The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 24th February 2017

Appeal Ref: APP/V5570/W/16/3162003
55-65 Randell's Road, Islington, London N1 0DH

- 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 NewMac KGX Developments Ltd against the decision of the Council of the London Borough of Islington.
- The application Ref P2016/2428/FUL, dated 9 June 2016, was refused by notice dated 22 September 2016.
- The development proposed is for the demolition of a single storey workshop and construction of a 4-storey plus basement building containing B1 office use at ground floor and basement levels and 5 x 2-bed flats and 1 x 1-bed flat above.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by NewMac KGX Developments Ltd against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Procedural matters

3. The description in the application differs from that shown in the Council's decision notice. I agree that the Council's description clearly defines the scope of the development and have considered this appeal on the basis of a proposal for the demolition of the existing garage/workshop and the erection of a 4-storey plus basement building to provide commercial (B1) space at ground floor and basement and residential use (5 x 2-bed flats and 1 x 1-bed flat to the upper four floors together with the incorporation of refuse bin stores and bicycle storage.

Main Issue

4. The main issue in this appeal is whether the proposed development is liable to the making of financial contributions towards affordable housing and carbon off setting measures.

Reasons

5. The appeal site is presently occupied by a longstanding car repair business and comprises a single storey pitched roof building with access from Randells Road and lies directly opposite a Grade II Listed Building. The immediate area is

characterised by a variety of uses, including employment related premises to the north and south and residential development to the north-east and east. The site benefits from planning permission[1] for an identical development that is proposed in this appeal. Although that permission represents a significant fall-back position, it was subject to a section 106 Obligation that required the making of financial contributions towards affordable housing provision and carbon off setting measures. The basis of this appeal is that the approved development should take place without a planning obligation requiring such contributions.

6. The proposals would see the demolition of the garage/workshop premises and the erection of a four storey plus basement building that would provide a replacement commercial space (Use Class B1) at ground floor and five no. 2-bed flats and one 1-bed flat to the upper floors, including refuse bin stores and bicycle storage facilities. The Council previously found that the design in terms of height, scale, massing and form was appropriate for the site. I would agree with that assessment. In addition, the Council accepted that the scheme would be of benefit in terms of the relationship and thus the setting of the Paget Christian Centre Grade II Listed Building opposite. I also accept these findings and accordingly I am therefore satisfied that for the purposes of my statutory duty in heritage matters, the development would not affect or otherwise harm the setting of this listed building.

7. The basis of the Council's stance in relation to its requests that financial contributions should be made for small scale residential development proposals lies within the Islington Core Strategy that was adopted in February 2011 (the 'Core Strategy'). Policy CS12 of the Core Strategy sets out the Council's policy towards affordable housing whilst Policy CS10 deals with sustainable design issues. The Council believes these policies are consistent with The London Plan.

8. The approach to securing financial contributions from smaller sites such as the appeal proposal is set out in the Council's Affordable Housing Small Sites Contribution Supplementary Planning Document (October 2012) (the 'Affordable Housing SPD') in terms of affordable housing and in the Environmental Design Planning Guidance Supplementary Planning Document (EDSPD) in terms of offsetting CO_2 emissions. The Affordable Housing SPD is based on a Borough-wide viability assessment, which concludes that a £50,000 commuted sum per unit is likely to be viable for the majority of development scenarios although the document allows provision for a lower level of contribution provided this is justified. The EDSPD identifies a "flat fee" based contribution level based on £1000 per flat.

9. The supporting text to Policy CS12 of the Core Strategy recognises the need for a flexible approach taking account of economic circumstances. The SPD also recognises that there may be on-site circumstances which give rise to viability issues. This is consistent with paragraph 173 of the Framework, which identifies that to ensure viability, extraneous costs such as requirements for affordable housing, standards, infrastructure contributions or other requirements that are in addition to the normal cost of development and mitigation should continue to provide competitive returns to a willing land owner and willing developer and thus ensuring that development is deliverable.

[1] Council of the London Borough of Islington Ref P2015/2834/FUL

10. From the evidence, the appellant has neither provided any viability assessment or an undertaking to provide such contributions. There is little in the Council's evidence that seeks to justify why a contribution should be made towards carbon off-setting measures or indeed to what purpose such contributions would be made.

11. I have been provided with copies of several appeal decisions from both parties that refer to the Written Ministerial Statement (the 'WMS') dated 28 November 2014 and subsequent alterations to the Government's Planning Practice Guidance (the 'PPG') that outlined the circumstances when affordable housing and tariff style contributions should not be sought for small scale developments. The WMS states that "for sites of 10-units or less and which have a combined gross floor space of 1,000 square metres…*these types of* contributions should not be sought". The WMS was subject of a High Court judgement[2] and declaration Order, which confirmed that the policies within the WMS should not be given weight as material considerations in planning decisions.

12. However, the Secretary of State successfully challenged the High Court's decision in the Court of Appeal and judgement[3] was made on 11 May 2016 which means that the WMS is once again a material consideration in planning decisions.

13. I am cognizant of the strong arguments put forward by the Council both in this and other appeals in the Borough, including the proportion of new housing coming forward on smaller sites and the level of contributions made in this sector so far by small-scale developments. I am also mindful of the high house prices in the Borough and the prevalence of families on low incomes. I do not disagree either with the findings of the Council that indicates a requirement that 50% of all new housing that will be built in the Borough over the Plan period should be affordable. This is set against the background of high private rental levels and higher rental values than those across the Greater London Area.

14. As my colleague Inspector Mulloy explained at a recent appeal[4] for a small housing scheme elsewhere in the Borough "Overall, there is a 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." On the evidence before me relating to affordable housing, 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. Accordingly, the contribution would meet the tests set out in Regulation 122(2) of The Community Infrastructure Levy Regulations 2010.

15. The statutory position is that planning applications have to be determined in accordance with the development plan unless material considerations indicate otherwise. I have attached significant weight to the WMS as a material planning consideration. However, this does not outweigh the significant and substantial weight which I attach to the evidence of affordable housing need in

[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 [2016] EWCA Civ 441)
[4] APP/V5570/W/16/3161073

this Borough. As the proposal would fail to contribute appropriately to maximise affordable housing, I find that the proposal would be contrary to Policy CS12 of the Core Strategy and the Affordable Housing SPD.

16. On the matter of carbon reduction, it is unclear from the Council's evidence the precise purpose that such a contribution would be put to. In the absence of robust evidence, I find that it has not been demonstrated that a planning obligation is necessary or that it would be directly related to the development. Accordingly such an Obligation in this case would fail to meet the tests set out in regulation 122(2) of The Community Infrastructure Levy Regulations 2010. Consequently, although I have found against the appellant in terms of affordable housing, I conclude that the Council's stance with regard to the failure to address the financial contributions, as sought by Islington's EDSPD would not outweigh the WMS.

Conclusion

17. In the light of the above and, having regard to all other matters raised, I conclude that this appeal should be dismissed.

Gareth W Thomas

INSPECTOTR