
Appeal Decision

Site visit made on 8 December 2025

by Alison Scott (BA Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2026

Appeal Ref: APP/V5570/W/25/3373331

72 Prebend Street, Islington, London N1 8PR

- 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 Prebend Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref is P2025/1014/FUL.
 - The development proposed is Change of use of ground floor (part) and 1st floor to a 7 room HMO (sui generis) and new disabled access door to Coleman Fields elevation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site has a reasonable planning history associated with it. I read that planning permission was allowed at appeal¹ for the change of use of the public house on the ground and lower ground floor to a café and juice bar. These floors are identified by the parties as falling within the definition of the Town and Country Planning (Use Classes) Order 1997 (as amended) as a Class E (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly taken on the premises. I understand this use was implemented and is still in operation.
3. The appellant intends to change part of the ground floor and all of the first floor into a seven bed HMO sharing a kitchen for between seven and eleven individuals residing together. There would be limited physical alterations to the internal structure of the building and minor external alterations to the external fabric.
4. At the time of my inspection, the first floor and second floors were in residential use.

Main Issues

5. The main issues with regards to this appeal are:
 - Whether or not the loss of use class Class E be justified;
 - The effect of the proposal on the living conditions of future occupants of the HMO by way of shared facilities;
 - Whether or not the use can be considered as a seven bed HMO and the effect on the living conditions of future occupants of the ground floor unit with regard to

¹ Appeal Ref APP/V5570/W/21/3281724

spacing standards, external space, outlook, ventilation and day light and sunlight levels.

- The effect on the living conditions of local residents pertaining to noise and disturbance;
- Whether or not the proposal provides acceptable accessible accommodation;
- Whether or not affordable housing would be secured in perpetuity; and
- Whether or not a sustainable construction management plan is required.

Reasons

Loss of Class E

6. The appeal site is a substantial public house called the Duchess of Kent located on the corner of Prebend Street and Coleman Fields. The ground floor and basement level are in commercial use as a juice bar. The appellant has confirmed to me at the site visit that the first floor is currently used as an aparthotel. I note a change of use of the first and second floors of the building was refused planning permission for an aparthotel and subsequent appeal dismissed.²
7. The appellant seeks to change part of the ground floor into a single flat to facilitate disabled access as part of the HMO as a whole. From the submitted plans, I could see that this room is entirely self-contained and separate from the rest of the accommodation as the first floor is to be used for six separate bedrooms with communal access to a kitchen.
8. Turning to the matter of the ground floor of the premises, local Policy R5 (A) requires proposals involving the loss of dispersed retail and café/restaurant uses to demonstrate that the premises has been vacant for a period of at least a year through sufficient vacancy and marketing evidence. Details must be submitted to clearly justify that there is “no reasonable prospect of the unit being used in its current use or any other suitable E use”. There has been no vacancy or marketing evidence provided to accompany this proposal.
9. From my own assessment of the ground floor as proposed, the plans demonstrate that around a quarter of the ground floor would be lost to a new bedroom. Local Plan Policy R5 aims to protect dispersed retail and café uses outside town centres. From my interpretation of the policy, it is worded in so far as it refers to losing *all* of the use, and not *part* of the use (my emphasis). The appellant also states in their appeal documents that the juice bar is operational. There is no current vacancy according to the appellant and there is nothing before me to disagree with this finding.
10. Even if this is my finding, in this situation, I must give some tolerance to the amount of floorspace that would remain post conversion of part of this area in order to avoid rendering the Class E use unviable. Having considered the degree of floorspace that would be removed and its corner position, and the floorspace that would remain, I am of the view that the ground floor and lower ground floor can still function as their intended use. Therefore, it would not undermine the continued operational use of Class E floorspace.

² Appeal Ref APP/V5570/W/21/328945

11. On this basis I am not convinced that the proposal would be in conflict with Policy R5 of Islington's Strategic and Development Management Policies (2023) that aims to protect dispersed café/restaurant uses. The Council site London Plan Policy E9 within their reason for refusal. On examination of this policy, I find no direct relevance as the use is a Class E (b) use.

