



Appeal Decision

Site visit made on 19 October 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2021

Appeal Ref: APP/V5570/W/21/3271578

The Alban Building, to the rear of 71-73 Upper Street, St Alban's Place, Islington, London N1 0NX

- 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 Charles Margulies of Grays Road Investments Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2020/1707/FUL, dated 29 June 2020, was refused by notice dated 23 September 2020.
 - The development proposed is the demolition of existing workshop, excavation of single-storey basement and erection of part-2 part-3 storey building to provide 760sqm of commercial floor space (Class B1).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, I have taken the name of the appellant from the appeal form as it is more precise.
3. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of this appeal. The main parties have had an opportunity to comment on the significance of the changes.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the occupiers of no's 71 to 74 Upper Street, particularly regarding outlook and dominance.

Reasons

5. The appeal site comprises a single storey commercial building, which has a shallow dual pitched roof, with access taken from an alleyway off St Alban's Place. The proposed development will be located over 4 floors, albeit with a basement area and the second floor having a reduced footprint.
6. During my visit, I viewed the site from the alleyway and the rear first floor terraces at no's 71 and 73 Upper Street. I was also granted access to the rear second floor windows at No 71 and the rear entry to No 71, which is located off the alleyway between the site and 74 Upper Street. From these areas, I could clearly view the site and understand its relationship with its neighbours. I also found the site to be in a reasonable condition.

7. The appellant has drawn my attention to the changes that have occurred in this scheme, when compared to previous schemes including the most recent application that was dismissed at appeal¹ (the previous scheme). The scheme before me has been amended and no longer has any residential accommodation proposed within it and comprises entirely of commercial floorspace. I also acknowledge that the massing to the rear of the proposed development has been reduced with a green roof incorporated, removal of external terraces and obscure glazing proposed in the rear elevation.
8. I note the comments from the appellant regarding the separation distances in the surrounding urban context and the assertion that the proposed development will improve the outlook, which he considers is limited, noting in particular the presence of the Hilton Hotel. The existing occupiers of No's 71 to 74 currently experience a good level of amenity, particularly with regard to outlook and dominance.
9. Nonetheless, despite the alterations within proposed in the proposed development, I still consider the current scheme would cause significant harm to the living conditions of the occupiers of No's 71 to 74 Upper Street through insufficient separation distances and the overall height and massing of the proposed development. This harm would be to rear habitable room windows present at first and second floors and to the external terraces at No's 71 and 73. However, I acknowledge that the level of harm to the occupiers of No 74 would not be to the extent of that experienced by the occupiers of No's 71 to 73 due to these properties being located directly behind the site.
10. The appellant also has drawn my attention to a planning application refused in 2016. However, whilst extracts from the Officer Report have been provided, the details submitted surrounding this scheme is limited. Consequently, as I do not have the full details of the scheme, including a full analysis from the Council, a comparison between this scheme and the case before me cannot be drawn. Accordingly, I find little within this case which would lead me to alter my conclusions in this instance.
11. For the reasons given above, I therefore conclude that the proposed development would harm the living conditions of the occupiers at No's 71 to 74 particularly through an unacceptable loss of outlook and a sense of enclosure. This would fail to accord with the amenity aims of Policy DM2.1(x) of the Council's Local Plan: Development Management Policies 2013, Policies 7.1 and 7.4 of the London Plan 2021, and the requirements of the Framework.

Other Matters

12. The appellant has raised concerns surrounding the lawful status of the first-floor rear extension at No 72. However, the Council has referred to approval of a planning application². Whilst the Council cannot provide any drawings, they have provided an aerial photograph of the site, dating from 1991, which appears to show the extension in question. Thus, in the absence of any substantive evidence to the contrary and on the balance of probabilities, I find that it is highly likely that the rear extension at No 72 has been in place for a notable period of time. Even if there was an absence of planning permission, it

¹ APP/V5570/W/19/3236194

² 851568

would be highly likely that the development would be immune from enforcement action given the passage of time that has lapsed.

13. The appellant has drawn to my attention that a further planning application is under consideration by the Council. However, on the evidence before me, no decision has been made on this application. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.
14. In addition to those matters considered above, neighbouring occupiers have raised concerns, regarding, amongst other things, daylight/natural light and loss of privacy. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
15. Additionally, I have had regard to the concerns of neighbouring occupiers, regarding access, potential damage to property and the Party Wall Act. However, these are not matters for my consideration in this appeal, and these issues are a private matter between the relevant parties and not within my jurisdiction.

Planning Balance and Conclusion

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
17. The provision of what is likely to be modern commercial premises would generate notable additional social benefits. In addition, there would be economic benefits for the locality, both during construction and occupation of the property, but on the evidence before me this is not a reason to grant permission in the face of the harm identified.
18. Whilst I acknowledge the factors in favour of the proposed development, including the absence of other harm, those considerations do not outweigh or overcome the harm that I have identified on the main issue. Consequently, the scheme would not accord with the development plan when considered as a whole and the evidence does not indicate a decision other than in accordance with the development plan would be justified.
19. For the above reasons, I therefore conclude that the appeal should be dismissed.

W Johnson

INSPECTOR