



Appeal Decision

Site visit made on 18 August 2022

by Alison Scott (BA Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th October 2022

Appeal Ref: APP/V5570/W/21/3289911

6th Floor (Previously known as 5th floor), Hill House, 17 Highgate Hill, London N19 5NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by New Archway Prop Co Limited against the decision of London Borough of Islington.
 - The application Ref P2021/1540/S73, dated 26 May 2021, was refused by notice dated 21 July 2021.
 - The application sought planning permission for Change of use of the fifth floor from B1 offices to D1 use as an interview centre for patients without complying with a condition attached to planning permission Ref P060155, dated 20 March 2006.
 - The condition in dispute is No 3 which states that: The premises shall be used for Class D1(a) (the provision of medical or health services) only, and for no other purpose (including any other purpose within Class D1 of the Town and Country Planning (Use Classes) Order 2005).
 - The reason given for the condition is: To ensure the future occupation and use of the premises is in accordance with Policies E4, D3 and Env 17 of Islington's Unitary Development Plan (2002).
-

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. Now identified by the parties as the sixth floor, formally the fifth floor, I have no reason to contradict this information.
3. The appellant provided no description of the proposal within their application form and referred to their covering letter submitted with their planning application. Despite the Council's description of the proposal within their delegated report, the appellant seeks to remove Condition 3 imposed to planning permission Reference P060155 in order to allow the use of the sixth floor as an unrestricted Class E use. I have proceeded on this basis.
4. The Use Classes Order has been amended in 2020 with a medical or health service encompassed within Class E. As a consequence of an unrestricted use to the appeal site, it could therefore vary between the commercial, business and services uses of Class E.

Main Issues

5. The main issues are the effect of removing the condition on:

- The provision of local social infrastructure within the local area;
- The public highways network; and
- The living conditions of local residential occupiers.

Reasons

Loss of local social infrastructure

6. Located within the centre of Archway, the appeal building has undergone substantial transformation in more recent times and its use is one predominantly associated with C3 use.
7. The appellant confirms that the health/medical use on this floor has ceased since 2015 and there is nothing before me to contradict this.
8. It remains however that at the time the application was approved by the Council as a D1 use, the use of that floor was restricted as a medical or health facility D1 (a) only. The Council saw fit to restrict the use from moving within the other permitted uses under Class D1 in the interest of compliance with the adopted Council Unitary Development Plan policies at the time. The policies the Council applied within the planning condition were therefore a determining factor.
9. Since the time the previous application was determined, the adopted Islington local plan has been replaced as well as other national policy changes, including the Use Classes Order. These are all material considerations.
10. Policy DM4.4 of the Development Management Policies (2013) seeks to promote Islington's town centres, and Policy DM4.12 objectives are to protect social and strategic infrastructure amongst its other aims. Therefore, in accordance with this policy, the loss of a medical service as a form of social infrastructure should be justified by the appellant by submitting the required evidence.
11. Despite the fact the use is currently non-operational, there is no evidence submitted to demonstrate there is no demand for such use. The appellant has provided no information to demonstrate there would be no shortfall in this type of local social infrastructure. Without the required evidence before me, the expectations of the policy have not been met. Therefore, I cannot be certain a detrimental impact would not arise to the local area because of removing this facility.
12. I am aware of the Planning Practice Guidance pertaining to the use of planning conditions that should be imposed and the requirements of paragraph 56 of the National Planning Policy Framework, (the Framework). However, their purpose is to mitigate the adverse effects of development. It would not be appropriate to impose conditions without this first being established.
13. Therefore, to conclude on this main issue, the proposal would result in the loss of social infrastructure without justification contrary to Policies DM4.4 and DM4.12 of Development Management Policies (2013) in their combined

objectives to maintain, enhance and protect social infrastructure within this town centre location. However, I find no direct relevance of the proposal to the broad strategic aims of Policy CS1 of the Core Strategy (2011).

Public highways network

14. Despite the fact the site is located within a designated town centre with excellent access to public transport services, and that the appellant states that deliveries take place from the rear of the building, they have not demonstrated that an unrestricted Class E use would result in no adverse effects upon the local public highways network.
15. No planning conditions would be reasonable to impose without being directly related to the impact of the proposal, to which has not been demonstrated.
16. Therefore, to conclude on this main issue, without evidence to justify how an unrestricted Class E use would not lead to detrimental harm arising to the public highways network, the proposal is therefore contrary to Policy DM8.6 of Development Management Policies (2013) in its aims for development to demonstrate acceptable access and serving arrangements for new uses.
17. However, I find no direct relevance to Core Strategy Policy CS1 Islington Core Strategy Policies (2011) as this is a wider strategic policy, or Policy CS8 as this relates to Islington's character. In addition, I find no direct relevance to Policy DM2.1 of the Development Management Policies as this relates to design and character, or Policy DM4.4 as it does not apply to the situation before me. Also, I find no direct relevance to Policy DM4.12 or Policy DM5.1 as this does not relate to impacts of a change of use upon the highway network.

Living conditions

18. Residential flats form the predominant use within Hill House with other residential accommodation within close quarters. The living conditions of all local occupants should therefore be safeguarded.
19. The ability to flexibly move unrestricted within Class E would permit end uses with the potential to impact upon the living conditions of local occupants, even though Class E uses would be compatible with a town centre environment.
20. Therefore, without a formal assessment on the effects of an unrestricted Class E use on the living conditions of local residential occupiers, there is no evidence to demonstrate that the proposal would not lead to adverse effects. It would not be appropriate to impose planning conditions to mitigate impacts without the findings of the harms having been identified.
21. Therefore, to conclude on this main issue, there is no evidence presented to demonstrate that the proposal would safeguard the living conditions of local residents, contrary to Policy DM2.1 and DM4.4 of the Development Management Policies (2013) in so far as their combined expectations are to broadly protect amenity. I find no direct relevance to Policies CS1 or CS8 of the Core Strategy, or policies DM4.12 and DM5.1 of the Development Management Policies as they do not directly relate to safeguarding living conditions.

Other Matters

22. I appreciate the need for flexible uses within town centre locations and the emphasis on the changes to the Use Classes Order 2020 to simplify

circumstances. Nevertheless, that is not to say that this is without due regard to material planning considerations.

23. The appellant has brought to my attention an appeal decision that allowed the removal of a planning condition to permit an unrestricted change within Class E at a site in Jarrow. From the information presented on this decision, I do not find the circumstances to be the same. Despite the fact the location is within a town centre, the Inspector considered the scale of the proposal to be small. The proposal before me relates to a lateral floor of a building and is a considerably greater scale set in a context of a much larger site and embodied within a building of a predominately residential nature. They are not comparable. In any event, as with every decision, they are assessed on their own individual merits.

Conclusion

24. The proposal would thus lead to 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. For the reasons given, I conclude that the appeal should not succeed.

Alison Scott

INSPECTOR

