
Appeal Decision

Site visit made on 3 September 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Appeal Ref: APP/V5570/W/19/3231409

100 Tollington Park, Islington, London N4 3RB

- 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 H Schneck of Mountgreen Limited against the Council of the London Borough of Islington.
 - The application Ref P2018/1391/FUL, is dated 20 April 2018.
 - The development proposed is a revised planning application for the conversion and extension of an existing garage/store at the rear ground floor to create a one bedroom flat.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site constitutes an existing garage and store area forming part of the ground floor of 100 Tollington Park, an early Victorian villa located in the Tollington Park Conservation Area. The present proposal is the latest in a series of applications seeking to convert the garage to a residential use. The Council, having failed to determine the application within the applicable statutory or extended period, have produced an Appeal Statement giving as their putative reason for refusal the lack of any financial contribution towards the provision of affordable housing in the Borough. A number of other matters are raised in the Council's Appeal Statement and in representations raised by others.
3. From all these documents I consider that the main issues arising in the appeal are:
 - Whether the proposal makes adequate provision for affordable housing;
 - The effect of the proposal on the living conditions of future occupiers and neighbouring residents;
 - The effect of the proposal on the character or appearance of the host building and the Tollington Park Conservation Area; and
 - The effect of the proposal on traffic conditions having regard to parking provision; and
 - Whether the proposal makes adequate provision for carbon offsetting.

Reasons

Affordable housing

4. Although a draft planning obligation has been submitted in the course of the appeal, no completed document has been provided. The appellant has invited the Council to complete the relevant provisions before completing the document, but there is no apparent reason why the appellant could not arrange for the completion of a unilateral undertaking which would not require the Council's input.
5. The draft obligation would provide for the payment of a contribution towards the offsite provision of affordable housing in the Borough. The appellant, although apparently willing to provide a completed planning obligation, nevertheless disputes that such a contribution is necessary, in the light of updated Government planning policy as expressed in paragraph 63 of the National Planning Policy Framework ('the Framework') stating that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. The PPG also advises¹ that planning obligations for affordable housing should only be sought for residential developments that are major developments.
6. Government policy as expressed in the Framework and its accompanying guidance are material considerations of significant weight. Nevertheless, the starting point for consideration remains the development plan.
7. Policy CS12 of the London Borough of Islington Core Strategy of 2011 seeks appropriate financial provision towards offsite affordable housing from residential schemes delivering fewer than 10 units. It therefore applies to the current proposal. Contributions may be waived or reduced where viability constraints can be demonstrated, giving some flexibility to the policy requirements. The supporting Affordable Housing Small Sites Contributions SPD of 2012 ('the SPD') sets out the requirement for contributions which in the present case, in the absence of any viability appraisal being relied on to demonstrate any lesser amount, would be £50,000.
8. In the absence of a planning obligation to secure such a contribution, the proposal is contrary to Policy CS12 and the SPD. The Council's case is that such contributions are required to meet an acute affordable housing need within the Borough. The appellant does not dispute the policy position, but considers that the Council's policy requirement is outdated in the light of the more recent affordable housing thresholds as set out in the revised Framework.
9. The Council report that around one third of new housing delivery in the Borough arises from sites of 10 or fewer units. If the '10 unit threshold' set out in the Framework were to be invoked, the Council's ability to deliver its objectively assessed need for affordable housing would be likely to be seriously compromised. I accept in these circumstances that the policy requirements of CS12 and the SPD should prevail, notwithstanding the more recent statements of Government policy that I accept carry significant weight.

¹ Paragraph: 023 Reference ID: 23b-023-20190901. The PPG was revised very recently but does not differ in this respect from the version subsisting when the present appeal was made.

10. Therefore I conclude on this issue that the proposal would not make adequate provision for affordable housing, contrary to the development plan for the area.

Living conditions

11. Policy DM2.1 of Islington's Local Plan: Development Management Policies of June 2013 ('the DMP') requires all new developments to provide a good level of amenity including consideration of overlooking, privacy, direct sunlight and daylight and outlook.
12. The proposed development would adjoin the existing garden flat to the property, 100E. The property faces north, and the street entrance to the proposed development would be immediately into the proposed kitchen and dining area. The existing rather high level glazing in the carriage doors would be retained, giving a limited outlook, and little light into this area would be received. Towards the rear of the flat, the outlook and light would be improved, with the main living area having dual aspect windows to the south and east. To the east, an existing dense hedgerow would restrict outlook and light, and trees are shown to the south. Patio doors onto a walkway would lead to an area of private amenity space to the rear, at the south, surrounded by box hedging and raised timber planting beds. The bedroom would have a single south-facing side half glazed door looking on to the hedgerow to the east.
13. Although the outlook and light levels to the living area are acceptable, on the whole the outlook and natural light would be rather restricted. The privacy of the amenity space would be limited. Although the plans show the box hedging to be around head height, it may take a number of years to become established and grow to this level, and so there would be likely to be some loss of privacy between the neighbouring occupiers. Overall I therefore consider that the proposal would not afford an adequate standard of amenity for future occupiers, contrary to policy DM2.1.
14. As to the impacts on the amenity of the adjoining neighbour, the same privacy concerns would apply, where the box hedging and timber planting would produce an unsatisfactory relationship of overlooking between the 2 gardens. To the front, the plans show considerable amendments to the cycle and bin storage areas from the plans previously considered (produced by the Council at Appendix E to their Appeal Statement). These are no longer situated in front of the neighbour's front windows. The cycle storage is described on the plans as being located under the staircase to the ground floor flat, whereas it is shown to be located underneath the steps leading to the upper floor flats. It would be accessed immediately in front of the entrance door to Flat 100E, so could give rise to some scope for conflict between neighbours. The bins would be located just beyond that, again in front of the entrance door to Flat 100E. Although these arrangements might produce some risk of conflict, on the whole they appear to me to be workable and would not affect the privacy or outlook from the front windows of Flat 100E.
15. The existing garage area presently has an internal glazing panel towards the front that adjoins the hallway into the neighbouring flat. Light therefore reaches the hallway of Flat 100E through the carriage doors and through this panel. It appears that this is to be blocked up as part of the proposal. This loss of light would adversely affect the neighbour, but not so significantly that it would warrant dismissing the appeal on this basis.

16. To conclude on this issue, the impacts on the privacy of both occupiers, and the unsatisfactory light and outlook for future occupants, would produce an unacceptable standard of amenity contrary to policy DM2.1.

Conservation Area

17. The appeal site lies within the designated heritage asset that is Tollington Park Conservation Area, with the appeal property dating from around 1840 and being locally listed. Accordingly, special regard is to be had to the desirability of preserving or enhancing the Conservation Area when assessing development proposals, and the effect of the proposal on the significance of the locally listed building should also be taken into account. The Framework advises that great weight should be given to the conservation of heritage assets, and policy DM2.3 seeks to ensure that the Borough's heritage assets are conserved and enhanced in a manner appropriate to their significance.
18. By incorporating a curved corner element I agree with the main parties that the rear extension forming part of the proposal would not adversely affect the character or appearance of the host building or the Conservation Area. There would be minimal changes to the appearance of the building's frontage, and again no harm would ensue. The existing garden to 100 Tollington Park is large and its existing open character contributes to the significance of the building and the Conservation Area. The proposed development would involve severing part of the existing garden in order to provide the proposed rear amenity space.
19. In large part this would be achieved by continuing the line of the existing hedgerow with the addition of further box planting. To the south, a screen provided by a timber planting bed would be provided. This would result in the physical and visual separation of the two garden areas. Nonetheless I agree with the main parties here that the achievement of this separation mainly by soft landscaping treatment, which would not be out of character with the hedgerows and the trees presently on the site, would not detract from the overall contribution of the garden to the area's significance.
20. Therefore on this issue I find that the significance of the heritage assets would be preserved, and no conflict with policy DM2.3 to arise.

Traffic and parking

21. A draft but not executed planning obligation has been provided that would commit the occupation of the property to exclude anyone who has a residential parking permit, save in certain specified circumstances. This is in pursuance of the Council's 'car free' parking policy, to which the appellant raises no objection. The car free policy approach is set out in DMP policy DM8.5.
22. The Council have proposed that the restriction on the ability for future occupants to obtain a parking permit may be imposed by a planning condition. The proposed condition states that all future occupiers shall not be eligible to obtain an on street residents parking permit except in certain circumstances. The Council explain that the Borough's parking service will determine applications for parking permits according to their own policies.
23. The proposed planning condition does not appear to appropriately secure the car free outcome sought by the Council's planning policies in this case. The condition would not control the use of the land that is in the control of the

landowner or future occupants, but is instead directed at the use of land, being the public highway, lying outside the application site. By merely saying that the occupants are 'not eligible' to obtain parking permits, the proposed condition does not direct the land to any particular use or restriction. It contains no mechanism for ensuring that any subsequent would-be purchasers are made aware of the restriction. For these reasons I do not think that the condition is reasonable, precise or enforceable.

24. I therefore consider that a legal agreement is necessary to achieve the planning objectives of avoiding increased traffic congestion and pollution in the area. In the absence of such a completed agreement, I find that the proposal is contrary to the development plan in this regard.

Carbon offsetting

25. The Council explains that paragraph 2.0.13 of the Environmental Design SPD sets out that minor new-build developments of one unit or more are required to offset all remaining regulated CO2 emissions not dealt with by onsite measures through a financial contribution. As minor schemes are not required to produce Energy Statements to the same level of detail as major developments, the process for carbon offsetting has been simplified. The cost of the offset contribution is a flat fee based on the development type, and in a development such as the appeal proposal would require a contribution of £1000.
26. Although the appellant has not disputed the need for such a contribution, no indication of agreement is given, and a contribution does not form part of the draft planning obligation that has been submitted. The Council have referred to but not provided the Environmental Design SPD. However, Policy CS10 of the Core Strategy of 2011 requires development to offset CO2 emissions associated with the building through a financial contribution towards measures which reduce CO2 emissions from the existing building stock. Although the detailed justification for the amount sought is not before me, in the absence of a mechanism to secure any contribution I find that the proposed development would be contrary to Policy CS10.

Conclusion

27. For the above reasons, although I find no harm to heritage assets, I find that the living conditions of future and neighbouring occupants of the proposal would be unacceptably affected by the proposal. I also find no adequate mechanisms to secure affordable housing provision, carbon offsetting, or a car free development to be in place. As a result I consider that the proposal conflicts with the development plan in these respects. The benefit of the proposal, providing an additional dwelling in the area, and the material consideration of Government policy in relation to affordable housing contributions, are not sufficient considerations to outweigh my findings in respect of compliance with the development plan. Therefore I conclude that the appeal should be dismissed.

Laura Renaudon

INSPECTOR