



Appeal Decision

Hearing Held on 11 May 2021

Site visit made on 8 May 2021

by Stephen Wilkinson BA(Hons) BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities

Decision date: 17/06/2021

Appeal Ref: APP/V5570/W/20/3258770

Parkhurst Court, Warlters Road, Islington, N7 OSD

- 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 Jamie Milne against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/3585/FUL, dated 26 November 2019, was refused by notice dated 6 August 2020.
 - The development proposed is airspace development to create 8 new flats on the existing flat roof.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of proposed development in the banner heading above differs from that included in the Council's decision letter. The description used by the Council, 'proposed mansard roof extension with dormer windows to create 8 self contained flats (5No. x 1 bedroom 1 person flat units, 2no. x 2 bedroom 3 person units and 1no. 2 bedroom, 4 person unit on the existing flat roof, lift shaft extended and reinstated, existing chimneys to be extended above proposed roof level and cycle storage and refuse storage including internal refuse chutes)', more accurately describes the form of proposed development and was agreed by the appellant at the start of the Hearing. Accordingly, I have determined the appeal on the basis of this description.
3. A Unilateral Undertaking was submitted with the appeal which includes financial contributions towards carbon offsetting, that the scheme is car free development and blue line clauses in respect of contributions to affordable housing in line with the Council's adopted policy. I address this matter later in this decision.
4. The Development Plan includes the London Plan 2021 as well as the Council's Core Strategy 2011 and Development Management Policies 2013. For this reason, I wrote to the main parties requesting comments given that the new London Plan was adopted after the Council had made its decision.
5. Finally, I made a brief visit to the site on 8 May. Given the nature of the main issues a detailed site visit was not necessary. This was agreed with all parties during the Hearing.

Main Issues

6. The effect of the proposals:

- on the living conditions of future occupiers,
- on the proposed dwelling mix, and
- whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Living conditions

7. The difference between the parties on this main issue is the extent to which the cumulative impacts of variations from adopted policies and standards in the design of the scheme would result in unacceptable living conditions for future occupiers. The variations from adopted standards, identified by the Council, include low floor to ceiling heights, single aspect flats, compromised privacy and a lack of amenity space.
8. Seventy five percent of the floorspace of each flat has a floor to ceiling height of 2.5m. Whilst this complies with the London Plan 2021, it fails the Council's standards which require a floor to ceiling height of 2.6m over the same percentage of floor area. This requirement is to enable adequate ventilation to address the London heat island effect.
9. Each of the flats in the middle would not be compromised by the floor ceiling heights given that each would have dual aspect. This would be true for the secondary windows onto the walkway serving the 3 middle flats within the scheme. The windows could be openable to enable through ventilation and in this respect would compensate in part for the reduction in ceiling height compared to the adopted standards.
10. Each flat has been designed to exceed the BRE¹ adopted standards for sunlight and daylight. I consider that the proposal is in accordance with Policy DM3.4Cii) which allows for exceptions to the floorspace standards as long as good standards of daylight, ventilation and useable floorspace can be provided.
11. Whilst the Council states that there would be overlooking from the walkway into each of the 3 flats in the middle of the scheme leading to a loss of privacy, it is clear from the discussion during the Hearing that with 2 lifts to the roof extension, the numbers of people moving through this space would be limited. For these reasons, the location of the walkway in relation to the secondary windows would not adversely impact on their living conditions by reason of loss of privacy.
12. Finally, the 5No.1 bedroom flats do not include amenity space and the remaining flats fail the adopted standards by 2sm each. The appellants state that each flat includes compensatory space in the internal floor areas of each flat. My review of the floorspace for each flat confirms this assessment.
13. However, the provision of private amenity space in the form of a roof terrace would be entirely appropriate for the proposed scheme in line with Policy

¹ Building Research Establishment

DM3.5. The Council states that the Borough has the second lowest amount of public open space in the country and in this respect the provision of private amenity space assumes greater significance.

