



Appeal Decision

Site visit made on 21 May 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2019

Appeal Ref: APP/X5210/W/18/3210874
87-93 Kingsgate Road, London NW6 4JY

- 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 Alison and Tim Solnick against the decision of the Council of the London Borough of Camden.
 - The application Ref: 2017/6543/P, dated 20 November 2017, was refused by notice dated 21 March 2018.
 - The development proposed is the erection of a third floor roof extension to provide 1x2 bedroom and 1x1 bedroom self-contained flat (Class C3) and erection of three storey rear extension to No. 91 to enlarge existing office (Class B1a) and flats (Class C3) at ground, first and second floor level, following demolition of existing two storey closet wing, to include associated hard landscaping and new entrance to Messina Avenue.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The site address given on the planning application form is 87 Kingsgate Road only. It is clear from both the submitted drawings and from what I saw during my site visit that the appeal site covers several buildings, namely numbers 87-93 Kingsgate Road. The decision notice issued by the Council and the appeal form use this address and I have, therefore, also used that address for the purposes of the appeal.
3. The proposed development is described on the planning application form as 'Erection of 3rd floor roof extension to provide 3 residential flats (Class C3) and erection of 3 storey rear extension to no. 91 to enlarge existing office and flats on ground, 1st and 2nd floors, following demolition of the existing 2 storey closet wing, plus associated hard landscaping and new entrance facing Messina Avenue'. The Decision Notice issued by the Council and the appeal form use the description 'Erection of a third floor roof extension to provide 1x2 bedroom and 1x1 bedroom self-contained flat (Class C3) and erection of three storey rear extension to No. 91 to enlarge existing office (Class B1a) and flats (Class C3) at ground, first and second floor level, following demolition of existing two storey closet wing to include associated hard landscaping and new entrance to Messina Avenue'. This description corresponds to the details shown on the drawings submitted with the appeal and which are listed on the decision notice. As this more accurately describes the development proposed, I have used this description for the purposes of the appeal.

4. Four of the six reasons for refusal refer to the absence of a legal agreement to secure various matters. During the course of the appeal the appellant submitted a draft Unilateral Undertaking seeking to address the matters of securing the new development as car free; securing the submission and implementation of a construction management plan; and securing remedial highways works. The Unilateral Undertaking also sought to address the matter of securing a financial contribution towards the provision of affordable housing, although the appellant disputes that it is necessary to provide a contribution. Shortly after the site visit was undertaken, the appellant submitted a signed and completed Unilateral Undertaking (the UU) with the same text as the draft.
5. There is a small technical defect in the UU in that in the information section of the text the appeal reference number is cited incorrectly. Within the interpretation section of the UU the correct appeal reference is given, and the correct planning application number is consistently referred to. I am satisfied that on a fair reading of the UU, it is clear to which proposal it is related and that although there is a minor drafting error in the text, this is not fatal to the validity of the UU.
6. Whilst the UU was not before the Council when it made its decision on the planning application, the Council has had the opportunity to comment on it as part of the appeal process and have made no comments in respect of it. This notwithstanding, the matters remain in dispute and must be considered as part of the appeal process. I have considered the appeal on the basis of the above points.

Main Issues

7. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on highway safety and parking provision in the vicinity of the appeal site; and
 - Whether the proposed development is required to contribute towards the provision of affordable housing.

Reasons

Character and appearance

8. The section of Kingsgate Road where the appeal site is located is comprised of short terraces of three storey, brick built, buildings to either side of the road, with commercial premises at ground floor level and residential accommodation on the upper floors. The buildings have butterfly, or inverted pitch, roofs concealed behind a brick parapet above a dentilled cornice. At the upper levels, a repeating pattern of windows with prominent stone or stucco heads and sills unifies the upper floors of the terraces. Whilst there have been some alterations to the ground floor shopfronts, and the façade of number 89 has been painted grey, overall this section of the street retains a considerable degree of homogeneity.
9. In the wider area, whilst the predominant building typology is terraced housing of various heights and designs, there is a range of building designs and roof

forms, particularly in the southern part of Kingsgate Road where large blocks of flat roofed buildings containing residential flats have been inserted into the older built fabric. North of Gascony Avenue, which lies just to the south of the appeal site, the built form is more consistent, comprising later Nineteenth or early Twentieth Century terraced houses with the notable exceptions of Kingsgate Workshops, housed in a three storey purpose built commercial building and Kingsgate Primary School. Despite their obviously different built form, these latter two buildings are of a contemporary age to the surrounding housing.

