



Appeal Decision

Site visit made on 16 August 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Appeal Ref: APP/V5570/W/22/3294020

Rear of 11 - 15 Kelross Road, London N5 2QS

- 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 John Johnson against the decision of Islington Borough Council.
 - The application Ref P2021/2786/FUL, dated 23 September 2021, was refused by notice dated 8 December 2021.
 - The development proposed is described on the application form as the 'Demolition of part of an existing single storey garage block involving the removal of 6 garages and replacement with 2 new, 2 storey (2 bed/3 person) houses'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address above is taken from the decision notice as it more clearly describes the appeal site than that given on the application form.
3. The Council has confirmed in writing that reason for refusal 4 should have referenced Policy D5 of the London Plan 2021, not London Plan Policy 3.8. The Officer's report identifies the correct policy context within which the decision was made and has been seen by the appellant. Consequently, I am assured that his ability to respond on this matter has not been prejudiced.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area, including whether it would preserve or enhance the character or appearance of the Sotheby Road Conservation Area (CA);
 - the effect of the proposal on highway safety, with particular regard to parking provision and access;
 - whether the proposal would provide acceptable living conditions for future occupants with particular regard to privacy and the provision of private garden space;
 - the effect of the proposal on the living conditions of the occupiers of No 11 Kelross Road, having particular regard to privacy; and
 - whether the design would be inclusive in relation to access.

Reasons

Character and Appearance

5. The appeal site comprises part of a garage court accessed from Kelross Road. The garage court contains a total of 31 lock up garages, of utilitarian design, set around a large central manoeuvring area. It lies to the rear of properties that have frontages to Kelross Road, Highbury New Park and Balfour Road.
6. Kelross Road, including the garage court, lies within the southern part of the CA. The area was laid out for housing in the last decade of the 19th century. It is characterised by highly detailed and ornate brick terrace houses with bay windows. They are generally 2 or 3 storeys over a semibasement with highly decorated pitched roofs, incorporating gables or dormers, or on corner sites, turrets. The windows have vertical sliding sashes, and the entrance doors are panelled. These features add value to the properties and contribute to the character of the area as a whole.
7. The proposal would replace 7 of the garages that are located on the northern eastern part of the garage court with a pair of 2 storey dwellings of contemporary design. Whilst I acknowledge that the garages have little intrinsic value as individual buildings, I find their low height, spacious layout and consistent design makes a positive contribution towards the site and their immediate surroundings.
8. Whilst the proposed buildings would be located around the perimeter of the garage court, on a similar footprint to the existing garages, they would contrast markedly in terms of their height and design. As a result, they would appear as isolated, prominent and incongruous features within their immediate setting. This would cause significant harm to the character and appearance of the area.
9. Furthermore, whilst noting that a scheme for the comprehensive redevelopment of the garage court was allowed on appeal¹ in 2000, I have no evidence before me to indicate whether the remainder of the site would be redeveloped. Moreover, in the event that such a scheme was to come forward, it is likely that it would be constrained by the form of the development currently proposed. This would not be in the best interest of the overall planning of the area.
10. I accept that the development would not be visible from Kelross Road, and that there would only be glimpses from other public locations in the area. Nonetheless, and notwithstanding existing trees located in rear gardens, the development would be clearly visible from the upper floors of the surrounding properties.
11. In light of the above, the contribution the appeal site makes to the significance of the CA would be eroded. The character and appearance of the CA would not be preserved or enhanced. Whilst the harm that would be caused to the CA as a designated heritage asset would be less than substantial, paragraph 202 of the National Planning Policy Framework (the Framework) makes it clear that this harm should be weighed against the public benefits of the proposal.
12. The proposal would provide 2 additional residential units and some employment during construction. Whilst these benefits weigh in favour of the

¹ T/APP/V5570/A/99/1028390

proposal, they attract only little weight. These benefits do not outweigh the great weight that I am required to give to the harm that would be caused to the significance of the designated asset.

