
Appeal Decision

Hearing held on 11 December 2014

Site visit made on 11 December 2014

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 January 2015

Appeal Ref: APP/V5570/A/14/2227160

The Trader, 142 Whitecross Street, London EC1Y 8QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Whitex Properties LLP against the Council of the London Borough of Islington.
 - The application Ref P2014/0781/FUL, is dated 17 February 2014.
 - The development proposed is refurbishment of the existing A4 public house and rear extension to residential unit including erection of first and second floor rear infill extension and second floor mansard roof extension, to create five self-contained residential flats (use class C3) comprising 1 x 3 bed, 1 x 2 bed, and 3 x 1 bed, and new openings formed in the existing north facing façade onto Withers Place.
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Decision

1. The appeal is allowed and planning permission is granted for refurbishment of the existing A4 public house and rear extension to residential unit including erection of first and second floor rear infill extension and second floor mansard roof extension, to create five self-contained residential flats (use class C3) comprising 1 x 3 bed, 1 x 2 bed, and 3 x 1 bed, and new openings formed in the existing north facing façade onto Withers Place at The Trader, 142 Whitecross Street, London EC1Y 8QJ in accordance with the terms of the application, Ref P2014/0781/FUL, dated 17 February 2014, subject to the conditions in the attached schedule.

Preliminary matters

2. The appellant submitted amended plans to the Council prior to the submission of the appeal to show how the scheme would meet Lifetime Homes requirements, including a wider entrance door and staircase to access the flats; and scope to install a lift in the future; the removal of timber cladding to the southern and eastern elevations; and insertion of obscure glazed windows in these elevations. The Council consider the changes are *de minimis* and as such would not have re-consulted on the plans. I agree that the amendments are minor in nature and thus no one would be prejudiced by my consideration of these drawings. For the avoidance of doubt I have determined this appeal with reference to the aforementioned amended plans, dated 9 July and 8 September 2014.
3. The Council have adopted a CIL charging schedule. The collection of any CIL contribution is undertaken by the relevant charging authority on service of a

notice that planning permission has been granted in relation to chargeable development. As such, the requirement for, and enforcement of, any contribution in relation to the proposed residential units is not a matter for this appeal.

4. Main Issue

5. The main issue in the appeal is whether the proposal should provide affordable housing having regard to the relevant development plan policies and all other material considerations.

6. Reasons

7. The appeal property is a two storey public house with a mansard roof extension to the front elevation and a single flat above. Whitecross Street is narrow with a mix of uses. There is a 14 storey residential block (Colston Court) to the north and a three storey residential block (George Gillet Court) which fronts Banner Street to the south.
8. The proposal would involve the refurbishment of the public house and rear infill and roof extensions to create 5 self-contained flats. London Plan (2011) Policy 3.13A states that Boroughs should normally require affordable housing provision on a site which has capacity to provide 10 or more homes, applying the density guidance in the plan. Policy 3.13B encourages Boroughs to seek a lower affordable housing threshold than 10 or more homes where this can be justified. Islington Core Strategy (CS) (2011) Policy CS12 states that schemes below a threshold of 10 residential units (gross) will be required to provide a financial contribution towards affordable housing provision elsewhere in the borough. The Council's Affordable Housing Small Sites Contributions Supplementary Planning Document (SPD) (2012) requires a commuted sum of £50,000 per unit in this location towards affordable housing in the Borough.
9. The Council indicated that had it determined the application it would have refused planning permission on the basis that the appellant had not agreed to provide the full financial contribution that was required by the Affordable Housing Small Sites Contributions Supplementary Planning Document (SPD) (2012). The appellant claims that the development would not be viable if contributions were made at the level sought by the Council.
10. However, since the appeal was submitted, National Planning Practice Guidance (the Guidance) was updated on 28 November 2014. This now advises that planning obligations should not be sought for development of less than 10 residential units with a floorspace of less than 1000 square metres, as is the case with the appeal proposal. Consequently the parties have agreed that the SPD is now considered to be out of date and no weight should be attributed to it.
11. The Council no longer seeks to secure contributions towards the provision of affordable housing. I see no reason to disagree. There is conflict with the development plan, but the recent Guidance, as a material consideration, is sufficiently clear on this matter as to outweigh the conflict.

