



Appeal Decision

Hearing held on 14 February 2023

Site visit made on 14 February 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Appeal Ref: APP/V5570/W/22/3298080

91 Grosvenor Avenue, Islington, London N5 2NL

- 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 Rajesh Patel against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/3467/FUL, dated 25 November 2021, was refused by notice dated 20 January 2022.
 - The development proposed is change of use of existing ground floor unit from Class E (retail) to Class C3 (residential) to provide 1 x one-bedroom flat and minor front external alterations.
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the hearing an application for costs was made by Mr Rajesh Patel against the Council of the London Borough of Islington. This application is the subject of a separate decision.

Preliminary Matters

3. I have used the description of development as stated on the Council's decision notice as this is more precise than the description given on the application form. The appellant raises no specific objection to that description, which they have subsequently used in their appeal form and statement.
4. At the time of my site visit works for the conversion of the ground floor to a flat had already commenced. I observed that there is a discrepancy in the existing and proposed plans compared to the property as it currently stands in respect of the shop front windows and door, which appeared to have been blocked off with windows installed above. For the avoidance of doubt, I have determined the appeal on the basis of the proposal as shown on the plans and elevations submitted to the Council.
5. The Council confirmed at the hearing and in their statement that the fourth reason for refusal relating to waste, recycling and cycle parking provision is not being contested. I have not considered these matters further.
6. At the hearing a draft Unilateral Undertaking (UU) was provided by the appellant in respect of an affordable housing contribution. I return to this matter below.

7. The Council submitted an updated viability appraisal prior to the hearing. The appellant had the chance to comment on the updated appraisal and would not be prejudiced by my consideration of it. As such I have taken this additional information into account in my determination of the appeal.
8. I was advised at the hearing that the emerging Islington Local Plan: Strategic and development management policies (September 2019) (the emerging Local Plan) is at an advanced stage with main modifications having been published. The full set of policies for consideration is set out in the draft Statement of Common Ground. However, I have no details of the outcome of the consultation or whether amendments to the policies are proposed. I therefore give only moderate weight to the emerging Local Plan policies in my consideration of the appeal proposal.

Main Issues

9. The main issues are:
 - the effect of the proposed development on the vitality and viability of the Grosvenor Avenue Local Shopping Area;
 - whether the proposal would provide for satisfactory living conditions for future occupiers, with particular regard to daylight, defensible space, ventilation, private outdoor space and internal floorspace; and
 - whether the proposal should make a contribution towards affordable housing and, if so, whether an appropriate contribution would be made.

Reasons

Vitality and viability of the Local Shopping Area

10. The appeal site relates to a ground floor unit in the middle of a terrace containing self-contained flats on the upper floors and at basement level. The surrounding area is of mixed commercial and residential character. The site is located within the Grosvenor Avenue Local Shopping Area (LSA), which besides the appeal site premises consists of four other ground floor units, including two retail premises, a restaurant/wine bar and a veterinary practice.
11. The appeal property was previously used as a post office but it closed in 2018. The proposal seeks permission to convert the retail premises to a ground floor flat. Although the appellant contends that the proposal cannot be considered to represent a loss of retail use as the property has been empty for several years, the evidence before me indicates that this use remains the lawful use of the property. Therefore, the proposal falls to be considered under Policy DM4.6 of Islington's Development Management Policies (2013) (DMP).
12. Proposals for change of use of existing ground floor retail units within LSAs will be resisted unless the premises has been vacant for a continuous period of at least two years and a continuous marketing evidence for this two year vacancy is provided in accordance with the requirements of the first criterion of Policy DM4.6 (B) of the DMP. Whilst the premises has been vacant for at least a continuous period of two years, no marketing information has been provided. The appellant contends that it is not viable to provide another retail premises offering the same services as currently found in the parade and surrounding area and that the existing businesses sufficiently cater for the local needs of

residents. However, in the absence of marketing I cannot be satisfied that there is no reasonable prospect of the unit being used for retail use in the future in accordance with the requirements of the policy.

