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# Appeal Decision

Site visit made on 21 November 2022

**by Mr R Walker BA HONS DIPTP MRTPI**

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

**Decision date: 21<sup>st</sup> December 2022**

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**Appeal Ref: APP/V5570/W/22/3299946**

**125 Packington Street, Islington, London N1 7EA**

- 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 Priestley Homes (London) Ltd against the decision of London Borough of Islington.
  - The application Ref P2022/0476/FUL, dated 15 February 2022, was refused by notice dated 27 April 2022.
  - The development proposed was originally described as Change of Use of Vacant Public House (Sui Generis) to 2 x 2 bedroom apartments (Use Class C3).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the submission of the appeal, the Building Research Establishment (BRE) has issued a new edition of its guide, 'Site layout planning for daylight and sunlight' (BRE 209 2022). As the submitted GIA Daylight and Sunlight Report (GIA report) refers to the 2011 guidance, the main parties were given an opportunity to comment on whether the new guidance has any implications for the appeal. I have taken their responses into account in coming to my decision.

## Main Issues

3. The main issues are:
  - Whether sufficient evidence has been provided to justify the permanent loss of the Public House;
  - Whether the proposal would preserve or enhance the character or appearance of the Duncan Terrace/Colebrooke Row Conservation Area (CA); and
  - Whether the proposal would result in an acceptable standard of accommodation with particular reference to the use of space, layout, external amenity provision, outlook and light.

## Reasons

### *Public House*

4. The Council refer to Policy HC1 of the London Plan (2021) (LP) in its first reason for refusal. However, it is Policy HC7 of the LP, which is relevant to this main issue and this policy, along with Policy DM4.10 of the Islington Local Plan Development Management Policies (2013) (DMP) seek to protect Public

Houses, in recognition of the intrinsic role that they play in community life. Both policies resist applications for the change of use of pubs, unless marketing evidence demonstrates that there is no realistic prospect of the building being used as such in the foreseeable future.

5. Policy DM4.10 requires evidence that the Public House has been vacant for 2 years, with continuous marketing for the vacant 2-year period. Moreover, Appendix 11 of the DMP sets down the nature of marketing evidence that should be provided to assess the acceptability of the marketing undertaken. Paragraph 7.7.7 of the LP says that the pub should have been marketed as a pub for at least 24 months at an agreed price following an independent valuation, and in a condition that allows the property to continue functioning as a pub.
6. The Public House has not operated for more than 6 years. The evidence before me includes an Open Market Appraisal letter from Immedi Let, dated 4 April 2020, which refers to marketing undertaken by Goodsir Commercial. This letter advises that the marketing was undertaken for a period of over 24 months. However, there are no substantive details of this marketing, other than a picture of the advertisement board on the building and the advertisement particulars. These indicate that the unit was available to let with the unit to be provided in "shell and core" condition. The letter also refers to marketing that Immedi Let undertook for 12 months but provides only a very brief summary of this and no substantive evidence accompanying it.
7. In addition, I have before me, a Marketing Letter, dated 23 November 2021, from Davis Coffey Lyons advising that they were instructed to market the unit in July 2020. This letter refers to attachments. However, none are before me.
8. In each case, the evidence provided in relation to the three strands of marketing by Goodsir Commercial, Immedi Let and Davis Coffey Lyons is limited and falls significantly short of the detailed requirements required by Appendix 11 of the DMP or paragraph 7.7.7 of the LP. This includes, amongst other things, precise details of the value that the property was advertised at, and when, by each of the agents or evidence regarding the valuation to demonstrate that it reasonably reflects the market value.
9. The requirements of other Council's, in respect of marketing evidence, do not alter or outweigh the requirements or status of either the DMP or the LP. Even if the Council did not request more evidence during the application, the requirements of Policy DM4.10, and by association, Appendix 11, and Policy HC7 of the LP, are publicly available documents. Moreover, no such evidence was provided as part of the appeal submission.
10. I have no reason to question the broad market conditions for Public Houses. Nonetheless, there are other Public Houses nearby, such as the Duke of Cambridge, that are operating in a residential setting away from the main roads. Moreover, these broad findings do not allow me to reach a firm conclusion that there is no demand for the Public House subject of this appeal.
11. To conclude, insufficient evidence has been provided to justify the permanent loss of the Public House. I therefore find that the proposal would be contrary to the requirements of Policy DM4.10 of the DMP and Policy HC7 of the LP. These policies are consistent with the requirements of the National Planning Policy Framework (the Framework) (2021). This, amongst other things, says planning

policies and decisions should enable the retention and development of accessible local services and community facilities, such as Public Houses.

12. The Council also cited Policies CS1 and CS14 of its Core Strategy (2016) (CS) and Policy DM4.6 of the DMP in its first reason for refusal. However, Policy CS1 relates to an area known as Archway and not the area around the appeal site. Moreover, Policies CS14 and DM 4.6 relate to Local Shopping Areas and retail and services rather than Public Houses. As such, none of these policies have been determinative in my assessment.

### *Conservation Area*

13. The appeal site is located within, but on the edge of, the CA. The Council's Conservation Design Guidelines Document (2002) (CADG) indicates that the CA's significance is derived primarily from its consistency of built form. This includes Georgian and Victorian residential development with terraces having a relatively uniform appearance.
14. The appeal property is positioned at the end of a short terrace on a prominent corner at the junctions of Packington Street and Prebend Street. The ground floor elevation has a distinct appearance with tiled external walls on both street facing sides and timber columns, with intricate detailing, facing onto Packington Street. These elements distinguish the building from the residential properties. Moreover, although the windows were boarded up during my site visit, they are shown on the existing plans as being of a style that matches the windows on the upper floors.
15. The Public House needs renovating. Even so, it makes a positive contribution to the local identity of the area due to its architectural design and materials, its historic role and function, and its pivotal location in a highly visible corner location.
16. The proposal would result in the loss of key distinctive elements. In particular, the rendering, and the introduction of large modern glazed windows, would fundamentally alter its distinctive appearance. This would significantly erode the legibility of the history of the building.
17. The combination of large, glazed openings and render would give the building a contemporary appearance, and there are examples of similar treatments nearby, including along the street. Even so, the loss of the visual distinctiveness that characterises the Public House would not preserve or enhance the character and appearance of the CA.
18. Although highly visible, the harm would be localised to this part of the CA. The effects would be less than substantial in the context of paragraph 202 of the Framework. In accordance with paragraph 202 I must balance that less than substantial harm against the public benefits of the proposal.
19. The government places considerable importance on making effective use of buildings to boost the supply of housing, including from small developments. The proposal would deliver economic and social benefits from the construction works and the occupation of the apartments, in a sustainable location. However, and having regard to my findings on the first main issue, the proposal would result in the loss of a potential community asset in the Public House. This would be a public disbenefit.

20. Heritage assets are irreplaceable, and taken together, the balance of these findings does not outweigh the less than substantial harm to the CA and the great weight given to its conservation. The proposal would therefore conflict with the requirements of Policies D3 and D4 of the LP, Policies CS8 and CS9 of the CS, Policies DM2.1 and DM2.3 of the DMP, the provisions of the Framework and the guidance within the Council's Urban Design Guide (2017) and CADG, insofar as they relate to this main issue. These say, amongst other things, that the historic significance of Islington's unique heritage assets and historic environment will be conserved and enhanced whether designated or not.
21. The Council has cited Policy D1 of the LP in its second reason for refusal. However, this is a broad policy setting out how Boroughs should define an area's character to understand its capacity and subsequently plan for growth. It has not therefore been determinative in my assessment.

*Standard of accommodation*

22. The proposal would result in two spacious two-bedroom apartments that would exceed the minimum space standards set within the LP. Apartment one, in particular, would significantly exceed the standards. However, as an existing building with basement accommodation, I recognise that the site is constrained. Moreover, the ground floor of the units is well proportioned. It is only, in my view, the basement of apartment one, which appears excessively spacious with large areas of underused space. However, given the difficulties in bringing natural light into the basement, I am satisfied that on balance the proposed layout would make an efficient use of the built fabric.
23. There is no indication from the Council that an additional unit would be realistically achievable within the site, given the constraints. In this regard, I do not consider that the proposal would conflict with the objectives of the LP space standards or the advice within paragraph 3.6.2 of the LP.
24. The external space for apartment two is modest and the shape of the space for apartment one would limit its useability. However, there would be sufficient space to sit in both instances. Moreover, both would be accessed from large, glazed doors opening into spacious dining areas. In my view, this design would likely see a fluidity between the use of these spaces by the occupiers. On balance, and considering the overall spaciousness of the accommodation, I find that the external amenity space for both apartments would be acceptable.
25. Most of the ground floor windows would abut the footway, giving the potential for passers-by to look into the property. This is not an unusual occurrence with redeveloped buildings or traditional terraced properties built up to the back of pavement. Indeed, I saw that this exists in several properties nearby. The appellant proposes to glaze these windows with a privacy screening up to 1.7m, as found on other properties in the street. This would allow upward views toward the sky and ensure passers-by could not look in, striking an acceptable balance, between affording occupiers both privacy and outlook.
26. The submitted Internal Daylight and Sunlight Study (the Study) shows that the rooms would pass the Average Daylight Factor test from the 2011 BRE Guidance<sup>1</sup>. However, this test is no longer recommended in the BRE 209 2022. The Study also assesses the Median Daylight Factor (MDF), which is referred to

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<sup>1</sup> Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' (2011)

in BS EN 17037:2018+A1:2021 (BS). The BRE guide does not supersede the BS, indeed it specifically refers to it within its guidance.

27. The Study indicates that all habitable rooms would pass the MDF test. Although the Council indicate that they would expect further data to support the table of results, I have not been referred to any specific requirements for further evidence. Moreover, I have no reason to question the accuracy of the computerised modelling results. The ground floor rooms would have access to large windows, which, due to large voids, would also give natural light to the basement bedrooms. However, there would also be darker zones, particularly in apartment one, such as the storage area and the en-suite off bedroom one.
28. With regards to sunlight, the BS recommends that at least one habitable room in a dwelling should receive sunlight for a minimum of 1.5 hours, measured on a date between February 1<sup>st</sup> and March 21<sup>st</sup>. The Study indicates that the living room for apartment two would achieve 4 hours of Sunlight Hours on 21<sup>st</sup> March. However, I have no modelled results for apartment one. Moreover, it appears to me that this property would have very little access to sunlight due to its layout, and the position of windows relative to the sun, along with the built form enclosing the external amenity space. This would be at odds with the requirements of part E of Policy DM3.4 of the DMP. This says, amongst other things, that all dwellings should provide for direct sunlight to enter the main habitable rooms for a reasonable period of the day.
29. I am mindful that neither the BRE guidelines or the BS are mandatory, and that their interpretation may be treated flexibly, taking into account site specific factors. Moreover, the Framework, at Paragraph 125 c), advocates a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site, provided the resulting scheme would provide acceptable living standards. In this regard, apartment one would not have particularly good access to sunlight, and to a lesser extent, daylight, given the large areas of basement accommodation that are not defined as a bedroom on the plans. However, given the spaciousness of the accommodation, overall, I consider that future occupiers would have acceptable living conditions.
30. To conclude on this main issue, there would be conflict with some of the Council's standards and, in this regard, some of the requirements of Policy DM3.4 and DM3.5 of the DMP. However, for the reasons given above, despite such conflict, the proposal would result in an acceptable standard of accommodation with particular reference to the use of space, layout, external amenity provision, outlook and light. In this regard, I find no conflict with the objectives of Policy D6 of the LP, Policy CS12 of the CS, Policy DM2.1 of the DMP or the Framework. These broadly, amongst other things, seek to achieve a high standard of amenity for future users.

## **Other Matters**

31. The appellant advises that a legal agreement is being discussed between the main parties. This would include, amongst other things, financial contributions towards the provision of off-site affordable housing and the Council's carbon offsetting strategy. The timeframes for the submission of legal agreements are set down in the Start Letter and Annexe D of the Procedural Guide Appeals. However, there is no planning obligation before me, and it is not, therefore, a matter for my consideration.

32. Given my findings on the first two main issues, considering matters relating to car free development and cycle and waste provision further, would not alter the outcome of this appeal. On that basis, there is no need to examine these matters further for the purposes of making my decision.
33. Concerns regarding the processing of the application are not issues that I can assess as part of this appeal. The validity or not of such matters does not affect the planning merits or effects of the proposal before me.

### **Conclusion**

34. For the reasons given above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal is dismissed.

*Mr R Walker*

INSPECTOR