10. The proposed side and rear extension to numbers 91 and 93 Kingsgate Road would in part, on the elevation to Messina Avenue, reflect the design of the existing terrace and the architectural features of the houses on Messina Avenue. This would assist in integrating it into the street scene. However, the proposed three storey, flat roofed, elevation to the rear of number 91 would be significantly taller than the adjoining closet wing at number 89, rising to the same height as the parapet of the main building, and would contain windows, that are not present in the current rear elevation. Due to the relative orientation of Messina Avenue to Kingsgate Road and the fact that Messina Avenue rises in level to the east, the rear elevation of the terrace on Kingsgate Road is clearly visible and the paired rear additions to numbers 89 and 91 are a prominent feature in views from the east. The paired rear additions to the other buildings in the terrace are also visible through the gap between number 93 Kingsgate Road and the new dwelling that has been inserted adjacent to number 56 Messina Avenue.
11. Whilst I note the appellants point that the rear elevations of the buildings on Kingsgate Road are less visually attractive than rest of the terrace, the paired rear additions at the rear of the buildings are nonetheless characteristic of buildings of this type. Within the surrounding area, it is not uncommon for the rear elevations of buildings to be visible in the same view as the front elevations of buildings in a different street and, again, this is characteristic of the area. Due to its height and design this element of the proposed development would be inconsistent with other rear additions in the terrace and surrounding area which are lower in height and subordinate to the main building. This, in conjunction with the visual prominence of the rear of the buildings from Messina Avenue would be harmful to the character and appearance of the area.
12. The proposed roof extension would be a large flat roofed addition that would encompass approximately half the length of the existing terrace and would wrap around the corner of the block as it returns onto Messina Avenue. Although the set back from the existing parapet would reduce the visibility of the proposed extension from street level immediately adjacent to the appeal buildings, it would be plainly visible in short to medium range views from both the north and south on Kingsland Road.
13. Due to the relative orientation of the streets and the ascending level of Messina Avenue the proposed roof extension would be clearly visible from this road. From this viewpoint, the repeating pattern of the butterfly roofs and the chimneys of the buildings form a prominent and visually interesting skyline feature. The addition of a further storey to the buildings would result in the loss of both the chimneys and this view of a traditional form of roof and add a significant amount of additional massing at high level to this prominent corner.

Whilst the roof extension would be inset slightly from the main rear wall of the terrace and the original roof form may still be discernible, the long flat roof would significantly alter the traditional roofline and skyline.

14. Some of the windows in the proposed extension will align with those on the floors below. However, on most prominent elevation, that to Messina Avenue, and which is widely visible from the north of Kingsgate Road, the large recessed patio window to the roof terrace would introduce a window size and form that is wholly inconsistent with existing visible windows in the area.
15. I saw when I visited the site that there is a roof extension to number 92 Kingsgate Road, opposite the appeal buildings. I do not have the full details of this or the circumstances that led to it being accepted. However, I note that the Council state that this alteration was granted planning permission in 2005 and so it clearly predates the Council's current planning policies. The design guidance for roof extensions set out in the Camden Planning Guidance CPG1 states that additional storeys and roof alterations are likely to be acceptable where there is an established form of roof addition or alteration to a terrace, or group of similar buildings, and where continuing the pattern of development would help to re-unite a group of buildings and townscape. The appellant contends that the appeal proposal, when seen in conjunction with this existing roof extension, will re-unite the two terraces on either side of the road. I do not find this argument a persuasive one as the proposed extension would have a markedly different external appearance and would be significantly larger than the extension to number 92, particularly given that it would also be present above the extended façade of number 93.
16. CPG1 goes on to say that a roof alteration or addition is likely to be unacceptable where there is likely to be an adverse effect on the skyline, the appearance of the building or the surrounding street scene; or where there is an unbroken run of valley roofs; or complete terraces or groups of buildings have a roof line that is largely unimpaired by alterations or extensions. From what I saw when I visited the site, these latter points are more applicable to the appeal proposal.
17. Although part of the side and rear extension to numbers 93 and 91 would not, of itself, be intrinsically harmful, due to its height and design, the rear extension element that would replace the current rear addition to number 91 would be inconsistent with the remaining rear elevations of the terrace. The proposed roof extension would appear as a large and incongruous addition to the roof that would be visible over a wide area. The proposed small area of landscaping adjacent to Messina Avenue and the reinstatement of a wall and railings on the corner of the site would do little to mitigate this harm. Taken as a whole, the appeal proposal would detract from the homogenous appearance of the terrace of buildings and would not sit comfortably in the surrounding area.
18. I therefore conclude that the proposed development would be harmful to the character and appearance of the area. It would conflict with the relevant requirements of Policy D1 of the Camden Local Plan 2017 (the Local Plan), which expects, among other matters, that new development respects local context and character and integrates well with the surrounding streets.

