



Appeal Decision

Site visit made on 10 July 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 22nd August 2017

Appeal Ref: APP/V5570/W/17/3173699

272 Upper Street, Islington, London, N1 2UQ

- 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 Gregory Ireland against the decision of London Borough of Islington.
 - The application Ref P2016/3191/FUL, dated 9 August 2016, was refused by notice dated 17 October 2016.
 - The development proposed is the erection of two storey rear extension at first and second floors and full length mansard roof extension in conjunction with conversion of existing maisonette flat into 2no. two-bedroom flats and 1no. one-bedroom flat.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two storey rear extension at first and second floors and full length mansard roof extension in conjunction with conversion of existing maisonette flat into 2no. two-bedroom flats and 1no. one-bedroom flat at 272 Upper Street, Islington, London, N1 2UQ in accordance with the terms of the application, Ref P2016/3191/FUL, dated 9 August 2016 subject to the attached schedule of conditions.

Preliminary Matters

2. I have taken the description of the proposed development from the appeal form rather than from the original application form as this is more precise. This is also reflected in the Council's decision notice.
3. In their appeal statement, the Council raised concern regarding lack of financial contributions relating to affordable housing and carbon offsetting. Such issues did not feature in the Council's formal decision notice. The appellant was given an opportunity to comment on and address these matters, as well as in respect of car free housing. A completed legal agreement under s106 of the Planning Act (s106), dated 3 August 2017, was subsequently submitted. The Council have since indicated that this addresses their concerns.
4. The provision of affordable housing, carbon offsetting and car free housing and the compliance of the obligation with the relevant Regulations, the National Planning Policy Framework (the Framework) as well as Planning Practice Guidance (PPG) is considered below.

Main Issue

5. The main issue is whether the proposed development would preserve and enhance the character or appearance of the Upper Street North Conservation Area.

Reasons

Conservation Area

6. The appeal property is a 3 storey end of terrace building with a shop to the ground floor and single maisonette flat to the second and third floors. It occupies a corner plot at the junction of Upper Street and Tyndale Lane.
7. The property forms part of a wider terrace which has commercial units to the ground floor with a mix of traditional and modern shop fronts. Upper floors consist of red brick with decorative brickwork and string course with timber sliding sash windows. The roof structure is largely hidden behind a raised brick parapet.
8. No 272 is located within the Upper Street (North) Conservation Area (CA). Upper Street forms a busy commercial area within Islington which is lined by a number of historic buildings, which are in a variety of architectural styles and ages. In general, the area is characterised by terraced properties of 2, 3 and 4 stories in height set in narrow plots with traditional shop fronts at ground floor level. I consider that the appeal property, and the wider terrace, to which it is attached make a positive contribution to the character and appearance of the CA.
9. The Council's Conservation Area Design Guidelines 2002 (CADG), and the Urban Design Guide 2017 (UDG) state that extensions should be subordinate to the original building, and no higher than one storey lower than the existing eaves, unless it can be shown that no harm will be caused to the character of the building and the wider area.
10. While the extension and formation of a mansard roof would increase the height of the side wing of the existing building, as viewed from Tyndale Lane, I consider that the scale, design details and materials to be used are wholly in keeping with the existing property. Specifically, architectural detailing such as the string courses, window header treatments, windows and brickwork would match the existing and would represent a sympathetic development which would not dominate this elevation.
11. The development would enclose the gap between the existing 1½ storey wing to the rear of the appeal property and to the 3 storey flats along Tyndale Lane. It would also be taller than this adjacent building. However, there would be a small separation of around 3m between the development and these properties and in light of the density and general mix of heights of buildings in the area, the infilling of the gap would not be harmful in this regard.
12. Moreover, I consider that no important views are gained through the existing gap and again, given the density and height of buildings in the area, I do not accept that such a gap is characteristic of the locality, nor that the gap makes any particular contribution or relief in respect of light and air.

