
Appeal Decision

Site visit made on 2 June 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 28 June 2017

Appeal Ref: APP/V5570/W/17/3169256

382 Hornsey Road, Islington, London N19 4HT

- 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 S March of Goldmoore Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/4348/FUL, dated 4 November 2016, was refused by notice dated 1 February 2017.
 - The development proposed is described as "Erection of a full-width rear extension at rear first and second floor levels; change of use at ground floor level and conversion of existing vacant building to provide 4 no. self-contained residential flats (1 x two-bed unit and 3 no. one-bed unit) including creation of a roof terrace with installation of associated balustrade and new entrance doors".
-

Decision

1. The appeal is allowed and planning permission is granted for "Erection of a full-width rear extension at rear first and second floor levels; change of use at ground floor level and conversion of existing vacant building to provide 4 no. self-contained residential flats (1 x two-bed unit and 3 no. one-bed unit) including creation of a roof terrace with installation of associated balustrade and new entrance doors" at 382 Hornsey Road, Islington, London N19 4HT in accordance with the terms of the application Ref P2016/4348/FUL, dated 4 November 2016 subject to the conditions attached in the schedule to this Decision.

Procedural Matter

2. I have taken the description of development from the appeal form, as this is consistent with the description used by the Council in the decision notice.
 3. The Council has advised that the Conservation Area Design Guidelines cited in the first reason for refusal, the Environmental Design Supplementary Planning Document cited in the second reason for refusal and Policy DM2.3 of the Development Management Policies (2013) cited in the fifth reason for refusal were all referenced in error. I have considered the appeal on this basis.
 4. The Council has also advised that the reference to No 382 Hornsey Road in the fifth reason for refusal was an error, and that the building in question is No 380. The Council has pointed out that its delegated report referred correctly to No 380. Although the error in the decision notice is somewhat confusing, I do not consider that it has prejudiced the interests of the appellant, as it is
-

apparent from the delegated report which building the Council was concerned with.

Main Issues

5. The main issues are: (i) the effect of the development on the character and appearance of the area and the host building; (ii) whether or not the development would make adequate provision for affordable housing; (iii) the effect of the development on the vitality and viability of the local shopping area; (iv) whether the development would provide suitable living conditions for future occupants and; (v) the effect of the development on the living conditions of neighbouring residents, with the regard to privacy.

Reasons

Character and Appearance

6. The appeal property comprises a vacant four storey end of terrace building. The proposed development includes rear extensions at first and second floor levels, and the provision of a roof terrace. Alterations to the front elevation include the replacement of the former shop front with two windows and a door.
7. I saw during my site visit that the rear of the building is in a poor state of repair and sheeting is being used for protection. There is very little evidence of what the original elevation would have looked like. Also, the other properties in this, and the adjoining terrace, have been extensively altered through the addition of full width extensions, many of which extend to two and three storeys in height. Overall, there is little unity in terms of the architectural style and fenestration at the rear, although in general the windows tend to be sash windows with a vertical emphasis. It was also apparent from my site visit that the rear of property is not prominent in views from Pine Grove. The only views of the building are from the car park of the depot which adjoins the site, the depot building itself and possibly from the adjoining properties.
8. The Council is particularly concerned about the terrace, access doors, fenestration design and, overall, visual clutter. However, as explained above, the property is not overly prominent in views from the rear. Moreover, the rear of the terrace does not display unity of design and the development would be consistent with other extensions in the immediate vicinity. The extension would be proportionate to the existing building and it would not appear incongruous. The proposed windows would have a vertical emphasis, and would be similar to other windows in the terrace. The large glazed area formed by the patio doors would be partially concealed by the rear boundary wall. I did not see any similar glass balustrades in the vicinity, however, this feature would have a relatively minor visual impact due to its height at roof level and the transparent materials.
9. The Council is concerned that the alterations to the former shop front would be harmful to the host building. The shop front was boarded up at the time of my visit. However, the wider terrace displays a variety of styles and shop front treatments. Some premises within the terrace have been converted at ground floor level and the shop fronts have been replaced with windows and doors, similar to that proposed. The window design would not be entirely consistent with the window proportions on the upper floors of the building. However, given the variation of design in the vicinity, the ground floor front

elevation would not stand out as alien form of design and its overall effect on the street scene would be limited.