14. The lack of amenity space is a significant shortcoming given the context of this site, on the edge of the Nag's Head shopping centre as there are few areas of incidental public open space in the locality. I do not accept that because the existing flats in the block do not have private amenity space then this is a precedent which influences the appeal scheme. The construction of the original block preceded the adopted policies required to improve living conditions. The ground floor communal space surrounding the block would not fulfil the same function.
15. For the above reasons and when taken in the balance, whilst there would not be cumulative conflicts with Policy DM.4, the lack of private amenity space for 5No. of the flats and the under provision of space in 3 others conflicts with adopted Policy 3.5 of the Council's Development Policies 2013, and for this reason alone would prejudice the living conditions of future occupiers.

Mix of units

16. The Council has a shortfall of 2 and 3 bed units. The Core Strategy requires a range of units to address this shortfall and to ensure that new development is designed to meet housing needs through maximising the amount of family accommodation. Accordingly, Policy DM3.1 requires a good mix of housing sizes in all development based on the Local Housing Needs Assessment. For the appeal scheme this requires that at least 90% of units have 2 beds or are larger, in contrast to the 40% proposed.
17. I do not consider that a need to 'stack' the units within the proposed scheme, required by the alignment of internal services or aesthetics in respect of fenestration, with the flats on the lower floors is a sufficient justification to not address the Council's housing mix requirements. This could have been achieved through a different arrangement involving fewer flats.
18. Furthermore, I am not convinced by the appellants argument that 1 bed flats are appropriate for the site's location lying close to the boundary of the Nag's Head shopping centre. The site lies outside the centre in a residential area and a mix of units in line with the Council's adopted policy would be appropriate.
19. The appellant has not provided a convincing body of evidence to counter the Council's Local Housing Needs Assessment on why a departure from adopted policy is warranted for this scheme. Accordingly, the balance of evidence supports the Council's case in respect of this main issue.
20. For these reasons, I conclude that the appeal scheme conflicts with Policy 3.1 of the Council's Development Management Policies 2013 which requires a balance of units to be provided in development schemes.

The provision of affordable housing

21. There are 2 aspects to this issue. The first concerns the legitimacy of Council Policy, given the adoption of the London Plan 2021 and the second concerns whether a policy compliant provision of affordable housing would be viable.

Policy

22. Policy CS 12G of the Islington Core Strategy requires the provision of 50% affordable housing in all residential schemes over 10 units. Below this figure a contribution is required for the provision of affordable housing elsewhere in the Borough. Additional guidance included in the Council's Supplementary Planning Guidance 2012² requires a contribution based on a standard tariff of £50,000 for each dwelling proposed. In this appeal, 8 market dwellings would require a contribution of £400,000.
23. The Council acknowledge that this policy runs counter to Paragraph 63 of the National Planning Policy Framework (the Framework). However, the Council can point to continued success in defending the policy on appeal and a bundle of these decisions was included in its evidence base.
24. During the EIP³ into the recently adopted London Plan, the Examining Inspectors questioned the basis of a London wide policy (Policy H2) which would have required contributions towards affordable housing on small sites. Although this policy was deleted from the adopted London Plan the Examining Inspectors recognised that individual boroughs were not precluded from retaining such policies.
25. Furthermore, the Examining Inspectors for the Council's emerging Local Plan, whilst seeking clarification on the impacts of the adopted London Plan, did not question the basis of a proposed policy which retains the requirement for contributions to support the provision of affordable housing on small sites.
26. Notwithstanding this dynamic policy context, the Council's rationale included in the supporting text to the Housing chapter of its adopted plan demonstrates that the need for affordable housing in the Borough is acute. Given the high density of development across the Borough, the contribution of small sites to the supply of affordable housing is an essential source.
27. Given the weight of evidence before me, I am satisfied that there is a continuing need for small sites to contribute to the supply of affordable housing across the Borough in line with adopted policy.
28. Whilst the Framework is an important material consideration in this regard, Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires planning decisions to be made in accordance with the development plan unless other material considerations indicate otherwise. I consider that there is compelling evidence in support of the Council's Policy and for this reason the Framework, as a material consideration does not override the development plan in this instance.

Viability

29. Although there is written Guidance from both the Council and the Greater London Authority⁴, the National Planning Policy Guidance (the Guidance) provides the most up to date advice on viability. It requires that at the decision making stage, the burden of proof lies with the appellant.

² Affordable Housing Small Sites Contributions SPD 2012

³ Examination in Public

⁴ Affordable Housing and Viability

30. Areas of disagreement between the parties' viability assessments include: Gross Development Value (GDV), Developer's Profit, Total Build Cost, Professional Fees, Affordable Housing Contribution, Benchmark Land Value (BMV) and Acquisition Costs.
31. The principle difference between the parties on GDV is framed around the selection of comparables. The appellant acknowledges that many of their examples were drawn from sales values of older flats which can depress values compared to those used by the Council which are derived from a broad selection drawn from flats in both new and old developments. However, I accept the appellant's point that whilst the proposed flats would have a modern specification, they would be located on an existing 4 storey mansion block around 90 years old which could marginally depress sales values.
32. In terms of GDV the difference between the parties is around £663psf⁵ and £731psf resulting in total sales values of around £3,080,000 for the appellant compared to £3,400,000 for the Council. Whilst both parties could demonstrate that asking prices were not always achieved, the Council could point to examples of sales figures from comparables quoted from Zoopla in 2020, which were still above the asking prices for the flats cited by the appellant. However, I acknowledge that the impact of Covid-19 may have tempered growth in values since this time, as the appellant suggests.
33. In line with the Guidance both parties derived their figure for developers profit within the range of 15-20% of GDV. Given concerns over the risks of building above an existing block each party raised this figure from their normal assumptions to 17.5% for the Council and for the appellant 20%.
34. The total build costs vary between the parties of around £406psf compared to £307psf, resulting in total build costs of £2,191,750 and £1,658,721 for the appellant and Council respectively. I accept the appellants anecdotal comments that costs are likely to have risen given the impacts of C-19 and Brexit on supply chains, materials and the labour market. These account for their higher figure than that suggested by the Council. Furthermore, I accept that additional building costs would arise from the construction of a large extension atop an existing building where all development would occur at high level. The scheme would involve modernising lifts and altering existing services such as chimney stacks which would require specialist contractors.
35. For these reasons, I would be inclined towards the appellant's figures regarding total build costs and fees rather than the Council's given the impact of the nature of the project and external factors.
36. For the same reasons as above, the professional fees which are based on a percentage of the total building costs are assessed by the appellant at 12% slightly higher than the Council's figure of 10%. Again, for the same reason as above I am inclined towards the appellant's figures.
37. In respect of the benchmark land value the Council directed my attention to the most recent advice from the RICS⁶ which identifies 5 components of a benchmark land value, none of which are met by the appellant's suggested figure of £100,000. Whilst I acknowledge that there may be some value which could be ascribed to 'airspace' above an existing development, the appellant's

⁵ Per square foot

⁶ Royal Institution of Chartered Surveyors, Assessing Viability in Planning 2021

value, based on professional experience, needs a more substantive body of evidence to support it. The Council has a nil value for the BMV.

38. Finally, as a result of these differences, the appellant estimates that the scheme would result in a loss of £375,000⁷ (this does not include a contribution for affordable housing) compared to the Council's surplus of £141,213 which accounts for a policy compliant contributions to affordable housing.
39. I accept that viability studies are a snap shot in time but there is a significant difference in the residual valuations between the parties for what is a small scheme. This calls into question the premise of why this development would be pursued with no chance of securing a developer's profit. As the appellant considers that construction costs are rising and sales values are flatlining or based on the Council's figures, rising marginally, this situation would affect the viability of this scheme in the short to medium term, possibly beyond the life of the permission.
40. The Mayor's Guidance⁸ requires that schemes should be deliverable. Although the appellant has retained the blue line clauses in the agreement for contributions to affordable housing it is not in the interests of the planning system to encumber a scheme with such a huge deficit and for this reason it has not been shown as capable of delivering an increase in housing supply in line with both national and local policy.
41. For these reasons, I conclude that the proposal would conflict with Policy CS12G) and the SPG on affordable housing which require contributions to be made to affordable housing on the appeal site.

Other Matters

42. The appeal was accompanied by a completed Unilateral Undertaking which includes financial contributions towards affordable housing and carbon offsetting and requiring that the appeal scheme is a car free development. As I am dismissing this appeal, I do not have to consider this matter further.

Planning balance and conclusion

43. There is a dispute between the parties on whether the Council has a 5 year housing land supply (5YHLS) of deliverable housing. As part of the Council's work on this issue for the emerging plan, it has identified 5.4years supply based on the requisite allocation included in the London Plan. However, I understand that this matter is still the subject of further discussion by the Examining Inspectors and by the Council's own admission it is working closely with developers to demonstrate the deliverability of its sites.
44. On the basis of the evidence before me I am not convinced that the Council has a 5YHLS of deliverable housing site and for this reason the 'tilted balance' is engaged under paragraph 11d)ii, and footnote 7 of the Framework. This requires that the policies which are the most important for determining the application should be considered as out of date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.

⁷ JR Brown summary table received by PINS 10 May 2021

⁸ Affordable Housing and Viability, Mayor of London 2017

45. However, the fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 213 which amongst, other things, explains that the closer that policies in the plan are to policies in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed out of date for reason of an inadequate housing land supply to still carry significant weight.
46. The Council's decision is drawn around Policies DM3.1, DM3.4, DM3.5 of Islington's Development Management Policies 2013 and CS12G) of the Core Strategy 2011. I regard these as the most important policies for the purposes of this decision.
47. Policy DM3.1 is broadly consistent with the Framework which requires housing provision to be based on the Council's local housing needs. The is consistent with London Plan policy H10 and Paragraph 61 of the Framework which requires that policies reflect the housing needs of different groups in the community.
48. Policy DM3.4 identifies a range of criteria which new housing is required to meet and Policy DM3.5 requires that new development provides good quality outdoor space. The Policy recognises the challenges that this requirement can impose. However, both policies are consistent London Plan Policy D6 and the underlying premise of this Council policy is consistent with Paragraph 127e) of Framework is creating places which promote health and well being.
49. In respect of Policy CS12G), I acknowledge that it runs counter to Paragraph 63 of the Framework. However, the substance of this policy relates to the requirement for policies to respond to local needs. For the reasons, as stated above there is a strong rationale for this policy based on the local housing needs survey.
50. In summary therefore, despite the policies cited in the Council's reasons for refusal being deemed out of date, I consider that they still carry significant weight in the determination of this appeal.
51. Set against the conflict with adopted policy, the appeal scheme includes a range of benefits when assessed against the policies of the Framework as a whole. In terms of the environmental dimensions of the Framework the appeal site would constitute 'airspace' and its development would be an efficient use of land, broadly in line with Paragraph 118e) of the Framework.
52. The scheme would partially contribute to the economic and social dimensions of the Framework in the creation of construction employment in the short term and would make a modest contribution to housing supply.
53. I accord the financial contributions through the Mayoral Community Infrastructure Levy (MCIL) and the Council's CIL included in the Undertaking only neutral value as they are required for the scheme in line with the Framework.
54. However, the scheme does not accord with the social dimensions of the Framework in the lack of private amenity space for 5No. flats and the mix of units does not address locally identified housing needs. Finally, whilst I recognise that the Framework is an important material consideration it does not in this instance override the importance of local policy, predicated on a

local needs assessment which requires the provision of affordable housing from small sites.

55. Although the appellant has indicated that they would be willing to provide affordable housing, despite the negative viability assessment, the scheme's other failings against policy point to a dismissal.
56. Overall, I conclude that the harm caused in this case would significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. As such the proposed development does not benefit from the Framework's presumption in favour of sustainable development.
57. Bearing all of the above in mind, there are no material considerations, including the Framework, that would indicate that the decision in this case should be taken otherwise than in accordance with the Development Plan. Accordingly, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Stephen Wilkinson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jon Murch MA TCP MRTPI	Planning Director Davies Murch
Will Wimshurst BA (Arch)	Director, Wimshurst Pelleriti
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James Brown BSc Hons MRICS	James R Brown and Company Ltd, Viability Consultant
Mark Stevens BSc(Hons) FRICS	Partner, Ward Williams Associates
Ben Davies	Director Oander QS
Nick Vaughan MRICS	Director of Savills, London Residential

FOR THE LOCAL PLANNING AUTHORITY:

Jake Shiels BA (Hons) MA
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MCIH
Michael Carless

INTERESTED PERSONS:

Ambreen Raouf	Legal Secretary, Solomon Taylor & Shaw
Daniel Dui	Speaking on behalf of the residents of Parkhurst Court
Ben Norton	Norton, Taylor Nunn, Planning adviser to the residents of Parkhurst Court