13. The CADG notes that the varied and interesting roofline is an attractive characteristic of the area and that alterations which disrupt the line of a terrace causing harm to the CA will not be supported. The CADG also provides a schedule of buildings where roof extensions would be considered acceptable and I note that the appeal property, nor the wider terrace to which it forms part, is identified in that schedule. The Council consider that the principle of a roof extension is therefore unacceptable.
14. However, I consider that the proposed mansard roof would not form a particularly prominent addition, and nor would it be incongruous. It would be set back from the Upper Street elevation of the property and would largely be hidden behind the existing brick parapet. Accordingly, views of the roof when standing opposite the property, on Upper Street, would be limited. Similarly, the proposed roof would be masked in views when travelling south along Upper Street due to the increased height of the adjacent attached building which is 4-storey. Views of the flank elevation are also largely screened by mature trees when looking north along Upper Street, again reducing any visual impact of the development.
15. I also noted at my site visit that the roofline of the wider terrace has been altered, including to No 160 which forms the northern corner of the terrace. I accept that this was granted over 30 years ago prior to the adoption of the CADG, nonetheless I saw that this was a relatively unobtrusive alteration which has not harmed the character of the terrace or the wider CA.
16. I accept that the property isn't on the schedule of buildings deemed by the Council as appropriate for roof extensions, however the CADG is of some age and there is no evidence in respect of why properties on this list are considered to be acceptable, or conversely why the appeal property has been excluded from this list. In determining the appeal upon its own merits, while the roof extension would be visible from some vantage points it would not be particularly prominent or noticeable.
17. On this matter, I therefore find that there would be no harm to the character or appearance of the Upper Street North Conservation Area. The development accords with Policy 7.4, 7.6 and 7.8 of the London Plan 2016 (LP) which require that development be of high quality design, architecture and conserve the significance of heritage assets. The proposals also comply with Policy CS8 and CS9 of the Core Strategy 2011 (CS) which seek to protect the historic significance of Islington's heritage assets and Policy DM2.1 and 2.3 of the Development Management Policies 2013 (DMP) which requires development to respect and respond positively to existing buildings, the streetscape and the wider context, including local architectural language and character, surrounding heritage assets, and locally distinctive patterns of development.

Other Matters

18. I note the comments from local residents. Matters in respect of party wall agreements, soundproofing and guttering would come under the remit of the Building Regulations and as such would be dealt with under other legislation.
19. I note the concern regarding loss of light at Tyndale House. However I consider that the submitted Sunlight and Daylight assessment demonstrates that this window would not be impacted to an unacceptable degree. Nor do I

consider that the development would be overbearing. I note that the Council also came to the same conclusions in their Officer Report.

Planning Obligations

20. 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.

21. As stated above, 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. I shall deal with each obligation within the UU in turn.

Car Free Housing

22. The appeal site is highly accessible on foot as well as by bicycle and public transport. It is located in a controlled parking zone where parking stress is evident. It is undisputed by the parties that all new developments in the Borough should be car free, as per the requirements of Policy CS 18 of the CS and Policy DM8.5 of the DMP in order to mitigate the transport impacts of development.

23. The Council initially proposed that the requirement for the development to be car free could be dealt with by a condition, an approach which was not disputed by the appellant, subject to the retention of an existing permit serving the existing maisonette flat. Both parties were given the further opportunity to comment on this approach in light of Planning Practice Guidance¹ (PPG) and in respect of recent case law.²

24. The PPG is explicit that negatively worded conditions requiring an obligation or agreement are unlikely to be appropriate although in exceptional circumstances their use may be appropriate in the case of more complex and strategically important development whereby delivery would be at risk. I do not consider that the proposed development, given its modest scale and straightforward nature, is the more complex and strategically important development to which the exception applies.

25. The submitted UU 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.

26. This restriction would therefore accord with the aforementioned Regulation 122 and Framework tests and is necessary to make the development acceptable. The UU also makes reference to section 16 of the Greater London Council (General Powers) Act 1974, and in line with the abovementioned high court

¹ PPG Paragraph 010 Reference ID: 21a-010-20140306

² *R (Khodari) v Kensington and Chelsea RBC* [2017] EWCA Civ 333

judgement, I consider that the UU would be enforceable in this regard. I give this substantial weight to this obligation.

