The Planning Inspectorate

Appeal Decision

Inquiry Held on 9, 10, 11 & 12 October 2018

Site visit made on 12 October 2018

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2018

Appeal Ref: APP/V5570/W/18/3204636
104 Tollington Park, Islington, 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 Cormac Dolan, Redtree Ventures Ltd against the decision of the Council of the London Borough of Islington.
- The application Ref P2018/1225/FUL, dated 6 April 2018, was refused by notice dated 1 June 2018.
- The development proposed is demolition of existing garage building and construction of nine (9) dwelling houses (9 x 2 bed), ancillary features, landscaping, refuse and cycle parking.

Decision

1. The appeal is dismissed.

Procedural matters

2. In the Statement of Common Ground the main parties agreed that the appeal should be considered against revised plans that excluded the main building on site, 104 Tollington Park, from the appeal site; the proposed change was at the instigation of the appellant. The appellant was unable to justify the change other than it excluded part of the site which would not be altered by the proposal. The general presumption is that an appeal should be considered on the same basis as the original application. I therefore declined to accept the amended plans and the proposal was considered on the basis of the original drawings.

3. The appeal was accompanied by a Planning Obligation by way of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended), Section 111 of the Local Government Act 1972 (as amended) and Section 16 of the Greater London Council (General Powers) Act 1972 (as amended) dated 12 October 2018. This dealt with contributions towards affordable housing and carbon off-setting, car-free development and works to the main building. I will discuss these matters below.

4. As an aid to reading this decision when I refer to "Tollington Park" I am referring to the road of that name, and to the "TPCA" I am referring to the conservation area.

Main Issues

5. The main issues are:

   - the effects on the Tollington Park Conservation Area (the TPCA) and 104 Tollington Park as a locally listed building;
   - the effects on the living conditions:
     - of the proposed occupiers in terms of quality, outlook, privacy and amenity space; and
     - of the occupiers of 102 and 106 Tollington Park in terms of outlook and overbearing effect; and
   - whether the proposal makes adequate provision for affordable housing.

Reasons

Conservation area and locally listed building

6. Tollington Park was one of the earliest residential streets laid out in the vicinity in the early part of the nineteenth century. It was lined with grand semi-detached dwellings in the 1830s and 1840s, many of which survive. The appeal property, No 104, is of the same date but is unusual in that it is a detached dwelling, although it has side outriggers which are a common feature in the area. As a detached dwelling the width of the plot is wider than those predominantly found in the area. No 104 has three storeys, with the lowest in a semi-basement when seen from the front and the main entrance is up a short flight of steps. It is a locally listed building at category "A"; this is the highest of the three categories applied by the Council.

7. The TPCA includes not only a section of Tollington Park but also parts of its surrounding roads. The TPCA is "book-ended" by two Grade II churches of contemporary period, St Mellitus and St Mark, although it extends beyond both churches. On the southern side of Tollington Park the TPCA extends to the depths of the original properties with the properties in Moray Road to the rear and their gardens outside the TPCA. It was agreed, and I concur, that the proposal would not affect the settings of any listed building which would therefore be preserved.

8. The Council published Conservation Area Design Guidelines (the CADG) in 2002 to assist, as it says, in the practical application of policies in the Council's Unitary Development Plan. While the Unitary Development Plan has been superseded by Islington's Core Strategy February 2011 (the ICS) and the Islington's Local Plan: Development Management Policies June 2013 (the DMP) the fundamental aim of promoting and assisting in the preservation and enhancement of conservation areas remains a requirement both statutorily and as part of development plan policy. I am therefore able to give the CADG significant weight.

9. The CADG notes that the predominant character of the TPCA is residential, although there are other uses. It also notes that there are many mature trees and an "unusually spacious quality".

10. To the rear of the main building is a garage courtyard. This has been in existence for between 80 and 100 years. There are three ranges of garages,

one down each of the sides of the appeal site and a shorter range across, although slightly separate from, the rear of the main building. Access is to the northwest of the appeal site under one of the outriggers, and the area in front of the garage courtyard is laid to concrete. There is a change in levels so that the level of the garage courtyard is set at approximately that of the semi-basement of No 104.

11. The proposal is to demolish the garage buildings and construct two rows of terraced dwellings along either side of the appeal site. These would be two-storey in height, although with mono-pitches running down to the respective boundaries with Nos 102 and 106. The boundary walls would be built up.

12. The demolition of the garages would involve some loss of fabric, but there was no assertion made that the buildings were of any historic worth, being constructed with a brick face, concrete block dividing walls and sheeting roofs. The garages were generally in reasonable physical order. The roofing had been overlaid with further sheets in some locations, and there were leaks from the rainwater goods that had affected some of the wooden garage doors. I saw inside a number of the garages (from each range) at the site visit and generally they were weather tight. However, some occupiers had reinforced the water-proofing of the building with polystyrene sheeting which, reasonably, would be because they were not satisfied that water penetration would not occur.