Highway safety and parking

19. The section of Kingsgate road where the appeal buildings are located is restricted in width and subject to waiting restrictions along part of its length. A number of parking bays are marked out to each side of the carriageway and a controlled parking zone (CPZ) operates in the area and surrounding streets, with parking restricted to permit holders between 08:30 and 18:30 on Mondays to Fridays. At the time of my visit the on-street parking in area and surrounding streets was well used, although a small number of spaces were available. The proposed development has the potential to increase parking demand in the area. Local Plan Policy T1 seeks to promote walking cycling and public transport use, whilst Policy T2 sets out that all new development in the Borough is to be car free.
20. It is proposed by the appellant that the appeal proposal will be car free. The UU seeks to address this by containing clauses that the proposed new roof level flats cannot be occupied or used by a person or persons holding a resident's or business parking permit. This is an obligation that restricts the development or use of land in a specified way and which complies with s106(1) of the Town and Country Planning Act 1990 (as amended). Consequently, as the appeal site is within a CPZ where resident's or business parking permits are required, I am satisfied that the UU would secure the new flats that would be created by the development as car free and it would comply with Local Plan Policies T1 and T2.
21. Local Plan Policy T4 requires that a Construction Management Plan (CMP) is provided for all for developments over 2500m² that are likely to generate significant movement of goods or materials by road, both during construction and operation. The proposed site area of the appeal proposal given on the planning application form is 354m² and, therefore, the submission of a CMP is not a policy requirement. Local Plan Policy A1, which addresses managing the impact of development, seeks to protect the amenity of communities, occupiers, and neighbours and may require mitigation measures where necessary, including the use of a CMP. I accept that there are some constraints in the area in terms of parking and access and for deliveries, however, there is nothing in the Council's evidence, or the policies and supplementary guidance I have seen that would indicate that it is necessary to require a CMP by way of a planning obligation, particularly when there is no requirement in terms securing compliance with Policy T4. A CMP for a development of this scale could, if required, be secured by a planning condition and I find that an obligation to this effect would not be necessary to allow planning permission to be granted.
22. The reason for refusal in this respect also refers to a monitoring payment for supporting implementation of the CMP, which the Council suggests is £3,136. There is no indication in the evidence of where the proposed level of charge is derived from. The Camden Planning Guidance 8 on Planning Obligations states that for minor schemes the monitoring charge per head of terms of an obligation is currently £531 and for major schemes the monitoring charge per head of term is £745. These charges cover the assessment, inspection and supervision of related plans and proposals to manage impacts arising during construction. The other policies that I have been provided with are silent in this respect. I find that, from the evidence that is before me, regardless of whether there is a requirement for a CMP, there is no basis for the suggested

