



Appeal Decision

Hearing held on 20 January 2011

Site visit made on 20 January 2011

by Mike Moore BA(Hons) MRTPI CMILT MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2011

Appeal Ref: APP/V5570/A/10/2137052

70 Pembroke Street, King's Cross, London, N1 0FY

- 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 Volta Developments Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P092396, dated 16 November 2009, was refused by notice dated 16 September 2010.
 - The development proposed is alterations to external appearance of the building and rearrangement of internal layout in order to change the number of residential units from 14 to 9.
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Application for costs

1. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Preliminary Matters

3. The description of development recorded above is as stated on the decision notice and the appeal form but differs to that shown on the application form. At the hearing the main parties agreed that the above description was the appropriate one to use and I have considered the appeal on that basis.
4. The appellant company had included some amended drawings with its appeal statement which it sought to substitute for some of the plans considered by the Council. The changes in the drawings related to the appearance of the building and its internal layout and sought to address some of the Council's concerns. However, other than a reduction in the size of the lift housing on the roof, the general size and scale of the building would be retained. While the Council considered that the appeal should proceed on the basis of the original plans, in its view the changes were not so large that they would require further consultation. I concluded that the development would not be so changed that third parties would be prejudiced. As such, I accepted the amended drawings Ref. AMD002A, AMD004A, AMD010A, AMD012A, AMD014A and AMD016A. On the basis of the amended plans the Council withdrew its reason for refusal 4 concerning wheelchair access. I have determined the appeal in that context.

5. The Council's appeal statement suggested that were the appeal to be allowed a legal agreement should be entered into requiring a financial contribution towards environmental and streetscape improvements, a code of construction practice, the repair and reinstatement of footways, car club membership, legal fees and the removal of residents rights to parking permits. No agreement had been entered into and there was no unilateral undertaking on these matters. However, they were not referred to in the reasons for refusal and the Council had produced no evidence to support the case for them in the light of the requirements of the Community Infrastructure Levy Regulations and Circular 05/2005. At the hearing the Council indicated that it did not wish to pursue these planning obligations and withdrew paragraph 8.2 of its statement in that regard. I have considered the appeal accordingly.

Main Issues

6. On the basis of what I have read, heard and seen the main issues are:
- The effect of the proposed development on the character and appearance of the area;
 - Whether the proposed development would provide acceptable living conditions for future occupants in terms of on-site amenity space; and
 - Whether the proposals should make provision for affordable housing.

Reasons

Character and appearance

7. Planning permission at the appeal site was granted in 2002 for a 5 storey building plus basement containing 13 flats which would replace a former public house. A building of 14 flats was constructed which was subject to enforcement action by the Council and resulted in an appeal which was determined in 2009. Amongst the Inspector's conclusions were that there were a number of significant differences between what had been built and what was approved. Overall the building did not fit comfortably into its surroundings and there were several aspects of the design that had resulted in an ungainly and incongruous appearance. With a variation in the compliance period the Inspector upheld the enforcement notice, and refused to grant planning permission on the deemed application. The remedy to the breach of control in the enforcement notice is the demolition of the building.
8. The previous Inspector's decision records the Council's view that it may be possible to carry out works to the building to meet its concerns, as an alternative to demolition. At the current appeal hearing the Council indicated that significant modification may be necessary for an acceptable development to be achieved. With the appeal scheme the appellant has sought to address the previous Inspector's concerns.
9. The appeal site occupies a corner position and the building is set further forward than its neighbours on Pembroke Street. There is an area of public open space, Bingfield Park, to the south-west on the opposite side of the street. As a result the building is prominent in the street scene and in some views from the park. I share the previous Inspector's view that as constructed it has a heavy and overbearing appearance and also his criticisms of the design detailing.
10. The appeal building shares a similar characteristic with many others in the locality, being a flat-roofed block of flats. Its general size and scale are not

inappropriate in this location. The amended plans show a much smaller lift housing, comparable to that in the scheme approved in 2002, and the size of the corner columns has been reduced so that they are comparable, if a different shape, to those in the earlier scheme. Amongst other proposed changes, the building would be repainted and a canopy introduced above the fourth floor terrace.

11. There is no existing view of the whole of the rear façade of the building due to the presence of the adjacent building at 1-12 Stranraer Way. Nevertheless, a significant section of it can be seen from Stranraer Way. The windows on this elevation are small and there is a significant area of blank rendered wall. The amended drawings show the introduction of glass blocks to replace an existing solid stairwell wall and which are intended to provide some interest but the small windows would remain. Although glass blocks were used in light openings in the 2002 scheme, these were of a different shape to the windows proposed now. I am not persuaded that their use here in a different way in the appeal proposal would assist significantly in changing the utilitarian appearance of this elevation.
12. There is an existing narrow entrance to the building in the Pembroke Street façade and it has a largely blank and featureless ground floor. The amended plans show the introduction of a wider, recessed main entrance with a solid canopy projecting over the footway. However, this has the character of an afterthought rather than being an integral feature of this prominent front elevation and would appear incongruous as a result.
13. Although the amended drawings have addressed some of the individual issues that were of concern to the earlier Inspector and the Council, some matters are still unacceptable and the building as a whole would still have an unsatisfactory appearance in this prominent location. Reference has been made to the appearance of some of the other blocks of flats in the locality. However, these vary in age and quality. Design which is inappropriate in its context or which fails to take the opportunities available for improving the character and quality of the area should not be accepted. I conclude that the appeal proposals would materially harm the character and appearance of the area. They would therefore conflict with the aims of Policies D1 and D3 of the Islington Unitary Development Plan (UDP) and Policy 4B.1 of the London Plan (LP).

Amenity space

14. The approved scheme was for 4 one-bedroom, 7 two-bedroom and 2 three-bedroom flats. The appeal proposal would reduce the number of flats in the building as built from 14 to 9 comprising 4 two-bedroom and 5 three-bedroom units.
15. UDP Policy D3 relating to site planning includes a requirement for development to provide adequate open space. The Council's adopted Planning Standards Guidelines (2000) (PSG) indicate that gardens should be provided for all family dwellings. It defines family housing as that having two bedrooms or more. By that definition 9 of the 13 units in the 2002 approved scheme were family housing. However, it seems to me that, with a majority of three-bedroom flats, there would be a significantly greater chance that the appeal scheme would be occupied by families.

16. On-site amenity space for flats is often communal and any private space is commonly limited to balconies. In this case, the ground floor flats would have access to patio areas within the light wells, those on the first to third floors would have balconies and that on the fourth floor a roof terrace. Such provision may be appropriate for single people or couples but I am not persuaded that these are acceptable where there is likely to be children as in this case. There would be a small grassed area and flower bed at one end of the building but this would be adjacent to the bin enclosure and in my view would be of more visual than practical value as amenity space. There is a substantial, well equipped and recently refurbished children's play area as well as grassed and hard surfaced areas in the nearby park. Although this is public provision of a high standard, there is a need for families to have some usable private garden space.
17. My conclusion is that the proposed development would not provide acceptable living conditions for future occupants in terms of the provision of private amenity space. As such, it would not accord with the objective of UDP Policy D3 to provide adequate open space.

Affordable housing

18. Since the 13 flat scheme was approved in 2002, LP Policy 3A.11 has been adopted which requires affordable housing provision on a site which has a capacity to provide 10 or more homes. The number of units proposed is a matter for the applicant, but this policy requires that consideration is given to site capacity when considering a proposal for new housing.
19. While there are 14 units in the building at present, these do not have the benefit of planning permission and there have been changes to Building Regulations since 2002 that mean that the permitted scheme, now out of time, could not be implemented in that form. In addition, the Mayor's Housing Design Guide, being produced alongside the review of the LP, has included changes to standards for the internal areas of dwellings. This guidance has not yet been adopted and the Council has its own standards in the adopted PSG. The appeal proposal seeks to show how the building could be modified to meet modern design standards and concludes that only 9 units are possible. Nonetheless, as the existing building does not have planning permission it is the capacity of the site to accommodate 10 or more dwellings, rather than the existing structure, that is at issue in terms of the LP policy.
20. The appellant's economic viability assessment, for the proposed 9 units, updated for the appeal, concludes that the scheme would not be viable if it included any affordable housing. Indeed the detailed calculations conclude that even without affordable housing it is not profitable in the current economic conditions. The Council has indicated that the assessment does not provide the information requested in order for viability to be assessed independently according to its usual practice. However, it did not provide a detailed critique of the submitted assessment for the appeal hearing. The assumptions in the assessment would have to change significantly before a profitable scheme incorporating affordable housing was achieved.
21. Planning Policy Statement 3: Housing (PPS3) indicates that smaller sites, such as that here, should contribute to the creation of mixed communities. The site is situated in Caledonian Ward where almost 60% of housing was categorised as affordable at the last Census. However, the LP target is for 50% affordable

housing so that even if it were demonstrated that provision should be made here there would be different tenures within the building. Moreover, in the context of the overall need for affordable housing and the LP's strategic aims in this regard, I am not convinced that the housing mix should be a determining factor in the appeal.

22. On the evidence before me affordable housing associated with 9 units in the appeal scheme would not be viable. In terms of the capacity of the site, the previously approved scheme would not meet the current relevant standards and the Council has not produced design evidence that demonstrates that it could accommodate more than 9 units. Dwelling size is only one of many factors that determine site capacity. On the other hand the evidence from the appellant relates solely to the adaptation of the existing building and not to whether the site has capacity for more dwellings. There is no scheme before me for 10 or more dwellings and no evidence as to whether or not an element of affordable housing would be viable for anything other than the appeal scheme. In the light of my conclusions on the first two main issues I conclude that the provision of affordable housing on the site is not a matter on which my decision should turn. It is not a factor that would outweigh my conclusions on the other issues and the resulting conflict with the development plan.
23. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

M J Moore

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Hinsley MRTPI	Tetlow King Planning
Mark Smith BSc Estate Management	Affordable Housing 106
Niaz Choudhury MSc CEng MIHT MICE	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Paul Conboy MA MSc(Planning)	Planning Officer, London Borough of Islington
Kristian Kaminski MA (History and Theory of Architecture)	Conservation and Design Officer, London Borough of Islington
Samuel Oyebanjo MSc (Construction Management)	London Borough of Islington

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Report on Means of Escape Provisions and Access
- 2 Islington Design Guide December 2006 extract – pages 36-37
- 3 Appeal decisions relating to 16 Barnsbury Square, London, N7 1LJ
- 4 Extract from Building Regulations – Means of Escape from Flats
- 5 Extract from Islington Planning Standards Guidelines – page 100

PLANS

A1 – A6	Revised application plans
B	Approved plan for application P011575