The Planning Inspectorate

Appeal Decision

Site visit made on 12 December 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 11 January 2017

Appeal Ref: APP/V5570/W/16/3158054
Syracusae, 134 Liverpool Road, Islington, London N1 1LA

- 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 John Koratjitis against the decision of the Council of the London Borough of Islington.
- The application Ref P2015/4091/FUL, dated 25 September 2015, was refused by notice dated 10 August 2016.
- The development proposed is "partial demolition of existing buildings and extensive basement excavation of the entire site to facilitate the construction of 3no. residential single dwelling houses comprising a 2 storey plus basement level 1 x 2-bedroom house and a four storey plus basement level 2 x 4 bedroom houses, communal and amenity spaces and other associated works and alterations to the sites existing boundary walls".

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development provided by the application form has been amended in subsequent documents. I adopt the description provided by the appeal form accordingly.

3. A Unilateral Undertaking (UU) made under Section 106 of the Planning Act was submitted as part of this appeal. The UU includes obligations relating to contributions to affordable housing and to offset carbon dioxide omissions, together with restrictions upon occupants of the site relating to resident parking permits.

Background and Main Issues

4. A previous appeal decision[1] has been brought to my attention relating to proposed redevelopment of the site that was similar to the proposal before me in so far as it related to part demolition of the existing buildings and basement coverage over the entire area of the site. The previous Inspector found no harm relating to the effect on the provision of business floorspace or the impact of the basement upon the structural integrity of surrounding properties, including nearby listed buildings. However, the previous appeal was dismissed due to unsatisfactory living conditions for future occupants, the impact of the basement excavations upon the health and longevity of adjoining trees and

[1] APP/V5570/A/14/2225785 – Dismissed – 23 December 2014

failure to demonstrate an acceptable level of energy efficiency or reduction in carbon emissions.

5. The concerns of the previous Inspector relating to living conditions for future occupants have been overcome by evidence provided within a BRE[2] compliant sunlight and daylight report, and conformity with internal floorspace and private outdoor space standards. In addition, a tree survey and arboriculture assessment demonstrate that there would be no adverse impact on the health and longevity of adjoining trees given the difference in soil levels and the presence of an existing boundary wall which restricts the existing root systems. However, the Council has identified a number of concerns relating to the development proposed and the inclusion of on-site parking spaces.

6. Having regard to all of the above, the main issues are:

   - the effect of the development in relation to the character and appearance of Barnsbury Conservation Area, with particular regard to the structural integrity of adjoining properties, including listed buildings, landscape and biodiversity;
   - the effect of the development in terms of drainage and energy efficiency, and;
   - whether the proposed car parking arrangements would be suitable, with particular regard to highway safety, flood risk, air quality and healthy lifestyles.

Reasons

Character and appearance

7. Barnsbury Conservation Area is characterised by predominantly Georgian and Victorian housing arranged in a sequence of squares and terraces, the former of which are characterised by the verdant setting of buildings provided by gardens, mature trees and well established planting. Liverpool Road, where the appeal site is located, is a main route running broadly north to south through the Conservation Area between a number of the squares.

8. The appeal site is in a backland position accessed from Liverpool Road and is tightly enclosed by three storey buildings on all sides. Aside from the building facing Liverpool Road below which site access is taken, public views into the site are limited to a gap between the terraces facing Gibson Square and Milner Place, which consist of Grade II listed buildings.

9. The Council has offered no objection to demolition of part of the existing buildings or the appearance and contemporary form of the proposed development, subject to control of materials. Based on the evidence before me and my observation of the site and its surroundings, I have no reason to take a different view. I am, therefore, satisfied that the character and appearance of the Conservation Area and the setting of the Grade II listed buildings would be preserved by the development visible above ground. In reaching this finding, I have taken account of the limited prominence of the site, the neutral effect of the existing buildings on the significance of the heritage assets and that the

[2] Building Research Establishment 'Site Layout Planning for Daylight and Sunlight - a guide to good practice.

scale and massing of the replacement buildings visible above ground would remain similar to those existing.

10. Following the earlier Inspector's appeal decision I have previously referred to and prior to the Council making its decision, the Islington Basement Development Supplementary Planning Document (SPD) was adopted in January 2016 and is a material consideration when determining this appeal. The SPD provides guidance to assist in the interpretation of Policy CS8 of Islington's Core Strategy (CS), adopted February 2011, in terms of the scale of development reflecting the character of the area. In this respect, there are also links to Policy CS9 of the CS in so far as it seeks to protect and enhance Islington's built and historic environment, which includes Conservation Areas and nearby listed buildings. The Basement Development SPD also aligns with the National Planning Policy Framework (the Framework).

