

---

## Appeal Decision

Inquiry held on 14-17, 21 & 22 July 2015

Site visit made on 22 July 2015

**by Terry G Phillimore MA MCD MRTPI**

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

**Decision date: 22 September 2015**

---

**Appeal Ref: APP/V5570/A/14/2227656**

**Former Territorial Army Site, 65-69 Parkhurst Road, London N7 0LP**

- 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 Parkhurst Road Limited against the decision of the Council of the London Borough of Islington.
  - The application Ref P2013/4950/FUL, dated 6 December 2013, was refused by notice dated 17 October 2014.
  - The development proposed is demolition of existing buildings and erection of buildings of 4, 5 and 6 storeys accommodating 112 residential units (use class C3) together with associated cycle parking, accessible car parking, highways, landscaping and infrastructure works.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application as originally submitted to the Council proposed a total of 150 residential units in buildings of part 4, 5, 6 and 7 storeys. This was amended prior to the Council's decision, and I have considered the appeal on the basis of the agreed revised scheme and description.
3. Draft versions of a unilateral undertaking containing planning obligations pursuant to section 106 of the Act were submitted during the inquiry. Due to continuing negotiations regarding this, I agreed to accept following the close of the inquiry written comments from the Council on the undertaking and the appellant's written response to these, together with the final completed version of the undertaking. The submissions and undertaking were received according to the deadlines that I imposed and have been taken into account.

### Main Issues

4. The main issues are:
  - a) the effect the development would have on the character and appearance of the surrounding area by reason of its layout, height and massing;
  - b) the effect the development would have on the amenity and living conditions of neighbouring properties;

- c) whether the proposal complies with policy objectives relating to the provision of affordable housing.

## **Reasons**

### ***Character and appearance***

5. The site of some 0.581ha is currently vacant. The buildings of the former Territorial Army centre comprise a main south-east block which fronts Parkhurst Road and projects back into the site, with three further ancillary buildings within the rear part of the site. This widens out on the western side, and the majority of the rear inner area is a hard-surfaced open yard. A recently completed single-storey cadet centre occupies an area of land to the rear of 53-63 Parkhurst Road which previously also formed part of the centre but is outside the appeal site.
6. The site is included in the 'Islington's Local Plan: Site Allocations' document (2013) as site NH5. This identifies that it has potential for intensification for residential accommodation to help meet housing need in the borough, in addition to possible continued Ministry of Defence use on part of the site. No objection is raised by any party to replacement of the existing 1-3 storey buildings, which are of no particular merit.
7. The proposed development would be contained in 6 blocks. Blocks F, E and D would extend back in a linear arrangement from the Parkhurst Road frontage. Blocks A, B and C would form a U-shaped plan around a courtyard within the wide rear part of the site, with the open end facing towards the new cadet centre.
8. The flat-roofed blocks would have a common theme of brick, partly of two shades and with contrasting textured and latticework detailing, plus elements of concrete, glass and metal. The robust, clean lines of the buildings would be in a modern style. The Council raises no objection to the architecture and appearance of the development including the materials, and the proposal can be regarded as of a high quality in terms of detailed design.
9. The south-east elevation of block F would form the street frontage. This would comprise 3 storeys plus a set back metal-clad attic storey. The elevation would be broken down by detailing into 3 vertical elements. Lying adjacent to the site to the south-west is part of the Hillmarton Conservation Area, which includes a row of 19<sup>th</sup> century villas onto Parkhurst Road, some of which are locally listed. The proposed block F would be an improvement on the appearance of the existing undistinguished frontage building, and its scale and design would be appropriate having regard to the wider streetscape along the road and the various views in which it would be seen. The settings of the Conservation Area and its individual buildings would to a small degree be improved as a result of the development, and this carries significant weight. No harm has been identified to any of the other heritage assets in the vicinity.
10. The Council's concern arises in relation to the combined layout, height and massing of the rear blocks. It describes the site as being of a backland nature, and on this basis argues that the rear development should be subordinate to the surrounding street frontage buildings. At the inquiry it suggested that this should therefore be less than 4 storeys. In contrast to this, much of the proposed development would rise to 6 storeys. The Council relates its concern

to the absence of a proposed direct new route through the site to link Parkhurst Road with Tufnell Park Road. It considers that the provision of such a route could help justify the step up in scale into the site by way of enhanced legibility in accordance with section 2.2.4 of the Islington Urban Design Guide Supplementary Planning Document (2006). As proposed, it is argued that the development would not be in keeping with the character of the local townscape.

11. The absence of a new through route across the site was not a ground for refusal of the application, and is not contended by the Council in itself to be a reason to reject the proposal. The NH5 allocation does not mention such a route. Its provision could benefit the local area by facilitating permeability of the streetblock, with potential to improve natural surveillance, as identified by Greater London Authority officers. There is some local support for it. However, there has apparently been resistance to such a route from adjoining occupiers, and it has been opposed by the Police on grounds that it would put the security of neighbouring occupiers at risk. It would also require a break to be made in the existing wall on the boundary with the neighbouring estate of McCall House, with no apparent prospect of this.
12. The proposal seeks to safeguard the possibility of making such a link in the future by way of a route running between the linear and U-shaped blocks, with a planning obligation to secure this. The route would need to turn south-westwards at the corner of block B before exiting the site. While this would not provide a direct line of vision from the site entrance, pedestrian routes that involve turns can easily become familiar to users, and do not appear to be out of keeping with the pattern in the area. With its series of landscaped spaces adjacent to and between the blocks that could serve a variety of functions, the scheme would provide for a reasonably legible public realm within the development. In this regard it would be satisfactorily absorbed into the surrounding built context even without the immediate provision of an obvious route running through it. With respect to the planning obligation, I regard this as necessary in order to secure the scope for future provision, while also containing reasonable stipulations on the degree of public access in order to protect the interests of occupiers of the development.
13. Buildings in the surrounding area are of a mix of scales and types. As with Parkhurst Road, part of Tufnell Park Road is fronted by 19<sup>th</sup> century domestic development of 2-4 storeys, with similar development lying towards the west. Immediately adjoining the site to the south-west is a 1990's gated residential development of 1-4 storeys around a cul de sac (Moriarty Close). Adjoining to the north-east are 20<sup>th</sup> century flat blocks of 4 storeys (Holbrooke Court), and to the north-west are further flat blocks of 5 storeys (McCall House). The latter two estates extend deep from the road frontages with no diminution in height, such that buildings that do not accord with a pattern of decreasing scale towards the centre of the streetblock are already a feature of the area. There is also not a characteristically uniform grain of development in the vicinity.
14. The maximum height of the proposal would be only slightly taller than the pitched roof of McCall House. In some 6-storey sections of the proposed blocks the top floor would be set in, thus reducing the apparent bulk. Block A alongside Moriarty Close would have a stepped form on that side, with a height of 4 storeys. The neighbouring end part of block B would also be stepped. The Willow Children's Centre to the north of the site and the new cadet centre are

recent neighbouring developments that are examples of low buildings away from the road frontages, but these do not set a compelling precedent of a diminishing scale that needs to be followed. The site is of a large scale nature given its extent within the centre of the streetblock. Despite the site's shape and the limited street frontage, it is of sufficient size within its setting for the development appropriately to create its own particular character and grain.

15. However, there is a part of the proposal that pays insufficient regard to its context. Blocks E and D would include elements rising to 6 storeys, with a sharp step up from 4 storeys part way along block E. This would result in a substantial height and mass of building located alongside and very close to the north-east boundary of the site. From the rear this would be viewed in the immediate context of the 4-storey blocks of the Holbrooke Court estate which adjoins the site on this side. This relationship is not effectively shown by the appellant's view 5 illustration, in which a foreground tree at the gated entrance to the Holbrooke Court estate mostly screens the higher part of the proposal. Moving beyond this entrance and into the estate I consider that with the proximity, height and span of the proposed block, it would appear overdominant and obtrusive as seen from the north-east side and in the context of the lower neighbouring buildings. Despite the low quality of the building that would be replaced, and the design merits and articulated residential character of the proposal, the overbearing effect would be seriously harmful to this part of the local townscape.
16. Of relevance to this assessment is an appeal dismissed in 2013 relating to a proposal for a fourth floor on the flat blocks of 14-43 Northview which lie to the north-east of Holbrooke Court (ref APP/V5570/A/13/2195274). The Inspector found that this would have an unacceptably dominant presence over Holbrooke Court. In part the concern related to the contrast of materials and detailing of the proposal, resulting in a visually incongruous and top heavy addition, but the scale of the extension was also cited. The current scheme is clearly of a different nature and design, but a similar effect of dominance in the relationship to Holbrooke Court would arise.
17. According to the Framework, permission should not be refused for buildings which promote high levels of sustainability because of concern about incompatibility with an existing townscape, if those concerns have been mitigated by good design (except where there would be harm to a designated heritage asset, which does not arise in this case). The site is in a sustainable location in terms of public transport. The Council contends that the proposal would involve a reversal of the normal hierarchical pattern of building heights found both generally and in the local area, but I find that its scale would mostly not give rise to townscape harm, including with respect to local legibility. However, there would be an unduly uncomfortable relationship with the surroundings in relation to Holbrooke Court, involving an incompatibility that is not acceptably mitigated.
18. In terms of the development plan, the promotion by Islington's Core Strategy (2011) policy CS 9 of the perimeter block approach and coherent street frontages would be sufficiently achieved by the relationship of the buildings within the development to the proposed public access. The protection and enhancement of Islington's built and historic environment sought by that policy, and the quality of design objectives of policy DM2.1 of Islington's Local Plan: Development Management Policies (2013), would also be satisfied, other

than in relation to the concern identified above which would involve a breach of the policy. In the London Plan (2015), policy 3.4 requires housing output to be optimised for different types of location within the relevant density range. The proposal at 610 habitable rooms per hectare is below the range maximum of 700hrph based on the accessibility of the site. However, policy 3.4 also requires that local context and character should be taken into account. I consider this requirement not to be adequately met in relation to the concern that I have identified, which would amount to serious harm to the character and appearance of the area.

