
Appeal Decision

Site visit made on 8 February 2017

by Nicholas Taylor BA(Hons) MRTPI

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

Decision date: 29th March 2017

Appeal Ref: APP/V5570/W/16/3161415
313-315 Caledonian Road, London N1 1DR

- 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 Nicholas Cockburn (Opticrealm Ltd) against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2646/FUL, dated 29 June 2016, was refused by notice dated 6 October 2016.
 - The development proposed is Demolition of part of building to rear of Caledonian Road, conversion of the remainder, (including accommodation in roof space with rooflights to the rear) together with new building (part single storey/part three storey height) to provide for continued Class B1(a) Office Business use on part of ground floor, use of basement and five residential dwellings (2 No. one bed, 2 No. two bed, 1 No. three bed) together with integral secure storage for bicycles and refuse, and an array of photovoltaic panels on the roof of the new three storey element.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of part of building to rear of Caledonian Road, conversion of the remainder, (including accommodation in roof space with rooflights to the rear) together with new building (part single storey/part three storey height) to provide for continued Class B1(a) Office Business use on part of ground floor, use of basement and five residential dwellings (2 No. one bed, 2 No. two bed, 1 No. three bed) together with integral secure storage for bicycles and refuse, and an array of photovoltaic panels on the roof of the new three storey element at 313-315 Caledonian Road, London N1 1DR in accordance with the terms of the application, Ref P2016/2646/FUL, dated 29 June 2016, subject to the conditions set out in the Schedule at the end of this decision.

Main Issues

2. The appeal property is located within the Barnsbury Conservation Area. The Council considers that, given the chequered planning history of the property and its previous period of vacancy, the partial change of use of the upper floors would be acceptable. I see no reason to disagree and so, consequently, the main issues in this case are as follows:
 - Whether the proposed development would preserve or enhance the character or appearance of the conservation area;
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- Whether the proposal would provide acceptable living conditions for future occupiers of the proposed development, with particular regard to the two bedroom ground floor flat; and
- Whether the proposed development would make adequate provision for affordable housing.

Reasons

Character and appearance

3. The appeal property is a three storey building, above a basement level, with mainly single storey extensions to the rear. It is situated on a corner site, at one end of a terrace on Caledonian Road. The building is currently configured for a mixture of commercial use with a residential flat above. The proposed development would involve the demolition of some parts of the rear of the property, erection of a three storey rear extension, significant external and internal remodelling and conversion and part change of use, resulting in office space at basement level and part of the ground floor and five flats in the remainder of the building.
4. The property has, effectively, three frontages: Caledonian Road, the very short Kember Street to the south side and, running along the back of the terrace, Carnoustie Drive, which is fairly wide and tree-lined. The buildings to the west of Carnoustie Drive, outside the conservation area, comprise multi-storey flats built in the 1960s.
5. Nos. 313-315 is situated on the western edge of the extensive conservation area. Whilst the conservation area in general is notable for its relatively complete Georgian and early Victorian residential terraces and squares, Caledonian Road has a predominantly commercial character, with more varied architectural styles and quality. The submitted Heritage Statement (HS) identifies the appeal property as probably dating from the mid-20th Century, although its style is more akin to the pre-war period and the Council puts it at early 20th Century. Architecturally, it is completely at odds with the remainder of the terrace, which comprises three storey Victorian buildings of decidedly mixed appearance.
6. Applying recognised methodology, and referencing several other assessments, the HS concludes that the property, which is not listed as of architectural or historic interest, does not make a positive contribution to the significance of the conservation area. However, I consider this slightly underestimates its, on balance, positive, albeit modest, contribution. Although the back of the building is of no great merit and does not contribute positively to the quality of the area and streetscene, its principal corner facades are not devoid of intrinsic architectural merit. Whilst not representative of the predominant period or style of the conservation area, the building is an interesting anomaly.
7. I consider that the proposed development would be generally acceptable in scale and footprint, having regard to a number of factors. The proportion of built footprint in relation to overall site area would be reduced with the creation of a small rear space. The site's prominent location, with three street frontages, calls out for a development of appropriate scale which would, nevertheless, remain subservient to the mass and height of the frontage building. The proposed slim three storey corner block would achieve that aim,

providing a visual 'bookend' to the terrace. Its scale would be appropriate in relation to the buildings on the south side of Kember Street and west side of Carnoustie Drive whilst respecting the adjoining terraced property.

