



Appeal Decision

Site visit made on 13 June 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 09 August 2017

Appeal Ref: APP/V5570/W/17/3169653

Flat 5, 284 Caledonian Road, Islington, London N1 1BA

- The appeal is made under section 78 of the Town Country Planning Act 1990 against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure of the applicant to submit further information, plans, drawings or other evidence required by a direction made by the local planning authority under section 62 of the Town and Country Planning Act 1990 and Regulation 4 of the Town and Country Planning (Applications) Regulations 1988.
 - The appeal is made by Mr Andrew Panayi against the Council of the London borough of Islington.
 - The application Ref P2016/4066/FUL is dated 15 October 2016.
 - The development proposed is described as '*retrospective application for Flat 5*'.
 - The information alleged by the Council to be necessary is described by the Council as '*form LBI small sites agreement to pay fees, viability assessment fees and sign UU*'.
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Decision

1. The appeal is dismissed and planning permission is refused for development described as '*retrospective application for Flat 5*' at Flat 5, 284 Caledonian Road, Islington, London N1 1BA.

Procedural Matters

2. It was evident from my site visit that the proposal has been carried out, albeit that the unit was unoccupied. I have determined the appeal on this basis.
3. The Council's statement¹ refers to an appeal against non-determination within the statutory 8 week period. However, the appeal form is clear that the reason for the appeal is against the Council's failure to give notice of its decision within the appropriate period because of a dispute over the provision of local list documentation. I have determined the appeal on this basis.

Validation

4. The Council did not validate the original application due to the absence of information required by the Council's local validation requirements. This related to the failure to provide confirmation of the payment of an Affordable Housing Small Sites contribution via a Unilateral Undertaking, including payment of the Council's legal fees or submit a viability assessment to demonstrate that the contribution is not viable and agreement to pay for an independent examination of that assessment.

¹ Paragraph 1.2

5. The appellant considers that such a contribution is not required in light of a Written Ministerial Statement on 28 November 2014 ('WMS'), and subsequent alterations to the Planning Practice Guidance ('PPG') that outlined the circumstances when affordable housing contributions should not be sought from small-scale developments. The Secretary of State successfully challenged the High Court's decision² in the Court of Appeal, the judgement of which was issued on 11 May 2016. Consequently, the November 2014 WMS is once again a material consideration.
6. The appellant also contends that the evidence base pre-dates the National Planning Policy Framework ('the Framework') is therefore not up to date and is being applied in blanket fashion by the Council. Furthermore, that even if a financial contribution should have been required that the application should have been validated and a decision made to refuse the application.
7. Section 62(3) of the 1990 Town and Country Planning Act provides that a local planning authority may require that an application for planning permission must include (a) such particulars as they think necessary, and (b) such evidence in support of anything in or relating to the application as they think necessary.
8. Specifically, the Council considered that additional information was required on payment of required contributions to mitigate the impact of the proposal. The appellant disputed the need for the additional information and followed the process set out for dealing with such disputes in The Town and Country Planning (Development Management Procedure) (England) Order 2015 ('GMPO') article 12A.
9. The outcome is that the application is classified as a non-validated application and as such the time periods for decision set out in article 34 apply, which in turn enables an appeal to be made under section 78(2) of the 1990 Act where the Council has not given notice of their decision on the application. The structure of the legislation is such that it is a dispute about the need for the required information that provides the right to appeal.
10. Section 62(4A) of the 1990 Act specifies that it must be reasonable to think that the matters on which additional information was required will be a material consideration in the determination of the application, having regard to the nature and scale of the proposed development. A material consideration is a matter that should be taken into account in deciding a planning application or on an appeal against a planning decision and the law requires that all material considerations must be considered.
11. Thus, I must first determine whether it is reasonable to consider that the matters about which the additional information is required are likely to be material considerations. Only if I conclude that it was not reasonable, and that the application should have been validated, would it be appropriate to consider whether planning permission should be granted.
12. The need for the contributions is a material consideration and I am mindful that the Council can take the lack of contributions into account in deciding the application. I also note the advice in the PPG³ that planning obligations or

² *West Berkshire District Council and Reading borough Council v Secretary of State for Communities and Local Government* CO/76/2015 [2015] EWHC 2222 (Admin)

³ Paragraph 042 Reference ID: 14-042-20140306.

heads of terms should not normally be a requirement for validation of a planning application. However, the PPG goes on to state that if they are to go on the local list, the local planning authority should be able to justify their inclusion in relation to any particular development.

