



Appeal Decision

Site visit made on 6 September 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2022

Appeal Ref: APP/V5570/W/22/3292985

106-110 Islington High Street, Islington, London N1 8EG

- 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 Segal (Passage Properties Ltd) against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/1558/FUL, dated 19 May 2021, was refused by notice dated 17 August 2021.
 - The development proposed is described as 'Change of use across all floors of 106-108 Islington High Street from Restaurant ancillary accommodation (E(b)) to residential (C3) to create 3 no. self-contained residential units (2 no. 1-bed, 1 no. 2 bed), including partial demolition and internal reconfiguration throughout; partial change of use at ground floor in 108 from Retail (E(a)) to residential (C3); erection of single storey rear extension and partial extension infill to rear of 106; partial replacement roof to 106; formation of new shopfront and residential access at ground floor of 108; new windows to rear of 108; creation of replacement ancillary restaurant accommodation at 110; lowering of basement floor at the front of 112 and creation of fire escape to rear; relocation of restaurant ancillary staff accommodation to basement of 112'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address in the banner heading above is taken from the planning application form. However, the decision notice gives the address as No's 106-112, while the plans also show that the development proposals include No 112, albeit this is limited to the basement of that unit.
3. A unilateral undertaking (UU) was submitted during the appeal. The Council has provided further comments on its content, and I have taken these matters into consideration in this decision.

Main Issues

4. The main issues are as follows:
 - Whether the proposal would provide suitable living conditions for future occupiers of the flats;
 - Whether the proposal would have an unacceptable impact on the long-term viability of the commercial units at ground floor level;
 - Whether or not the proposal provides appropriate provision for affordable housing; and

- The effect of the proposal on heritage assets.

Reasons

Living Conditions

Private Outdoor Space

5. Policy DM3.5 states that all new residential development and conversions will be required to provide good quality private outdoor space in the form of gardens, balconies, roof terraces and/or glazed ventilated winter gardens.
6. Flat 1 does not include any private outdoor amenity space and as such would not provide suitable living conditions to future occupiers in this regard. I have noted the examples¹ provided by the appellant whereby the Council did not require amenity space for other developments. I have limited information on these, although from the extracts provided, and the officer report for 90-92 Islington High Street, there appear to have been extenuating circumstances which persuaded the Council that the lack of amenity space was acceptable. I have not been provided with any substantive reasons as to why the proposal before me should not be required to provide amenity space other than it has occurred elsewhere. I have therefore assessed the proposal on its own merits.

Noise

7. The existing commercial ground floor space of No 106 is occupied by a restaurant. Two of the proposed flats would be located on the upper floors of that building, with the other located above No 108. Evidently, the restaurant hosts weddings, among other events.
8. I note the Council's concerns with regards to the initial noise report, which it claimed lacked analysis against development plan policies and other matters. This has been revised and the submitted noise impact assessment report (Sound Licensing – February 2022) identifies the two main sources of noise as being from plant machinery and entertainment in the restaurant. The report concludes that the operation of the entertainment noise and mechanical plant is demonstrated to be below the BS 8233:2014 daytime & night-time desirable internal and external ambient noise guideline values, and the World Health Organisation's guideline values. This is on the basis that additional sound insulation is installed between the first and second floors, which is recommended to be secured and agreed by planning condition prior to commencement of works.
9. Although the Council advises there have been noise complaints raised against the venue, I have little information on these matters. In any event, I see no reason why appropriate conditions could not be agreed to mitigate potential noise impacts and as such, based on the evidence before me the proposal would provide suitable living conditions for future occupiers with regard to noise.

Ceiling Heights

10. Policy DM3.4 states that in new housing development all habitable rooms, kitchens and bathrooms are required to have a minimum floor to ceiling height of 2.6 metres (between finished floor level and finished ceiling level). In

¹ P2020/0588/FUL, P2021/2365/FUL & P2018/0448/FUL

residential conversions, including extensions, where the original ceiling height is maintained, a lower ceiling height may be acceptable where it can be demonstrated that overall, a good standard of daylight, ventilation and useable floorspace can be provided.

11. The ceiling height of Flat 3 is 2.2m towards the front elevation of the building and increases to a maximum of 2.89m at the proposed roof ridge. The proposed floor plan indicates that the kitchen and bathroom would be located at the point of the lowest ceiling heights. There is nothing before me to indicate that this would cause adverse impacts on daylight, ventilation or would preclude useable floor space given much of this ceiling height would be occupied by kitchen worktops and the bathtub. As such, I find that there is justification for the lower ceiling height given the arrangement of the floor space.
12. The proposal would include two one-bed (one 1 person and one 2 person) and one two-bed flats located at second and third floor levels. The Council is concerned that the one bed 1 person flat would be occupied by two people and would in that case have an undersized bedroom. However, there is nothing substantive before me to show that this would occur.
13. I understand that Table 3.2 of the DMP states that studios/bedsits/single bedroom flats will only be permitted in exceptional circumstances, where a larger unit is not possible, or this would result in better aspect. However, Policy DM3.1 states that to ensure the range of housing sizes needed in the borough is provided, the housing mix required on all residential developments will be based on Islington's Local Housing Needs Assessment. The associated table 3.1 shows that one bed houses would be acceptable in certain circumstances. Therefore, there is no meaningful evidence to suggest that in this instance a one-bedroom one person property would not contribute to a suitable mix and in principle, one-bedroom properties are appropriate in accordance with Policy DM3.1 of the DMP and H10 of the LP, which generally seek a range of dwelling sizes and tenures.

Living Conditions Conclusion

14. Notwithstanding the lack of harm with regards to noise, ceiling height and housing mix, and to conclude on this main issue, the proposal would not provide suitable living conditions with regards to the lack of private amenity space for Flat 1. This would be contrary to Policies DM3.4 and DM3.5 of the DMP as explained in the foregoing sections of this report.

Viability of Commercial Units

15. The appeal site comprises four mid-terrace properties on Islington High Street. Each building is formed of three-storeys with a basement and includes a commercial unit on the ground floor with a mix of uses on the upper floors. The ground floor of 106 has a restaurant while Nos 108, 110 and 112 have retail units. The appeal site is located within a number of strategic land use designations, including Angel Town Centre and the Primary Retail Frontage.
16. Policy DM4.4 of the DMP seeks to maintain and enhance the retail and service function of Islington's four Town Centres, including Angel, where development is required to contribute positively to the vitality and viability of the centre.

17. Policy DM4.5 states that within the Primary Frontages proposals to change the use of existing retail premises (Use Class A1) will not be permitted unless several criteria are satisfied. This includes that individually or cumulatively, the proposed use would not have a harmful effect on the predominantly retail function and character of the Town Centre, and its vitality and viability.
18. The proposal includes a partial change of the use of the ground floor retail space of No 108 to provide a residential entrance and staircase to access the proposed flats on the floors above. The upper floors would also be reconfigured to move some of the ancillary spaces which serve the functions of the commercial spaces below. The trading area of the restaurant would not be reduced, although ancillary spaces such as wine and cold storage areas and administrative rooms would be moved and reconfigured.
19. The ground floor commercial space of No 108 would be reduced by 1.7m square metres (sq. m) to accommodate the new entrance and staircase. Although this is described as insignificant by the appellant, there is insufficient evidence before me to demonstrate why, or how the proposal would contribute positively to the vitality and viability of the centre. While marketing evidence may not be required for the change of use of the upper floors, the crux of the concern lies in the impact the reduction and reconfiguration of these spaces could have on the long-term viability of the retail and commercial units, and therefore on the wider retail area.
20. I understand that the current tenant has extended their lease on the property, which it is claimed demonstrates that the proposals have not had an impact on the viability of the space to continue to function in this manner. However, the lease is dated prior to the submission of the planning application. As such, there is a possibility that when the space is reduced, this could cause the current and future leaseholders to reassess whether the space would be suitable for their needs.
21. Furthermore, part D of Policy DM4.4 states that the Change of Use of ground floor units from main Town Centre uses (e.g. A Use Classes, D2 Use Class and Sui Generis main Town Centre uses) to other uses (particularly residential use) within Town Centres will be generally resisted. However, this may be deemed acceptable outside any designated Primary and Secondary Frontages. The proposal is within the Primary Frontage and, contrary to section i) of part D, the premises has not been vacant for a continuous period of at least 2 years with continuous marketing evidence for this 2 year vacancy period provided which demonstrates that there is no realistic prospect of the unit being used in its current use in the foreseeable future. Furthermore, as per section iii) of part D of DM4.4, I have concluded that the proposal would not provide high quality dwellings with a high standard of residential amenity, consistent with other policies and standards relating to housing and design, given the lack of private amenity space for Flat 1.
22. Although Policy DM4.5 refers to changes of use of 'Use Class A1' properties, the supporting text outlines the aims of the policy to maintain retail uses and the vitality and viability of town centres. As such, while A1 may have changed within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, this does not make the policy 'redundant'.
23. I note the letters provided by local estate agents, with one confirming demand for one bed flats and the other advising that there would be a lack of demand

for the upper floor office spaces as they are not self-contained. Alongside anecdotal evidence regarding market demand, this is not sufficient justification required by the relevant policies of the development plan for the change of use, nor does it offer any insight into the effect of the loss of this ancillary space may have on the viability of the commercial units at ground floor level. As such, these factors are given limited weight in favour of the scheme.

24. My attention is drawn to other planning applications determined² by the Council whereby this main issue was also considered. I have limited details on these cases other than extracts from the officer reports, so it is unclear what the circumstances which led to their approval or otherwise were. However, while consistency in decision making is important, each proposal is assessed on its own merits. The cases identified would have had their own, site-specific circumstances and this does not lead me to conclude otherwise on this matter in the context of the appeal before me.
25. I am advised that the proposal could be carried out under various prior approval procedures, including Class MA and Class G of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. I agree that they are material considerations; however, as the appellant highlights, these would come with their own limitations and assessments. Moreover, this is not the proposal before me. As such this carries limited weight in favour of the scheme.
26. My attention is drawn to an appeal³ for an ostensibly similar change of use whereby more floor space of a retail unit within the Angel Town Centre was to be lost to a residential conversion, but which the Inspector in that case determined would not harm the viability of the retail operations of the area. Again, I have little information on this matter. However, from the extract I have been provided, it would seem as though the remaining retail space of circa 100m² could reasonably be considered as a suitable size for many businesses, and would likely still be attractive for potential tenants, compared to the vastly smaller circa 6.3m² as in the case of the unit of 108.
27. To conclude, the proposal would be contrary to Policies DM4.4 and DM4.5 of the DMP, CS5 of Islington's Core Strategy (CS) (adopted February 2011) and SD5 and SD6 of the London Plan (LP) (adopted March 2021). These seek to ensure development maintains and enhances the retail and service function of Islington's four Town Centres and requires development to contribute positively to the vitality and viability of the centre.

Affordable Housing

28. In accordance with Paragraph 57 of the Framework and pursuant to the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, and directly, fairly, and reasonably related in scale and kind to the development.
29. The Affordable Housing Small Sites Contributions Supplementary Planning Document (the SPD) requires a £50,000 contribution per dwelling. Consequently, affordable housing contributions are necessary to make the development acceptable in planning terms, something that does not appear in

² P2020/0588/FUL, P2017/0534/FUL, P2017/1894/FUL & P2021/2365/FUL

³ APP/V5570/W/15/3005908

dispute between the parties. The submitted UU includes an obligation to pay £150,000 for the three additional dwellings.

30. The Council has identified several issues with the UU. The appellant was made aware of these concerns and an amended agreement was submitted which was largely acceptable. However, I have still not been provided with evidence of titles of the land and it is not known whether all the relevant parties are included and whether the UU would be legally binding. This causes sufficient doubt in my mind about its precision and effectiveness to secure the provisions as required.
31. For the reasons above, I conclude that the proposal would not make appropriate provision for affordable housing, as I cannot be certain that the UU is precise and effective or that it would meet the relevant tests. The proposal would therefore conflict with Policy CS12 of the CS and the SPD. Among other things, these seek to secure sufficient affordable housing contributions. Consequently, any benefits that may have been derived from affordable housing contributions would carry no weight in this context.

Heritage Assets

32. The appeal site is located in the Angel Conservation Area (ACA) and within the setting of 100-104 Islington High Street, Phelps Cottage and The Mall, all of which are Grade II Listed Buildings. Furthermore, No 106 Islington High Street is identified as a Locally Listed Building (LLB). The proposal seeks to install a new roof extension to No 106, among other external changes. This would involve the flat roof being replaced by a hipped section which would rise towards the rear of the building creating a shallow pitch, with the parapet and sloped section towards the front retained alongside the flank walls. The roof would be lined with lead.

LLB and the Angel Conservation Area

33. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
34. Islington's Conservation Area Design Guidelines (CADG) (January 2002) advises that the significance of the ACA lies in the well-preserved buildings dating from the 17th, 18th, 19th and 20th centuries. Buildings have a vertical emphasis and the variety of height and design at roof and parapet level provides great visual interest. From my own observations on the site visit I would concur, despite the age of the document.
35. The CADG advises traditional roof extensions may be permitted on properties given in Schedule 18.2. Otherwise, roof extensions visible from any street level or public area will not be permitted. The CADG goes on to advise that alterations which are not in keeping with the existing buildings, or which disrupt the line of a terrace have a harmful effect on the character and appearance of the conservation area. Roof extensions will only be permitted on the properties listed in Schedule 18.2 if they are correctly detailed and accord with other Council standards. They should be 'mansarded' front and rear and set behind parapet walls.

36. The Urban Design Guide Supplementary Planning Document (the UDG) advises with regards to roof extensions, that successful proposals will be both sympathetic to the host building and harmonise with the predominant roofline in the vicinity. It goes on to state that within conservation areas, the roofline is often an important feature contributing to the character of an area and therefore proposals for roof extensions anywhere along an unaltered roofline within a conservation area will not generally be acceptable.
37. No 106 is not listed in Schedule 18.2 of the CADG but there is disagreement as to the visibility of the proposed roof from the public domain. To that end, the appellant has submitted several visualisations from street level (rbmp – 10th February 2022). These demonstrate that the existing slope to the front would be visible from the west side of Upper Street, as it is now, but the pitch to the rear would not. Other views to the front and are not possible as per the visuals. This would align with my own observations on the site visit, whereby views of the roof were either too close or oblique when in the vicinity of the High Street or obscured by built form.
38. No 106 is a LLB noted for its craftsmanship and detailing to the pub front and its group value⁴. It sits forward of the front building line of the host terrace and the existing roof has a shallow sloping front which is set behind a parapet wall. The roof then extends flat towards the rear. The roofs of No's 108-114 are shown to be of a mansard form in the submitted Existing Front Elevation plan (Drawing No. 1451/101 Rev C) which from my observations on the site visit is similar to the roofs on the opposite side of No 106, albeit with some variation in pitches and heights. However, these are predominantly of similar shape and form.
39. The existing parapet and flank walls would be retained. The proposed roof extension would not be of mansard form, although the existing flat roof isn't either. Whilst the hipped roof would be contrary to some of the advice in the CADG, this is not necessarily harmful. The hipped roof would be subordinate to the host building and would incorporate traditional materials such as lead. Moreover, No 106 already differs from other buildings in the terrace in its existing roof form and the position set forward of the front building line. Given the circumstances, the lack of visibility from the public domain and general variety at roof level in the area, the proposed roof would be acceptable. This would not harm the character and appearance of the LLB and would preserve the significance of the ACA.

Listed Buildings

40. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker to pay special attention to the desirability of preserving the setting of a Listed Building. No 106 adjoins '100-104, Islington High Street', which derives part of its significance from its architectural detailing, including the roof obscured by a parapet, and its group value which contributes positively to the townscape of the High Street. As such, the setting of the Listed Building makes a positive contribution to the significance of the heritage asset. As I have concluded in the foregoing paragraphs, the proposed roof extension to 106 would not harm the host building, terrace and ACA. As such, it stands to reason that the setting of the Listed Building would be preserved.

⁴ Register of Locally Listed Buildings and Locally Significant Shopfronts (April 2010)

41. Phelps Cottage is located on the opposite side of Islington High Street to the appeal site, while The Mall is situated to the west and between Islington High Street and Upper Street. The significance of both buildings largely derives from their relative architectural detailing and historic associations with the development of the area. Although No 106 is within the setting of both, the roof extension would not be readily visible from street level in the vicinity as demonstrated. As such there would be no intervisibility between the elements and a neutral effect on the understanding and experiencing of the heritage assets.

Heritage Assets Conclusion

42. To conclude on this main issue, the proposal would preserve the character and appearance of the ACA, the special local interest of No 106 as a LLB and the settings of 100-104 Islington High Street, Phelps Cottage and The Mall which are Grade II Listed Buildings. Taken together, the proposal would be in accordance with Policies DM2.1 and DM2.3 of the DMP, CS8 and CS9 of the CS and D1, D4 and HC1 of the LP. These seek to ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance, among other things. The proposal would also be accord with the advice found within the CADG and SPD and the conservation aims of the Framework.

Planning Balance and Conclusion

43. The proposal would provide an additional three residential units in a suitable location with regards to access to services and transport links and make efficient use of an existing building. These considerations are worthy of significant weight in favour of the proposal.
44. Conversely, I have concluded that the proposal does not include the necessary evidence to demonstrate that the long-term viability of the commercial units at ground floor level of No's 106 and 108 would not be compromised due to the reduction in retail floor space and reconfiguration of ancillary areas. Without this justification, I cannot be certain that the proposal would not harm the viability and vitality of the town centre, in particular its retail functions.
45. Moreover, the necessary contribution to affordable housing cannot be guaranteed with the submitted UU given the missing title evidence. I have also found harm with regards to the living conditions of future occupiers of the units with regards to a lack of private outdoor space for Flat 1. Although I have found appropriate living conditions in other regards and there would be no harmful effects on heritage assets, a lack of harm would be neutral in the planning balance rather than weighing in favour.
46. On balance, while there would be some significant public benefit of the appeal scheme, this would not outweigh the conflict with the development plan as a whole. Even if the UU had been valid and the affordable housing added as a benefit, then although significant considered in total, the material considerations would still not outweigh the conflict with the development plan. Accordingly, for the reasons given, the appeal is dismissed.

C McDonagh

INSPECTOR