
Appeal Decision

Site visit made on 24 January 2017

by Brendan Lyons BArch MA MRTPI IHBC

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

Decision date: 6 March 2017

Appeal Ref: APP/V5570/W/16/3160795

St Peters House, Oakley Crescent, Islington, London EC1V 1LQ

- 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 Walter Hawes against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2441/FUL, dated 15 June 2016, was refused by notice dated 9 August 2016.
 - The development proposed is described as conversion of existing first and second floor HMO unit into 2no. 3 bedroom (5 person) self-contained flats with associated bins and cycle storage; refurbishment of existing windows including reglazing with slimline glazing units; addition of 5no. conservation roof lights.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. An application for costs was made by the appellant against the Council. That application is the subject of a separate Decision.
3. The description of development set out in the heading above, which is taken from the Council's decision notice and the appeal form, has been used as it more accurately reflects the appeal proposal than the description on the planning application form.
4. The Council has noted that the site plan¹ provided with the appeal was not made available at application stage, but has not raised any concern on this point. As the plan serves mainly to clarify the proposal, I consider that no party's interests would be prejudiced by my taking it into account in the determination of the appeal.
5. Some time after providing its statement for the appeal, the Council submitted copies of the decisions made in two other recent appeals² in the borough where the issue of affordable housing contributions had been considered. I accepted that this material is relevant to the determination of the current appeal and ought to be taken into account. However, the appellant did not respond to the opportunity given to add to earlier submissions in the light of the recent decisions.

¹ Existing/proposed site plan No. 2002.24

² APP/V5570/W/16/3161073; APP/V5570/W/16/3160780

Appeal proposal

6. The appeal relates to a former vicarage, comprising three storeys over a basement, in an inner urban location. The building has been previously subdivided, with self-contained flats at basement and ground floor level and the two upper floors in use described by the application form as a 'duplex flat' and by the Council as a 'HMO' (house in multiple occupation). The application site also includes a two-storey wing, described as an 'annexe', which is in separate residential use.
7. Permission is now sought to convert the upper floor unit to two self-contained 5-person flats, one to each floor. At the time of my visit to the site, the conversion work was well advanced. I noted that the first floor flat appeared to have been laid out without the single bedroom indicated on the submitted plan, which could alter the eventual occupancy level. However, I have determined the appeal on the basis of the proposal as submitted.
8. A previous application to convert the upper floors to three self-contained flats, with the addition of side and rear dormers, was refused permission³ and a subsequent appeal was dismissed in September 2015⁴.
9. The current application also includes some minor alterations to the exterior of the building, including the refurbishment of existing windows with double-glazed units and the insertion of roof lights. The Council acknowledges that these aspects have already received planning permission⁵, and raises no objection to them. I agree that the character and appearance of the surrounding Duncan Terrace/Colebrooke Row Conservation Area would be preserved and that there would be no adverse effect on neighbours as a result of the changes.

Main Issues

10. The main issues in the appeal are whether the proposal would allow satisfactory living conditions for existing and future residents, with regard to the amount and quality of outdoor amenity space, and whether appropriate provision would be made for affordable housing.

Reasons

Living conditions

11. The Council accepts that the provision of 5-person flats would accord with development plan preference for larger units, and that national internal space standards, as adopted by Policy 3.5 of the London Plan 2016 ('LP'), would effectively be met.
12. Policy DM3.5 of Islington's Local Plan Development Management Policies 2013, ('DMP') requires all new residential development and conversions to provide good quality outdoor space, such as gardens or balconies. Part C of the policy specifies minimum areas to be provided. The lack of such provision was a factor in the dismissal of the previous appeal.

³ P2015/0698/FUL

⁴ APP/V5570/W/15/3067561

⁵ P2016/0206/FUL

13. The issue was not addressed in the planning application submissions, but the appellant's statement outlines that the addition of balconies to the building was ruled out due to likely adverse impacts on the conservation area, and overlooking of surrounding properties. I accept that external balconies would not be typical of a building of this style and date, and their addition would probably involve significant alterations to existing window openings. Even if designed as sensitively as possible and sited on less visible rear and side elevations, they would be likely to appear incongruous and harmful to the character and appearance of the conservation area. External spaces of residential properties on Oakley Crescent and Remington Street to the east appear to be already well overlooked, but I accept that balconies to the rear would be likely to cause harmful overlooking of the very close small gardens of the terrace of houses on Nelson Place, to a greater extent than from existing windows. There would also be a more overbearing effect when seen from those houses.
14. The now submitted site plan shows the triangular space behind the building, with an estimated area of 51 sqm, as shared external space for the two existing and two proposed flats. The appellant refers to the supporting text to Policy DM3.5, which acknowledges that provision of private outdoor space can be challenging on some sites, and that accessible, well maintained and managed communal provision can provide a workable, if less than ideal, solution.
15. The appellant also argues that the one additional proposed unit would result in a net gain of only one extra person more than the existing HMO, so that the future situation would be little different from the existing. I do not agree with the Council that the size of the proposed units, which could be suitable for families, would necessarily result in significant increased demand for outdoor space. The flats could as likely be occupied by single people or couples sharing, as envisaged by the appellant, while the existing unit could as easily have been occupied by a large or extended family.
16. I accept that in this instance there appears to be no suitable opportunity for private provision for the new flats and that communal space would represent the only feasible option. The total size of the space available, its orientation and surroundings are defined by the circumstances. None of these factors would be ideal but, given the level of existing use of the building, the shortfall in each case would not be sufficient to demand rejection of the proposal.
17. However, the submitted plan suggests that little consideration has been given to how the space might best provide for amenity use in practice. The optimum use of the space would be significantly hampered by the proposed layout, with the paved area best suited for amenity purposes to be given over to cycle and bin storage, thereby significantly reducing the area available. One effect of this would be to increase the potential conflict with the privacy of the basement unit, whose principal access and main windows open directly onto the space. As drafted, the proposal would not offer the sort of well managed communal provision envisaged by the DMP where normal standards cannot be achieved.
18. One of the core principles of national policy set out in the National Planning Policy Framework ('NPPF') is the achievement of a good standard of amenity for all existing and future occupants of land and buildings. As currently framed, the proposal's unsatisfactory provision of outdoor space would not deliver

acceptable living conditions for existing and future residents and would be contrary to the NPPF principle and to DMP Policy 3.5.

Affordable housing

19. Policy CS12 of Islington's Core Strategy 2011 ('CS') requires all residential development to make appropriate provision for affordable housing, either on-site or, if less than 10 units are proposed, by a financial contribution to off-site provision. Following analysis of viability evidence, the Council's Affordable Housing Small Sites Contributions Supplementary Planning Document 2012 ('SPD') has set the level of contribution in the area of the appeal site at £50,000 per additional dwelling unit. The Council argue that a contribution is reasonable and necessary in this case, but none has been offered, by means of a planning obligation or otherwise.
20. The appellant has not challenged the viability assumptions underpinning the SPD or offered any site-specific viability evidence that would suggest that a contribution of this scale would compromise deliverability of the appeal proposal. Therefore, I have no reason to conclude that the scheme could not viably support the contribution sought by the development plan.
21. The appellant instead relies on Government policy in the form of the Written Ministerial Statement ('WMS') of 28 November 2014, which states that tariff-style contributions such as that set by the SPD should not be sought from developments of 10 dwellings or less. The Planning Practice Guidance ('PPG') was updated to reflect the WMS approach⁶ following the judgment by the Court of Appeal on 11 May 2016⁷ that the policy stance adopted by the WMS is lawful.
22. The appellant argues that the more recent publication of the WMS should effectively supersede the SPD, referring to Section 38(5) of the Planning and Compulsory Purchase Act 2004. However, that provision deals with conflict between policies in adopted development plans. The WMS does not form part of a development plan. The publication of government policy, such as the WMS or the NPPF, has not altered the requirement of Section 38(6) of the same Act that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
23. But while the WMS and the amended PPG have not superseded the development plan, their policy stance nevertheless remains a very important consideration in any small scale housing proposal, including the current appeal, and one to which very substantial weight must be attached.
24. The CS policy and the SPD clearly derive from severe affordability issues in the borough. The Council's appeal statement outlines detailed evidence of continuing worsening trends in this regard, with an extremely adverse relationship between house prices and rents on the one hand and typical incomes on the other, in an area of acknowledged severe deprivation. The evidence also explains the critical role that development of small sites has to play in the delivery of new housing in a densely built urban borough, with over one third of new provision coming from sites of 10 units or fewer. The evidence

⁶ Paragraph ID 23b-031-20161116.

⁷ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

suggests that an absence of contributions from small sites would significantly compromise the Council's ability to secure affordable housing.

25. None of this evidence is challenged by the appellant. The WMS seeks to reduce a disproportionate burden of developer contributions on small-scale developments. In the absence of a viability assessment, there is no evidence in this case of a requirement for other contributions that would cumulatively be seen as disproportionate. Therefore, notwithstanding the obviously desirable objective of the WMS policy, in this instance I consider that greater weight must be given to the specific local circumstances that underpin the development plan and SPD requirement.
26. I conclude that the proposal should make a financial contribution to affordable housing provision in accordance with the SPD, whose requirements are reasonable and necessary in this case. A planning obligation to that effect would meet the tests set out by the NPPF⁸. I note that a similar conclusion was reached in the recent appeal decisions provided by the Council, as in a number of other decisions referred to in its statement.
27. In the absence of a formal commitment, the proposal would not make appropriate provision for affordable housing and the resultant conflict with Policy CS12 would not be outweighed by other material considerations.

Conclusion

28. The proposal would result in the creation of an additional dwelling in an accessible urban location. The two units resulting from the proposed subdivision would potentially be suitable for occupation by small families. The investment in property improvement would represent an economic benefit, and the alterations to the fabric of the building could result in a modest environmental benefit, thereby addressing two of the three dimensions of sustainable development. But the unsatisfactory provision of outdoor space and the lack of contribution to affordable housing need would fail to meet the social dimension.
29. For the reasons set out above, and having taken account of all representations made, I conclude that the appeal should be dismissed.

Brendan Lyons

INSPECTOR

⁸ NPPF paragraph 204