



Appeal Decision

Hearing held on 7 February 2019

Site visit made on 7 February 2019

by J Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2019

Appeal Ref: APP/X5210/W/18/3198010

15 Lyndhurst Terrace, London NW3 5QA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Mond against the decision of the Council of the London Borough of Camden.
 - The application Ref 2017/2471/P, dated 2 May 2017, was refused by notice dated 11 October 2017.
 - The development proposed is replacement two storey residential dwelling with basement, following demolition of existing dwelling; associated works
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above was taken from the appeal form and decision notice. It has been agreed by the main parties.
3. During the hearing, it became apparent that the Hampstead Neighbourhood Plan (HNP) had been made since the appeal was submitted. As it constitutes part of the adopted Development Plan, I accepted the HNP as late evidence.
4. A signed and dated Statement of Common Ground (SOCG) was submitted prior to the hearing. I have had regard to it in reaching my decision.
5. I received late representations after the hearing from Sir Nicholas Serota and the Heath and Hampstead Society. These were forwarded to the appellants for information and the appellants responded by email. For the avoidance of doubt, while I have had regard to these communications, they have not altered the decision I have reached.

Main Issues

6. The main issues in this appeal are:
 - a) The effect of the proposed development on the character and appearance of the Fitzjohns/Netherhall Conservation Area (FNCA) with particular regard to:
 - i) the significance of the existing building and the contribution it makes to the character and appearance of the FNCA;

- ii) the design of the proposed building, including the proposed basement; and
 - iii) whether, if there would be harm to heritage assets, the public benefits arising from the proposed development would be sufficient to outweigh that harm.
- b) The effect of the proposed development on the living conditions of future occupiers, with particular regard to the provision of external amenity space.

Reasons

Significance of the existing building

7. The statutory duty under section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (LBCA Act) sets out that special attention shall be paid to the desirability of preserving or enhancing the character and appearance of the conservation area.
8. 15 Lyndhurst Terrace is located on Lyndhurst Terrace's western side within the Rosslyn sub-area of the FNCA. The Fitzjohns/Netherhall Conservation Area Statement 2001 (FNCAS) describes the wider FNCA as having substantially scaled properties and generous grounds, while the sub-area's street layout has a smaller and more intimate character with gentler gradients, and architecture ranging from the 1860s to the 1880s. Although of some age, the FNCAS was adopted following public consultation and is afforded weight in this appeal.
9. Like much of the FNCA, Lyndhurst Terrace's western side is predominantly residential. There is a mix of building styles, ages, and scales along a generally similar building line excluding the large gothic style detached house with pronounced roof gables at Elm Bank which is set back from the street. Amongst substantially-scaled buildings with significant levels of detailing and ornamentation, there are later buildings interspersed. 9 and 11 Lyndhurst Terrace are described as unsympathetic, while No 15 is described as fitting better in the streetscape than its near neighbours. The view down Thurlow Road towards the substantial gault brick and stucco building at Heath House (13 Lyndhurst Terrace) is described as a key view in the FNCAS and there is common ground that this is a key view.
10. Heritage assets, as defined in the National Planning Policy Framework (the Framework), refers to buildings, sites and places as having a degree of significance meriting consideration in planning decisions, due to their heritage interest. Heritage assets include designated heritage assets and non-designated heritage assets (NDHA) identified by the local planning authority.
11. The Planning Practice Guidance (PPG) also confirms that while there is no requirement to do so, local planning authorities are encouraged to consider making clear and up to date information on their identified NDHA, both in terms of the criteria used to identify assets and information about the location of existing assets, accessible to the public¹. Local lists can provide a useful means of identifying NDHA, but it is clear that this is not the sole means of doing so. NDHA have a degree of significance due to their heritage interest that merits consideration in the planning process.

¹ Paragraph Reference: 18a-006-20140306: Should non-designated heritage assets be identified in the Local Plan?

