



Appeal Decision

Site visit made on 31 October 2022

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

Appeal Ref: APP/V5570/W/22/3300890

Land adjacent to 1 Dresden Road, Islington, London N19 3BE

- 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 Romer of MMM Management Ltd against the Council of the London Borough of Islington.
 - The application Ref 2021/0954/FUL, is dated 26 March 2021.
 - The development proposed is the erection of a three storey 4 bedroom end of terraced dwelling, with associated private amenity space and boundary treatments.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a three storey 4 bedroom end of terraced dwelling, with associated private amenity space and boundary treatments at land adjacent to 1 Dresden Road, Islington, London N19 3BE, in accordance with the terms of the application, Ref 2021/0954/FUL, dated 26 March 2021, subject to the conditions as set out in the attached Schedule.

Applications for Costs

2. An application for costs has been made by Mr Romer on behalf of MM Management Ltd against the Council of the London Borough of Islington and is the subject of a separate decision.

Preliminary Matters

3. The appellant has provided a Unilateral Undertaking (UU) which would make financial contributions towards affordable housing and to offset carbon dioxide (CO₂) emissions, dated 10 March 2023. This is considered later in my decision.
4. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has provided a Statement setting out how they would have determined the application. This forms the broad basis of the main issues that I have identified.

Main Issues

5. The main issues are:
 - Whether the contributions sought towards affordable housing and to offset CO₂ emissions are reasonable and necessary to make the development acceptable; and,

- Whether or not adequate arrangements have been made in respect of fire safety strategy.

Reasons

Contributions

6. The submitted UU would make provision for, amongst other things, financial contributions of £50,000 towards affordable housing and £1,500 to offset carbon dioxide emissions. The Council has advised that the UU addresses its concerns in respect of these matters. Notwithstanding this, it is necessary for me to consider this obligation against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
7. The National Planning Policy Framework (Framework), the Planning Practice Guidance (PPG) and the Written Ministerial Statement of 28th November 2014 (WMS), set out that the provision of affordable housing should not be sought for residential developments of the scale set out in the appeal proposal. However, Policy CS12 of Islington's Core Strategy, adopted February 2011 (CS) sets out that one of the ways the Council seeks to meet its housing challenge is through the delivery of affordable housing. In order to do that, the Council requires schemes of less than 10 units to provide a financial contribution towards affordable housing provision elsewhere in the Borough. The Council's Affordable Housing Small Sites Contributions Supplementary Planning Document adopted October 2012(AHSPD), states that a scheme of one dwelling in this part of Islington should make a financial contribution of £50,000.
8. The Council has provided a wealth of supporting information demonstrating that there is a chronic affordable housing need in the Borough due to the high house prices, the median salary of the Borough's working population, and high rents charged. It also sets out that a large proportion of its housing delivery comes from relatively small sites, an inevitable consequence of the densely built-up nature of the Borough. This demonstrates the key role that such smaller sites have in the delivery of affordable housing in Islington and is therefore a consideration that attracts very significant weight.
9. Given the above I am persuaded that there is a demonstrable affordability issue in the Borough and that contributions from small sites such as this form a key element in the overall delivery strategy of affordable homes in the Borough. Policy CS12 G. of the adopted statutory development plan and the relevant parts of the AHSPD, in particular the required financial contribution as outlined above, outweigh the WMS, and the guidance within both the Framework and PPG in this case. The obligations within the UU in this regard are reasonable and necessary to make the development acceptable.
10. Policy CS10 of the CS seeks to minimise Islington's contribution to climate change, and as part of that policy requires development to both minimise emissions and make a contribution towards offsetting any remaining emissions. The Council's Planning Obligations SPD, adopted December 2016 (POSPD), sets a contribution of £1,500 per new-build house.
11. Given the development plan policy in this regard and the nature of the development proposed, I am satisfied that the financial contribution to offset

CO2 emissions is reasonable and necessary to make the development acceptable.

Fire safety

12. The appellant has submitted information within their final comments as to how the particular fire safety aspects of The London Plan (LP) Policy D12(A) have been considered in relation to the appeal proposal. The Council is broadly content with the appellant's submissions and coverage, but they have requested a separate standalone document be prepared which should, amongst other matters include details of routes and outdoor spaces. The Council has indicated that this could be controlled by planning condition. This is considered later in my decision.
13. The supporting text to Policy D12 explains that the aim of the policy, is for fire safety to be considered from the outset. I am therefore satisfied that the appellant through their additional information has satisfactorily considered the relevant fire safety aspects of the scheme consistent with Policy D12(A) of the LP, which requires new development to achieve the highest standards of fire safety.

