
Appeal Decision

Site visit made on 10 April 2018

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 9 May 2018

Appeal Ref: APP/V5570/W/17/3181452

Garages rear of 21-28 Barnsbury Square, London N1 1JP

- 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 Matthew Slotover and Emily King against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/1383/FUL, dated 8 April 2016, was refused by notice dated 10 May 2017.
 - The development proposed is described as demolition of existing garages and erection of dwellinghouse including ground floor and basement together with ancillary works including erection of boundary wall.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing garages and erection of a three-bedroom single family dwelling house including excavation at basement level with associated landscaping; erection of boundary wall and provision of cycle and refuse storage at Garages to the rear of 21-28 Barnsbury Square, London N1 1JP in accordance with the terms of the application, Ref P2016/1383/FUL, dated 8 April 2016 subject to the conditions set out on the attached schedule.

Procedural Matters

2. The Council changed the description of application Ref P2016/1383/FUL from that contained on the application form to 'demolition of existing garages and erection of a three-bedroom single family dwelling house including excavation at basement level with associated landscaping; erection of boundary wall and provision of cycle and refuse storage'. This is a more accurate description of the development proposed which I have therefore used in the determination of this appeal.
3. The appellant initially indicated that an application for an award of costs was to be made against the Council of the London Borough of Islington. However, it was confirmed on 22 February 2018 that the appellant was no longer minded to submit a costs application and was content to allow the appeal to proceed without this being matter considered. Consequently, I have not considered any application for the award of costs in the determination of this appeal.

Main Issues

4. The main issues are:

- Whether the proposed development maximises the development potential of the urban site with particular regard to density.
- The effect of the proposed development on protected trees.

Reasons

Whether or not the development potential of the site is maximised

5. The appeal site is located within the Barnsbury Square Conservation Area and comprises a relatively narrow 'L' shaped former garage site that is occupied by 20 vacant garages and is accessed via a track located to the western side of No 21 Barnsbury Square. The surrounding area comprising of residential properties with Nos 21-28 Barnsbury Square, positioned adjacent to the access road and to the south of the site, being two storey terraced and semi-detached properties and Nos 27-28 are Grade II Listed semi-detached villas. To the north are semi-detached villas along Belitha Villas with the Grade II Listed Buildings of No 45 Thornhill Road to the east and No 2 Mountfort Crescent to the west.
6. The proposed development would involve the demolition of the existing garages and the construction of a single storey, with part basement, detached dwelling of a contemporary design. The proposed dwelling would have a flat roof with its height below that of the existing substantial boundary wall to properties on Belitha Villas.
7. The Council indicates that the proposed development fails to deliver a maximum number of units on the site and is therefore contrary to Policy CS 12 of the Islington Core Strategy 2011 (Core Strategy). This policy deals with a wide range of matters associated with the provision of housing and suggests that Islington will meet its housing challenge, to provide more high quality, inclusive and affordable homes.
8. Although the Council has not referred to which specific parts of this policy that the proposed development may be in conflict with, it appears that Sections A, D and E are the most to be relevant to the consideration of the issues in this appeal. Section A seeks to ensure that residents have a good quality of life while living in the second most densely developed borough in the country. This requires careful management of the design, layout, materials and locations of residential developments and that design standards will be significantly increased from their current levels. This will support the council's aim of retaining and encouraging middle income families and older residents, alongside meeting the pressing need for more social-rented housing.
9. Section D requires residential developments to follow and not exceed the densities level set in the London Plan (currently shown in the London Plan density matrix), and complying with housing quality standards. Section E requires a range of unit sizes within each housing proposal to meet needs in the borough, including maximising the proportion of family accommodation in both affordable and market housing. In my view, the proposed delivery of family accommodation is entirely consistent with the objectives of Sections D and E.