Other Matters

12. The appellant's noise assessments indicate that there would be material harm to the living conditions of future occupiers of the flats due to noise from the

- existing public house use on the ground floor, through the floor, windows and from patrons outside, and potentially in the future from plant equipment. However the noise impacts can be mitigated through appropriate conditions.
13. There have been concerns regarding the impact of the development on the levels of daylight and sunlight to neighbouring properties, but the Daylight and Sunlight Assessment submitted with the application demonstrates that no windows to habitable rooms would be significantly affected by the appeal proposal and I have no evidence before me to the contrary. The potential for overlooking of properties on Coltash Court and George Gillet Court would be mitigated by the use of obscure glazing to windows and the roof terrace enclosure. This could be secured by condition.
 14. The amount of communal garden space provided for the 5 flats is broadly in line with the Council's requirements as set out in Policy 3.5 of the Development Management Policies (DMP) Development Plan Document. However the Council were concerned that the communal use of the space could lead to unacceptable noise and disturbance adjacent to windows serving Flats 2.01 and 2.02, and suggested that the available space be sub-divided into two private amenity areas to serve these flats. The appellant indicated at the hearing that this would be acceptable, and a condition requiring a detailed plan to that effect be submitted to and approved by the local planning authority is included in the SOCG. I agree that the suggested condition would be necessary to prevent undue noise and disturbance to future occupiers.
 15. Finally, the site lies within the St Luke's Conservation Area. Accordingly I have had regard to the need to preserve or enhance the character or appearance of the Conservation Area. From the Council's Conservation Area Guidelines and my observations on the site visit, I consider the heritage significance of the conservation area lies in its mixed uses; the special character of Whitecross Street, a medieval lane and home of London's oldest street market; the Church of St. Luke's and several important groups of Georgian and Victorian properties around it which contribute to its setting.
 16. There would be no change to the front elevation of the appeal property, and although the additional windows in the side elevation would be seen from Whitecross Road due to the set back of Coltash Court, the proportions and materials would match the existing windows. In order to meet Code Level 4 the development would include several photo-voltaic panels and it is unclear where the panels would be located on the development as they are not shown on the submitted plans. At the hearing the appellant indicated that the optimal position in terms of orientation would be on the flat roof of the second floor extension.
 17. The parties agreed that an amendment to Council's suggested condition 9 to include reference to the photo-voltaic panels would ensure that they would not be visible from the street, and in the suggested position behind the parapet wall that would be the case. Accordingly I am satisfied that with the inclusion of such a condition the heritage significance of the conservation area would be preserved.

Conditions

18. I have found that the development would be acceptable subject to certain conditions. The conditions I shall impose are based on those suggested by the

Council but with some variation in the interests of clarity and with regard to the 'tests' in the Framework. In addition to the standard time limit condition, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.

19. I shall require details of facing materials to be used in the development to be submitted and approved by the local authority, for the roof material to be tiles to match existing, and the prevention of equipment or structures placed on the front or side elevations or visible from the roof, all in the interests of visual amenity and to safeguard the character and appearance of the St Luke's Conservation Area.
20. I have specified the provision and retention of bicycle parking spaces and for the development to be car free, to promote sustainable modes of transport, and in the interests of highway safety.
21. Conditions requiring the development to meet Code Level 4 and to meet the Council's standards for accessible homes, incorporating all Lifetime Homes Standards are necessary to ensure sustainable development and the provision of flexible and adaptable homes.
22. In addition, further details of the sub-division of the communal terrace; provision and retention of obscure glazing to specified windows; and refuse and recycling storage are all required in the interests of residential amenity.
23. Finally I shall require the specified sound insulation measures between the ground floor commercial use and upper residential units to be carried out; for controls on the noise levels of new fixed plant equipment; and verification of the effectiveness of these measures to be produced prior to first occupation of the residential units; to safeguard residential amenity. These conditions would all meet the relevant tests set out in the Framework.

Conclusion

24. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

Claire Victory

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; 553-S01 P1; 533EX00 P1; 533EX01 P1; 533EX02 P1; 533EX03 P1; 533EX04 P1; 533EX05 P1; 533EX06 P1; 533EX07 P1; 533DE00 P2; 533DE01 P1; 533DE02 P1; 533GA00 P4; 533GA01 P4; 533GA02 P4; 533GARF P4; 533GE01 P4; 533GE02 P4; 533GS01 P4; 533GS02 P3; 533GA00-Lift P1; 533GA01-Lift P1; 533GA02-Lift P1; 533LH00 P1; 533LH01 P1; 533LH02; Daylight and Sunlight Study prepared by Behan Partnership LLP dated 11 July 2013; Lifetime Homes Standards prepared by Harper Downie Creative Architecture; Energy & Renewable Energy Statement dated July 2013; Code for Sustainable Homes Pre-Assessment Report dated July 2013; Preliminary Planning Compliance Report 9793.PPCR.01 prepared by KP Acoustics dated 13 May 2014; Noise Impact Assessment – Patron Noise Report 9793.NIA02 prepared on 15 May 2014.
- 3) Notwithstanding the approved plans, all new roof material shall be tiles to match existing.
- 4) Details and samples of all facing materials shall be submitted to and approved in writing by the local planning authority prior to any superstructure work commencing on site. The details and samples shall include:
 - a) solid brickwork;
 - b) window treatment (including sections and reveals)
 - c) balustrading/screening treatment to second floor terrace area;
 - d) any other materials to be usedThe development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.
- 5) The bicycle storage area shown on drawing no 533GA00 P4 hereby approved, which shall be secure and provide for no less than 8 bicycle spaces (1 per room) shall be provided prior to the first occupation of the development hereby approved and shall be maintained as such thereafter.
- 6) The development shall achieve a Code of Sustainable Homes rating of no less than 'Level 4'.
- 7) All future occupiers of the residential units hereby approved shall not be eligible to obtain an on-street resident's parking permit except:
 - a) In the case of disabled persons;
 - b) In the case of units designated in this planning permission as "non car free"; or
 - c) In the case of the resident who is an existing holder of a residents parking permit issued by the London Borough of Islington and has held the permit for a period of at least one year.

- 8) The residential dwellings, in accordance with the Design & Access Statement and plans hereby approved, shall be constructed to the standards for flexible homes in Islington ('Accessible Housing in Islington' SPD) and incorporating all Lifetime Homes Standards.
- 9) No new grilles, security alarms, lighting, cameras, boiler flues, downpipes, ventilation grilles, dustbin stores or other appurtenances shall be fixed on the front and side elevations of the building. No additional visible water tanks, plant equipment, photo-voltaic panels or other structures shall be fixed/placed on the roof of the building.
- 10) The dedicated refuse/recycling enclosure shown on drawing no. 533GA00 P4 shall be provided prior to the first occupation of the development hereby approved and shall be maintained as such thereafter.
- 11) Notwithstanding the plans hereby approved, the communal terrace space shown on drawing no. 533GA02 P4 shall be subdivided into two separate private spaces to be for the sole use of the 2 no. second floor residential units (unit 2.01 and 2.02). Full details of this revised terrace division shall be submitted to and approved in writing by the local planning authority prior to work commencing on site.
- 12) Full particulars and details of a scheme for sound insulation between the existing ground floor public house and the proposed residential use of the building shall be submitted to and approved in writing by the local planning authority prior to works commencing on site. The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter. The insulation and mitigation measures shall be implemented prior to first occupation of the development hereby approved.
- 13) Following completion of the measures identified in condition 12, a verification report, carried out by an appropriately experienced and competent person, that demonstrates the effectiveness of the sound insulation and noise mitigation measures carried out, must be produced which is subject to the approval in writing of the local planning authority. The report must be approved before occupation of the residential units.
- 14) The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level $L_{Aeq Tr}$ arising from the proposed plant, measured or predicted at 1m from the façade of the nearest noise sensitive premises, shall be a rating level of at least 10dB(A) below the background noise level $L_{AF90 Tbg}$. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142: 1997. A verification report, carried out by an appropriately experienced and competent person that demonstrates compliance with this condition must be submitted to and approved in writing by the local planning authority prior to the occupation of the residential units.
- 15) All windows shown on the plans hereby approved as being obscurely glazed shall be provided as such prior to the first occupation of the development and retained thereafter.