### ***Amenity***

19. Most of the site is surrounded by existing residential buildings. Due to its present mainly open condition parts of the accommodation in these buildings currently experience a largely unrestricted aspect towards the site. This contributes to standards of daylight/sunlight, outlook and privacy for the occupiers that are relatively high in the context of an inner London location. Given the acknowledged potential of the site for residential development, it is inevitable that such development would lead to a noticeable erosion of the existing level of neighbouring amenity. This is a factor to be taken into account in considering the degree of impact.
20. The Council appropriately refers to the potential for a cumulative impact on particular properties in terms of the combined effects on the various individual amenity criteria. I also have regard to this, but deal in turn with the three areas of impact that have been raised and assessed. In making my judgments I have had the benefit of visiting a number of properties around the site.

### ***Daylight/sunlight***

21. The appellant's numerical assessment of daylight/sunlight impact is based on the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2011). This is cited as guidance in the Development Management Policies (paragraph 2.13), and is an appropriate basis for assessment. It provides criteria for use in assessing existing daylight and the effects of development on existing buildings. Vertical Sky Component (VSC) is a measure of the amount of light at the window wall. Target values of 27% VSC and a reduction of no more than 20% of the existing VSC are given: if these are not met, occupants of the existing building will notice the reduction in the amount of skylight. The impact on daylight distribution can be measured by plotting the No Sky Line for an individual room. The area beyond the No Sky Line will usually look dark and gloomy, and an increase in this by 20% or more will be noticeable to occupants. The BRE guide is not itself policy, and acknowledges that the criteria are to be applied flexibly and to help rather than constrain design.
22. The appellant prepared an updated report using the BRE criteria shortly before the inquiry (dated May 2015), with common ground that this represented the agreed quantitative position. Corrections to this and other additional information, including layout plans of neighbouring properties, continued to be produced during the inquiry itself. This was unsatisfactory in terms of normal procedures on the submission of evidence, but the final calculations were effectively accepted by the Council.
23. The properties around the site identified as being of concern with respect to daylight are as follows.

#### 41-60 Moriatry Close

24. 4 flats in this block (one on each of ground to 3<sup>rd</sup> floors) have two windows facing the site. Based on the flat I saw, these windows serve a living room and an adjacent dining area. The internal space is linked, but there is a semi-partition in between the two areas, with a kitchen to the rear of the dining area and divided from it by further semi-partitioning. There is an additional window to the living room which faces north-westwards away from the site.
25. On the appellant's figures the average VSC for the 3 windows would in each case remain above 27% except for the ground floor (which has windows facing the boundary wall to the site), but here the average loss would still be less than 20% of the existing VSC. Daylight distribution in each room would remain near to 100%. I apply some caution to the average VSC and daylight distribution figures given the room layouts and presence of partitioning, with the dining areas and kitchens being more dependent than indicated by averaging on the light from the most south-easterly window. This individual window taken alone would fall below the criteria at ground and first floors. However, taking into account the relationship of the affected windows to the boundary in terms of the degree of reliance on receiving light across this, in addition to considering the internal layout, I regard the loss of daylight to these flats as acceptable.

#### 61-62 Moriatry Close

26. This comprises two units at first floor level with a number of rooflights serving habitable spaces facing the site. Due to the degree to which these rooflights are angled towards the horizontal, in revised calculations which take into account the full access to skylight and not just that available from across the boundary, the VSC in all cases would remain well above 27%. A recently inserted dormer window at a higher level would fall somewhat below the target values. However, bearing in mind that this new window serves a sleeping platform rather than a fully habitable room, the loss is again acceptable.

#### Holbrooke Court

27. There would be an effect on daylight to the 3 blocks of 4-storey flats lying to the north-east of the site. Block 41-80 (fronting Parkhurst Road) has rear windows which are perpendicular to the site boundary, with its lower floor at semi-basement level. Blocks 25-40 and 1-24 have rear windows angled towards the site.
28. Some of the nearest lower windows in block 41-80 would fall below 27% VSC but in each case retain near to 80% of their former values. Daylight distribution in the rooms would remain relatively unaffected and at high levels.
29. Flats in blocks 25-40 and 1-24 have both bedroom and living room windows facing at an angle towards the site. The latter windows have overhanging balconies which restrict daylight to them, giving relatively low existing VSCs. As a result, what would be fairly small falls in VSC would give rise to substantial percentage reductions, with a number well above 20%. This does not apply to the windows that are not overhung, which would remain close to or above the target values. In this situation the BRE guide suggests calculating the effect of the proposal without the balconies in place. When this is done, the results either exceed 27% VSC or the reductions are less or not much more

than 20%, suggesting that it is the overhangs that are the main factor in the restriction of VSC. In addition, tested with the overhangs in place the daylight distribution would remain close to 100%. Although I saw that the wide glazing to the living room windows does not extend fully down to the floor level, these results indicate that the daylight effects on these flats would also be acceptable.

#### McCall House

30. The only daylight losses for these flats to the north-west of the site would be to windows that are agreed to be of a secondary nature. The impact would not be materially harmful.

#### Sunlight

31. The quantitative analysis indicates that there would be no significant losses of sunlight to neighbouring residential properties. There would also generally be little effect on the sunlight received by outdoor amenity areas neighbouring the site, with the exception of the playspace of Holbrooke Court lying to the north. However, the level of sunlight here would fall to only just less than the BRE target value of 50% receiving 2 hours sunlight on 21 March, which is acceptable.
32. Daylight and sunlight to the interior of the Willow Children's Centre to the north of the site would be only marginally affected. There would be a small loss of sunlight to its outdoor playspace, but this would continue to comply with the target. The Council refers to the sensitivity of the Centre given the particular nature of its use, but does not regard the impact as amounting to a ground for resisting the proposal. I agree with this position.

