



## Appeal Decision

Site visit made on 21 January 2019

**by Zoe Raygen, Dip URP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> February 2019**

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**Appeal Ref: APP/V5570/W/18/3199742**

**139-149 Fonthill Road, Islington, London N4 3HF**

- 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 Ms Oksana Protsyuk (Polar Romax) against the decision of the Council of the London Borough of Islington.
  - The application Ref: P2017/0333/FUL dated 24 January 2017, was refused by notice dated 8 January 2018.
  - The development proposed is refurbishment and extension of the site to provide retail (Use Class A1) commercial floor space (Use Class B1) and flexible employment floor space (Use Classes A2/B1/D1/D2) together with 9 No residential units (Use Class C3).
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### Decision

1. The appeal is dismissed.

### Preliminary matter

2. The appellant has submitted a signed Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990, as amended. The UU contains obligations in respect of ensuring that the development remains car free, and the payment of financial contributions towards the cost of affordable housing and carbon offsetting.

### Main Issues

3. The main issues are:
  - Whether or not the proposal would provide appropriate living conditions for future residents with particular regard to the inclusion of single aspect units, noise and external space
  - The effect of the proposal on the retail function, character and vitality and viability of the Finsbury Park Town Centre and the unique function of the Specialist Shopping Area
  - Whether or not it has been appropriately demonstrated that the proposal delivers the maximum number of residential units.

## Reasons

### *Living conditions*

4. Policy DM3.4 (A) (i) of the Islington Local Plan Development Management Policies 2013 (the DMP) requires that accommodation should be of an adequate size, with acceptable shape and layout of rooms having due consideration to aspect amongst other matters. Furthermore, part D of the Policy states that new residential units are required to provide dual aspect accommodation, unless exceptional circumstances can be demonstrated. For sites where dual aspect dwellings are demonstrated to be impossible or unfavourable, the design must demonstrate how a good level of natural ventilation and daylight will be provided for each habitable room.
5. Four of the proposed units would be single aspect, and in this respect contrary to Policy DM3.4. The appellant refers me to Standard 29 of the Mayor of London's Housing Supplementary Planning Guidance 2016 (the SPG) which states that developments should minimise the number of single aspect dwellings and those that would be north facing should be avoided. It goes on to state that good single aspect one- and two-bedroom homes are possible where limited numbers of rooms are required, the frontage is generous, the orientation/outlook is favourable, and care is taken to mitigate the potential for overheating, which is considered to be an increasing concern in London, without the need for mechanical ventilation.
6. I accept that none of the units would be north facing however, the main living rooms, and in most cases the bedrooms to flats B.3.1 and B3.3, B.4.1 and B.4.2 would only be served by one window. While the balcony which would partly adjoin some rooms would be open, it would be separated from the rooms by some form of enclosure.
7. At the time of my site visit it was mid-morning on a relatively dull day in winter, and the level of light in the part of the building where the flats would be located was low. The DMP states that dual aspect design is key to maximising natural light, cross ventilation and access to quiet parts of homes. The reliance on single aspect windows, together with the depth of the rooms proposed, and the relatively large size of the units, would in my opinion lead to gloomy living conditions.
8. The appellant's Noise Assessment (NA) identifies that noise on the Fonthill Road side of the building would fall within Noise Exposure Category - C contained within Table 3.4 of the DMP where planning permission should not normally be granted. As a result, mitigation measures are likely to be required to the fenestration on the Fonthill Road elevation. The NA suggests the use of double glazing of a performance beyond basic thermal double glazing together with some form of ventilation system either as part of the window frame or separate to it. Although windows should not be sealed they should be openable only for purge ventilation.
9. This is confirmed in the Council's Acoustic Officer's (AO) consultation response which states that "the Fonthill Road façade is appreciably noisier than the quieter opposite façade and the best design for the flats would enable each one to have access to a quieter side. To enable internal noise targets to be met then there will need to be consideration of the design of the façade, glazing

