



Appeal Decision

Site visit made on 13 September 2022

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/N5090/W/22/3296329

5 Leicester Mews, London N2 9EJ

- 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 Gabriel, Ms Emily and Ms Vita Gottlieb against the decision of the Council of the London Borough of Barnet.
 - The application Ref 21/3901/FUL, dated 3 July 2020, was refused by notice dated 20 October 2021.
 - The development proposed is to use the building, formally used as a workshop under Class B1 of the Use Classes Order 1987, as a one bedroom self contained dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether:
 - The loss of employment floorspace within East Finchley town centre would meet the requirements of development plan policy; and
 - The proposed development would provide adequate living accommodation for future occupiers with regard to the provision of private external amenity space, outlook and light.

Reasons

Loss of Employment Floorspace

3. The proposal involves the change of use of a property on Leicester Mews from its last use as a workshop to a one bedroomed dwelling. The terrace of mews properties which the appeal premises forms part of is located immediately to the rear of Finchley High Street.
4. Following the publication of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, Use Class B1 use became Use Class E(g) of Part A, Schedule 2. As such, Policy DM14 of the Barnet's Local Plan Development Management Policies Document (2012) (DMPD) is slightly inconsistent with the current regulations. Nevertheless, its meaning is still clear and can be applied to this case as the last lawful use of the appeal property was as a workshop, which fell under Use Class B1 use and now falls under Use Class E(g)(iii). Uses within the new E Class are consistent with those which the policy seeks to protect and therefore it would be reasonable to apply the new class to this policy.
5. With respect to existing employment space, DMPD Policy DM14 seeks to protect the supply of sites and premises in employment use across the

Borough. Outside of designated industrial and business sites, where changes of use require planning permission, the policy states that they are normally only permitted subject to demonstration that the premises are no longer suitable and viable for employment use.

6. Thus, in order to justify the loss of employment floorspace the appellants must be able to demonstrate that there is no reasonable prospect of the premises being used for employment uses in the short, medium and long term through a suitable period of effective marketing. However, as no such evidence has been submitted, it has not been adequately demonstrated the appeal premises are no longer suitable or viable for employment use. The proposal therefore conflicts with the requirements of policy DM14 of the DMPD in this respect. The proposal, as a result would also fail to comply with policies CS1 and CS NPPF of the Local Plan Core Strategy (2012) which, amongst other things, seek to ensure that economic growth is located in accessible areas and planning decisions are made in accordance with the development plan.
7. The reason for refusal also refers to Policy E6 of the London Plan (LP) which seeks to protect Locally Significant Industrial Sites (LSIS). I have not been made aware that the appeal site is located in an area designated as an LSIS and therefore this policy is not relevant to the determination of the appeal.

Living Conditions

8. Around 10m² of private amenity space would be provided at the rear of the proposed dwelling in an enclosed courtyard area surrounded by high walls on all sides. The Council's Sustainable Design and Construction Supplementary Planning Document (2016) (SPD) requires a minimum of 5m² per habitable room to be provided and, where rooms exceed 20m² they are to be counted as two rooms. As a result, the SPD would require 15m² of outdoor space to be provided, whereas LP policy D6 requires a minimum of 5m² of space to be provided for 1-2 bed dwellings unless there is a higher local borough standard.
9. The proposal would deviate from the higher standard of provision set out in the SPD. Nevertheless, the amenity space would, in this instance and in this context, provide a reasonably pleasant and private area for sitting out or drying of laundry, which is not overlooked. In these respects, the proposal would nevertheless satisfy the aim of the SPD if not its exact detailed requirements.
10. The outlook from the ground floor living accommodation would be towards the outdoor amenity space at the rear and at the front of the property stable style doors have been retained. Openable shutters over glazed panels in the doors afford views over the access lane and allow light into the space. From the bedroom on the first floor the outlook would be over rear gardens of nearby houses. The result would be a reasonably pleasant outlook from both the ground and first floor of the property.
11. I have not, however, been supplied with any specific information demonstrating that adequate daylight and sunlight would penetrate the living spaces especially at ground floor level. From my observations, given the depth of the room, the orientation of the property and the proximity of surrounding development it is likely that the ground floor living accommodation would be served by adequate levels of natural light which as a result would not create an unduly gloomy and oppressive form of accommodation for its occupiers.

12. Accordingly, the proposed change of use would not have any adverse effect on the living conditions of future occupiers of the proposed dwelling with regard to the provision of outdoor amenity space and outlook or light. The proposal would therefore comply with DMPD policies DM01 and DM02 as well as LP policy D6 which, amongst other things, seek to ensure that adequate living conditions for future occupiers of developments are provided. Despite the technical breach of the SPD's guidance with regard to the quantum of amenity space, the site-specific circumstances of this appeal mean that the scheme would still comply with the overall amenity and design aims of the guide. Additionally, there would be no conflict with the aims of the Mayor of London's Housing Supplementary Planning Guidance (2016) with respect to living conditions.

Other Matters

13. The appellants have referred to the Government's White Paper on Levelling Up the United Kingdom (February 2022) and the importance of the supply of housing. The White Paper does not form any part of planning policy, I place little weight on this. The Framework encourages boosting the supply of homes which contributes to the government's aims of levelling up and sustainable development. This should not, however, be at the expense of good quality accommodation which complies with adopted planning policy.
14. The Council have indicated that a legal agreement to secure the development as car-free may be required. However, this matter was not raised in the Council's reasons for refusal and no obligation is before me. Even if I were to agree that the proposal meets the provisions of Paragraph 57 of the National Planning Policy Framework and that this factor could carry some weight in support of the proposal, I have no mechanism before me to consider the matter further.
15. I note that the appellants state that pre-application advice was provided on the basis that the proposal should comply with a different clause in DMPD policy DM14. However, pre-application discussions are not binding on any future decision the local planning authority may make once a proposal has been subject to the formal planning process and ultimately the Council refused planning permission. I have considered the appeal resulting from that accordingly, on the basis of the evidence and planning merits of the case.

Planning Balance and Conclusion

16. The appellant contends that the proposal should be assessed in accordance with the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework. However, mindful that I have not been made aware by either party if the Council is unable to demonstrate a 5-year housing land supply, I can only therefore conclude that the development plan policies are up-to-date and that the provisions of paragraph 11(d) are not triggered.
17. I am mindful of the benefits of the proposal, that it is in a location which is close to the town centre and public transport links. I also acknowledge that the proposal would meet minimum internal space standards and would not have any adverse effects on neighbouring occupiers. These benefits, however, would not outweigh the harm I have identified in the main issues.

18. Therefore, for the reasons given, I have found that the proposal conflicts with the development plan read as a whole. No material considerations have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is dismissed.

KL Robbie

INSPECTOR