#### Privacy

33. The following properties are identified as being potentially affected by way of overlooking.

#### 41-60 Moriatry Close

34. The south-west flank wall of proposed block B would lie 6.8m from the north-east wall of the existing flat block, with proposed windows at 1<sup>st</sup> and 2<sup>nd</sup> floor levels having a potential oblique view towards the dining area windows of the flats at above ground floor level. The most directly facing proposed windows would be secondary to combined kitchen/living/dining rooms, each of which would also have a north-west facing window. The appellant suggests that, if considered necessary, these secondary proposed windows could be fitted with obscure glass/view control film to prevent overlooking. I regard this as being warranted to safeguard privacy, which would also be reasonable in terms of the effect on outlook for the proposed accommodation given the other clear glazed window that the relevant rooms would also have.
35. At 3<sup>rd</sup> floor level on the flank of the proposed block there would be a terrace at the same separation distance. As indicated in the appellant's supplementary drawing, a planter structure could be provided at the edge of this to prevent a potential view into the existing facing flats, and similarly screen the view from the set back window at this level; again this would be a necessary measure. Above this at 4<sup>th</sup> and 5<sup>th</sup> floor levels the potential downward viewing angles would be such that intrusive overlooking to the windows of 41-60 would be

unlikely to occur due to the relative height differences. In addition, the west edges of the balconies to the north elevation of the proposed building (at distances of 12.1-15.1m) could be satisfactorily screened by the incorporation of louvre details to prevent direct views to the north-east windows of 41-60, again as illustrated by the appellant. With the above necessary measures secured by appropriate conditions, unacceptable overlooking of the existing flats in 41-60 could be avoided.

#### 61-62 Moriatry Close

36. The south-west elevation of proposed block A would have windows at 1<sup>st</sup> and 2<sup>nd</sup> floor levels at 7.7m from the rear wall of 61-62, with external access walkways alongside. These would create potential views into the rear 1<sup>st</sup> floor skylights of 61-62 and a significant intrusion on privacy. The appellant again suggests that, if considered necessary, the windows could be treated with obscure glass/view control film. However, the proposed windows would be the sole ones to bedrooms, and it would not be acceptable to obstruct outward views from the new accommodation in this manner due to the effect on the living conditions of the future occupiers. There would be no significant overlooking from the proposed 3<sup>rd</sup> floor level terraces and windows due to the green edge planter features. However, the views from the walkways at the lower levels would be only partially screened by the proposed glass balustrades and concrete upstands, again resulting in intrusive overlooking, despite that the use of these would be intermittent. I give little weight to the effect of the proposal on privacy to the dormer window in that this is a recent addition and does not serve a fully habitable space.
37. 61-62 can in some respects be regarded as a 'bad neighbour' development in that it is sited very close to the boundary of the appeal site. Nevertheless, this relationship is mitigated by the low height of the building and the use of rooflights which avoid a directly facing orientation. The proposed block A itself, despite its stepped form and limited overall height, is of an un-neighbourly nature given the combination of its proximity to the boundary and incorporation of extensive glazing and external access in the facing elevation. In this context I consider that there would be a significant loss of privacy to the existing accommodation at 61-62 by way of overlooking which could not reasonably be prevented by way of conditions.

#### Holbrooke Court

38. The rear of block E would contain numerous windows and external access walkways at multiple levels lying perpendicular to the rear of 41-80 Holbrooke Court. Given the oblique nature of the potential views towards the existing flats, despite the relative proximity, I consider that the relationship would not involve unacceptable overlooking. However, it would be a factor in the effect on outlook from the accommodation in block 41-80, which I deal with below.

#### 63 Parkhurst Road

39. This detached villa abuts the south-west boundary of the front part of the site. The front of proposed block E would lie some 10.2m from the side boundary of its large rear garden. Overlooking of gardens is a common condition within urban areas such as this, and it appears that there would have been such overlooking from the existing building when in use. However, the facing elevation of block E would feature many windows and balconies at up to 6



storeys oriented towards the rear garden. I agree with the Council that the extent of this potential overlooking would be disconcerting and highly intrusive for the occupiers, and exceed what could reasonably be expected in this location.

40. Other properties around the site would be at sufficient distances from the proposal for material overlooking to be avoided.