10. To conclude on this issue, I find that the development would not have an adverse effect on the character and appearance of the area or the host building. It would comply with Policy CS12 of the Core Strategy,¹ Policy DM2.1 of the Development Management Policies,² and the guidance contained within the Islington Shopfront Design Guide (2003) and the Islington Urban Design Guide (2017) which, in combination, seek to promote high quality development that makes a positive contribution to local character and distinctiveness, whilst also respecting the integrity, rhythm and visual amenity of the street.

Affordable Housing

11. The Council's Supplementary Planning Document (SPD) Affordable Housing Small Sites Contributions (2012), together with Policy CS12 Part G of the Core Strategy, require development proposals below a threshold of 10 residential units to provide a financial contribution towards the provision of affordable housing elsewhere in the Borough. The Council has sought to justify this policy requirement, and evidence supporting the need for affordable housing contributions has been submitted. This includes information on local house prices and rents compared with average earnings. The Council also explains that a relatively large proportion (approximately one third based on analysis of permissions between 2012/13 and 2014/15) of new housing delivery in the Borough was from sites of 10 units or fewer, and the development of these sites makes up a significant proportion of the local housing supply. No financial contribution is offered by the developer and therefore the proposal would be in conflict with these policies.
12. The appellant refers to a Court of Appeal judgement,³ the result of which is that the policies in the Secretary of State's Written Ministerial Statement of 28 November 2014 (WMS), and subsequent alterations to the Planning Practice Guidance (PPG), should once again be considered as national planning policy. This defines the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development of 10-units or fewer, and which have a maximum combined gross floorspace of no more than 1000 square metres. The WMS seeks to relieve the disproportionate financial burden from small scale developers.
13. The statutory position is that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The WMS is a material consideration to which I attach significant weight as Government policy, to be read alongside the National Planning Policy Framework (the Framework).
14. The Council disagrees with the appellant's argument that the WMS outweighs local policy on the basis that local circumstances justify a lower threshold. I

¹ Islington's Core Strategy February 2011

² Islington's Local Plan: Development Management Policies June 2013

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

am satisfied from the evidence submitted by the Council that there is a demonstrable affordability gap in both the home ownership and private rented sectors, and there is a significant need for affordable housing in Islington. The evidence also indicates that an absence of contributions from small sites would compromise the Borough's ability to deliver its objectively assessed need for affordable housing, and contribute towards the London Plan annual target for affordable homes. On this basis, I consider that the specific local circumstances are such that the WMS does not outweigh relevant local policy. This finding is consistent with other Inspectors who have considered this issue in relation to appeals on similar sites. I appreciate that the appellant has referred to other appeal decisions that support their submissions. However, irrespective of these decisions, the specific circumstances of this appeal amount to a compelling case that the WMS should not outweigh local policy.

15. Following analysis of viability evidence, the Council's adopted SPD has set the level of contribution in the area of the appeal site at £50,000 per additional residential unit. The Council confirms that it would reduce or waive the contribution where there are clear viability constraints. This is consistent with paragraph 173 of the Framework, which relates to ensuring viability and deliverability. The appellant submits that the development would be unviable if affordable housing were to be sought in the form of a financial contribution. A Viability Report has been submitted to support this assertion.⁴
16. In response, the Council has submitted an independent assessment⁵ of the appellant's Viability Report, which concludes that the development would be viable and, therefore, a financial contribution would not compromise the deliverability of the scheme. There is no dispute in terms of the methodology used by the appellant. The outstanding areas of disagreement between the parties are the likely sales values, developers profit allowance, finance and acquisition costs, and sales and marketing costs. On examining the two reports, it is clear that the main area of dispute, which has the most significant effect on whether or not the development would be viable, is the likely sales values.
17. The appellant has provided details of recent sales values achieved in the vicinity. This includes the sale price for similar sized properties in a search area of approximately one mile from the appeal site. Sold prices of comparable flats on Hornsey Road are also provided. This exercise supports the appellant's assumptions of the likely achievable sales values. The Council's independent assessment disputes these findings and refers to web-based research and discussions with local estate agents, however, the details of this research are not before me. Although I agree with the Council that the newly refurbished properties may attract a small premium, this in itself does not justify the significantly higher sales values suggested. In the absence of any information to support this assertion, I consider that the sales values as advocated by the appellant are more likely to accurately reflect the current market conditions.
18. To conclude on this matter, I find that it has not been demonstrated that the findings of the appellant's Viability Report are not robust. Therefore, it is