Living conditions - future occupants

12. As the appellant confirms, between seven and eleven people could be residing within the HMO at any one time. There is an expectation that the occupants would share communal facilities, most specifically a kitchen.
13. The Council's Standards for Houses in Multiple Occupation (HMO) requires a kitchen of around 11.5sq m for 8-10 sharing occupants and a separate set of kitchen facilities required for every 5 residents sharing. At around 7.7sq m the kitchen is inadequate for the maximum number of sharing occupants.
14. Whilst there is nothing before me to disagree with the appellant's findings that not all rooms must share facilities, a kitchenette facility is to be provided in a number of the bedrooms. From the plans before me, this is proposed to be located within around five of the seven bedrooms. The plans demonstrate a very small area in each of these bedrooms to be dedicated to a kitchenette. There is nothing before me to demonstrate the facilities and equipment to be provided within this very limited space that would limit the need for occupants to use the shared kitchen. Furthermore, the Islington Standards for HMO's does not indicate that by providing a kitchenet avoids the need to provide a shared kitchen of an adequate size.
15. I note the appellant suggests imposing planning conditions to include a kitchenette within the bedrooms that currently do not include this area, as well as limiting the occupancy of these rooms to a single person occupancy as the shared kitchen would therefore be of an acceptable size to meet the occupants' needs. Irrespective of this and further to my interpretation of the Islington HMO standards, this would not mitigate for the fact that the existing shared kitchen would not comply with the Islington HMO standards. I apply considerable weight to this document.
16. Therefore, it would not be reasonable to impose planning conditions as they would not meet the requirements of paragraph 57 of the National Planning Policy Framework (the Framework). As a large HMO, it would fall short of the very necessary functional needs to support a shared household.
17. Turning to the matter of HMO licensing of the premises, this relies on a separate licencing regime. An HMO licence is granted to the individual who applies for the licence and upholds the conditions within the licence. Planning permission is attached to the land. There is some overlap with the nature of what these Acts control, but that does not mean to say that the Council's Planning department as regulatory authority enforce the conditions of the HMO licence, or that the conditions ascribed to a planning permission are enforceable through their licencing team. They are discreet entities. Therefore, imposing planning conditions that depend on a separate legislation would not meet the tests of paragraph 57 of the Framework.
18. Therefore, to conclude on this main issue, the living conditions of the occupants would not be safeguarded and is contrary to the amenity aims of the National Planning Policy Framework (2024), and the broad good design principles of Policy

PLAN1, and policies H4 and H10 of the Islington's Strategic and Development Management Policies (2023) in their aims to protect living conditions. I find no direct relevance to Policy D13 of the London Plan (2021) as this relates to existing noise generating activities.

Whether or not a seven bed HMO, and effect on living conditions of future occupants of ground floor unit

19. I take note from the Council's Local Plan supporting text to Policy H10 that defines an HMO '*as residential property that takes the form of shared houses, flats and non-self-contained units/housing.*' The ground floor would combine its own bathroom, kitchen and as an accessible flat it would have its own main door onto Coleman Fields. It could physically and functionally operate as a separate unit as there would be no need for occupants to share communal facilities with the first floor and would therefore not form a consolidated HMO. By all intents and purposes, it can reasonably be considered as an independent unit as it would not align with the Council's definition of an HMO.
20. Nor is there the ability for the future occupants to access the first floor in any case as there is no through floor lift. It would therefore not need to function as part and parcel of an HMO as it can function as an independent flat.
21. As I am considering the ground floor unit as a self-contained flat, I am required to consider London Plan standards to ensure an acceptable standard of living for future occupants. The outlook would be single aspect via one main window although ventilation could be safeguarded by way of planning condition, where I minded to allow the appeal. Its overall GIA floor area would not comply with policy and no private amenity space available to support the future occupants. As a whole, the living conditions of the occupants would be compromised as a consequence.
22. To conclude on this main issue, the proposal is therefore contrary to the National Planning Policy Framework (2024) to safeguard amenity, Policy D6 of the London Plan (2021) and the overarching good design principles of Policy PLAN1, and to deliver high quality housing and to protect living conditions of occupants in accordance with policies H4 and H10 of Islington's Strategic and Development Management Policies (2023). I find no direct relevance to Policy H2 as this is a strategic housing policy target.

Living conditions – local residents

23. Up to eleven individuals would be living together as part of the proposal. Even if I do not classify the ground floor unit as part of this HMO, it would still be considered in planning terms as a large HMO. HMO'S have the ability to generate noise and disturbance due to their character. This is especially significant as the local area is residential in character.
24. I am mindful of a previously refused scheme for a hotel at the site raised noise and disturbance concerns by the Inspector who dismissed the appeal. The hotel was for around 18 guests and whilst the numbers of occupants differ, I have concerns regarding the number of comings and goings associated with a large HMO in this built-up residential area.

25. No noise surveys have been provided to determine the level of existing and future noise levels and how the effects can be mitigated. A management company can oversee day to day operations at the site. However, there are limitations to how they can manage the site remotely and even if tenants are subject to the necessary background checks and they are contractually obliged to reside in the premises for a minimum of six months, would not satisfactorily safeguard the living conditions of local residents. The appellant cannot control the tenant's behaviours even if they provide advice on how to be a good neighbour. Nor would staggered check in and check out service, communal maintenance of the site and secure entry system reasonably safeguard the living conditions of local residents.
26. From an internal sound proofing measure, the Council consider a condition to approve a scheme of sound proofing between floors would satisfy internal noise transfer and the appellant would agree to this. There is nothing before me to contradict this and a suitably worded condition could be imposed to meet the tests of paragraph 57 of the Framework.
27. However, whilst the proposal could be made acceptable in this respect, it would not be in others. Therefore, without evidence to demonstrate there would be no adverse cumulative effects on local occupants, the proposal would not meet the amenity aims of the National Planning Policy Framework (2021), policies D13 and D14 of the London Plan (2021) to mitigate the effects of noise, and the broad design principles of Policy PLAN1, or policies H4 and H10 of Islington's Strategic and Development Management Policies (2023) that aims to deliver high quality housing and to protect living conditions.

Accessible accommodation

28. Despite the fact that the Council's Inclusive Design SPD may not refer to HMO's, planning permission is required for the proposal and therefore, there is a requirement to meet local policy H10 to secure 5% of bedspaces to be wheelchair accessible. I note the SPD refers to new homes requiring 10% to be wheelchair accessible.
29. As I have concluded the ground floor can be considered as an independent self-contained unit, it would be out-with the HMO. The first-floor rooms cannot be physically accessed by wheelchair users due to their location on the first floor with no means of access apart from the stairs to reach the first floor.
30. There is nothing before me from the appellant to demonstrate it can be 'easily adapted' for wheelchair access, especially as the parties agree that lift access could be difficult to integrate into the building. Therefore, the proposal is not local plan policy compliant.
31. To conclude on this main issue, the proposal fails to meet the provisions of the National Planning Policy Framework (2024) to achieve well designed places, the broad design aims of Policy PLAN1 and the objectives of Policy H10 of Islington's Strategic and Development Management Policies (2023) including the guidance of Islington's Inclusive Design SPD (2014) for equal access.

Affordable housing

32. There would be new residential units to the first floor by way of an HMO as well as a separate self-contained flat on the ground floor I consider to be out-with the HMO.
33. Local Plan Policy H10 requires large HMO's to provide 35% on-site affordable housing and provide tenures in line with Policy H3. The appellant agrees to affordable rent tenure at the site to be secured by condition.
34. Whilst this may be an acceptable means to secure affordable rent in perpetuity, without a mechanism in place, there are no details before me to consider further. Therefore, I cannot be certain it would meet the tests of paragraphs 56 and 57 of the Framework.
35. Even though the Council may not have referred to the need to secure affordable housing when considering application P2023/1173/FUL, I am determining the appeal before me and not this earlier scheme. It is not within my remit to consider and should be referred to the Council in the first instance.
36. Therefore to conclude on this main issue, in the absence of a legal agreement to secure affordable housing in perpetuity, the proposal would be in conflict with Policy H10 of Islington's Strategic and Development Management Policies (2023) with regards to achieving affordable housing.

Sustainable construction

37. I have considered the content of the local plan policies the proposal should be assessed against in the interest of sustainable construction, and overall minimising environmental impact. It is therefore reasonable to apply a condition to off-set and mitigate the environmental impacts of the proposal. Therefore, a planning condition for the appellant to submit an updated Sustainable Design and Construction Statement would meet the tests of paragraph 57 of the Framework. I note both the appellant and the Council would agree to a planning condition, should I be minded to allow the appeal.
38. Therefore, to conclude on this main issue, as a planning condition can be sufficient to ensure the proposal is a sustainable form of development, it would therefore comply with the design, construction and operation objectives of Policies S1, S2, S4, S6, S7, S9 and S10 of the Islington SDMP.

Other Matters

39. The site is located within the Arlington Square Conservation Area (CA). The significance of the conservation area, as a whole, is derived in part from its abundance of well-maintained 19th century properties with period details, commonly arranged in cohesive terraces, and its wide streets. The site's positive contribution to the conservation area draws in part from its appropriate scale in relation to its immediate surroundings, and the brickwork to its upper floors which aesthetically blends well with many nearby properties. As the scheme relates to a minor alterations to the external fabric of the building, I am satisfied that the proposal preserves the character and appearance of the conservation area. Thus, there is no harm to its significance as a designated heritage asset. This, however, is a neutral factor, which does not weigh in favour of the proposal however.

40. Any issues surrounding CIL contributions is not within my scope to comment on and should be referred to the Council in the first instance.

Balance and Conclusion

41. There are some benefits ascribed to the proposal by way of the site is located in position with good access to public transport and it would provide shared accommodation. These I apportion only a small level of weight in the balance. It may be in Flood Zone 1 and it would cause minimal intervention to the external appearance of the building within the CA. It would have no impact on highway and pedestrian safety and would be a car free development. Fire safety is not raised by the Council as an issue and waste management can be addressed. Nevertheless, these are neutral in the overall scheme of things and neither weighs for or against the proposal.
42. All things considered, the proposed development would lead to conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. For the reasons given above, the appeal should be dismissed.

Alison Scott

INSPECTOR