13. I conclude, on this main issue, that the proposal would be harmful to the character and appearance of the area and would not preserve or enhance the character or appearance of the CA. Accordingly, the proposal is contrary to Policies D1, D4 and HC1 of the London Plan 2021 (LP), Policies CS8 and CS9 of Islington's Core Strategy 2011 (CS), Policies DM2.1 and DM2.3 of Islington's Local Plan: Development Management Policies 2013 (DMP) and the Islington Urban Design Guide 2017 (DG). These policies and guidance, amongst other matters, expect development to harmonise with the wider area and conserve and enhance the significance of the Borough's heritage assets. They accord with section 16 of the Framework which seeks, amongst other things, to ensure that heritage assets are conserved in a manner appropriate to their significance.

Highway Safety – Parking and Access

Parking

14. Policy DM8.5 of the CS establishes that developments will be car free, which means no parking provision will be allowed on development sites, including any involving housing units created through new build.
15. The proposal indicates that one garage space would be retained. The Council has interpreted this space as being for a future occupant of the dwellings. The appellant asserts that this is not the case, and the garage would be retained for his own use when visiting family who have a desire to live in the locality. In any event, he contends that the proposal would result in fewer garages within the garage court, and as a consequence there would be a net reduction the number of parking spaces and therefore vehicular activity.
16. In this regard, I have no compelling evidence before me to show that the retained garage would be restricted to use by the appellant. In particular, I am not aware of any legal agreement to that effect. Even if that were to be the case the proposed development would continue to exist long after the personal circumstances ceased to exist. As a result, there is no certainty that the retained garage would not be used in connection with the proposed dwellings.
17. I acknowledge that the retention of one garage would, in itself, result in only limited vehicular activity. However, it would continue to contribute cumulatively towards air pollution, road congestion, noise vibration and issues relating to road safety, which are acknowledged problems in the locality.
18. I accept that the red line application boundary could have been revised, as indicated by the highway authority, and the retained garage omitted from the application site. However, this is not the proposal before me, which I am required to determine on its own merits.

Access

19. The Council has also raised concerns in respect of access by emergency vehicles, with particular reference to fire appliances. In this regard, I note that the existing access to the garage court has restricted width and height, which would prevent a standard fire appliance gaining access to the site. In this regard I note the decision, made in 2000, to allow a comprehensive redevelopment of the garage court, at which time the London Fire Brigade raised no objection. That said, the decision was made over 20 years ago and I have no evidence before me to indicate that the fire service continues to hold that view. In the absence of evidence to the contrary, I am concerned that the limited access to the proposed dwellings would result in future occupants being poorly served by emergency services.
20. Insofar as matters relating to the everyday use of the accessway are concerned these are addressed alongside 'inclusive access' below.
21. In light of the above, the proposal would have a harmful effect on highway safety, with particular regard to parking provision and access. This would be contrary to Policy CS10 of the CS and Policies DM8.1, DM8.5 and DM8.6 of the DMP. These policies, amongst other matters, seek developments that encourage sustainable transport choices by maximising opportunities for walking, cycling and public transport use, and require all new developments to be car-free.

Living Conditions – Future Occupants

22. The Council are concerned that the proposal would not provide a quality living environment for future occupiers. They make specific reference to the relationship between the internal living space and other activity that takes place within the garage court and the quantum of garden space that would be provided.

Privacy

23. The proposal would be located in the north eastern corner of the garage court and would be offset from the line of approach that drivers and pedestrians would take to access and egress their garages. Consequently, it would be unlikely that people active in the area would come into close proximity with the windows on the front elevation. This, combined with the planters proposed in front of the dwellings, and the use of mechanical blinds as suggested by the appellants, would ensure that occupants would have a reasonable level of privacy inside their property.

