
Appeal Decision

Site visit made on 26 June 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 8 August 2017

Appeal Ref: APP/V5570/W/17/3169985

228 St Paul's Road, Islington, London N1 2LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Messrs Antoniadis and McCann against the Council of the London Borough of Islington.
 - The application Ref P2016/4319/FUL, is dated 2 November 2016.
 - The development proposed is retention of two self-contained flats on first, second and third floors, including two front rooflights, rear dormer window and one rear rooflight.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning Practice Guidance (PPG)¹ sets out the various provisions for validation, including a completed application form, compliance with national information requirements, the correct fee, and any local information requirements (subject to accordance with the TCP-DMP 2015²).
3. The planning application subject of this appeal was not made valid upon submission and instead, the Council sent a letter dated 10 November 2016 which referred to the type of application as a removal / variation of condition 2 of planning consent reference P2013/0079/FUL dated 28 February 2013 under Section 73 of the TCPA 1990 for the "*retention of additional rooflights to front and rear, and shift in position of rear dormer window*". The letter stated that the items required for validation were a deed of variation to amend the legal agreement of P2013/0079/FUL should the amendments be acceptable. In addition, it stated that an amended third floor plan drawing as built and a revised application form relating to variation of condition 2 would be required and that an overpayment of the fee had been made.
4. The appellant replied on 28 November 2016 and in doing so, provided drawing no. 1646/22 Rev A relating to the third floor of the property with the rear dormer and rooflights as built. The appellant also indicated that a full application for planning permission was entitled to be made and that the fee provided was correct for such an application. An accompanying notice was provided under Article 12 of the TCP-DMP 2015 which relates to the procedure for validation disputes relating to local lists. The notice set out that a deed of

¹ Making an Application, Paragraph: 016 Reference ID: 14-016-20140306 and subsequent paragraphs

² Town and Country Planning (Development Management Procedure) (England) Order 2015

variation/agreement to pay legal fees as set out in Islington's Local List of Planning Application Requirements was not needed as part of the application.

5. Further correspondence between the parties failed to resolve the validation dispute. The appeal was submitted on 21 February 2017 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
6. The Council through the previous grant of planning permission have accepted the principle of additional residential accommodation within the building, together with the appropriateness of the character and appearance of the previous proposal, the suitability of the living environment and the absence of a detrimental effect upon the living conditions of occupiers of neighbouring properties. The Council's appeal statement makes it clear that the proposal could also be acceptable in those respects, subject to conditions, a planning obligation relating to affordable housing and the development being 'car free'. Nevertheless, the making of an appeal against non-determination requires that I consider the merits of the proposal afresh should the application contain sufficient information to be valid and determined.
7. Having regard to the above, the main issues are:
 - Whether the application contains sufficient information to enable it to be valid and determined;
 - If so, whether the proposal would preserve or enhance the character and appearance of Canonbury Conservation Area;
 - Whether the development would provide for a satisfactory living environment for future residents;
 - The effect on the living conditions of occupiers of neighbouring properties;
 - Whether the proposed development should make provision for affordable housing, and;
 - Whether the development should be 'car free'.

Reasons

Whether the application is valid

8. At the time of my visit, the development as proposed on the submitted plans had taken place. The description of development within the application form for the proposal subject to this appeal is comparable with the planning permission granted under P2013/0079/FUL in so far as it relates to conversion of the building to 2No. self-contained flats and erection of a rear dormer. There are only minor differences between the internal layout of the approved plans of P2013/0079/FUL and the proposed plans before me. I, therefore, consider it reasonable to conclude that the planning permission previously granted had been commenced and remains extant.
9. Notwithstanding the above, the external alterations such as the revised position of the dormer within the rear roofslope, together with the alteration to rooflights including the addition of a further rooflight to the front and rear roofslope, have resulted in the development as built not being in accordance with condition 2 of planning ref: P2013/0079/FUL. Consequently, the development has been carried out without planning permission.