- and mechanical ventilation to allow the windows to stay shut and noise attenuation to be effective”.
10. The flats B.3.1, B.3.3 and B.4.1 would only have windows and balconies on the Fonthill Road elevation. I do not doubt that a technical solution could be achieved through details required by the imposition of a condition as suggested by the AO. However, if the design solution would be closed windows with a ventilation system to effectively mitigate the impact of the level of noise from Fonthill Road, this would be far from ideal for the only window in the habitable rooms. To my mind residents would be likely to want to open their windows in fine weather (or would wish to do so at least occasionally). In this instance therefore, the lack of dual aspect design would harmfully restrict natural light and cross ventilation which would create poor living conditions for future occupiers.
  11. The appellant has also referred me to appeal decision APP/N5660/W/17/3170507 where the Inspector found that the provision of 9 single aspect units out of 28 minimised their provision as required by the SPG. Furthermore, the Inspector concluded that the narrow linear nature of the appeal site, together with the access restrictions were particular and unusual constraints upon the sites development which amounted to exceptional circumstances so that there was no conflict with local Policy. However, I am not aware of whether the situation regarding noise and ventilation requirements was similar to the case before me now.
  12. In addition, although the appeal building is narrow and linear, there is no substantive evidence before me to suggest that dual aspect accommodation is impossible to achieve for all residential units. Therefore, I am not satisfied that in this instance the appellant has demonstrated exceptional circumstances, to justify the provision of the single aspect units. Furthermore, the provision of 4 units within a scheme of only 9 does not, in my opinion minimise the number of units that are single aspect in accordance with the SPG. Moreover, the maximisation of housing does not outweigh the need to ensure that housing is built to the highest environmental standards.
  13. The Council suggest that 6 of the two-bedroom units have a floorspace large enough to accommodate a three-bedroom unit. In particular it is concerned that if 4 of the units (B.4.3, A.2.1, A.3.1 and A.4.1) were converted to three-bedroom units then there would be insufficient external garden space.
  14. Policy DM3.5 of the DMP states that the minimum requirement for private outdoor space is 5 sqm on upper floors and 15 sqm on ground floors for 1-2 person dwellings. For each additional occupant, an extra 1 sqm is required on upper floors and an extra 5 sqm on ground floors up to a minimum of 30 sqm for family housing (three-bedroom residential units and above).
  15. There is no dispute that the units have sufficient external space to comply with the requirements of Policy DM3.5 for a two-bedroom unit. I understand that the Council’s preference is for three-bedroom units to be provided at ground floor with 30 sqm of external space available. However, all four of the units that the Council raise concerns about are on the upper floors and are shown on the submitted plans for my consideration to be two-bedroom units. Furthermore, while I note the content of the original plans submitted by the Council in respect of these units, there is no substantive evidence before me to suggest that there would be any intention to convert them to three-bedroom

units in the future. I am satisfied therefore that the external space for the residential units is satisfactory and in accordance with Policy DM3.5.

16. The Council also raises concerns regarding the location of residential units adjacent to the proposed B1 units on the first, second and third floors. However, the Council's AO, in their consultation response suggests details of a soundproofing scheme could be secured by a suitably worded condition. Their particularly concern appears to lie in any location of residential units adjacent to a gym or restaurant. However, that is not proposed in the scheme before me.
17. Although the Council suggests that it would be difficult to achieve compliance for a soundproofing scheme for the length of wall between the proposed B1 use and residential units on the third floor, I have seen no technical evidence to support this view. Therefore, I am satisfied that the matter could reasonably be mitigated through details secured by a condition if the appeal were to be allowed. As a result, there would be no conflict with Policy DM3.7 of the DMP which seeks to secure sufficient sound insulation between dwellings and public/communal areas.
18. While the proposal is acceptable in some respects, for the reasons above I conclude that the proposal would not provide acceptable living conditions for future occupiers with particular regard to the inclusion of single aspect units. It would therefore be contrary to Policy 3.5 of the London Plan (2016), Policy CS12 of the Core Strategy and Policies DM2.1 and DM3.4 of the DMP and the SPG. These seek to ensure developments are functional and fit for purpose and provide a good level of amenity and quality of life, and that residential units have a dual aspect.

*Retail function, character and vitality and viability*

19. The appeal site is located within an area designated as Finsbury Park Town Centre, a Primary Retail Frontage and a Specialist Shopping Area. Policies DM4.4, DM4.5 and DM4.9 of the DMP seek to maintain and enhance the retail and service function of the town centres, protect the predominantly retail function and character of town centres and the unique function of the specialist shopping areas. Within the explanatory text to Policy DM4.9, the small clothing shops at Fonthill Road, where the appeal site is located, are identified as a Specialist Shopping Area that provide a major contribution toward a healthy, diverse retail offer in these centres.
20. The Council raise concerns regarding, in its opinion, a loss of A1 floor space, caused by the proposal. According to the Council the existing basement of the appeal building contributes to the current A1 floor space by virtue of its suitability to be used as an ancillary storage area for the existing A1 units. As a result, the Council considers that although there would be an increase in the number of retail units provided on the site, there would be an overall loss of 207.38 sqm of retail floor space, which would be harmful to the retail function and character of the Town Centre, Primary Retail Frontage and Specialist Shopping Area.
21. There is no dispute between the parties that the basement area meets the definition of Gross Internal Area which is contained within the DMP. In addition, it is agreed that part of the basement has planning permission for A1

- use and is currently being used by one of the retail units fronting Fonthill Road. I saw this to be the case at my site visit.
22. The appellant has submitted details of the planning history of the buildings and believes that use of the basement was abandoned between the 1970's and 2001. The Council refer to a letter from Simon Powell Architects dated 2 April 2001 submitted by the appellant, which it considers lends support to the case that the basement was, at that time, being used for ancillary A1 storage uses. However, the letter states that "some of the shops fronting Fonthill Road utilise other parts of the building for storage and wholesale distribution". It does not specify that the other parts of the building referred to in the letter includes the basement area. Therefore, I cannot be sure that the letter is sufficient evidence to identify the use of the basement area as an ancillary storage area to the retail units.
  23. Photographs within the appellant's appeal statement show the basement to be vacant and not used other than the area where plant is situated providing heating and hot water for the building. The Council state that given its location and accessibility the plant operates ancillary to the A1 use. However, I am not persuaded by this argument. The plant provides heating and hot water for the whole building and is accessible by all tenants of the building from the front entrance.
  24. At the time of my site visit the basement area was little changed from its state shown in the appellant's photographs. The appellant also confirms that use of the basement is not contained in any of the leases for the shop units. I am satisfied from the evidence submitted and my observations on site that the area is not currently being used for A1 floor space or has been for some time. Furthermore, I saw at my site visit that the basement is accessible by all tenants of the building by a front entrance from Fonthill Road and not just the tenants of the shops.
  25. At my site visit I noted that the basement ceiling is low and pipes in places located even lower, making it necessary for people to duck down to access the area. In addition, the basement is accessed by a steep narrow staircase with no handrail, there is very limited ventilation, no windows and the area is poorly lit. To my mind this is not ideal, in terms of safety, for people to access on a regular basis, even for storage purposes.
  26. Through the reuse of the floor space currently in use as retail, and the incorporation, and extension of the basement area the appeal scheme would provide 14 retail units. These would be small in size, in broad accordance with the requirements of Policy DM4.1 of the DMP which states that to encourage new provision of small and independent shop units, the council will seek to secure small shop units (generally considered to be units of around 80 sqm gross internal floor space or less) suitable for small and independent retailers throughout the borough. Furthermore, four of the units would have floor space of about 90 sqm which the Council suggest is essential to maintain the existing character of the Specialist Shopping Area. Moreover, the number of shops fronting Fonthill Road would be unaltered, and there would be no break in the continuity of the existing retail frontage. I note the comments of an interested party stating that units in excess of 90 sqm would be required to ensure their viability. However, I have seen no substantive evidence in support of this claim.