Other Matters

14. The appeal site is in the Whitehall Park Conservation Area (the CA). S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The CA contains a mixture of property types, many of these being terraced properties in a tightknit arrangement along tree-lined roads. The proposed dwelling would be a continuation of an existing terrace of properties, consistent with the density, design, scale and architectural detailing of the attached terraced properties.
15. I have been made aware that an earlier appeal decision that was dismissed for a similar dwelling on this site (APP/V5570/W/21/3269845); this featured a wider and taller two-storey rear projection. The reasons for dismissal related to its effect upon the CA and the living conditions for the occupiers of No.3 Dresden Road. In terms of the CA, the Inspector was concerned at the space between No. 1 and No.3 Dresden Road being narrowed, recognising its importance to the CA and its conflict with the Council's Urban Design Guide Supplementary Planning Document (January 2017) (UDG). The previous scheme included a much longer side elevation with a two-storey rear wing that projected far beyond its rear elevation, and unsympathetic fenestration on that raised rear wing.
16. I have had due regard to the earlier appeal decision in my decision. The proposal in question includes a flat roofed single storey rear wing beyond its rear elevation, and the previously proposed unsympathetic fenestration are not included as part of this proposal. These changes make the scheme distinctly different to the earlier appeal proposal; they reduce the mass of its side elevation; ensure a greater sense of space and openness; and provide the opportunity for some views into the rear areas of the terraced properties that back onto the area. Whilst the proposal would narrow the gap in the street, this view is already partially obscured by existing trees, furthermore some space

would be retained between the proposed dwelling and No. 1 Dresden Road to respect this characteristic break in the streetscene.

17. As such I find the proposal would preserve the character and appearance of the CA and comply with the statutory test. It would also comply with the UDG. It is noteworthy that the Council raised no concerns in this regard.
18. No. 1 Dresden Road is locally listed, a non-designated heritage asset (NDHA) in the language of the Framework. As the proposal would continue the existing terrace of properties in a matching style, whilst also retaining a space between it and No. 1 together with a single storey rear wing, the proposal is not considered to be harmful to the setting of NDHA.
19. The proposal would continue an existing terrace of properties, with windows mainly on its rear and front elevations. In this closeknit environment of terraced properties there is already some mutual overlooking between properties, including second floor inward opening doors. The proposal would be unlikely to have a discernible effect over and above the existing situation in this regard. As such, the effect of the proposal upon the privacy of neighbouring occupiers is acceptable.
20. The use of the property is unlikely to be harmful to the living conditions of neighbouring occupiers in terms of pollution or from noise and disturbance during its occupation. Furthermore, the proposal would not unacceptably reduce the size of the garden that belongs to No. 1 Dresden Road. I also note the submitted daylighting and sun lighting assessments show that the proposal would not cause unacceptable effects upon neighbouring occupiers. It is noteworthy that the Council did not raise any objections in respect of these matters.
21. The effect of this proposal upon the living conditions for occupiers of No. 3 is also much different to the earlier dismissed appeal referenced above, as the proposed rear wing in this appeal is not two storey nor does any part of it directly abut No.3's rear wing. Accordingly, I am satisfied that this scheme would not be harmful to the living conditions of the occupiers of No. 3.
22. Whilst there would likely be some disruption during the construction phase of the proposal, this would be for a temporary period. Moreover, it is not unusual to have construction works within residential areas. It is also noted that in certain circumstances the Council does have powers in regard to nuisance under environmental legislation should this be found to be occurring to the living conditions of nearby occupiers. The planning system should not be used to duplicate these controls. In addition, I have not been provided with any evidence to demonstrate that the construction of the proposed dwelling would cause any structural stability issues for other properties nearby. I am therefore unable to attach any weight to this concern.
23. The plans and information provided was satisfactory to assess the proposal. The information provided by the Council has shown that the application was advertised to allow interested parties the opportunity to provide comments. Disability access will also likely be addressed separately in accordance with compliance with the Building Regulations.
24. The condition of the site is noted, together with the current use of part of the existing site for parking vehicles. The Council has not sought to retain this

parking area. The proposed development will also be 'car free' development, secured by condition. The existing crossover to the site would no longer be required, its removal could allow the Council to re-configure on-street parking areas should they decide to do this. I therefore do not find any unacceptable highway safety or parking effects arising from the proposal.