13. Whilst such justification is a matter I return to below, in terms of the validation dispute I find it is not determinative. Paragraph 2(e) of Article 11, which allows for particulars or evidence required by the authority under Section 62, only, applies if the list of requirements was published (or republished) during the 2 year period immediately before the date on which the application was made. The PPG is also clear that a local list should be reviewed at least every 2 years⁴.
14. Having sought clarification from the Council, the local list was published on 27 June 2013 and the Council have also confirmed that it has only recently been updated⁵. The application was made on 15 October 2016 and consequently the local list was not up to date in accordance with the GMPO and Paragraph 2(e) of the GMPO does not apply. In the absence of any substantive evidence from the Council to demonstrate otherwise, in this particular case the Council should not have insisted on the provision of such further particulars and evidence and the application should have been validated.
15. Given my findings, I am required to consider the planning merits of the appeal proposal and consequently the main issues are:
 - Whether affordable housing provision is required.
 - The effect of the proposal on the living conditions of future occupiers, with particular regard to internal and external space.
 - The effect of the proposal on the character and appearance of the Barnsbury Conservation Area.

Reasons

Affordable housing

16. Policy CS12 of Islington's Core Strategy 2011 ('CS') sets out the Council's strategic housing policy. Part G of Policy CS12 relates to affordable housing. It requires all sites capable of delivering 10 or more units gross to provide affordable homes on-site, and states that schemes below this threshold will be required to provide financial contribution towards affordable housing provision elsewhere in the borough. The supporting text to Policy CS12 explains that Islington's Housing Needs Study 2008 clearly demonstrates that affordability is, and will continue to be, a major issue in the borough.
17. Policy CS12 is based on meeting objectively assessed needs identified in the Core Strategy evidence base. As such, it is consistent with paragraphs 47 and 50 of the National Planning Policy Framework ('the Framework'), which requires local planning authorities to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area and, where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial

⁴ Paragraph 043 ref ID: 14-043-20140306.

⁵ 22 June 2017.

contribution of broadly equivalent value can be robustly justified. This approach is consistent with Policy 3.13 of the London Plan ('LP'), which states that boroughs are encouraged to seek a lower threshold through the Local Development Framework process where this can be justified in accordance with guidance.

18. The evidence base for financial contributions is contained in the London borough of Islington Affordable Housing Financial Viability Assessment - Sub Threshold Contributions 2011, which examined the level of financial contribution likely to be viable for the majority of developments in the borough with fewer than 10 residential units.
19. The Council's Affordable Housing Small Sites Contribution Supplementary Planning Document 2012 ('SPD') is based on a borough wide viability assessment, which concludes that a £50,000 commuted sum per unit is likely to be viable for the majority of development scenarios. It acknowledges at paragraph 4.0.9 that there may be site-specific circumstances which might give rise to viability issues. In such circumstances, the SPD sets out that the Council will accept viability assessments.
20. The supporting text to Policy CS12 states at paragraph 3.3.17 that each scheme will be examined very carefully in order not to restrain residential development. It goes on to state at paragraph 3.3.30 that if the overall supply of housing appears to be seriously threatened by economic conditions, the Core Strategy policies are sufficiently flexible to enable the council to tailor its approach to changing circumstances with the view to maximising delivery.
21. This flexible approach to the application of Policy CS12 is consistent with paragraph 173 of the Framework which states that to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
22. The appeal proposal would effectively result in the creation of a new residential unit. As such, in accordance with Policy CS12 and the SPD a contribution of £50,000 towards the cost of providing off-site affordable housing is required, unless it can be demonstrated that it would not be viable to make the full contribution. The appellant has not provided written confirmation of an agreement to make this contribution, and has not submitted a viability assessment.
23. The evidence before me suggests that in 2016 the borough had the 8th highest median house price of 348 local authority areas in England and Wales and continues to see large increases in house prices year on year⁶. Affordability is clearly an issue for those seeking to purchase or rent properties within the borough. The Council's statement also suggests that to date, £5.9m of small sites contributions have been received which has either directly supported or helped to enable the delivery of a significant number of the 157 social rented homes delivered by the borough since 2012. A further £17.2m⁷ will become due if relevant schemes are implemented.

⁶ £599,975.

⁷ Paragraph 7.3 of Council's statement.

24. The sums of money generated by contributions under Policy CS12 also suggest that housing continues to be delivered on small sites in the borough and to my mind, it does not follow therefore that the requirements of Policy CS12 are generally disproportionate in these particular circumstances and there is no substantive evidence from the appellant in this regard. I am also mindful that given the densely built up nature of the borough that it is inevitable that a small number of sites make up a significant amount of new housing coming forward.
25. When combined with the highest population density of any local authority area in the UK and being the 5th most deprived area in London with between 8,500 to 9,000 people who qualify for allocations on its housing register, it is clear to me that housing need is acute and that the need to maximise affordable housing provision is a key objective and priority. Furthermore, that financial contributions secured from small scale housing schemes play a significant role in helping to meet this.
26. On the evidence before me, the contribution would be 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. It would therefore meet the 3 tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010 and the Framework.
27. Whilst a weighty consideration, the WMS is simply a factor that must be weighed against the failure to comply with Policy CS12 of the CS and the SPD. There is also nothing substantive from the appellant that suggests the evidence presented to me is not robust or inaccurate and I note the appellant does not dispute the Council's figures. There is nothing before me to suggest that the contribution would be a disproportionate burden, especially given viability considerations are accommodated for in the Council's approach.
28. For these reasons, a contribution towards affordable housing provision is required, is not provided and therefore the proposal would conflict with Policy CS12 of the CS and the SPD. I find in this particular case that the conflict is not outweighed by the WMS as a material consideration.

