell and would provide these rooms with a degree of daylight. The proposed development would not therefore be overbearing in this regard.
28. Taking all the above into consideration, the proposed development would not harm the living conditions of neighbouring occupiers. It would therefore accord with Policy DM2.1 of the LP and the Framework which seek to ensure that developments provide a high standard of amenity for existing residents.

### **Other Matter**

29. The Council has identified that, in the event that the appeal was allowed, a planning obligation would be required to secure the development as car-free and to make contributions towards affordable housing and carbon offsetting. The appellant has not submitted an obligation. However, as I am dismissing the appeal on the basis of other main issues, I do not need to reach a finding on this matter.

### **Conclusion**

30. As I have found above, the proposal would result in limited social and economic benefits. These would not outweigh the identified harm to heritage assets, the living conditions of future occupiers and inclusive design. Accordingly, the proposal conflicts with the development plan and there are no material

considerations that indicate a decision otherwise would be appropriate. Thus, the appeal should be dismissed.

*H Ellison*  
INSPECTOR