
Appeal Decision

Site visit made on 23 October 2015

by G Powys Jones MSc FRTPI

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

Decision date: 04 December 2015

Appeal Ref: APP/Y5420/W/15/3097684

2-6 Summerland Gardens, Muswell Hill, London, N10 3QN

- 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 K Patel against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2014/2640, dated 18 August 2014, was refused by notice dated 11 March 2015.
 - The development proposed is the demolition of existing 5No single storey garage/workshops and the erection of 4No two storey houses.
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Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. Reference has been made to the lengthy planning history of the site. This indicates that since the turn of the millennium a series of planning permissions and conservation area consents have been obtained by the appellant for the demolition of the garage/workshops and their replacement with dwellings. The last such permissions were granted in November 2011 under References HGY/2011/1066 & 1067. These permissions renewed permissions for identical proposals permitted in 2008.
3. The appellant, in effect, seeks to 'renew' the 2011 permissions. The planning history of the site is a material consideration in my determination, attracting moderate weight, especially since the Council has granted planning permission for identical development on two previous occasions, having regard to development plan policies applicable at the time.
4. In their reasons for refusal, however, the Council rely in support on development plan policies that were in place when the last, 2011 permission was granted. I do not consider this to be an appropriate or equitable approach, since the Council tested the development against these policies previously, and found it acceptable. The Council's position in this regard is unacceptably inconsistent.
5. The appeal should instead be assessed having regard to any material changes in planning circumstances that may have occurred since the date of the previous permission. In this respect, the Council has published the Haringey Local Plan (LP) (March 2013), the Government has published the *National Planning Policy Framework* and *Planning Practice Guidance*, and the Courts have also decided cases of relevance. I shall proceed on this basis.

6. The appellant has made an application for costs against the Council. This is the subject of a separate decision.

Main issues

7. Having regard to the foregoing the main issues are: (a) the effect on the Borough's stock of employment land/sites/floorspace; (b) whether the development would preserve or enhance the character or appearance of the Muswell Hill Conservation Area, and (c) the adequacy of the living conditions of extant neighbouring and future residents were the scheme built, with specific reference to privacy.

Reasons

Employment

8. The appeal site comprises a number of garages/workshops located on a service road to the rear of development fronting Muswell Hill Broadway. They adjoin other garages/workshops in separate ownership, one of which is used as a showroom. A gymnasium occupies some of the appellant's space, but for the most part the buildings are in a very poor, almost dilapidated condition and are unoccupied.
9. The buildings, which are of a limited floorspace, are not allocated for employment use in the development plan, but the Council consider them capable of being used for employment purposes. There is a local shortage of employment opportunities. Although the Council considers that the appellant should show evidence of marketing and lack of need/demand for the space, this was not a requirement when previous applications were considered, and no compelling explanation has been provided as to why the appellant should be treated differently now.
10. The Council has referred me to LP policy SP9 which demonstrates its commitment to address unemployment by allocating land for employment, facilitating training, and by promoting the diversification of the Borough's economy. It is considered that the employment use of the appeal property would assist in meeting the policy's objectives.
11. To my mind however, the buildings are in such a state of poor repair that it has not been adequately demonstrated that they could feasibly or fruitfully contribute towards the achievement of the Council's employment objectives in their current condition. Whilst no viability exercise has been conducted, I strongly suspect that the costs of restoration, rehabilitation and repair to bring the buildings to an appropriate standard could prove prohibitive.
12. I conclude in the circumstances that the Council's objection on the basis of loss of employment space, taking account of the LP policy SP9 is not warranted.

Conservation area

13. Although extended since, the CA was first designated in 1974, and a *Conservation Area Character Appraisal* (the Appraisal) was published in February 2008, prior to the last permission being granted on the site. The Appraisal says:

None of the buildings in Summerland Gardens is of conservation interest. The value of this area, consisting of steeply sloping ground, is in the long views out from this part of

the conservation across the Thames Valley. The area to the rear of Nos. 120 to 142 (even) Muswell Hill Broadway is occupied by a large car park, south of which are two 1960s flat roofed buildings in leisure use and an area of garages.

Stepping down the slope at the rear of Nos. 144 to 256 (even) is Summerland Grange, a three storey late 20th Century staggered block of flats. Despite their size, their location is such that they are not immediately visible in views from the Broadway or from other parts of the conservation area. The rear elevations of the properties on the Muswell Hill frontage are prominent beyond a line of single storey lock-up garages which front a narrow service road.

14. I agree with the appraisal of this part of the CA. The flat roofed appeal property is specifically mentioned, and is an unattractive and utilitarian set of buildings. Its only saving grace is that it is tucked away at the end of a cul-de-sac, where it is not too prominent. Given its low profile, I can understand why the Council should describe the garages/workshops as having a neutral effect on the CA.
15. The appellant says that the design of the replacement housing scheme and its effect on the CA has proved acceptable to the Council on two previous occasions, and there is no good reason why it should take a different view now. However, the Council's reference to a recent Court of Appeal judgment (*Barmwell v East Northamptonshire DC [2014] EWCA Civ 137*) serves as a reminder that my statutory duty is clear, being set out in section 72 (1) of *The Planning (Listed Buildings and Conservation Areas) Act 1990*. This should not be compromised by the nature of the Council's past decisions, and in any event there is insufficient evidence before me to properly judge whether the Council appropriately exercised its statutory duty when considering past applications.
16. The replacement buildings would be somewhat taller and in view of their flat roofs, rather bulkier than the extant buildings. As a result, they would be more prominent than the buildings replaced, but not unacceptably so. The appellant's Design and Access Statement says that '*the architectural style is sympathetic with the recently built adjoining properties*', being the flats called Summerland Grange. That would be the case to an extent, but in effect a mews style of development would be created, which would not look out of place in this service lane location.
17. Given the utilitarian and dilapidated nature of the extant buildings the replacement buildings, despite their greater bulk and relative modernity would prove more attractive than those replaced. To this extent, I conclude that the character and appearance of the CA would be preserved, with a slight enhancement.

Living conditions

18. The proposed two storey properties would have similar internal layouts comprised of a single garage, bathroom and a double bedroom on the ground floor, with a large living room and kitchen above. The living room is designed to open out via a set of large glazed sliding doors onto an external patio area, which would act as an external amenity space.
19. To the rear of the proposed dwellings is a substantial row of four storey residential flats. The windows and external balconies of many of the flats face the rear of the proposed appeal properties. The appellant says that the

properties, that is, the extant flats and the proposed dwellings would be subject to a 20m separation.

20. I was taken to a vantage point where the juxtaposition of extant and proposed properties became apparent. I saw that the respective properties would be far closer to one another than 20m, and this is also clearly demonstrated in one of the appellant's drawings (Ref 0121 - 55).
21. There is no doubt in my mind that the properties, extant and proposed, would be so close to one another that the extent of mutual overlooking and subsequent loss or lack of privacy would be unacceptably excessive. The wall proposed to enclose the patios would not prevent the amenity spaces being badly overlooked at close quarters from the higher windows in the existing flats. Residents of the existing flats could see into the habitable rooms of the proposed flats at relatively close quarters, and vice versa.
22. The appellant says that the relationship had previously proved acceptable to the Council. That may well be so, and the issue of residential amenity has long been regarded as a material consideration. However, I mindful that one of the Framework's core principles provides that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. That fundamental recently published national planning objective would certainly not be achieved in this case.
23. Although not a matter of seeming concern to the Council I note that the only bedroom in each proposed dwelling would be virtually subterranean. Although some natural light would be provided by rooflights, the bedrooms would have four blank walls with no fenestration, and no outlook. The lack of outlook from this habitable room merely underlines my concern that the living conditions of future residents would prove unacceptable.
24. I conclude that, contrary to the Framework's guidance and advice, the residents of the proposed dwellings would not be provided with acceptable living conditions since the levels of privacy they could reasonably be expected to enjoy would not be achieved. Additionally, the residents of some of the adjacent flats would suffer harm as a result of loss of privacy.

Other matters

25. I have considered the points raised by local residents and businesses, and I have already dealt with the main planning-related points raised. There is no compelling evidence to suggest that any of the Summerfield Grange flats' residents would be materially affected by being overlooked, and the highway objections raised are unsustainable, given the past, lawful uses of the site. Many residents expressed concern as to the congestion and disruption that would be caused during the construction period. However, this would be transitory and the worst effects could be mitigated by the imposition of conditions.
26. The Council also raised a further objection to the development, relating to the lack of provision for affordable housing either on site or in the form of a financial contribution towards provision elsewhere in the Borough. Given the nature of my overall conclusions set out below, I have no reason to deal with this matter further, other than to say that the provisions of LP policy SP2 relating to affordable housing appear to be currently very much alive and pertinent pursuant to the judgment in *R (on the application of West Berkshire*

District Council and Reading Borough Council) v Secretary of State for Communities and Local Government) [2015] EWHC 2222 (Admin). Accordingly, had planning permission been granted, I would have expected the appellant to have made provision for a financial contribution to be paid to the Council towards the provision of affordable housing elsewhere in the Borough.

27. Reference has been made to other development plan policies but those to which I have referred are the most relevant in the particular circumstances of this case. I have taken account of all other matters raised in the representations, but no other matter raised is of such significance as to outweigh the considerations that led me to my overall conclusions.

Overall conclusions

28. I find for the appellant in respect of the first two main issues identified at the outset, those in relation to employment and the effects on the CA. However, I find against him on the third main issue relating to residential living conditions and amenity. This is sufficient reason to dismiss the appeal.

G Powys Jones

INSPECTOR