8. The scheme's relatively simple, contemporary style would effect a transition from the more traditional character of Caledonian Road to the large scale and block-like post-war architecture to the west. The articulation of its basic forms, combined with the contrasting use of materials, would achieve the perception of 'lighter' upper storeys adjoining but, visually, slightly distinct from the robust ground floor and existing frontage building. I am satisfied that the proposed materials, which the evidence appears to indicate have been successfully employed elsewhere in the conservation area, would not, in principle, be unduly discordant in this edge of conservation area context. The requisite quality of the materials can be precisely controlled by means of a condition.
9. The extent and composition of fenestration, including rooflights on the rear elevation, together with the balconies, would be consistent with the overall schema. In any case, the new development would not dominate the property's appearance on Caledonian Road. Given that this is an unlisted building of, at most, moderate aesthetic value and that its rear elevation is its least appealing aspect, the loss of historic fabric would be of limited concern.
10. Overall, therefore, I conclude that the design and scale of the proposed development would at least preserve the character and appearance of the conservation area and its significance as a heritage asset.
11. Consequently, the scheme would comply with a number of relevant development plan policies which, in common, seek to achieve high standards of design and conserve Islington's character and historic heritage. These are Policies 7.4, 7.6 and 7.8 of *The London Plan* (LP), Policies CS8 and CS9 of *Islington's Core Strategy* (CS) and Policies DM2.1 and DM2.3 of *Islington's Local Plan: Development Management Policies* (DMP). Similarly, there would be no conflict with the *Islington Urban Design Guide Supplementary Planning Document* or *The Barnsbury Conservation Area Guide*, which states that rear extensions should be considered on their merits, provided that there would be no harm to the conservation area.
12. The proposal would also comply with the *National Planning Policy Framework* (the Framework) which, at paragraph 132, requires great weight to be given to the conservation of heritage assets. Furthermore, the requirement, in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area, would be satisfied.

Living conditions

13. The Council is generally satisfied with the size and arrangement of most of the residential units but is particularly concerned about the living conditions which would be experienced by occupiers of the proposed ground floor flat at the rear of the building. I see no reason why in principle, in the context of a mixed use area and a mixed use building, residential and office accommodation cannot share ground floor accommodation. As the appellant points out, there is no inherent reason why adequate sound proofing cannot be achieved, having regard to the Building Regulations, between the flat and the communal spaces

- or office use at the front. On plan, residential and commercial functions would be adequately separated within the building.
14. The ground floor flat would have a small but adequate open courtyard space at the rear of the site. The living area and each bedroom would have significant areas of opening glazing onto this space. The external space would be west-facing, with moderately high boundary walls, so that the space and rooms would benefit from direct sunlight at certain times of the day and periods of the year. I accept that the open plan, living/dining/kitchen area would extend to a fair depth back from the windows, but the kitchen/dining part would also receive natural light from a skylight overhead. Although DMP Policy DM3.4D does not favour single aspect dwellings, small, single aspect flats are not uncommon and, in this case, the appellant has demonstrated through submitted evidence¹ that good levels of daylight in accordance with BRE guidelines² would be achieved, as the policy requires. All in all, I have no undue concerns regarding the standard of accommodation provided by the ground floor flat.
 15. The living rooms of two flats on the first and second floors would have balconies to the rear of the building. Whilst a largely blank, flank wall of the proposed three storey rear extension would extend well beyond the balconies and shade them from direct sun to some degree, the extensive glazing, together with the generally open, western aspect over a green roof, would ensure acceptable living conditions within the two flats.
 16. I conclude, therefore, that the proposed development would provide acceptable living conditions for future occupiers, with regard to noise and privacy, outlook, daylight and sunlight and private amenity space. Consequently, there would be no conflict with CS Policy CS12, DMP Policies DM2.1 and DM3.4 or the relevant Policy 3.5 of the LP, which, taken together, seek to ensure that new housing is well designed and meets certain criteria in order to provide good living conditions for occupiers. The proposal would, therefore, also comply with the Framework's core planning principle, to secure a good standard of amenity for all existing and future occupants of land and buildings.

