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## Appeal Decisions

Site visit made on 18 February 2020

**by S J Papworth DipArch(Glos) RIBA**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 March 2020**

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### **Appeal A: APP/V5570/W/19/3240359**

#### **Rear of 56 Richmond Avenue, Islington, London N1 0NA**

- 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 David Andrew against the Council of the London Borough of Islington.
  - The application Ref P2018/4077/FUL, is dated 4 December 2018.
  - The development proposed is demolition of an existing vacant and derelict single storey building and the erection of a two storey (ground floor and basement), one-bedroom 2-person dwelling house.
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### **Appeal B: APP/V5570/Y/19/3240620**

#### **Rear of 56 Richmond Avenue, Islington, London N1 0NA**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
  - The appeal is made by Mr David Andrew against the Council of the London Borough of Islington.
  - The application Ref P2018/4160/LBC is dated 4 December 2018.
  - The works proposed are demolition of an existing vacant and derelict single storey building and the erection of a two storey (ground floor and basement), one-bedroom 2-person dwelling house.
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#### **Decision Appeal A**

1. I dismiss the appeal and refuse planning permission for demolition of an existing vacant and derelict single storey building and the erection of a two storey (ground floor and basement), one-bedroom 2-person dwelling house.

#### **Decision Appeal B**

2. I allow the appeal and grant listed building consent for demolition of an existing vacant and derelict single storey building and the erection of a two storey (ground floor and basement), one-bedroom 2-person dwelling house at Rear of 56 Richmond Avenue, Islington, London N1 0NA in accordance with the terms of the application Ref P2018/4160/LBC dated 4 December 2018 and the plans submitted with it subject to conditions 1) to 3) on the attached schedule.

#### **Application for Costs**

3. An application for costs was made by Mr David Andrew against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

## **Procedural Matters**

4. The appellant has provided details of what is described as the 'superseded applications' references P2018/0162/FUL and P2018/0206/LBC, which were refused permission and consent respectively for reasons concerning the standard of accommodation, affordable housing, accessibility and trees.
5. Whilst the current applications were not determined within the prescribed period and hence the appeals, it is accepted that residential development in this location, including the replacement of the garage would be acceptable in land use terms. It appears that the Council's objections now only relate to the standard of accommodation, affordable housing and accessibility, the other objections having been overcome by the change in design.
6. The building is described by the Council as being listed Grade II through association and attachment to the listed 56 Richmond Avenue, and that assessment appears correct. Although there was a heritage objection in the previous applications, and specifically in the listed building consent case, that was overcome by the change in design. Nevertheless, the Inspector at appeal has duties under the Planning (Listed Buildings and Conservation Areas) Act 1990 and these are reflected in the Main Issues below.

## **Main Issues**

7. In Appeal A these are;
  - The effect of the development on the living conditions of prospective occupiers with particular regard to outlook and accessibility.
  - The effect of the development on the provision of affordable housing.
8. In both Appeal A and Appeal B there is a further main issue of the effect on designated heritage assets.

## **Reasons**

### *Living Conditions and Accessibility*

9. Local Plan Policy DM3.4 sets out the housing standards, including a requirement for dual aspect, or where the site makes that aim impossible or unfavourable, a good level of natural ventilation and daylight is required. The Council has also published the Supplementary Planning Document '*Inclusive Design*' which are described as design standards including those for accessible housing.
10. Paragraph 124 of the 2019 National Planning Policy Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
11. The Council's objections are set out in 2 putative reasons for refusal, the first of which cites Policy DM3.4, and a failure to provide dual aspect and a resulting poor level of outlook and an oppressive sense of enclosure. The site is small and constrained although the Council acknowledge that the proposal exceeds the London Plan floor area for a 2-person 1-bedroom dwelling. Whilst the private open space provided would be less than sought in Policy DM3.5, the

Council accept that given the restrictions of the site, and the proximity of public open space at Barnard Park, the failing can be permitted.

12. It can be said that the site makes the aim of dual aspect impossible, and the alternative set out in Policy DM3.4 of a good level of natural ventilation and daylight has been shown to be met through testing against British Standard BS8206 '*Code of Practice for Daylighting*' and BRE guidance. However, the Council object to what are described as the poor level of outlook and an oppressive sense of enclosure, again citing Policy DM3.4, and section A.i states that all new housing developments, including conversions, are required to provide accommodation that is of adequate size, with acceptable shape and layout of rooms with due consideration to aspect and outlook from habitable rooms.
13. Whilst the size is acceptable, the constrained nature of the site has resulted in a particular shape of rooms in order to have a full-height triangular courtyard on the lower floor, overlooked by a balustraded edge to a terrace accessible off the living room on the ground floor, and a larger opening in the flat roof. This device together with the flush rooflight provide the necessary light and air, but the outlook on the south wall would be of the wall alone from the bedroom, which given the use and number of occupants would not be unacceptable, but only what is described as a clear glass block wall level with the lounge.
14. The nature of this material is indicated on the '*proposed visual kitchen dining living area*' image as a lattice grid with a clear view through to vegetation, and the appellant describes this as facilitating extensive and desirable outlook. There are various types of glass block available, with varying degree of translucency or transparency together with possible distortion, one use being to provide daylight together with obscuration for privacy. In addition, there would likely be losses in clear vision through the jointing method.
15. The red line site boundary runs along the external face of this glass block wall and the land outside that is described on the proposed floor plans drawing as '3.5m wide redundant derelict strip of land'. A door in the existing garage gave onto that land, which does not presently form part of the accessible public park either. On the information available, serious doubts exist over the quality of the direct eye-level outlook and how privacy would be controlled, given the uncertain status of the 3.5m strip of land. There does not appear to be any mechanism whereby that outlook could be guaranteed. The quality of the outlook even if kept open would be poor, having mind to the confined layout of the dwelling.
16. To conclude, whilst the open roof and the fully-glazed screen between the living room and the terrace would allow a view of sky and the tops of trees, the outlook through the glass blocks would be poor with doubts over the assured quality of the outlook into the land that is not owned or controlled by the appellant or the future occupiers.
17. The second reason for refusal is that the proposal would fail to provide an accessibility compliant residential unit contrary to Policy DM2.2 and the guidance found within '*Inclusive Design*'. The appellant has suggested some changes which provide an entrance-level toilet and the ability to convert the bathroom into a wet-room, as well as an outward opening door and the provision of a cycle store. With these changes the layout does meet the requirements of Policy DM2.2 and Guidance.

18. However, the layout is contrived and results in some awkward shapes, notwithstanding compliance with the letter of space and accessibility standards. That together with the limited direct outlook leads to the conclusion that the quality of the accommodation does not reach the standard sought in Policy DM3.4, and that the layout would not provide for ease of and versatility in use, and the spaces would not be convenient and enjoyable to use as required in Policy DM2.2. The design fails to accord with the aims set out in the Framework.

#### *Affordable Housing*

19. Policy CS12 Part G of the Islington Core Strategy (2011) seeks financial contributions for affordable housing to be made on sites of 9 dwellings and less and hence this site and proposal would be subject to that requirement. The exception is where a contribution can be demonstrated to be unviable. A Written Ministerial Statement of 28 November 2014 indicated that, for sites of 10 units or fewer, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought. Whilst challenged in the Court of Appeal, this was unsuccessful and the Statement stands. Paragraph 63 of the 2019 version of the Framework states that the provision of affordable housing should not be sought for residential developments that are not major developments, defined in the Glossary as 10 or more homes or a site of 0.5ha or more.
20. Neither the Written Ministerial Statement nor the Framework change the requirement in Section 38(6) of the Planning and Compulsory Purchase Act 2004 on the primacy of the Development Plan, and the Council has supplied background information on the special circumstances of Islington's housing need, the price of dwellings and the relative income levels in the Borough, along with the proportion of small sites being developed and the Council's dependence on such sites to address the pressing need also for affordable housing. The *'Islington Affordable Housing Small Sites Contributions Supplementary Planning Document'* provides further justification.
21. The Council has supplied previous Appeal Decisions where Inspectors have found in favour of the policy and attached less weight to the Written Ministerial Statement and the Framework. On the evidence available to this Appeal, it is concluded similarly, and a contribution, subject to viability, should be sought from the appeal proposal.
22. The appellant has argued that the £50,000 sought should be discounted using the formula set out in the Planning Practice Guidance at Paragraph: 027 Reference ID: 23b-027-20190315. The succeeding paragraph 028 sets out the circumstances where the building has been abandoned, and the vacant building credit not applied. The description of development is that the building is derelict. This matter is somewhat academic to the determination of the Appeal since the appellant claims the development not to be viable even at the discounted rate of contribution.
23. The Council's viability assessment addresses the Existing Use Value based on the appellant's description of the state of the building, and its potential Alternative Use Value as 2 garages. The yield assumed is described as 'very optimistic' to arrive at a capital value of £75,000, discounted to £50,000 to allow for much-needed repairs. The analysis contains reasonable comparators for garages in the area.

24. With regard to build costs, the Council's consultant's use of a Quantity Surveyor adds greater credence to the figures than that of 'quotations' and the appellant's use of Building Cost Information Services data with the Council suspecting an element of double counting as a result.
25. The appellant's sales value is stated by the Council as being overly optimistic and an alternative is proposed. The finding of the first main issue on the quality of the accommodation and its outlook, apart from being determinative of the dismissal of this Appeal, indicates a dwelling that would not be attractive to prospective purchasers other than at the suggested lower figure, if that.
26. Looking at the other figures, the profit assumed by the Council is reasonable, as are the fees, contingencies, scheme timings, sales and marketing, while Community Infrastructure Levy should be agreed. Finance costs may even have reduced in light of the recent reduction in Base Rate.
27. The conclusion supported by considerable detail is that the Residual Land Value is £187,500 compared with a 'benchmark value' of £60,000 resulting in a surplus of £127,500 and hence on that basis the scheme is able to make the full policy-compliant contribution.

#### *Designated Heritage Assets*

28. 56 Richmond Avenue is listed Grade II and lies within the Barnsbury Conservation Area. Policies CS8 and CS9 of the Islington Core Strategy and DM2.1 and DM2.3 of the Development Management Policies set out requirements on enhancing character, enhancing the built and historic environment and on design and heritage. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given its conservation.
29. The previous reason for refusal concerned what the Council considered to be the excessive height, scale, protruding and dominant rooflight, and harm to the visual appearance, setting and historic character of the heritage assets of the Grade II listed buildings and the Barnsbury Conservation Area.
30. The appeal scheme replaces the protruding rooflight with a flush version, which would not therefore have the harmful effects claimed by the Council. The present building is not attractive and the replacement of the garage door would enhance the setting of the principal listed building and the appearance of the conservation area, and the proposal would cause no harm to the curtilage listed building, a curtilage listed wall and the principal building. The change of use would also be an enhancement to the character of the conservation area, and to the residential character of Richmond Avenue, and would provide a far more fitting entrance route to the attractive public park.
31. Consequently, the proposal would satisfy the statutory tests in the Planning (Listed Buildings and Conservation Areas) Act 1990, Policies CS8, CS9, DM2.1 and DM2.3 and the requirements of the Framework with regard to designated

heritage assets. There is no reason to withhold Listed Building Consent and Appeal B should be allowed with conditions controlling materials and the protection of the boundary wall between numbers 54 and 56.

## **Conclusions**

32. Whilst the contrived layout is able to demonstrate compliance with the letter of policies on floor area and accessibility, the quality of the accommodation would be poor and the outlook particularly so due to the view being through glass blocks and the lack of assurance over the future and upkeep of the land immediately outside the red-line boundary. The proposal does not accord with the qualitative aims of Policies DM3.4 and DM2.2 and does not reach the standard of design sought in the Framework.
33. That failing is sufficient to lead to the conclusion that planning permission should be refused in this 'failure' case. The matter of the contribution to affordable housing is therefore academic, but the balance lies in favour of the Council's approach being the more compelling.
34. Nevertheless, the works do not cause harm to the listed building or its setting and there is no reason to withhold listed building consent.
35. For the reasons given above it is concluded that Appeal A should be dismissed, and planning permission is refused, while Appeal B should be allowed and listed building consent is granted.

*S J Papworth*

INSPECTOR

## **SCHEDULE OF CONDITIONS – APPEAL B LISTED BUILDING CONSENT**

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) Details and samples of all facing materials shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure work commencing on site. The details and samples shall include:
  - a) solid brickwork (including brick panels and mortar courses)
  - b) window treatment (including sections and reveals);
  - c) roofing materials;
  - d) balustrading treatment (including sections);
  - e) any other materials to be used.

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

- 3) No works that affect the boundary wall (along the west elevation shared boundary between nos. 54 and 56 Richmond Avenue) shall be carried out until details in relation to the impact of the works on the integrity of that wall have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out only in accordance with the approval given.