



Appeal Decision

Inquiry held on 17, 18 and 19 September 2013 and 11 October 2013

Site visit made on 11 October 2013

by Julia Gregory BSc (Hons) BTP MRTPI MCMi

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

Decision date: 15 January 2014

Appeal Ref: APP/V5570/A/13/2195285

**130-154 Pentonville Road, and 3, 4 and 5A Cynthia Street, Islington
N1 9JE**

- 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 Groveworld Rodney Street Limited against the Council of the London Borough of Islington.
 - The application Ref P121570 is dated 17 July 2012.
 - The development proposed is the comprehensive redevelopment of the site for a mixed use development comprising of approximately 3,624 sq m (GIA) of commercial floorspace (sui generis) comprised of office and 150 parking spaces associated with a car hire business; approximately 872 sq m (GIA) of B1 (office) floorspace; and 123 residential units (C3 use); together with associated communal amenity space, play space, landscaping, cycle and refuse storage, and related infrastructure and engineering works.
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Preliminary matters

1. The Council failed to determine the planning application within the prescribed period. Nevertheless, the Council resolved on 15 April 2013 that it would have refused planning permission had it been able to have done so. The putative reasons for refusal are recorded in Council Minute 413 contained within the Statement of Common Ground (SoCG).
2. Subsequently, the Council has adopted its Development Management Policies and Site Allocations Documents. The putative reasons for refusal were updated with amended policy references in Mr Durling's Proof of Evidence.
3. The SoCG identifies the areas of disagreement between the main parties. These are the relationship between the scheme and the surrounding area, including townscape and undesignated local views, and the relationship between the scheme and surrounding residential properties in respect of daylight and sunlight.
4. The main parties agreed at the Inquiry that the plans to be considered were those that were detailed within the SoCG. A supplementary SoCG was submitted at the Inquiry to provide an update on negotiations regarding conditions and a S106 agreement. An executed S106 agreement was submitted on the last day of the Inquiry.
5. In addition to the accompanied site visit on 11 October 2013, I visited the vicinity of the site the day before the Inquiry opened, on 20 September 2013 and on 10 October 2013 unaccompanied by any party.

Decision

6. The appeal is dismissed.

Main Issues

7. The main issues are the effect on the living conditions of the occupiers of adjacent residential properties in respect of daylight and sunlight and the effect on the character and appearance of the area.

Reasons

Living conditions

8. The building would comprise 5 defined blocks A to E. It would be located with its main frontage comprising blocks B to D facing onto Pentonville Road on the back of the footway. The side elevation of block D and block E would face Cynthia Street to the east. Block A and the side elevation of block B would face Rodney Street to the west. The building mass would frame the perimeter of the block, albeit that it would be set back some 1.6m from the footway in Cynthia Street.
9. The National Planning Policy Framework (the Framework) identifies as a core planning principle that planning should always seek a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings.
10. The development plan includes the London Plan 2011 (LP), the Islington Core Strategy 2011 (CS), Islington's Local Plan Development Management Policies June 2013 (DMP), and Islington's Local Plan: Site Allocations June 2013 (SA).
11. LP policy 7.6 identifies that buildings should not cause unacceptable harm to the amenity of particularly residential buildings in respect of matters including privacy and overshadowing. Intrusive overlooking in Cynthia Street would be resolved by the use of opaque glazing to certain balconies.
12. SA site KC1 identifies as a design consideration and constraint that future uses on the site and design should respect the amenity of residential properties within the vicinity of the site, but it also advocates that frontages should be positioned along the site boundary.
13. DMP policy DM2.1 specifies that development should provide good levels of amenity. This includes consideration of overshadowing which should not unduly prejudice the operation of adjoining land. The text explains that this includes negative impacts on privacy, sunlight and daylight.
14. Proposals must ensure that adjoining buildings are protected from unacceptable overshadowing. It explains that the Building Research Establishment (BRE) provides guidance on site layout planning to achieve good sunlighting and daylighting (*Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice 2011*). It thus specifically endorses its use, but does not go further to identify if and when any alternative target values it contains might be applied.
15. BRE standards include as a general rule to minimise the impact to existing property. Vertical Sky Component (VSC), No Sky Line (NSL) (Daylight

Distribution) and Average Daylight Factor (ADF) methodology information have all been submitted by the appellant.

16. In respect of VSC, if with the new development in place it would be less than 27% and less than 0.8 times its former value then occupants of the existing building will notice the reduction in the amount of skylight. It may however be appropriate to use less than 27% in certain circumstances.
17. The NSL calculates the change in the no sky line between the existing and the proposed situations. If the area of an existing room which does not receive direct sunlight is reduced to less than 0.8 times its former value, then this will be noticeable to the occupants and more of the room will be poorly lit. Areas without direct daylight will appear dark and gloomy compared with the rest of the room.
18. The ADF is primarily used for calculating daylight provision in new rooms and therefore is not appropriate to calculate the loss of daylight. Average Probable Sunlight hours (APSH) seeks to identify if a dwelling will appear reasonably sunlit.
19. The properties where daylight and sunlight considerations would be most relevant would be Hill House on the opposite corner of Cynthia Street with Pentonville Road, Gower School to the rear in Cynthia Street, Rodney House at the rear facing Donegal Street and Paul Robeson House, on the opposite side of Pentonville Road.

Hill House

20. The rooms in Hill House facing Cynthia Street served by windows that would be opposite the appeal building are single aspect and the main windows for the properties. The frontage of the building would be sited only between some 11.06m and 14.2m away from Hill House. At present buildings on the appeal site are low rise and set back from Pentonville Road, and so there is open land on the corner.
21. It is the ground, first, second and third floor windows in Hill House that would be affected. 27 windows on ground, first, second and third floors facing the site would have a VSC of less than 27% and would suffer a loss in the amount of daylight that they receive. This would range from between 23% and 79%. To over a third of the windows the loss would be more than 50%. Of these 27 windows there are 7 that serve living room/kitchen/dining rooms and a further 4 that serve living rooms.
22. Although 16 are bedroom windows that would be less important, all of the windows are to habitable rooms. Where there are rear windows, those are small and obscure glazed and provide little additional daylight to the main parts of the dwellings.
23. Even if an allowance were to be made for the balconies, as suggested in BRE guidance paragraph 2.2.11, as of themselves they restrict light, losses would be between 25% and 41% at ground floor, with an associated NSL of 58% and 59%. Only once in the second floor rooms under this calculation would the proposed VSC amount to almost 27%. In addition, in 12 of the habitable rooms there would be significant losses to the areas of the rooms that would receive direct daylight, in several, in excess of 50%.

24. ADF is not recommended for calculating loss of daylight. However if it were to be used to assess the lighting levels, three living rooms on ground floor, five bedrooms on the first floor and two open plan living/ dining/ kitchen rooms on the second and third floors would be below the BS8206 Part 2 recommended minimum.
25. In all cases, the reduction in sunlight over the year in Hill House would exceed the 4% threshold in the BRE guidance. 15 rooms would suffer a loss of winter sunlight in excess of 50% over existing levels. 5 rooms would lose over 75% with 3 rooms on first floor only retaining a proposed winter ASPH of zero or 1%.
26. The reduction in sunlight received over the whole year would be as much as 77% at ground floor. This would be significantly in excess of the 20% threshold set out in the BRE guidance. Six living rooms would experience losses of total sunlight across the year of up to 77%. VSC are currently below 27% if balconies are not discounted. The degree of harm that would be caused by the appeal building would be substantial and would demonstrably harm living conditions.
27. The BRE guidance identifies in appendix F that there might be alternative targets for setting skylight and sunlight access, for example where an existing building has windows that are unusually close to the site boundary and are taking more than their fair share of light. Hill House might be argued to be such a building.
28. Nevertheless, no alternatives have been set by the Council for the appeal site, and there would be substantial harm caused in relation living conditions of some residents in Hill House. I also note that, although the Council has not sought to oppose the scheme on that basis, that the internal daylighting in the proposed scheme does not in all rooms meet minimum ADF standards where opposite Hill House.
29. The BRE guidance does acknowledge that its guidance should be applied flexibly in central locations. This is a central location. A higher degree of obstruction may also be unavoidable if new developments are to match the height and proportions of existing buildings.
30. Although in townscape terms the perimeter approach to design is promoted by policy, there is no specific provision to mirror the adjacent Hill House, and policy provision seeks to prevent harmful impacts to living conditions.
31. I note that there are schemes elsewhere in London that have, according to the appellant, been granted planning permission without adherence to the BRE numerical guidelines. Nevertheless, I have insufficient information about the direct circumstances of those buildings and neighbouring properties to be able to determine their comparability to the impact of the appeal scheme.
32. I cannot discount the possibility, although none are before me for consideration, that alternative schemes might come forward for this site that might be acceptable that would both be appropriate from a townscape perspective and would comply, or more closely follow the BRE guidance.