Affordable housing

17. For developments of fewer than 10 dwellings, the LP encourages Boroughs to set a lower threshold for contributions to affordable housing where appropriate. Part G of CS Policy CS12 requires proposals of 9 dwellings or fewer to make a financial contribution to affordable housing provision off-site. The level of contribution is defined in the Council's *Affordable Housing Small Sites Contributions Supplementary Planning Document* (Contributions SPD), resulting in a requirement for £50,000 per unit in this case. The Contributions SPD allows for a lower contribution where justified by viability evidence. The appellant has challenged the requirement for any contribution whatsoever towards affordable housing from this development.
18. Legislation³ requires that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. However,

¹ *Internal Daylight Report*, Syntegra Consulting, May 2015

² Building Research Establishment

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

a Written Ministerial Statement (WMS)⁴, together with *Planning Practice Guidance*⁵, which have both subsequently been upheld in the Court of Appeal⁶, indicate that such contributions should not be sought in the case of developments of 10 or fewer dwellings. The WMS, supported by PPG, amounts to national planning policy and must, therefore, carry due weight. The Court of Appeal was clear that the weight to be given to the WMS and PPG, as material considerations, is a matter for the decision taker in the circumstances of the individual case.

19. The main parties have both provided copious evidence in support of their differing contentions regarding housing affordability and need in general within the Borough. Suffice it to say that nothing in the evidence leaves me in any doubt as to the overall importance of securing a supply of affordable housing in Islington. Indeed, such an objective is endorsed by the Framework. Furthermore, as small developments make up a significant proportion of Islington's housing schemes, they have the potential to make a valuable contribution to affordable housing provision and it is understandable that the Council wishes to defend its development plan policy.
20. The Council carried out a study in 2011 of viability for affordable housing contributions from smaller developments. The Contributions SPD explains that, on the basis of this financial modelling, the standard rate of contribution ought to be comfortably viable for all developments and so should not frustrate the delivery of small schemes by smaller builders and developers, which is one of the underlying concerns behind the WMS.
21. Policy CS12, as expanded upon by the Contributions SPD, incorporates a degree of flexibility regarding viability and is, therefore, broadly consistent with the Framework, albeit it is in conflict with the WMS and PPG as regards small developments. Notwithstanding fundamental disagreement with the requirement to provide affordable housing in this case, the appellant has provided an *Affordable Housing Statement* which summarises a viability exercise. The outcome of that exercise, which appears to follow established methodology, is that, even without a contribution to affordable housing, the development would produce a small, negative residual value. Whilst I have not been provided with full details of the viability appraisal, any independent assessment of it or any evidence that the Council has done so, I see no strong reason to dispute it. The Council's evidence concerning viability is generic, rather than scheme-specific in this instance. Consequently, within the terms of Policy CS12 and the Contributions SPD, the viability evidence before me does not support the full requirement for an affordable housing contribution.
22. Each main party has referred me to a number of appeal decisions, post-dating the WMS, concerning cases within Islington and elsewhere, both upholding the affordable housing requirement and otherwise. An absence of viability evidence is a common theme in those cases in which the Inspectors gave greater weight to Policy CS12 than the WMS and PPG.
23. In the current appeal, I conclude that the available viability evidence which is specific to the development should carry substantially greater weight than the Council's generic evidence. Even if I were to have any serious doubts about

⁴ 28 November 2014

⁵ Paragraph 031 of PPG

⁶ 11 May 2016

the appellant's evidence, further substantial weight in favour of the appeal must be accorded to the WMS and PPG as expressions of up to date national planning policy. Accordingly, in this particular case, having had regard to the development plan as a whole, I conclude that material considerations indicate that, despite potential conflict with CS Policy CS12 and the Contributions SPD, the absence of any financial contribution to affordable housing should not warrant the appeal being dismissed.

Other Matters

24. A third party has raised concerns about the structural integrity of the building and disturbance during construction. The former is a matter for the Building Regulations and the latter, whilst temporary in its effects, can be mitigated by good practice during construction, which can be addressed by a condition. The Metropolitan Police Crime Prevention Officer has raised detailed concerns regarding security around the proposed communal entrance area. These do not have a significant impact on the safety of the public realm or the overall security of the development and, having been brought to the appellant's attention, I am satisfied that they could be addressed without recourse to a condition. Moreover, building security is now within the ambit of the Building Regulations and PPG states that conditions should not be imposed imposing higher standards for individual dwellings. All in all, none of these matters persuades me to reach a different overall conclusion in this case.

