



# Appeal Decision

Site visit made on 30 July 2024

**by Sarah Housden BA (Hons) BPI MRTPI**

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

**Decision date: 12 August 2024**

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**Appeal Ref: APP/X5210/W/24/3336580**

**94 Mill Lane, London, NW6 1NH**

- 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 Mr Sunil K Radia against the decision of the Council of the London Borough of Camden.
  - The application Ref is 2022/5197/P.
  - The development proposed is Conversion of basement and part of ground floor to residential flat; construction of lightwell; new windows to side and rear elevations.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters and Main Issues

2. A Basement Impact Assessment (BIA) was submitted with the appeal, to respond to the second reason for refusal. The Council has had an opportunity to comment on the BIA as part of its submissions. As the appeal is being dismissed and since it would not affect the overall outcome, I have not sought further comments on the BIA from third parties and I am satisfied that no party would be disadvantaged as a result. I have taken the contents of the BIA into account in my determination of the appeal.
3. Following the submission of the appeal, the appellant provided a signed planning obligation by way of agreement under section 106 of the Town and Country Planning Act 1990 (the s106 agreement). This secures car-free housing and approval in principle for the basement works adjacent to the public highway, which are matters related to reasons for refusal 6 and 7. I am satisfied that the s106 agreement meets the relevant tests set out at paragraph 57 of the National Planning Policy Framework (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and that these matters have been satisfactorily addressed and do not need to be considered further.
4. The site is covered by an Article 4 Direction, which removes permitted development rights under Class MA of the General Permitted Development Order (2015) for the conversion of Class E premises to residential use.
5. Set in the context of the matters outlined above, the main issues in this case are:
  - The effect of the proposal on the vitality and viability of the Mill Lane Neighbourhood Centre;

- Whether or not the basement would be suitable for residential accommodation, having particular regard to flood risk and structural stability;
- The effect on the character and appearance of the Mill Lane street scene, having particular regard to the effect of the proposed lightwell and railings; and
- The effect on highway users, having particular regard to their safety and free passage.

## **Reasons**

### *Effect on Neighbourhood Centre*

6. The property is within the Mill Lane Neighbourhood Centre (NC) and occupies a prominent corner location at the Mill Lane/Broomsleigh Street junction. At the time of my site visit, the shop and No 94a Mill Lane (No 94a), which is the flat above, were both vacant and empty, and internally in need of refurbishment and repair.
7. Policy TC1 of the Camden Local Plan (2017) (the LP) seeks to focus new shopping and related uses in existing centres, and LP Policy TC2 seeks to retain convenience shopping for local residents in NCs and to ensure that development does not harm the function, character or success of the centres within the Borough. Housing within centres will be supported under Policy TC2 where it would not prejudice the town centre function and particularly the ability of the ground floor to be used for town centre uses.
8. The Fortune Green and West Hampstead Neighbourhood Plan (2015) (the NP) Policy 14 relates to the Mill Lane NC and requires development to promote a diverse range of shops, businesses and economic activity. It states that proposals to convert ground floor retail/business space into residential use will not be supported.
9. Whilst noting that the LP policies do not set out any specific requirements for marketing to assess proposals for non-retail uses, the explanatory text to Policy TC2 states that in NCs, the prospect of achieving an alternative occupier for vacant premises will be taken into account in assessing proposals for non-retail use. In this context, the submission of marketing details would be a relevant material consideration.
10. The marketing information submitted with the planning application and the appeal is very limited. There is no evidence to indicate whether the rental value of the property has been realistic based on its current usability and condition, to support the appellant's point that the size of the premises and the reduced rental value would be likely to attract more tenants. In the absence of more comprehensive marketing evidence, the Council's proposition that more could have been done to offer the space to community groups is a matter which attracts very limited weight in the determination of this appeal.
11. Eight units are identified in the appellant's appeal statement as being vacant. However, this does not represent a significant proportion of the number of units in the Mill Lane NC as a whole. At the time of my site visit, some of the vacant premises had been re-occupied, for example No 45 which is now a physiotherapy business, and shopfitting work was underway at No 53. Different

- units had become vacant but were available to let. Such turnover is a common feature of a healthy and functioning centre. Overall, the NC was busy and active. The presence of business premises open by appointment only is not unusual in retail centres, for example hairdressers, and I consider that their presence does not undermine the vibrancy or functioning of the Mill Lane NC.
12. At my site visit, and as set out in the appellant's statement of case, I was able to see that the bathroom on the existing ground floor serves No 94a, being situated behind the entrance door for the flat which is accessed via the lobby off Broomsleigh Street.
  13. Turning to the details of the proposals, the storage rooms and kitchen at basement level and the outside toilet currently serving the retail unit would become part of the proposed basement flat. Whilst only a small part of the current ground floor level retail floorspace would be lost, the loss of the basement storage, kitchen and toilet would be likely to render the shop unit much less suitable and commodious for prospective retail or commercial occupiers. The shop also currently has access to the rear yard via the gates off the rear alleyway, which would become the outdoor area serving the basement flat. The only shop entrance/exit would be the front door at the corner of the unit.
  14. The appellant states that the loss of the toilet facilities could be addressed by the installation of a toilet under the existing staircase. However, that does not form part of the proposed ground floor plan before me in this appeal and nor is it clear how this could be accommodated within the layout of the proposed shop. As such, a condition to secure its provision would not be reasonable.
  15. The ground floor retail floorspace remaining would be limited and inflexible with no ancillary facilities or rear access and it would be less attractive and convenient to prospective occupiers. Overall, I conclude that the proposal would undermine the commercial attractiveness of the retail unit at this prominent corner site and would adversely affect the vitality and viability of the Mill Lane NC. For these reasons, the proposal would be contrary to LP Policies TC1 and TC2 in so far as they seek to protect and enhance the role of centres and maintain a range of shops. There would also be conflict with NP Policy 14 in so far as it seeks to preserve or enhance the character of the Mill Lane NC.

#### *Basement works*

16. LP Policy A5 requires a BIA to support basement proposals, which should cover the impact on drainage, flooding, groundwater conditions and structural stability. The policy states that basement schemes will not be permitted which include habitable rooms and other sensitive uses in areas prone to flooding.
17. The site is within a Critical Drainage Area as set out in the Council's Strategic Flood Risk Assessment. The Lead Local Flood Authority (LLFA) states that it is in an area at risk of flooding as defined by the LP, with both Mill Lane and Broomsleigh Street having flooded in 1975, and Mill Lane again in 2002. The main entrance/exit to the proposed basement flat would be off Broomsleigh Street, and the proposal would involve the conversion of the basement to include living and bedroom space. The kitchen would be on the floor above at ground floor level accessed by a staircase, but it would have no means of external access from that level.

18. The BIA submitted with the appeal advises that the proposed lightwell could be at very low to low risk of water ingress from surface water flooding. It recommends a number of mitigation measures to reduce the potential for surface water to enter the lower ground floor including the development of a sustainable drainage strategy, and a barrier or wall rather than a railing surrounding the proposed lightwell to secure a 300 millimetre freeboard to minimise the risk of flood water ingress.
19. The LLFA response indicates that further localised information is required about the site, building and topography to ensure that the basement flat would not be at risk of flooding. A condition to secure these details is recommended in the event of the appeal being allowed.
20. However, the BIA's recommended measures include a barrier or wall around the lightwell, instead of railings. Whilst alternative solutions may be possible, there is insufficient information before me to establish that the necessary measures to minimise flood risk can be secured as part of the scheme that is the subject of this appeal. Furthermore, the use of a barrier or wall would have different implications for the visual impact of the development on the character and appearance of the area which would need to be addressed as part of the appeal proposal. In this context, the use of a condition to secure these measures would not be reasonable and would not meet the tests for conditions set out in the Framework.
21. The BIA does not include any information about the effect of the basement works on the structural integrity of the building. As such, it has not been demonstrated that the basement conversion can be satisfactorily achieved whilst ensuring the structural safety and integrity of the appeal building and adjoining properties.
22. Overall, I conclude that insufficient information has been submitted to demonstrate that the future occupiers of the proposed basement flat would not be at risk from flooding, and that the development would not adversely affect the structure of the building. There would be conflict with LP Policies A5 and CC3 in so far as they seek to ensure that basement development does not cause harm to neighbouring properties and water conditions in the area and does not increase flood risk.

#### *Character and appearance*

23. The addition of a lightwell and railings on the front elevation would enable a window to be provided at lower ground floor level to serve the basement flat. This would result in some change to the open and unobstructed views of the shop frontage on Mill Lane.
24. Whilst there are no lightwells or railings to the front of the units between Broomsleigh Street and Sumatra Road, the appeal property is also viewed in conjunction with the shop frontages to the west, between Broomsleigh Street and Ravenshaw Street. Black metal railings have been installed to the front of some units to define side boundaries, for example at Nos 76 and 78. Whilst I note that the lightwells and railings at Nos 60 - 62 and No 66 pre-date the adoption of the LP and NP policies, they are not unduly prominent or visually intrusive in the street scene.

25. I have assessed the proposal based on the current site context in which lightwells and railings are a feature in the street scene. As set out in the appellant's statement, the proposed railings would be 1.1 metres high and as a result, they would not be unduly tall or obtrusive. I am satisfied that had the appeal been allowed, further details of the materials, design and colour of the railings could have been secured by means of a condition to secure high quality design and materials.
26. Overall, I conclude that the proposed lightwell and railings would not cause material harm to the character and appearance of the area and there would be no conflict with LP Policy D1 in so far as it seeks to ensure that development respects local context and character. Whilst there would be a degree of conflict with LP Policy A5 and NP Policy 2, I have come to my conclusion based on the context of the appeal site and the details of the proposal before me.

#### *Safety of highway users*

27. Mill Lane serves residential, retail and business properties and is also a bus route and Broomsleigh Street is a residential road. There was a regular flow of people using the footway to the front of the appeal premises at the time of my site visit.
28. The proposed railings would extend approximately 1.8 metres into the concreted forecourt to the front of the shop unit, and would be 3.2 metres wide, which would result in a sizeable area being removed from the public highway. The frontage between Broomsleigh Street and Sumatra Road is relatively unobstructed, and I note that the ramp and railings at No 96 Mill Lane are subject to further investigation by the Council. The width of the footway is further reduced at this point by a bollard and a large plastic bin for the deposit of refuse from residential properties above the ground floor retail/commercial units.
29. The reduction in the available space on the footway would be likely to impede the flow of highway users, particularly people with pushchairs or using mobility devices, and who are visually impaired. This would particularly be the case as the reduction in space would be at a corner location, where the inter-visibility between highway users on Broomsleigh Street and Mill Lane is more restricted.
30. Overall, I conclude that the proposed lightwell and railings would be detrimental to the safety of highway users. There would be conflict with LP Policies T1 and C5 and NP Policy 9 which amongst other things, seek to promote safe and accessible streets and pavements for all users.

#### **Other Matters**

31. The proposal would deliver an additional dwelling to contribute to the Council's housing supply in a sustainable location, a matter to which I give some limited weight in favour of the scheme.
32. A number of points have been raised by local residents which are addressed as part of the main issues for the appeal.

### **Planning Balance and Conclusion**

33. I have found that the proposed lightwell and railings would not harm the character and appearance of the area. The s106 agreement would secure car free housing, but that is a requirement of LP Policy T2 and NP Policy 7 and is neutral in the overall planning balance. However, the proposal would undermine the vitality and viability of the Mill Lane NC and would be likely to harm the safety of highway users. Furthermore, it has not been satisfactorily demonstrated that future occupiers of the proposed basement flat could be safely accommodated having regard to flood risk, and that the proposal would not increase the risk of flooding elsewhere, nor that the structural integrity of the building can be safeguarded. Collectively, these matters weigh heavily against the appeal proposal and the material considerations in this case are not of sufficient weight to outweigh the conflict with the development plan, read as a whole.
34. For the reasons outlined above, and having had regard to all other matters raised, the appeal is dismissed.

*Sarah Housden*

INSPECTOR