Garden space

24. The proposal would provide approximately 13 sqm of garden space for each dwelling, in an accessible and private location situated adjacent the end elevation of each respective property. The garden space available for the southernmost dwelling would be further increased with the inclusion of a planting bed resulting in the provision of approximately 17.9 sqm for that property. Based on the evidence before me both garden spaces would receive a reasonable level of sunlight and daylight throughout the day.
25. Notwithstanding the above, the appellant accepts that there would be a shortfall in garden provision, below the minimum requirement of 16 sqm as set

out in the DMP, for the northernmost dwelling. In this regard I note that the CS provides a higher local standard for garden space than the LP. This is in acknowledgement of the dense nature of the Borough. I acknowledge the shortfall is small, however, I agree with the Council that where the development involves new build, with no apparent constraints, it should deliver garden space in accordance with local policy.

26. I note the appellant's reference to exemplar projects elsewhere in the Borough, however I have not been provided with details of the context in which that development took place. Consequently, I am not in a position to say whether it is directly comparable with the appeal proposal.
27. Taking all of the above matters together, the I find that proposal would provide acceptable living conditions for future occupants with regard to privacy. However, the garden space proposed for the northernmost unit falls below local requirements which would be detrimental to the living conditions of future occupiers. Accordingly, on this main issue, the proposal is contrary to Policy CS12 of the CS and Policies DM3.4 and DM3.5 of the DMP. These policies jointly seek, amongst other matters, to ensure that residents have a good quality of life with functional and useable space that provide good quality private outdoor space.
28. The proposal would not be contrary to the Policy D6 of the LP as it requires a smaller amount of garden space than the Borough's adopted CS.

Living Conditions – Neighbours

29. The side elevation of the proposed dwelling located immediately to the rear of 11 Kelross Road would, according to the Council's officer report, be approximately 15m away from its rear elevation. The windows in the rear elevation of No 11, a three storey high property, contain habitable rooms on all floors with clear glass windows. The side elevation of the proposed dwelling contains a patio door at ground floor level, with a bathroom and bedroom window at first floor level. Both windows at first floor level are indicated on the submitted drawings to be opaque.
30. Whilst acknowledging that the distance between windows serving habitable rooms would fall below the recommended 18m required by local policy, the use of opaque glazing, of a suitable obscurity, would protect the privacy of the occupiers of No 11. This could be secured by an appropriately worded condition. I also find that the living conditions for future occupiers of the proposed dwelling would not be significantly affected by the use of opaque glass in the side facing bedroom window, as a second clear glass window would be provided on the front elevation.
31. In light of the above, on this main issue, I conclude that subject to an appropriately worded condition regarding the use of opaque glazing on the end elevation, the proposal would not have a harmful effect on the living conditions of the occupiers of No 11 Kelross Road, having particular regard to privacy. Consequently, I find no conflict with Policy DM2.1 of the DMP which supports, amongst other matters, developments that provide a good level of amenity.

Inclusive Access

32. Policy D5 of the LP requires all new development to be convenient and welcoming with no disabling barriers, providing independent access without additional undue effort, separation or special treatment.
33. In this regard I note the Council's Inclusive Design Officer has raised concern to the long narrow accessway from Kelross Road to the garage court, and the lack of step free access to both units.

Use of accessway

34. On my site visit I noted that the existing accessway from Kelross Road was just wide enough to accommodate a vehicle, but not wide enough to enable a pedestrian, wheelchair or pushchair to safely use it at the same time. That said during my visit, which took place late in the morning, I saw that there was no activity associated with the garages. However, I acknowledge that this represents only a snapshot in time, and activity would be likely to increase at other times of the day and week.
35. Notwithstanding the above, there will be occasions when drivers will pass along the accessway to retrieve their vehicles, or return them to their garages, at the same time as vehicles or pedestrians approach from an opposite direction. The users of the accessway will be familiar with this situation and are likely to act in a manner befitting the circumstances. Whilst the replacement of six garages with two dwellings may lead to an increase in activity through the accessway I do not consider that this would be of a scale that would result in significant inconvenience to its users. This accords with the view of the highway authority who consider the use of the accessway by cars at the same time as pedestrians and cyclist, whilst unwelcome, would be acceptable.
36. I have also taken into account the appellant's willingness to a condition being imposed with regards to an 'entrance safety strategy', incorporating features such as entry-phone/bell, flashing lights and barriers. Whilst noting this offer, given my reasoning above, I do not consider such provision would be justified.

Internal arrangements

37. The submitted drawings indicate that the finished floor level of the proposed dwellings would be approximately 1m below existing ground level. Level access would be provided from the garage court to the front entrance with internal steps providing access to the lower ground floor.
38. The appellant asserts that, for the purpose of paragraph 2.29 of Part M2 of the Building Regulations, the 'storey below' should be considered as the entrance storey, and that the whole space containing the kitchen, living area and accessible bathroom are continuous and step free. I do not accept this interpretation as a landing, and steps, are clearly indicated between the entrance door and the lower ground floor, therefore the entrance storey is not continuous or step free.
39. In this regard I have taken into account the appellant's willingness to accept a condition requiring the installation of a chair lift to accommodate the 4 step change in level. I also note their reference to Policy D7 of the LP which, although specifically directed at Accessible Housing, recognises that some flexibility should be applied in certain circumstances.

40. Subject to an appropriately worded condition with respect to a stair lift, I find that the proposal would provide a reasonable level of independent access. Accordingly, on this main issue, I conclude that the design would be inclusive in relation to access. Consequently, I find no conflict with Policy D5 of the LP, or the Islington Inclusive Design Supplementary Planning Document (SPD) which jointly seek, amongst other matters, developments that provide places and spaces that are convenient and enjoyable to use for everyone.

Other Matters

41. I acknowledge that the appellant engaged in pre-application discussions with the Council and responded to their opposition for a scheme for three dwellings by reducing the number. Although I do not have full details of the earlier scheme, I have seen the response the Council provided and note that some, but not all, detailed matters have been addressed when submitting a revised proposal. In particular I note their reference to the need for a comprehensive scheme for the whole of the garage court, car free development and the provision of garden space that accords with the CS.
42. I also note the appellant's desire to provide accommodation for family members who were trying to find places to live in the area, and who have rented flats locally. Whilst noting that the application form indicates the proposal would be for starter homes, which would meet their needs, I have no evidence before that occupation would be restricted to particular individuals, or relatives. In any event, the relationship of the occupiers to the appellant carries very little weight in my assessment and does not outweigh the significant harm that I have found.
43. I also note that the Council has no objection to the elevational treatment or materials proposal. In this regard I do not disagree with their view. That said, this is a neutral matter and does not weigh heavily in favour of the proposal. It does not outweigh the harm that I have identified elsewhere in this decision.
44. I accept that in 2000 an Inspector accepted the principle of residential development on the whole of the garage court, and found that the scheme before him, which included a modern housing design in a backland area, would not offend the established townscape. Moreover, I note that he found that the scheme would improve the appearance of the site and be seen as a discrete and subservient element within the encircling turn of the century housing. Whilst that may have been the case, the scheme before him, has not been submitted for consideration. In any event, I am unable to reach the same conclusion for the current proposal. In particular, I have found that development of part of the site, without the benefit of knowing what will take place on the remainder of the garage court, would result in a piecemeal and uncoordinated approach which would be to the detriment of the character and appearance of the area.

Conclusion

45. I have found that there would be harm in regard to the first, second and third main issues, but none in respect of the fourth and fifth. However, the lack of harm would be neutral in each case and thus could not, by definition, be used to weigh in favour of the development.

46. The harm and conflicts are such that the proposal should be regarded as being in conflict with the development plan, when taken as a whole. Material considerations, including the Framework, do not indicate to me a decision should be made other than in accordance with it. The appeal is therefore dismissed.

John Gunn

INSPECTOR