



Appeal Decision

Site visit made on 1 February 2024

by **L Reid BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2024

Appeal Ref: APP/V5570/W/23/3330449

137-139 Essex Road, London N1 2NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Patel Taylor Investments Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2023/1658/FUL was approved on 4 August 2023 and planning permission was granted subject to conditions.
 - The development permitted is proposed refurbishment of Astey's Row building facade including removal of existing windows and installation of enlarged openings and associated new windows/doors, creation of enlarged lightwell and enclosure, landscaping and associated works.
 - The conditions in dispute are Nos 4 and 5, which state that:
Condition 4: *Notwithstanding the provision of the Town and Country Planning (Amendment) (England) Regulations 2020, the premises shall be used only for the purposes indicated in the submitted details as (retail) at ground floor and (office) on the floors above and not for any other purpose listed within Use Class E of the Town and Country Planning (Amendment) (England) Regulations 2020.*
Condition 5: *Notwithstanding the provisions of Schedule 2, Part 3, Class MA the Town and Country Planning (General Permitted Development) Order 2021 (or any order revoking and reenacting that Order with or without modifications), no change of use of the existing floorspace hereby approved from Class E (retail, commercial, business and service) to a use falling within Class C3 (dwellinghouses) shall take place without an express grant of planning permission.*
 - The reasons given for the conditions are:
Condition 4: *To ensure sufficient commercial space is protected within the Town Centre.*
Condition 5: *For the avoidance of doubt and to ensure that the Local Planning Authority can restrict the use of the building to this specific use only, in order to protect the supply of office floorspace in this location and retain control over the change of use of the building in the future. Due to the small and constrained nature of the borough, performance against the spatial strategy within the Development Plan is vitally important to ensure that targets to increase employment continue to be met. Additionally, windfall sites are rare and a loss of opportunity to negotiate affordable housing within such proposals would significantly undermine the borough's ability to address critical housing need again due to the small and constrained nature of the borough.*
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Decision

1. The appeal is allowed and the planning permission Ref P2023/1658/FUL for the proposed refurbishment of Astey's Row building facade including removal of existing windows and installation of enlarged openings and associated new windows/doors, creation of enlarged lightwell and enclosure, landscaping and associated works at 137-139 Essex Road, London N1 2NR granted on 4 August 2023 by the Council of the London Borough of Islington, is varied by deleting conditions Nos 4 and 5.

Applications for costs

2. An application for costs was made by Patel Taylor Investments Limited against the decision of the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Preliminary Matter

3. Since the Council determined the planning application, it has adopted the Islington Local Plan Strategic and Development Management Policies 2023 (the SDMP). I have therefore assessed the appeal against the SDMP.

Main Issue

4. The appeal site comprises a three-storey building in a busy commercial area which is in a designated Town Centre. The ground floor is in use as retail and there is office space on the upper floors.
5. Planning permission was granted for external alterations to the rear elevation of the building. Condition 4 and Condition 5 remove permitted development rights, restricting the use of the building and preventing any future changes of use to residential without the granting of planning permission.
6. The main issue is:
 - whether Condition 4 and Condition 5 are necessary, relevant to the development permitted and reasonable in all other respects.

Reasons

7. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. In addition, the National Planning Policy Framework is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
8. I have not been presented with any sufficient evidence that leads me to conclude that the approved changes to the rear elevation of the building will ultimately result in a loss of the office and retail floorspace provision within the building. The restriction of permitted development rights is therefore not necessary to secure compliance with Policies B3 and R3 of the SDMP, which seek to protect existing floorspace and maintain and enhance retail provision in town centres.
9. Regardless of the planning history, since the development relates to external changes to the building, conditions restricting the use of the building and future changes of use are not relevant to the development permitted. As I am unable to identify any clear justification for the removal of permitted development rights in this case, Conditions 4 and 5 are unreasonable.
10. The Council's suggested alteration to the wording of Condition 5 would not change my findings. The wording change to 'upgraded and improved existing floorspace' would not relate to the development permitted as notwithstanding the comments in the documents supporting the planning application, the development does not relate to the floorspace.

11. When considering a previous appeal¹¹ at the site, an Inspector removed permitted development rights restricting future changes of use. I am not party to the evidence before that Inspector, and I have not been provided with the full details of the case. Nevertheless, the description of development in the previous appeal includes internal works and is therefore different to the planning permission before me.
12. For the reasons set out above, I conclude that Condition 4 and Condition 5 are unnecessary, irrelevant to the development permitted and unreasonable in all other respects.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed.

L Reid

INSPECTOR

¹¹ APP/V5570/W/21/3289507