Living conditions

29. The Council make reference to the housing standards set out in Policy DM3.4 of Islington's Local Plan Development Management Policies 2013 ('DMP') and Policy 3.5 of the LP. Following a Written Ministerial Statement in March 2015 and the publication of the 'Technical housing standards – nationally described space standard' ('NDSS') that same month, from 1 October 2015 existing local plan, neighbourhood plan, and supplementary planning document policies relating to water efficiency, access and internal space are required to be interpreted by reference to the nearest equivalent new national technical standard. I have determined the appeal on this basis.
30. The NDSS requires a gross internal floor area ('GIA') for a single-storey 1b1p dwelling of 37sqm. The bedroom was separated from the rest of the living space by internal walls, and contained a double bed. Consequently, the arrangement of the studio flat is more suggestive of a two person property, and would fall significantly short of the 50sqm minimum under the NDSS.

31. Furthermore, section 3 of the notes to Table 3.3 of Policy 3.5 of the updated LP and the NDSS set out that a minimum ceiling height of 2.3m for at least 75% of the GIA should be achieved and in order to address heat island effects within London, a minimum ceiling height of 2.5m for at least 75% GIA is strongly encouraged. This is carried through in Policy 3.4 of the DMP.
32. I found that the bedroom space benefitted from a reasonable level of natural light due to the arrangement of the existing windows and this would be further improved by an additional roof light. Even if it were for a 1 bed unit and above the 37sqm minimum, the shortfall in ceiling height, which is below the minimum standard covered a significant part of the kitchen/living area. Following the addition of a table and other furniture such as a sofa and storage that is typically required for day to day living purposes, the low ceiling heights and extent of sloping ceiling would result in a claustrophobic and cramped living space.
33. Noting that the balcony space would also fail to achieve the minimum standard of 5sqm for a top floor one bedroom unit and having seen the space, the lack of adequate balcony space only adds to my concerns that the living conditions of future occupants would not be acceptable.
34. For these reasons, the proposal would fail to provide acceptable living conditions for future occupiers in terms of internal living space and would conflict with part C of Policy 3.5 of the LLP, Policies DM3.4 and DM3.5 of the DMP and to CS Policy CS8 insofar as they all relate to achieving accommodation of an adequate size that functions comfortably and efficiently for their intended purpose, having regard to minimum space standards. In this regard it would also be contrary to a core planning principle of the Framework, which is to always seek to secure high quality design and a good standard of amenity.

Conservation area

35. The unit is located in the upper floors of a mid-terrace building in a row of similar properties with commercial ground floor uses and residential above. It is mainly faced in brick but also contains areas of white render on the parapets and around the front windows. The significance of the Barnsbury Conservation Area ('BCA') lies in its many examples of formal late Georgian/early Victorian residential development, much of which is set out in squares and terraces. Brick and smooth white painted render are common facing materials.
36. Although the proposal would not be fully visible from Caledonian Road given its shallow roof plane and because of the height of the host property, it would be readily visible from residential properties within the BCA to the rear. I also saw that on the opposite side of the road there were some examples of similar roof alterations on buildings on the opposite side of Caledonian Road.
37. However, these properties are not within the BCA and the requirement for development proposals to preserve or enhance the character or appearance of the BCA applies with equal force whether or not the proposal is prominent or in public view. The combination of the shallow sloping roof and the flat façade to the rear are not sympathetic to the character and appearance of the traditional mansard roof extensions that prevail within this part of the BCA and in my view represents a poor quality of design.

38. For these reasons, the proposal fails to preserve the character and appearance of the Barnsbury Conservation Area and would conflict with Policies DM2.1 and DM2.3 of the DMP and CS8 and CS9 of the CS which seek to ensure that development conserves or enhances conservation areas. In the context of the Framework, the proposal would cause less than substantial harm to significance of the BCA. On the evidence before me, the very limited public benefits of one additional dwelling without an affordable housing contribution would not outweigh this harm.

Other Matters

39. I have been provided with numerous appeal decisions by the parties in support of their respective cases. However, I do not have the full details of those cases and I am required to determine the appeal on the basis of the evidence as put to me solely by the parties. In any event each case must be determined on its own merits and consequently they do not alter my views in relation to the main issues.

Conclusion

40. In relation to the validation dispute, I find that in this particular case and on the evidence before me, the Council should not have insisted on the 'form LBI small sites agreement to pay fees, viability assessment fees and sign UU' given the requirements of Paragraph 2(e) of Article 11 of the DMPO and the application should have been validated.

41. However, for the reasons given above, having duly considered the planning merits of the proposal I have found that the proposal would conflict with the development plan, when read as a whole and the Framework.

42. Material considerations do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed and planning permission refused.

Richard Aston

INSPECTOR