Conditions

25. I have considered the conditions suggested by the Council in the light of the development plan, national policy and guidance and for succinctness and clarity and have amended them accordingly where necessary. In addition to the usual commencement condition, it is necessary, in the interests of certainty, to specify the approved plans.
26. A pre-commencement condition, requiring details and, where appropriate, samples of external materials to be submitted is necessary, in the interests of preserving the character and appearance of the conservation area. I consider that requiring further details of fenestration would be disproportionate in this case. A further pre-commencement condition, requiring submission of a Construction Logistics and Management Plan is also necessary in the interests of neighbours' living conditions and to protect the safety and health of users of the highway.
27. The appellant has contested the need for a condition restricting future occupiers' from applying for a car parking permit, partly on the grounds that any occupier of the existing flat within the building would be eligible to do so. The location has good public transport accessibility and the development has been designed with integral cycle storage and no on-site parking spaces. I have imposed a condition regarding cycle storage. Without further measures, that would not necessarily make the development "car-free" in practice. However, I have not been provided with any details of parking stress or controls in the locality or justification for imposing a relevant condition or requiring an agreement. All in all, I am not convinced in this case that a condition as suggested by the Council would meet the "exceptional circumstances" required by PPG.

28. In March 2015, the government announced the introduction of new housing technical standards through a Written Ministerial Statement (the 2015 WMS). Further policy and guidance is set out in the Framework and PPG (Housing: Optional Technical Standards), together with the Building Regulations and associated Building Regulations Circular 01/2015 and guidance. These measures have significantly changed the framework within which measures relating to, among other things, energy and water efficiency and accessibility can be addressed. One of the basic tenets is that requirements in excess of the Building Regulations, but corresponding with the optional technical standards, can only be justified by reference to up to date and appropriate development plan policies which are justified by local need and take account of viability. During the transition period, where policies have yet to be revised, planning authorities should explain how existing policies should be applied.
29. The Council has suggested two conditions which engage with the optional standards but has provided limited explanation of how existing CS, DMP or SPD policies are to be interpreted. Consequently, I am not convinced that the precise targets for enhanced reductions of energy and water consumption, in the suggested condition requiring a Sustainable Design and Construction Statement, would meet the 2015 WMS and PPG requirements. Given that, the amount of information already provided by the appellant and the size and nature of the development, to require such a statement as a pre-commencement condition would be disproportionate in this case and would fail to meet basic PPG tests.
30. DMP policies DM2.2 inclusive design and DM3.4 housing standards pre-date the 2016 WMS. LP Policy 3.8 provides a strategic background to housing standards and a basis for Boroughs' own development plans and decision taking. It states a clear aim that 90% of new housing should be built to optional Building Regulation Standard M4(2) regarding accessible and adaptable buildings. However, the supporting text to Policy 3.8 and PPG⁷ advise caution in applying the enhanced standard to non-lift serviced multi-storey dwellings. The appellant's submission explains that the building constrains the installation of a lift and the Council has not sought to justify the viability or occupier service charge costs which might ensue. Consequently, I have not imposed the Council's suggested pre-commencement condition, as to do so "notwithstanding the drawings hereby approved" would be unreasonable and contrary to development plan and national policy and guidance.

Conclusion

31. For the reasons set out above, the appeal should be allowed.

Nicholas Taylor

INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

⁷ Ref ID: 56-010-20150327

- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule set out in the Council's decision notice dated 6 October 2016.
- 3) No development shall commence until details and, where appropriate, samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and/or samples.
- 4) No development shall take place, including any works of demolition, until a Construction Logistics and Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall provide for:
 - i) proposed access routes for construction traffic; vehicular numbers and type;
 - ii) permitted hours of access for construction;
 - iii) proposed on-site management measures to ensure that movement of vehicles in and out of the site is safe (and in forward gear);
 - iv) using freight operators who can demonstrate commitment to best practice - for example, members of the Freight Operator Recognition Scheme (FORS), consolidating deliveries so fewer journeys are needed and using sustainable delivery methods; and
 - v) details of the methods to be used and the measures to be undertaken to control impacts from demolition and construction works; such as noise, air quality including dust, smoke and odour emissions, vibration, and TV reception.

The report shall assess impacts during the demolition and construction phases of the development on the road network, nearby residents and other occupiers, together with means of mitigating any identified impacts. The approved plan shall be adhered to throughout the construction period for the development.

- 5) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 1414-PP-250 for occupiers of the development's bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.

End of schedule