



Appeal Decision

Hearing Held on 8 August 2017

Site visit made on 8 August 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 31 August 2017

Appeal Ref: APP/V5570/W/17/3178307

Legard Works, 17A Legard Road, Islington, London N5 1DE

- 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 Mr Paul Whitley of Re-Creo (Legard Works) Ltd against the Council of the London Borough of Islington.
 - The application Ref P2017/1593/FUL is dated 19 April 2017.
 - The development proposed is the creation of 3 additional residential units (2 X 1 bed, 1 X 2 bed) by way of two roof extensions to the existing buildings, Blocks A and B, a first floor extension to Block B, which creates an additional bedroom to a 1 bed apartment that already benefits from an extant prior approval, the extension and refurbishment of the ground floor of Block A to provide a modern office unit, the demolition of Block C and ancillary works including external landscaping to create a central courtyard.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A second appeal¹ has been made for a redevelopment of the appeal site and this was considered at the same hearing. This will be the subject of a separate decision letter. At the hearing I was provided with additional evidence from both the Council and appellant. These documents are listed at the end of this decision. Following adjournments I accepted the late evidence as no party was prejudiced by this course of action. This is because it did not significantly alter the proposal, was relevant to my considerations and the parties present were able to address it.
3. The appellant submitted his appeal following the Council's failure to give notice of its decision within the prescribed period. The Council have provided an appeal statement expressing concerns that the proposal would harm the living conditions of neighbours and provide inadequate living conditions for future occupants. I have therefore treated it as an indication from the Council that, had it been in a position to determine the application, it would have refused it for reasons along these lines. I have considered the appeal accordingly.
4. In the absence of a decision notice I have taken the application number from the Council's appeal statement. At the outset of the hearing the Council confirmed that it had no objections to the scheme in respect of daylight and, given the findings of the daylight and sunlight report provided by the appellant, I share this conclusion.

¹ APP/V5570/W/17/3173204

Main Issues

5. The main issues in this appeal are: 1) The cumulative effect of the proposed development on the living conditions of neighbours with particular reference to sunlight, privacy, outlook and any noise and disturbance; and 2) Whether the proposal would provide adequate living conditions for the future occupants of Unit A8, with particular reference to outlook.

Background

6. Legard Works is a roughly triangular shaped employment site accessed from Legard Road along a narrow entrance track. The site includes a workshop and office building along the eastern boundary of the appeal site. This building is Block A. Along the southern boundary of the appeal site is a second, smaller building and this is Block B. The site used to have a covered central courtyard and a detached toilet block (Block C). These structures have been demolished as has the western single storey section of Block B.
7. To the north of the appeal site is Century Mews, a small development of 'contemporary' town houses. To the south is Pitt House, which is a modern flatted development recently completed and arranged over five storeys but with a sunken ground floor. To the immediate west of the appeal site is a terrace of three properties (15 - 18 Elphinstone Street) and the rear/side garden of 1 Elphinstone Street. The appeal site is on notably higher ground than the neighbouring properties to the north and west. To the immediate east is a terrace of properties fronting Legard Road (including Nos 17 -31) with rear gardens adjacent to Block A.
8. A residential prior approval² has been granted by the Council for the change of use of the existing floor space in Block B to create five homes³. A residential prior approval has also been granted⁴ for the change of use of the first floor of Block A to create four homes. Subsequent to this, planning permission was granted for other operational development. The development covered by these approvals does not form part of the appeal scheme before me.

Reasons

The cumulative effect on the living conditions of neighbours

The effect on the outlook from 17 - 31 Legard Road and Pitt House

9. The rear gardens of 17 – 27 Legard Road are short and the outlook from both the gardens and those internal rooms with a westerly aspect are dominated, and thereby compromised, by the eastern wall of Block A. As such, the outlook, and thus living conditions, of the occupants of these properties are sensitive to cumulative change.⁵
10. It is unlikely the roof extension to Block A would be visible from the main body of the gardens of 17 – 27 Legard Road due to the eaves height of Block A and the shallow depth of much of the gardens. However, the roof extension to Block A would be visible from a combination of ground, first and second floor rooms within 17 - 27 Legard Road and the sections of the rear gardens within side returns.

² Under Part 3, Class O of the General Permitted Development Order 2015 (as amended)

³ Council Reference P2016/2554/PRA approved July 2016

⁴ Council Reference P2016/4428/PRA

⁵ . Nos 29 and 31 Legard Road do not face directly onto Block A and therefore the proposed alterations would not harm the living conditions of the occupants of these two properties.

11. The combined effect of the extra height and length of the roof extension, and its proposed siting relative to the properties in Legard Road, would result in the outlook from these dwellings being compromised further than they already are. The sense of Block A towering over these properties would be increased and this would reinforce the existing presence of Block A as an unavoidable and overbearing structure. Such an impact would significantly harm the living conditions of the occupants of 17-27 Legard Road. The pitch of the roof extension would be angled away from the boundary and this would soften the impact. However, this would not provide sufficient mitigation given the overall height of Block A in combination with the proposed roof extension.
12. There is some merit in the appellant's proposition that access to natural daylight, and views of the sky, are components of outlook. The proposed roof extension to Block A would not be harmful in these respects. However, a consideration of outlook has some subjectivity and factors such as the height of existing and proposed structures/buildings, the distances in-between them, the surrounding context, the existing arrangement of the built form and the magnitude of change are factors that need to be weighed together.
13. In this instance, the proposed roof extension would add to an already tall structure located in close proximity to dwellings. It has not been adequately demonstrated that the proposed arrangement is typical of the area and whilst the magnitude of change may not be great, it is significant given the existing impacts. These factors are not outweighed by the residual access to natural daylight and views of the sky that would remain in spite of the proposed roof extension.
14. The ground floor flats in Pitt House are partially sunken and located in close proximity to Blocks A and B. The outlook from the ground floor flats of Pitt House is already restricted and, like the properties in Legard Road, is sensitive to further change. The roof extension to Block A would be flush with the lower floors and this increase in height without any relief would increase the sense of bulk and massing. The combined effect of the increase in height and the lack of relief in the massing would result in the roof extension to Block A harming the outlook from the adjacent flats in the lower floors of Pitt House.
15. In respect of Block B, the roof extension would have a notable set back, a design break between old and new and extensive breaks in the cladding provided by translucent panels. This would break up the massing of the structure to a significant extent and ensure the roof extension to Block B would not appear dominant or oppressive in the outlook from the ground floor flats of Pitt House.

The privacy of the occupants of Elphinstone Street, 6 Century Mews and Pitt House

16. The removal of Block C would open up views from the proposed roof extension of Block A towards the rear gardens and elevations of 15-18 Elphinstone Street and 6 Century Mews. The intervening distance would be below the Council's 18 metre window to window standard towards the northern end of the proposed roof extension. However, it would be set back from the eaves and behind a parapet wall and this, along with the change in ground levels, would ensure the aspect from the second floor of Block A would not be angle downwards and thus include the private space of 15-18 Elphinstone Street
17. Nevertheless, given the size of the windows and the close proximity of 6 Century Mews, the parapet wall and set back would be less successful in screening views from the master bedroom and living area of Unit A8 towards 6 Century Mews. As

such, there would be an unreasonable loss of privacy for the occupants of 6 Century Mews.

18. In respect of Units B5 and B6, I am satisfied any overlooking towards Pitt House from the terraces that would serve these properties could be mitigated by opaque/obscured glass panels and these could be provided whilst ensuring an acceptable south westerly outlook from these spaces. Privacy screens are a common feature in the more recent development around the appeal site and in this respect their use would be consistent. Additionally, the north facing windows in Unit B6 would be a sufficient distance from the rear elevations of the properties in Elphinstone Street and would have a high sill that would angle any view towards the roof of the neighbouring properties.
19. The north and south facing windows in Unit B5 would have a similar placement to those approved as part of the residential prior approval and it has not been established that they would have a greater impact than this fall-back position. As such, the impacts on privacy arising from these windows would not be a sound reason for dismissing the appeal.

The effect on sunlight penetration into the rear gardens of 17 – 31 Legard Road

20. The appellant provided evidence at the hearing from Mr Fogarty⁶ which considered the appeal scheme's effect on the extent of sunlight that would penetrate the rear gardens of Nos 17-31 Legard Road. This additional information considered the effect on a garden by garden basis and therefore corrects the failings in the previous assessment submitted with the appellants appeal statement, which considered the impacts collectively.
21. The relevant Building Research Establishment (BRE) guidance suggests that a new development should be designed so that the level of sunlight entering neighbouring properties does not fall below 20% of the pre development level when measured on the 21 March. The new data submitted at the hearing demonstrates that some of the adjacent properties in Legard Road would experience a loss of sunlight as a result of the appeal scheme but the percentage reduction on the current situation would be in the region of 0.5% to 4.8%. There is nothing before me to suggest the methodology applied by Mr Fogarty was incorrect and therefore I afford it significant weight as an indication of the appeal scheme's likely effect on sunlight.
22. Following a short adjournment to consider the data, the Council confirmed that the effect on sunlight demonstrated in the memorandum was not sufficient to refuse the grant of the planning application. In effect, the new evidence had alleviated its concerns although the Council did not consider the effect should be disregarded. Nevertheless, I am content the new evidence demonstrates that the magnitude of change would not be harmful on the living conditions of the occupants of 17-31 Legard Road.

Noise and disturbance from the use of the proposed terraces and the siting of extraction equipment

23. Following discussions at the hearing it was agreed that a planning condition could be imposed in the event the appeal was successful to secure details of how fumes would be extracted from the kitchens and bathrooms within Block A. As such there would be no odour impacts on the occupants of Legard Road.

⁶ Memorandum dated 7 August 2017

24. Elevated terraces are common place additions to properties in the vicinity of the appeal site, including properties within Pitt House, Century Mews and Elphinstone Road. I have not been presented with substantive evidence to suggest these existing terraces have presented a problem to the living conditions of neighbours through noise and disturbance. In this context, it is unclear why those proposed at the appeal scheme would. Furthermore, terraces are encouraged within the Council's guidance as a means of providing outdoor amenity space. For these reasons the provision and use of elevated terraces within the appeal site would not be inherently harmful to neighbouring residents through any noise and disturbance arising from their reasonable use. It is also important to note that the area around the appeal site is a dense and busy residential area and any noise needs to be considered in this context, including any noise from deliveries and associated vehicles such as taxis.
25. Although not raised by the Council, interested parties are concerned by the position of the refuse enclosure, which would adjoin 17-19 Legard Road and therefore noise and activity from residents using this space would arise. However, it would be possible to enclose the area and this would attenuate some of the noise. Furthermore, the use of the bin store would be intermittent. On balance, the siting and use of the bin store would not harm the living conditions of neighbours.

Conclusion on the effect on the living conditions of neighbours

26. In conclusion, the appeal scheme would result in a loss of privacy for the occupants of 6 Century Mews. The outlook from the adjacent properties in Legard Road and the neighbouring ground floor flats in Pitt House would also be compromised. As a consequence, the appeal scheme would significantly harm the living conditions of neighbours and this would be an impact inconsistent with the requirements of Policy DM2.1 of the DMP⁷.

The adequacy of the living conditions of the future occupants of Unit A8

27. To prevent overlooking of the occupants of 15-18 Elphinstone Street the outlook from Unit A8 would be significantly curtailed with much of the western elevation being dominated by a solid wall. A roof window would provide an outlook to the sky but this would not provide views of the surroundings. The sideways angled windows would be small and partially blocked by louvers and parapets. Overall, the living area of Unit A8 would have an enclosed feel and a lack of connection to the outside. It would be an oppressive space in which to live. The outside space would also be poor as it would be predominately enclosed by louvres and this would give a cramped and enclosed feel. Consequently, the living conditions of the occupants of Unit A8 would be inadequate and therefore the proposal would be contrary to Policy 3.5 of the London Plan, Policy CS12 of the CS⁸ and Policies DM2.1 and DM3.4 of the DMP.

Other Matters

28. I have been presented with a unilateral undertaking but given my findings above it is unnecessary for me to consider this in detail, including whether the 'car free' obligations adhere to recent case law⁹. For similar reasons it is unnecessary for me to address the concerns of interested parties in detail, including those in respect of

⁷ Islington Local Plan Development Management Policies 2013

⁸ Islington Core Strategy 2011 (CS)

⁹ *R (oao Khodari) v Royal Borough of Kensington and Chelsea and Cedarpark Holdings Inc* [2017] EWCA Civ 333

highway safety, parking, any loss of a community/employment space and the impact on bats.

29. As a material consideration it is important to acknowledge that the appeal scheme would have a number of benefits. It would recycle previously developed land within an urban area. It would also deliver housing and refurbished employment floor space in a location accessible to services and facilities. This would result in a number of social and economic benefits including those to the construction industry and the circulation of funds locally.
30. Nevertheless, the benefits identified in the preceding paragraph would be achieved at the expense of the living conditions of neighbours and the quality of the living conditions of future occupants. These impacts would be contrary to the development plan. An application should be determined in accordance with the development plan unless material considerations indicate otherwise. The benefits of the scheme are not matters of sufficient force as material considerations to outweigh the harm I have identified. As such, the proposal would not be sustainable development.

Conclusion

31. Some of the harm alleged by the Council has not been substantiated or could be mitigated. Nevertheless, the absence of demonstrable harm in these respects does not outweigh the harm I have identified. Thus, my overall conclusion is that the appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

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Galina Ward
Nicole Polonsky
Susanna Longley

Local Resident
Local Resident
Local Resident and chair of the Residents
Association
Local Resident
Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Cundall memorandum dated 7 August 2017 for Scheme 6B
2. Photographs showing the demolition of Block C