27. Therefore, even if the basement area does have the capacity to form an ancillary storage area to the shops and there would be an overall loss of retail floor space, I have seen no substantive evidence to suggest it is either currently in use or is critical to the viability and vitality of the existing shops in its current form. The maintenance of shops on the Fonthill Road frontage and the creation of further small shop units would ensure that the retail function character and viability and vitality of the Town Centre, Primary Retail Frontage and the Specialist Shopping Area would be maintained and enhanced.
28. For the reasons above, I conclude that the proposal would not be materially harmful to the retail function, character and vitality and viability of the Finsbury Park Town Centre and the unique function of the Specialist Shopping Area. There would therefore be no fundamental conflict with Policies DM4.4, DM4.5 and DM4.9 of the DMP.

*Efficient use of the site*

29. The appellant proposes the provision of 9 residential units with a total floor space of 859 sqm. The Council consider that the 9 units are oversized when considering the Technical housing standards – nationally described space standard 2015 (the Space Standards), and that the scheme could provide 10, 11 or 12 units which would trigger the requirement for the provision of on-site affordable housing. Therefore, in its opinion, the number of units has not been maximised and the proposal is not sustainable development in accordance with Policy DM2.1 of the DMP.
30. Policy CS12 (G) of Islington’s Core Strategy 2011 states that all sites capable of delivering 10 or more units are required to provide affordable homes on site. The Council relies considerably on appeal decision APP/V5570/W/15/3131288 where it had similar concerns to those raised in the appeal before me now. The Inspector accepted the Council’s case regarding the provision of Policy CS12 and that it was reasonable that ensuring sites reach their maximum potential should be a material consideration. The Inspector concluded that the appellant had not satisfactorily demonstrated that the appeal site was not capable of accommodating 10 or more units and dismissed the appeal.
31. However, that appeal was in relation to the demolition of the existing buildings on site and the construction of a new five storey building purely for residential use. The case before me is a mix of conversion and extension, which would be subject to constraints due to the retention of the existing building fabric. Furthermore, at that time, the Inspector had clear evidence in front of them that the appeal site could accommodate 10 dwellings in the form of an alternative proposal for the site. Therefore, I am not persuaded that the two cases are sufficiently comparable for me to reach a similar decision.
32. The Inspector in the decision also makes the point about the Policy referring to all *sites* capable of delivering 10 or more units gross to provide affordable homes on-site rather than *developments* or *proposals*.
33. The appeal site here is large and if a mixed-use scheme were not being proposed would be likely to be capable of accommodating 10 or more dwellings. However, the scheme before me now, seeks to meet the requirements of other Policies of the DMP in terms of an uplift in B1 floor space, the preferred mix of housing, the maintenance and delivery of an enhanced retail offer and improvements to the appearance of the building. Nevertheless,

most of those aspirations have been met while providing 859 sqm of residential floor space and about 483 sqm of “flexible” commercial floor space. Therefore, the nub of the Council’s case, as I understand it, is that such an amount of residential floor space could be alternatively delivered as 10, 11 or 12 residential units and still meet the requirements of Policy DM3.1 regarding the preferred mix of sizes of residential units in new developments.

34. However, I accept that the total residential floor space is split over four floors, three of which are within the existing fabric of the building. As a result, the fixed position of the existing access stairways through the first, second and third floor provides its own constraint to the layout of the uses, as well as the location of the staircase on the proposed fourth floor. Furthermore, most of the existing building is locally listed which restricts the development potential in terms of additions and alterations to the building. Moreover, I have already identified a need to avoid conflict between the residential units and the flexible commercial use with regard to noise. These matters together with the existing restricted fenestration to the building, means that the layout and size of the units is constrained, unlike with new build accommodation.
35. Furthermore, it appears to me that four of the units that are particularly oversized are those that according to the plans submitted by the Council were either proposed as three bedroom or capable of being used as three bedroom units and the internal layout has subsequently been amended so that the units would be two bedroom (A.2.1, A.3.1 A4.1 and B4.3). The appellant confirms that this is the case and changes were made in order for the scheme to meet the Councils preferred mix of housing set out within Table 3.1 of the DMP and required in all residential schemes by Policy DM3.1 of the DMP. Had the units remained three-bedroom then it is likely that the amount of oversize would not be significant, and the proposal would not accord with the mix shown in Table 3.1.
36. The appellant has submitted a viability report dated 6 March 2018 that demonstrates that a scheme providing 10 residential units which would be fully compliant with Policy CS12 would not be viable, and the contents of the report are not disputed by the Council. I accept though that this is only one scenario, and there is no further evidence regarding a combination of market and affordable houses which the Council has stated may be acceptable.
37. Nevertheless, based on the evidence before me and my observations on site, I am satisfied that the case has been made by the appellant to justify the proposed mix and distribution of uses on the site which limits the space available for residential units. Furthermore, for the reasons above, I conclude that, taking into account the existing building constraints and differing Policy requirements, it has been appropriately demonstrated that the proposal delivers the maximum number of residential units. There is therefore no fundamental conflict with Policies CS12 of the Core Strategy and DM 2.1 of the DMP.

### **Planning Balance**

38. I have found that the retail function character and viability and vitality of the Town Centre, Primary Retail Frontage and the Specialist Shopping Area would be maintained and enhanced. I have seen no substantive evidence though to suggest that the retail area is in decline. Indeed, at my site visit I saw a vibrant retail area with very few vacant units. Therefore, I give limited weight

- to this enhancement. Even if I were to accept the appellant's case that the scheme delivers an increase in retail floor space, the additional amount is very limited, and the consequent economic benefits have not been quantified.
39. There would be a number of external alterations to the building. Some of these would positively improve the appearance of the building such as the alterations to the front façade of No 139 so that the design reflects that on the adjacent locally listed building. However, such alterations only apply to a small part of the building. Furthermore, the appellant proposes to reinstate the cupola on the tower on the building. There is though no guarantee, for example in the form of a legal agreement, that the reinstatement of the cupola would occur. Therefore, I give these benefits limited weight.
  40. The provision of 9 residential units in an accessible location would be a benefit of the scheme. The appellant asserts that there would be a strong emphasis on family accommodation in accordance with Policy CS12 (E) of the Core Strategy given that the majority are two bed units and the draft London Plan (2018) acknowledges that many families live in two-bedroom units in London and this should be taken into consideration when assessing the needs that different sized units can meet. In any case, the Council's preferred housing mix demonstrates a requirement for two-bedroom housing, so irrespective of whether two-bedroom housing is classed as family housing or not it meets the requirements of Policy DM3.1 in this respect.
  41. However, as I have found that some of these units would not provide acceptable living conditions this limits the weight I can give to the units and therefore they only attract limited weight.
  42. The Affordable Housing Small Sites Contributions Supplementary Planning Document 2012 requires a contribution of £50,000 per new unit towards the cost of affordable housing in the Borough. Therefore, in this instance there would be a requirement for a payment of £450,000. The Council is satisfied that the appellant's Viability Report 2017 justifies a reduction in this amount to £300,000 and this is secured within the UU. I have seen nothing to lead me to disagree with this view and therefore this is a significant benefit of the scheme.
  43. The provision of additional B1 office space and flexible floorspace is an economic benefit of the scheme. Furthermore, the Framework states that significant weight should be placed on the need to support economic growth and productivity.
  44. While I have found no conflict with the development plan in some instances, the proposal is contrary to the development plan as a whole in that it fails to provide acceptable living conditions for future residents' contrary to Policies Policy CS12 of the Core Strategy and Policies DM2.1 and DM3.4 of the DMP.
  45. In such circumstances, paragraph 12 of the Framework indicates that planning permission should not be granted unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making. In this case, the appeal proposal would be contrary to the development plan policies I have referred to, and the very significant resultant harm would not be outweighed by other material considerations.

**Conclusion**

46. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Zoe Raygen*

INSPECTOR