10. I agree with the Council that the status of the development as built could be regularised through an application made under the powers of subsection (2)(c) of Section 73A of the TCPA 1990, which relates to development carried out without complying with some condition subject to which planning permission was granted. However, Section 73A (2)(a) is also applicable to the proposal. Accordingly, an alternative approach to regularise the development would be a planning application determined in accordance with Sections 70 and 73A (2)(a) of the TCPA, as sought by the planning application subject to this appeal. The particular circumstances of the planning application as submitted does not fall within the powers of a local authority to decline to determine applications under Sections 70A, 70B or 70C of the TCPA 1990. Consequently, the application form submitted was not invalid, the application was duly made in that context and there is no evidence that the correct fee had not been paid. I proceed to determine the appeal on that basis. Such an approach would create a new planning permission for the site if the appeal were to be allowed.
11. Turning to local information requirements, in accordance with Section 62 of the TCPA 1990³ and as set out in Article 34(6) of the TCP-DMP 2015, the information required in support of a planning application must be reasonable having regard in particular, to the nature and scale of the proposed development and may require particulars of, or evidence about, a matter only if it is reasonable to think that matter will be a material consideration in the determination of the application. The Council's Local Validation Requirements document (local list) was adopted on 27 June 2013 and has been recently updated in June 2017. On the local list at the time the application was submitted, was item 21 - a planning obligations statement - draft heads of terms for '*applications which require the council and applicant to enter into a legal agreement (a planning obligation); for example, to secure affordable housing on site*'.
12. There is no evidence before me that the Council's local list at the date that the application was submitted had been reviewed since 27 June 2013. The Council's local list at the date of the application submission, therefore, predated guidance in the PPG relating to the local list⁴ and planning obligations with specific reference that affordable housing and tariff style contributions should not be sought for small scale development and self-build development⁵, a definition which includes the development. The local list was also contrary to guidance in the PPG that a local list should be reviewed at least every 2 years and the associated requirements of Article 34(6) of the TCP-DMP 2015.
13. Having regard to the above, the absence of a planning obligations statement – draft heads of terms is a matter to be dealt with as a material consideration when determining the planning application, including consideration relative to the development plan, Islington Affordable Housing Small Sites Contributions SPD and other relevant evidence. Nevertheless, in the particular circumstances of this case, the status of the local list that was in place at the time of the application's submission is a procedural matter of great importance.
14. Based upon the evidence before me, the local list did not meet the requirements of Article 34(6) of the TCP-DMP 2015 on the date when the application was submitted. The absence of a planning obligations statement

³ As modified by the Growth and Infrastructure Act 2013

⁴ Making an Application, Paragraphs 038 – 044, Revision date: 06 03 2014

⁵ Planning Obligations, Paragraph: 031 Reference ID: 23b-031-20161116

was not, therefore, reasonable justification in itself to make the application invalid or fail to give notice within the prescribed period of a decision on an application for planning permission. The planning application, therefore, contained sufficient information on 28 November 2016, at which time the notice until Article 12 of the TCP-DMP 2015 was served, to enable it to be made valid and determined prior to the appeal being submitted.

15. I conclude that the planning application contains sufficient information to be valid and determined. Although there is conflict with the Council's local list, such matters are outweighed in the particular circumstances of the proposal by material considerations relating to the status of the local list at the date when the planning application was submitted.

Character and appearance

16. Canonbury Conservation Area is predominantly of a residential character, but with shopping frontages on St Paul's Road, including the appeal property, and Canonbury Place providing local services which make an important contribution to the character of the area. The special character and significance of the Conservation Area is established by the 18th and 19th century buildings built of brick, stucco, with timber windows, doors and slate roofs, together with sympathetic shopfronts at ground floor level. The rooflines on terraces, including No 228 St Paul's Road (No 228), makes a positive contribution to the character of the Conservation Area.
17. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 131 of the National Planning Policy Framework (the Framework) requires that account be taken of the desirability of sustaining and enhancing the significance of heritage assets, and of new development making a positive contribution to local character and distinctiveness. Paragraph 132 of the Framework states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation.
18. No 228 sits within a terrace where a majority of properties have existing rear dormer windows with a range of designs, proportions and positions. In that context, the rear dormer as built assimilates with and complements the existing character of the rear elevation of surrounding properties along the terraced row. Furthermore, the surrounding terrace also includes a number of properties with rooflights in front and rear roofslopes. Consequently, the rooflights as built do not appear out of place, particularly along St Paul's Road where views of the front roof slope at street level are limited due to the three storey height of the building and a parapet wall.
19. I conclude that the development preserves the character and appearance of the Canonbury Conservation Area. The proposal, therefore, does not conflict with Policies CS8 and CS9 of Islington's Core Strategy (CS), adopted February 2011, and Policies DM2.1 and DM2.3 of the Islington Development Management Policies (DMP), adopted June 2013, together with the associated guidance within the Islington Urban Design Guide SPD, adopted January 2017 and the Islington Conservation Area Design Guidelines – Canonbury (CA8), January 2002 in that respect. When taken together, the policies seek to ensure new development is of a high standard of design which contributes

positively in complementing and reinforcing local character through respect for scale, proportions and setting, whilst preserving or enhancing the significance of the historic environment, including conservation areas. The policies are consistent with the Framework.

Living environment – future residents

20. The appeal proposal involves the retention of a 1-storey, 1-bedroom flat (Flat 1) at first floor level and a 2-storey 2-bedroom flat (Flat 2) at second and third floor level, with the existing commercial premises at ground floor level unaltered.
21. Policy DM3.4 of the DMP at Table 3.2 and 3.3 sets out the minimum gross internal floor space required for residential units. The bedroom in Flat 1 indicates the provision of a double bedroom. However, the floor space, proportions and configuration of the bedroom would appear to be that of a single bedroom. In that regard, the accommodation would not meet the minimum requirements of Table 3.3. However, the deficit would be largely imperceptible. On balance, as appropriate outlook and light is provided to all rooms by their dual aspect arrangements, Flat 1 provides a satisfactory living environment for existing or future occupiers.
22. Flat 2 would provide 2-storey, 2-bedroom, 3-person accommodation based on the dimensions of the bedrooms being consistent with a double bedroom and a single bedroom having regard to Table 3.4 of the DMP. The size of some of the rooms and the overall accommodation is smaller than the minimum requirements of Tables 3.3 and 3.4 of the DMP. However, in the particular circumstances of this case, the fallback position of the extant planning permission for a similar internal layout of the property must be taken into account. On balance, the fallback position is afforded significant weight and when taken together with the presence of adequate outlook and light to each room, outweighs the conflict with the minimum space standards. Flat 2, therefore, would provide a satisfactory living environment for existing or future residents.
23. The proposal fails to make provision for private outdoor amenity space and does not provide step free access. However, given the existing constraints of the site and that step free access and outdoor amenity space was not provided as part of the extant planning permission, I find that no harm would arise as a result. In reaching those findings, I have taken into account the close proximity to public open spaces nearby, including Highbury Fields and Laycock Street Park, which would provide recreation opportunities for residents.
24. I conclude that, on balance, the development does provide for a satisfactory living environment for the future occupiers of the development. There is minor conflict with Policy DM2.2 and DM3.4 of the DMP in terms of the absence of step free access, an absence of private outdoor amenity space and accommodation being smaller than minimum space standards set out in Tables 3.3 and 3.4. However, in the particular circumstances of this case, those matters are outweighed by the fallback position of an extant planning permission for a comparable development and therefore, no harm would arise from the proposal.

Living conditions

25. The rear dormer and rooflights are positioned within the existing roof slopes, set back from eaves level of the respective front and rear elevations of No 228 and set in from side boundaries with neighbouring properties. The dormer windows and rooflights would have a comparable outlook as the existing windows to the front and rear elevations of No 228. Consequently, the development as built retains adequate separation distance to the habitable windows of neighbouring properties and rear gardens to prevent any adverse effect in terms of outlook, sunlight, daylight or privacy.
26. I conclude that the development does not harm the living conditions of occupiers of neighbouring properties. The proposal does not, therefore, conflict with Policy DM2.1 of the DMP in that respect.