10. The Council suggest that the gross internal floor area (GIA) of the proposed development at 346sqm would be far in excess of the 110sqm minimum floor area required for a 3 bedroom, 5 person dwelling. Consequently, the Council suggest that the site is capable of accommodating a greater number of units.
11. Whilst I recognise the basis for the Council's view, I agree with the appellant that, in relation to the appeal proposal, Policy CS 12 does not specifically require development to deliver a maximum number of units on a site or to maximise the development potential of a site. In this case, the site has a number of development constraints including its configuration, proximity to adjacent properties including heritage assets, proximity to protected trees and a need to protect the living conditions of the occupants of adjacent properties.
12. In my view, the design solution adopted takes into account these constraints in a manner which delivers family accommodation of a quality that is both appropriate in its design and provides a high standard of internal accommodation, consistent with the overall housing objectives of Policy CS 12. It may well be that a form of development that could provide more units on the site. However, the fact remains that Policy CS 12 does not provide a specific requirement that seeks to maximise the number of units nor does it suggest any maximum dwelling size that can be provided. Exceeding the minimum standard of GIA does not in itself amount to a breach of Policy CS 12.
13. Although not referred to within the Council's reasons for the refusal of planning permission, reference has been made to a conflict with Policy DM2.1 of the Islington Local Plan: Development Management Policies 2013 (DMP) and Policy 3.4 of the London Plan 2016. These policies, amongst other things, require development to efficiently use the site and to optimise housing output taking into account local context and character.
14. Policy DM2.1 is a design themed policy and I agree with the appellant that it is not a policy that requires optimisation or maximisation of unit numbers, nor does it set out maximum unit sizes. Policy 3.4 of the London Plan suggests that rigorous appreciation of housing density is crucial to realising the optimum potential of sites, but it is only the start of planning housing development, not the end. It stresses that it is not appropriate to apply the accompanying supporting Table 3.2 mechanistically.
15. Taking into account the site constraints in this case, I am not persuaded that the proposal fails to consider local context and character to the extent that additional units could reasonably be provided without compromising other objectives of the development plan. In this regard, the appellant has drawn my attention to Section 1.3 of the Mayor's Housing Supplementary Planning Document (2016) which indicates that *'one of the key themes of the London Plan is the recognition that while the best use should be made of development opportunities, proper account must be taken of the range of factors which have to be addressed to "optimise" rather than simply maximise, housing potential'*. Considering the development plan as a whole, I have no demonstrable evidence to suggest that the scheme does not develop land to the fullest potential consistent with all other planning objectives.
16. The Council also suggests that as a consequence of the failure to maximise the development potential of the site, the proposal would not amount to sustainable development. However, the appeal relates to a brownfield site with numerous planning constraints positioned in a sustainably accessible urban

location. In this case, I am not persuaded that the proposal amounts to unsustainable development when considered against the economic, social and environmental dimensions as set out in the National Planning Policy Framework.

17. Taking the above factors into account and considering the development plan as a whole, I am not persuaded that it has been demonstrated that the proposed development fails to maximise the development potential of this urban brownfield site. Consequently, I do not find any conflict with the provisions of Policy CS 12 of the Core Strategy.

Protected trees

18. There are several protected mature trees close to the boundaries of the site. The proposed development would not involve the felling of any of these trees. However, whilst the tree trunks are not located on the site the submitted arboricultural reports suggest that roots and canopies pass under/over the site.
19. The scheme incorporates specialist foundations which have been developed to suspend the building above the root protection area using a combination of bored piles, raised ground beams and trenchless installation of services by mole boring beneath the depth of the tree roots.
20. The Council indicate that it is content that the technical aspects of the methodology for the construction of the proposed dwelling addresses initial concerns regarding the impact on protected trees. However, concerns remain regarding the principle of constructing a dwelling beneath the canopy of substantial protected trees. In particular, the Council suggests that the proposed conservatory beneath the canopy of tree T3 could result in potential post-development tree pruning pressures.
21. Whilst I am sympathetic to the Council's concerns, there is no firm evidence to suggest that this would be the case. In any event, as the tree stands within a Conservation Area, there is a statutory duty to provide the Council with notification of any proposed works in addition to the controls that are available pursuant to its designation as a tree protected by a Tree Preservation Order. As such, the Council has control over any future management of this tree.
22. Taking the above factors into account, there is no demonstrable evidence to suggest that the proposal would have an unacceptable effect on the health and integrity of protected trees. Consequently, there would be no conflict with Policy DM 6.5 of the DMP or Policy 5.10 of the London Plan (2016). These policies, amongst other things, require development to minimise the impact on trees and integrate green infrastructure from the beginning of the design process. In addition, the Council will refuse permission for development proposals that would have a detrimental impact on the health of trees.

Other matters

23. The Council has raised no concerns regarding the impact of the appeal proposal on the character and appearance of the Conservation Area and the setting of adjacent Listed Buildings. I am nevertheless required to have regard to the statutory duty to consider the effect of the proposal on such assets. In applying the statutory test as set out in Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have had regard to the desirability of preserving or enhancing the designated heritage assets.

24. In this case, I note the comments of the Council's Design and Conservation Officer that the proposed development would not exceed the height of the northern boundary wall and that the increase in height of the roof above that of the roofs of the existing garages would be relatively minimal and no more than 1.2m. Moreover, the Officer confirms that the replacement of the existing garages would improve the setting of the Listed Buildings and that the character and appearance of the Conservation Area would be preserved. I have no reasons to disagree with the views of the Council in this regard and therefore I am satisfied that the proposal would preserve those interests.
25. I carefully considered the concerns of the occupants of No 45 Thornhill Road regarding the impact of the proposal on the setting of the Listed Building as a consequence of the projection of the proposed roof above the height of the existing boundary wall and thereby being visible in views to the west from the rear garden. The proposed roof would undoubtedly be seen in such views. However, the depth of the rear garden, the presence of mature trees and shrubs in the vicinity of the boundary and the proposed projecting height of the roof above the wall are all mitigating factors. In combination, these mitigating factors lead me to conclude that the harm of being visible in views would not be of such a significant extent to have a detrimental effect on the setting of the Listed Building sufficient to dismiss this appeal on that ground.
26. I have also taken into account the concerns of interested parties regarding the height of the proposed roof impact, the suitability of the driveway for construction traffic, potential damage to surrounding property and noise. Although these matters have been carefully noted, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.
27. The Council has drawn my attention to a recent appeal decision for development at Grosvenor Avenue (Ref APP/V5570/W/15/3131288) where the Inspector considered that in the context of Section G of Policy CS 12 ensuring that sites meet the maximum potential should be a material consideration. This part of Policy CS12 relates to the provision of affordable housing, requiring that 50% of additional housing to be built in the borough over the plan period should be affordable requiring all sites capable of delivering 10 or more units gross to provide affordable homes on-site. Schemes below this threshold are required to provide financial contribution towards affordable housing provision elsewhere in the borough.
28. However, the issues in that case were very different to those in this appeal and related to the provision of eight dwellings. Moreover, this part of the policy does not specifically require developments of one dwelling to maximise the development potential of a site but in circumstances where the proposal is below the threshold of 10 dwellings then a financial contribution towards affordable housing provision elsewhere in the borough should be made. In this case, such contribution would be provided by means of a completed Unilateral Undertaking which has been submitted by the appellant which, amongst other things, provides for a contribution towards affordable housing. Consequently, I do not consider that there is any conflict with Section G of Policy CS 12.
29. In any event, I do not have full details of the nature of the proposals or the circumstances and material considerations that were relevant to the

determination of the appeal referred to by the Council. Consequently, I cannot be sure that it is wholly representative to any of the circumstances in this appeal. In any case, this has not led me to a different conclusion on the main issues of this appeal which I have determined on its own merits.

Conditions and Unilateral Undertaking

30. The appellant has submitted to the Council a completed Unilateral Undertaking dated 23 August 2016. This provides for financial contributions towards affordable housing and carbon offset and the occupation of the proposed dwelling as car free development. These provisions are necessary and meet the tests set out in Regulation 122 and 123 of the Community Infrastructure Regulations 2010 and paragraph 204 of the Framework.
31. The Council has suggested a number of planning conditions which I have considered against the advice given in paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Government's Planning Practice Guidance. Where necessary I have altered or amended them in the interests of necessity, precision, conciseness or enforceability and I have deleted one for the reasons set out below.
32. In addition to the standard implementation condition I have imposed a condition requiring that the development is carried out in accordance with the approved plans and documents. This is in the interests of certainty.
33. In the interests of protecting the character and appearance of the Conservation Area, I agree that conditions are necessary relating to the submission of details of all external wall, roofing materials, balustrades and proposed windows. In order to protect the living conditions of the occupant of nearby properties a condition is necessary requiring the submission and implementation of a construction management scheme.
34. Given the proximity of the development to surrounding walls and structures, in order to protect and maintain their structural integrity, I agree that a condition is necessary requiring the monitoring and certification of the Structural Method Statement. Whilst I note the appellants' view on this matter, I consider that excavations to basement level in close proximity structures that form part of the setting of the adjacent Listed Buildings have the potential to undermine their structural integrity. Given the importance of these structures to the setting of the heritage assets the Council's suggested condition is both reasonable and necessary.
35. In order to encourage the use of sustainable transport modes a condition requiring the provision of bicycle storage areas is necessary. A condition requiring the provision of refuse/recycling areas is necessary to ensure efficient management of waste and recycling activities.
36. The Council has also suggested a condition requiring car free development. However, this matter is covered within the requirements of the Schedule of the Unilateral Undertaking and as such I have deleted the suggested condition.

