
Appeal Decision

Site visit made on 10 January 2017

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 14 February 2017

Appeal Ref: APP/V5570/W/16/3160058

Former Studios 306, 307 and 309, 1 Kember Street, Islington, London N1 1BF

- 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 Mr Andrew Panayi against the Council of the London Borough of Islington.
 - The application Ref P2016/2486/FUL, is dated 17 June 2016.
 - The development proposed is described as "Flat 306 integrates former Studios 306, 307 and 309".
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council issued a decision notice on 25 October 2016, by which time the appeal had already been made, and therefore the refusal has no effect. I shall treat the reason in the decision notice as that which would have been given had the Council been able to refuse the application, which is:

The applicant has not agreed to make the contribution sought by the Islington Affordable Housing Small Sites Contributions SPD or to submit a viability assessment to demonstrate that the full contribution is not viable and that instead a lesser contribution should be made. Therefore, the proposal is contrary to policy CS12 Part G of the Islington Core Strategy 2011, the Islington Affordable Housing Small Sites Contributions SPD and Environmental Design SPD.

3. The Council's decision notice describes the proposal as the "Conversion of formerly unauthorised studios 306, 307 and 309 at 1 Kember Street into a 2 bedroom residential unit under Class C3." I consider that this better describes what is intended and I shall deal with the appeal on this basis.

Main Issue

4. The main issue is whether a contribution towards the provision of affordable housing is necessary.

Reasons

5. The proposal is to create a single, 2-bedroom dwelling from three studios on the second floor of a building on the corner of Kember Street and Caledonian
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- Road. Policy C12(G) of the Islington Core Strategy, adopted in 2011, seeks financial contributions to be made on sites of 9 dwellings or fewer, unless it can be demonstrated that it would be unviable to do so. There has been no evidence submitted in relation to viability in this case, and thus the failure to make a financial contribution is in conflict with this policy.
6. However, more recently¹ the Court of Appeal has overturned a legal challenge to the Written Ministerial Statement (WMS) of 28 November 2014. The WMS, amongst other things, indicated that, because of the disproportionate burden of developer contributions on small-scale developers, for sites of 10 units or fewer, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought. The Planning Practice Guidance (PPG) has since been amended to reflect the approach in the WMS.
 7. Neither the WMS nor the PPG alter the statutory basis for determining proposals in accordance with the development plan unless material considerations indicate otherwise. The PPG reflects the Government's intentions, and is a material consideration of substantial weight. It is the Government's clear intention that the need to encourage new house building should outweigh the contribution that small sites make towards providing affordable housing.
 8. Accordingly the issue is not black and white; the Council's development plan policy, and the planning circumstances that led to it, have to be balanced against the site specific circumstances and the Government's policy as expressed in the WMS and the PPG. Counsel's opinion provided by the appellant broadly confirms that approach.
 9. The Council argues that Islington's circumstances justify a lower threshold being applied. Its housing stock is the 7th highest median house price in the country, and the housing in the cheapest quartile is the 6th highest in the country. Average incomes in the borough are comparatively low, and the evidence of incomes and sales and rental prices shows that there is a significant affordability gap in the borough in terms of both rented properties and those to buy.
 10. The Council's Supplementary Planning Document *Affordable Housing Small Sites Contributions* was adopted in October 2012, and sets out the requirement for a contribution of £50,000 per dwelling (and £60,000 for those south of Pentonville Road/City Road where sales prices are higher), which it says has been tested for viability. Since that time, the Council's evidence shows that house prices and rents in the borough have continued to rise; whilst this on its own does not indicate that the £50,000 figure is still robust, without contrary evidence it reinforces my view that it is likely to be.
 11. About a third of all new residential development in the borough is from sites of fewer than 10 dwellings. Thus small sites are important to the provision of affordable housing in the borough. Whilst this is likely to be true of most London boroughs, the combination of acute need and dependence on small

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441, dated 11 May 2016

sites to help address that need makes Islington's ability to secure affordable housing all the more pressing.

12. The purpose of the WMS/PPG approach in exempting small sites from the need to provide affordable housing contributions is to avoid a disproportionate burden of developer contributions on small-scale developers, custom and self-builders. The appellant has not claimed that the proposal would be unviable or that it would not go ahead if a contribution had to be made. Thus, there is no evidence that a disproportionate burden would result, and this adds to my view that the undisputed local and site specific circumstances justify my finding that Policy CS12 is not outweighed by the substantial weight which can normally be afforded to the WMS/PPG.
13. The Council has referred me to three appeal decisions² in the borough where Inspectors have found that the local circumstances outweigh the WMS/PPG approach. The appellant has not made any representations about these cases, and has not sought to distinguish them from this case, and this reinforces my conclusions on this case.
14. I therefore conclude on the main issue that a contribution towards the provision of affordable housing is necessary, and the failure to provide it conflicts with Policy CS12.

Other matters

15. The proposal would provide a small unit at the more modest end of the market, which is no doubt in considerable demand. Whilst this is a clear benefit, there is no suggestion that the development would not go ahead if a contribution had to be made. The provision of affordable housing is an essential part of the social dimension of sustainable development, which would not be met in this case.

Conclusion

16. In view of the importance of providing affordable housing in the borough I find that the proposal would conflict with the development plan as a whole, and for the reasons given above, I conclude that the appeal should be dismissed.

JP Roberts

INSPECTOR

² Refs: APP/V5570/W/16/3155770, APP/V5570/W/16/3161073 and APP/V5570/W/16/3160780