
Appeal Decision

Site visit made on 11 August 2017

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

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

Decision date: 30 August 2017

Appeal Ref: APP/V5570/W/17/3170858

Ground floor garage, 100 Tollington Park, London N4 3RB

- 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 H Schneck (Mountley Ltd) against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2195/FUL, dated 31 May 2016, was refused by notice dated 1 March 2017.
 - The development proposed is conversion and extension of an existing garage/store at the rear ground floor to create a two bedroom flat (2b 3p) and alterations to front elevation and replacement rear extension with private amenity space and fencing plus bicycle and bins stores.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal site is a three storey residential building that has been subdivided into flats. On the south western side of the building a garage is in use as a workshop/store. To the rear of the garage is a small brick built outbuilding that the neighbours say was a bomb shelter. The property is a locally listed building, part of a formal group of linked semi-detached villas and is located in Tollington Park Conservation Area.
3. There has been a history of planning applications for development on the site. In June 2015 an appeal was dismissed in respect of a proposed conversion and extension of the garage/store to create a two bedroom flat.
4. The development plan includes the London Plan 2016, Islington's Core Strategy adopted in February 2011 and the Development Management Policies Development Plan Document (the DMP) adopted in June 2013. The National Planning Policy Framework (the Framework) and Planning Practice Guidance are material considerations.
5. I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Therefore this is a matter for consideration in this appeal, despite the lack of objection by the Council on conservation grounds. The issue will be informed by the appellant's design and access statement, the planning history and the representations made by local residents.

6. The conversion of the garage/store to a flat would be in character with the residential character of the Tollington Park area. The additional unit would make effective use of land and optimise the potential of the site to accommodate development, in accordance with policy in the Framework. Core Strategy Policy CS 12 identifies ways of meeting the Borough's housing challenge. The proposed two bedroom 3 person unit would not be at the expense of a family home and would contribute to the housing size mix identified through Policy DM3.3 of the DMP.
7. The main issues for detailed consideration are:
 - Whether a financial contribution towards affordable housing should be secured in association with the proposal;
 - Whether the living space would be of an adequate standard for future occupiers of the proposed unit;
 - The effect on the living conditions of nearby residents, having particular regard to privacy;
 - The effect on the character and appearance of the host building and Tollington Park Conservation Area.

Reasons

Affordable housing

8. Islington's Core Strategy Policy CS 12 - Meeting the housing challenge – states in part G that to provide affordable housing 50% of additional housing to be built in the Borough over the plan period should be affordable. All sites capable of delivering 10 or more units gross should provide affordable homes on site. Schemes below this threshold should provide a financial contribution towards affordable housing provision elsewhere in the Borough.
9. The Council's Affordable Housing Small Sites Contributions Supplementary Planning Document (the SPD) supports the implementation of the Core Strategy. The SPD confirms that all minor residential developments resulting in the creation of 1 or more additional residential unit(s) are required to provide a commuted sum towards the cost of affordable housing on other sites in the Borough. The requirement applies not only to new build but also conversions of existing buildings resulting in the creation of new units and the subdivision of residential properties resulting in net additional units. Based on a study of the level of financial contribution that would be viable, the required contribution is £50,000 per unit for north and mid-borough locations, which includes the Tollington Park area. Provision is made to take account of site specific circumstances, if supported and justified by viability evidence.
10. The proposal would result in the creation of 1 additional residential unit and is therefore subject to the policy requirement. The appellant, relying on national policy, did not submit a planning obligation to secure a small sites contribution and no viability evidence was produced to support this approach. The proposal is not compliant with Policy CS 12 and the SPD.
11. The Framework in paragraph 50 requires a local planning authority to set out policies for meeting identified affordable housing needs on site unless off-site provision or a financial contribution can be robustly justified. A Written

Ministerial Statement (WMS) in November 2014 stated that affordable housing and tariff style contributions should not be sought for sites of ten units or less and which have a maximum combined gross floorspace of 1,000 m². The developer contribution was stated to place a disproportionate burden on small scale developers. The reform was introduced to lower the construction cost of small scale new build and in turn to increase housing supply, encourage development on smaller brownfield sites and to help diversify the house building sector.

12. On 13 May 2016 a judgement by the Court of Appeal confirmed that the policy in the WMS is a material consideration in development management and development plan procedures and decisions. Very shortly after the judgement the policy in the WMS was given legal effect and a revision to the Planning Practice Guidance confirmed the special circumstances where contributions for affordable housing should not be sought from small scale development.
13. The national policy indicates that an affordable housing contribution should not be required as a result of the proposal. The Core Strategy policy on affordable housing pre-dated the WMS. The determining matter on this issue is whether the WMS outweighs the development plan policy.
14. The local planning authority produced evidence to demonstrate that housing in Islington has been getting more expensive more quickly compared to the national picture and elsewhere within London. Consequently the ability to purchase a home at even the lower property prices has become increasingly difficult for many residents. Moreover, in the private rented sector rents are shown to be significantly higher in the Borough than across Greater London. Attention has also been drawn to the fact that Islington has the highest population density of any local authority area in the UK. Indices indicate the Borough suffers high levels of poverty, deprivation and overcrowding. These factors explain why maximising affordable housing provision is a key priority for the Borough.
15. The local planning authority also demonstrated the role of small sites to housing delivery in a Borough that is densely built-up and covers a relatively small area. This source approximately provided one third of the new housing units 2012/13 to 2014/15. According to the Council between 2012/13 and 2015/16, a total of 157 Council new build social rented dwellings have been completed and the small sites contribution has funded nearly a fifth of the Council's social rented programme over the last four monitoring periods.
16. The appellant did not dispute the Council's evidence on why affordable housing is a priority in the Borough or the importance of the small sites policy in the provision of affordable homes in Islington.
17. Having considered all the evidence I conclude that there is a serious shortage of affordable homes in the Borough, an area where affordability is a more acute issue than in many other London boroughs and local authority areas because of its demographic and locational characteristics. Small sites make a very important contribution to the delivery of new homes in the Borough. There is no significant evidence to show that the affordable housing contribution has had an adverse effect on housing supply and the development of smaller brownfield sites. The SPD allows for flexibility subject to viability evidence.

18. The Council and the appellant have submitted appeal decisions to support their respective cases. The three decisions referred to by the appellant were for developments in the Borough and date back to the July/August/September 2016 period, shortly after the Court of Appeal judgement. In these decisions the statement of national policy was afforded greater weight than the development plan by the decision maker.
19. All the decisions referred to by the Council, nine in total, were issued in 2017 and concern proposed developments in the Borough. In those appeals the Inspectors decided in light of the evidence and the circumstances of the cases to attach greater weight to the Council's policies. Clearly the Council's position has been found to be justified in a number of very recent appeals.
20. Weight is a matter for the decision-maker. Drawing all these considerations together I conclude the policy in the WMS does not outweigh the requirements of Policy CS 12 part G. A planning obligation securing a financial contribution towards affordable housing is necessary to make the development acceptable in planning terms. No viability evidence has been submitted to demonstrate that a contribution of £50,000 would not be fairly and reasonably related in scale and kind to the development. The proposal fails to comply with Policy CS 12 part G, as supported by the SPD.

Living conditions

21. During the course of the planning application the proposed internal layout was amended. The amended plan was considered by the Council in making its decision and therefore this is the proposal I will assess.
22. The proposal is for a 2 bedroom 3 person flat. The Council's concerns highlighted the size and outlook from the proposed living room, as well as the poor internal layout and poor outlook levels to the main habitable room spaces.
23. Policy DM3.4 of the DMP states that rooms must be designed to function comfortably and efficiently for their intended purpose including having regard to the size standards set out in Table 3.3. The Council's assessment is that the size of the proposed living area is 12 m², which the appellant has not disputed. This size would be substantially below the minimum floor area of 23 m² set out in the DMP. The room standards in the DMP were taken from the London Housing SPG¹ 2012. However the London Plan 2016 and the Housing SPG 2016 (the SPG) now apply.
24. London Plan Policy 3.5 confirms that housing developments should be of the highest quality internally, externally and in relation to their context. The minimum space standards are consistent with the nationally described space standard. The SPG (Standard 24) confirms that all new dwellings should meet the nationally described space standard.
25. The proposed unit is stated to be 61 m², which is equivalent to the minimum area stated in Table 3.3 of the London Plan and the nationally described space standard. No standard is expressed for living rooms as the gross internal area (GIA) incorporates combined floor areas for living/dining/kitchen space corresponding to the occupancy of the dwelling. Based on the GIA parameter of 61 m² the proposal complies with up to date development plan and national

¹ Supplementary Planning Guidance

- policy on dwelling size. The appellant provides no dimensions on built in storage (which should be a minimum of 2 m²), or widths of the bedrooms.
26. The living area would have patio doors leading onto a narrow paved path giving access to the amenity space at the back. A timber fence is proposed along the boundary with the adjacent garden flat. The outlook would be of an enclosed space and solid boundary feature with no opportunity to introduce visual relief.
27. The kitchen/diner would have a limited outlook, provided not by a window but a glazed front door. A main purpose of the glazing would be to allow natural light to the kitchen/diner. Bearing in mind the need to safeguard the privacy of the occupiers, little improvement to outlook could reasonably be expected. The principal bedroom would have a full length door/window with a channelled outlook to the amenity space. The only room shown to have a dual aspect is the second smaller bedroom which may well be the least used room in the unit. Overall outlook is considerably restricted.
28. Turning to other factors, an Internal Daylight Assessment dated October 2015 was submitted with the proposal and related to the original internal layout, not the revised layout. The assessment has limited weight for the purposes of this appeal. In addition the assumptions are not clearly expressed and do not entirely relate to the proposal, such as the assumption that lightwells and external walls will be a light colour.
29. The property is north facing and, as noted in the 2015 appeal decision, direct sunlight would not enter into the flat and more particularly the kitchen/diner, via the glazed doors at the front of the unit. The SPG and Policy DM3.4 advise that sunlight is particularly desirable in kitchen dining areas as well as living areas. No assessment has been made of the amount of glazing relative to the internal floor area of habitable rooms and receipt of sunlight within the flat.
30. Other aspects, such as ventilation and amenity space would be adequate. The erection of close boarded fencing at the rear would provide privacy and prevent undue overlooking from the neighbouring garden flat.
31. Policy 3.5 of the London Plan expects the design of new dwellings should take account of factors to ensure the home should be a comfortable place of retreat. The SPG cautions against rigid application of quantitative standards without careful consideration of location. In the DMP, Policy DM2.1 expects a good level of amenity, Policy DM3.3 sets out the requirements for acceptable conversions and Policy DM3.4 sets out a range of considerations affecting housing quality and liveability. I am not satisfied that the proposal has demonstrated compliance with the development plan and that future occupiers would enjoy a reasonable level of amenity within the urban context.

Living conditions of neighbours

32. The proposal is most likely to affect the garden flat within the property.
33. At the rear the erection of a solid and sufficiently high boundary fence/wall would protect the neighbouring kitchen, living space and patio from undue overlooking.
34. The function of the small front garden (adjacent to the path and steps) is to provide visual amenity near the residential entrance, a setting for the villa building, enhancement of the street scene and a buffer space between the

home and the activity of the street. Use by residents would be very limited. The proposal indicates use of the front garden for bin storage and the parking of cycles, the removal of the existing earth bank and the introduction of a cycle parking space at semi-basement level. The introduction of bin and bike storage would result in increased use of the space, encourage residents to look down into the flat and have access to the lower paved area. These arrangements would have a severe impact on the privacy and amenity of the garden flat, where the principal bedroom has an outlook towards the front garden.

35. The proposed refuse disposal and cycle parking is an unacceptable element of the scheme, conflicting with a consideration set out in Policy DM3.3 part B.
36. Within the flat is a partially glazed wall which allows some light into the hallway. This obscured window would be filled in because it is on the party wall with the proposed flat. The resident of the flat refers to a planning condition on a permission granted in 2009 for a conversion of the garage to a one bedroom flat that required retention of the glazed screen. The loss of a valued source of light would be regrettable for the current occupier but in my judgement the amount of harm would not be so significant as to weigh against the proposal.

Conservation Area

37. Tollington Park was one of the earliest residential streets to be laid out in the northern part of the borough and was lined with grand semi-detached villas in the 1830's and 1840's, many of which survive². The wide street, many mature trees and generously sized rear gardens contribute to an unusually spacious quality.
38. 100 Tollington Park dates to around 1840 and is locally listed because it is part of a 'remarkable' formal group designed by A.D Gough³. The deep garden at the rear and the garden space to the front make a positive contribution to the building's setting and enhance the Conservation Area. The air raid shelter is a minor ancillary structure that has very little effect on the rear of the property.
39. In considering the proposal the Council took account of the 2015 appeal decision when the Inspector concluded that a similar proposal would preserve the character and appearance of the host dwelling and the Conservation Area. On that basis no objection was included in the reason for refusal.
40. The extension would be a similar depth to the existing shelter but it would be slightly higher and would extend across the full width of the existing three storey side/rear element of the property. The appellant described the proposed flat roof design and cill, header and sash window detailing as mirroring those used in the existing house. That may be so but the more substantial residential extension would not relate well to the distinctive curved corner of the host building.
41. There would be no significant loss of garden land at the back of the property. However, the creation of a new residential unit would result in the sub-division of the rear garden, an outcome that would not be likely to happen with the existing accommodation. The erection of an internal 1.8 m close boarded

² Conservation Area Design Guidelines Tollington Park

³ Register of Locally Listed Buildings

timber fence⁴, the installation of timber decking and timber planter boxes would not be in keeping with the period building and would detract from the open character of the garden space.

42. The plans and the planning application form do not identify an existing pear tree in the rear garden. In all probability this tree would have to be removed to enable the scheme to proceed as shown on plan. The tree has some amenity value but the Council's tree officer describes it as being of poor health, form and vigour. That being the case its loss could not reasonably be resisted and a planning condition could require replacement planting.
43. The alterations to provide for cycle parking and bin storage in the front garden would not be consistent with the encouragement for the reinstatement of front boundary walls and soft landscaping to the front of 96-108 Tollington Park as stated in the Conservation Area Design Guidelines. This document has significant weight because it is a supplementary planning document identified in relation to the application of Policy DM2.1 of the DMP.
44. The proposal is to retain the existing timber carriage-house doors but to insert vertical areas of glazing to provide natural light into the living area. The plans show a similar treatment to the front door to the adjacent flat. The plans indicate to me that little of the existing fabric of the doors would be retained and they would assume a modern appearance in a style that would fail to complement the fenestration or the main entrance of the host building. The relationship to the host building is equally if not more important than the appellant's reference to large horizontal glazed openings at lower and ground floors on other houses in the street.
45. In conclusion, by reason of the combination of a number of small elements of harm the proposal fails to maintain the character and appearance of the host property and the Conservation Area, leading to conflict with Policy CS 9 Part B of the Core Strategy and Policies DM2.1 and DM2.3 of the DMP. The proposal would cause less than substantial harm to the significance of the designated heritage asset. The public benefit of an additional dwelling unit does not outweigh the harm. The direct harmful effect on the significance of the non-designated heritage asset also weighs against the proposal. The proposed development is not in accordance with policy in the National Planning Policy Framework that seeks to conserve and enhance the historic environment.

Other matters

46. Policy DM8.5 of the DMP requires all additional homes will be car free, which means no on-site parking and no on-street parking through use of a resident's parking permit. This strict approach is in line with the Core Strategy and is justified by the need to tackle air quality and congestion.
47. There is no proposal to include any car parking within the scheme and the conversion of the garage/workshop would result in the permanent loss of an on-site parking space. To this extent there is compliance with policy.
48. An appropriate mechanism, such as a completed planning obligation, has not been put forward to ensure the proposed development is compliant with the aforementioned policy in practice. Control would not be reasonably secured by

⁴ The notation on plan is 1500 mm but 1.8 m is the height in the appellant's statement and would be the more likely height in order to afford the necessary privacy protection.

way of a planning condition. The planning condition suggested by the Council would not be enforceable and the appellant has not proposed an alternative form of wording. There are not the exceptional circumstances to justify imposing a negatively worded condition requiring the submission of a planning obligation. There is conflict with Policies DM8.5 and DM3.3 part D.

Conclusions

49. The conclusions on all the issues have identified harm and unacceptable aspects within the scheme. The gain of a single residential unit in an accessible location and the contribution to the borough's housing stock is not of sufficient weight to overcome the serious objections.
50. The proposal does not comply with the development plan when read as a whole. There are no considerations to indicate that the proposal should be determined other than in accordance with the development plan.
51. For the reasons given above the appeal should be dismissed.

Diane Lewis

Inspector