#### *Outlook*

41. The appellant makes a number of points that are relevant to consideration of the effect of the proposal on neighbouring outlook, as follows. Outlook is not a concept susceptible to significant submission or analysis, nor is there much policy advice relating to it. There is no right to the maintenance of a view. The issue of whether the juxtaposition of one building with another constitutes harm will depend on a variety of factors which are almost wholly contextual and judgmental. Key to whether a relationship is truly harmful will be context, distance and multiplicity of views. In the present case the context is inner London where there is a less legitimate expectation of longer distance views, and the existing open nature of the site is not an appropriate one by which to set expectations. I have taken all these points into account in making my assessment.
42. As set out above, windows in the south flank of the nearest McCall House block would face the rear of the proposed 6-storey block B. However, with the intervening distance, the distance by which block B would be separated from the boundary, and on the basis that these windows appear to be secondary and/or the respective rooms are also served by other main windows, the effect on the existing accommodation would not be unduly oppressive.
43. With respect to Moriarty Close, a general concern about an overbearing relationship of the proposal to the cul de sac is raised as an amenity issue by the occupiers. It is asserted that living conditions in the Close would be eroded by way of a constant awareness of the bulk and presence of the development. However, given the height and stepped form of proposed block A and of the end of block B, despite the proximity of these to the shared boundary, and the degree of screening that there would be by existing buildings and boundary features, this is not relationship that would amount to unacceptable harm to living conditions within the public domain of the Close.
44. The Council's concern about outlook impact within Moriarty Close relates to the flat block of 41-60. The flank wall of proposed block B would be within some 6.8m of the north-east facing wall of 41-60, as identified above. However, the building would overlap only with the dining area windows at each level. With the internal partitioning and the kitchen positioned behind the dining area, this window is important to this part of each room notwithstanding the other windows serving the larger space. Nevertheless, given that this would be a corner of the new building and there would remain an open angled view to one side of this, in addition to there being another window on this side and the dual aspect of the relevant rooms, overall the degree of enclosure created would not be unacceptable.
45. Due to the potential for upward views from the rooflights of 61-62 Moriarty Close, there would not be an undue restriction on outlook to the accommodation these serve despite the proximity of the proposed block A.

46. The rear windows of 41-80 Holbrooke Court would be perpendicular to rather than directly facing proposed blocks D and E to its south-west side. However, the line of new building would project a considerable distance rearwards near to the boundary at a height rising to 6 storeys. The angled blank flank wall of block 25-40 already features in the view from many of the rear windows of 41-80. The effect of the addition of the proposed mass of building to one side would be oppressive and unduly curtail outlook, especially from lower windows at the south-west end of 41-80. Although the existing structure on the site is in a similar position, and there are existing sections of wall and bin store restricting outlook at lower levels, the proposed new building would be considerably taller as well as deeper. By comparison it would have an improved appearance, but the presence of numerous windows and walkways on the elevation would add to an oppressive overbearing effect on living spaces in 41-80 by way of a constant reminder of the proximity of extensive living accommodation. In addition to the overbearing visual impact on the public areas of the estate, the overall effect would be a significantly harmful erosion of living conditions in nearby flats at 41-80 by way of restriction on outlook.

#### *Conclusion on amenity*

47. The Framework includes as a core planning principle that planning should always seek to secure a high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Part of policy DM2.1 of the Development Management Policies is that proposals should provide a good level of amenity including consideration of, among other matters, overshadowing, overlooking, privacy, direct sunlight and daylight, over-dominance, sense of enclosure and outlook. Paragraph 2.14 indicates a minimum distance of 18m between windows of habitable rooms to protect privacy. London Plan policy 7.6 in part states that buildings should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing and other matters. Paragraph 2.3.30 of the Mayor's Housing Supplementary Planning Guidance (2012) refers to minimum separation distances as being useful yardsticks but not to be adhered to rigidly.
48. I conclude that in many respects the amenity impacts of the proposal would be limited, but in relation to the privacy of 61-62 Moriarty Close and 63 Parkhurst Road, and the effect on the outlook of flats in 41-80 Holbrooke Court, the impact would be seriously harmful to living conditions and breach the above policies.

#### ***Affordable housing***

49. There is no dispute that there is a substantial unmet need for affordable housing both in London as a whole and within Islington. Policy 3.11 of the London Plan seeks to maximise affordable housing provision. Part B requires boroughs to set an overall target for the amount of affordable housing provision needed over the plan period in their areas. Part A of policy 3.12 on planning decisions requires that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes. This should have regard to a number of matters, including b. the adopted affordable housing targets and c. the need to encourage rather than restrain residential development. Under part B,

- negotiations on sites should take account of their individual circumstances including development viability and other identified matters.
50. The Core Strategy pre-dates the latest version of the London Plan, but is broadly consistent with the above policies. Thus part G of policy CS 12 requires that 50% of additional housing to be built in the borough over the plan period should be affordable. It seeks the maximum reasonable amount of affordable housing, especially social rented housing, from private residential and mixed-use schemes over a 10 unit threshold, taking account of the overall borough wide strategic target. It is expected that many sites will deliver at least 50% of units as affordable, subject to a financial viability assessment, the availability of public subsidy and individual circumstances on the site.
  51. The proposal would provide 16 of the units as affordable housing, which equates to 21% of the total by habitable rooms or 14% by units (to be secured by planning obligation). The Council contends that this does not represent the maximum reasonable amount as required by the development plan taking into account viability considerations.
  52. The Council has undertaken a borough wide viability appraisal with respect to affordable housing provision. However, there is still a need to assess the viability of individual schemes, as the policy recognises. While 50% is the strategic target, any level below this could be in accordance with the plan providing it is shown to be the maximum reasonable amount.
  53. The Framework advises that, to ensure viability, the costs of any requirements likely to be applied to development, such as for affordable housing, standards, infrastructure contributions or others, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
  54. The national Planning Practice Guidance (PPG) extends this policy to decision-taking. In cases where viability is relevant, realistic decisions must be made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.
  55. The PPG notes that there is no standard answer to questions of viability, nor is there a single approach for assessing viability. Underlying principles for understanding viability in planning are: evidence based judgment, informed by the relevant available facts and requiring a realistic understanding of the costs and value of development in the local area and an understanding of the operation of the market; a collaborative approach including transparency of evidence; and a consistent approach.
  56. For viability assessment in decision-taking, the guidance is that this should be informed by the particular circumstances of the site and the proposed development in question. A site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken.
  57. Local planning authorities are advised to be flexible in seeking planning obligations where it is demonstrated that these would cause development to be unviable. This is stated to be particularly relevant for affordable housing

contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability.

