



Appeal Decisions

Hearing held on 13 January 2015

Site visit made on 13 January 2015

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 23 July 2015

Appeal A: APP/V5570/A/14/2226258

Land to the East of Shire House, Lamb's Passage, London EC1Y 8TE

- 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 London City Shopping Centre Ltd and Lamb's Passage Real Estate Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref.P2013/3257/FUL, dated 13 September 2013, was refused by notice dated 31 July 2014.
 - The development proposed is the demolition of an existing works building and development of the existing surface car park with a mixed use scheme that would utilise a building up to 8 storeys in height and convert the existing historic underground vaults into a new development comprising 38 residential apartments (24 market units and 14 affordable) (Class C3), a 61 bedroom hotel (Class C1), as well as office (Class B1), restaurant (Class A3), retail (Class A1) and gym (Class D2) uses, along with the creation of a new area of public realm, associated landscaping, and alterations to existing access.
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Appeal B: APP/V5570/E/14/2226261

Land to the East of Shire House, Lamb's Passage, London EC1Y 8TE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by London City Shopping Centre Ltd and Lamb's Passage Real Estate Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref.P2013/3297/LBC, dated 13 September 2013, was refused by notice dated 31 July 2014.
 - The works proposed are conversion and alterations to underground vaults to enable use as a restaurant, ancillary areas, gym, plant and machinery spaces.
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Preliminary Matters

1. In the lead up to the Hearing, the main parties helpfully agreed a Statement of Common Ground¹. At paragraph 1.3, the SoCG includes an agreed description of development associated with the appeals. I have repeated this in the header above in respect of Appeal A.
2. The extensive vaults below, and beyond, the appeal site are part of the former Whitbread's Brewery, a Grade II listed building. Works are proposed to these vaults as part of the proposal. To describe those works, for the purposes of dealing with Appeal B, I have used a modified version of the description of the works discussed at the Hearing, and reflected that in the header above.

¹ Referred to hereafter as SoCG

3. During the course of the applications, the plans were amended several times, and further, relatively minor, changes were made as part of the appeal process. Given that no prejudice would be caused by my so doing, and as agreed at the Hearing, I have dealt with the appeals on the basis of the latest iterations of the plans, as set out in the SoCG.
4. There was some discussion at the Hearing about the Obligation under s.106. I allowed a period after the Hearing closed for a completed version of the Unilateral Undertaking² to be submitted, and for the Council and the appellant to comment upon it. Subsequently, I had to revert to the parties to canvass views on the implications of the ending of the transitional period under CIL Regulation 123(3)³, on 6 April 2015, after which obligations under s.106 designed to collect pooled contributions ('tariffs') may not lawfully be used to fund infrastructure which could be funded from CIL. Post-hearing correspondence was also necessary to deal with any implications of the adoption of Further Alterations to the London Plan⁴ on 1 March 2015.

Appeal A

5. The appeal is dismissed.

Appeal B

6. The appeal is dismissed.

Main Issues

7. The Council refused planning permission on the basis that the proposal would undermine the living conditions of existing residents in the vicinity of the appeal site through loss of daylight and visual impact. This is the main issue to be considered, therefore. The relevant decision notice goes on to say that the benefits of the scheme are not considered to outweigh that harm. The benefits that the scheme would bring forward need to be considered too, obviously.
8. In terms of Appeal B, listed building consent was refused because of the lack of an acceptable scheme. The impact of the scheme on the listed building needs to be analysed along with the general impact on the character and appearance of the area.

Reasons

Living Conditions

9. LP Policy 7.6 Architecture, referred to by the Council, says that buildings and structures should, amongst other things, not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate.
10. For a development to be acceptable, Policy DM2.1 of Islington's Local Plan: Development Management Policies⁵ requires it to provide a good level of amenity including consideration of a range of factors including daylight, over-dominance, the sense of enclosure, and outlook.

² Referred to hereafter as the UU

³ The Community Infrastructure Levy Regulation 2010 (as amended)

⁴ Referred to hereafter as LP

⁵ Referred to hereafter as DMP

11. All that chimes with the exhortation in the Framework⁶ to always seek a good standard of amenity for all existing and future occupiers of land and buildings.
12. The appellant and the Council have considered the impact of the proposal on a range of residential properties around the appeal site. Having carefully considered the technical information put forward, and visited the site, including individual flats within Shire House, it seems to me that the only impacts on living conditions that could be considered sufficient to bear on the planning balance, are those that would affect some residents of No.1 Lamb's Passage, and Shire House.
13. No.1 Lamb's Passage is a recently constructed, 7-storey, residential building, which lies to the south of the appeal site. It has full height windows to what appear to be habitable rooms facing the proposed development. Shire House is a 4-storey residential building to the west of the appeal site that sits above a 5 metre high loading and servicing bay. The flats within the complex have windows serving habitable rooms, facing the appeal site.
14. As the technical analyses show, the building proposed on the appeal site would reduce the amount of daylight reaching windows in No.1 Lamb's Passage and flats in Shire House, with the residential units on the lower levels being affected most. Similarly, the proposal would radically close off the outlook from windows facing the appeal site, and the resulting visual impact would be significant. On that basis, there would be something of a detrimental impact on the living conditions of affected residents in No.1 Lamb's Passage and Shire House through loss of daylight, and visual impact.
15. However, that is not the end of the matter, for two reasons. First, the fact that living conditions of some residents would be undermined, to a degree, does not necessarily mean that the proposal would conflict with LP Policy 7.6 Architecture which refers to *unacceptable* harm (my emphasis), or DMP Policy DM2.1 which requires a good standard of amenity to be maintained. In my view, the harmful effect on living conditions would not be so great that there would be conflict with either policy. Nevertheless, the harmful impact is still something that needs to be weighed in the planning balance.
16. Secondly, the appeal site is clearly under-used in its current guise as a car park. It will almost certainly be developed in some shape or form, as borne out by the fact that is allocated for 'redevelopment to provide a mixed use development including small scale business uses and residential uses alongside open space' in FLP⁷ Site BC 31.
17. While reference is made in the allocation to the need to respect the surrounding residential area, it is axiomatic that the need to improve the delivery of housing and job creation in the capital in order to meet substantial levels of unmet need and stimulate the economy, highlighted by the LP in particular, means that best use must be made of the site.
18. In that context, some harm to living conditions through loss of daylight and visual impact will be inevitable if the site is to be developed. The central question in Appeal A is whether the harm caused would be outweighed by the benefits that the proposal would bring forward.

⁶ The National Planning Policy Framework

⁷ Finsbury Local Plan Area Action Plan for Bunhill & Clerkenwell of June 2013

Benefits

19. As set out, the appeal site is currently used as a car park and given the tightly-packed urban grain around the appeal site, its open detracts from the character and appearance of the area. That is particularly apparent in views along Lamb's Passage towards the appeal site from the south, and the east.
20. The proposal would bring a sense of enclosure to Lamb's Passage, and the eastern part of Sutton Way and it would provide closure to the views along Lamb's Passage from the south and east referred to. In design terms, the building proposed would have a scale and appearance that would respond well to the form of other buildings in the area. On top of that, the provision of a pedestrian route across the appeal site would improve permeability.
21. All that would be a clear benefit to the immediate area and furthermore, enhance the settings of the listed buildings in the vicinity and the St Luke's and Chiswell Conservation Areas. The extensive vaults below, and beyond, the appeal site are part of a listed building and, like the appeal site, under-used. Finding a new use for these spaces, as part of the scheme, would be to the benefit of the listed building. It appears to me that subject to appropriately worded conditions, the works involved need cause no harm to its special interest. Bearing in mind the requirements of Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the approach to designated heritage assets set out in paragraph 132 of the Framework, these factors carry considerable importance and weight.
22. As I have touched on above, the proposal would bring forward much-needed employment generating uses and open-market housing. Again, bearing in mind local policy and the Framework, these weigh in favour of the proposal. However, the pressing need for the delivery of housing is not limited to open-market housing; the need for affordable housing in Islington, and London more widely, is acute.
23. It is not necessary to rehearse all the viability dealings between the Council and the appellant with regard to affordable housing. Suffice to say that, as set out in the SoCG, the adoption of the Borough CIL Charging Schedule on 1 September 2014, after the Council made its decision on Appeal A, meant that the appellant had to reassess the viability of the scheme. This affected the extent of affordable housing that could be provided. The parties have agreed, on the basis of an updated Financial Viability Assessment dated 7 January 2015, that the scheme can only provide 10 social rented and 4 shared ownership units of affordable housing.
24. This means that the proposal does not comply with CS⁸ Policy CS 12 which requires that 50% of additional housing built in the Borough over the plan period should be affordable. The policy seeks the maximum reasonable amount of affordable housing, especially social rented housing, from private residential and mixed-use schemes, taking account of the overall strategic target.
25. Given the viability issues, referred to above, that the proposal does not meet the requirements of CS Policy CS 12 target is not necessarily determinative. Nevertheless, the manner in which the provision of affordable housing is approached is important. Assuming relatively prompt implementation of the