⁴ S106 Affordable Housing Ltd, dated 12 January 2017 and updated 9 February 2017

⁵ Adams Integra, dated January 2017

likely that there would be no surplus to fund the affordable housing contribution which would, in turn, affect the viability of the scheme. Although I have found that the WMS does not outweigh local policy in this case, I am satisfied that there are site-specific circumstances in the form of viability constraints. Consequently, a contribution towards the provision of affordable housing elsewhere in the Borough has not been justified in line with Policy CS12 of the Core Strategy, and the guidance contained in the Council's SPD.

Vitality and Viability

19. The appeal property was formerly occupied by a commercial use at ground floor level. It is located within a designated local shopping area, and the surrounding area is characterised by a mix of commercial and residential uses. The Council is concerned that the loss of the commercial use would undermine the vitality and viability of the local shopping area.
20. Policy DM4.6 of the Development Management Policies seeks to protect ground floor retail units, subject to certain criteria. The first of these is that the premises should have been vacant for a continuous period of two years and marketing evidence demonstrates that there is no realistic prospect of the unit being brought back into use. Although the building has been vacant for a number of years, no marketing information has been submitted. However, the site-specific circumstances are unusual in that the building is in a very poor state of repair. I appreciate that repairs and improvements to units are often negotiated through the terms of the lease, and a certain level of disrepair would not prevent the unit from being marketed. However, I saw from my site visit that there is no shop front and supporting walls appear to be missing or damaged, which compromises the structural integrity of the building. Given this situation it is unlikely that any effective marketing could be carried out without extensive repairs taking place first. Therefore, due to the current level of disrepair, it is unlikely that the unit would be brought back into a commercial use in the foreseeable future.
21. The second criterion is the proposal would not result in a break in retail frontages. The building forms the end of a terrace in which several ground floor units have been converted to residential uses, including those either side. Therefore, there would not be a break in the retail frontage.
22. The third criterion is that the loss of the commercial unit should not affect the vitality and viability of the local shopping area. There are a number of commercial uses in the area, including a barbers shop, a dental surgery, computer repairs and a number of food outlets. The retail units are interspersed with ground floor residential uses. At present the vacant building has a negative impact on the area and the unit makes no contribution to the vitality and viability of the area. If a new commercial use could be secured, it would have a positive impact. However, as explained above, this is unlikely. In contrast, the proposed residential use would improve the appearance of the building, and future residents would introduce a level of activity to the area. They may also support the existing commercial uses in the vicinity.
23. Policy DM4.6 also resists the change of use of commercial units to residential. However, paragraph 51 of the Framework states that planning applications for change of use to residential from commercial should normally be approved

where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate. The Council argues that the number and type of commercial uses in the area is insufficient to meet the needs of the local population. This may be the case, but the Council also states that there are seven vacant units, including the appeal building, within the local shopping area. This relatively high vacancy level undermines the argument that there is a significant population in the immediate area who need everyday services. Therefore, the evidence before me is insufficient to demonstrate that there are strong economic reasons why the development would be inappropriate.

24. Overall, I am satisfied that the development would make an appropriate contribution to the mix and balance of uses within the local shopping area, and there would be no adverse effect on the vitality and viability of the area. Consequently, the development would accord with Policy DM4.6 of the Development Management Policies and Policy CS13 of the Core Strategy, which seeks to prevent the loss of employment space.

Living Conditions: Future Occupants

25. The Council is concerned that the residential accommodation would fail to meet the minimum space standards set out in Policy DM3.4 (Table 3.2) of the Development Management Policies and the London Plan. There is a dispute between the parties with regard to the gross internal floor areas for each of the proposed units. The Council suggests it has obtained its figures from measuring the submitted drawings but I am not provided with any detailed explanation of how the figures have been calculated. The plans before me clearly show the floorspace to be provided and there is no evidence to demonstrate that the plans are inaccurate. Therefore, I have taken the information on the submitted plans as being the correct floor space.
26. Table 3.2 gives the following space standards for flats which I have compared with the proposed development. A flat with one double and one single bedroom (proposed ground floor) requires a Gross Internal Area (GIA) of 61 square metres (sqm). The development would provide 73 sqm. A flat with one double bedroom (proposed first and second floors) requires a GIA of 50 sqm. The development would provide 53 and 51 sqm. A studio single bedroom flat (proposed third floor) requires a GIA of 37 sqm. However, the proposed studio is shown to have a double bedroom which would require a GIA of 50 sqm. The development would provide 49 sqm, which would be marginally below standard, but this is not significant especially as the unit would be a studio flat. Overall, I am satisfied that the size of the residential accommodation to be provided would be acceptable to meet the guidelines.
27. The Council is further concerned that the living conditions of the occupants of the ground floor flat would be compromised by its location on a main road, and its siting at the back of the footway. I appreciate there would not be any amenity space and there is likely to be a level of noise and disturbance resulting from the road. However, this is not unusual in an urban area where residents accept levels of disturbance, and lower levels of privacy, in exchange for the location. Moreover, there are a number of similar properties in the immediate vicinity with ground floor residential accommodation, which indicates there is demand for this type of accommodation. I note the

concerns about security but there is no evidence to demonstrate that the ground floor flat would be especially vulnerable. Also, it would be located in an area of high surveillance, which is more likely to discourage breaches in security.

28. To conclude on this issue, I find that the development would provide suitable living conditions for future occupants, in accordance with Policy DM3.4 of the Development Management Policies.

Living Conditions: Neighbouring Residents

29. The Council is concerned that the use of the third floor terrace would enable overlooking into the rear windows of No 380. During my site visit I looked at the relationship between these properties. The windows on the second floor rear elevation of No 380 would be close to the terrace, but would be at a lower level. Whilst it would be possible to stand towards the side of the terrace and look downwards at an oblique angle into the neighbour's windows, it is unlikely that this would occur frequently. Residents are more likely to sit on the terrace facing towards the commercial building at the rear, than stand looking backwards at an awkward angle. Overall, I think it unlikely that there would be a material loss of privacy to the adjoining property. The Council cites Policy DM2.3 of the Development Management Policies, however this refers to heritage assets and is not relevant to this issue.

Conditions

30. In addition to the standard time limit condition, I have imposed a condition to specify the approved plans as this provides certainty. I have imposed a pre-commencement condition requiring samples of materials, as this is necessary to ensure the development complements the host building. I have imposed a condition requiring the cycle storage area and refuse facilities to be provided to encourage the use of cycling and ensure adequate facilities for the recycling of waste are provided.
31. I have imposed the Council's suggested condition to require the development to be car free, due to the site's location in an area of relatively good access to public transport and to discourage the use of the private car.
32. I have also imposed the Council's suggested condition regarding the National Standard for Housing Design, to secure the provision of adaptable homes.

Conclusion

33. For the reasons given above, the appeal is allowed.

Debbie Moore

Inspector

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Plans, Elevations, Section, Site Location and Block Plan, Drawing No jw839-101 Rev A dated October 2016.
- 3) The bicycle storage area and refuse facilities shall be provided in accordance with details that shall have been submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby permitted, and retained as such thereafter.
- 4) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 5) All future occupiers of the new residential units hereby approved shall not be eligible to obtain an on-street residents' parking permit except: i) In the case of disabled persons; ii) In the case of units designated in this planning permission as non-car free; or iii) In the case of a resident who is an existing holder of a residents' parking permit issued by the London Borough of Islington and has held the permit for a period of at least one year.
- 6) Notwithstanding the drawings hereby approved, all residential units 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 LPA prior to the occupation of the development hereby permitted. The development shall be constructed in accordance with the details so approved.

[end]