Paul Robeson House

33. Paul Robeson House comprises student accommodation on the opposite side of Pentonville Road to the appeal site. Because it is student accommodation, the BRE guidance is not strictly applicable. Nevertheless, DMP policy DM2.1 applies to all buildings and the BRE guidance still provides a useful methodology for assessment.
34. The development would result in a loss of daylight of up to 36% as measured by the VSC and up to 75% against the NSL to 46 bedrooms and kitchens at ground, first, second, third and fourth floors. 38 rooms would suffer a loss of daylight beyond the minimum recommended in the BRE document. In addition, a total of 28 rooms would see a reduction in NSL in excess of the BRE recommended levels. However, because this is student accommodation which would have a transient population and is not family accommodation, I consider that the effect on Paul Robeson House would not be unacceptable.
35. Because Paul Robeson House does not face within 90 degrees of due south, sunlight is not relevant.

The Gower School

36. Although one window in a classroom would be affected and would suffer a significant loss of daylight, because the room is also served by other windows, the room would remain adequately lit.

Rodney House

37. 12 windows at ground, first and second floor levels would suffer a loss of VSC in excess of 20% and would fail the test. All the rooms on the ground floor would also suffer from a reduction in daylight distribution of between 28% and 50%. 2 rooms at ground and first floor levels would experience a loss of direct sunlight in winter months in excess of the recommended maximum. There would also be losses for some rooms on lower ground and first floors.
38. Nevertheless, if the deep recesses were taken into account then it would produce a different result. All but one window would pass the guidance and that relates to a room with a second window. It also has to be seen within the context of the effect of the extant planning permission that could be built on the appeal site. Because of these matters, I consider therefore that the scheme would not have an unreasonable effect on the occupiers of Rodney House.
39. I conclude that the development would be harmful to the living conditions of the occupiers of Hill House in respect of daylight and sunlight which would be contrary to LP policy 7.6 and DMP policy 2.1.

Character and appearance

40. LP policy 7.6 and DMP policy DM2.1 set design criteria for planning decisions. Land levels rise significantly from Kings Cross to the Angel. There is a gentle slope through the appeal site so that there would be 1 to two storeys underground providing car storage, swimming pool, cinema room, gym and plant rooms. Above ground the building would vary in height from mainly 7 storeys to 10 storeys on Pentonville Road. It would be tallest in block B at 10 storeys high on the corner of Rodney Street with Pentonville Road.

41. In Rodney Street the building would reduce from 10 storeys to 7 storeys and then to 5 storeys in height. In Cynthia Street the building would reduce from 6 storeys with set back seventh floor to five storeys and then to 4 storeys high.
42. CS policy CS6 promotes a perimeter block approach and the aim is for new buildings to be sympathetic in scale and appearance and to be complementary to local identity. New development will need to be based on coherent street frontages and new buildings will need to fit into the existing context of facades. The development would follow that perimeter block approach which is also supported by the Islington Urban Design Guide.
43. It was agreed by the main parties at the Inquiry that the widest context was that along Pentonville Road between Kings Cross and the Angel, and close by it was in Pentonville Road, Joseph Grimaldi Park, Rodney Street, Cynthia Street and Penton Rise.
44. The area to the north of the site includes Rodney House, and a 10 storey block of flats, Prospect House, facing Donegal Street. Because of the substantial massing of buildings at the rear, although the building would be 10 storeys high on the corner of Pentonville Road with Rodney Street most of the building would be screened from much of the area to the rear of Pentonville Road and would not be a significant feature in that context. The connecting elevations in Rodney Street and Cynthia Street would relate well in terms of height, massing and rhythm of fenestration to existing buildings.
45. LP policy 7.7 advocates that tall buildings should be part of a plan led approach. DMP policy DM2.1 identifies that the only locations that may be suitable for tall buildings are set out in the Finsbury Local Plan, which does not include the appeal site. CS policy CS9 identifies that tall buildings above 30m high are *generally* inappropriate to Islington's medium to low level character.
46. Because the building would exceed 30m in height it would technically be a tall building. This is why the Greater London Authority was consulted on the planning application. Nevertheless, it would only exceed 30m because of flues on the roof. These flues would not be visible from any public vantage point. Because of the use of the word *generally* in the policy, it does allow for exceptions to the prescription against such buildings.
47. Regard is to be had also to the other design policies of the development plan and to the advice in English Heritage/Cabe's Guidance on Tall Buildings. There are buildings of substantial scale and massing nearby including 10 storey buildings between Weston Rise and Penton Rise. Directly opposite the site on Pentonville Road there are buildings that are 7 to 9 storeys high on the corner with Penton Rise.
48. Because of the close proximity of these buildings, although they are on lower land, and because the 10 storey part of the building would be a relatively small part of the overall building, the 10 storey part of the building would not in terms of its height look out of character. Furthermore, the massing of the building overall would respect other substantial blocks locally.
49. When viewed from Pentonville Road looking towards Kings Cross, from quite a distance away at Claremont Square when approaching towards the building itself, the backdrop to the site is the 18 storey Nido student housing development. This would be partially obscured by the building. Because that exists, the building would sit comfortably within this context.

50. When viewed in the other direction, on approach from Kings Cross, a large part of the building would be well screened for much of the year by trees in Joseph Grimaldi Park and by street trees and so the building would not be overly dominant in views. Additional street trees may also be planted. It is important also that the Council promoted an 8 or 9 storey building and that there is an extant planning permission for a substantial 7 storey building on the corner with Rodney Street that is a fallback.
51. The site allocation KC1 identifies that there is a need to maintain and enhance views up Penton Rise. Whilst the highest part of the development would be that lying opposite Penton Rise, which rises towards Pentonville Road, again there is a significant screening by street trees. This is not a protected or particularly important view, and the traffic flow is away from the junction. The vista for pedestrians is relatively narrow because of these trees and also because of the buildings on the corner of Penton Rise with Pentonville Road to the east.
52. There is no dispute that the buildings on the site at present are of little townscape value and their removal would be beneficial to townscape. The building would improve on the current hotch potch appearance of the site which comprises mainly the car rental building set behind car parking on Pentonville Road.
53. It would thus comply with that part of the KC1 allocation design considerations and constraints because with its interesting gridded well articulated fenestration patterns, deep window reveals and inset balconies and use of a brick, stone and bronze cladding materials, its design would improve the appearance of the area.
54. Pentonville Road is a straight wide thoroughfare which rises between Kings Cross and The Angel. This is a main route on which there is a variety of buildings of different types, heights, age and quality. There are no strategic views within this area that need to be protected. Local view 8 Pentonville Road to St Pancras Chambers and Station set out in DMP policy DM2.4 would not be obstructed.
55. Joseph Grimaldi Park lies on the opposite side of Rodney Street and contains Joseph Grimaldi's grave which is a grade II listed building. The park also includes an office building, No 154A, a modern building designed with a façade to replicate the church previously within the graveyard.
56. The park is a non-designated heritage asset. It is a relatively recent 20th century creation in its current form. There are 5 separate distinct areas within park. It is not a traditional square. DMP policy DM2.3 specifies that proposals that unjustifiably harm the significance of a non-designated heritage asset will generally not be permitted. Also CS policies CS9 and CS6F seek to protect and enhance Islington's built and historic environment. The site allocation KC1 identifies, amongst other matters, that the development should conserve and enhance the setting of the Joseph Grimaldi Park with 154a Pentonville Road.
57. The 10 storey high block B on the corner of Rodney Street would mark the corner. Although it is a taller element of the overall composition with a slightly different architectural expression that would add variety to the overall design, this would not cause it to appear separate from the overall composition or be

- so tall in comparison to the rest of the building or in relation to Rodney Street that it would be unsatisfactory within its context.
58. Because the building would frame the perimeter of the block, it would serve to reinforce the townscape. The building would integrate well, by reducing in height towards the north where it would abut a proposed building on adjacent land. It would be a similar height where it would be sited opposite Hill House in Cynthia Street. The fenestration pattern and articulation of the frontage in Cynthia Street would be sympathetic to the design of the adjacent and neighbouring buildings.
59. The part of the building with the greatest dominance would be on the Pentonville Road frontage with those with lesser scale fronting the secondary frontages. This would reflect the hierarchy of streets and would increase the legibility and sense of order in the townscape. The building would provide a backdrop to the park, but because of the trees within the park would not be overly dominant in views from within it.
60. The building would be viewed at a distance from lower land closer to Kings Cross, but trees in Joseph Grimaldi Park would provide much screening to it. Although the corner of the building would be higher than the rest of the property, it would not be so much taller as to look unrelated to the rest of the building.
61. There would also be some surveillance from the upper floors across the park. From within the park the building would provide for better enclosure that would not be overbearing on its enjoyment because the 10 storey element is not for the full length of the Rodney Street elevation. Also, there is little to suggest that it harms the significance of the park as a non-designated heritage asset or the setting of the Joseph Grimaldi grave. Because the park has separate components and many trees, it is not distinguished by openness that would be harmed.
62. Because the Park provides a separation from lower buildings to the west along Pentonville Road, taking into account the buildings on the south side of Pentonville Road, I consider that the wider setting of the site to the west would not be harmed.
63. I agree with the Council that there is no particular need to mark the corner of Rodney Street with Pentonville Road because it is a small scale insignificant junction and the view up Penton Rise does not necessarily require to be terminated by such a building. Also its location half way between Kings Cross and The Angel does not warrant a landmark building. The Design Guide identifies that there may also be other ways of emphasising junctions without reliance on extra height.
64. Nevertheless, I consider that the building would not be a particular landmark and whether an alternative scheme would be preferable is not a matter for me to consider. The 10 storey block would be well integrated with the remainder of the building, rather than appearing as a separate tower, and would not appear out of context in the light of my earlier observations.
65. Although blocks C and D are not broken down into smaller vertical elements, this block would be well separated from buildings by Joseph Grimaldi Park and would relate well in height and architectural composition to Hill House to the east. The scheme would be a significant improvement to the character and

appearance of the area, would constitute a high quality design response that would have interesting articulation and would complement the character and appearance of the area.

66. Site allocation KC1, LP policy 7.7 and LP policy 7.4 all advocate active frontages. The underlying landform and topography would result in the need for a mezzanine floor for much of the commercial floorspace at level 0, fronting Pentonville Road. Choice of an appropriate material for internal mezzanine balustrading could ensure that there was human activity visible within the premises, quite close to the frontage windows in that area. The entrances to the residential parts of the scheme would not be so mean that they would appear squat within the overall scheme.
67. The car hire business would have some activity close to Pentonville Road and there would be entrances both on Pentonville Road and Rodney Street. There would be balconies on each of the outward facing elevations that would again create a positive relationship with street level activity. Although there would be a significant area of dead frontage in Rodney Street at floor level 0 this would be broken up by the vehicular entrance, the residential lobby and the car hire office would be on the corner where pedestrian activity would be most substantial. This has to be seen also within the context of being an improvement on what currently exists.
68. I conclude that the development would respect its context, would enhance the character and appearance of the area and would comply with the development plan in those respects.

Other matters

69. The executed S106 agreement dated 9 October 2013 includes provision for 22% affordable housing, for contributions towards a raft of infrastructure matters and public realm works, for local employment provisions and for controls on construction works. I do not need to discuss those matters further for the most part, in the light of my conclusions about the harm caused by the scheme in respect of the first main issue. The exception to this is where they provide a positive benefit of the scheme to be weighed in the balance.
70. The S106 agreement amongst other matters includes provision for affordable housing. CS policy CS12G requires 50% affordable housing, but the Framework identifies that market conditions over time should be taken into account.
71. The offer of 22% affordable housing, comprising 11x3 bed social rented units, 6x1 bed and 3x2 bed intermediate rental units is included in the S106 agreement. Viability information supplied by the appellant included the circumstances surrounding the site assembly, the costs of building the expanded car hire business and the difficulties associated in securing value for the expanded car hire business. On the basis of the viability information supplied by the appellant, the Council accepted a lower provision.
72. CS policy CS6 promotes office led mixed use development in Pentonville Road. The building would lie also within the LP Kings Cross Opportunity Area. The more recently adopted site allocation KC1 allocates the site for mixed use redevelopment including employment and residential uses. Any redevelopment should intensify the use of the land to provide employment uses. Furthermore there should be a net increase in office floorspace subject to viability.

73. Although the scheme is residential rather than employment led, it would provide for the transformation of an underused car rental business that would increase employment on the site from some 69 jobs to 121 jobs. The scheme was supported by a viability study. The Framework identifies that policies should avoid the long term protection of employment sites where there is no reasonable prospect of them being used for those purposes.
74. The S106 agreement would also make positive provisions for local employment both in the construction and in relation to the car hire business. This again would be a positive benefit of the proposal which needs to be taken into account in the overall planning balance. I acknowledge that the obligation provides positive benefits which weigh in favour of the proposal in respect of affordable housing and employment locally.
75. Although Islington is able to demonstrate a 5 yr housing land supply, there is a pressing need for housing in London. The scheme would provide 123 new homes including affordable homes. I acknowledge also that the development would be located within a highly sustainable location with a PTAL of 6b and that it could comply with energy efficiency criteria within the development plan.

Conclusions

76. There are substantial benefits of the scheme in respect of the character and appearance of the area and the positive provisions in respect of housing and employment creation. Nevertheless these do not outweigh the substantial harm that I have identified in respect of the effects on the living conditions of the occupiers of adjacent residential properties in respect of daylight and sunlight, for residents in Hill House. For the reasons given above, I conclude that the appeal should be dismissed.

Julia Gregory

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Russell Harris QC

He called

Andrew Beharell

Peter Stewart

Lance Harris

Jonathan Owen Davies

Murch

Pollard Thomas Edwards Architects

Peter Stewart Consultancy

Anstey Horne and Co

Savills

FOR THE APPELLANT:

Daniel Kolinsky

He called

Tina Garratt

Matthew Durling

Thomas Webster

Of Counsel

Conservation and Design Officer

Principal Planning Officer

Principal Planning Officer

INTERESTED PERSONS:

Lidija Danilovic

Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Appearances list for appellant
- 2 Supplementary Statement of Common Ground
- 3 Draft S106 agreement
- 4 Application plan PL-L01 Rev A
- 5 Brief Opening for the appellant
- 6 Opening Submissions on behalf of the London Borough of Islington
- 7 Rebuttal by Andrew Beharell to the proof of evidence of Tina Garratt
- 8 Annual Monitoring Report 2012
- 9 Islington Housing Trajectory
- 10 Note on discrepancies identified in respect of Anstey Horne Technical Assessment
- 11 Appendix 9 Heritage of DMP
- 12 Justification for early years needs south of Islington Borough from Tom Webster
- 13 Photographs of active frontage to duplex business unit (Diespeker Wharf)
- 14 Response from Sustainability Officer 18/10/12
- 15 London Plan policy 5.2 and 5.3 and 5.9
- 16 Islington Council Development Management Policies- Adoption 2013 Policy DM7.5
- 17 13 units that would have comfort cooling
- 18 S106 agreement dated 9 October 2013
- 19 Letter dated 16 September 2013 from Marples to the London Borough of Islington in connection with S106 agreement
- 20 Power of attorney for execution of documents on behalf of

- Mortgage Business PLC
- 21 Business Power of Attorney The Royal Bank of Scotland plc 14
September 2013
 - 22 Closing Submissions on behalf of the London Borough of Islington
 - 23 Appellant's closing submissions