Conclusion

37. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONTIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, reports, statements and documents accompanying the application:

3D 001 Proposed Axonometric View Rev. C;
337_0001 Existing Location Plan Rev B;
337_0100 Existing Ground Plan Rev B;
337_0101 Existing Roof Plan Rev B;
337_0200 Existing Section AA Rev B;
337_0201 Existing Section BB Rev B;
337_0202 Existing Section CC Rev B;
337_0203 Existing Section DD Rev C;
337_1000 Proposed Site Plan Rev C;
337_1100 Proposed Basement Plan Rev E;
337_1101 Proposed Ground Floor Plan Rev I;
337_1103 Proposed Roof Plan Rev G;
337_1200 Proposed Section AA Rev F;
337_1201 Proposed Section BB Rev F;
337_1202 Proposed Section CC Rev G;
337_1203 Proposed Section DD Rev F;
337_1204 Proposed Section EE Rev F;
337_1205 Proposed Section FF Rev F;
337_1206 Proposed Section GG Rev E;
337_1208 Proposed Section II+JJ;
337_1209 Proposed Section KK+LL;
337_1210 Proposed Section MM;
337_1211 Proposed Section NN;
337_1212 Proposed Section OO;
337_1300 Proposed South Elevation Rev C;
337_1301 Proposed West Elevation;
337_1302 Proposed North Elevation Rev A;
337_1303 Proposed East Elevation Rev B;
Tree Protection Plan Rev B October 2016;
Arboricultural reports dated February 2015 and September 2016;
Heritage Statement January 2016 and Addendum to Heritage Statement October 2016;
Fire Brigade Article 29 letter July 2016;
Inclusive Design Statement June 2016;
Structural Method Statement April 2016;
Sustainable Design and Construction Statement April 2016;
Topographic survey September 2014; Drainage drawing Rev. B;
Design and Access Statement April 2016 and Supplementary Design Report October 2016;
Construction Management Plan January 2015;
Flood Risk Assessment SUDS Statement April 2016;
Planning Statement April 2016;
Site Investigation Report 2015;
Supplementary Design Report 2 - March 2017;

Letter dated 19 April 2017 from Derek Finnie, Structural Inspection Report April 2016;
Geo-Environmental Information - Groundsure Geosight - 08 May 2015.

- 3) Details and samples of all facing materials shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure work commencing on site. The details and samples shall include:
- a) solid brickwork (including brick panels and mortar courses)
 - b) render (including colour, texture and method of application);
 - c) window treatment (including sections and reveals);
 - d) roofing materials;
 - e) balustrading treatment (including sections); and
 - f) any other materials to be used.

The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 4) No development (including demolition works) shall take place on site unless and until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. 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. mitigation measures of controlling noise from construction machinery during business hours.

The development shall be carried out strictly in accordance with the details so approved.

- 5) The professional person certifying the Structural Method Statement (SMS) hereby approved shall be retained (or a replacement person holding equivalent qualifications and experience shall be appointed and retained) for the duration of the construction to monitor the safety of all critical construction stages of the development, and to ensure that the long-term structural stability of the existing buildings and other nearby buildings is safeguarded, in line with the SMS.
- 6) The bicycle storage area(s) hereby approved, which shall provide for no less than 4 bicycle spaces, shall be provided prior to the first occupation of the development and shall be maintained as such thereafter.

- 7) The dedicated refuse/recycling enclosure(s) shown hereby approved shall be provided prior to the first occupation of the development and shall be maintained as such thereafter.