



Appeal Decision

Site visit made on 19 February 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29TH February 2024

Appeal Ref: APP/E5900/W/23/3328882

56 Middlesex Street, Tower Hamlets, London E1 7EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Zarinah Agnew of Studio Charrette against the decision of the London Borough of Tower Hamlets.
 - The application Ref is PA/22/02715.
 - The development proposed was originally described as “change of upper floors to residential”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has referred to the appeal in its decision as *change of use of existing retail unit to a mixed use of retail unit on the ground and basement with residential unit on the upper floors to residential (Sui Generis)*. The appellant confirms that the original description in the banner heading above is not correct. They use the same description as that set out in the Council’s decision notice in their appeal form. I have determined the appeal on that basis.
3. The appellant has provided revised drawings that were not before the Council when it made its decision. The plans amend internal and external residential access arrangements and fundamentally alter the amount of commercial floorspace. These form matters that are in dispute between the parties. The revised plans would lead to a materially different application. As such, those consulted on the proposal may have wished to have had an opportunity to comment.
4. The appeal process should not be used to evolve a scheme and in applying the *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin) principles I have made my decision on the basis of the plans considered by the Council, and on which interested people’s views were sought.

Main Issues

5. The main issues are (i) the effect of the proposed development on employment provision; and (ii) whether the proposal would provide acceptable living conditions for future occupants with particular regard to internal space.

Reasons

Employment

6. Evolving work patterns in a pandemic and post pandemic context are acknowledged. However, the appeal site is in an area where commercial and employment uses are of particular priority, as set out in the Tower Hamlets Local Plan 2031, January 2020 (THLP). Amongst other things, Policy D.EMP2 of the THLP says that development of employment and residential use in the same self-contained unit (i.e. live-work and work-live) will not be supported. The supporting text to this policy notes that proposals that would offer a range of uses, including employment and housing as separate units within the same site, would be welcomed.
7. There are other policies in the THLP such as D.EMP4 that would be supportive of mixed use redevelopment schemes. In that context, the benefits of mixed use schemes are recognised within paragraph 124 of the National Planning Policy Framework. Nevertheless, the ability to be able to work at home would not be compromised by these development plan policies. Therefore, although written before the recent pandemic, I have given them full weight.
8. It is acknowledged that Policy D.EMP2 of the THLP does not explicitly state that separate entries or accessways are required. However, such arrangements could differentiate between a commercial and residential unit on the same site. Although the proposal would include a separate stairway entrance to the proposed residential unit, this interconnecting door would be within the commercial space. Consequently, occupants would share front/rear entrance points and floorspace on the ground floor. This would all be within the same self-contained unit and not separate units within the same site. As such, the functionality of commercial space prioritised and protected within Policy D.EMP2 of the THLP would be harmfully diminished.
9. Therefore, I conclude on this main issue that the proposal would have a harmful effect on employment provision. As such, there would be conflict with Policy D.EMP2 of the THLP.

Living conditions

10. The proposal would provide a 75sqm, 2 bed property over 3 floors. There is no minimum space standard for such units, though a 2 storey property would be expected to provide 79sqm of accommodation. Even so, the proposed layout includes a generous separation of space and functionality for each of its rooms. Consequently, this would not lead to a cramped or restricted living arrangement.
11. Each of the proposed rooms would provide a minimum of 2.5m floor to ceiling heights as required by Policy D.H3 of the THLP. Even though a small section of the bathroom would have a restricted ceiling height, this would be a non-habitable room. The Council does not raise significant concerns in this respect.
12. The proposed 3rd floor bedroom would include storage cupboards in the part of the room with restricted ceiling heights. The majority of this room would however exceed minimum height requirements. Given the overall available space within this bedroom, it would provide an acceptable standard of accommodation. Moreover, when taken as a whole, the proposed floor to ceiling heights within the accommodation would not be unduly restricted.

13. Therefore, I conclude on this main issue that the proposed development would provide acceptable living conditions for future occupants with particular regard to internal space. As such, it would comply with Policy D.H3 of the THLP.
14. I have been provided with little evidence to demonstrate there would be any conflict with Policy H6 of the London Plan 2021.

Other Matters

15. The appellant refers to Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 as a potential fallback position. In these circumstances it is not appropriate for me to decide whether the appellant might be able to rely on permitted development rights as a fallback. However, part (b) of this class does not permit the change of use of any part of the ground floor as a flat. Given I have concluded that the proposal would amount to a live/work arrangement on its ground floor, I have given the fallback position very little weight.
16. I have paid regard to a previous lapsed planning permission at the appeal site. This permission was however materially different to the proposal as the whole ground floor was retained as a commercial unit and residential accommodation was on a separate floor.
17. The appeal site is within the Wentworth Conservation Area (CA) where there is a statutory duty to pay special regard to the desirability of preserving or enhancing its character or appearance. The proposal would involve limited alterations to the appeal building. Additionally, the Council raises no concerns in respect of this matter. The scheme would have a neutral effect on the CA, thus preserving its character or appearance.
18. I have paid regard to the appellant's comments in respect of the processing of the application. However, these have no bearing on my decision which is based on the planning merits of the proposal.

Planning Balance and Conclusion

19. Bringing together my conclusions on the main issues, I have found that the proposal would not harmfully affect the living conditions of future occupants. However, this does not outweigh the harm I have found to the conflict with the development plan in respect of employment provision.
20. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development fails to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR