
Appeal Decision

Site visit made on 9 January 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 23rd January 2017

Appeal Ref: APP/V5570/W/16/3161073
10 Chapel Market, Islington, London N1 9EZ

- 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 Chuni Kahan, Barron Properties against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2750/FUL, dated 7 July 2016, was refused by notice dated 19 September 2016.
 - The development proposed is erection of first floor rear extension and mansard roof extension to provide 2 x1 bed self-contained flats.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Chuni Kahan, Barron Properties against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:
 - Whether the proposal would result in the loss of a family home and add to the over-supply of small sized units in the Borough; and
 - The effect of the proposal on the character and appearance of the host property and the Chapel Market/Penton Street Conservation Area; and
 - Whether the proposal should make appropriate provision for affordable housing.

Reasons

Over-supply of small sized units

4. Policy DM3.3 of Islington's Local Plan: Development Management Policies (DMP) 2013 relates to residential conversions and extensions and states that in order to maintain a supply of larger homes to meet Islington's housing need the conversion of residential units will normally only be permitted where the total floor area is in excess of 125m² (gross internal) and the proposal meets a number of criteria.
 5. The supporting text clarifies that limiting the supply of one bedroom units in favour of delivery of two and three bedroom units is in order to contribute to the housing size mix requirement identified in Table 3.1 of the DMP which is based on an analysis in the 'Balancing Housing Markets Assessment' (BHM).
-

6. Policy DM3.3 of the DMP is consistent with paragraph 47 of the National Planning Policy Framework (the Framework) which states that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area.
7. Furthermore, there is consistency with paragraph 50 of the Framework which states that local planning authorities should plan for a mix of housing based on current and future demographic trends and the needs of different groups in the community and identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand. Significant weight can, therefore, be attached to Policy DM3.3 of the DMP in my Decision.
8. The floor area of the existing unit is 60 m² which is significantly smaller than the 125 m² threshold set out in Policy DM3.3. The appellant contends that the 125 m² standard would be met once the extensions proposed in the appeal proposal are taken into account; however, this is not the policy test. The proposal would result in the loss of a family unit and it would create two one bedroom units thus adding to the cumulative oversupply of small sized units. The proposal, therefore, conflicts with Policy DM3.3 of the DMP.
9. It is suggested that the existing property cannot be considered a family housing unit worthy of retention due to its size, location above a commercial unit on a busy high street, outlook and the lack of external amenity space. In a densely populated area it is not unusual for residential units to be situated above commercial units and this in itself does not make the existing flat unsuitable for family accommodation. In addition, I note that the existing flat roof is used, albeit informally, as amenity space by the existing occupants and that there is amenity space in close proximity at Culpepper Park.
10. Furthermore, the existing unit which comprises two bedrooms, a bathroom, a living room and kitchen has functioned in its current configuration for some time and overall I consider that it provides a good standard of accommodation. Consequently, there is no substantive evidence before me to justify a departure from Policy DM3.3 of the DMP.
11. For the reason stated I conclude that the proposal would result in the loss of a family sized unit and add to the oversupply of small sized units and would, therefore, be contrary to Policy DM3.3 of the DMP. Conflict would also arise with criterion E of Policy CS12 of Islington's Core Strategy (Core Strategy) (2011) which requires a range of unit sizes within each housing proposal to meet needs in the borough including maximising the proportion of family accommodation in both affordable and market housing and resisting the loss of existing units that are appropriate for the accommodation of families.

Character and appearance

12. The appeal property lies within the Chapel Market/Penton Street Conservation Area (the Conservation Area). The Islington's Conservation Area Design Guidelines (CADG) (2002) states that despite alterations and changing commercial requirements many of the old Georgian houses have survived to give this area a special historic and architectural character and appearance which it is desirable to preserve and enhance. The buildings on the northern side of Chapel Market are well preserved on their front elevations.

13. The appeal property is a three-storey mid-terrace traditional building containing a ground floor commercial unit with a residential maisonette flat in the first and second floors. With the exception of the flue the rear elevation of the property appears to be largely unaltered, including the traditional butterfly roof. There have been alterations to the front elevation including a modern shop front and fascia and replacement windows. Nonetheless, the architectural features and detailing are clearly still legible. I, therefore, consider that the appeal property makes a positive contribution to the character and appearance of the Conservation Area.
14. 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.
15. 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.
16. The Council considers that the principle of the mansard roof extension is supported, subject to the reduction in the size of the windows, due to the presence of visible mansard roof extensions in the vicinity. It considers that the size of the dormer windows could have been addressed by way of a condition. From everything which I have seen in submissions and on my site visit I have no reason to disagree.
17. Paragraph 33.15 of the CADG states that full-width rear extensions higher than one storey or half width rear extensions higher than two storeys will not normally be permitted unless it can be shown that no harm will be caused to the character of the area. Paragraph 33.16 explains that this is in order to preserve the scale and integrity of the existing building by ensuring that extensions are subordinate to the mass and height of the main building.
18. The proposal to erect a full width extension at first floor level would cover a large portion of the rear elevation and would, therefore, dominate this elevation and fail to appear subservient to the host property. Furthermore, the proposal would disrupt the traditional architectural hierarchy of the property.
19. The large format fixed window would be in stark contrast to the vertically proportioned modest windows on the rear elevation of the host property. In addition, the proposed glazed balustrade would draw further attention to the detrimental appearance of the extension and introduce a feature which is not characteristic of the area.
20. Moreover, the proposal would be visible from Tolpuddle Street and the car park of the superstore to the north-east of the application site. Thus the proposal would, therefore, have a harmful effect on the character and appearance of the Conservation Area and would thus be in conflict with the CADG.
21. Contrary to the assertion that the heritage value of the building is solely upon the front elevation, I consider that the less formal arrangement to the rear forms an important contrast to the more ordered, uniform composition of the front elevation

and is an important element of the architectural hierarchy of the building and wider terrace.

22. The appellant contends that the proposal would be seen within the context of other extensions in the terrace. However, the Council clarify that where rear extensions exist, for example at numbers 8 and 14 Chapel Market, they are either historic extensions which pre-date the current development plan or were constructed without the benefit of planning permission. None of these cases are directly comparable to the appeal proposal which limits the weight I can attach to them in my Decision.
23. The proposal may provide some benefits in terms of making a contribution, albeit limited to housing supply. However, whilst the harm arising from the proposal may be less than substantial, the public benefits of the proposal would not outweigh the harm which I have identified.
24. For the reasons stated I conclude that the proposal would harm the character and appearance of the host property. Furthermore, it would fail to preserve or enhance the character and appearance of the Conservation 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.
25. The proposal would, therefore, be contrary to Policies CS8 and CS9 of the CS which together seek to protect and enhance Islington's character and built and historic environment. Conflict also arises with Policy DM2.1 which states that all forms of development are required to be of high quality, and make a positive contribution to the local character and distinctiveness of the area. Furthermore, there is conflict with Policy DM2.3 which requires that alterations to existing buildings in conservation areas conserve or enhance their significance.
26. Moreover, conflict arises with the Islington Urban Design Guide Supplementary Planning Document (2006) which states that there is sometimes scope for roof terraces above flat topped rear addition depending on the impact of the design and massing of the balustrading upon the rear elevation. Conflict also arises with the CADG. Finally, conflict arises with paragraphs 132 and 134 of the Framework.

Affordable housing

27. Criterion G of Policy CS12 of Islington's Core Strategy requires that 50% of additional housing to be built in the Borough over the Plan period should be affordable. In addition, all sites capable of delivering 10 or more units gross should provide affordable homes on-site. Schemes below this threshold will be required to provide a financial contribution towards affordable housing provision elsewhere in the Borough.
28. The requirement to meet the affordable housing need identified in the Islington's Housing Needs Study 2008 is consistent with paragraph 47 and 50 of the National Planning Policy Framework (the Framework) which requires local planning authorities to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area and where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly identified. Furthermore, the Policy is consistent with Policy 3.13 of the London Plan which states that boroughs are encouraged to seek a lower threshold through the LDF process where this can be justified in accordance with guidance.

29. The London Borough of Islington Affordable Housing Financial Viability Assessment-Sub-Threshold Contributions 2011 examined the level of financial contribution likely to be viable for the majority of developments in the Borough with fewer than 10 residential units. It provides the evidence base for the Islington Affordable Housing Small Sites Contributions Supplementary Planning Document (SPD) 2012. The SPD requires all minor residential developments resulting in the creation of one or more additional residential unit(s) to provide a commuted sum of £50,000 per unit towards the costs of providing affordable housing units on other sites within the Borough.
30. The supporting text of Policy CS12 recognises the need for a flexible approach taking account of economic circumstances. In addition the SPD recognises that there may be site-specific circumstances which give rise to viability issues and states that, in such circumstances, the Council will accept viability assessments. This flexibility ensures that the policies and guidance are consistent with paragraph 173 of the Framework which sets out that, to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
31. The proposed development would create two new residential units and thus in accordance with Policy CS12 and the SPD, a contribution of £100,000 towards the cost of providing off-site affordable housing would be required unless it can be demonstrated that it would not be viable to make the full contribution. The appellant has not provided written confirmation of an agreement to make this contribution and has not submitted a viability assessment. Consequently, the appeal proposal does not accord with Policy CS12 of the SPD.
32. The Written Ministerial Statement¹ (WMS) stated that for developments of 10 units or less and which have a maximum combined gross floor space of no more than 1000sqm, no affordable housing or tariff style contributions should be sought. The WMS had been ruled unlawful following a legal challenge². However, on 13 May 2016 the Court of Appeal³ overturned the High Court decision so that the WMS is now Government policy. This is reflected in subsequent alterations to the Planning Practice Guidance (PPG)⁴ in respect of planning obligations for affordable housing and social infrastructure contributions.
33. In light of the conflict between Government policy and development plan policy the appellant points to Section 38(5) of the Planning and Compulsory Act (the Act) 2004 in support of his case and contends that the proposal should be considered in the context of the WMS, the latest policy to be published. However, Section 38(5) applies only where a policy of one development plan is in conflict with that of another development plan.
34. Section 38(6) of the Act requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Furthermore, paragraph 196 of the Framework states that the planning system is plan-led. The WMS is a material consideration

¹ House of Commons: Written Statement (CWS50) 28 November 2014

² West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government CO/76/2015 [2015] EWHC 2222 (Admin)

³ Secretary of State for Communities and Local Government v West Berkshire District council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

⁴ Planning Practice Guidance paragraphs 013-017, 019-023 and 031.

which should be afforded considerable weight and which needs to be addressed alongside development plan policy. Where there is conflict between Government policy and the development plan it is for the decision maker to decide how much weight to give to relevant policies with regard to material considerations including local circumstances.

35. The Council's statement sets out updated information relating to housing need and affordability in the Borough and the significance of small sites to the Borough. The information draws on the evidence base assembled to inform the Mayor's Housing Strategy⁵ which shows that the average house price of a residential property in Islington has increased by 56% since 2007 and at June 2016 was £657,755, amongst the highest in England and Wales. Median and lowest quartile incomes are both around 16 times below the median and lowest quartile house prices which represents a considerable affordability gap. Furthermore, the Council's evidence shows that approximately one third of new housing delivery in the Borough comes from small sites of 10 units or less. The evidence of affordable housing need has not been disputed by the appellant.
36. The WMS seeks to reduce the disproportionate burden of contributions on small scale developers. Whilst the proposal would make a contribution to housing supply, I have not been provided with any substantive evidence such as a viability appraisal to demonstrate that making the required contribution would render the appeal proposal unviable or that the contribution would be a disproportionate burden. I, therefore, have no evidence that a payment of a contribution towards the cost of providing off-site affordable housing would prevent the development from coming forward.
37. Overall, there is substantial evidence of considerable affordable housing need in Islington and it has been demonstrated that small sites make an important contribution to affordable housing delivery in the Borough. I attach very significant weight to this consideration.
38. Consequently, on the basis of the evidence before me the contribution sought would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The contribution would, therefore, meet the 3 tests set out in Regulation 122(2) of The Community Infrastructure Levy Regulations 2010.
39. Whilst the WMS is a material consideration of very considerable weight, based on the local circumstances of this case, in this instance the WMS does not outweigh the relevant development plan policy, which I have found to be consistent with the Framework. For the reasons given above, the appeal proposal would not make appropriate provision for affordable housing. Consequently, I conclude that the appeal proposal is contrary to the affordable housing aims of Policy CS12 Part G of Islington's Core Strategy and the SPG.

Conclusion

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

Caroline Mulloy

Inspector

⁵ GLA Housing in London 2014: the evidence base for the Mayor's Housing Strategy (April 2014)