13. The appellant also asserts that 93 Grosvenor Avenue was vacant for three years prior to being utilised as wine bar which demonstrates that there is not demand for retail outlets in the area. However, I have not been provided with the full circumstances of that case, including whether it was marketed for retail use, and so I cannot be sure that it is comparable to the appeal proposal.
14. In relation to the second and third criterion of Policy DM4.6 (B), the proposal would introduce a residential use at ground floor level which would represent a harmful break in the continuity of retail frontages, particularly as it occupies a central position in the parade and two of the existing ground floor units are already not in retail use. Given the small size of the LSA, the loss of one further unit to non-retail use would undermine its vitality and viability and potentially result in local residents having to travel further for their day to day shopping needs. It follows that the proposal would fail to maintain and enhance an appropriate mix and balance of uses in the LSA, contrary to Policy DM4.6 (A).
15. The appellant argues that the policy is out of date and that the proposal would follow Government policy to see continued and flexible use of buildings and not constrain new housing. However, Paragraph 86 of the National Planning Policy Framework (the Framework) states that planning policies and decisions should support the role that town centres play at the heart of local communities by taking a positive approach to their growth, management and adaptation. Based on the evidence before me I do not consider that the local policy is inconsistent with the approach set out in the Framework.
16. There is no substantive evidence before me to demonstrate that the reuse of the property as a retail unit would affect the viability of existing commercial properties and result in a decline in commercial activity in the area. The appellant argues that the way people shop is changing and that it is unlikely that people from further afield would specifically travel to this parade to shop. However, the DMP recognises that LSAs complement the Town Centres and provide a valuable service to their surrounding communities by meeting the day-to-day needs of residents, workers and visitors. The parade has been designated as a LSA which suggests that it plays an important role in serving the needs of the local community.
17. Other properties in the immediate vicinity of the appeal site have been converted from commercial to residential use at ground floor level. However, I do not have the substantive details of the other developments referred to by the appellant, though there is no indication that they are located within a LSA, as is the case with the appeal site. In any event, I must determine the appeal on its own merits. Therefore, the other developments do not lead me to disregard my findings.
18. It is put to me that the use of the ground floor as a flat would ensure that the whole building is in residential use, thereby enhancing the amenities of the existing residents. Given the lawful use of the ground floor as a retail unit and the presence of commercial uses on either side, it is unlikely that there would be any significant enhancement to the amenities of neighbouring occupiers arising from the proposed change of use. The low volume of local objections does not justify the level of harm that would result from the proposal.

19. For the above reasons, I conclude that the proposal would be harmful to the vitality and viability of the LSA. It would be contrary to Policy CS14 of the Islington Core Strategy (2011) (CS) and Policy DM4.6 of the DMP which seek to promote a healthy retail and service economy and maintain and enhance the retail and service function of LSA. In addition, it would be contrary to Policies R1 and R4 of the emerging Local Plan and paragraph 86 of the Framework, which have similar aims.

Living conditions

20. The proposal would provide a ground floor 1 bedroom flat with a living area, kitchen and WC to the rear and an en-suite bedroom to the front. A new internal wall, which I note has already been constructed, divides the bedroom from the living area.
21. The living area and kitchen would be served by an existing window to the rear elevation of the building. The kitchen would be situated adjacent to the rear window and would thus receive ample daylight. However, the living area would be located much further from the window. During my visit I observed that this area was a gloomy and oppressive space even on a bright, sunny day and would be likely to require artificial lighting for much of the time. I find that the rear window would fail to provide sufficient levels of daylight to the living area with resulting poor quality living conditions for future occupiers. The use of artificial light would not compensate for the lack of daylight and would not align with Policy D6 of the LP and Policies DM2.1 and DM3.4 of the DMP which place emphasis on the need for adequate daylight.
22. The plans show that the bedroom would be served by large shop front windows and new openable windows in the position of the shop fascia sign. These would provide good levels of daylight to the bedroom. However, these windows front directly onto the pavement, where there is likely to be high footfall due to the location of the premises within a parade of shops on a busy main road. The bedroom would not have any defensible space outside of the windows which would compromise privacy and security for future occupiers.
23. Whilst this might be addressed by means of blinds, curtains or the application of window film, this in turn would be likely to adversely affect the outlook from the windows, which would also compromise future occupiers' living conditions. The appellant suggests that a prospective occupier would be aware of the situation prior to moving in and also refers to the properties on the opposite side of the road which have been converted from commercial to residential. However, these matters do not justify what I consider would represent substandard living accommodation.
24. Due to the position of the front windows relative to the highway, the Council has suggested that they would need to be non-openable. However, the use of mechanical ventilation, secured by condition if I had been minded to allow the appeal, could ensure that future occupiers have satisfactory living conditions in this respect.
25. DMP Policy DM3.5 requires all new residential development and conversions to provide good quality private outdoor space. It sets out that the minimum requirement for private outdoor space is 15sqm on ground floors for 1-2 person dwellings. The appellant argues that the requirements of the policy are not consistent with the LP in this respect. However, Policy D6 of the LP sets out

where there are no higher local standards in the borough development plan, a minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings and an extra 1sqm for each additional occupant. The proposal would not provide any private outdoor space for the future occupiers who would also not have access to any shared outdoor space, to the detriment of their living conditions. The appellant contends that many conversions such as this in built up areas, including the existing flats above, do not benefit from private outdoor space. However, I have considered the appeal scheme on its individual merits against the requirements of the current development plan.

26. The appellant says that the proposal would be a 1 bed/1 person flat and they would be willing to accept a condition restricting the occupation of the property to that effect. The internal floorspace of the unit is around 43sqm which would meet the minimum internal space standards for that type of accommodation, as set out in LP Policy D6 and DMP Policy DM3.4. On the basis that the floorspace of the bedroom would be in excess of 11sqm, the Council consider it to be a double bedroom and that the proposal would not meet the minimum internal floorspace of 50sqm required for a 1 bed/2 person unit. However, I have limited information before me to support the assertion that the proposal would be a 2 person unit. I consider that the proposal, including the living area and kitchen, would be of sufficient size for its intended occupancy as a 1 bedroom, 1 person flat. I see no compelling reason why this level of occupancy could not be secured by a condition had I been minded to allow the appeal.
27. The appellant considers that the relevant development plan policies are out of date, particularly in relation to housing standards, since they were adopted prior to the latest iteration of the Framework and the LP. However, the policies are not out of date simply because they pre-date the Framework and the LP. I am satisfied that the relevant policies are in general conformity with the Framework and the LP.
28. For the above reasons, I consider that whilst the internal floorspace would be acceptable for a 1 bedroom, 1 person flat, the proposal would fail to provide satisfactory living conditions for future occupants having regard to light, defensible space, ventilation and private outdoor space. It would be contrary to Policy D6 of the LP, Policies CS9 and CS12 of the CS, Policies DM2.1, DM3.4 and DM3.5 of the DMP, Policies Plan1 and H4 of the emerging Local Plan and the Mayor of London Housing Supplementary Planning Guidance (March 2016, Updated August 2017) which, amongst other things, seek to ensure that developments secure high design quality and good levels of amenity and housing standards.
29. The Council have referred to a conflict with CS Policy CS8, however this policy relates to Islington's character which is of little relevance to this main issue and I have identified no conflict with it.

Affordable housing

30. CS Policy CS12 seeks to ensure the provision of affordable housing to address housing need and requires that sites providing fewer than 10 units provide a financial contribution towards affordable housing provision elsewhere in the borough. The Islington Affordable Housing Small Sites Contributions Supplementary Planning Document (SPD) indicates that the need for affordable housing remains very high and provides greater detail regarding the financial contribution required by Part G of Policy CS12. Section 4 of the SPD sets out

that minor residential developments resulting in one or more additional residential units are required to provide a commuted sum of £50,000 per unit towards the provision of affordable housing on other sites within the borough, subject to viability considerations which might justify a reduced contribution.

