The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2017

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: Thursday , 30 March 2017

Appeal Ref: APP/V5570/W/16/3164313
St James House, 28 Drayton Park, Islington, London N5 1PD

- 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 Ozmen Safa against the decision of the Council of the London Borough of Islington.
- The application Ref P2016/1791/FUL, dated 4 May 2016, was refused by notice dated 29 November 2016.
- The development proposed is the addition of 3 residential units to the roof space of an existing residential use building.

Decision

1. The appeal is allowed and planning permission is granted for the addition of 3 residential units to the roof space of an existing residential use building at St James House, 28 Drayton Park, Islington, London N5 1PD in accordance with the application Ref P2016/1791/FUL, dated 4 May 2016 and subject to the conditions in the schedule below.

Procedural Matter

2. The appellant has submitted a signed and dated Unilateral Undertaking (UU) which commits to making financial contributions for affordable housing provision and carbon offsetting in the Borough, and also to ensure that the development is car free. This issue is considered later in my decision.

Main Issues

3. The main issues are i) the effect of the development on the character and appearance of the host building and the wider street scene; ii) whether sufficient provision would be made for refuse and recycling storage and iii) whether the submitted planning obligation is necessary to make the development acceptable.

Reasons

Character and Appearance

4. The street scene is characterised by large-scale buildings, of varied architecture along a wide thoroughfare. Buildings are generally 3 - 4 storeys in height, though some, such as 1 Benwell Road, are markedly taller than this. The appeal site is adjacent to and similar in height to No 30 Drayton Park. It is however shorter than the next building along at No 32, and significantly taller than the three storey building known as Tinniswood on its opposite side.

5. Accordingly, whilst the proposed development would be visible from Drayton Park, it would not interrupt any strong sense of uniformity in the height of the building frontage along the road. There are also a number of further mitigating factors in this case. The proposed development would be set in from the edges of the building, behind a parapet wall and would incorporate sloping elevations and a shallow curved roofline. The use of zinc cladding would also reflect the use of this material elsewhere in the locality. These characteristics would soften the appearance of the development giving it a recessive quality that would not appear discordant with its surroundings. Furthermore the extension would not exceed the height of the building at No 32.

6. From further along Drayton Park to the west, the eye would tend to be drawn by the more imposing corner feature to the Tinniswood building or by the taller building at 10 – 14 Drayton Park, on the opposite side of Horsell Road, in preference to the proposed extension. Similarly when viewed from the east, attention would naturally tend to be drawn to the more imposing iconic design of the taller building at 1 Benwell Road. Therefore, whilst visible, the extension would not appear as a dominant or incongruous structure.

7. The Council and a number of local residents have drawn my attention to a previous scheme to provide additional accommodation to the roof space of the building that was dismissed at appeal[1]. I have been provided with limited information, however it is apparent that the proposed development in that case would have incorporated a balustrade and additional storey. It would therefore have been taller and potentially more imposing, and as such can be distinguished from the current appeal. Whilst the Inspector in that case found that that proposal would have a harmful effect on the street scene, this did not mean that any proposal to extend the building would do so.

8. For the above reasons I conclude that the development would not result in harm to the character and appearance of the host building and the wider street scene. It would not therefore conflict with Policies 7.6 of the London Plan 2015 (LP); Policies CS 8 and CS 9 of the Islington Core Strategy 2011 (CS); Policy DM2.1 of the Islington Development Management Policies 2013 (DMP) and the Islington Urban Design Guidelines 2017 insofar as they seek to promote high quality design which respects the character of its surroundings.

Refuse and recycling storage

9. The Council has objected to the development on the basis that there would be inadequate provision for refuse and recycling storage within the site. Indeed refuse storage capacity is a widely raised matter of concern for residents, who emphasise that the proposal would only compound what they consider to be existing insufficient levels of bin provision.

10. The Council's publication entitled 'Recycling and Refuse Storage Requirements' provides guidance on this matter, indicating that for the three proposed two bedroom apartments, an additional 1020 litres of storage would be required. The proposal would, in practice, incorporate additional provision for 720 litres of storage from the two additional bins proposed, therefore falling short of the guideline.

[1] APP/V5570/W/16/3142273

11. However, the aforementioned guidance is just that and should not be regarded as a mandatory requirement. Furthermore it is apparent from the information before me, that the proposed level of additional storage followed consultation with and concurred with specific advice given by the Council's Area Operations Manager for Street Environmental Services. It would be reasonable to expect that officer to be well placed in terms of identifying additional refuse and recycling storage need within a given development. Accordingly I consider that this provides a robust justification for the more flexible approach to increased refuse and recycling storage capacity at the site and I am satisfied that the proposal amounts to a proportionate response in this regard.

12. From the information before me and my visit I am also satisfied that the proposed alterations to the bin store enclosure to allow for additional storage as proposed would enable the concentration and containment of storage in a single location, whilst allowing for satisfactory access.

13. Notwithstanding the above, it seems to me that even if further storage need were to arise in the future, it would be physically possible to provide additional capacity within the position where the bins earmarked to be relocated are currently sited, that is within the undercroft area providing access to the rear of the site. Whilst I would accept that this would not be an ideal solution, the existing bin storage arrangement demonstrates that it would not prejudice the movement of pedestrians and traffic to and from the site.

14. For the above reasons I conclude that the proposal would make satisfactory provision for refuse and recycling storage. It would therefore be in accordance with Policy CS 11 of the CS insofar as it seeks to encourage sustainable waste management.

Planning Obligation

15. Regulation 122 of the Community Infrastructure Levy Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 204 of the National Planning Policy Framework (The Framework) are as follows:

    - 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.

16. Policy CS 12 of the CS sets out the Council's policy towards the provision of affordable housing, which is acknowledged within the explanatory text to that policy to be a major issue in the Borough. It is based on meeting objectively assessed needs identified in the Core Strategy evidence base. The policy states that for schemes of fewer than ten units, a financial contribution will be required towards affordable housing provision elsewhere in the Borough.

17. The Council, in support of the need for the contribution, has set out updated information in respect of housing need and affordability in the Borough. Amongst the key findings are that house prices in Islington are amongst the highest in England and Wales and have been increasing far more rapidly than in other areas. The submitted figures show that the median and lowest quartile house prices are respectively around 16 times higher than the median

and lowest incomes in the Borough. Furthermore rents in Islington are notably higher than in Greater London as a whole. In addition there is significant deprivation in the Borough with very high levels of overcrowding and the second highest rate of child poverty in the country.

18. Based on this information, undisputed by the appellant, I am firmly of the view that there is a demonstrable affordability issue in both the home ownership and private rented sectors and a significant need for affordable housing in Islington.

19. The Islington Affordable Housing Small Sites Contributions Supplementary Planning Document identifies the appropriate level of affordable housing contribution to be £50,000 per unit in relation to proposals for fewer than ten units. This level of contribution was derived following a process of viability threshold testing.

20. The Council sets out in its justification statement that a large proportion of its housing delivery comes from relatively small sites, an inevitable consequence of the densely built-up nature of the Borough. This demonstrates the key role that such smaller sites have in the delivery of affordable housing in Islington and is therefore a consideration that attracts very significant weight.

21. This approach to seeking financial contributions to the provision of affordable housing in the Borough is therefore consistent with paragraph 50 of the Framework. This states that where need for affordable housing has been identified, local planning authorities should set policies for meeting that need on site unless a contribution to off-site provision can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities.

22. However, the Government's Planning Practice Guidance confirms that following the order of the Court of Appeal dated 13 May 2016 giving legal effect to the policy set out in the Written Ministerial Statement (WMS) of 28 November 2014, there are specific circumstances where contributions for affordable housing should not be sought from small scale development[2]. These circumstances include developments of 10-units or less and which have a maximum combined gross floorspace of no more than 1000 sqm.

23. The WMS, as national policy, is therefore a material consideration that carries significant weight and with which Policy CS 12 would not be consistent. However, based on the specific circumstances of this case, in which there is such an acute need for affordable housing and where contributions from small sites form a key element in the overall delivery strategy, there is a compelling case that the WMS does not outweigh the relevant plan policy. I therefore conclude that both the principle and amount of affordable housing contribution, £150,000, would accord with Policy CS 12 of the CS and would meet the relevant Regulation 122 and Framework tests. This payment is therefore justified and necessary to make the development acceptable.

24. Policy CS 10 of the CS sets out that the Council will seek financial contributions to offset remaining carbon emissions associated with new development. The Council's Environmental Design Supplementary Planning Document explains that the amount of contribution for minor developments is calculated based on a flat rate of £1,000 per unit. The contribution of £3,000 in this regard would

[2] Paragraph: 031 Reference ID: 23b-031-20161116

therefore meet the aforementioned Regulation 122 and Framework tests. Accordingly, I consider that there is sufficient justification for this payment.

25. The planning obligation would prevent occupation of the proposed units by any resident with an Islington parking permit, subject to certain exceptions, with the objective of ensuring the proposal is a car free development. The proposal would not make provision for any additional parking and it is undisputed by the parties that all new developments in the Borough should be car free in accordance with Policy CS 18 of the CS and Policy DM8.5 of the DMP in order to mitigate the transport impacts of development. This restriction would therefore accord with the aforementioned Regulation 122 and Framework tests and is necessary to make the development acceptable.

Other Matters

26. A number of further concerns have been raised by local residents. With regard to the potential for overlooking and loss of light, I am satisfied that the development would be sufficiently separated from existing developments to the front and rear not to result in a problem. Furthermore due to the difference in levels and the oblique angles involved, the terrace serving proposed unit 17 would not result in unacceptable overlooking and loss of privacy to the rear of Tinniswood.

27. Noise and disturbance arising from the construction process would be temporary in nature and not therefore sufficient to warrant refusal of planning permission. As previously acknowledged, the planning obligation would be designed to secure car free development by preventing future occupiers from obtaining parking permits. Accordingly the development would not result in increased parking pressure. In terms of amenity space each of the additional units would be provided with private terraces. Any additional impact on use of the communal amenity space would therefore be negligible. Concern has been raised by objectors that the amount of internal space would appear insufficient. The Council, however, is satisfied that the scheme would comply with minimum internal space standards in the London Plan and that amenity space provision would meet the Council's requirements. This is not specifically disputed by third parties.

28. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.

29. With regard to proposed alterations to two existing car parking spaces to accommodate the reconfigured bin store, I have not been provided with any evidence that ownership constraints would prevent this from being achieved. Whilst residents have referred to a number of unresolved matters with the existing building, in terms of the impact of the development on the stability of the structure and the accuracy of the drawings, I have not been provided with any evidence to suggest that a structural problem would arise or that the development could not be constructed as demonstrated on the drawings.

30. Concern has been raised that the development would interfere with rights under Article 1: The Peaceful Enjoyment of Property, of the Human Rights Act 1998 (HRA). In addition Article 8 of the HRA is concerned with The Right to

Respect for Private and Family Life and for the Home. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic wellbeing of the country which has been held to include the protection of the environment and upholding planning policies. Furthermore Article 1 provides that no one shall be deprived of his possessions except, subject to conditions, in the public interest.

31. In this case I have found the development to be in accordance with planning policies. Furthermore whilst I acknowledge that residents would experience change to their surroundings, I have not identified harm and as such the impact of this would be outweighed by the wider public interest of the need to increase the supply of housing as set out in national policy. Accordingly the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 or Article 8.

Conditions

32. I have considered the conditions suggested by the Council. In addition to the standard implementation condition, conditions specifying the plans and requiring details of the external materials are necessary to provide certainty and to safeguard the character and appearance of the area. Conditions requiring cycle and bin storage to be in place are required in the interests of the proper planning of the area. Conditions requiring the submission of a construction management plan and the provision of visual screens to the terrace areas are required to protect the living conditions of residents. Conditions are required to ensure the use of sustainable construction techniques to secure the energy efficient design of the apartments and that the units allow for changing accessibility needs in the interests of inclusive design.

33. I have made alterations to the wording of some of the suggested conditions for clarification and to ensure they meet the tests for conditions as specified in Planning Practice Guidance. The conditions concerning materials and construction management are specified as pre-commencement conditions as they are considered fundamental to the development permitted.

34. A condition requiring the development to be car free is not needed as this is a matter covered by the planning obligation. Similarly, a specific condition restricting use of part of the roof area for amenity purposes is not required as this is clarified on the plans.

Conclusion

35. I have not found harm to the character and appearance of the area nor to provision for refuse and recycling storage. I have also found that a planning obligation would be justified to secure financial contributions to the provision of affordable housing and carbon offsetting in the Borough and to ensure that the development is car free. Consequently, having had regard to all other matters raised, I conclude that the appeal should succeed.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

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

2) The development to which the permission relates shall be carried out in accordance with the following approved plans and specifications: SE-1567-EX03; SE-1567-EX03A; SE-1567-04; SE-1567-05; SE-1567-EX05A; SE-1567-06; SE-1567-EX06A; SE-1567-07; SE-1567-EX07A; SE-1567-08; SE-1567-EX08A; SE-1567-09; SE-1567-11; SE-1567-12.

3) No development shall commence until samples and details of the materials to be used in the construction of the external surfaces of the development 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.

4) The visual screens to roof terraces shown on the drawings hereby approved shall be installed prior to the first occupation of the development and shall be retained thereafter.

5) The bicycle storage area hereby approved, which shall be covered, secure and provide for no less than 6 bicycle spaces, shall be provided prior to the first occupation of the development hereby approved and thereafter retained.

6) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The statement shall provide for:

   - loading and unloading of plant and materials including delivery hours;
   - storage of plant and material used in constructing the development;
   - the parking of vehicles of site operatives and visitors;
   - measures to control the emission of dust and dirt during construction;
   - the hours of building operations in connection with the construction of external walls and roof, erection of scaffolding, delivery and removal of materials or other external site works involving the use of plant and machinery and

   The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

7) The dedicated refuse / recycling enclosure shall be provided prior to the first occupation of the development hereby approved and shall thereafter be retained.

8) Notwithstanding the Design and Access Statement and plans hereby approved, the dwellings shall be constructed to Category 2 of the

National Standard for Housing Design as set out in the Approved Document M 2015 'Accessible and adaptable dwellings' M4 (2). Evidence, confirming that the appointed Building Control body has assessed and confirmed that these requirements will be achieved shall be submitted to and approved in writing by the local planning authority prior to any superstructure works beginning on site. The development shall be constructed in accordance with the details so approved and shall thereafter be retained.

9) A Sustainable Design and Construction Statement shall be submitted to and approved in writing by the local planning authority prior to any superstructure works beginning on site. The statement shall detail how the dwellings hereby permitted achieve best practice sustainability standards with regard to water, materials, energy, ecology and adaptation to climate change. The statement must demonstrate how the dwellings will achieve a 19 per cent reduction in regulated carbon dioxide emissions when compared with a building compliant with Part L of the Building Regulations 2013, and not exceed water use targets of 95 litres per person per day. The development shall be constructed in accordance with the details so approved and shall thereafter be retained.