The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Appeal Ref: APP/V5570/W/22/3295534
171 Hemingford Road, Islington, London N1 1DA

- 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 Vipin Desai against the decision of the Council of the London Borough of Islington.
- The application Ref P2021/1534/FUL, dated 21 May 2021, was refused by notice dated 1 October 2021.
- The development proposed is described as 'Use as Single-Family Dwelling, Mansard Roof Extension with Front Terrace, Installation of a Gate and Railings to Front Forecourt and Creation of Part Front Lightwell.'

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether there is sufficient evidence to justify the loss of the shop, and whether a contribution to affordable housing is required.

Reasons

Loss of Retail Space

3. The appeal site comprises a three-storey, mid terrace property with a basement. The ground floor includes a retail space towards the front of the building. The remaining areas of the property are residential in use. A Certificate of Lawful Use or Development (Existing Development) (CLUD) was approved[1], after submission of the appeal, and confirms that the property is of mixed use.

4. Policy DM4.7 of Islington's Local Plan: Development Management Policies (DMP) (Adopted June 2013) seeks to avoid the loss of shops (formerly Use Class A1) which are located outside designated Town Centres and Local Shopping Areas.

5. Exceptions include where; i) the premises has been vacant for a continuous period of at least 2 years and continuous marketing evidence for this 2-year vacancy is provided which demonstrates that there is no realistic prospect of the unit being used in its current use or to provide an essential service to residents in the foreseeable future; and ii) there is accessible provision of essential daily goods within short walking distance (within 300m). There is no dispute that the proposal would comply with part ii of DM4.7.

[1] P2021/2516/COL

6. From my observations on the site visit, the retail space is separated from the residential elements to the rear of the ground floor by an internal door, while the entrance from the street to both elements is to the front through the retail area.

7. A marketing report (Marketing Report & Recommendations – Strettons, Ref BAH/COM27643) advises that the property was advertised as A1 in terms of its planning use class and a trading space to the front with rear internal storage space but from the evidence before me there does not appear to be reference to the residential elements.

8. As confirmed by the CLUD, the use of the building (or 'unit') is mixed residential/retail. Appendix 11 of the DMP requires properties to be marketed for the appropriate use or uses as defined by relevant planning policy, among other things. Moreover, Policy DM4.7 states evidence must demonstrate that there is no realistic prospect of the unit being used in its current use. There is no evidence before that if the building was advertised as mixed use, as it is currently used, it may have appealed to prospective tenants wishing to take up the residential space alongside their business, as the appellant evidently had done for many years.

9. I understand that the marketing strategy was undertaken following pre-application advice from the Council and that the appellant is unhappy with the handling of the planning application. Re-marketing may require the appellant to vacate the premises and their home for two years. However, I can only assess the proposal based on the evidence before me and on its planning merits. Any complaints regarding the handling of the proposal by the Council should be made to that organisation.

10. Based on the foregoing, the proposal would lead to a loss of a dispersed shop without the required evidence to demonstrate that there is no realistic prospect of the unit being used in its current use or to provide an essential service to residents in the foreseeable future, contrary to Policy DM4.7 of the DMP.

Affordable Housing

11. As established through the granting of the CLUD, the unit is of mixed residential and retail use. As such, the residential areas of the building do not constitute a separate residential unit. The proposed change of use would constitute development and mean the building would be of residential use only. Therefore, based on all that I have seen and read, the development would create an additional dwelling. I note that the appellant does not dispute the need for affordable housing in Islington generally speaking, but that given the change of use would be from mixed use to residential, they consider that there is no requirement for a contribution in this case.

12. The Affordable Housing Small Sites Contributions Supplementary Planning Document (SPD) states that all minor residential developments resulting in the creation of one or more additional residential unit(s) are required to provide a commuted sum of £50,000 per unit, towards the costs of providing affordable housing units on other sites within the borough. This includes the conversion of existing buildings resulting in the creation of new units. This payment is secured via a planning obligation in accordance with Policy DM9.2 of the DMP. Moreover, the SPD advises that where an additional self-contained unit is being created for a family member (or in similar circumstances) and there will be no

immediate sale of the unit, the payment will not usually be required on commencement or completion of the scheme. Although the appellant has declined to commission a market demand analysis, there is insufficient evidence before me to demonstrate that the use of the building is not viable.

13. Similarly, Policy CS12 of Islington's Core Strategy (CS) (adopted February 2011) states that development comprising less than 10 units will be required to provide financial contribution towards affordable housing provision elsewhere in the borough.

14. While neither Policy CS12 nor the SPD explicitly reference a change of use from Sui Generis to residential as triggering a requirement for affordable housing contribution, both are clear in stating development which creates additional units are eligible. As I have determined that an additional unit would be created, there is no reason why the proposal should not make the required contribution. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any proposal must be determined in accordance with the development plan unless material considerations indicate otherwise. While I am aware that the Framework would not require a contribution in this case, that is only one material consideration which, given the extent of the evidence before me regarding the need for affordable housing contributions from small sites, would not outweigh the requirements of the development plan and the SPD.

15. I am referred to two previous decisions made[2] by the Council which involved a change of use from live-work units to residential without the requirement for a small sites contribution. I have little substantive information on either of these before me. However, from the officer report for 20 Corsica Street the Council states that it had attributed the submitted marketing details and viability information considerable weight in assessing that case. Without this information before me I cannot be certain of what informed the Council's decision with regards to that aspect of the scheme.

16. The application at 2A Fairbridge Road includes a change of use to both residential and B1 office use, creating a mixed-use development rather than solely residential as in the appeal before me. As such, neither would be convincing justification to conclude that the proposal before me should be determined contrary to the development plan. Moreover, I note that a previous appeal decision[3] concluded that a change of use of the first and second floors of the existing public house from ancillary residential accommodation (Use Class A4, Drinking Establishments) to create a self-contained 3-bedroom flat also necessitated a small sites contribution. This approach is outlined in the SPD.

17. For the foregoing reasons, I consider that a financial contribution towards the provision of affordable housing elsewhere in Islington would be necessary. Therefore, in the absence of a completed planning obligation, the proposed development would be in conflict with Policy CS12 of the CS, Policy DM9.2 of the DMP and advice in the SPD.

Other Matters

18. The appeal site is located within the Barnsbury Conservation Area (BCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention be paid to the desirability of

[2] P2013/2943/FUL & P2013/1661/FUL
[3] APP/V5570/W/20/3245275

preserving or enhancing the character or appearance of a Conservation Area. The Council concludes that the external works proposed to facilitate the conversion, including a roof extension, gates, railings and lightwells, would not harm the harm the character and appearance of the BCA. Based on the evidence before me I see no reason to disagree.

Conclusion

19. The proposal would lead to the loss of retail space without sufficient evidence to demonstrate that there is no realistic prospect of the unit being used in its current use. Moreover, there is no planning obligation before me to secure the required financial contribution to affordable housing given the creation of an additional dwelling. As such it would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR