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## Appeal Decision

Site visit made on 26 July 2022

**by M Cryan BA(Hons) DipTP MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 DECEMBER 2022**

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**Appeal Ref: APP/G5750/W/22/3295168**

**277A Green Street, Forest Gate, London E7 8LJ**

- 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 Daminis Limited against the decision of the Council of the London Borough of Newham.
  - The application Ref 21/00471/FUL, dated 26 February 2021, was refused by notice dated 20 September 2021.
  - The development proposed is the retention of existing commercial unit on the ground floor and change of use of the first and third floors from Use Class E to Eight residential units with the addition of windows, associated access, amenity spaces, waste and cycle storage.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form. I have used that description in preference to the wording on the original planning application form as it provides a more complete description of the proposal.
3. As part of the appeal, the appellant submitted revised ground floor, third floor and roof plans<sup>1</sup>. In determining whether or not to accept these, I have given consideration to the "Wheatcroft Principles"<sup>2</sup> and whether any prejudice would occur. In this case, the revised drawings do not introduce any significant changes; indeed, it seems that they reflect the scheme as it was finally considered by the Council, and that they have been retitled as "Revision A" merely to reflect the changes made as the proposal evolved. With that in mind, I have determined the appeal on the basis of the revised plans.

### Main Issues

4. The main issues are whether or not the proposed development:
  - Would represent "piecemeal" development, with particular regard to successful placemaking and making optimum use of the site; and
  - Would make an appropriate affordable housing provision.

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<sup>1</sup> Drawings 20/113/03 Rev A, 20/113/06 Rev A and 20/113/07 Rev A

<sup>2</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

## Reasons

### *Piecemeal development*

5. The appeal site is at the junction of Green Street and Cromwell Road, within the Green Street District Centre, and with frontages to both streets. It is a four-storey building, with the top floor set within a mansard-style roof. It is in retail (Class E) use; the appellant describes it as “a mall with individual retailers within the building set across the floors”. It appears that actual trading is primarily limited to the ground floor, with the upper floors used as ancillary space by the retail businesses. There is a small yard to the rear, accessed from Cromwell Road, which provides parking and servicing space.
6. In 2020 the appellant sought a Lawful Development Certificate (“LDC”) under Schedule 2, Part 3, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter “the GPDO”) for the conversion of the western part of the second floor (closest to Green Street) to two residential units with an access corridor; this was issued on 8 January 2021<sup>3</sup>. In the same year, the appellant also sought prior approval for the change of use of the remainder of the second floor from retail to three residential units under Schedule 2, Part 3, Class M of the GPDO; this was granted on 3 February 2021. Neither of these permissions had been implemented at the time of my site visit; I return to their relevance to this appeal below.
7. The appellant is now seeking permission for the conversion of the first and third floors of the building to residential use. There would be one two-bedroom flat and two one-bedroom<sup>4</sup> flats on each of those floors, making a total of eight new residential units. The ground floor would remain in retail use. The flats on the upper floors would be provided with a reconfigured private entrance way on the main Green Street frontage. Waste and refuse storage facilities would be provided within the rear yard and would be accessible by a secondary entrance leading to a staircase serving the upper floors. As well as the internal alterations to facilitate the change of use, there would be some alterations to the street elevations; a separate front door would be created on Green Street to serve the flats, and there would be changes to the fenestration on both street frontages including the replacement of the existing large display windows at first and second floor levels on the Green Street/Cromwell Street corner with smaller windows.
8. Policy S1 of the 2018 Newham Local Plan (“the NLP”) sets out the strategic principles for development in the borough; of particular relevance it states that “sites should be designed and developed comprehensively: the Council will resist the development of any sites in a piecemeal way, particularly where this would prejudice the realisation of the overall vision for the area or where timing of delivery would be unsupported by infrastructure”. Policy D3 of the London Plan 2021, meanwhile, seeks to optimise site capacity through a design-led approach, ensuring that new development makes the most efficient use of land.

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<sup>3</sup> LPA Ref: 20/02500/CLP

<sup>4</sup> The submitted drawings show Flat 2 on the first floor with a combined studio-type living/dining and bedroom, although this apparent discrepancy does not in fact have a significant bearing on the main issues in this appeal.

9. The site is within a Primary Shopping Frontage and the proposal would lead to a loss of commercial floorspace. However, the Council considers that, as the proposal affects only the upper floors of the building which are essentially ancillary to the retail use on the ground floor, the proposal would not cause harm to the role of the district centre. It thus considers the loss of commercial floorspace to be acceptable in principle. It also considers that the introduction of housing on the site would be acceptable in principle, recognising that there is a pressing need for more homes in London, and that meeting local housing need would help to foster mixed sustainable and cohesive communities.
10. Notwithstanding that the Council considers both the loss of commercial floorspace and the introduction of residential units to be acceptable in principle, it found the proposal as a whole to be unacceptable; it considers that the site has the potential to deliver more housing if it were planned and developed in a holistic manner, and that the appellant has taken a piecemeal approach to developing the appeal site "through three disjointed applications for one existing planning unit". On the other hand, the appellant contends that "the thrust of [Policy S1] relates to new build development on a larger scale", and that interpreting it otherwise would "prohibit any change of use of part of a building or extension".
11. Although S1 goes on to refer to "large applications", there is nothing in either the policy itself or the subsequent supporting text to reinforce the appellant's argument that the ambition of avoiding piecemeal development should only apply to large sites. There is also nothing before me to substantiate the appellant's claim in respect of the application of S1 as written effectively preventing the change of use of parts of a building. Clearly, however, whether or not a proposal (or sequence of proposals) would actually represent piecemeal development is a question of fact and degree in each case. This appeal represents the culmination of the appellant having brought forward three separate development proposals for the appeal site in quick succession, each by a different means (LDC, then prior approval, then a planning application). Regardless of the planning merits of the individual proposals, the piece-by-piece, one-part-at-a-time approach which has been taken is in my view a practical demonstration of the definition of the word "piecemeal".
12. I consider that there would be likely to be some negative consequences of this approach. For example, the kitchen, living and dining area of proposed Flat 6 on the third floor would be immediately above the bedroom area of approved "Flat 2" on the second floor, and the kitchen area of approved "Flat 1" on the second floor<sup>5</sup> would be immediately above the bedroom of proposed Flat 3 on the first floor. This arrangement would increase the risk of day-to-day activity in one flat (such as cooking or watching television) causing noise disturbance to the neighbours below compared to a proposal in which similar uses were stacked vertically (as might be expected in an integrate
13. The proposed access arrangements are also less than optimal in terms of convenience for future occupiers of the building. It appears from the submitted drawings that the lift serving the upper floors would not be connected to the flats' entrance at ground floor level, considerably limiting its usefulness. The walking route from the front entrance to the flats on the second and third floors of the building would require anyone entering the building to pass immediately

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<sup>5</sup> Based on the plans for the second-floor flats in the prior approval scheme

by the door to Flat 3 on the first floor at the top of the front stair (with, presumably, a risk of creating noise disturbance for the occupiers of that flat) before crossing the landing to the building's rear staircase. As such, there are some shortcomings in terms of successful placemaking and making optimum use of the site, albeit relatively minor ones, which might have been avoided had a holistic proposal covering the entire building been brought forward.

14. I note the appellant's comment that they have sought the conversion of the property through multiple consents because it has been "necessitated by the need to apply for Prior Approval to benefit from the permitted development rights". However, while it is of course a legitimate route which the appellant is entitled to have pursued, in my view it appears to have been a matter of choice rather than strict necessity.
15. There is nothing to suggest that the proposal before me would compromise or otherwise prejudice the delivery of any regeneration ambitions or development schemes in the wider Green Street area, nor would the conversion of parts of the appeal property to residential accommodation be dependent on the delivery of other infrastructure. Although the Council consider that the proposal may not be maximising the appeal site's potential, it is noteworthy that at four storeys high it is already one of the tallest buildings in the vicinity. Notwithstanding my concerns about the proposal in placemaking terms, there is nothing before me which indicates that the overall residential capacity of the site might realistically be significantly greater than the 13 units envisaged by the combination of this appeal scheme and the separate change of use of the second floor.
16. Nevertheless, for the reasons which I have described in paragraphs 11 to 14 above, I conclude that the proposal would represent piecemeal development, with particular regard to successful placemaking and making optimum use of the site. As such, the proposed development would conflict with Policy S1 of the NLP and Policy D3 of the London Plan 2021, the most relevant provisions of which I have set out in paragraph 8 above.

#### *Affordable housing*

17. Policy H2 of the NLP sets out the requirement to ensure that 50% of all new homes built in the borough over the plan period are affordable units, and that these are provided on all sites with the capacity for 10 units or more. The supporting text to Policy H2 of the NLP describes the high level of need for affordable housing within Newham, while also acknowledging the aspiration to create mixed and balanced communities. The Council therefore considers that the development should make some form of contribution to providing affordable housing, although there is nothing before me which indicates whether it considers this should be met on site or by way of an "in lieu" financial contribution in this particular case.
18. The appellant, on the other hand, has referred to Paragraph 64 of the National Planning Policy Framework ("the Framework"), which states that "provision of affordable housing should not be sought for residential developments that are not major developments"; major housing development is defined in the Glossary to the Framework as "development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more". It is also argued that Policy H2 of the NLP does not take into account permitted development rights.

19. The appeal scheme is for 8 additional residential units, and the site area is less than 0.5 hectares; the proposal therefore does not fit within with the Framework's definition of "major development". The Framework was last updated in July 2021 and, as the most recent expression of government policy, is a material consideration of significant weight. Nevertheless, the relevant part of the Framework has not changed since the NLP was adopted in 2018<sup>6</sup>; from this it can be deduced that the precise wording of Policy H2 has been found sound in the same national policy context. It also seems to me that the wording of Policy H2 accommodates the possibility of some housing coming forward via permitted development while ensuring that other schemes on sites of a suitable capacity can still make provision towards meeting the pressing need for affordable housing in the borough.
20. On this basis, I consider that seeking affordable housing on sites capable of accommodating 10 units or more, such as the appeal site, is necessary to address the identified needs in the borough. Although considerable weight should be given to the Framework, it does not outweigh development plan policy in this case.
21. The provision of affordable housing, whether on-site or by making another form of contribution to secure affordable housing off-site, is necessary in the interests of the Council's housing strategy. The proposed development would not make any affordable housing provision; as such it would conflict with the requirements of Policy H2 of the NLP which I have set out in paragraph 17 above., and with the provisions of Policy S1 of the NLP which seek to create and sustain mixed and balanced communities. There would also be some conflict with Policy H4 of the London Plan 2021 insofar as, while it only directly requires affordable housing provision in major developments (in line with the Framework definition), it also provides for individual boroughs requiring affordable housing contributions from minor housing development.
22. I find no conflict on this matter with Policy D3 of the London Plan 2021, which seeks to optimise site capacity through a design-led approach, nor with Policy H2 of the London Plan 2021 which supports and encourages the delivery of housing on small sites. I also find no conflict with the provisions of the Framework in respect of affordable housing provision, but for the reasons I have set out above I give the Framework less weight in this matter than the provisions of the development plan.

### **Other Matters**

23. The appellant considers that the combination of the LDC and prior approval which were secured in 2021 represent a fallback position. In assessing the implications of this I have had regard to established caselaw, including the *Mansell* judgment<sup>7</sup> to which the appellant referred.
24. In fact, since the LDC was granted, the provisions of Schedule 2, Part 3, Class G of the GPDO have been altered such that the LDC no longer reflects the current legislative position. Nevertheless, the appellant has stated their intention to submit a new prior approval application under the revised Class G and, while I cannot be certain as to the outcome of such an application, based

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<sup>6</sup> Paragraph 63 of July 2018 National Planning Policy Framework; available online at <https://webarchive.nationalarchives.gov.uk/ukgwa/20181206183454/https://www.gov.uk/government/publications/national-planning-policy-framework--2>

<sup>7</sup> *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

on all the evidence before me it seems there is a considerable likelihood of an approval being granted.

25. Given the appellant's obvious desire to introduce residential use to the building it appears to me that there is a very real prospect of some form of scheme using permitted development rights being implemented in the event of my dismissing this appeal. The consequences of this position are considered below.

### **Planning Balance and Conclusion**

26. Section 38(6) of the Planning & Compulsory Purchase Act 1990 and the Framework state that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the proposal would represent piecemeal development, and it would not make any provision for affordable housing. Consequently, it conflicts with the development plan taken as a whole.
27. Using permitted development rights as the appellant has sought to do would have the effect of bringing the second floor into residential use, with commercial uses remaining on either side. This would also represent a piecemeal form of development which would be less successful in placemaking terms than the proposal before me, even taking into account the shortcomings of the appeal scheme. This fallback position is therefore a material consideration carrying considerable weight in favour of the proposal.
28. The Government's objective set out in the Framework is to support sustainable housing growth. The proposed development would provide 8 additional residential units, in a district centre location close to shops, transport links, and other services. It would also bring a small number of additional residents to the area, who would be likely to make some contribution to supporting the local economy. Given the limited scale of the scheme, I give these matters moderate weight in favour of the proposal.
29. I have carefully considered the factors which have been put to me in favour of the appeal scheme. In my final analysis, although they would outweigh the harm I have found in respect of piecemeal development and placemaking, they do not outweigh the totality of the conflict with the development plan when the failure to make provision for affordable housing is also taken into account.
30. The other material considerations, including the Framework, do not justify making a decision other than in accordance with the adopted development plan. For the reasons given above, the appeal is therefore dismissed.

*M Cryan*

Inspector