



Appeal Decision

Site visit made on 9 August 2019

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2019

Appeal Ref: APP/V5570/W/19/3228338

33 Jackson Road, Islington, London N7 6ES

- 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 Don Kaufman against the decision of the Council of the London Borough of Islington.
 - The application Ref P2018/1788/FUL, dated 24 May 2018, was refused by notice dated 8 November 2018.
 - The development proposed is demolition of existing garage and erection of a new build dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The National Planning Policy Framework was revised in February 2019 (the Framework). I have taken the Framework into account as part of the determination of this appeal.
3. The Council's statement refers to policies from the Draft London Plan. In accordance with paragraph 48 of the Framework, weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. I have not been provided with any substantive details of the status of this emerging plan, and therefore I attribute the plan and policies very limited weight as a material planning consideration.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - whether the proposed development would provide acceptable living conditions for future occupiers, in respect of the amount of internal space, the provision of outdoor space, outlook, daylight levels and natural ventilation;
 - whether the proposal provides an accessible and adaptable home;

- the effect of the development upon the living conditions of the occupiers of Nos 33 and 35 Jackson Road, in respect of outlook, daylight and sunlight;
- whether the proposal provides an appropriate amount of cycle parking; and
- whether it is necessary for the proposal to include (i) a financial contribution towards affordable housing and (ii) a financial contribution towards carbon off-setting and, if so, whether there are mechanisms in place to ensure that any such requirements are properly controlled and achieved.

Reasons

Site and proposal

5. The appeal site is located to the rear of No 33 Jackson Road. It is occupied by a single storey building, which abuts the flank elevation of No 12 Annette Road. The existing building has an 'L-shaped' layout and is used for storage purposes. Access to the existing building is from Annette Road.
6. It is proposed to demolish the existing building and erect a three-storey dwelling. The property would face onto Annette Road and continue the existing residential terrace. The proposed dwelling would feature a 'stepped' design whereby the amount of built form would reduce over each of the three floors, with mono-pitched roofs incorporated at the ground floor and first floor levels.
7. Internally, the proposed dwelling would comprise a living/dining room, kitchen, WC, cycle and refuse store on the ground floor; a double bedroom and bathroom on the first floor; and a room labelled on the proposed floorplan as a 'gym/study' on the second floor. Whether or not the 'gym/study' could be used as a second bedroom by future occupiers is disputed by the parties. I return to this issue later in the Decision.

Character and appearance

8. The surrounding area has an urban residential character and the properties within the immediate area are predominately three-storey terraced Victorian dwellings and laid out around a loose grid pattern. However, some later residential development is present within the local area. Whilst there are differing Victorian styles present including rectangular and curved window surrounds, the consistent vertical proportions of the dwellings and the use of common materials results in a design balance and symmetry which contributes positively to the character and appearance of the area.
9. The Council's Urban Design Guide Supplementary Planning Document provides guidance in respect of end of terrace infill development. Paragraph 5.143 states '*Nearly all Victorian/Edwardian residential terraces are characterised by a gap in the corner return that allows light and air in to the rear elevation and gardens. By allowing a glimpse of the rear gardens, these gaps also provide a soft backdrop to the street. For these reasons, this arrangement should normally be retained. Where there is an especially long gap or, outside conservation areas, an existing structure that is incongruous with the dominant character of the street, there may be scope for an infill building/extension that repairs and improves the street frontage.*'

10. Whilst I accept that the existing structure is of limited architectural value, due to its single storey form, it reads as a subordinate residential outbuilding in a rear garden location from the street and has a neutral impact upon the character and appearance of the area.
11. In addition, due to the single storey form, it provides an open visual gap between the properties on Annette Road and Jackson Road, and therefore contributes positively to a sense of spaciousness in the immediate area. Owing to its position and height, it ensures that the rear elevation and outside amenity areas of the properties on Jackson Road are afforded reasonable levels of light and outlook. The proposal would infill the existing gap with a three-storey development, which, despite the stepped design, would unacceptably erode the existing open visual break between the two streets. In terms of the effect of the development upon the living conditions of the occupiers of Nos 33 and 35 Jackson Road, I consider this issue later in the Decision.
12. In terms of the external appearance of the proposal, despite the use of sympathetic materials and windows, the stepped design of the proposed dwelling would appear at odds and visually jar with the traditional design and vertical proportions of the adjoining Victorian terrace. As such, the proposal would be an incongruous and unduly prominent form of development when viewed from the street, which would cause significant harm to the character and appearance of the area.
13. I acknowledge that there is a variety of property types within the immediate area of the appeal site, which includes a residential development built opposite the appeal site within the street gap between the properties on Jackson Road and the western side of Annette Road. Despite occupying part of the street gap, this development has a significantly smaller ridge height than the proposal and therefore it is not directly comparable to the current proposal. Furthermore, the existence of the development opposite the appeal site, does not alter my view that the appeal site offers some positive spacious and open relief to the otherwise built up nature of the surrounding area.
14. For the reasons set out above, I conclude that the proposed development would cause significant harm to the character and appearance of the area. As such, the proposal would not accord with Policies 7.4 and 7.6 of the London Plan 2016 (the 'LP'), Policies CS8 and CS9 of the Islington Core Strategy 2011 (the 'CS') and Policy DM2.1 of the Islington's Local Plan Development Management Policies 2013 (the 'DMP'), insofar that they require new development to contribute positively to the locality through high quality design that is reflective of the character of the area.

Living conditions for future occupiers

15. Policy 3.5 of the LP states that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment. Table 3.3 of the LP sets out the minimum space standards for new dwellings, which incorporates the minimum space standards for new residential development as set out within the Government's Technical Housing Standards - Nationally Described Space Standard (March 2015) (the National Standard).
16. Policy DM3.4 of the DMP sets out housing space and design standards for new residential development within the Borough. Criteria B of Policy DM3.4 relates

- to internal floor area and states that all new residential developments, conversions and extensions are required to meet or exceed the minimum space standards set out in Table 3.2 of the DMP. The minimum space standards within Table 3.2 align with the National Standard. In addition, it refers to minimum room sizes, as set out in Table 3.3 of the DMP.
17. The National Standard does not provide a minimum space standard for one-bedroom, two-person, three storey unit, nor a two-bedroom, three-person, three storey unit. As such, the main parties refer to the minimum space standard for a two-storey unit when assessing the proposal. Based on the evidence before me, I have no reason to disagree with the parties' approach and I have determined the appeal on this basis.
 18. The National Standard sets out that the minimum space standard for a one-bedroom, two-person, two storey unit is 58 square metres. Whereas, the minimum space standard for a two-bedroom, three-person, two storey unit is 70 square metres. Amongst other things, the technical requirements of the National Standard set out that in order to provide one bedspace, a single bedroom should have a floor area of at least 7.5 square metres and a width of at least 2.15 metres.
 19. The Council contend that the second-floor room, which is labelled as a 'gym/study' on the proposed plans, should be classified as a single bedroom due to its size, shape and the provision of an openable window. Therefore, the Council argue that the minimum space standard for a two-bedroom, three-person, two storey unit applies to the proposal. As the size of the proposed unit falls below 70 square metres, the Council argue that the proposed unit would provide cramped and substandard living accommodation for future occupiers.
 20. The appellant states that the width of the second-floor room is less than 2.15 metres, which is below the minimum width for a single bedroom, as set out within the National Standard, and, thus the proposal should be assessed as a one-bedroom, two-person, two storey unit. I note that the Council have not disputed this figure. When assessed against the technical requirements of the National Standard, the second-floor room would not be classified as a single bedroom, suitable for occupation by one person. As such, I find the proposal would be categorised as a one-bedroom, two-person, two storey unit whereby the minimum space standard is 58 square metres. The proposal has a floor area of about 62 square metres, which would exceed the minimum space standard.
 21. The supporting text to the National Standard explains that relating internal space to the number of bedspaces is a means of classification for assessment purposes only when designing new homes and seeking planning approval. It does not imply actual occupancy, or define the minimum for any room in a dwelling to be used for a specific purpose other than in complying with the National Standard. On that basis, I disagree with the Council's interpretation and application of the National Standard. Consequently, I conclude that the amount of internal floorspace provided as part of the proposed development would be acceptable.
 22. Notwithstanding the above, the provision of an appropriate amount of floorspace is not the only consideration when determining whether the proposal would provide acceptable living conditions for future occupiers. In this instance, the Council have also raised concerns about outlook, daylight levels, natural

ventilation, a lack of defensible space and the failure of the proposal to provide outdoor space.

23. Criteria D of Policy DM3.4 of the DMP states that all new residential units are required to provide dual aspect accommodation, unless exceptional circumstances can be demonstrated. For sites 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.
24. The proposed development would have a single aspect, with all of the proposed windows being located on the front elevation facing onto the highway. The appellant states that due to the proximity of the surrounding properties it would be unfavourable to include fenestration in other elevations. However, they argue that due to the shallow nature of the proposed dwelling and the presence of openable, south west facing windows, that future occupiers would have adequate access to natural ventilation and daylight. In terms of outlook, they contend that occupiers would have an acceptable outlook over Annette Road, which would include views of a soft landscaping area near to the junction with Jackson Road.
25. Whilst the south western orientation of the proposed windows would, in theory, afford occupiers with a high level of natural daylight, due to the single aspect nature of the proposal and location of the dwelling immediately adjacent to the highway, without any defensible space, I consider that users of the ground floor living/dining area would be very likely to keep the ground floor window closed and curtains drawn-in to protect their privacy and avoid overlooking from passing pedestrians and other road uses. As such, this would limit outlook and light levels from the ground floor and decrease the level of natural ventilation within the property.
26. In addition to the above, the first-floor bedroom would face the street and therefore the design of the dwelling fails to take account of the need to provide a 'quieter private side' within new developments, where bedrooms face away from the public realm, as set out within Policy CS9, Criteria F of the CS.
27. Overall, I consider that the proposed single aspect arrangement and lack of defensible space would create a substandard form of accommodation for future occupiers of the proposed dwelling due to an inadequate outlook, limited daylight levels and a lack of natural ventilation, especially at the ground floor level. To this regard, I note that the appellant states they would install additional mechanical measures in order to improve ventilation in the kitchen, cloakroom and bathroom of the dwelling. However, this would not outweigh the harm I have found due to a lack of natural ventilation.
28. In terms of defensible space, the appellant argues that the proposal has been designed to follow the existing building line and the pattern of development on Annette Road, where other dwellings have no defensible space, and, as such, the proposed development would not result in any unacceptable impacts on the amenity of future occupants. Based on the evidence before me, the adjoining development appears to be historic, and, thus, it pre-dates the Framework and the development plan. In any event, I have determined this appeal on its individual planning merits.

29. Policy DM3.5 of the DMP states that all new residential development and conversions will be required to provide good quality private outdoor space, which can be in the form of gardens, balconies, roof terraces and/or glazed ventilated winter gardens. Criteria C of Policy DM3.5 sets out that the minimum requirement for private outdoor space is 5 square metres on upper floors and 15 square metres on ground floors for 1-2 person dwellings.
30. The proposed development does not provide any outdoor space for future occupiers. However, the appellant argues that the site's proximity to several public open spaces would sufficiently overcome the shortfall in amenity space at the appeal site. In addition, the appellant contends that the site's town centre location and limited size of the proposed dwelling, which would mean that it would not be occupied as a family unit, are justifiable reasons for the site not to provide a private garden area.
31. The Council explain that the closest public open space, which is known as Biddlestone Park, is located approximately 200 metres away from the appeal site and to obtain access pedestrians must cross Holloway Road, which is a busy dual carriage way.
32. Even if I were to accept that future occupiers of the proposed dwelling would be willing to make use of the surrounding public open spaces, due to the absence of any private outdoor space, the future occupiers of the proposed dwelling would have no dedicated areas to dry washing or to sit outdoors in a private setting. In addition, I am not persuaded that future occupiers of the proposed dwelling would not require private outdoor space due to the site's town centre location and limited size dwelling of the property. Consequently, I consider the proposal would provide unacceptable living conditions for future occupiers due to a lack of private outdoor space.
33. Notwithstanding the above, I agree with the appellant that the proposed dwelling would be unlikely to be occupied by families with children. As such, I find that the proposal would not conflict with Policy 3.6 of the LP, which requires development proposals to make provision for play and informal recreation, based on the expected child population generated by the scheme.
34. For the reasons set out above, whilst I have found that the proposal would exceed the minimum space standard, I conclude that the proposed dwelling would provide unacceptable living conditions for future occupiers due to a lack of outdoor space, and, inadequate outlook, limited daylight levels and a lack of natural ventilation caused by the single aspect arrangement and lack of defensible space. As such, the proposal would not accord with Policy 3.5 of the LP, Policies CS9 and CS12 of the CS and Policies DM3.4 and DM3.5 of the DMP, insofar that they require new housing development to be of the highest quality to protect and enhance London's residential environment by meeting the needs of future occupiers.

Accessible and adaptable home

35. Policy 3.8 of the LP states that 90 per cent of London's new build housing should be built to Building Regulation requirement 'M4 (2): Accessible and adaptable dwellings' and the remaining 10 per cent of new build properties to be built to Building Regulation requirement 'M4 (3): Wheelchair user dwellings'.

36. The appellant acknowledges that the proposal does not currently achieve compliance with Building Regulation requirement M4 (2) but contends that changes such as redesigning the staircase could be made to the design of the proposed dwelling to achieve compliance and that such details could be secured by a planning condition. The Council maintain the view that compliance is very unlikely due to the constraints of the site.
37. Given the extent of the information required to satisfy the policy requirements and the potential that the works required to achieve compliance with Building Regulation requirement M4 (2) could fundamentally alter the external appearance of the proposed dwelling, I consider that the imposition of such a condition would be unreasonable.
38. Consequently, in the absence of specific details to demonstrate how the proposal could comply with Building Regulation requirement M4 (2) development, I conclude that the proposal would not accord with Policy 3.8 of the LP. As such, I am unable to conclude that the development would accord with the advice contained within the Council's Inclusive Design in Islington Supplementary Planning Document (2014), which aims to deliver an inclusive and sustainable environment within which all sections of the community enjoy the same benefits and opportunities.

Living conditions for neighbouring occupiers

39. Nos 33 and 35 Jackson Road are situated to the south eastern side of the appeal site with the rear garden boundaries of the respective properties adjacent to the appeal site. Due to the moderate single storey scale of the existing building at the appeal site, the existing building does not have an overbearing impact on the neighbouring occupiers.
40. The proposed dwelling would introduce a significant volume of additional built form to rear of Nos 33 and 35, when compared to the current arrangement. I acknowledge the proposed stepped design, but due to the close proximity of the proposed dwelling and its height and overall massing it would have a significantly enclosing and overbearing impact when viewed from the rear garden and rear facing windows of the respective properties. As such, the proposal would cause significant harm to the living conditions of the occupiers of Nos 33 and Nos 35 in terms of loss of outlook.
41. The Council contend that the proposed development would likely result in a material loss of daylight and sunlight from the rearward facing windows and from within the rear garden areas of Nos 33 and 35. However, as the appellant has not submitted technical sightline drawings and a daylight and sunlight assessment, the Council have been unable to reach a view on this matter.
42. The appellant states that due to the orientation of the neighbouring properties, these existing dwellings restrict sunlight/daylight levels into their own rear garden areas and windows. As such, given the design and overall height of the proposed dwelling, the separation distance between properties (which increases with each storey, due to the stepped design) and the orientation of the buildings, the proposal would not significantly reduce the amount of daylight and sunlight reaching the rear gardens or the main habitable rooms to the rear of Nos. 33 and 35.

43. In the absence of a daylight and sunlight assessment, I am unable to come to a conclusive view as to whether or not the proposal would result in a material loss of daylight and sunlight from the rearward facing windows and from within the rear garden areas of Nos 33 and 35. However, even if I were to accept the appellant's position in relation to daylight and sunlight, this would not outweigh the harm that I have identified above in respect of the effect of the development on outlook. Consequently, this is not a determinative point in this appeal.
44. For the reasons set out above, I conclude that the proposed development would cause significant harm to the living conditions of the occupiers of Nos 33 and 35 Jackson Road with particular regard to outlook. In addition, in the absence of any substantive evidence, I have been unable to reach a conclusion in terms of the daylight and sunlight effects. As such, the proposal would not accord with Policy 7.6 of the LP and Policy 2.1 of the DMP, insofar that they require new development to not cause unacceptable harm to neighbouring amenity through a high standard of design. In addition, the proposal would be inconsistent with the aims of Paragraph 127(f) of the Framework, which requires that development does not have an adverse impact on the amenities of existing and future occupants.

Cycle parking

45. As set out above, I have found that the proposal would be a one-bedroom, two-person dwelling. I have assessed the proposal against the Council's cycle parking standards on this basis.
46. The Council's cycle parking standards are set out within Appendix 6 of the DMP. The standards state that a one-bedroom residential dwelling should provide one cycle space. The proposed development provides internal cycle parking for one bicycle. As such, the proposal would accord with Policy DM8.4 of the DMP, which amongst other things, requires all new residential development to provide cycle parking in accordance with the Council's minimum cycle parking standards.

Planning obligations

47. Policy CS12 of the CS states that 50% of additional housing to be built in the Borough over the plan period 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.
48. The Affordable Housing Small Sites Contributions Supplementary Planning Document (2012) (AHSPD) explains that the need for affordable housing is a major issue in the Borough for the foreseeable future because of a high demand and lack of provision. As such, the AHSPD sets out that all new residential dwellings located within this part of the Borough should provide a commuted sum of £50,000 per unit. The commuted payments from minor residential schemes will augment existing funding sources and provide an important resource for the delivery of much-needed social rented housing within the Borough.
49. As part of the evidence base for the AHSPD, the Council undertook a viability study which concluded that the level of financial contributions sought would likely to be viable for a large majority of developments in the Borough with

fewer than 10 residential units. Nonetheless, the AHSPD recognises that there may be site-specific circumstances which give rise to viability issues and states that, in such circumstances, the Council will accept viability assessments. This approach is reflected in Policy CS12 of the CS and ensures that the policies and guidance are consistent with paragraph 57 of the Framework. In this case, a viability assessment has not been put forward by the appellant.

50. The appellant disputes the need to make contributions towards affordable housing and refers to paragraph 63 of the Framework which states that the '*Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)*'. As the Framework was published in February 2019, this is a very recent expression of national policy and is a material consideration of significant weight.
51. The appeal scheme is not a major development, and therefore the provision of affordable housing contributions would conflict with paragraph 63 of the Framework. Even so, paragraph 213 of the Framework makes clear that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework.
52. Overall, I consider that the Council's evidence demonstrates that there is a significant unmet need for affordable housing in the local area, and, that the importance of small sites in contributing to the provision of such housing through a commuted payment, is part of the Council's strategy to meet unmet demand. In addition, the Council have brought to my attention a large number of recent appeal decisions for small residential schemes, where Inspectors have found that the exceptional local need should outweigh national policy set out in the Framework.
53. The local circumstances in this case warrant determining the appeal based on the affordable housing approach set out in the development plan. Hence, the material consideration of the Framework does not outweigh the development plan in this instance. Consequently, having regard to Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraph 56 of the Framework, I am satisfied that the planning obligation is necessary and indeed meets all of the required tests.
54. The appellant has not provided a legal agreement which would secure a contribution towards affordable housing. Furthermore, the appellant has not submitted a viability assessment to demonstrate that the provision of such a contribution would make the development unviable. Accordingly, the appeal proposal would not accord with Policy CS12 of the CS.
55. Given the above, having regard to Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraph 56 of the Framework, I am satisfied that a planning obligation would be necessary. In the absence of such a planning obligation, the proposal is unacceptable in affordable housing terms.
56. Policy CS10 of the CS addresses Islington's contribution to climate change and seeks to ensure that the Borough develops in a way which respects environmental limits and improves quality of life by promoting zero carbon development. Policy DM7.2 of DMP has similar objectives and states that

carbon emissions from minor new-build residential of one unit or more, not dealt with by on-site measures, will be offset by a planning obligation, unless it can be demonstrated that this is not feasible, in which case the maximum feasible payment for offsetting will be required.

57. In this instance, the Council have sought a planning obligation of £1,500 towards the provision of carbon off-setting. The contribution is based upon a standard formula from the Council's Environmental Design Planning Guidance Supplementary Planning Document (2012) (EDSPD) and would be used by the Council to reduce carbon dioxide emissions from the existing building stock in the Borough. On that basis, I am satisfied that the planning obligation would be necessary and indeed meets all of the required tests.
58. The appellant has not provided a legal agreement which would secure a contribution towards carbon off-setting. In addition, I have no evidence before me to suggest that such a payment would not be feasible, nor that carbon emissions from the new-build residential dwelling would be dealt with by on-site measures. Therefore, the appeal proposal would not accord with Policy CS10 of the CS, Policy DM7.2 of DMP and the EDSPD.

Other Matters

59. The provision of one dwelling, near to local services and public transport links would make a positive contribution to the Council's housing land supply which weighs in favour of the proposal. Furthermore, I note that the proposal would lead to the development of previously developed land as distinct from greenfield land. However, none of these matters would overcome the very weighty conflict with the identified development plan policies as outlined in the main issues above.

Conclusion

60. The proposed development would provide an appropriate amount of cycle parking, but this would not overcome the significant harm to the character and appearance of the area caused by the proposal; the scheme's failure to provide satisfactory living standards for future occupiers; the significant harm that would occur to the living conditions of neighbours; and the lack of an appropriate mechanism to ensure that financial contributions towards affordable housing and carbon off-setting are properly controlled and achieved as part of the development. Consequently, the proposal would not accord with the development plan taken as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Christopher Miell

INSPECTOR