58. Advice is given on gross development value and costs. These matters are not in dispute in the present case.
59. The PPG further identifies that the assessment of land or site value is central to the consideration of viability, and will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case, but there are common principles which should be reflected. It is stated that, in all cases, land or site value should:
- reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy (CIL) charge;
  - provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and
  - be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.
60. On what is a competitive return to willing developers and land owners, the PPG states that this will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options, it is stated, may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.
61. Both the Mayor's Housing SPG and the Council's Planning Obligations Supplementary Planning Document (2013) advocate the use in most circumstances of a conventional residual value based viability assessment, which compares the net development value with an existing use value as the benchmark. This is to determine whether the development would generate sufficient return, including a return to the developer by way of profit, to incentivise the release of the land by exceeding a level above the existing use value as the comparator benchmark. In the present case the existing lawful use of the site as an army centre has a use value, at around £750,000, which is very low due to the restricted nature of this use. There is agreement that this figure does not represent a reasonable basis for establishing the benchmark value; since the site is allocated for residential development in the development plan, and therefore potentially of much higher value, no reasonable landowner would release it for a sum that does not reflect this enhancement.
62. In fact, it is known that the appellant purchased the site as the successful bidder in a competitive bid sale undertaken on behalf of the Ministry of Defence in May 2013. The purchase price was £13.25M. The appellant updates this figure to £13.26M, and argues that this should be an input into the viability calculation as a fixed acquisition cost. Based on the agreed values and other costs, including a total of some £2.67M for planning obligations and Mayor and

Islington CIL contributions, a profit level based on the offered affordable housing contribution is calculated. At some 16.50% on scheme cost and 14.31% on scheme value, this profit is below the normal target values of 20% and 16.67% respectively. While sensitivity testing indicates potential to reach the targets, the appellant argues that the scheme is not capable of providing more affordable housing than is offered, since this would place significant strain on the development's economics and diminish returns, with the result that it could not be delivered.

63. The Council has carried out residual valuation calculations using the same values and costs and target profit level, the latter which is also not in dispute. The calculations use the alternatives of 50%, 40% and 32% affordable housing (as a percentage of floor area, compared with the appeal scheme's 15% on the same basis adjusted to achieve break-even point). The calculations give a residual land value of £4.98M, £7.32M and £9.35M respectively. On this basis it is argued that the price paid for the site was excessive since it did not properly reflect the policy imperative to maximise affordable housing, with an expectation of 50% provision.
64. The Council has put forward no market-based evidence, which the PPG indicates is important, to support its suggested land value figures. Conversely, the appellant relies on several elements of evidence to support the figure of £13.26M, as follows.
65. The first is the purchase price itself. The RICS guidance on Financial Viability in Planning (2012) expresses some caution about reliance on purchase price in arriving at site value for assessment of financial viability, including having regard to the assumptions made by the developer, which might be unreasonable or over-optimistic. In this case the Ministry of Defence was bound by a best consideration requirement, and can be regarded as a rational seller. In addition to the successful bid, certain other information from the bid process is available. The underbid was only 2% lower and was by a Registered Provider. The appellant's argument that such a purchaser can be assumed to have reasonable knowledge of the local market and be unwilling to overpay for land is not contested. There were also what are described as "a number" of bids within 13% of the winning bid, which would therefore have been above around £11M. Full information is not available on these unsuccessful bids, including on the assumptions made by the bidders and on their financial positions. There is also some confusion regarding the extent of confidentiality requirements that apply to the details of these bids. However, the accuracy of the available information is not questioned, and this suggests that the successful bid was not significantly out of kilter with other bids that were made for the site.
66. Secondly, the site has been the subject of a recent (May 2015) unsolicited offer made by one of the previously unsuccessful bidders, a major housebuilder. The offer was at £15.75M for an unconditional purchase.
67. Thirdly, an independent valuation of the site on a Red Book basis has given it a value of £15.5M as at May 2015. This appears to have relied strongly on the evidence of the sale of the site and of a residual appraisal that was undertaken based on 25% affordable housing provision (in a scheme of 125 units). However, other market evidence was also considered, and such a valuation is

- bound by the relevant professional responsibility requirements as needing to be a true reflection of the market.
68. Finally, the appellant has carried out an assessment of what are described as comparable transactions. This analysis is of 21 larger residential development land sales in Islington since 2010. It produces a wide range of prices paid pro rata to area, with the equivalent price paid for the appeal site being at the lower end of this range. A further sub-set of 7 sites are examined which are considered by the appellant to be particularly relevant. While not all in Islington, they are relatively nearby and can be regarded as within the same market area. The results generate a comparable range in value for the appeal site of £12.98-16.44M, so that the site value used by the appellant is again towards the lower end of a range. Clearly the details of the comparator sites will vary in terms of location, nature, size, constraints, and the content of proposed schemes. The assumptions made by purchasers are also again unknown. However, the RICS guidance emphasises the importance of comparable evidence, while recognising that in many cases relevant up-to-date evidence may not be available.
69. These individual elements of the appellant's evidence each have limitations. However, taken together they provide a consistent indication that the price paid for the site was not at a level significantly above a market norm. There is no counter evidence to contradict this picture. Having regard to the advice of the PPG, there is no reason to exclude the purchase price as part of the exercise of arriving at a land value for the site.
70. The Council points to the PPG's statement that land or site value should reflect policy requirements as well as planning obligations and CIL. This is consistent with the special assumption approach of the RICS in its definition of site value: that this should equate to the market value but "has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan". In this respect it is argued that the appellant's evidence generally contains no assessment as to whether the comparisons used were policy compliant, in particular with regard to affordable housing and/or the justification for the specific level of provision of this that was made in each case. It is therefore contended that the appellant has not engaged with the need to adjust the market evidence in accordance with the special assumption; and that, conversely, in effect the particular constraints of other sites are imported into the valuation of the appeal site, leading to a benchmark which assumes that a low level of affordable housing will be acceptable.
71. Detailed information was produced by both parties on the levels of affordable housing achieved in recent decisions in the borough. This was not examined at the inquiry, with the parties content to rely on the written material. It indicates that around 25% provision is typical but with a wide range. Nevertheless, as set out above, while compliance with the development plan policy can involve an acceptance of provision down to 0%, as argued by the appellant, this does preclude the need to consider whether the maximum reasonable amount is being secured in a particular case. In the present one, it is fair to characterise the site as appearing to be relatively unencumbered by abnormal costs such as might arise for example from demolition or remediation complexities, notwithstanding the location adjacent to a Conservation Area. This is in addition to the site having a very low existing use value, with

consequent scope for a substantial uplift in value from a potential residential development even on the Council's lowest residual valuation figure.

72. In this context I can understand the wider concern of the Council about the possible effect of inputting purchase prices which are based on a downgrading of the policy expectation for affordable housing on the eventual outcome of a scheme viability appraisal. If such prices are used to justify a lower level of provision, developers could then in effect be recovering the excess paid for a site through a reduced level of affordable housing provision. Such a circularity has been recognised in research for the RICS, and the Council in its SPD and the GLA (in its Development Appraisal Toolkit Guidance Notes of 2014) are alive to this potential outcome of using purchase price as an input in viability assessment. The Council postulates an undesirable scenario of diminishing returns of affordable housing and eradication of the potential to achieve its delivery. It argues that the current appeal is an opportunity to return to a proper approach.
73. However, the PPG clearly distinguishes land value from the viability of a particular scheme. The appellant appropriately contends that different purchasers will have different views on a likely scheme, and residual valuations can be very sensitive to small variables. Moreover, the PPG stresses the need to take account of market signals. The only information on such signals in this case supports the use of the appellant's land value figure. Importantly, the evidence does not suggest that a reasonable landowner would be incentivised to release the land for development at the value suggested by the Council. The options for a rational owner in a rising market include that of holding onto the land rather than selling it below a value indicated by the market.
74. In this respect, an essential aspect of development plan policy on affordable housing is to encourage rather than restrain development. This is consistent with national guidance which seeks to avoid jeopardising viability. The boosting of housing development in general terms assists in the supply of affordable housing. National policy is firmly in favour of realism and flexibility where the viability of a development is in question. In this case, the market evidence supports a higher valuation for the site than that used by the appellant and the scheme is strictly not viable on the current figures.
75. Taking all of the above into account, the appellant's land value figure can be regarded as adequately reflecting policy requirements on affordable housing. Bearing in mind that the development plan policy is to seek the maximum reasonable rather than the maximum possible amount of affordable housing, on the available evidence of the current position I consider that what is being offered in this case would achieve that.

#### *Review mechanism*

76. The submitted unilateral undertaking contains a planning obligation relating to an affordable housing review. This includes a clause that the obligation would take effect only if found in this decision to meet the tests of Regulation 122 of the CIL Regulations 2010, one being necessity. The obligation would provide for a review of the affordable housing provision by way of an updated viability assessment if the development is not implemented within 12 months of the date of permission.

77. The PPG advises that viability assessment in decision-taking should be based on current costs and values, and planning applications considered in today's circumstances. However, where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in the costs of delivery may be considered. Part B of policy 3.12 of the London Plan refers to negotiations on sites taking account of, among other matters, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'). Such reappraisal mechanisms for large schemes built out in phases are also referred to in the Mayor's Housing SPG, with for schemes with a shorter development term consideration to be given to using short-term permissions or section 106 clauses to trigger a review of viability if a scheme is not substantially complete by a certain date. Such approaches are said to be intended to support effective and equitable implementation of planning policy while also providing flexibility to address viability concerns such as those arising from market uncertainty. The Islington SPD also provides support for review mechanisms.
78. The emphasis of both the development plan and the PPG is on securing such arrangements for phased developments. While the current proposal is not intended to be built out in phases, it is of significant size and comprises relatively discrete parts. In addition, there is no dispute that future rises in values can be expected, which could have a considerable effect on the viability of the development. The level of affordable housing provision being made is well below the target of 50%. Taking all these factors into account, and having regard to the policy context, this is therefore a case that warrants a mechanism to ensure the potential for securing a higher level of provision in the event of material changes affecting viability.
79. The trigger for an additional payment in the obligation of a profit level above 20% and a split of the surplus such that 60% would go towards affordable housing are reasonable clauses in this particular case given the risk profile for the developer and the need to ensure sufficient incentive. Other aspects of the mechanism also appear to be reasonable in the specific circumstances. On this basis I regard the obligation as being both necessary and reasonable.
80. With regard to other appeal cases involving review mechanisms that have been referred to, one relates to a proposal in Buckinghamshire (ref APP/N0410/A/14/2228247) and therefore the development plan context differed from the current one. The other is on a scheme in Islington (ref APP/V5570/A/14/2226258 & APP/V5570/E/14/2226261), but there is no information before me with respect to the details of the viability assessment. Neither case therefore provides a firm precedent on the points relied upon by the parties for the current appeal.

#### *Conclusion on affordable housing*

81. I conclude that, with the obligations to secure affordable housing including the review mechanism, the proposal complies with policy objectives on this matter.

#### **Overall Conclusion**

82. I have found the proposal to be acceptable in relation to affordable housing. However, it has serious shortcomings on certain aspects with regard to the effect the development would have on local character and appearance and neighbouring amenity, despite the other positive findings on these issues.



83. The scheme would bring important benefits in terms of the delivery of housing and specifically affordable housing and the re-use of a brownfield site, and some improvements to the settings of heritage assets. I have also taken into account the planning obligations and proposed conditions. However, with the environmental harms the proposal would not be fully sustainable development, as well as conflicting with the development plan. These harmful impacts outweigh the benefits, and warrant refusal of planning permission.
84. I have taken into account all other matters raised including the comments of the local Design Review Panel and other appeal decisions that have been referred to. For the reasons given above I conclude that the appeal should be dismissed.

*T G Phillimore*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Daniel Kolinsky QC    Instructed by London Borough of Islington

He called:

Victor Grayson BA(Hons) MTP MAUD	Principal Planner, London Borough of Islington
Andrew Jones BSc MRICS	Director, BPS Chartered Surveyors
John Wacher BA MSc MRTPI	S106 and Development Viability Manager, London Borough of Islington

### FOR THE APPELLANT:

Russell Harris QC    Instructed by Herbert Smith Freehills LLP

He called:

Simon Allford BA DipArch RIBA AHMM	Director, Allford Hall Monaghan Morris
Peter Stewart BA DipArch RIBA	Peter Stewart Consultancy
Michael Harper BSc MSc MBA MRICS	Founding Partner, Waldrams Ltd
Robert Fourt BSc(Hons) MSc FRICS	Partner, Gerald Eve LLP
Jonathan Murch MA TCP MRTPI	Davies Murch

### INTERESTED PERSONS:

Marian O’Gorman	Local resident
Stacey Broughton	Local resident
Jake Beaumont-Nesbitt	Local resident
Marianne Delon	Local resident
Greg Cooper	Partner, Metropolis Planning and Design, for Moriarty Close Management Board
Carolyn Hodkin	Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Appellant’s opening submissions
- 2 Council’s opening submissions
- 3 Tesco v Dundee City Council [2012] UKSC 13
- 4 2 x Holbrooke Court room layout plans
- 5 Mr Beaumont-Nesbitt’s sketch layout plan
- 6 Savills’s Planning Note on Detailed Review of AMR Data
- 7 Council’s response to Savill’s Planning Note
- 8 Mr Cooper’s statement

- 9 Mr Harper's revised calculations for 41-60 Moriatory Close and layout plan for 49 Moriatory Close
- 10 Mr Harper's revised calculations (VSC) for Holbrooke Court
- 11 Mr Harper's revised calculations (DD) and plan for Holbrooke Court
- 12 Appellant's summary schedule on s106 obligations
- 13 Savill's Note on Council's response to Savill's Planning Note
- 14 Appeal decision ref APP/V5570/A/11/2160872
- 15 Appeal decision ref APP/V5570/A/10/2139585
- 16 Appeal decision ref APP/V5570/A/14/2214889
- 17 Islington Planning Committee Report on application P2014/1792/FUL
- 18 CBRE Valuation Report dated 12 June 2015
- 19 Mr Fourt's summary of purchase price, offers and valuations
- 20 Council's bundle of correspondence re: bid process
- 21 Appeal decision ref APP/E3525/S/15/3006060
- 22 Neighbouring residents' details for site visit
- 23 Council's response to draft s106 unilateral undertaking
- 24 Draft s106 unilateral undertaking
- 25 Statement on behalf of residents of Holbrooke Court
- 26 Appellant's draft condition 35
- 27 Appellant's note/plans on overlooking and privacy
- 28 Appellant's outlook plans
- 29 Appellant's revised summary schedule on s106 obligations
- 30 Revised draft s106 unilateral undertaking
- 31 Council's closing submissions
- 32 Appellant's closing submissions

#### **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

- 33 Council's response dated 31 July 2015 to draft unilateral undertaking
- 34 Appellant's final position note dated 5 August 2015 on unilateral undertaking
- 35 Unilateral undertaking dated 5 August 2015