⁸ Islington's Core Strategy of February 2011

scheme, the 14 units of affordable housing would be secured by the UU. However, the UU also makes provision for the submission of an 'Updated Viability Assessment' in the event that the proposal is not implemented after 18 months from any grant of planning permission. If this assessment shows up a 'surplus' that could be used to justify the provision of additional units of affordable housing, up to the 50% that CS Policy CS 12 would require, the UU appears to give the appellant the option of giving half of that surplus to the Council, and retaining the rest.

26. To my mind, if the 'Updated Viability Assessment' shows up such a 'surplus', then that additional leeway should be used to provide additional units of affordable housing, in order to meet, or get closer to, the requirements of CS Policy CS 12. In the context of what CS Policy CS 12 says about maximising the delivery of affordable housing, reflective of the acute shortage of such housing in Islington, and London, sharing any such 'surplus' between the Council and developer, is, in my view, an unacceptable contrivance.

Final Conclusion

27. The proposal the subject of Appeal A would undermine the living conditions of residents of No.1 Lamb's Passage and Shire House through loss of daylight and visual impact. It would however bring forward significant environmental improvements in townscape terms, provide a new use for an under-used part of a listed building and bring forward much-needed open-market housing and employment generating uses. However, the approach to the provision of affordable housing fails to accord with the requirements of CS Policy CS 12 in that in certain circumstances, the proposal would not bring forward the amount of affordable housing it could, or indeed should.
28. Bringing all these points together, I find that the benefits of the proposal, in the form it is presented, are not sufficient to outweigh the harmful impacts identified. I reach that conclusion because much the same benefit could be secured by a proposal that addressed the issue of affordable housing in a way that better reflected the objectives of CS Policy CS 12.
29. In the light of that conclusion on Appeal A, there is no larger scheme to underpin a grant of consent for the works proposed to the listed building that form part of it. It would not be correct to grant consent for those works in that overall context.
30. For the reasons given above I conclude that the appeals should be dismissed.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gary Stevens	Barton Willmore LLP
Justin Kenworthy	Barton Willmore LLP
Jerome Webb	GIA
Elizabeth Houghton	GIA
Karen Cooksley	Winckworth Sherwood
Jo Hannah	Winckworth Sherwood
Sanja Tiedemann	Collado Collins Architects
Richard Ashdown	Upside London
James Liebefrau	Winckworth Sherwood
Lloyd Simon	Western Ridge
Paul Bolton	Developer/Shareholder
Adam Hall	Falconer Chester Hall
Richard Dickson	RD Property
Simon Matthews-Williams	Sanguine Hospitality Ltd
Paul Bartrop	Sanguine Hospitality Ltd

FOR THE LOCAL PLANNING AUTHORITY:

John Kaimakamis	Principal Planning Officer, LB Islington
Ed Telepneff	Legal Team, LB Islington
Ricky Ching	CIL & Development Viability Officer, LB Islington
Eloise Lobsey	LB Islington

INTERESTED PERSONS:

Dennis Kleinberg	Chairman, Whitbread TRA
Jonathan Lang	Assistant to Chairman, Whitbread TRA
Peter Newby	Parish Priest of St Joseph's Church
Brian Holberry ⁹	Resident of Shire House
Alice Jackson ¹⁰	Resident of Shire House

HEARING DOCUMENTS

- 1 Statement of Common Ground (Final – January 2015)
- 2 Suggested description of works for Appeal B
- 3 Letter of objection dated 12 January 2015 from Richard Keczkas, Senior Planning Solicitor, LB Islington
- 4 Bundle of material submitted by GIA including updated daylight distribution contours, window maps and daylight analyses relating to 1 Lamb's Passage, Shire House, Sundial Court, St Joseph's Church, and YMCA
- 5 VSC material relating to APP/V5570/A/13/2195285
- 6 Copy of decision notice Ref.P2014/3384/LBC dated 17 November 2014 relating to Flats 15 & 19 Sundial Court and 38-42 Chiswell Street.
- 7 Copy of Draft SPD: Preventing Wasted Housing Supply
- 8 Updated Schedule of Areas
- 9 Copy of completed UU dated 2 February 2015
- 10 Revised copy of completed UU dated 2 February 2015 (plans corrected)

⁹ Took part in the site visit

¹⁰ Took part in the site visit

- 11 Bundle of representations relating to the completed UU
- 12 Bundle of correspondence relating to the involvement of UBS Triton with the Council
- 13 Bundle of correspondence dealing with the implications of CIL Regulation 123(3) as amended
- 14 Correspondence about adoption of Further Alterations to the London Plan

PLANS

- A Li56-183-02-01-001 Revision A: Proposed Location Plan
- B Li56-183-02-02-001 Revision D: Proposed Site Plan
- C Li56-183-02-03-001 Revision G: Proposed Lower Basement Floor Plan
- D Li56-183-02-03-002 Revision G: Proposed Upper Basement Floor Plan
- E Li56-183-02-03-003 Revision J: Proposed Ground Floor Plan
- F Li56-183-02-03-004 Revision G: Proposed First Floor Plan
- G Li56-183-02-03-005 Revision G: Proposed Second Floor Plan
- H Li56-183-02-03-006 Revision G: Proposed Third Floor Plan
- I Li56-183-02-03-007 Revision F: Proposed Fourth Floor Plan
- J Li56-183-02-03-008 Revision H: Proposed Fifth Floor Plan
- K Li56-183-02-03-009 Revision F: Proposed Sixth Floor Plan
- L Li56-183-02-03-010 Revision F: Proposed Seventh Floor Plan
- M Li56-183-02-03-011 Revision F: Proposed Roof Plan
- N Li56-183-02-03-012 Revision A: Proposed Upper Basement Demolitions
- O Li56-183-02-04-001 Revision C: Proposed Section 01
- P Li56-183-02-04-002 Revision C: Proposed Section 02
- Q Li56-183-02-05-001 Revision E: Proposed East Elevation
- R Li56-183-02-05-002 Revision E: Proposed West Elevation
- S Li56-183-02-05-003 Revision D: Proposed South Elevation
- T Li56-183-02-05-004 Revision G: Proposed North Elevation
- U Li56-183-02-05-005 Revision D: Proposed Sutton Way Elevation
- V Li56-183-02-91-001: Existing Lower Basement Plan
- W Li56-183-02-91-002: Existing Upper Basement Plan
- X Li56-183-02-91-003: Existing Ground Plan
- Y Li56-183-02-91-004: Existing Elevations Survey Rooms 1 + 2
- Z Li56-183-02-91-005: Existing Elevations Survey Rooms 3 + 4
- AA Li56-183-02-91-006: Existing Elevations Survey Rooms 5 + 6
- AB Li56-183-02-91-007: Existing Elevations Survey Room 7
- AC Li56-183-02-91-008: Existing Elevations Survey Rooms 8
- AD Li56-183-02-91-009: Existing Elevations Survey Rooms 10 + 11
- AE Li56-183-02-91-010: Existing Basement Sections

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