11. The Framework seeks that planning policies and decisions should ensure that new development is appropriate for its location, to prevent unacceptable risks from, amongst other things, land instability[3]. In this respect, decisions should also ensure, amongst other things, that adequate site investigation information, prepared by a competent person, is presented[4]. This is supplemented by Planning Practice Guidance (PPG) which states that the planning system has an important role in considering land stability by, amongst other things, minimising the risk and effects of land stability on property, infrastructure and the public[5].

12. The Basement Development SPD sets out the requirement for site investigations to inform the design of basements. This includes that a Structural Method Statement (SMS) must be submitted in support of any application for basement development, together with the detailed requirements of investigations to be undertaken. The SPD also includes design considerations, including guidance relating to the depth and extent of basement development within a site, together with related factors such as landscape, flood risk, sustainable design and relationship to heritage assets.

13. During my visit, I observed that basements are a feature of the surrounding area, including to Nos. 132 and 136 Liverpool Road located at either side of the access and the terraced properties facing Gibson Square and Milner Place, consisting of Grade II listed buildings. Nevertheless, the site coverage and depth of the proposed basement excavations are considerable. The excavation required to achieve the basement level accommodation and vehicular access to car parking identified on the submitted plans would extend to each boundary of the site, including works undertaken in close proximity to the existing foundations of Nos. 132 and 136 Liverpool Road.

14. Evidence provided by an interested party includes the professional opinion of a qualified civil engineer and expert in ground engineering that the excavation below the foundation level of No 132 along both its northern and eastern sides would cause substantial movement and damage to that property. In particular, the concerns relate to the depth of excavations below the foundations of No 132 and within its zone of influence as indicated on Proposed Section MM,

[3] The Framework, Paragraph 120
[4] The Framework, Paragraph 121
[5] PPG, Land Stability, Paragraph: 001 Reference ID: 45-001-20140306 Revision date: 06 03 2014

together with the necessity for very substantial retaining walls. No technical evidence has been provided by the appellant relating to this matter.

15. Based on the evidence before me, the extent of ground excavations required to construct the development and the close proximity to surrounding residential properties, particularly Nos. 132 and 136 Liverpool Road, would introduce the potential for unacceptable risk to their structural integrity. The level of risk to the nearby Grade II listed buildings facing Gibson Square would appear to be considerably less due to the greater separation distances involved from the boundary of the site and differences in land levels. However, given the listed buildings adjoin closer properties this does not prevent the potential for harm to occur. In this respect, I have taken into account that the depth of parts of the basement development would exceed the maximum 1 storey depth indicated in the guidance in the Basement Development SPD. As a consequence, the risk associated with the development would reasonably necessitate site specific ground investigation as part of a SMS to take place, rather than a desk-based investigation.

16. In the absence of such details, I consider that it would be premature to grant permission for such a development. Based on the evidence before me, I am not satisfied that a condition requiring a ground investigation of the site would in itself overcome or mitigated the potential risks identified. This is noting that outcome of ground investigation works could influence the depth and extent of basement development that would be acceptable. The proposal should set out now what mitigation measures (if any) would be necessary to prevent unacceptable risk from the development to local land stability and the structural integrity of adjoining properties, including nearby listed buildings.

17. In reaching the above findings, I have taken into account that the previous Inspector considered that a condition could be imposed to ensure that works are carefully controlled and that the structural condition of adjoining properties is known prior to work commencing. However, I do not have the full details of the earlier scheme or evidence that was before the previous Inspector that led to such a view. Furthermore, the appeal decision was also prior to the adoption of the Basement Development SPD which specifies the need for a SMS as part of any application and sets out circumstances, relevant to this appeal, where physical site investigations may need to be undertaken. In such circumstances, I have reached my own conclusions on the basis of the evidence before me and the risks identified relating to the structural integrity of adjoining properties.

18. The proposal exceeds the Basement Development SPD guidance in terms of the basement occupying an area of the site larger than above ground building footprints. However, as the extent of underground development associated with the basement levels would not be visible above ground with only modest lightwells, it would not in itself have a harmful effect on the character of the Barnsbury Conservation Area and the setting of nearby listed buildings relative to Policies CS8 and CS9 of the CS. However, there is insufficient information to demonstrate that the basement excavations required to facilitate the development would protect Islington's existing built environment and conserve its heritage assets. Consequently, the proposal is, therefore, in conflict with Policy CS9 of the CS.

19. Policy DM6.5 of the DMP seeks to protect, contribute to and enhance the landscape, biodiversity value and growing conditions of any development site and its surroundings. As previously mentioned, based on the evidence before me, I am satisfied that there would not be an adverse impact on the trees within the rear gardens of properties along Gibson Square that positively contribute to the verdant character of the area. In addition, the inclusion of planters with soil depth of 1.5m, green walls and green roofs, would represent a limited enhancement to landscaping and biodiversity within the site that comprises predominantly buildings and hardstanding as existing. The proposal, therefore, would not conflict with Policy DM6.5. However the absence of concern in this respect does not justify the harm otherwise identified.

20. I conclude that there is insufficient evidence to demonstrate that the proposed basement excavation would not result in an unacceptable risk to the structural integrity of adjoining properties in Barnsbury Conservation Area, including listed buildings. The proposal consequently fails to demonstrate that it would preserve or enhance the character and appearance of the Barnsbury Conservation Area and the nearby Grade II listed buildings. The development is, therefore, contrary to Policy CS9 of the CS and the guidance in the Basement Development SPD, in so far as the policy seeks to protect Islington's built environment and conserve heritage assets, and paragraphs 120 and 121 of the Framework.

21. As the site is in a conservation area, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. Section 66 of the same Act requires special attention to be paid to the desirability of preserving listed buildings and their settings. Paragraph 131 of the Framework requires that account be taken of the desirability of sustaining and enhancing the significance of heritage assets, and of new development making a positive contribution to local character and distinctiveness.

22. Rather than make the positive contribution desired by paragraph 131 of the Framework, the proposal due to the unacceptable risk to the structural integrity of adjoining buildings in Barnsbury Conservation Area and Grade II listed buildings, has the potential to significantly harm local character and distinctiveness. Paragraph 132 of the Framework states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation. The Framework also makes it clear that significance can be harmed or lost through alteration of a heritage asset or development within their setting.

23. With regard to the above, the proposed development does not demonstrate that there would not be an unacceptable risk to adjoining buildings to an extent that could lead to substantial harm or even total loss of significance of designated assets. There is no substantive evidence before me that redevelopment of the site could not otherwise be achieved without the potential harm resulting from the proposal. Consequently, the redevelopment of the site and any associated benefit does not constitute a public benefit which would outweigh the substantial harm or loss of significance.

Drainage and energy efficiency

24. Policy DM6.6 of the DMP requires a reduction in existing surface run-off levels where possible. There is no evidence before me that the site is located in an area considered at high risk of flooding. Furthermore, taking into account that buildings and hardstanding currently occupy almost the entire site, I consider it unlikely that the development would significantly increase surface run-off or reduce the permeability of the site. In this respect, the inclusion of SUDs[6] attenuation tanks would appropriately address surface water management and drainage within the site to support the development.

25. Policy DM7.2 of the DMP requires development to achieve best practice energy efficiency standards in terms of design and specification. The development incorporates energy efficiency measures as set out in a Sustainable Design and Construction Statement submitted by the appellant. I am satisfied that if these details were secured by condition if the appeal were to be allowed, there would be no conflict with Policy DM7.2.

26. I conclude that the development would not have a harmful effect in terms of drainage and energy efficiency. The proposal would not, therefore, conflict with Policies DM6.6 and DM7.2 of the DMP or the Framework in those respects.

Car parking arrangements

27. Policy CS10 of the CS in seeking a sustainable design of development requires, amongst other things, that all new developments are car free. The associated definition is that car free development means no parking provision will be allowed on-site and occupiers will have no ability to obtain car parking permits, except for parking needed to meet the needs of disabled people. The explanatory text indicates that requiring new residential developments to be car-free will help to reduce traffic congestion and associated pollution from new developments.

28. Policy DM8.5 of the DMP supplements Policy CS10 of the CS and states that applications for vehicle parking within the curtilage of existing residential properties will be refused. In addition, it states that no provision for vehicle parking or waiting will be allowed for new homes, except for the essential drop-off and wheelchair-accessible parking, and that in line with the Core Strategy, all additional homes will be car free.

29. The site and the surrounding streets are within a Controlled Parking Zone with resident permit holder restrictions from Monday to Friday between 0830 - 1830 and on Saturdays between 0830 - 1330. There are also additional on street parking restrictions in the form of double yellow lines and markings associated to a pedestrian crossing along nearby sections of Liverpool Road. During my visit to the site in the morning, I observed that demand for on-street parking spaces in the local area and surrounding streets was high. The occupancy of spaces was close to capacity, which is an indicator of parking stress.

30. The UU is signed, dated and executed and would ensure that the development would be resident parking permit free in accordance with Policy CS10 of the CS. Consequently, it would, be necessary to make the development acceptable in an area of parking stress. Furthermore, as it would only apply to the occupants at the site it would be directly related to the proposed development

[6] Sustainable Urban Drainage Systems

and reasonably related to it in scale and kind. The UU would therefore accord with paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) with regard to its planning obligation that the development would by resident parking permit free which is attributed weight in the planning balance.

31. The site has an existing access from Liverpool Road with an area of established hardstanding in front of the existing buildings that would appear to be capable of accommodating off street parking for up to 3 vehicles. A fallback position of on-site parking associated to the use of the existing buildings for residential purposes has been established by a prior approval previously granted by the Council for 3 self-contained residential units.

32. With regard to the above, the development would involve the loss of the existing on-site parking, with alternative provision provided via basement excavations to facilitate the provision of 3No. car parking spaces, a vehicle platform lift and car turntable. In this respect, there would be conflict with Policies CS10 of CS and DM8.5 of the DMP in so far as the proposal comprises new development which would be served by on-site parking. However, in the particular circumstances of this case, the proposal would not result in a net increase of parking demand or on-site parking provision when compared to the existing fallback position which is attributed significant weight. Consequently, there would be no harm arising in terms of highway safety, traffic congestion, air quality and healthy lifestyles.

33. The Council have expressed additional concerns relating to the car parking provision proposed in terms of visual amenity, biodiversity and flood risk. However, based on the evidence before me and my observations of the site, there would be no harm in those respects. The underground car parking area, vehicle platform lift and car turntable would not be visible from public vantage points. Furthermore, the development would not significantly increase surface run-off or reduce the permeability of the site. There would also be limited enhancements to landscaping and associated biodiversity within the site that is predominantly buildings and hardstanding as existing.

34. The precedent of an existing development at Islington Square with underground car parking provision is offered little weight given its significantly different character and development plan context when compared to the proposal before me. I agree with the Council that the type of vehicle to be parked within the site would be difficult to enforce. In any case, restrictions on vehicle types or limitations to wheelchair-accessible parking would not be necessary in circumstances where harm has not been identified.

35. I conclude that the proposed car parking arrangements would be suitable and would not result in harm to highway safety, flood risk, air quality and healthy lifestyles. There is limited conflict with Policy CS10 of the CS and Policy DM8.5 of the DMP in so far as the development would be served by on-site parking. However, this is outweighed by the absence of harm due to the particular circumstances of the site, including the fallback position of on-site parking associated to residential occupation of the site and an absence of net additional car parking demand or provision. The development accords with paragraph 32 of the Framework in that there would be no severe residual cumulative impacts arising from the development on transport grounds.

Other Matters

36. The proposal would provide economic benefits arising from CIL revenue associated with the additional floorspace proposed and short term benefits relating to the necessary construction works. However, the extent of these benefits are limited by the scale of development proposed and do not outweigh the harm identified.

37. During my visit, I observed significant opportunities from within the upper levels of the existing buildings to look down and into the rear gardens of neighbouring properties. These relationships would be improved by the design and layout of the dwellings which have appropriately positioned windows, outside spacing and screening, the latter of which could be controlled by condition. I am, therefore, satisfied that there would be no additional impact from the proposal on the living conditions of occupiers in terms of overlooking, privacy or light pollution when compared to the existing buildings. However, the absence of concern in this respect is a neutral factor.

38. The vehicle platform lift would operate in close proximity to neighbouring properties, particularly 132 Liverpool Road, which could have the potential to create noise and disturbance. There would also be potential noise and vibration generated by underground vehicle parking and the use and maintenance of proposed swimming pools. There is no evidence relating to the levels of noise and vibration that would result and whether mitigation would necessary and / or feasible. However, as the appeal is to be dismissed based on harm otherwise identified relating to the basement excavation, it is not necessary for me to pursue this matter any further.

39. The UU also includes planning obligations relating to financial contributions towards affordable housing and energy efficiency and carbon reduction in seeking to meet the requirements of Policy CS12 of the CS and Policy DM7.2 of the DMP. Taking into account the Council's evidence submitted to this appeal, the Government's Written Ministerial Statement of November 2014 on affordable housing contributions and the associated guidance in the PPG[7], the former is a potential benefit to which I attach some weight. However, as the appeal is to be dismissed based on its substantive merits, it is not necessary for me to look in detail at these obligations as they would not alter the outcome of this appeal.

Conclusion

40. I have considered the public benefits of the development which are limited given that the proposal would be a private redevelopment. The absence of harm relating to landscaping, biodiversity, drainage, energy efficiency and car parking arrangements, together with the limited benefits of the proposal do not outweigh the harm in terms of insufficient evidence to demonstrate that there would not be an unacceptable risk to the structural integrity of adjoining properties, including listed buildings. The harm is significant and overriding given the consequent failure to demonstrate that the character and appearance of the Barnsbury Conservation Area and the nearby Grade II listed buildings would be preserved with potential for substantial harm to the significance of the heritage assets.

[7] PPG, Planning obligations, Paragraph: 031 Reference ID: 23b-031-20160519, Revision date: 19 05 2016

41. For these reasons and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Gareth Wildgoose

INSPECTOR