



Appeal Decisions

Site visit made on 12 December 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2024

Appeal Ref: APP/V5570/W/23/3322608

Basement and Ground floors, 269-270 Upper Street, London N1 2UQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Livio Venturi on behalf of Designated Contractors Ltd against the decision of the Council of the London Borough of Islington.
- The application Ref P2023/0548/PRA, dated 22 February 2023, was refused by notice dated 18 April 2023.
- The development proposed is the subdivision and change of use of the existing Class E unit into a smaller Class E unit and 3x 1-bedroom self-contained flats (Class C3).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. I have also dealt with another appeal (Ref: APP/V5570/W/23/3326414) on this site. That appeal is the subject of a separate decision.
4. At my site visit works were underway to the interior of the property. Following my site visit I sought clarification from the appellant as to the nature of the works and the Council were also invited to provide comments. The appellant has confirmed that a new tenant has been secured for the commercial premises. However, notwithstanding this, at the time the application for prior approval was made, it is not disputed that the appeal site had been continuously vacant for at least three months. I have therefore considered the appeal on this basis.

Background and Main Issues

5. Under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), planning permission is granted for the change of use from commercial, business and service (use class E) to dwellinghouses (use class C3) subject to certain limitations and conditions.

6. The prior approval matters for Class MA includes amongst other things, the impact of the change of use on the character or sustainability of the conservation area and the provision of adequate natural light in all habitable rooms of the dwellinghouses.
7. Article 3, Schedule 2 of the GPDO also states that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse where the gross internal floor area is less than 37 square metres in size; or that does not comply with the Nationally Described Space Standard issued by the Department for Communities and Local Government on 27th March 2015.
8. There is no dispute that the other criteria of Class MA are satisfied. As such, there is no need to give them further consideration in this decision.
9. Therefore, the main issues of the appeal are:
 - The effect of the proposed development on the character and sustainability of the conservation area; and
 - Whether or not the proposed development would provide adequate living conditions for future occupiers, with particular regard to the provision of natural light in all habitable rooms and compliance with the Nationally Described Space Standards (NDSS).

Reasons

Character and Sustainability of the Conservation Area

10. The appeal site comprises the ground and basement floors of an existing commercial terraced property. The property is a three-storey building, with the upper floors already in a residential use. The site is within the Upper Street North Conservation Area (USNCA), which is described as being a lively commercial area with mainly retail and service uses.
11. The significance of the USNCA is derived from its role as Islington's main historic thoroughfare, with its slightly winding form, wealth of old buildings and stepped pavements. The Upper Street North Conservation Area Design Guide 2002 (CADG) states that the Council will seek to maintain the lively retail nature of the area and will not normally grant permission for schemes which harm this established mixed use character.
12. The proposed development would involve the subdivision and change of use of an existing Class E premises to provide a smaller Class E unit and three, one-bedroom flats. The proposal would retain a commercial use to the front of the site, which is within a row of similar commercial premises. However, the amount of floorspace within a commercial use on the ground floor would be reduced, by approximately 75%. There would also be a reduction in the amount of basement floorspace and the access to the rear of the building would be lost. The proposal would involve no external alterations to the shop frontage.
13. The appeal site occupies a wide frontage within a row of commercial properties and as a result, a vacant unit would have a harmful effect on the character and sustainability of the USNCA. Although I acknowledge that the appeal site has experienced periods of vacancy and is supported by two letters from commercial property agents, which indicate a smaller unit may present a more

attractive opportunity. There is no substantive evidence to support the amount of commercial floorspace which would be lost. Furthermore, the appellant has recently confirmed that a tenancy has been secured for the premises.

14. Therefore, whilst I acknowledge that the proposal would involve the retention of the ground floor commercial use to an extent, the permanent reduction in floorspace would result in a smaller, less flexible Class E unit. The reduction in floorspace would influence the future potential uses of the commercial unit, for which it has not been demonstrated would not result in greater periods of vacancy, than for a larger, more flexible commercial unit.
15. Consequently, it has not been demonstrated that the proposed development would not result in a harmful effect to the character or sustainability of the USNCA. Therefore, the requirements of MA.2(e) of the GPDO are not met.

Living Conditions of Future Occupiers

16. Class MA.2(f) of the GPDO requires the provision of adequate natural light in all habitable rooms of the dwellinghouses. The GPDO refers to 'adequate natural light' rather than specifically daylight and sunlight. However, to my mind the consideration of natural light encompasses both daylight and sunlight.
17. Paragraph X of Part 3 of the GPDO defines "habitable rooms" as any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways, or utility rooms. On the basis of this definition, for each proposed flat, the bedrooms and the combined kitchen/living area would constitute habitable rooms.
18. The Daylight and Sunlight Report (DSR) is based upon a number of external alterations to the windows at the rear of the building. These works are the subject of a separate application¹ which the Council refused. I have not been presented with any evidence from the Council as to whether the DSR demonstrates that the proposed development would provide natural light in all habitable rooms of the dwellinghouses.
19. From the evidence provided, the DSR indicates that adequate daylight could be provided to each of the flats. However, Flat 2 in particular would only just exceed the minimum threshold as set out in the BRE guidance. The DSR also indicates that guideline amount of sunlight provision would not be met in two of the three flats. BS EN 17037 recommends that the at least one habitable room (living room, bedroom, nursery, or kitchen) in a whole dwelling should comply with the guidance. This has not been demonstrated as being capable of being achieved for the proposed development.
20. I have had regard to Paragraph 129(c) of the Framework which states that a flexible approach should be taken in applying guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards). However, whilst applying the guidance flexibly, regard must also be had to whether or not the proposed development would provide adequate living conditions for its future occupants. Furthermore, Paragraph W.2(a) of Part 3 and Paragraph B.9 of Part 20 states that prior approval must be refused in

¹ Planning Application Ref: P2023/0537/FUL

relevant applications if adequate natural light is not provided in all the habitable rooms of the dwellinghouse.

21. In this particular case, the proposed flats would be single aspect, narrow and with limited outlook to the rear. Their kitchens and shower rooms would be located centrally within the building, with the main sleeping and living areas located where the existing window openings are. Even if planning permission for glazed openings was granted for the external alterations needed to facilitate provision of an adequate amount of daylight, the proposed flats would not have adequate access to sunlight. Therefore, I find that whilst the design and layout of the flats has sought to maximise available natural light, I am not satisfied that the level of daylight and sunlight that would be provided would ensure adequate living conditions could be provided for future occupiers.
22. In relation to the provision of internal floorspace, the GPDO does not permit any new dwelling where the gross internal floor area is less than 37 square metres in size; or that does not comply with the nationally described space standard (NDSS) issued by the Department for Communities and Local Government on 27th March 2015.
23. The proposed flats are indicated as being studio flats which would achieve the minimum standard required by the NDSS for a 1 bedroom/1 person dwelling. However, the Council states that the submitted plans show double beds in each of the flats, and that they would not comply with the relevant standards for a 1 bedroom/2-person property.
24. The appellant has submitted amended plans, confirming that the studio-flats would be single occupancy. On this basis, I am satisfied they would comply with the NDSS.
25. Consequently, whilst I have found that the proposed development would provide adequate internal floorspace, it has not been demonstrated that adequate natural light would be provided in all habitable rooms within the proposed units. Therefore, the requirements of Paragraph MA.2(f) would not be met.

Conclusion

26. For the above reasons, I conclude that the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO having regard to its impact on the character or sustainability of the Conservation Area and the provision of natural light to habitable rooms. The appeal should therefore be dismissed.

K Lancaster

INSPECTOR