Conditions

25. The planning conditions imposed in the Schedule below have been thoroughly assessed against the tests in paragraph 56 of the Framework, to ensure they are necessary, reasonable, related to planning and the development permitted, enforceable, and precise. All the pre-commencement conditions imposed below have been agreed with the appellant in advance.
26. A standard implementation condition, along with a condition listing the approved plans to provide certainty over what has been approved, have been imposed. A condition is also necessary to control the external finishes to protect the CA and to satisfy Policy DM 2.3 of Islington's Local Plan: Development Management Policies 2013 (DMP).
27. To ensure the development is car-free, a suitably worded pre-commencement condition is necessary to comply with Policy 8.5 of the DMP.
28. The submitted energy reduction information was not conclusive on the methods to be used to reduce CO2 emissions on the new dwelling, consequently rather than imposing the condition suggested by the Council relating to a percentage reduction, a pre-commencement condition is necessary to ensure the reduction is factored into the overall scheme when the exact methods are known and to comply with Policy 7.2 of the DMP. I have not imposed the water usage condition recommended by the Council as I was not persuaded it was reasonable, however, water efficiency is addressed through the condition imposed below relating to compliance with Category 2 for National Housing Standards, which I did find to meet the relevant tests, and be required by Policy 7.4 of the DMP and the Environmental Design Planning Guidance, Supplementary Planning Document dated October 2012.
29. Whilst the appellant has queried the need for the tree protection conditions, given that their submitted report was prepared in 2016, I consider that a new plan is required in advance of works commencing on site to protect the trees on and adjoining the site and to protect the character and appearance of the CA and to satisfy Policy 6.5 of the DMP. A surface water drainage condition is also imposed as a pre-commencement condition and to comply with Policy 6.6 of the DMP, given the relatively small size of the site, and the likely need to undertake such works early in the construction phase.
30. Due to the small size of the site and its main garden area being to its rear side, a landscaping scheme is not necessary, although the references to boundary treatments in the Council's suggested landscaping condition have been incorporated into a condition addressing boundary details to ensure all boundaries are agreed to ensure the privacy of nearby occupiers, protect the character and appearance of the CA, and to satisfy Policy DMT 2.1 of the DMP. A condition to provide a cycle storage and bin storage area is necessary to protect the CA and to satisfy Policy 2.3 of the DMP.

31. No special circumstances as required by the PPG to justify the removal of permitted development rights has been provided by the Council, furthermore, from my assessment I am not persuaded that there are any such special circumstances. Nor is a condition to make good the existing crossover necessary, without it, the development would still be acceptable. The crossover is within the highway and the Council can undertake this work should they find it necessary. Furthermore, given the small scale of the development and its limited plot size, it is not reasonable to impose the suggested construction management plan condition in this case. The Highway Authority has powers to control works in the highway.
32. Given the wording of Policy D12A of the LP, it was not found to be necessary to impose a condition to require additional fire safety related information for this single dwelling in this case. It was clear that the fire safety had been considered by the appellant. Moreover, Building Regulations cover these aspects separately and such controls should not be replicated through planning conditions in accordance with PPG advice.
33. Finally, a condition is necessary to secure the provision of integrated swift nesting bricks, to provide biodiversity enhancements and comply with Policy CS10 of the CS.

Conclusion

34. For the reasons given above, considering the development plan as a whole and all relevant material considerations, the appeal is allowed.

A Hunter

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans and documents: Dwg 02DSR P 0011; Dwg SK1 Rev D; Dwg 03DSR P 203 Rev A; Dwg 03DSR P202 Rev A; and Dwg 03DSR P 201.
- 3) No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the dwelling and boundary walls hereby permitted have been submitted to and approved in writing by the local planning authority. Such details shall include any brickwork (including mortar courses), window and door treatment (including sections and reveals) and roofing. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and any occupiers of the approved development shall surrender any such permit wrongly issued or held. Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.
- 5) No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority to secure CO2 reductions from the development hereby approved. Thereafter the development shall be undertaken in accordance with the approved scheme.
- 6) No development shall take place until a scheme for surface water drainage of the site has been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - b) include a timetable for its implementation; and,
 - c) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public

authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out and maintained in accordance with the approved scheme.

- 7) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan, TPP) and the appropriate working methods: the arboricultural method statement, AMS in accordance with British Standard BS 5837 2012 –Trees in Relation to Demolition, Design and Construction and construction method statement have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with the approved details.
- 8) Notwithstanding the drawings hereby approved, all residential units shall be constructed to Category 2 of the National Standard for Housing Design as set out in the Approved Document M 2015 'Accessible and adaptable dwellings' M4 (2). Evidence, confirming that the appointed Building Control body has assessed and confirmed that these requirements will be achieved shall be submitted to and approved in writing by the Local Planning Authority prior to any superstructure works beginning on site. The development shall be constructed strictly in accordance with the details so approved.
- 9) No occupation of the dwellings hereby permitted shall take place until detailed drawings of the refuse and bicycle store to serve the residential property have been submitted to and approved in writing by the local planning authority and they have been provided and made available for use in accordance with the details as approved and to be retained as such thereafter.
- 10) Before occupation of the dwelling hereby approved details of the boundary treatments to all sides of the site shall be submitted to and agreed in writing with the Local Planning Authority together with a timetable for their implementation. The development shall be carried out in accordance with the approved scheme.
- 11) Before first occupation of the dwelling hereby approved, swift integrated nest bricks shall be installed close to the eaves of the new dwelling in accordance with precise details that shall first have been submitted to and agreed in writing with the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the details agreed and shall be retained in perpetuity.