



Appeal Decision

Site visit made on 10 October 2017

by Caroline Jones BA (Hons) DipTP MTP MRTPI

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

Decision date: 31st October 2017

Appeal Ref: APP/X5210/W/17/3172882

163 Sumatra Road, Camden, London NW6 1PN

- 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 Jeremy Stein against the Council of the London Borough of Camden.
 - The application Ref 2015/2203/P is dated 15 April 2015.
 - The development proposed is conversion of existing family dwelling incorporating previously approved extensions into 5 no. self-contained units with associated amenity, cycle storage and refuse provision.
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Decision

1. The appeal is dismissed and planning permission for conversion of existing family dwelling incorporating previously approved extensions into 5no. self-contained units with associated amenity, cycle storage and refuse provision is refused.

Procedural Matters

2. Following the determination of the application and submission of the appeal, the Council adopted the Camden Local Plan (LP) which has replaced the Camden Core Strategy and Camden Development Policies. Therefore, in determining the appeal, I have had regard to the LP policies identified by the Council in its statement. The appellant has had the opportunity to comment on the implications of the recently adopted policies to his case.
3. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted in the Council's statement which confirms that it has no objection to the proposal in terms of its impact on the character and appearance of the area, or on the living conditions of neighbouring residents. I also have before me a 'draft' Decision Notice for approval. However, the Council has ongoing concerns as to the wording of the submitted planning obligation to secure a financial contribution for highway works, a construction management plan and car free housing.

Main Issues

4. Whilst, as set out above the Council takes no issue in relation to the effect of the proposed development on the character and appearance of the area or the living conditions of the occupiers of neighbouring properties, a local resident did raise concerns in these regards. I therefore consider that the main issues in this case relate to the effect of the proposed development on the character and appearance of the area and on the living conditions of neighbouring residents with particular regard to noise.
5. The Council also has ongoing concerns as to the wording of the submitted planning obligations. A further main issue therefore, is whether the planning obligation is effective in securing car free housing, a financial contribution for highway works and a construction management plan.

Reasons

Character and appearance

6. With the exception of the excavation of the basement, the majority of the proposed works will take place within the existing property. Therefore, I agree with the Council that there would be minimal impact on the character and appearance of the area and that the proposal is acceptable in design terms.
7. Concern has been raised by a neighbouring resident that the proposal would lead to an increase in rubbish produced and that together with refuse storage this would look unsightly. I note the submitted plans show refuse storage to the front of the property which appears to be covered. I note that the Council has no objections in terms of refuse storage and I have no reason to take a different view. Furthermore, I am satisfied that suitable screens or covers for the storage areas could be secured by condition had the appeal succeeded.
8. I therefore conclude that the proposed development would not have a materially harmful impact on the character and appearance of the area and find no conflict with Policy D1 of the LP in this regard which states, amongst other things, that the Council will seek to secure high quality design in development.

Living conditions

9. Concern was raised that the proposal would lead to a significant increase in noise. However, I noted at my site visit that there are numerous properties in the locality which have been converted into flats. There is no evidence before me that these developments give rise to such disturbance or complaints of this nature. I also note that the Council has not raised concerns in this regard. Given the above, there is no compelling evidence to persuade me that the proposal would give rise to unacceptable levels of noise and disturbance.
10. I therefore conclude that the proposal would not materially harm the living conditions of neighbouring residents and find no conflict with Policy A1 of the LP in this regard which seeks, amongst other things, to ensure the amenity of communities, occupiers and neighbours is protected.

Planning Obligation

11. I have before me both a draft s106 Agreement and a draft Unilateral Undertaking (UU). Both would secure a number of measures in the event that the appeal was to succeed. It is intended to meet a range of local policy

objectives. I shall look at each of these in turn having regard to the National Planning Policy Framework (the Framework) which confirms that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. In addition, I have had regard to Regulation 122 of the Community Infrastructure Levy Regulations (2010) (as amended). The use of planning obligations is also supported by the Council's Camden Planning Guidance 8: Planning Obligations (CPG8) to which I have also had regard.

12. The Council requires a financial contribution to allow for the repaving of the footways adjacent to the appeal site if they are damaged during construction. Although the obligations before me would secure a payment of £5,000, the Council has provided calculations to demonstrate that the actual cost to repave the footways adjacent to the property would be in the region of £3,350. Works to which the contribution relates are necessary, directly related to the development proposed and would comply with the aims and objectives of Policy A1 of the LP. The additional sum of money over and above what is required has not contributed to my conclusions on this matter in any way.
13. Sumatra Road is a narrow street with parking on either side. It is also located close to West Hampstead Town Centre and Beckford Primary School. In that context, a construction management plan (CMP), setting out the measures that will be adopted in undertaking works on the site, is necessary in this instance to minimise the impact on and disturbance to the surrounding environment and highway network. Whilst this can sometimes be a matter that can be secured by condition, I agree with the Council that in this instance, the provisions of the management plan are likely to relate to the wider area and land outside the appellant's ownership, including the loading and unloading of goods and the parking of vehicles. It is not appropriate therefore to deal with such measures by condition. The requirement is supported by Policies A1 and T4 of the LP, which seek to manage the transport impacts of developments on communities, occupiers, neighbours and the existing transport network and promote the sustainable movement of goods and materials by roads and I am satisfied that this element of the obligations would meet the relevant tests.
14. The site is within an extremely accessible location, with a PTAL rating of 5 with good access to shops, services and public transport. The site is also within a controlled parking zone and, at the time of my site visit, parking was more or less at capacity. In line with Policy T2 of the LP, the proposal is intended to be 'car free' in order to reduce air pollution and congestion and improve the attractiveness of an area for local walking and cycling. Obligations are included within both the s106 and the UU to ensure that future occupiers are not entitled to a residents parking permit. As both obligations include reference to s16 of the Greater London Council (General Powers) Act 1974, the obligation effectively secures the proposal as 'car-free'. The requirement would mitigate against the harm arising from the development and the proposal would comply with the relevant development plan policies. I consider that these obligation requirements meet the relevant tests, with both the s106 and the UU secured by s16 powers taking account of relevant legal judgements on this matter¹.

¹ Westminster City Council v SSCLG and Acons [2013] EWHC 690(Admin) and R (oao Khodari) v Kensington and Chelsea RBC [2015] EWHC 4084

15. Taking the above into account, I consider the measures in both the s106 and the UU are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
16. However, I share the concerns of the Council about the document itself, its execution and thus whether the Council could rely on it to secure the obligations, particularly in relation to the highway works and the CMP.
17. The appellant requires a clause within the obligation to the effect that the mortgagee shall only be liable for a breach of the Agreement that it has itself caused whilst mortgagee in possession, but shall not be liable for any pre-existing breach. Without this clause the mortgagee will not execute the document. The Council does not agree to the clause, since were the bank to become mortgagee in possession they would be gaining the benefit of the planning permission without being bound by the planning obligation.
18. Section 106 (3) of the TCPA 1990 (as amended) provides that a planning obligation is enforceable against a) the person entering into the obligation **and** b) any person deriving title from the person. In other words, a planning obligation should 'run' with the land. If the mortgagee became the mortgagee in possession and there was a continuing breach of the terms of any obligation at that time, the obligation would not be enforceable against the mortgagee in possession. In such circumstances, the planning obligation would not be effective and would not be capable of being enforced should the situation arise.
19. In light of the above, whilst I am satisfied that the draft UU and S106 would be effective in securing car free housing², I am not satisfied that it would effectively secure a CMP or financial contribution to highway works and therefore fails mitigate against the harm arising from such. I note that this matter has been discussed between the parties at length and am aware that an impasse has been reached. In light of this and my findings above, I have not pursued the execution of either obligation further with the main parties.
20. I note the appellant's frustrations in relation to the above and acknowledge that the Planning Practice Guidance (PPG) states that local planning authorities should be flexible in their requirements and that the use of model agreements does not remove the requirement for local planning authorities to consider on a case by case basis whether an obligation is necessary. However, I have found that the measures in both the s106 and the UU are necessary, related directly to the development and fairly related in scale and kind and agree with the Council that the clause required by the appellant would render the obligations ineffective. The matters secured by the obligations cannot properly be dealt through the imposition of planning conditions.

Other Matters

21. Had the appeal succeeded the obligation would have secured the development as 'car-free' thus it would not lead to an increase in on street parking. I see no reason why the provision of cycle storage would indicate the properties are more likely to be let out and even if this was the case there is no evidence

² The nature of this obligation prevents the occupiers from being entitled to a residents parking permit or to buy a contract to park within any car park owned, controlled or licensed by the Council and this provision will remain permanently and cannot therefore be breached.

before me to suggest that future occupiers would not care for the property or its appearance.

Conclusion

22. Whilst I have found no harm in relation to the character and appearance of the area and the living conditions of neighbouring residents, I have found that the submitted planning obligations would be effective in securing a CMP or a contribution towards highway works thus failing to mitigate the harm arising from such.
23. For the above reasons, and taking all matters raised into account, I conclude that the appeal should be dismissed.

Caroline Jones

INSPECTOR