Affordable Housing

27. In a Written Ministerial Statement (the WMS) in November 2014 the government introduced a threshold beneath which planning obligations, affordable housing and tariff style contributions should not be sought. As a result, government policy is now that planning obligations, affordable housing and tariff style contributions should not be sought from small-scale and self-build developments. Small scale is defined as developments of 10 units or less, and which have a maximum combined gross floor space of no more than 1000 square metres. Thus the policies in the WMS of November 2014 are a material consideration in this case.
28. In light of the WMS, the appellant disputes the necessity of the contribution, notwithstanding that they have submitted the UU which would secure £100,000 towards affordable housing.
29. Policy CS12 of the CS details the Council's position, which is consistent with paragraph 50 of the Framework. The Council has put forward substantial evidence relating to local problems of housing affordability, reflecting housing costs relative to incomes, and on the relative importance of small site developments and the contributions from these to new affordable housing provision. My attention has also be drawn to a number of appeal decisions which have found that affordable housing contributions are necessary in other such small schemes in the Borough.
30. While I am conscious that the development plan policy pre-dates the WMS and the PPG, the clear and compelling evidence supplied to me in this case adds strong support to the local policy approach. Consequently, these considerations lead me to the view that, in this instance Policy CS12 of the Core Strategy, and the compelling and substantive evidence produced to support their approach, are material considerations that clearly outweigh the WMS.
31. I have reviewed the UU, and in considering that the planning obligation is necessary to make the development acceptable in planning terms, I am satisfied that this is both directly and reasonably related to the proposal and that it meets the three tests stated in paragraph 204 of the National Planning Policy Framework (the Framework) and Regulations 122 and 123 of the Community Infrastructure Levy (Amendment) Regulations 2015. Again, I give significant weight to this obligation.

Carbon Offsetting

32. Policy CS10 of the CS requires development to offset CO2 emissions associated with their building through a financial contribution to measures that reduce such emissions in the existing building stock. In accordance with the Environmental Design Planning Guidance Supplementary Planning Document (SPD) a contribution of £1000 to secure carbon offsetting measures is specified in the submitted UU. The proposed development would thus meet the requirements of Policy CS10 in this regard, insofar as it seeks to ensure that new development minimises Islington's contribution to climate change.

33. However, as a tariff-based contribution from a small site, again I am mindful of the WMS. I have been supplied with limited evidence in respect of the purpose that such a contribution would be put to and thus I consider that it has not been demonstrated that the contribution would be fairly and reasonably related in scale and kind to the development. I also have no information in respect of the pooling of contributions, as under CIL Regulation 123 (3) (b) sets out a 'five obligation limit' for CIL liable infrastructure.
34. Therefore, on the basis of the evidence before me, I consider that the requirement for a planning obligation of this type would thus be at odds with the national policy as expressed in the WMS. Consequently, in this instance, I consider that the policy of the WMS clearly outweighs the development plan requirements.
35. For these reasons this part of the planning obligation would not meet the tests of Regulation 122(2) and 123 (3) (b) of the Community Infrastructure Levy Regulations 2010 or paragraph 204 of the National Planning Policy Framework. Accordingly, it has not been established that the contribution towards carbon offsetting measures would be necessary in this case and I am unable to take it into account in determining the appeal. Accordingly, I have given this obligation no weight in reaching my decision.

Conditions

36. I have had regard to the Conditions as suggested by the Council. In addition to the standard condition relating to the timescales, I have required the development to be carried out in accordance with the approved plans in the interest of certainty.
37. In order to protect the character and appearance of the Conservation Area, a condition relating to materials, in accordance with the Planning Statement is necessary. I have combined the conditions in respect of cycle and refuse facilities, for brevity. These are necessary in respect of sustainable transport and residential amenity. For similar reasons, a condition relating to a Construction Method Statement (CMS) is necessary, although I have simplified the wording provided by the Council to avoid repetition. Due to the nature of a CMS this is a pre-commencement condition.
38. As discussed above, and in light of my findings and due to the submission of a UU which deals with car free housing, the Council's condition in this respect is omitted.

Conclusion

39. Overall, for the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed and planning permission granted, subject to the conditions discussed above.

C Searson
INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans:
1420.001, 1420.002, 1420.003, 1420.010, 1420.020, 1420.021, 1420.022, 1420.023, 1420.102, 1420.103, 1420.110, 1420.120, 1420.121, 1420.122, 1420.123, Planning Statement, Daylight and Sunlight Report.
- 3) The development shall be constructed in accordance with the schedule of materials noted on the plans and within the Planning Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.
- 4) The dedicated cycle storage facilities and the refuse / recycling enclosure(s) shown on drawing no. 1420.102 shall be provided prior to the first occupation of the development hereby approved and shall be maintained as such thereafter.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) delivery, demolition and construction working hours;
 - ix) traffic management including construction vehicle routes and entrance and exit arrangements and;
 - x) the method of demolition and removal of materials from the site.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.