Affordable housing

27. Policy 3.13 of The London Plan, March 2016, encourages boroughs to seek a lower threshold where it can be justified in accordance with guidance, with the supporting text emphasising appropriateness being relative to local circumstances. Policy CS12 of the CS in seeking to address housing challenges in Islington, amongst other things, requires that 50% of additional housing to be built in the borough over the plan period should be affordable, with schemes below 10 or more units gross required to provide a financial contribution toward affordable housing elsewhere in the borough.
28. The Islington Affordable Housing Small Sites Contributions SPD, adopted October 2012, supplements Policy CS12 of the CS. The SPD includes reference to relevant evidence sources at the time – Islington's Housing Needs Study (May 2008) and a Strategic Housing Market Assessment (2011) which identified a very high need for affordable housing, together with an Affordable Housing Study (2009) and District Valuation Service (February 2012) which indicated very high sales values for residential properties. The approach of the SPD in seeking commuted payments for off-site affordable housing and the level of the commuted sum (£50,000 per unit in relation to proposals for fewer than ten units) was supported by viability evidence⁶. Nevertheless, the SPD includes flexibility for submission of viability assessments to justify not providing the full financial contribution where site-specific circumstances result in viability issues. That approach is consistent with the supporting text of Policy CS12 and the approach of the Framework in terms of the viability and deliverability of development.
29. The fallback position of an extant planning permission already granted is a similar development which included a planning obligation with a contribution toward affordable housing. In contrast, the appeal submission does not include a planning obligation to make appropriate provision for the affordable housing relating to the additional unit arising from the development to accord with Policy CS12 of the CS and the associated guidance in the SPD. Furthermore, a viability appraisal has not been provided by the appellant to justify that an affordable housing contribution would undermine the viability of the development already built.

⁶ London Borough of Islington Affordable Housing Financial Viability Assessment – Sub Threshold Contributions (November 2011)

30. With regard to the above, the PPG⁷, following order of the Court of Appeal dated 13 May 2016 which gives legal effect to the policy set out in the Written Ministerial Statement (WMS) of 28 November 2014, seeks to reduce disproportionate burdens on developer contributions and sets out specific circumstances where affordable housing and tariff style contributions should not be sought for small scale development and self-build development. The circumstances include, amongst other things, development of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area). That definition includes the development as built which has resulted in the provision of only one additional unit. The WMS is national policy that is a material consideration which carries very considerable weight, and reflects an approach that post-dates the grant of the extant planning permission and is different to that of Policy CS12 of the CS and the associated guidance in the SPD.
31. My attention has been drawn to a number of recent appeal decisions in Islington⁸ all of which were dismissed, where previous Inspectors have addressed the issue of the weight to be attributed to the WMS as a material consideration relative to conflict the CS and evidence of affordable housing need. Those appeal decisions take account of evidence submitted by the Council to demonstrate affordable housing need in Islington, and I afford significant weight to the conclusions of the previous Inspectors in that context. Nevertheless, it is necessary that I reach my own conclusions based upon the individual circumstances of this appeal and the evidence before me.
32. The Council's statement of case and supporting documents provide updated evidence regarding housing affordability up to June 2016, high average house prices in Islington, the significant increase in average residential values in Islington in the two years up to May 2015, together with the high levels of poverty and deprivation. The evidence also stresses the importance of small sites to the delivery of affordable housing due to the relatively large proportion of new housing delivered in Islington arising from sites of ten units or fewer (analysis based on permissions between 2012/13 and 2014/15), with small sites contributions having funded nearly a fifth of the council's social rented new build programmes over the previous four monitoring periods. Based on the evidence before me, a significant need for affordable housing in Islington is demonstrated given the evident affordability issues in both home ownership and private rented sectors. The important contribution that smaller sites make in terms of the delivery of affordable housing in Islington in that context is afforded substantial weight in so far as the approach of the CS and the SPD is consistent with paragraph 50 of the Framework.
33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Based on the evidence before me, the affordable housing contribution required by Policy CS12 of the CS and the associated guidance in the SPD, would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010

⁷ Planning Obligations, Paragraph: 031 Reference ID: 23b-031-20161116

⁸ APP/V5570/C/16/3154748 - 20 March 2017, APP/V5570/W/16/3164740 - 14 March 17, APP/V5570/W/16/3160795 - 6 March 2017, APP/V5570/W/16/3162003 - 24 February 2017, APP/V5570/W/16/3160058 - 14 February 2017, APP/V5570/W/16/3160780 - 24 January 2017, APP/V5570/W/16/3161073 - 23 January 2017, APP/V5570/W/16/3157092 - 8 December 2016, APP/V5570/W/16/3155770 - 24 November 2016

and paragraph 204 of the Framework in the absence of a viability appraisal being provided by the appellant to indicate that the contribution would otherwise make the development unviable. Consequently, in the particular circumstances of this case, the affordable housing need and the associated conflict with the development plan are not outweighed by the WMS, given the demonstrable contribution that small sites, including for one additional dwelling when taken in cumulative with other developments, can make to delivery of affordable housing in an area of considerable need.

34. I conclude, therefore, that the proposal should make provision for affordable housing through a financial contribution. In the absence of a contribution secured by planning obligation or evidence that the development would not be viable if such a contribution were provided, the proposal is unacceptable and conflicts with Policy CS12 of the CS.

Car free development

35. Policy CS10 of the CS and Policy DM8.5 of the DMP, when taken together and responding to Policy 6.13 of The London Plan, seek that all additional homes will be car free and that unless exceptional circumstances can be demonstrated no parking permits will be issued to occupiers of the new homes.
36. The appellant has not provided a planning obligation to achieve a 'car free' development and made reference to the recent *R (on the application of Khodari) v Kensington and Chelsea RBC [2015] EWHC 4084* judgment in terms of the difficulty of achieving 'car free' restrictions. However, that judgement does not in itself preclude the possibility of an appropriately worded legal agreement being capable of securing a 'car free' development, albeit not under Section 106 of the TCPA. In such circumstances, the Council have recommended a negatively worded condition, if the appeal were to be allowed, to prevent future occupiers from being eligible to obtain an on street residents' parking permit except in specified circumstances.
37. The local area has good public transport accessibility and there are no on-site parking spaces. In addition, a condition could reasonably be imposed to secure bicycle storage to accord with Policy DM8.4 of the DMP. In those respects, although the Council have emphasised the population density of the area, the complex transport network and high levels of passing traffic into Central London, there is no specific evidence of parking stress in the locality or site specific justification for imposing such a 'car free' restriction to make the development acceptable. The planning obligation accompanying the extant planning permission P2013/0079/FUL did not include a 'car free' restriction and included only an informative on the Council's decision notice relating to the issue of 'car free' development which would not be enforceable. In such circumstances, taking account of paragraph 206 of the Framework, I am not satisfied that harm in terms of highway safety or local highway conditions would result if the development were not car free.
38. I conclude that, in the particular circumstances of this case, it is not necessary that the development should be 'car free'. In that respect, the conflict with Policy CS10 of the CS and Policy DM8.5 of the DMP is outweighed by other material considerations in terms of the absence of demonstrable harm to highway safety or local highway conditions and the fallback position at the site of an alternative development having not been secured as 'car free'.

Conclusion

39. I have found that the application contains sufficient information to enable it to be valid, that the development preserves the character and appearance of the Canonbury Conservation Area and would provide a satisfactory living environment for future residents. In addition, I have found no harm in terms of the living conditions of occupiers of neighbouring properties or in terms of the development not being secured as 'car free' based upon the particular circumstances of the case. Nevertheless, I have found that the development should make provision for affordable housing through a financial contribution. In such circumstances, the absence of a planning obligation to secure such a contribution or evidence that the development would not be viable if such a contribution were to be provided constitutes conflict with the development plan and the Framework, when taken as a whole, which is significant and overriding.
40. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR