



Appeal Decision

Site visit made on 20 November 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/V5570/W/19/3236021

Parking Area and Garages, 1-21 Keen's Yard, London N1 2NA

- 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 Copping Joyce (London & Western Holdings PLC) against the decision of the Council of the London Borough of Islington.
 - The application Ref: P2018/2694/FUL, dated 2 July 2018, was refused by notice dated 3 May 2019.
 - The development proposed is erection of 4no. residential units.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site address is referred to in submitted documentation variously as 'Keen's Yard' and 'Keens Yard'. I have used the apostrophised version in this decision.
3. Occupiers of some of the houses in the listed terrace to the east of the appeal site objected to the proposal on numerous grounds, including in relation to alleged effects on outlook, as well as possible effects on daylight and sunlight. Although not one of the Council's reasons for refusal, I provided the appellant and the Council with an opportunity to comment in more detail on those issues. I have taken account of their responses and those of the adjacent third-party occupiers in reaching my decision.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of neighbouring occupiers along Compton Road, with particular regard to outlook;
 - the setting of the adjacent Grade II listed terrace along Compton Road;
 - the character and appearance of the Canonbury Conservation Area (CCA); and its setting; and,
 - protected trees located outside but close to the eastern boundary of the appeal site.

Reasons

Living conditions of neighbouring occupiers on Compton Road

5. The appeal site is a long, narrow backland parcel of land, which comprises a parking area with a row of single storey lock-up garages along its eastern boundary. It is accessed from St. Paul's Road to the north and is situated behind buildings along that road. To the east the site and its garages back onto the rear gardens of a Grade II listed Victorian terrace of houses along Compton Road. Dixon Clark Court, a 15-storey Council housing development lies to the west, with Canonbury Primary School to the south.
6. It is proposed to demolish the existing single storey garages and to erect two identical pairs of semi-detached 3-bedroom dwellings, which would face each other across a central courtyard. The dwellings would be two storeys with an additional attic floor providing a third bedroom, served by front and rear dormers.
7. The gable end flank walls of units 2 and 4 would rise significantly above the height of the existing eastern boundary wall, which separates the appeal site from the rear gardens of properties on Compton Road. Currently, aside from the Dixon Clark Court tower in the distance, the outlook from the lower storeys and gardens of those properties above the existing boundary wall essentially consists of sky and trees, as I observed when I visited Nos 51 and 56.
8. Given that the existing garages backing on to the boundary wall are single storey and do not rise above the wall, the new two-storey houses replacing them would introduce significantly higher, largely blank (save for blind windows) gable end elevations, in close proximity to the rear gardens of houses along Compton Road. It appears, based on the limited numbering on the submitted plans, that the properties most directly affected would be Nos 50 and 51, adjacent to proposed units 3 and 4, and Nos 55 and 56, adjacent to proposed units 1 and 2. The proximity and height of the eastern gable end elevations, located just beyond the end of the rear gardens of those properties, would materially change the existing outlook and have an overbearing and enclosing effect on those neighbouring occupiers, when using the lower floors and outdoor garden spaces of their properties.
9. The appellant says that the '*proposed semi-detached dwellings would be set in, away from the boundary with the rear gardens of Compton Road.*' However, no 'set-in' distance is specifically referred to by the appellant and the submitted layout plan¹ shows the flank wall of Unit 2 to be very close to the boundary wall, with the flank elevation of Unit 4 only marginally further away. It is also suggested that the side-on orientation of the new dwellings, in relation to the Compton Road houses, would reduce their bulk. However, the relative height and proximity of the proposed flank walls and the minimal 'set in' would not sufficiently mitigate the overbearing and enclosing effect caused by their dominant eastern elevations.
10. It is further suggested by the appellant that the gardens of the adjacent dwellings are relatively deep. However, the agent acting for a number of the residents of Compton Road advises that the gardens, which taper slightly in relation to the boundary wall, are estimated to range between 12m and 16m in

¹ 12174-P007-A

length. In any event, whilst the extent of effects on habitable rooms is important, it is also legitimate to consider the impacts on occupiers using their private outdoor living space. There are trees in most of the gardens, but in many cases their partial screening effect would be likely to diminish in the winter months when leaves would be lost.

11. Although the appellant refers to an allegedly similar relationship between properties further south along Compton Road with later dwellings on Colebeck Mews, I have limited details of that development, the relationship between the respective buildings, when it was built or the circumstances which may have led to it being approved at the time. The appellant also refers to similar relationships between other developments in the area, although no specific examples are referred to. While development in this urban area is relatively dense there are green spaces, trees and gardens which help to retain a spacious quality and separation between groups of dwellings. The appeal proposal would introduce two storey houses very close to the boundary wall of existing properties, which does not appear typical of the area and would, in this case, not be desirable because of its negative effect on living conditions.
12. The appellant says that the Council advised, when considering the consented development at Dixon Clark Court to the west², that it would not affect the potential development of Keen's Yard. While that may be, that does not necessarily legitimise the particular form of development proposed in this appeal scheme in relation to other existing properties. In any case, all proposals must be considered on their individual merits in relation to their particular context and current national and local policy. That is the basis on which I have considered the appeal proposal.
13. I also appreciate that the Council did not refuse the proposal with regard to effects on outlook, although the consideration of that aspect in the Council Officer's Report appears relatively limited. Although I sought further comments from the Council on this aspect, it did not expand on its views. In any event, for the reasons already given, I take a different view from the Council and the appellant, and find, with regard to effects on outlook, that I am largely in agreement with the views expressed by residents of the adjoining properties at both the application and appeal stages.
14. The appellant refers to various site constraints relating to size, shape and other factors including a right of way, apparently to the rear of the school to the north, which must be maintained. Whilst those are understood, good design should take into account such constraints and the justification for the site to be developed in this particular way is not made convincingly. Moreover, the existence of constraints, does not legitimise a design and layout that would cause harm to adjoining occupiers. Ultimately, there is no imperative for the site to be developed in this particular form and layout with sizeable houses so close to the boundary of adjoining residential dwellings.
15. Overall therefore, I conclude that the proposed development would have a significant adverse effect on the living conditions of neighbouring residential occupiers along Compton Road, with particular regard to outlook. Consequently, the proposal would not comply with policy DM2.1 of Islington's Local Plan: Development Management Policies (DMP) or policy 7.6 of The

² P2017/2936/FUL

London Plan (LP).³ Those policies seek to ensure that development is of high-quality design and that, amongst other things, it provides a good level of amenity which includes a consideration of any impacts in relation to over-dominance, a sense of enclosure and outlook, where it should not cause unacceptable harm to amenity, particularly in relation to residential buildings.

16. The proposal would also conflict with similar protection at paragraph 127 f) of the National Planning Policy Framework (the Framework)⁴ which says that decisions should ensure that developments create places which, amongst other things, have a high standard of amenity for existing and future users and do not undermine the quality of life.

Setting of the listed terrace

17. As already indicated, the site is adjacent to part of the Grade II listed terrace along Compton Road, which was constructed in the mid-19th century and comprises Nos 39-47, 49-56, 58 and 59 and attached railings. The terrace was first listed in 1972.
18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 16 of the Framework sets out Government policy to conserve and enhance the historic environment and confirms that great weight should be given to the conservation of designated heritage assets.⁵
19. The Council has expressed concern that the proposal would harm the setting of the listed terrace. The Glossary to the Framework defines the 'setting of a heritage asset' as follows: *'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.'*
20. The three and four storey buildings along the listed terrace are distinguished by their impressive façades, comprising white stuccoed ground floors, semi-basements and steps leading up to porticoed entrances, with panelled doors and fanlights, flanked by Doric columns. The uppers storeys are of London stock brick and resolve at cornices. Drawing on the list description, first floor windows have cornices on consoles and cast-iron balconies the length of the terrace. The houses are fronted by cast-iron railings at street level. As is typical of buildings of this era, their rear elevations are relatively prosaic compared with the more decorative detailing and features of their public façades.
21. It is from the public highway along Compton Road itself and St Paul's Road that the architectural quality, essential uniformity and simple elegance of the principal façade of the listed terrace, which contributes principally to its significance, can be most readily experienced. That relatively open public setting contributes to the ability to appreciate the special architectural and

³ March 2016

⁴ February 2019

⁵ Paragraph 193

- historic interest of the terrace, which also evidences the development of this part of London in the 19th century. Surviving interior plan form and features would also contribute to the special interest of the terrace but would not be affected by the appeal proposal.
22. As the modest design of the rear elevations makes a lesser contribution to the overall significance of the listed terrace, it follows that the setting of that aspect of the terrace is not as critical in visual terms. Although the contribution that setting makes to a heritage asset does not depend solely on public views, the fact remains that, in this case, public views of the rear are very limited with partial views of some of the upper elevations from St Paul's Road and more distant glimpsed views from Canonbury Road and Highbury Corner, which may be further compromised by the already approved development of Dixon Clark Court, if built out. I do not consider that views out from the upper storeys of the listed terrace across the appeal site, consisting of garages and a car park, contribute to the significance of the listed terrace or would be detrimentally affected by the proposal from a heritage perspective.
23. At one point in its submissions, the Council appears to accept, with regard to the rear of the terrace, that: *'the setting of the listed terrace has been somewhat compromised by the scale and appearance of Dixon Clark Court, as well as the garage/parking development of Keen's Yard.'* However, later in its Statement of Case, the Council appears to take a different view. It states, with references to mews buildings that once appear to have existed in the vicinity: *'That the yard remains legible and the garages replicate the historic pattern of development allows the historic significance of this space – evidence of the domestic arrangements and development of London – to be read.'* Therefore, it would appear that there is some contradiction in the Council's analysis. Either the garages and parking area within Keen's Yard has somewhat compromised the setting or the site positively contributes towards the setting and significance of the listed terrace. It cannot do both.
24. In my assessment the existing garages and parking area make a limited contribution to the setting of the listed terrace, in providing a low level, open area next to it, which is of some benefit in private views from surrounding buildings. Moreover, it appears from Ordnance Survey mapping supplied by the appellant that those elements were in place by 1971, before the terrace was listed. In any case, the definition of 'setting' referred to above acknowledges that settings are likely to change and evolve over time.
25. The Council considers that the redevelopment of the site offers an opportunity *'to stitch the terrace back into its surroundings'* and that a *'mews-style development would rationalise the backland space between the terrace and the residential tower'*. That view appears to be partly based on historic OS mapping from 1871 onwards which, according to the Council, shows *'mews type buildings in the location of the garages.'*
26. The Council also draws on advice in its Urban Design Guide: Supplementary Planning Document (UDG)⁶ which says: *'In or adjacent to conservation areas or within the settings of listed buildings, constrained backland sites (those where it is not possible to create a new through route) where development is acceptable in principle should generally be developed as traditional mews or a contemporary interpretation of the same. Generally, such development should*

⁶ January 2017

be no more than two storeys above ground level and should employ context appropriate materials.'

27. While the UDG advice is noted and attracts weight, the use of the word 'generally' indicates that each case still needs to be examined on its particular merits and its actual effect on the setting of the relevant listed building or conservation area assessed. Furthermore, the appeal proposal would be two storey and appropriate materials are proposed, which could be secured by condition.
28. The Council's view appears to be that, because the proposed development is not a typical mews-style development and as it considers its semi-detached form and courtyard layout to be suburban and untypical of the area, the proposal would '*introduce an unacceptable level of harm to the setting of the Grade II listed terrace.*' It also submits that the proposal would divorce the listed terrace from its surroundings by confusing the urban form and compromising an historically ancillary space.
29. However, while I note the Council's reference to historic mapping, the appellant has supplied copies of OS maps dating from 1877, 1954 and 1971, which appear to indicate that the rear gardens of the relevant properties along Compton Road were originally longer but that by 1971 they had been truncated to accommodate the adjacent garages. While the 1877 map may indicate structures beyond some of the rear gardens in the southern part of the site and others outside the site, along with a possible row of lesser cottages or mews buildings to the west, most appear to be outside the site boundaries.
30. Therefore, while there may historically have been mews-type buildings in the immediate area, it is not clear that they related directly to the appeal site and a specific association with the listed terrace is ultimately speculative. Moreover, avoiding harm to the setting of the listed terrace, as it is now and appears to have been since at least 1971, before it was listed, is not necessarily a matter of restoring the surrounds to reflect a historic layout at a particular point in the past. Rather, the effect of the proposal in relation to the existing setting and ability to appreciate the significance of the listed building needs to be assessed.
31. Replacing the garages and car parking area within this enclosed site with two pairs of semi-detached houses, which would remain subordinate in scale to the terrace, around a relatively open courtyard area and a retained right of way, would not have a detrimental effect on the setting of the terrace in heritage terms.
32. Therefore, taking account of the overall context of the site, its history and evolution, I conclude that two pairs of semi-detached houses rising to two storeys, albeit oriented side-on to the listed terrace would not have a harmful effect on its setting or significance. Therefore, the proposal would not conflict with policies 7.4, 7.6 and 7.8 of the LP, policies CS8 and CS9 of the Council's Core Strategy (CS)⁷ or policies DM2.1 or DM2.3 of the DMP, insofar as they are pertinent to preserving the settings of listed buildings. It would also comply with the requirements of the Act and the Framework in that regard.

⁷ February 2011

Canonbury Conservation Area

33. Section 72(1) of the Act indicates that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Framework paragraph 200 indicates, in relation to the settings of heritage assets, that proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably. In this case, most of the appeal site is outside the western boundary of the CCA, although the existing garages and part of the access appear to fall within it.
34. The Council's Conservation Area Design Guidelines (CADG)⁸ advise that the existing character and appearance of the predominantly residential CCA is created by its surviving 18th and 19th century buildings, although there are also several 20th century developments which contribute positively to its character. Historically, the area is associated with the Elizabethan Manor of Canonbury. Those aspects form the basis of its significance.
35. Although the 19th century listed terrace along Compton Road is characteristic of, and within, the CCA, the Council accepts that the demolition of the garages would have a neutral impact on the conservation area. However, again with reference to the UDG, already referred to, it considers that a traditional or contemporary interpretation of a mews type development would be more appropriate than two pairs of semi-detached houses in a courtyard setting.
36. The appellant refers to other semi-detached dwellings within the CCA, for example, along Canonbury Park North and South, and the Council appears to accept that there would be nothing intrinsically incongruous in the semi-detached form. However, it is concerned that the form in combination with the layout, with the houses facing each other across a courtyard, would be suburban in character and that the development would turn its back on the yard's entrance to St Paul's Road.
37. While I note the Council's perspective, given the backland nature of the site, I am not persuaded that it is necessary for the houses to face towards the entrance and the road, which it is largely separated and concealed from. The context of the site is not the same as one adjacent to a public highway where one might expect an active frontage facing the road. Moreover, the mews-style, linear development in a similar alignment to the garages, which appears to be favoured by the Council, would also be unlikely to face towards the entrance given the physical constraints of this long narrow site.
38. The backland location means that public views of the development would be restricted. Additionally, much of the site is outside the CCA boundary. While there would be private views from surrounding buildings, I am not convinced that the modest scale of the development or the proposed layout, seen looking towards the CCA, or from the upper storeys of the listed terrace within it, would cause tangible harm to the character or appearance of the CCA, considered as a whole. Appropriate materials could be secured by condition. For similar reasons, in relation to the area of the site abutting but outside the CCA, the proposed development would not have a negative effect on the setting of the conservation area.

⁸ January 2002

39. Given the above, I conclude that the proposed development would preserve the character and appearance of the CCA and would not harm its setting. Therefore, the proposal would comply with policies 7.4, 7.6 and 7.8 of the LP, policies CS8 and CS9 of the CS and policies DM2.1 and DM2.3 of the DMP, in so far as they seek to protect local character and conserve heritage assets.
40. Furthermore, there would be no significant conflict with the objectives of the guidance UDG or the CADG. The proposal would also comply with relevant parts of the Framework and the Act in relation to this issue.

Protected Trees

41. The Council's view is that the proposed scheme fails to demonstrate that the development could be implemented without undue harm to the protected trees located within close proximity to the eastern boundary of the site. The relevant trees are outside the site but within the rear gardens of properties along the adjoining listed terrace on Compton Road. The Council advises that the trees are protected either by a Tree Preservation Order (TPO)⁹ or by virtue of being within the CCA. They are identified as T1-T11 on the 'Tree Constraints Plan' within the appellant's Arboricultural Report (AR)¹⁰, submitted during the course of the application.
42. Although public views of the trees are limited, they would be prominent in private views from surrounding residential buildings both within and without the CCA. Overall, I consider that the trees, providing green relief in a relatively dense urban environment, do make a positive contribution to the character and appearance of the CCA. Indeed, the presence and contribution of mature trees in rear gardens is acknowledged in the CADG. The amenity value of several the relevant trees was also recognised by the Council in imposing a TPO upon them in 2007.
43. The Council's first principal concern relates to the proximity of the trees and their crowns to the proposed buildings. It points to advice in BS 5837:2012 (the BS Guidance)¹¹ which indicates that the default position should be that structures are located outside the Root Protection Areas (RPAs) of trees to be retained, unless there is overriding justification. However, the BS Guidance also acknowledges that in such circumstances, technical solutions might be available that prevent damage to trees. The appellant points to the constraints of the site, including its narrowness and the existence of a right of way over part of it to the rear of the school, which is to be maintained.
44. It is acknowledged in the appellant's AR that the calculated RPAs of T6-T11 do extend onto the site. However, the AR suggests that it is reasonable to consider that the extent of root growth in that direction is likely to have been restricted by the historic presence of the boundary wall, garages and associated hard surfacing. The Arboricultural Consultant considers that: *'The amount of RPA encroachment is relatively minimum [sic] in relation to the total area per tree, therefore if roots have extended beyond the wall it is fair to say the root development is likely to be minimal and pruning any roots back is unlikely to have a detrimental impact on the trees.'* The AR recommends a

⁹ Ref: TPO 321/2007

¹⁰ Prepared by: Andrew Day Arboricultural Consultancy – 23 November 2018

¹¹ 'Trees in relation to design, demolition and construction – Recommendations'

range of technical measures to be taken during demolition and construction to protect the trees and their root systems, which could be secured by condition.

45. The Council's second area of concern is that the change of use from garages to residential housing could, given the close proximity of the adjacent trees, lead to conflict, with post-development pressure for further and additional pruning or even requests for removal. The AR points to some practical measures, such as gutter guards which could help to prevent blockage by leaf litter. While there may be some issues, the trees are already located in residential gardens and next to garages and it is reasonable to expect that some maintenance or pruning would periodically be required. In any case, any future occupants of the houses would be likely to be aware of the presence of the trees, prior to occupation.
46. While the Council questions some other elements of the AR, I do not see that the issues raised, undermine its essential findings. Nor do I think that the proposed buildings would significantly obstruct visibility of most of the trees from St. Paul's Road, which is already quite limited, or in private views from surrounding buildings.
47. Accordingly, I conclude that the proposal has sufficiently demonstrated that, subject to appropriate conditions, the development could be implemented without undue harm to the protected trees located within close proximity to the eastern boundary of the site. Therefore, it would not conflict with policies DM2.1, DM2.3 and DM6.5 of the DMP, insofar as they require, amongst other things, that proposals minimise any impacts on trees, particularly those protected by TPOs or in conservation areas.

Other Matters

48. The appellant has provided a completed Unilateral Undertaking (UU) which concerns an off-site affordable housing contribution, a carbon offset contribution and securing the development as car-free. The UU appears to be acceptable to the Council.
49. Paragraph 63 of the Framework indicates that the provision of affordable housing should not be sought for developments which are not major developments i.e. they are under 10 or more houses and where the site is under 0.5 hectares, which is the case here. While the Framework is a material consideration, policy CS12 of the CS and the Council's Affordable Housing Small Sites Contributions: Supplementary Planning Document¹² still requires an off-site affordable housing payment to be made, even for sites which are not capable of providing 10 or more homes.
50. The Council indicates that despite the conflict with the Framework and the previous Written Ministerial Statement,¹³ local circumstances within the borough and evidence of acute need for affordable housing justify the departure from national policy. The Council has directed me to numerous recent appeal decisions where Inspectors have accepted the Council's approach. Therefore, given those appeal decisions and the additional supporting evidence provided by the Council, I see no reason to take a different view. Furthermore, the appellant has not contested the requirement

¹² October 2012

¹³ 14 October 2014

for a £200,000 contribution in respect of affordable housing and has supplied the relevant completed UU to secure it.

51. I note that the appellant has not supplied a professional daylight/sunlight report to conclusively deal with effects on light reaching adjacent buildings. However, given the orientation of the existing houses on Compton Road which face in a westerly direction and the scale of the proposed development I find, like the Council, that there would not be likely to be a significant adverse effect on daylight/sunlight reaching adjacent properties.
52. The appellant has clarified that the windows shown on the proposed flank elevations in the submitted drawings would be blind windows and would remain so, which could, for the avoidance of doubt, be secured by condition. Therefore, given the orientation of the proposed houses, relative distances and the angle of any views from other windows, there would not be significant overlooking into neighbouring properties or their gardens.
53. In addition to the issues dealt with above, a range of other concerns were raised by residents of the houses on the adjacent terrace on Compton Road and by the Canonbury Society, including in relation to loss of parking spaces, effects on the consented development at Dixon Clark Court and potential damage to the rear boundary wall of the listed terrace. While I have considered those issues, some of which are not essentially planning matters, as I am dismissing the appeal on other substantive grounds there would be no purpose in me discussing them in any detail here.

Planning Balance and Conclusion

54. As detailed above, an agreed financial contribution of £200,000 towards the provision of off-site affordable housing would be secured via the completed UU. I am satisfied that the contribution would meet the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework. Therefore, this sum forms a benefit associated with the appeal proposal.
55. The development would also provide four dwellings on previously developed land, contributing to the supply of housing in the area. Economic benefits would arise during construction, through the provision of short-term employment and the purchase of building materials. Future occupiers would also contribute to the local economy. However, while all contributions have a value and small sites are important, the scale of the development inevitably limits the extent of those benefits.
56. Therefore, although I have not found that there would be adverse effects on heritage assets or protected trees, the harm identified to the living conditions of adjoining occupiers and the associated conflict with the development plan is decisive. That harm is not outweighed by the relatively limited benefits associated with the proposal or any other material considerations.
57. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR