



Appeal Decision

Site Visit made on 20 April 2021

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2021.

Appeal Ref: APP/V5570/W/20/3257099

40 Half Moon Crescent, Islington, London N1 0TJ.

- 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 Kesner on behalf of Lothbury Developments Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/4425/FUL, dated 2 November 2016, was refused by notice dated 6 March 2020.
 - The development proposed is demolition of the existing building and construction of a new six storey building with enlarged basement floor, to provide nine self contained flats on the upper floors with ancillary cycle and waste storage on the ground floor, and retention of the existing use on the Ground and Basement floors.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The new London Plan was adopted in March 2021. I have considered the appeal accordingly. The Council has also submitted its Local Plan to the Secretary of State for Examination. However, the extent of modifications or outstanding objections are unclear. As such, I give the Local Plan limited weight at this time.
3. A signed and executed planning obligation dated 8 April 2021 was submitted by the appellant. I have had regard to it in reaching my decision.

Main Issues

4. The main issues in this appeal are the effect of the proposed development on:
 - a) the character and appearance of the area;
 - b) the adjacent London Plane tree on Charlotte Terrace;
 - c) the development potential of adjacent land at 38 Half Moon Crescent; and
 - d) the living conditions of occupiers of 38 Half Moon Crescent with particular regard to daylight.

Reasons

Character and appearance

5. Charlotte Terrace slopes downwards from Copenhagen Street towards the junction with Half Moon Crescent and Carnegie Street. Adjoining the corner of Charlotte Terrace and Half Moon Crescent, the site comprises the former

Duchess of Kent public house. It is a detached, three-storey, brick building with a basement. It is considerably lower and narrower than its immediate neighbour, Vittoria House. The building's ground floor covers much of the appeal site, with smaller upper floors set back behind the ground floor frontage. It presently has residential accommodation on its two upper floors, with storage facilities at ground and basement floors. A large street tree is directly outside the existing building.

6. The site lies adjacent to the vehicular access to the taller flatted block of Vittoria House. Dating from the 1930s, Vittoria House is an imposing five-storey brick building with a large pitched roof, tall chimneys and consistent distribution of windows and balconies. There is a clear verticality to the building. Vittoria House is part of a wider group of similar buildings which surround the Vittoria Primary School and forms part of the Barnsbury Estate. The Vittoria Primary School lies immediately to the rear of the site and comprises a mixture of low buildings of different ages and design. A two-storey, flat-roofed former caretaker's house lies adjacent to the site.
7. Across Charlotte Terrace, the Barnsbury Estate continues. There are a number of large flatted blocks set within green spaces. These range in height from three to eight storeys. Generally, the taller blocks are closer to Copenhagen Street than Carnegie Street. Though built of different materials, the flatted blocks on this side of Charlotte Terrace have a strong horizontal emphasis.
8. Charlotte Terrace, Half Moon Crescent and Carnegie Street all meet close to the site. Carnegie Street slopes downwards from the junction with three, four, and five storey flats in brick and pebbledash render. Three-storey flats are located across Half Moon Crescent. While there is no one detailed design approach or building form and buildings differ in their plot sizes and plot coverage, buildings diminish in height from the top of Charlotte Terrace to the junction of the three streets close to the site. Furthering the area's varied nature, buildings surrounding the site vary in age with the most recent dating from the 1990s.
9. Taking a contemporary rather than pastiche approach, the proposed development would comprise a six-storey building with the top two storeys set back from the lower storeys and from each other. It would employ a range of brick colours and would have dark grey metal cladding to the building's top storey. There would be a mixture of terraces and balconies on the front and south-western elevations of the proposed development.
10. It is clear from the appeal documentation that there has been extensive discussion with a number of Council officers about the proposed development at both pre-application and application stages. This has included further work being carried out by the appellant, including certificate of lawfulness applications. I also note that a number of the design decisions visible on plan result from discussions between the parties, including replacement of more elaborate elevational treatments with plainer proposals. Notwithstanding those discussions, my assessment focusses on the plans before me at appeal. Concerns about the Council's consistency of approach to the development of the proposal should be directed to the Council.
11. In making efficient use of the plot, the proposed development would make use of the entire site, with the exception of the land directly adjacent to the neighbouring street tree, and its depth would be similar to its immediate neighbours. As such, I find that the depth of the proposed development would

- be acceptable. Additionally, given the varied materials employed on surrounding buildings, the materials proposed would not be incongruous.
12. The proposed ground floor frontage would contain a flat with outdoor space adjacent to the neighbouring street tree, foyer and circulation space, post room, lift and refuse and recycling storage. The outdoor space to the flat would have a raised planter bed with fencing above. While this allows for privacy, it reduces the scope for active frontage onto the street. The other windows to the proposed development's frontage would serve the building's foyer. These would be less defensive than the fenced area to the flat's frontage, though they would be inactive for much of the time. As such, the building's ground floor would not appear particularly legible.
 13. While there is potential for a taller building on the site than the existing building as was the case at the former public house at the junction of Charlotte Terrace and Copenhagen Street, the proposed development would not be sympathetic to neighbouring Vittoria House in terms of the alignment of its upper storeys with Vittoria House's prominent pitched roof and eaves. Furthermore, in a location where there appears to be a general stepping down in height from Copenhagen Street to Carnegie Street and Half Moon Crescent, I consider that the proposed development would not following the prevailing pattern of development. It would be incongruously tall at this point in the street and would therefore lack consistency with the wider streetscene.
 14. Although the appellant describes the design approach as restrained to ensure that the proposed development would not compete with the surrounding flats, it would instead lack a single strong design motif. It is not monotonous, but is instead confused and lacking in rhythm. Though relatively plain and lacking in ornamentation in a similar manner to surrounding buildings, the confusion is exemplified by the window and door arrangement across the proposed development.
 15. The proposed development would have a range of different window and door widths and alignments, with windows and doors of different proportions across different floors on almost every elevation. This fails to provide either a strong vertical or horizontal emphasis. While the appellant has highlighted the window alignment and sizes compared to the building on the corner of Charlotte Terrace and Carnegie Street, this does not represent a high-quality design solution worthy of emulating. The positioning and size of windows and doors lacks coherence.
 16. The metal cladding and set-back nature of the top floor replicate a similar design approach to the housing on the former public house site at the junction of Charlotte Terrace and Copenhagen Street. Although I find that the metal cladding and the set-back top floor are neither incongruous nor inappropriate, the alignment of windows within the metal-clad top storey furthers the cacophony of fenestration.
 17. I recognise that there is no policy requirement to match specific parts of the design of surrounding buildings. However, I have expressed concerns about a number of detailed design elements of the proposed development.
 18. Concluding on this main issue, the proposed development would cause harm to the character and appearance of the area. As such, it would conflict with paragraph 117, 122, and Chapter 12 of the National Planning Policy Framework

(the Framework), Policies GG2, D3 and D4 of the London Plan, Policies CS8 and CS9 of Islington's Core Strategy 2011 (CS), Policies DM2.1 and DM2.2 of Islington's Development Management Policies 2013 (DMP), and the Islington Urban Design Guide Supplementary Planning Document 2017 (SPD). These policies and the SPD collectively seek, amongst other things, to ensure developments complement local character and context. While Policies GG2 and D3 of the London Plan and paragraphs 117 and 122 of the Framework refer to the need to optimise the use of sites, it is clear that this is a design-led approach and there is a need to respond to context and to safeguard and improve the local environment.

Tree on Charlotte Terrace

19. There is a large mature London Plane street tree on the Charlotte Terrace frontage outside the site. The tree presently overhangs the existing building and has an average crown spread of some 8 metres. It is the largest street tree on Charlotte Terrace. The appellant's Arboricultural Impact Assessment and Method Statement 2019 recognises that the tree is in good condition with a life expectancy of in excess of 40 years.
20. The tree has previously been pruned back by the Council on a three year cycle of pollarding. Following this cycle, it was last due to be pruned in Winter 2019/2020. However, this pruning has not taken place. When pruned, the nearest pollard knuckle is located approximately 1.6 metres from the existing building and overhangs the property boundary by over 2 metres.
21. The proposed development would involve the demolition of the existing building and the erection of a building with numerous windows, balconies, and terraces on the front elevation close to the tree.
22. I have had regard to the appellant's Arboricultural Impact Assessment and Method Statement 2019 and letters from Oakwood Tree Consultants and Treeveys Consulting. I also note that the appellant is willing to work with the Council to carry out works to the tree without adverse effect on its health.
23. I recognise that the appellant can legally seek to remove those parts of tree overhanging their property and agree that it is unfortunate that the Council has not been able to maintain the tree pollarding regime to its normal timescale. It is also positive that the proposed development would not be likely to harm the London Plane tree's roots.
24. However, even if pollarded in a manner similar to the previous pollarding cycle, I am concerned that there would still be interference between the proposed development and the tree's canopy. The tree's canopy, even when pollarded, would be proximate to the proposed windows and balconies. This juxtaposition would be likely to give rise to nuisance to the future occupiers of the proposed development through shading of and encroachment on windows and balconies and dropping of leaves, seed balls and fibrous Plane dust. Such issues would be likely to result in pressure to remove the tree due to its adverse effects on the health and wellbeing of residents and would also result in greater likelihood of the tree being pruned excessively beyond its current pollard knuckle, risking the health of the tree. I find that this unacceptably close relationship would have a harmful effect on the tree.

25. Although the appellant has referred to other trees on Charlotte Terrace, the presence of these trees does not alter the tree's importance. The flats at Copenhagen Street have Himalayan Birch trees planted on their frontage and within the public footpath outside the flats. While I recognise that the Birch trees were an integral part of the landscaping for the development when it was built and that development plan policies have changed since the 2005 approval on Copenhagen Street, the fundamental concerns about living conditions and the retention of trees will have been in place at that time. However, although some of the trees partially obscure the frontage of the flats, none of these trees have yet reached the same size and maturity as the London Plane tree. Furthermore, it is not known whether there has been any pressure to remove the trees. As such, the presence of the Birch trees does not alter my view.
26. I conclude that the proposed development would have an unacceptable effect on the adjacent London Plane tree on Charlotte Terrace. Accordingly, the proposed development would conflict with London Plan Policy G7 and DMP Policy 6.5. Both policies seek to ensure, amongst other things, that existing trees of value are retained and impact upon those trees is minimised.

Future development of neighbouring site

27. The Council's third reason for refusal concerns the proposed windows to the proposed development's rear elevation, particularly those at ground to fourth floors. While there are four windows to the existing building's rear elevation which serve the staircase and landings at first and second floors, the proposed development would include some 25 windows across six floors on its rear elevation. Most windows would serve bathrooms, storerooms, and stairwells, but there would also be secondary windows to bedrooms and a kitchen area.
28. The Council's concerns are centred on the effect of the proposed windows on the short to long term development of 38 Half Moon Crescent, which adjoins the appeal site. No 38 is a vacant two-storey detached building which served as the caretaker's house for Vittoria Primary School.
29. DMP Policy DM2.1, amongst other things, refers to the need for development to not unduly prejudice the satisfactory development or operation of adjoining land and/or the development of the surrounding area as a whole. The SPD also addresses this point, highlighting that particular care needs to be taken along boundaries to ensure that light, air and privacy are safeguarded for the future.
30. There is no proposal at hand for redevelopment of the school or the caretaker's house. This has been confirmed by discussions between the appellant, the Council, and the school. Indeed, the service providers have not objected to the proposed development on this basis. Notwithstanding this, DMP Policy DM2.1 and the SPD do not refer to the need for a proposal to be in place for neighbouring land or for the neighbouring landowner to have objected.
31. Even though the appellant has confirmed that windows to the rear elevation could be removed, obscured, or non-opening, I consider that these windows are necessary for the future occupiers of the proposed development, either for outlook, light, or natural ventilation through the proposed flats. In addition, I am required to deal with the appeal before me and the plans show windows to these proposed units.

32. The crux of this main issue is whether the proposed development would impede the short to long term development potential of the neighbouring site. Although each site and proposal must be considered on its own merits, in this instance I am of a similar view to the Inspector who dealt with the Elthorne Road appeal¹. It is not unreasonable to consider that the land and building at No 38 might come forward for development, either as part of the school or separately, given its location and residential purpose. If it did come forward for development, the location of multiple windows on the proposed development's rear elevation would significantly limit and unduly prejudice its development potential.
33. In conclusion, the proposed development would have a harmful effect on the development potential of adjacent land at 38 Half Moon Crescent and would fail to comply with DMP Policy DM2.1 and the SPD as outlined above.

Living conditions

34. The Council has expressed concern that the proposed development would have a detrimental effect on daylight to 38 Half Moon Crescent. Although No 38 is vacant, there is nothing before me to indicate that it could not be brought back to use.
35. The appellant submitted a Daylight and Sunlight Study (Neighbouring Properties)(June 2017) which deals with the effect of the proposed development on properties on Half Moon Crescent, Muriel Street and Charlotte Terrace. A further Daylight and Sunlight Study dated May 2020 included properties on Half Moon Crescent, Vittoria Primary School, Muriel Street and Charlotte Terrace.
36. The Council's reason for refusal and the appellant's studies refer to the Building Research Establishment's Site layout planning for daylight and sunlight: A guide to good practice (Second Edition) 2011, (the BRE Guide). The BRE Guide offers advice on generally acceptable standards of daylight and sunlight, but warns that numerical guidelines should be interpreted flexibly since natural light is only one of many factors in site layout design.
37. In measuring daylight, the appellant has undertaken the Vertical Sky Component test (VSC) and the Daylight Distribution Test (No sky line) for No 38. The BRE Guide confirms that if the VSC with the new development in place would be both less than 27% and less than 0.8 times its former value, the existing building's occupiers will notice a reduction in the amount of skylight.
38. The windows to the north-west elevation of No 38 serve a ground floor living room (Window No 82) and a first floor bedroom (Window No 81). The appellant's analysis indicates that the VSC for these windows is currently 12.6% for Window 81 and 8.5% for Window 82. As such, the VSC is already very low for these windows. With the proposed development in place, the VSC would fall to 4.8% for Window 81 and 3.8% for Window 82. These figures would be considerably less than 0.8 times their former value at 0.38 for Window 81 and 0.45 for Window 82 respectively. As such, I consider that the reduced levels of daylight received through Windows 81 and 82 as measured by VSC would be unacceptable.

¹ APP/V5570/W/19/3226781

39. The VSC calculations are supplemented by the Daylight Distribution Test. This was not initially carried out by the appellant as room layouts for No 38 were unknown. These calculations have now been completed using assumed layouts. The BRE Guide confirms that if daylight distribution is reduced to less than 0.8 times its former value this will be noticeable to the occupants and more of the relevant room will appear poorly lit. The appellant's findings indicate that while the room served by Window No 81 to the rear of No 38 would retain between 0.86 and 1 before/after ratios in accordance with the BRE Guide's advice, the room served by Window No 82 would have a ratio of 0.41. This reinforces my concern that the effect on daylight to No 38 would be adverse.
40. The BRE Guide advises that sunlight tests should be applied to all main living rooms and conservatories which have a window which faces within 90 degrees of due south. Given their orientation, the sunlight test has not been carried out for Windows 81 and 82. Notwithstanding objections, I note that the garden area at No 38 would not be further affected by the proposed development than it is by the existing building at No 40 in terms of light.
41. Although the appellant argues that living rooms are more important in terms of lighting than bedrooms, both types of room are considered by the BRE Guide to form habitable rooms, though bedrooms are described as being less important as far as daylight distribution is concerned. While it is unusual for a habitable room's main window to be positioned on the side of a property, the building at No 38 is an unusual residential property located within a school site. In the absence of certainty that the two habitable rooms are served by other windows, I remain concerned about the detrimental effect of the proposed development on any occupiers of No 38.
42. In conclusion, I consider that the proposed development would cause harm with regard to its effect on the living conditions of neighbouring occupiers of 38 Half Moon Crescent, with particular reference to daylight. Consequently, the proposed development would be contrary to DMP Policy DM2.1, which amongst other things confirms that development should provide a good level of amenity including daylight and overshadowing, and the BRE guide as set out above.

Planning Balance

43. The appellant asserts in this instance that Islington had a 90% measurement in the national Housing Delivery Test 2020, thereby requiring an action plan. Reference has also been made to a 2019/20 trajectory produced by the Council, which confirms that the Council had not met its annualised benchmark for housing for the third year. The Council has not commented on this matter.
44. It is evident that the building has not been used as a public house for some time and that there is no market interest in the potential for its re-use as a public house. This does not appear to be a matter of dispute. The proposed development would provide a benefit in that it would make effective use of an under-utilised property and provide a net gain of 8 units of new housing on a small site in accordance with Policies H1 and H2 of the London Plan, which seek to increase housing supply on small sites, amongst other things. It would also adhere to paragraphs 59 and 68 of the Framework in respect of boosting the provision of housing, including on smaller sites, as emphasised by the Prime Minister's 30 June 2020 speech on the economy. Mindful of the most recent Housing Delivery Test results, I afford this moderate weight.

45. Adhering to a number of the requirements of CS Policy CS12 in respect of providing housing, housing density and mix, and accessibility standards, the proposed development would provide additional dwellings with cycle parking and store areas. It would also meet the Council's requirements for energy efficiency and sustainable design. The proposed development would also be close to transport, services and facilities. These issues have moderate weight in my decision.
46. In addition to the provision of market dwellings, the appellant has provided a completed legal agreement dated 8 April 2021 to pay financial contributions towards affordable housing provision (£450,000) and carbon offsetting (£9,000) and to ensure that the proposed development is car-free.
47. CS Policy CS12 and the Council's Affordable Housing Small Sites Contributions Supplementary Planning Document (AHSPD)(October 2012) seek to secure the maximum reasonable amount of affordable housing provision and indicate that schemes for residential development of below ten units will be expected to provide financial contributions towards affordable housing within the borough. This is supported by London Plan Policy H4. In order to offset the cumulative impact of minor schemes on energy consumption and carbon emissions, CS Policy CS10 and DMP Policy DM7.2 require development to provide for carbon offsetting. Furthermore, the Council's requirement for car-free development stems from DMP Policy 8.5. The provision of affordable housing, carbon offsetting, and car-free development would be benefits to which I give moderate weight.
48. However, I have found harm in respect of the effect of the proposed development on the area's character and appearance; the adjacent London Plane tree on Charlotte Terrace; the development potential of adjacent land at 38 Half Moon Crescent; and the living conditions of occupiers of 38 Half Moon Crescent with particular regard to daylight. These have significant weight.
49. In this instance, the adverse impacts would substantially outweigh the benefits. Therefore, the proposal should be dismissed.

Other Matters

50. Interested parties raised a number of concerns, including highway safety, overlooking and overshadowing of Vittoria Primary School, loss of the light industrial use at ground floor, the replacement of the building, effect on views, and disturbance during construction. I have not addressed these issues in detail given my overall decision.

Conclusion

51. For the reasons set out above, the appeal is dismissed.

Joanna Gilbert

INSPECTOR