12. The significance of No 15 is a key point of dispute with wide divergence between the main parties. If the proposed development were to be built, the existing building at No 15 would be removed. As such, it is necessary to consider the scale of harm from its loss, with regard to its significance and its contribution to the FNCA's character and appearance.
13. While the Council did not include No 15 in its Local List in the Camden Local Plan 2017 (CLP), Appendix 3 of the HNP indicates that No 15 constitutes an NDHA. The HNP suggests that NDHA are drawn from either the Camden Local List or from being identified as a positive contributor in the relevant conservation area appraisal and management statement. The FNCAS identifies No 15 as making a positive contribution to the FNCA's character and appearance.
14. Furthermore, Camden Planning Guidance 1 Design (July 2015 – updated March 2018) (CPG 1) at paragraph 3.29 onwards deals with NDHA and confirms at paragraph 3.31 that NDHA may either be identified as part of the planning process or on the Local List. CPG 1 sets out criteria for NDHA assessment, including architectural, historical, townscape and social significance. A building or structure should meet at least 2 criteria, one of which must be either architectural or historic significance. These criteria and sub-questions are not dissimilar from the questions for assessing buildings that contribute positively to the significance of a conservation area as set out in Historic England's Advice Note 1: Conservation Area Designation, Appraisal and Management (2016).
15. Turning to architectural significance first, No 15 replaced the coach house adjoining Heath House at some point between the early 1960s and mid 1970s. The Council considers that No 15 is an early embryonic work designed as a one-off house for a client by the architect Ted Levy, although the appellants consider No 15 to date from the 1970s, somewhat later in Levy's career. Ted Levy, Benjamin and Partners produced houses from the 1960s to the 1980s in Hampstead and Highgate.
16. The Council's evidence regarding Levy's involvement is based on correspondence from Sir Nicholas Serota and officers' knowledge of Levy's architecture. Having visited another local property attributed to Levy at 50 Redington Road², it is conceivable that the existing building was designed by Levy. However, the evidence before me is not conclusive.
17. Although the FNCA's primary wave of development was predominately 19th century, it appears that there was a secondary and varied wave of 20th century infill development in between larger plots. The existing house at No 15 is a modest and discreet, modernist, part two-storey and part single-storey house. It is highly modelled and is constructed predominantly of gault brick, with large full length windows covering much of the front and rear elevations, and a partially rounded stair tower, which forms a particularly noticeable feature. No 15 has later additions such as aerials which detract from the building's lines, but the building's simple form remains.
18. Evidence for the appellants is very critical of the building's architectural quality and cohesiveness. While it is of ordinary build quality and materials, the modernist house demonstrates a distinctive stepped form which due to the changes in storeys maintains a gap between the large and relatively imposing

² APP/X5210/A/12/2188302 and APP/X5210/E/12/2186816, decisions issued 14 June 2013.

buildings at Heath House and Elm Bank. While its proportions allow it to be subordinate to its neighbours, the verticality of its fenestration echoes the windows of Heath House. Given its form and proportions, I consider that it has sufficient architectural significance to meet the first criterion.

19. In terms of historical significance, the house was occupied by the Serota family for almost 30 years. Baroness Serota of Hampstead was a female Minister in Harold Wilson's 1960s Government at a time when few women participated in such roles. She lived at No 15 while she was active in the House of Lords, including as Deputy Speaker. Her children, Sir Nicholas and Judith Serota, are active in arts and music, with connections to the Tate, the Arts Council England, and the Spitalfields Music Festival. While the appellants have cast doubt on the importance of this connection with No 15, it appears from the Council's evidence and that of interested parties, that the Serota family have played a role within Hampstead circles and wider society over decades. As such, I consider that the historical significance criterion would be met.
20. Turning to townscape and social significance, I can see no evidence that No 15 would meet either criterion, as it is not a landmark building and does not promote collective identity or group value. Furthermore, no distinctive communal, commemorative, symbolic or spiritual significance, or literary or musical connection has been indicated beyond the history discussed above.
21. It was highlighted at the hearing that the Serota family had previously looked to improve the existing building's condition. The main and interested parties have very varying views about the condition, structural integrity, and quality of the existing building and whether it could be renovated and remodelled. I also understand that the house once had award-winning landscaped gardens including protected trees, but these are no longer present. The existing building and its gardens are not in excellent condition and may well have been originally constructed to a low budget, and I understand the building cannot be let due to its energy performance. However, it has not been demonstrated that the existing building is not structurally sound or that the deteriorated state of No 15 should be taken into account in my decision.
22. The FNCA has a varied character with a tradition of individual 20th century buildings occurring as infill between grander buildings dating back to the 1860s. The existing building at No 15 contributes positively to the overall character and appearance of the FNCA as it is indicative both historically and architecturally of that secondary wave of 20th century development.
23. Given its historic and architectural interest, I attach reasonable weight to No 15's significance and the positive contribution it makes to the FNCA's character and appearance. The proposed development would result in the demolition of No 15. Consequently, the development would result in the total loss of significance which would cause harm to the FNCA's character and appearance.

Design of the proposed building

24. The proposed building would be viewed as a two-storey detached house from Lyndhurst Terrace and would have a further basement storey beneath. Despite taking its cues from Arts and Crafts architects such as Lethaby and Schröder Prior, and employing design devices such as bays and oval arches to resonate with the local streetscape, the proposed building would have a bold and overly confident form. Its massing would fill the site's entire width at a height of 2

- storeys, and this massing would be emphasized by bay-like elements, rusticated and corbelled brick, and limited window and door openings.
25. In visual terms, its grounds would not be spacious enough for such a large building to be located within them successfully. This is most evident when considering the relationship between the proposed building, Heath House and Elm Bank. The proposed building's sculptural bulk and massing would significantly reduce the gaps between the buildings. With its horizontal and vertical bulk, it would represent a significantly more intensive form of development of the site than the existing building and would not appear sufficiently subservient to its neighbours. This would be highlighted by its bay elements being located forward of Heath House's main front wall.
 26. Although the appellants consider it appropriate for the proposed building to terminate Lyndhurst Terrace at its highest point given Elm Bank's set back, I disagree that the site creates an uncomfortable or unresolved streetspace which requires marking. The main features terminating Lyndhurst Terrace are dependent on where the viewer is located, with Heath House highly visible in long views along Thurlow Road and Elm Bank terminating Lyndhurst Terrace when approaching the site along Lyndhurst Terrace. It would disrupt the existing relationship between Heath House and Elm Bank, and would alter views of Elm Bank. While it would engage more positively with the street than the buildings at Nos 9 and 11 which fill a gap left by wartime bomb damage, it would distract from the identified key view of Heath House from Thurlow Road.
 27. The proposed building would use materials such as brick, concrete, timber, and polished terrazzo. While some materials are not commonly found locally, different materials are present in the FNCA, including a copper-clad extension and a timber-clad infill house on Thurlow Road. I consider that the proposed materials would not in themselves have a negative effect on the FNCA.
 28. I recognise that the appellants developed this design solution following the refusal of planning application 2015/6278/P, and subsequently sought pre-application advice in 2016 on the proposed development and attempted to engage with interested parties who had objected to the 2015 application. There is also a difference of opinion between the main parties regarding the appellants' request for the scheme to be presented at the Council's Design Review Panel (DRP). In the absence of the scheme's examination at the DRP, the appellants sought peer review from well-known architects, who praised the design of the proposed building. Some interested parties also view the proposed building positively.
 29. Turning to the issue of the proposed basement and the side and rear lightwells which would form part of the proposed basement, the proposed side lightwell would be small and wholly contained by the proposed building and an existing wall, while the rear lightwell would also be relatively small and would be sited within the proposed building's small rear garden. The proposed basement and lightwells would be largely hidden from view and would be an integral part of the proposed development's design. There are also examples of other basements with lightwells in the surrounding area.
 30. However, while the overall urban structure and garden space of the other Lyndhurst Terrace properties would remain intact between Spring Path and Lyndhurst Terrace, these gardens are outside the appellants' control. Indeed, the proposed development, its basement and rear lightwell would diminish an

already small rear garden within the context of Lyndhurst Terrace and the FNCA, where generous grounds are a feature. This would add to the proposed development's negative effects on the character and appearance of the FNCA.

31. The appellants have provided examples of local basement schemes³ approved by the Council despite not fully complying with CLP policy A5. However, these schemes would not be directly comparable to the proposal before me. While the appellant considers that CLP policy A5 is prescriptive and difficult to apply consistently and the proposed basement's size could be altered, I am required to deal with the appeal before me. Although permitted development rights could be used to extend the existing building and reduce the garden's size, I have no indication that this is likely to take place.
32. The FNCA is typified to some extent by its variety. I recognise that the proposed building would have architectural merit, add to the variety of architectural forms within the FNCA, and continue the ongoing process of change in the FNCA. Based on the above concerns, however, the proposed building would have a negative effect on the FNCA and result in harm to its significance. While I note the appellants' reference to a legal judgment⁴ with regard to a neutral effect preserving the character and appearance of a conservation area, this does not alter my findings with respect to the proposed development's aforementioned negative effect.

Public benefits

33. The harm to the significance of the FNCA would be less than substantial, but still important due to the effect of the proposed development on the FNCA. Having had regard to the appeal decision⁵ at 22 Frogal Way and the subsequent legal judgment⁶, the effect is the combination of the loss of a positive building in the FNCA and the design of the proposed building. In line with paragraph 196 of the Framework, a balancing exercise should be undertaken between "less than substantial harm" to the designated heritage asset, on the one hand, and the public benefits of the proposal, on the other.
34. Public benefits are outlined in the PPG⁷ as being anything that delivers economic, social or environmental progress as described in the Framework. They may include heritage benefits, such as sustaining or enhancing the significance of a heritage asset and the contribution of its setting, reducing or removing risks to a heritage asset, and securing the optimum viable use of a heritage asset in support of its long term conservation.
35. The appellants consider that the proposed development would deliver a significant building of the highest architectural merit, which would make a greater positive contribution than the existing building, thereby enhancing the FNCA's character and appearance and contributing to architectural culture. It will be seen from the paragraphs above that I disagree with this view.
36. Additionally, the proposed development would make efficient use of land and employ a range of sustainability measures, provide a more energy efficient

³ 34A and 106 King Henry's Road, 23 Netherhall Gardens, 20 Crediton Hill, 5 Mornington Crescent, 11 Glenilla Road, 32 Percy Street, 10 Agamemnon Road, 26 Lower Merton Rise, and 16A Lyndhurst Gardens

⁴ South Lakeland DC v SSE & Carlisle Diocesan Parsonages Board [1992] 2 WLR 204, [1992] 2 AC 141

⁵ APP/X5210/W/16/3150327, decision issued 9 March 2017.

⁶ Dorothy Bohm & Ors v Secretary of State for Communities and Local Government & Ors, Court of Appeal - Administrative Court, December 08, 2017, [2017] EWHC 3217 (Admin).

⁷ Paragraph Reference: 18a-020-20140306: What is meant by the term public benefits?

building than the existing building, reduce flood risk through rainwater retention and increase planting to enhance biodiversity. Furthermore, jobs would be created during the construction phase and there would be general townscape improvements to the frontage of the site, positive effects on parking and use of sustainable travel choices, and the provision of mature trees as part of the informal hard and soft landscaping. The proposed development would also provide a future-proofed home suitable for long-term use. These matters would have only moderate weight and would be insufficient to outweigh the harm identified to the significance of the FNCA. I therefore conclude the proposal would fail to comply with national policy outlined in Section 16 of the Framework on conserving and enhancing the historic environment.

37. Concluding on this main issue, the proposed development would have a harmful effect on the character and appearance of the FNCA. Consequently, it would conflict with CLP policies D1, D2 and A5. CLP policy D1 addresses design and requires amongst other things that development respects local context and character and preserves strategic and local views. Both CLP policies D1 and D2, amongst other things, require that development preserves or enhances the historic environment and heritage assets, including conservation areas and locally listed heritage assets. CLP policy A5 sets out a number of detailed criteria on basement development, including the requirement that such development would not harm the character and amenity of the area and the significance of heritage assets. There would also be conflict with Section 72(1) of the LBCA Act.

Living conditions

38. CLP policy A2, amongst other things, aims to protect non-designated spaces with townscape and amenity value, including gardens, where possible, and ensure developments seek opportunities for providing private amenity space. CLP policy A5, amongst other things, states at criterion h that proposed basements should not exceed 50% of each garden within the property and at criterion m that basement developments should seek to avoid the loss of garden space. CPG 2 Housing (undated) refers to all new dwellings having access to some form of private outdoor amenity space, and for family dwellings this should be a private garden. The Mayor of London's Housing SPG refers to a minimum of 5m² private outdoor space for 1-2 person dwellings with an extra 1m² per additional inhabitant. This would result in a requirement of 9m² for the proposed development. Private external spaces should also be a minimum of 1500mm. CPG 4 Basement and Lightwells (2015) provides further detail to assist in basement development proposals.
39. The existing rear garden at No 15 is an L-shaped, predominantly gravelled and hard landscaped space of just under 60m² stepped over slightly different levels with limited scrub vegetation. While the proposed development would provide private amenity space to the rear of the proposed replacement building, this would take the form of a smaller, irregularly shaped garden of some 27m² with an irregularly shaped rear lightwell of some 5m² making up part of the external amenity space adjacent to Elm Bank. There would be a landscaped front garden which would be smaller than the existing front garden, but this would not provide as much privacy for occupiers as the proposed rear garden.
40. The Council has no specific policy setting requirements for provision of external amenity space and the Mayor of London's Housing SPG expresses only

minimum standards for garden space. However, while the proposed development's rear garden would exceed the minimum requirement by some 300% and would exceed the minimum depth requirement, it would still be a very small garden for a house capable of accommodating 6 people, and part of it would be rendered less usable by being at a basement level and accessed via a guest bedroom. Although the proposed garden would meet the needs of the family it has been commissioned for and would be transformed from a rather tired space to a garden with level access from the house at ground level, the proposed development by reason of the proposed basement and larger footprint at ground floor level would considerably reduce the amount of garden space available at No 15. Furthermore, there is nothing preventing the existing garden from being re-landscaped and re-used.

41. Concluding on this main issue, the proposed development would have a detrimental effect on the living conditions of future occupiers, with particular regard to the provision of external amenity space. This would be contrary to CLP policies A2 and A5 as referred to above. The Council's reason for refusal also refers to CLP policy A3, which deals with biodiversity. However, as the main parties' agreed SOCG confirms that there would not be harm to biodiversity resulting from the proposed development, I have not referred to CLP policy A3 specifically.

Other Matters

42. At the hearing, a signed and executed legal agreement was submitted. This agreement would remove future occupiers' ability to apply for residents' on-street parking permits and would provide for a construction management plan and repair works to the adjacent highway. The Council has confirmed that the legal agreement satisfactorily resolves their concerns with regard to 3 reasons for refusal. Given that I am dismissing this appeal for other reasons, it has not been necessary for me to consider this matter in any further detail in terms of compliance with national policy and legal tests.
43. The proposed development would not harm neighbouring occupiers' living conditions, would enhance the landscaping at the front of the site and would not harm neighbouring trees. However, this does not overcome my concerns.
44. Interested parties have raised concerns about other matters including the effect of the proposed development on the mature horse chestnut tree at Elm Bank, noise, vibration, disturbance, parking and storage issues during construction, subsidence and stability, geological and hydrological issues, effect on the neighbouring wall, off-street parking, sustainable design and construction, and overlooking. However, given my findings on the main issues, it is not necessary to consider these matters in any detail.

Conclusion

45. For the reasons given above, the appeal is dismissed.

J Gilbert

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Scott Lyness	Landmark Chambers
Martin Harradine	AZ Urban Studio
Stephen Bates	Sergison Bates
Peter Stewart	Peter Stewart Consultancy
David Warman	Richard Max & Co Solicitors
Emanuel Mond	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Laura Phillips	6 Pump Court
Kate Henry MRTPI	London Borough of Camden
Catherine Bond BA Hons BArch Hons MTP AA Postgrad Cons IHBC	London Borough of Camden

INTERESTED PERSONS WHO SPOKE AT THE HEARING:

Tom Brent	Local resident
Andrew Dutton-Parish	Local resident
Michael Sternberg QC KFO	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Compendium of part of the appellants' Design and Access Statement at A3
2. Examples of planning decisions concerning proposed basements applying Local Plan policy A5 – addendum to Appendix 9 of Statement of Case for the Appellants (February 2019)
3. Excerpts of Mayor of London's Housing Supplementary Planning Guidance March 2016
4. Camden Planning Guidance 1: Design (July 2015 – updated March 2018)
5. Hampstead Neighbourhood Plan 2018 - 2033 (October 2018)
6. Camden Planning Guidance 3 : Sustainability (July 2015 – updated March 2018)
7. Camden Planning Guidance 8: Planning Obligations (July 2015 – updated March 2018)
8. Legal agreement signed and dated 7 February 2019

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Email from Sir Nicholas Serota dated 12 February 2019.
2. Email from the appellants dated 14 February 2019.
3. Email from the Heath and Hampstead Society dated 14 February 2019.
4. Email from the appellants dated 19 February 2019.