13. The parties were not in dispute that the residential redevelopment of the site was acceptable in principle; I concur. The site would constitute the development of suitable previously developed land for homes, which in line with paragraph 118 of the National Planning Policy Framework (the Framework), should be given substantial weight. The dispute was about the form of the development and its effects.

14. The Council has also published its Urban Design Guide Supplementary Planning Document (UDGSPD) in 2017. This provides advice on how urban design principles should be applied to ensure that new development successfully contributes to making the borough a better place. The UDGSPD includes a section entitled “Mews and backland development”. This includes a comment that backland sites with no development can be important for their openness. The UDGSPD goes on to explain that development will only be considered where it replaces an existing structure and is subservient to the surrounding development, in accordance with the predominant development pattern in the borough which concentrates massing along primary street frontage.

15. The area between Tollington Park and Moray Road is generally open, although a number of properties, including Nos 102 and 106, have been extended over the years and there are outbuildings. The appeal site appears to be the most intensively developed in the immediate vicinity with the others having significant amounts of vegetation. Notwithstanding that some of the vegetation lies outside the TPCA this vegetation forms part of the character of the TPCA.

16. The Council expressed its concerns that due, principally, from the additional height of the development the proposal would result in the loss of openness which is part of the spacious and therefore special character of the TPCA. It was also concerned that the closing of the gap between the two rows of building would also erode the spaciousness. The Council referenced an appeal

decision[1] from 2013 relating to 100 Tollington Park where the Inspector stated that the CADG identified "that it is the gardens that create a sense of spaciousness and it is this feature that helps to convey the prosperous origins of the [TPCA]". It also referred to a second appeal[2] relating to the same property from 2017 where that Inspector noted that "the wide street, many mature trees and generously sized rear gardens contribute to an unusually spacious quality". It seems to me that the spacious character relates to the whole of the TPCA rather than just Tollington Park, and the reference to "Tollington Park" in the CADG in the heading refers to the TPCA and not just the road, as it also makes reference to a number of other roads within the TPCA and not just Tollington Park.

17. There was discussion at the Inquiry as to how the proposal should be described, but to my mind in the context of this appeal this is a distinction without substance. The proposal is not a "mews" in the historic sense of the term, but would be "mews-style" as when taken from the rear of No 104 and sought to reference a mews typology.

18. The proposal would replace an existing structure and while it would be larger in all dimensions than at present, the proposal would open up the area immediately to the rear of No 104, and would provide enhanced rear access to the middle floor accommodation. These works would better reveal its significance as a non-designated heritage asset. Because of the ground level of the proposed building and the height of No 104 the proposal would appear as a subordinate structure to No 104 within the area to the rear.

19. Other than the effect on the living conditions of the occupiers of the development and those of adjoining dwellings, the design of itself, and subject to conditions on matters such as materials, was not considered to be objectionable. I would agree with this analysis. The building would be a simple reflection of that on the site at present. However, there would be a reduction in spaciousness within the TPCA from the increased building volume on site, notwithstanding the green roofs of the buildings and the proposed vegetated areas within the development. This would therefore be harmful to this characteristic of the TPCA.

20. Separate to this appeal, the Council has granted planning permission[3] for various external alterations to the front and rear elevations of No 104. The works are the reinstatement of missing eaves brackets, replacement of the carriage doors on either side of the building, replacement of a number of uPVC windows with timber casements and removal of advertisement boards from the front elevation. This last element has already happened.

21. The Planning Obligation includes provisions not to commence the appeal proposal until these works have been completed. These works will enhance the appearance of No 104 and thus its significance, and would enhance the appearance of the TPCA. The Obligation also makes provision for the appellant to submit an application for planning permission for a portico on the front elevation similar in design to others in the area and to construct this.

[1] APP/V5570/A/13/2190809
[2] APP/V5570/A/17/3170858
[3] Council Ref: P2018/1351/FUL

22. Porticos are found on several of the buildings in the TPCA and in particular Tollington Park, and indeed the CADG specifically indicates that the reinstatement of a portico on No 104 would be welcomed and sought as part of any development scheme.

23. Paragraph 193 of the Framework indicates that great weight should be given to the conservation of a heritage asset (the more important the asset the greater the weight should be). I therefore give great weight to the works with planning permission, although as it is on a non-designated heritage asset, even at category "A", this will have little effect on the weight that is required to counter the harm I have identified to the designated TPCA. However, while the proposed portico has guidance support, its delivery cannot be guaranteed unless and until planning permission is actually granted. I therefore give this element only limited weight.

24. Balancing these benefits with the loss of spaciousness I consider that the proposal would be harmful to the character of the TPCA and thus its significance. Great weight and special attention should be paid to this. In the terms of the Framework this would represent less than substantial harm to the significance of the designated heritage asset. In line with paragraph 196 of the Framework this harm should be weighed against the public benefits of the proposal. I will do this in the Planning Balance section of this decision below. However, I consider that taken in the round the works would enhance the significance of No 104 as a non-designated heritage asset.

25. Overall the proposal would be contrary to Policies CS 8 and CS 9 of the ICS which seek that development maintains the urban fabric of streets and squares and protects the historic urban fabric. It would also be contrary to Policy DM2.1 and that part of Policy DM2.3 of the DMP which require all development to make a positive contribution to the local character and distinctiveness, and in a conservation area to be of high quality contextual design so it conserves or enhances the significance of a conservation area. Policy DM2.3 also states that harm to the significance of a conservation area will not be permitted unless there is clear and convincing justification; I will consider that below. However, it would comply with that part of Policy DM2.3 of the DMP relating to non-designated heritage assets which seeks the retention and repair of such assets.

Living conditions

Within development

26. Development plan policies at London and borough level all indicate that development should be of high quality design. It was agreed that the Framework published in July 2018 has meant that Policy DM2.1 of the DMP is no longer fully consistent with the Framework. Policy DM2.1 (x) indicates that if development is to be acceptable it is required to provide a good standard of amenity. However, paragraph 127 f) of the Framework seeks the creation of places with a high standard of amenity. All parties agreed that this was a "raising of the bar" and, in line with paragraphs 212 and 213 of the Framework, the proposal should be considered on this "high" basis.

27. The dwellings would have windows facing the gap between the two rows of dwellings as the main source of daylight. While additional daylight would be provided through roof lights towards the rear of the dwellings, I do not think that these additional windows provide a "view" in the conventional sense of the

term as a prospect over or towards something. I therefore consider that the dwellings should be considered to be single aspect houses.

28. Policy DM3.4 of the DMP deals with housing standards. Included within them, in Part D, is that new residential units are required to provide dual aspect accommodation, unless exceptional circumstances can be demonstrated. The Part continues that where dual aspect dwellings are demonstrated to be impossible or unfavourable the design must demonstrate how a good level of natural ventilation and daylight will be provided for each habitable room.

29. The Mayor of London in 2016 published Housing Supplementary Planning Guidance (the HSPG) to provide guidance on the implementation of housing policies in the London Plan. I give the HSPG significant weight. The HSPG indicates, in Standard 29, that developments should minimise the number of single aspect dwellings.

30. The appellant sought to characterise the two sections of Policy DM3.4 D of the DMP as conjunctive, so that if a good level of natural ventilation and daylight is provided for each habitable room then this would demonstrate exceptional circumstances. However, I do not consider that this is correct. This argument, it seems to me, is predicated on the layout and style of development chosen. To my mind there is nothing inherent about the site that means that single aspect housing is inevitable; this was a matter of choice in the design. On that basis the appellant then indicated that he considered the benefits of the development represented those exceptional circumstances. I will consider those benefits further below, but conclude that they do not represent such exceptional circumstances.

31. Therefore the proposal is contrary to Policy DM3.4 of the DMP, but it may be that other development plan policies may pull in a different direction, or as a whole, other material considerations may indicate otherwise, so I will consider these matters further below.

32. The two rows of properties would be 6.1 m apart. To avoid unacceptable levels of privacy the design would incorporate a number of features. On the ground level the proposal would include wooden louvres into the building fabric set at an angle across the main windows, with “fritted” glass in the upper floor windows and in the courtesy windows by the front doors.

33. Fritted glass is a proprietary approach which includes a pattern of small circles baked in ceramic on the inside of the glass pane across the whole of the pane. The circles would be 2 mm diameter set in a 2.5 mm grid. These would be black in colour on the inside and, in this case, white on the outside. The technology is designed so that light can pass through the gaps between the circles providing sufficient light within the rooms in question and allowing a view out as the eye filters out the dark and thus recessive circles. However, when viewed externally, the theory is that the eye rests on the reflection of the lighter colour reducing vision through the glass into the room behind, so as to prevent unacceptable levels of overlooking. When compared with “normal” methods of preventing overlooking, such as obscure glazing, the approach is designed to provide higher quality living conditions within the building as the occupants are able to see out.

34. The appellants were only aware of one case where it had been used on a dwelling, in Cheshire, but there was a commercial building in London which

utilised the technology, albeit that the external colouring was red as part of the design. As part of the site visit, the property in London was visited and I was able to inspect that both externally and internally. In addition samples of the glass (with white external colouration) were also provided to the Inquiry and were displayed on windows at the venue.

35. My experience of the fritted glass is the performance depends on the distance from the window, lighting levels, both internally and externally, and the angle of view. The closer the viewer is to the window the easier it is to see through into the room behind. When viewed along the length of the windows at an oblique angle the dots apparently joined together to make an effectively continuous translucent covering. However, when viewed straight on it was possible to see through the gaps between the dots to some degree. The degree then depended on the light levels, with the greater the level of light internally the easier it was to see detail within the room. Overall, my conclusion was that when viewed straight on, in general terms, more detail could be seen within the room than was normally possible when using obscure glazing.

36. Whether the use of fritted glass, therefore, provides high levels of privacy depends on the proximity of the viewer, the relationship between the windows and the angle of view. The layout of the proposed dwellings is that each would have two bedrooms at the front; one with a conventional window and the smaller bedroom with patio doors behind a Juliet balcony. The juxtaposition of the windows would be such that only a small glazed area would be directly opposite each other.

37. The windows at just over 6 m face-to-face distance are quite close to one another. Due to this distance between the two opposite façades the angle of view would remain quite acute meaning that it would be possible to see into the room opposite with sufficient clarity, particularly if the lights were on within that room. This would result in unacceptable levels of overlooking. This would be with the windows closed. If the windows were opened, and particularly with a Juliet balcony this is part of the raison d'être of their inclusion in a design, then the reduction in visibility from the use of fritted glass would be removed. While opening a window or patio door would be the occupier increasing the visibility into their own room, ensuring a high level of privacy is a public policy aim, and not being able to open a window is not appropriate in a habitable room such as a bedroom except in exceptional circumstances, and none here have been shown, and would not represent good design.

38. At the application stage the proposal was that the louvres on the ground floor were to be set at 30° to the line of the window. As part of the appeal it was suggested that they could be adjustable to allow a variation up to 70°, closer to the perpendicular to the window, and thereby increasing the outlook, but also, by default, increasing the visibility in to and out from the room.

39. If the sets of louvres opposite each other were both set at 30° then levels of intervisibility would be acceptable, but if both were at 70° then levels of privacy would be compromised to an unacceptable extent. As with opening of windows or the patio doors at first floor this would be to some extent the choice of the occupier, but given that most occupiers are likely to want to maximise the outlook from a window it is likely that the louvres would be set and remain at 70°.

40. It was suggested that should an occupier find that they had insufficient levels of privacy they could install blinds, net curtains or the like. However, this would be to mitigate a design failing rather than ensuring that the design was of high quality in the first place. It would also affect the daylight levels inside the room, which at first floor are already reduced by the use of fritted glass when compared with clear glass, and this level of daylight had not been modelled to see whether it would remain at acceptable levels.

41. The louvres would also have the effect of reducing the outlook from the windows in question. If the louvres were set at 70° then there would be sufficient outlook, but if at 30° then this would be unacceptable given the relatively short distance to the row of dwellings opposite. This reinforces my conclusion that it is more likely that the louvres would be generally set either at or close to 70° for the majority of the time, thereby leading to unacceptable levels of privacy.

42. Policy DM3.5 of the DMP sets standards for private amenity space. For the two-bedroom three-person properties proposed this is 20 m^2 per dwelling, which would be provided for unit 5 at one end, but not for the other eight dwellings which would only have 12.3 m^2 and part of this would be the access way to the front door. While the proposal would provide some communal amenity space the development overall would not provide a satisfactory provision, particularly as one side would be generally facing northwest. The fact that there are areas of public open space in the local area outside the appeal site does not make up for the lack of private amenity space on site. This also weighs against the proposal.

43. Overall, through the shortfalls I have identified in respect of privacy, outlook and amenity space the proposal would not result in a high standard of amenity for the proposed occupiers. It would therefore be contrary to Policy CS 12 of the ICS which seeks high quality homes, and Policies DM2.1 DM3.4, DM3.5 of the DMP as set out above. It would also be contrary to Policies 3.5 and 3.6 of the London Plan which indicate the design of all new housing development should provide open spaces and make provision for play and informal recreation. It would also be contrary to paragraph 127 of the Framework that indicates planning decisions should create places that have a high standard of amenity for future users.

Adjoining development

44. The boundary walls on both sides of the appeal site would be raised by the proposal. In the case of the boundary with No 106 this would be by approximately 1.8 m for approximately 15.3 m length beyond the existing adjoining development. For No 102 this increase would be by approximately 1.3 m for approximately 29 m beyond the adjacent ground floor element.

45. In both cases the Council's concerns relate to whether the proposal would result in an overbearing effect creating an undue sense of enclosure and loss of outlook.

46. Regarding No 106 the rearmost part of the existing building is a two storey element with a small window with a Juliet balcony at first floor and large four-section patio doors on the ground floor. The first floor window is close to the joint boundary and the patio doors only slightly further away. The raising of the boundary wall by approximately 1.8 m would have an overbearing effect on the

living conditions of the occupiers both within the rear room on the ground floor and the garden leading to a loss of outlook. However, I am satisfied that this would not be the case for the room at first floor as the top of the boundary wall would be below the majority of that window. I consider that the enhanced outlook across the appeal site from the rear of No 106 of green roofs rather than the existing garages would not outweigh this harm.

47. The appellant has emphasised that there would remain the whole width of the property so that levels of light would be maintained and that the proportions of the garden are generous. However, this is a poor argument, in that it would allow a very high and very overpowering, let alone overbearing, wall to be constructed close to a window near a joint boundary provided the remainder of the garden away from the wall was open for a significant distance on the opposite side.

48. In the case of No 102 I was provided with plans of that property which show that at ground floor the rearmost room adjacent to the joint boundary is a living/dining room for a flat. As the proposed increase in height is lower than for No 106, and the orientation is closer to south, I am satisfied there would not be an overbearing effect leading to a loss of outlook harmful to the living conditions of those occupiers.

49. However, in respect of the No 106, the proposal would result in harm to the living conditions of the occupiers in terms of outlook and overbearing effect. As such it would be contrary to Policies CS 8 and CS 9 of the ICS and Policy DM2.1 of the DMP as set out above.

Affordable housing

50. Policy CS 12 of the ICS indicates that 50% of all additional housing in the borough should be affordable. For schemes of 10 dwellings or more this should be on site, but smaller schemes should provide a financial contribution towards off-site provision. In all cases this is subject to financial viability assessment.

51. The Framework indicates in paragraph 63 that the provision of affordable housing should not be sought for residential developments of less than ten dwellings. However, the Council sought to show that the need for affordable housing in the borough was so acute and the proportion of smaller sites so high that while the Framework was of considerable weight it did not outweigh the provisions of the development plan. To this end the Council referred to a number of recent appeal decisions[4] in the borough where the question of affordable housing had been considered.

52. The Framework, being published in July 2018, is a very recent expression of Government policy, but I do not consider that it fundamentally changed national planning policy in this area from that which was in place immediately prior to its publication. The Written Ministerial Statement of 28 November 2014 was a policy statement in similar terms (other than a change in the threshold) and the Courts have confirmed that, even if expressed in absolute terms, such a policy document can only be a material consideration to be assessed in the light of development plan policy.

[4] APP/V5570/W/16/3155770, APP/V5570/W/16/3160780, APP/V5570/W/16/3160795, APP/V5570/W/16/3161073, APP/V5570/W/16/3162003, APP/V5570/W/17/3167530, APP/V5570/W/17/3167531, APP/V5570/W/17/3173521, APP/V5570/W/17/3177927

53. In light of the evidence in front of me, I am satisfied that there is a continuing need for affordable housing in the borough which includes the need for provision to be made through smaller sites. This need is such that the Framework does not outweigh development plan policy even giving the Framework considerable weight.

54. The appellant did not seek to challenge this approach, rather it sought that the Council justify its position. I am satisfied it did that. However, the appellant took the view that the proposal would not be financially viable if a contribution were made. If that were the case then not making a contribution would mean that the proposal would be policy compliant for the reason set out above. Having said that, the Planning Obligation does include a clause to the effect that the sum is to be determined by me, as appointed Planning Inspector, should I find that such a sum is necessary.

55. There was considerable agreement between the parties on viability set out in a separate Statement of Common Ground. Consequently this decision will concentrate on those areas of disagreement which were the appropriate benchmark land value, developer's profit level and whether the costs of the appeal should be included.

56. The national Planning Practice Guidance (the PPG) includes a section on viability. This was updated at the same time as the Framework was published and is therefore up-to-date. It emphasises[5] that the role for viability assessment is primarily at the plan making stage, and[6] that at the decision-taking stage it will be for the applicant to demonstrate whether particular circumstances justify the need for a viability assessment.

57. The Council published in January 2016 a Development Viability Supplementary Planning Document (the DVSPD) and reference was also made to "Homes for Londoners – Affordable Housing and Viability Supplementary Planning Guidance 2017" (Homes for Londoners) published by the Mayor of London. However, as these documents both pre-date the relevant section of the PPG I give more weight to the PPG. Having said that I consider that they should still be given significant weight as they provide context for developers to ensure a consistent approach in decision taking.

58. The PPG emphasizes[7] that Existing Use Value (EUV) is the value of the land in its existing use together with the right to implement any development for which there are policy compliant extant planning consents, including realistic deemed consents, but without regard to alternative uses. Existing use value is not the price paid and should disregard hope value. To this should then be added a premium[8] to provide a reasonable incentive for a land owner to bring forward land for development while allowing a sufficient contribution to comply with policy requirements. This then creates "EUV+".

59. In considering the benchmark land value the main areas of dispute were the rentals to be assumed from the existing garages, the yield, whether purchaser's costs should be included, and the premium.

[5] Reference ID: 10-002-20180724
[6] Reference ID: 10-007-20180724
[7] Reference ID: 10-015-20180724
[8] Reference ID: 10-016-20180724

60. I was not provided with details of the current rents obtained from the site, but was advised that this was because of the desire to redevelop the site. This meant that the garages were not being let on fully commercial terms so that they could be vacated quickly. I was, however, provided with other rentals in the area including those sought by the Council in its own property portfolio. However, I note that the Council uses two different rental values; one for its residents living in the borough and one for those living outside. I was not given any explanation for this. It may be that the Council subsidises the rental for its own residents or seeks to add a premium to discourage their rental by those living outside. Either approach would not be a "commercial rent". Without this information I can only give the Council owned garages rental value information little weight.

61. The rental that can be obtained from a garage will depend on a number of factors, but in particular the quality of the building. In this regard, as set out above, I found them in reasonable physical order, but not necessarily completely weatherproof. This would reduce the rental that could be secured if let on commercial terms. I have looked at the various comparator figures used and consider that the average used by the Council in its valuation exercise to be reasonable.

62. The next issue in dispute was the yield from which to obtain a capitalised value. Yields are, of course, lower for a high quality investment, as they work on an inverse proportion. The appellant's valuation expert utilised a yield of 5% "given the surety of the income stream and potential for alternative land uses such as residential on the site"[9]. This clearly includes an element of hope value. However, as the PPG makes clear EUV should exclude any hope value. I was also provided with various comparator yields for other uses in the area, but none were directly comparable with a garage court.

63. I was also provided with a comparator in the London Borough of Hillingdon, but I note this is in an outer rather than inner London Borough so will have different economic drivers. I also note that since the sale an application for planning permission has been made so it may be that the purchaser paid over the EUV on the basis that it was prepared to include an element of hope value as risk.

64. As noted above, the quality of the buildings is not the highest. I therefore consider that the Council's use of a yield of 6% is reasonable in all the circumstances.

65. The Council included a deduction for purchaser's costs, such as Stamp Duty Land Tax and professional fees, which the appellant did not argue on the basis that considered it it would represent double counting based on the observed yield in Hillingdon. However, because I have given that comparator little weight for the reasons given, and utilised a higher yield due to the quality of the buildings, I consider that there should be a deduction for purchasers costs.

66. The final element of dispute in the EUV+ is the premium to be paid to provide a reasonable incentive for a land owner. Homes for Londoners indicates that this should be in the range of 10% to 30% but must reflect site specific circumstances and will vary. This depends on whether the site in its current state creates liabilities or has a profit-making business upon it. This approach is

[9] Paragraph 13.4.4 of Mr Haynes' proof of evidence

also set out in the DVSPD where it is noted that a site that fully meets the operational needs of a profitable business which needs relocation may need a higher premium. The Council sought to use a premium of 10% while the appellant sought to use 20%.

67. However, neither valuation included any factor from the improvement of the quality, and thus value, of the existing (and proposed) residential units in No 104. This is part of the same site, and while separate, it is unrealistic to think that this should not be taken into account. As noted above, if permitted, the quality of the area to the rear of No 104 would be enhanced by the proposal.

68. That is a separate analysis, but given that the existing buildings are only of reasonable quality, my view is that the additional benefit to the landowner of No 104 from developing the appeal area should reduce the premium of this scheme to the lower end of the range while still providing a positive premium. I therefore conclude that the 10% figure posited by the Council is appropriate, knowing that it will be greater in reality to the appellant.

69. Turning next to developer's profit the PPG indicates[10] that potential risk is accounted for in the assumed return for developers at the plan making stage. It is the role of developers, not plan makers or decision makers, to mitigate these risks. It continues that for the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. As noted above, the PPG indicates that the role for viability assessment is primarily at the plan making stage.

70. The DVSPD indicates that at the time of the economic downturn of 2008/9 increased profit levels of 20% were seen as being appropriate, but when the DVSPD was adopted in 2016 profits were seen at lower levels. However, the DVSPD indicates that the Council will avoid a rigid approach to profit levels depending on the individual characteristics of each scheme. It states that supporting evidence from applicants and lenders to justify why a particular return is necessary. Homes for Londoners also indicates that profit levels should be scheme specific.

71. The appellant took the view that the market had become less robust in the last couple of years since the publication of the DVSPD from a number of factors and that 20% was an appropriate level of profit. I note that the appellant has submitted a letter from a finance broker indicating that they had spoken to a couple of lenders who were interested in exploring the scheme subject to prerequisites including a developer profit of 20% of GDV. However, this was caveated with the phrase "let me know you thoughts on each" of the prerequisites which would seem to indicate that there may be some flexibility, rather than the 20% being an absolute requirement.

72. The level of return should take account of the level of risk, and to that end developers should seek to mitigate and thus reduce that risk. This will include, where appropriate, the use of pre-application advice. As the Framework makes clear, in paragraph 41, the more issues that can be resolved at pre-application stage the greater the benefits. Although local planning authorities cannot require that a developer engages with them before submitting a planning

[10] Reference ID: 10-018-20180724

application the appellant did not give any reasoned justification for not undertaking pre-application discussion other than choice.

73. Given the previous planning history of the site, including refused applications for schemes for 9 and 10 dwellings, it seems to me that this was a case where a prudent developer should have sought to engage with the Council to see if common ground could have been found on the design elements of the scheme through pre-application discussions. The joining of this appeal with an appeal[11] against the refusal of the 10 dwelling scheme (that appeal then being withdrawn) seemed to me more to do with timing rather than providing an acceptable scheme. It seems to me that in not seeking to engage with the Council at the pre-application stage the appellant has not sought to mitigate their risks.

74. While the evidence in front of me was that market conditions had deteriorated since the adoption of the DVSPD to then use a profit level at the top end of the range would be to incentivise not minimising risk which the appellant has not done. I therefore consider that a profit level somewhere in the middle of the range would be appropriate for this scheme. It must also be remembered that the range of profits set out in the PPG comes from the plan making stage rather than the decision taking stage, so this does not mean that this figure would be appropriate for all future circumstances.

75. The final dispute between the parties related to appeal costs. I was directed to two appeal decisions[12] where one Inspector had accepted these formed part of the costs of development but the other Inspector indicated that they should not. The later of the two decisions, which refers to the earlier, indicated that appeal costs should not be included as there was a choice as to whether to appeal and as there is provision for an appellant to claim costs so incurred at the appeal stage and it was not clear whether the first Inspector had had regard to the costs regime.

76. The appellant took the view that having had an application refused the choice was limited and the costs regime only dealt with "unreasonable behaviour" which was a relatively high threshold. However, as with the level of profit I consider that a prudent developer should seek to mitigate the risks. As the developer did not choose to use the Council's pre-application process it would not be appropriate in this case to include appeal costs within the overall calculation. As I set out above by utilising the pre-application regime he may have been able to resolve the design related issues at the very least and thus avoid the appeal. I have no information on whether the parties in the two cited appeals previously had pre-application advice.

77. The Planning Obligation provides that the Affordable Housing Contribution is the sum, if any, I determine in my decision to be payable. I am not going to set out a sum for three reasons. Firstly, I do not have all the necessary inputs, particularly those relating to finance costs and fees so such a figure would probably be arithmetically incorrect. Secondly, as I set out in my pre-Inquiry note, I am not sure that this approach is lawful. The Council did not positively object to such a provision on the basis that it was not aware that such an approach was not lawful. However, that is a very different matter from it

[11] APP/V5570/W/17/3191300
[12] APP/H5390/A/13/2209347 and APP/G2245/W/15/3132303

actually being lawful. Thirdly, as I am going to dismiss the appeal for other reasons this would be academic.

78. The evidence from the Council was that there was some latitude in the valuation figure so that the scheme would still be viable if using a higher profit figure than it promoted and making a contribution towards affordable housing. It may be, therefore, that the scheme could make an appropriate contribution towards affordable housing. Such a contribution is not provided for within the Planning Obligation and the appellant has not justified that a contribution would make the scheme financially unviable. Therefore the proposal would be contrary to Policy CS 12 of the ICS as set out above. It would also be contrary to Homes for Londoners and the DVSPD as set out above.

Other matters

79. The proposal makes provision towards carbon off-setting in line with Policy DM7.2 of the DMP. Given that this is required to make the proposal policy compliant I am satisfied that such a provision is 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 and does not represent infrastructure for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended). As this provision is to ensure policy compliance this would be a neutral factor in the final balance.

80. The Planning Obligation provides for the scheme to be car-free. This is necessary to ensure that the development does not increase the demand for parking in the area which is subject to a Controlled Parking Zone. Without such a restriction the proposal would be likely to add to highway safety concerns or harm the convenience of residents, business and users of services such as the nearby schools. While such a provision would not comply with the terms of Section 106 of the Town and Country Planning Act 1990 (as amended), the Obligation is also made under Section 16 of the Greater London Council (General Powers) Act 1972 (as amended) which is less restrictive. I am therefore satisfied that such a provision would be enforceable. As this provision is to avoid a harm, which would otherwise occur, this would be a neutral factor in the final balance.

81. The appellant emphasised that the proposal was in keeping with the general range of development densities in the area, and I would accept this. However, density can be a crude measure since it often does not take into account the size of the dwellings. In any event, as has been seen, it is not the density of the development that is objectionable rather its effects occasioned by the design.

82. The appellant set out what he saw as the benefits of the proposal. These were the provision of nine additional dwellings. The Council sought to downplay these as a benefit on the basis that it considered that it was "over-supplied" with market housing against London Plan figures. However, these figures are a "minimum ten year target" so there is nothing inherently harmful about them being exceeded. I therefore give the additional housing significant weight.

83. It was agreed that the re-use of previously developed land should be given substantial weight, but to then give additional weight to the replacement of the existing buildings and enhancements to the rear of No 104 to provide revised rear access, would represent double counting of the same benefit.

84. I have already discussed the enhancements to No 104 and that they would represent an enhancement to that building as a non-designated heritage asset, and the change in outlook for the occupiers of the adjoining dwellings.

85. The additional green areas would improve biodiversity, but given the overall scale of this I give this very limited weight.

86. Apart from the enhancements to No 104 none of these benefits are exceptional, and I am not satisfied that to achieve the same benefits to No 104 that the use of single aspect housing is necessary. I therefore conclude that it has not been demonstrated that exceptional circumstances exist for the purposes of Policy DM3.4 of the DMP.

Planning Balance

87. The principle of developing this area of previously developed land for residential development should be given substantial weight, and the proposal would enhance the setting, and thus the significance, of No 104 as a non-designated heritage asset. To this should be added the physical enhancements to No 104 secured through the Planning Obligation, giving the permitted works great weight, but the proposed portico only limited weight.

88. Set against this is the harm to the TPCA to which great weight and special attention should be paid. The public benefits of the development would be the construction of the nine dwellings on previously developed land, the secured works to No 104 and the limited enhancements to biodiversity, to which I give collectively significant weight. These benefits balance the less than substantial harm to the TPCA meaning that there would be compliance with that part of Policy DM2.3 of the DMP referred to above.

89. However, the proposal would deliver single aspect housing, not result in a high standard of amenity that would respect the privacy and outlook for the proposed occupiers, and would provide insufficient amenity space. It would also be harmful to the living conditions of the occupiers of No 106. As such it would be contrary to the development plan as a whole. Further, as paragraph 124 of the Framework makes clear the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. These failings mean that the proposal would represent poor design. In line with paragraph 130 of the Framework permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. Finally, I am satisfied that the proposal does not make adequate provision for affordable housing in line with development plan policies. These matters are overriding and as such the appeal should be dismissed.

Conclusion

90. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

R J Jackson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Miss Anne Williams	of Counsel, instructed by the Director of Law & Governance, London Borough of Islington
She called	
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Tom Broomhall MA (Hons) MTCP	Principal Planning Officer, London Borough of Islington
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FOR THE APPELLANT:

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INQUIRY DOCUMENTS

ID1	Court of Appeal Judgement in case of *R (Khodari) v Kensington and Chelsea Royal London Borough Council* [2017] EWCA Civ 333, [2018] 1 WLR
ID2	Court of Appeal Judgement in case of *R (Palmer) v Herefordshire Council* [2016] EWCA Civ 1061, [2017] 1 WLR
ID3	List of appearances and opening on behalf of the appellant
ID4	Opening on behalf of the Council
ID5	Extracts from Contra Vison website put in by the Council
ID6	Email dated 4 October 2018 relating to location of photovoltaic solar panels
ID7	Viability Sensitivity Testing put in by appellant
ID8	Extracts from planning application in respect of Former Garages site, r/o 65-75 Worcester Road, Uxbridge
ID9	Extract from London Borough of Islington website on estate parking costs
ID10	Draft conditions including comments of main parties
ID11	Draft Planning Obligation
ID12	Slides to evidence of Ms Brooks
ID13	Email and extract from Contra Vision brochure put in by the appellant
ID14	Extract from London Plan setting out Policy 3.3 and associated text
ID15	Final draft conditions
ID16	Letter on behalf of appellant dated 12 October 2018 giving written agreement to pre-commencement condition
ID17	Closing submissions on behalf of the Council
ID18	Closing submissions on behalf of the appellant
ID19	Planning Obligation dated 12 October 2018
ID20	Set of application drawings