31. However, Policy CS12 and the SPD pre-date the current Framework, which states at paragraph 64 that provision of affordable housing should not be sought for residential developments that are not major developments other than in designated rural areas. On that basis, the appellant argues that an affordable housing contribution should not be sought.
32. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The evidence before me shows that in relation to its housing needs, affordability is, and will continue to be, a major issue in the borough, which has not been refuted by the appellant. Financial contributions from minor residential developments such as the appeal scheme make a significant contribution towards achieving the strategic policies and targets, including maximising the provision of social rented housing. Therefore, whilst I give considerable weight to the Framework, it does not outweigh the great weight I afford to the evidence of affordable housing need in the borough. I therefore consider that the proposal should be determined in accordance with the requirements of CS Policy CS12 and the SPD and that a financial contribution towards affordable housing provision is required.
33. Notwithstanding the appellant's position on this matter, they have submitted a financial viability appraisal by S106 Management which concludes that the development cannot viably provide a contribution towards affordable housing on the basis that the benchmark land value (BLV) of £253,000 is higher than the residual land value (RLV) of £200,662.27.
34. The Council's viability appraisal calculates a BLV of £171,875 and a RLV of £208,812. On that basis, it concludes that the scheme is able to support an affordable housing contribution of £50,000. However, this is incorrect since the Council's own figures suggest the proposal could only support a contribution of £36,937. The Council's figure for RLV is only marginally higher than the appellant's figure. The main difference between the two appraisals relates principally to BLV.
35. The appellant's BLV figure is derived from an existing use value (EUV) based on the average rental rates for three other retail premises in the area, which have been capitalised at 8% to calculate an EUV of £230,000. A landowner premium of 10% has been added to the EUV which I consider is reasonable. However, two of the other premises referred to in the appellant's appraisal, both on St Paul's Road, are notably larger than the appeal property in terms of floorspace and it is also unclear whether they are comparable to the appeal premises in terms of location. The third, at 101 Newington Green Road, has a floorspace closer to but still larger than the appeal premises. It is situated in a corner position in a small shopping parade similar to the appeal premises. I consider that this premises is more akin to the appeal premises in terms of location, floor space and likely rental rates. It had a much lower rental rate than the other two premises which indicates that the appellant's EUV and BLV have been over estimated. That conclusion is supported by the Council's appraisal which

calculates a much lower EUV based on more modest rental values. On that basis, I consider that the appellant has failed to demonstrate that the proposal cannot viably provide a contribution towards affordable housing.

36. The Council's assessment demonstrates that the proposal could viably afford a contribution towards affordable housing. This would not be the £50,000 it states based on the RLV and BLV figures in the assessment, but it would be what the scheme could support. On this basis, I consider that a financial contribution should be required in accordance with the requirements of Policy CS12 and the SPD. It would be directly related to the development; would be necessary to make the development acceptable in planning terms; and would be fairly and reasonably related in scale and kind to the development. Such an obligation would therefore meet the three tests set out in paragraph 57 of the Framework. So, whilst a draft UU containing an affordable housing contribution of £50,000 has been submitted by the appellant, as the UU is in draft form only it does not represent an appropriate planning obligation towards affordable housing. The UU as drafted would not also satisfy the three tests due to the amount of contribution that it intends to provide.
37. In the absence of an appropriate planning obligation, I conclude that the proposal would not make a contribution towards affordable housing. It would therefore conflict with CS Policy CS12 and the SPD, the aims of which are set out above. The proposal would also conflict with Policy H3 of the emerging Local Plan which seeks to achieve similar aims. The Council refers to a conflict with the Environmental Design Planning Guidance, however that document relates to sustainable design and I have identified no conflict with it.

Other Matters

38. The provision of a new unit of accommodation would accord with the Government's objective of significantly boosting the supply of housing, and it would be situated in a highly accessible location relative to public transport, services and facilities. The proposal would reuse a vacant property and make effective use of previously development land. Employment opportunities would be created during the construction phase of the development and future occupiers would contribute to the local economy through spending in the local area and council tax revenue. Given the modest scale of the development, the weight attributable to these matters is limited. The appellant says that the proposal would provide affordable accommodation. However, there is no evidence before me to demonstrate that it would meet a locally identified need for affordable housing as it is defined in the Framework or how it would be secured as such. Therefore, these matters do not outweigh the harm I have identified above.

Conclusion

39. The proposed development does not accord with the development plan read as a whole, and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Rajesh Patel	Appellant
Dr Robin Hooper	Heal Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mr Samir Benmbarek	Planning Officer, London Borough of Islington
Mr Eoin Concannon	Planning Officer, London Borough of Islington
Mr David Coate	Adams Integra

DOCUMENTS SUBMITTED AT THE HEARING:

Draft unilateral undertaking

DOCUMENTS SUBMITTED AFTER THE HEARING:

Copies of Policies PLAN1, H3, H4, R1, R4 and T3 of the emerging Islington Local Plan: Strategic and development management policies (September 2019).