

Date: 23/08/2023
Your ref: APP/X5210/W/23/3319858
Our ref: 2022/2203/P
Contact: Alex Kresovic
Direct line: 020 7974 3134
Email: alex.kresovic@camden.gov.uk



Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk

The Planning Inspectorate
3D - Eagle, Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Sir/Madam,

Town and Country Planning Acts 1990 (as amended)
Planning Appeal Statement (Authority)
Appellant: Mr. John Clarke
Site: St Johns Lodge, Harley Road, London, NW3 3BY

I write in connection with the above appeal against the Council's refusal to grant planning permission for the following:

"Erection of timber conservatory to side (King Henry's Road) elevation."

Appeal by Mr John Clarke against refusal of planning permission for the above proposed development on grounds of design/conservation, daylight concerns and tree concerns.

The Council's case is set out primarily in the delegated officer's report that has already been sent with the questionnaire and is to be relied on as the principal Statement of Case. Copies of relevant policies from the Camden Local Plan (adopted July 2017) and accompanying guidance were also sent with the appeal questionnaire.

In addition, Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, comments on the Appellant's grounds of appeal and further matters that the Council respectfully requests be considered without prejudice if the Inspector is minded to grant permission.

1 Summary of the Case

- 1.1 The application site is a three storey (with basement) building. It is located on a corner plot at the junction with King Henry's Road and Harley Road. It is subdivided into four self-contained flats. It is constructed in yellow brick with pitched tiled roof and ground floor bay windows and set within a landscaped plot which has significant mature trees lining the boundaries.
- 1.2 The building, which is known as St Johns Lodge is unlisted, but it makes a positive contribution to the Elsworthy Road Conservation Area.
- 1.3 The application site is located within a Tree Protection Order (TPO).
- 1.4 There are various planning decisions relating to the site. Of note, planning permission 2022/2145/P was granted in 2023 for the substantial demolition of front, side and rear of existing building and re-modelling to form a new 4 storey 5 bedroom house with re-modelled front and rear hardstanding/garden including a bin store, bike store and air source heat pump in front of the new house.
- 1.5 Permission was refused for the conservatory on the following 3 grounds:
 - *The proposal, by way of its siting, size/height and design/materials would represent an incongruous and inappropriate addition to the building, detracting from its character and appearance in the Conservation Area. As such, the proposal is contrary to policies D1 (Design) and D2 (Heritage) of the LB Camden Local Plan, the London Plan 2021 and the NPPF 2021.*
 - *Without a Daylight Assessment the proposal is considered likely to result in a loss of daylight and obscuring of the adjacent bedroom of the lower ground floor flat. Furthermore, due to its height, design, extent and proximity to the bedroom window, the proposed conservatory, and steps thereto, would result in an unacceptable sense of enclosure, increased overlooking and a loss of outlook for the occupiers of the lower ground floor flat. The proposal is therefore contrary to policy A1 (Managing the impacts of development) of the LB Camden Local Plan 2017, the London Plan 2021 and the NPPF 2021.*
 - *Without the submission of an Arboricultural Impact Assessment, the proposal does not demonstrate that the impact of the scheme on the existing trees will be of an acceptable level and may potentially cause harm to the TPO trees in accordance with BS5837:2012 – Trees in relation to design, demolition and construction.*

2 Status of Policies and Guidance

- 2.1 On the 3rd of July 2017, the Camden Local Plan 2017 was formally adopted. The Council's policies are recent and up to date. They do not differ from the NPPF policies in relation to this appeal.
- a. The following policies from the Camden Local Plan 2017 are relevant to this appeal:
 - Policy D1 (Design)
 - Policy D2 (Heritage)
 - Policy A1 (Managing the impact of development)
 - Policy A3 (Biodiversity)
 - b. Given the site lies within the Elsworthy Road Conservation Area, the Elsworthy Road Conservation Area Appraisal and Management Strategy (2009) is relevant to this appeal.
 - c. With regards to supporting documentation in Camden Planning Guidance (CPG), the specific clauses most relevant to the proposal are as follows:
 - CPG Amenity 2021
 - CPG Design 2021
 - CPG Home Improvements 2021
 - CPG Housing 2021
 - CPG Biodiversity 2018

3 Comments on the appellant's grounds of appeal

3.1 Reason for refusal 1:

Appellant's Grounds of Appeal are summarised in italics and addressed subsequently as follows:

- 3.1.1 *The appellant argues the scheme has been sensitively designed, in terms of scale and height, and positioned to ensure that it would appear as a high quality, appropriate addition to the host building that would not result in any harmful impacts on the quality and character of the area, and existing host building, whilst acknowledging the sensitive setting of the site within the Elsworthy Road Conservation Area and public benefits the proposal would result in.*
- 3.1.2 *The appellant continues to argue the scale and height proposed ensures that the development would not compete with the architectural form, bulk and mass of the existing property which could still be appreciated in views through the foliage from Harley Road and King Henry's Road. In addition, the prominence of the development would be mitigated by the mature trees and shrubbery which border the site and even when the trees are bare views through into the site are significantly restricted.*
- 3.1.3 *The development would be positioned approximately 1.6m from the northern boundary which would increase to 3.1m due to the position of the building in relation to the boundary line.*
- 3.1.4 *The appellant concludes that the development proposed at St Johns Lodge would not detract from the wider setting, and the context should be taken into consideration although the modern developments are not within the Elsworthy Road Conservation Area.*

3.2 The Council response:

- 3.2.1 The application site is situated within the Elsworthy Road Conservation Area and is identified as a positive contributor. The application site is situated at the intersection of the conservation area and plays an important role at the King Henry's Road and Harley Road junction as the application site is the first visible building when entering the conservation area from the north.

- 3.2.2 This is a key and important entrance to the conservation area from the north and makes a notable contribution to its significance, along with the immediate setting of this part of the host building, announcing its presence in the street and conservation area. The proposal would be prominently sited on the northeast facing elevation and would be visible within the King Henry's Road streetscene, partly owing to its raised height, at upper ground floor level, and would conflict with the setting of Conservation Area.
- 3.2.3 In addition, the boundary of the site has a number of mature trees and shrubbery which border the site, as identified by the appellant, however excessive light spillage from the large window openings would make the proposed conservatory visible through the trees and shrubbery (bare/not bare), most notably to the northeast facing elevation, and to the windows of units within the host building on the application site. This harm to the important part of the setting would therefore cause harm to the significance of the building and the Conservation Area (designated heritage asset), albeit less than substantial.
- 3.2.4 The application site, although not listed, obtains a considerable amount of its significance from its wider setting particularly this principal entrance to the conservation area and street setting. The proposed conservatory would also obscure views and dominate St John's Lodge on the King Henry's Road elevation, thereby diminishing the building's significance and its contribution to the setting of the conservation area and public realm. Overall, given the scale of the conservatory and its visibility and dominance within views on the King Henry's Road elevation, the proposal would cause unacceptable harm to Conservation area.
- 3.2.5 Council Officer's disagree with the appellant conclusion that the wider setting, which includes modern development to the north of the site such as the UCL Academy, the Marriot Hotel, Chalcots Estate, and the Swiss Cottage Leisure Centre, should be taken into consideration although not within the Elsworthy Road Conservation Area.
- 3.2.6 The development to the north of the application site is vastly different in terms of scale, size, and context, resembling more commercial development which cannot be readily seen within the Elsworthy Road Conservation Area. The development to the south of the site, and within the conservation area, has a scale of development which is similar to the host building and consistent in context, and does not compare to the modern development to the north.

- 3.2.7 Considerable importance and weight have been attached to the harm to the significance of the designated heritage asset (Elsworthy Road Conservation Area), as required by legislation and the NPPF. The harm to the significance of the non-designated heritage asset (host building, positive contributor) is a matter of judgment in the planning balance, and considerable weight has also been attached to this especially given the positive contribution it also makes to the wider significance of the Elsworthy Road Conservation Area.
- 3.2.8 Local Plan Policies D1 and D2, and Chapter 16 (Conserving and enhancing the historic environment) of the NPPF, seeks to preserve and enhance designated heritage assets. The NPPF states in Paragraph 202 that *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”*.
- 3.2.9 Paragraph 203 states: *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*
- 3.2.10 Council acknowledges that the proposal would have short term public benefits in the sense of providing short term employment. Private benefit in terms of increasing gross floor area to a unit is not considered to be of public benefit as suggested by the appellant. This has been given moderate weight in this particular case. It is assumed there would be some negligible public benefits in terms of employment and economic activity from construction of the proposal, but this has been given minimal weight. Nevertheless, weighing the harm caused to the heritage assets and streetscape character, it is considered on balance that the benefit to the public arising from the proposal would not outweigh the harm arising to Elsworthy Road Conservation Area. The harm to the host building (St John’s Lodge), and wider character and amenity of the local area further weigh against a recommendation for approval.
- 3.2.11 Overall, therefore, on balance, the proposed development does not accord with Chapter 16 of the NPPF which seeks to preserve and enhance heritage assets. The proposal is also contrary to the design and heritage policies of the Development Plan. As such, the proposal is considered to be unacceptable in terms of siting and appearance.

3.3 Reason for refusal 2:

3.3.1 *The appellant argues that the development by reason of its elevated position on brick columns would not break a 45 degree line of sight taken from the nearest habitable room window to the occupiers of the lower ground floor flat, and as a result would not have an adverse impact to the daylight/sunlight, loss of outlook, overshadowing, increased sense of enclosure and loss of privacy.*

3.3.2 *The appellant advises the scheme proposes to relocate the staircase to the south-eastern side of the conservatory. The steps at ground level would be positioned approximately 5.3m from the side wall of the building which would decrease to 2.2m at the landing entrance to the conservatory. It is envisioned this would not bring occupiers any closer to the basement windows than can already be achieved from the communal garden area and would mitigate direct views to the habitable room window to the occupiers of the lower ground floor flat.*

3.4 The Council response:

3.4.1 The development plan and Camden Planning Guidance clarifies that the Council will have regard to the BRE publication Site layout planning for daylight and sunlight (currently the 2022 edition) when considering impact on light. Page 17 of the BRE guidance on daylight and sunlight makes clear that "A significant amount of light is likely to be blocked if the centre of the window lies within the 45° angle on both plan and elevation."

3.4.2 Floor plans reveal that the northeast elevation windows at lower ground floor serve two bedrooms, bedroom 2 (bay window) and bedroom 3. The master bedroom has a window on the northern elevation and does not have any windows on the northeast elevation. The side window of the bay of bedroom 2 at lower ground is within the 45degree in elevation, not in plan, and is unlikely to have a significant impact on daylight.

3.4.3 However, the northeast elevation window of bedroom 3, at lower ground floor, is well within the 45degree line in both plan and elevation, not only marginally, but would have a significant impact on daylight, as it would be the only window serving that room. Refer to below figure.

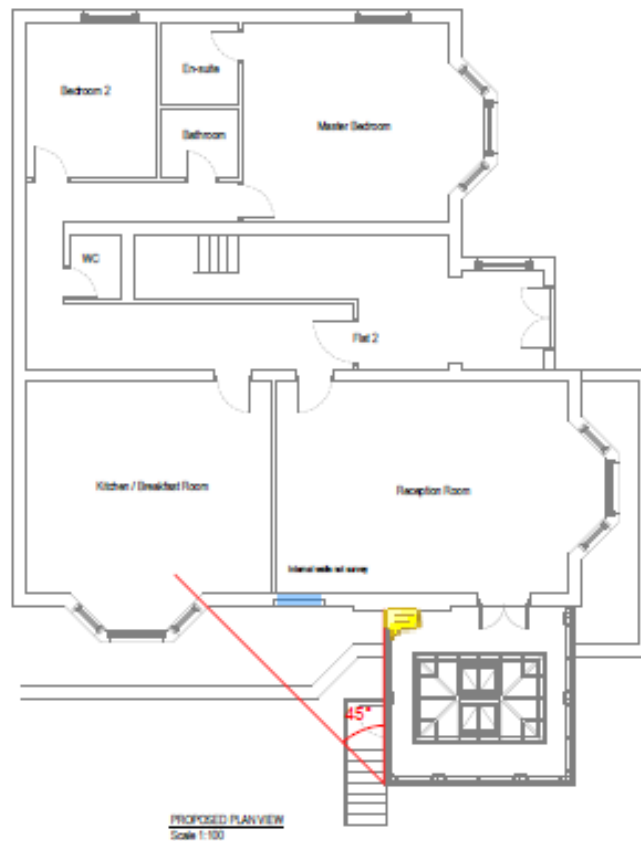
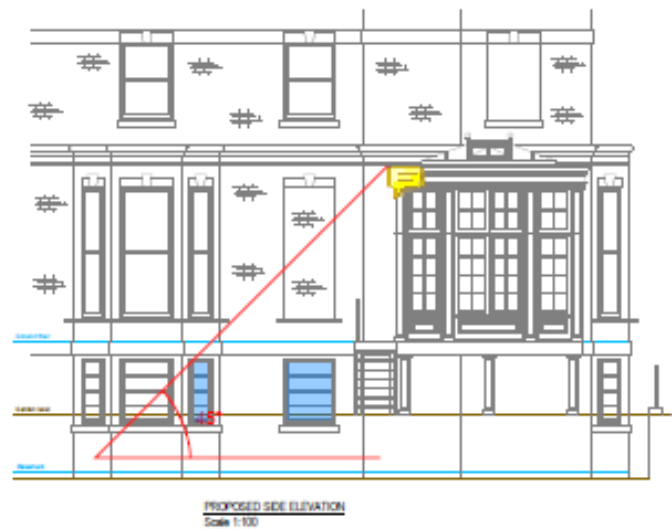


Figure 1: Daylight screening by officer - Plan & Elevation.

3.4.4 As such, there is a fairly sizeable impact on daylight, which the appellant has failed to justify this within the planning application process via a daylight / sunlight report as required under the amenity CPG (page 8). In addition, the home improvement CPG states that “regardless of the type of alteration or extension, basic principles should be considered such as ensuring your proposal does not reduce your neighbours access to daylight & sunlight.”

3.4.5 This impact is further magnified due to the affected window (bedroom 3) being on the northeast elevation of the building which does not benefit from sunlight, therefore, the significant impact to daylight would further impact the amenity of the lower ground floor window.

3.4.6 The lower ground floor flat relies on windows for daylight/sunlight which are mainly north facing, and the primary habitable space, which is the reception room, is only served by a single north facing bay and 2 relatively small west facing windows, which means that the other rooms in the flat (bedrooms) require further importance to be placed on the affectation as a result of the proposal, to be able to receive good levels of daylight.

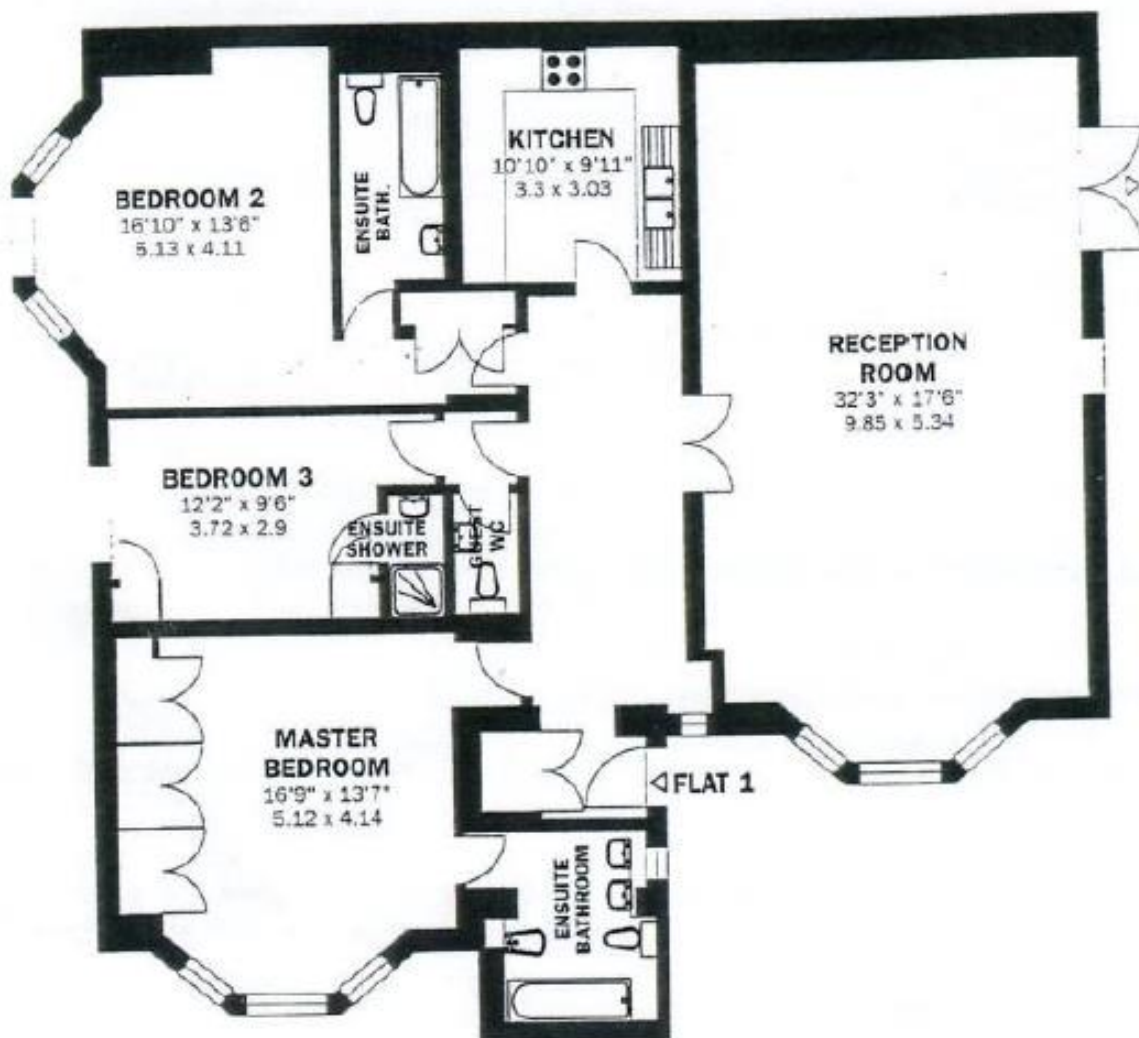


Figure 2: Floor Plan of lower ground floor flat

3.4.7 In conclusion, the BRE guidance is to be followed, as well as the home improvements and amenity CPGs, which has not occurred in this particular case.

3.5 Reason for refusal 3:

- 3.5.1 *The appellant argues that due to the positioning of the conservatory being in an elevated position on top of brick columns, which reduces the amount of excavation required for their construction which can be achieved with pile foundations, only a very small percentage of the structure would be within the root protection areas of the adjacent trees and therefore, the development would not have a detrimental impact upon the existing trees.*
- 3.5.2 *The appellant continues to argue that subject to conditions, the development would have complied with BS 5837:2012 (Trees in Relation to Construction – Recommendations), NPPF and with Camden Local Plan policy A3 (Biodiversity).*

3.6 The Council response:

- 3.6.1 Without the submission of an Arboricultural Impact Assessment, Council is unable to with certainty conclude that the proposal would not have an adverse impact on the root protection areas of the adjacent trees. As such, Council is unable to complete a full assessment as per the requirements of Camden Local Plan policy A3 (Biodiversity).
- 3.6.2 Tree protection conditions would assist in the protection of trees during the course of construction and then thereafter, however, a full assessment is first required prior to being able to condition such measures.

4 Conclusion

- 4.1 Based on the information set out above, and having taken account of all the additional evidence and arguments made, the proposal is considered contrary to the Council's adopted policies.
- 4.2 The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns. For these reasons the proposal fails to meet the requirements of policy and therefore the Inspector is respectfully requested to dismiss the appeal.
- 4.3 Should the inspector be minded to allow the appeal, it would be requested that conditions in Appendix A are attached the decision.
- 4.4 Should any further clarification or submissions be required, please do not hesitate to contact Alex Kresovic by the direct dial telephone number or email address quoted in this letter.

Yours faithfully,

Alex Kresovic

Senior Planning Officer

Supporting Communities Directorate

Appendix A

Recommended conditions:

1. The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 and D2 of the London Borough of Camden Local Plan 2017.

3. Before the relevant part of the work is begun, detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority:

- a) Details including sections at 1:10 of all windows (including jambs, head and cill), ventilation grills, external doors and gates;

- b) Plan, elevation and section drawings, including fascia, cornice, pilasters and glazing panels of the new shopfronts at a scale of 1:10;

- c) Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 and D2 of the London Borough of Camden Local Plan 2017.

4. Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the local planning authority in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the London Borough of Camden Local Plan 2017.

5. Prior to the commencement of construction works on site, tree protection measures shall be installed in accordance with approved Tree Protection Plan. The protection shall then remain in place for the duration of works on site and works should be undertaken in line with the approved arboricultural method statement, unless otherwise agreed in writing by the local authority.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the London Borough of Camden Local Plan 2017.

6. Prior to the occupation of the development hereby permitted, the high-level window on the rear elevation of the timber conservatory (elevation adjacent to the lower ground floor windows), shall be fitted with obscure glass be non-opening, and the window shall be retained as such for the duration of the development.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with policy A1 of the Camden Local Plan 2017.