- monitoring fee of £3,136 to support its implementation and that an obligation to this effect is not necessary. There is no basis for charging for the monitoring of compliance with planning conditions should a CMP be required by one.
23. It is equally unclear where in planning policy terms the requirement for any re-instatement of the highway comes from and there is no evidence whatsoever of how the suggested figure of £3,993 has been calculated. The reason for refusal refers to Local Plan Policies A1 and T1. Although Local Plan Policy T1 seeks to improve the pedestrian environment to encourage walking, it makes no reference to remedial re-instatement following a development being carried out. Local Plan Policy A1 mentions requiring mitigation measures where necessary but is in no way explicit about requiring payments for re-instatement. Similarly, there are no provisions in Camden Planning Guidance 7 (Transport) regarding reinstatement. The Council's evidence refers to re-instatement of the adjoining highway which may be damaged during the construction phase. However, the evidence gives no further elaboration and from this it is difficult to determine how such a specific sum could be arrived at.
24. There is no indication that the Highway Authority have been consulted or have offered advice in respect of the above requirements. I therefore find that, on the basis of the evidence before me, an obligation is not required in this respect.
25. The appeal proposal includes the enclosure of an area of land adjacent to number 93 Kingsgate Road that is within the ownership of the appellant. Whilst this land is currently paved with flagstones and can be passed over by the public it is not legally part of the highway. Were this to be enclosed, the remaining width of footway would be similar to that which exists just to the east on Messina Avenue and the enclosure would not reduce the current width of the footway adjacent to Kingsgate Road. This aspect of the appeal proposal would not prejudice pedestrian safety.
26. Drawing these various threads together, though the submitted UU the proposed development can be secured as car free and consequently would not affect parking provision in the vicinity of the appeal site. Although the submitted UU has also sought to address the matter of a Construction Management Plan and re-instatement of the highway, these matters are not requirements of policies in the local plan or the Council's planning guidance for a development of the scale proposed, and the obligations in respect of these are therefore not necessary.
27. I therefore conclude that the proposed development would not cause harm to highway safety and parking provision in the vicinity of the appeal site. It would comply with the relevant requirements of Local Plan Policies A1 ,T1, T2 and T4.

Affordable housing

28. Local Plan Policy H4 seeks a contribution toward the provision of affordable housing on all development that would provide one or more additional homes and involve a total addition to residential floorspace of 100m² gross internal area or more. It is not in dispute that the appeal proposal meets these triggers. However, the appellant contends that the National Planning Policy Framework (the Framework) and the Planning Practice Guidance don't allow for affordable housing contributions on development of less than 10 dwellings and, consequently, Policy H4 doesn't comply with current national policy. The

Council adopted its Local plan in 2017, which predates the current version of the Framework. Nonetheless, at the time that the Plan was examined and adopted, the Written Ministerial Statement (WMS) of November 2014 on Small scale developers had been issued. This established the position that affordable housing could not be sought for schemes of less than 10 dwellings and was Government policy at time of the adoption of the local plan.

29. The Council state out that the Camden Local Plan Viability Study shows that there is no direct correlation between scheme size and viability, and there is no viability basis for an affordable housing threshold or a lower target for smaller schemes. Through the Local Plan process, the Council has made provision for the Local Plan to seek affordable housing from smaller schemes as an exception to the national threshold. Whilst I have not been provided with a copy of the Local Plan Viability Study or the Inspector's report of the Local Plan examination, I have no reason to doubt the veracity of the Council's statement. The Local Plan was, therefore, found sound having regard to Government Policy at the time, as set out in the November 2014 WMS. This Government policy was subsequently incorporated into the 2018 revision of the Framework. Consequently, there has not been a change in Government policy since the adoption of the Local Plan. The requirements of Policy H4 apply to the appeal proposal and it is necessary for the scheme to make provision for affordable housing.
30. The submitted UU sets out that a financial contribution toward the provision of affordable housing will be paid in line with the calculation in Camden Planning Guidance 8 (Planning Obligations) dated July 2015 on, or prior to, the implementation of the appeal proposal. Whilst the UU doesn't specify the amount of the contribution, it includes a method for calculation that includes reference to the relevant Council policy and so would be enforceable. I am satisfied that in this respect the UU meets the requirements of Section 106 of the Act and Paragraph 56 of the Framework. This would secure the provision of a contribution towards affordable housing derived in line with Council Policy and the relevant obligation is necessary in order to comply with Policy H4.
31. I therefore conclude that the proposed development would make an appropriate contribution towards the provision of affordable housing. It would comply with the relevant requirements of Local Plan Policy H4.

Conclusion

32. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise.
33. I have found that the proposed development would cause harm to the character and appearance of the area and is contrary to the relevant requirements of Local Plan Policy D1. The proposed contribution towards provision of affordable housing would be a benefit of the proposal but, as the precise amount of this contribution is unspecified, I can only give little weight to this. Whilst I have found that the appeal proposal would not cause harm to highway safety and parking provision in the vicinity of the appeal site this, on its own, would not outweigh the significant and lasting harm that would be caused to the character and appearance of the area.

34. No other material considerations have been identified that would indicate that a decision should be made other than in accordance with the provisions of the development plan.

35. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR