
Appeal Decision

Site visit made on 3 October 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 10th November 2016

Appeal Ref: APP/T5150/W/16/3151892

1 A Streatley Road, Brent, London NW6 7LJ

- 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 Mr Gavin Essex, Central Link Properties Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 15/4517, dated 19 October 2015, was refused by notice dated 14 December 2015.
 - The development proposed is described as 'new residential development at the start of Streatley Road. The proposal is for three apartments; 3 x 2 bed apartments. This is a car free development'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - Whether the proposal would preserve or enhance the character or appearance of the North Kilburn Conservation Area and surrounding area;
 - The living conditions of future occupiers of the proposal with specific reference to outlook and light; and
 - The effect of the proposed development on the infrastructure of the Borough.

Reasons

Character and appearance

3. The appeal site is a triangular piece of vacant land that formerly housed a scout hut. It is situated to the south-east of Streatley Road at the end of a row of three storey terraced properties. To the south of the site lies Willesden Lane which is characterised by three storey Victorian buildings with commercial premises on the ground floor. The site lies within the North Kilburn Conservation Area (Conservation Area).
 4. The North Kilburn Conservation Area Character Appraisal/Management Plan (CACA) identifies that the special character of the area is based on the classical design of the buildings and decorative features, tree-lined streets, the small front gardens coupled with low boundary walls, small trees and shrubs and hedges that together form an attractive street scene. The houses in the
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Conservation Area are classically proportioned and styled. The buildings are highly decorative which is where the differentiation between the character of the streets is derived.

5. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
6. Paragraph 134 of the Framework confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.
7. The west side of Streatley Road has continuous red brick terraces of three storey traditional houses with slate or pantile roofs and timber sliding sash windows. The strong rhythm of the road is emphasised by the houses set on a consistent building line behind short front gardens typically with low masonry walls, the use of string courses and the pattern of raised fire walls and chimneys.
8. The houses have various decorative features on the facades including decorative arched entrance porches with fluted columns shared between houses, ground floor bay windows with stucco work and decorative metal balconies above, fenestration with decorative mullions and a heavy cornice above first floor level. Whilst there have been some alterations, the architectural features and detailing are still clearly legible. The terrace thus makes a significant contribution to the character and appearance of the Conservation Area.
9. The traditional properties on the opposite side of the road exhibit less architectural detailing and decorative features. I noted a gap in the terrace at the junction with Burton Road which was cleared presumably as a result of bomb damage and the site is now utilised as a park.
10. The site is bounded to the south by a gap formed by a gated service alley to the backs of the Willesden Lane shops. The alley forms a break in development and consequently the site is prominent in north western views from Willesden Lane and it is seen as part of the layout and pattern of housing on the south western side of the road. The site is currently vacant, boarded up and the single storey building which once occupied the site, was demolished in 2012. Consequently, I consider that the site detracts from the character and appearance of the Conservation Area.
11. The proposal seeks to continue the rhythm of the terrace but not replicate its detailing. The height and depth of the proposal reflects the overall scale and massing of the existing properties. The floor heights and window and door heights are also consistent with the existing properties, with the exception of the basement windows. The proposal maintains the existing building line of the terrace and the vertical emphasis of the terrace is maintained. The proposal also seeks to replicate certain features including the position and size of its

gable, paired dormers and double entrances, soldier courses and balcony rails. These factors weigh in favour of the proposal.

12. The frontage of the proposal is, however, almost a third wider than the frontages of existing properties and the proposed basement introduces a feature which is not characteristic of the existing street scene. The appellant contends that the fenestration pattern reflects that of the existing. However, whilst the windows in the dormer and the first floor 3 pane window reflect the fenestration pattern of the existing terrace, the wide patio doors of the recessed balconies would abruptly disrupt the rhythm of fenestration. Furthermore, the three storey bay element is crude and the design of the porch and windows lack the detailing of the existing terrace. These factors weigh against the proposal.
13. On balance, I consider that the simple, robust detailing of the proposal does not reflect the richness of the architectural detailing which gives light and shade to the façade of the existing terrace. The highly decorative features of the buildings form a key component of the significance of the Conservation Area and the local distinctiveness of this side of Streatley Road. Consequently, the proposal would disrupt the visual uniformity of the terrace and undermine the significance of the Conservation Area.
14. The appellant considers that the proposal's 'special position' at the end of the terrace and near a junction of the street justify a different approach. He also points to the previous building which was single storey. However, the previous building was clearly not part of the terrace visually, whereas the proposal seeks to become part of the terrace by virtue of its physical attachment, height and scale. Furthermore, I consider that it is particularly important to ensure that the proposal reflects the character and appearance of the Conservation Area given its important role in 'closing' the terrace and prominent location.
15. Attention is also drawn to an earlier planning permission¹ in which a modern design approach was accepted by the Council. Paragraph 3.1 of the CACA sets out principles to be adopted to guide Development Control decision making in conservation areas. Criteria v) states that the Council will not dictate the architectural style of any intervention but proposals must be either: a high quality, contemporary design that is at the same time sympathetic to the character of its context and neighbours or a well researched replication of the high quality historic design, scale, massing and detailing with strict replication of local materials. The Council deemed the earlier planning permission to fall within the remit of a high quality contemporary design. However, I find that the proposal falls between these two standards and thus undermines the character and significance of the Conservation Area.
16. I acknowledge that the site currently detracts from the character and appearance of the area at present, and that closing the gap in the street scene would be beneficial. However, I consider that this objective could be achieved by other means. Although the harm which I have identified is less than substantial and whilst the proposal would bring some benefits in terms of contributing to housing supply, I do not consider that the benefits would outweigh the significant harm which I have identified.

¹ Planning application reference 09/0102

17. Attention is drawn to paragraph 60 of the Framework which states that planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative. However, it goes on to say that it is proper to seek to promote or reinforce local distinctiveness and for the reasons stated above I consider that the proposal fails to meet this objective.
18. Attention is also drawn to two buildings which the appellant considers create a precedent for his case. No details are provided for those cases and it is not clear when they were built. From the very limited details before me I note that the case in Old Church Street is mid-terrace and the adjacent buildings have fewer decorative features than the west side of Streatley Road. The Macauley Road case relates to three modern buildings situated adjacent to semi-detached and detached traditional properties. These cases are not, therefore, directly comparable to the appeal proposal which limits the weight which I can attach to them in my Decision.
19. I, therefore, conclude for the reasons stated that the proposal would fail to preserve or enhance the character and appearance of the CA and the surrounding area to which I am required to have special regard and attention and to which the courts judge I am required to give considerable importance and weight.
20. The proposal is, therefore, contrary to Policy BE2 of the Brent Unitary Development Plan (UDP) 2004 which states that proposals should be designed with regard to their local context, making a positive contribution to the character of the area. Proposals should not have an unacceptable visual impact on Conservation Areas.
21. The proposal is also contrary to Policy BE9 of the UDP which seeks to ensure that new buildings, extensions and alterations to existing buildings should embody a creative and appropriate design solution, specific to their site's shape, size, location and development opportunities. Conflict also arises with Policy BE25 which states that development proposals and new uses in Conservation Areas shall pay special attention to the preservation or enhancement of the character or appearance of the area.
22. Furthermore, the proposal also conflicts with the Design Guide for New Development Supplementary Planning Guidance (SPG17) (2001) which seeks to encourage high quality design in all new development. Conflict also arises with paragraphs 17 and 56 of the Framework which seek to secure high quality design which contributes positively to making places better for people. Moreover, the proposal is also contrary to paragraphs 132 and 134 of the Framework.

Living Conditions

23. The Council is concerned that the kitchen/living area of apartment 1 on the lower ground floor would only be served by a narrow door looking out into the external courtyard which would restrict access to natural light and offer a poor level of outlook. Whilst the doors which would serve the kitchen/living area are double doors and there is also a roof light they are situated to the rear of the room and would have to serve the entire combined kitchen/living space. The kitchen area is situated some distance from the window/roof light and would, therefore, be gloomy.

24. Furthermore, although the external courtyard is relatively long it is, nevertheless, narrow and would be surrounded on all sides by 3.5m high wall, plus a further boundary wall of 1.82m on all sides giving a total height of 5.32m. Given the height of the walls, I am concerned that the kitchen/living area and the courtyard would receive little natural sunlight, particularly in winter months. Moreover, the narrowness and tapered shape of the courtyard and the height of the walls would foreshorten sightlines resulting in a poor outlook from the kitchen/living area and a sense of enclosure.
25. Two bedrooms of apartment 1 to the front of the building would also overlook an external courtyard. The height of the courtyard walls standing at over 5m would similarly restrict sunlight during the winter months, restrict outlook and create a sense of enclosure. Reference is made in the appellant's submissions to a daylight/sunlight study and an amended plan, however, neither the Study nor the amended plan is before me and I cannot, therefore, take them into account in my Decision.
26. Taking these factors in combination and in the absence of evidence to the contrary, I conclude that the proposal would result in poor living conditions for the future occupiers of apartment 1 (lower ground floor). The proposal would, therefore, be contrary to Policy 3.5 of the London Plan which seeks to achieve quality and design of new housing developments. Furthermore, the proposal would be contrary to saved Policies BE2 and BE9 of the UDP and SPG17. Furthermore, the proposal would be contrary to the Mayor of London's Housing Supplementary Planning Guidance (Housing SPG) (2016) which seeks to achieve a high quality of housing.

Infrastructure

27. The Council has advised that financial contributions are required towards the provision of community facilities due to the loss of the Scout Hut which previously occupied the site which was utilised by the 9th Willesden Scout group. The group vacated the premises and Conservation Area consent was granted for the building to be demolished in 2012.
28. The principle of the loss of this hut has been previously agreed by the Council in relation to an earlier application². Indeed an amount of £48,221.34 has been previously agreed to go towards the provision of community facilities and infrastructure in the area.
29. The appellant has contested the need for the contribution on the basis that the site has been vacant for a significant number of years, that there has been no community use on the site for over 12 years; that it has no current or potential use given its layout, overall size; and the fact that there is no useable building on the site itself. The appellant has, nevertheless, submitted a completed and signed 106 Unilateral Undertaking (UU) in the event that I decide that the contribution is necessary and had I decided to allow the appeal.
30. Policy CP23 advises that in order to ensure that the continuing needs of Brent's diverse community are met, existing community and cultural facilities, that support community participation and development will be protected, or their loss mitigated where necessary. The former scout hut would be classed as a community facility and, although the building/site has not been in use as such

² Application reference 09/0102 granted permission 17 September 2014 subject to a s106 legal agreement.

for a number of years, I am inclined to agree with the Council that this is due at least in part to the history of planning applications on the site. The scout hut was demolished in order to make way for development granted permission under a previous scheme and consequently the building is no longer available to be used by community groups. However, I have not been provided with any detailed evidence to define the extent of any local deficiencies in community facilities or the effect that the appeal proposal might have on them.

31. The Council indicate that the amount of £48,221.34 has been arrived at through consideration of the actual costs of implementing local infrastructure improvements equal to that which the site could provide. However, I have not been provided with any detailed evidence to show how that figure has been arrived at and no detailed information has been provided to show how and where the contributions would be spent.
32. Accordingly, I cannot be certain that the contributions sought would be directly related to the development and fairly and reasonably related in scale and kind. I am, therefore, unable to conclude that the contribution would meet the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and paragraph 204 of the Framework.
33. From 6th April 2015, Regulation 123 of the CIL Regulations states that no more than 5 obligations can be used to fund particular infrastructure projects or infrastructure types which could be funded through CIL. No specific information has been received from the Council in relation to the number of contributions which have been made towards specific projects or community facilities as a whole or indeed whether this type of contribution would be funded through the CIL. In the absence of this evidence I consider that the contribution would not meet the tests set out in Regulation 123 of the CIL Regulations.
34. Consequently, and notwithstanding the aims of development plan policy, it has not been demonstrated that the obligation to provide a contribution towards community facilities would comply with Regulations 122 and 123 of the CIL Regulations and paragraph 204 of the Framework. Therefore, although an obligation has been provided to address the contribution sought, it would not be lawful to take the obligation into account as a reason to grant planning permission.
35. Both parties agree that the proposed development should be 'car free'; however, a section 106 obligation was not before the Council when they determined the application. The appellant has since provided a 106 obligation in the form of an UU in order to withdraw the rights of future residents to on-street parking permits in the event that the appeal is allowed. Car parking standards for residential uses are set out in standard PS14 of the UDP. The proposal would generate a parking standard of 2.1 spaces and as no off-street parking is proposed, the maximum standard has not been complied with.
36. Policy TRN23 of the UDP requires the effect on on-street parking to be assessed when the standard cannot be met. However, I noted at the time of my site visit (1530) that Streatley Road and surrounding streets were heavily parked and this is likely to increase in the evening and overnight and consequently I consider that on-street parking arising from the proposal could not be safely accommodated.

37. Policy TRN23 exceptionally permits 'car-free' housing development in areas with good public transport accessibility on the basis that occupants of the proposal are not granted parking permits. The site has good access to public transport and I, therefore, consider that car-free housing would be appropriate in this location.
38. The UU ensures that the obligation is enforceable against current owners or occupiers and subsequent residents. For the reasons stated above I am satisfied that the permit free development obligation of the UU is necessary to make the development acceptable and is directly related to the development. I am, therefore, satisfied that the obligation meets the tests set out in Regulation 122 of the CIL and paragraph 204 of the Framework.

Planning Balance

39. The proposal is in a sustainable location within close distance of the town centre, services and shops. The proposal would also make a contribution to the economic dimension of sustainable development in the short term during the construction phase, in addition to the long term support of local shops and services. The proposal would contribute to the social dimension by way of a contribution, albeit limited, to housing land supply. However, the proposal would harm the living conditions of future occupiers.
40. Furthermore, for the reasons stated above, the proposal would not meet the environmental dimension of sustainable development as set out at paragraph 7 of the Framework. The proposal would not, therefore, constitute sustainable development. In any event, I consider that the totality of the harm which I have identified would significantly and demonstrably outweigh the benefits of the proposal.

Conclusion

41. For the reasons stated above and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector