

Date: 29/02/2024  
Your ref: PP/X5210/D/23/3334298  
Our refs: 2021/5750/P  
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Dear Ms Werrett,

**Town and Country Planning Acts 1990 (as amended)  
Planning Appeal Statement (Authority)  
Appellant: Mr Daniel Jaffe  
Site: 8A Hampstead Hill Gardens, London, NW3 2PL**

I write in connection with the above appeal against the Council's refusal to grant planning permission for 'Single storey rear extension, with basement below (including car lift and parking), garden roof terrace above and single storey link to main dwelling, to replace existing single storey garage building; 3rd floor front extension to main dwelling; creation of 4th floor roof terrace on roof of main dwelling, including access thereto; external alterations to front of main dwelling, including re-pointed brickwork, new timber doors, window and cladding and replacement of garage doors with fenestration; creation of garden to front to replace driveway parking' at the above site.

The Council's case is set out primarily in the delegated officer's report (ref: 2021/5750/P) 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.

Under normal circumstances no further comments/correspondence would be sent for a householder planning application appeal.

However, PINS has confirmed by email (19/02/2024) that recommended conditions should be sent (in the event that the Inspector is minded to allow the appeal). Additionally, the Council and the appellant have been working together and have concluded a signed S.106 legal agreement to address the third and fourth reasons for refusal.

Consequently, the Council request the Inspector to accept and consider the contents of this letter which also includes confirmation of the status of policy, in addition to the justification for

planning obligations secured in the legal agreement and the recommended conditions in the event that the Inspector should be minded to allow the appeal.

## 1. Summary of the Case

1.1. 8a Hampstead Hill Gardens is a 5 storey, red brick, single family dwellinghouse dating from the 1970s, attached to an older building (No. 8) which has been subdivided into flats. The application site is within the Hampstead Conservation Area. No. 8 (the façade of which was altered in the 1970s) is identified as making a neutral contribution to the character and appearance of the conservation area. The Hampstead Conservation Area Statement (2001) does not make specific reference to No. 8a, but with regards to modern additions to the street notes: "A few small modern houses and flats have been added in recent years, which, although in marked contrast to the older villas, do not detract from the character of the area."

1.2. The proposed 3rd floor front extension to main dwelling; creation of 4th floor roof terrace on roof of main dwelling, including access thereto; external alterations to front of main dwelling, including re-pointed brickwork were previously approved under planning permission reference 2022/3234/P, dated 09/02/2023.

1.3. The application the subject of this appeal was refused on 11/09/2023 on the grounds that:

1. *The proposed rear extension and basement below, by reason of size, siting, design and lack of subservience to the host building, would fail to respect the surrounding pattern of development and would cause harm to the character and appearance of the Hampstead Conservation Area, and would also fail to maximise opportunities for promoting and supporting greening, contrary to the aims of Policies D1 (Design), D2 (Heritage), A2 (Open space), A3 (Biodiversity) and A5 (Basements) of the Camden Local Plan 2017 and Policies DH1 (Design), DH2 (Conservation areas and listed buildings), NE2 (Trees), NE3 (Biodiversity corridors) and NE4 (Supporting biodiversity) of the Hampstead Neighbourhood Plan 2018.*
2. *The proposed development, as a result of the basement and associated car lift, would increase the capacity for on-site parking provision and would therefore promote car ownership and fail to promote or encourage trips by sustainable modes of transport, contrary to the aims of Policies T1 (Prioritising walking, cycling and public transport) and T2 (Parking and car-free development) of the Camden Local Plan 2017.*
3. *The proposed development, in the absence of a legal agreement to secure a Construction Management Plan, implementation support fee and Construction Impact Bond, would be likely to give rise to conflicts with other road users and be detrimental to the amenity of the area generally, contrary to Policies A1 (Managing the impact of development), T4 (Sustainable movement of goods and materials) and DM1 (Delivery and monitoring) of the Camden Local Plan 2017.*

4. *The proposed development, in the absence of a legal agreement to secure a highways contribution to undertake repair works outside the application site, would fail to restore the pedestrian environment to an acceptable condition, contrary to Policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport) and T3 (Transport infrastructure) of the Camden Local Plan 2017.*

1.4. The Council's case is largely set out in the Officer's report, a copy of which was sent with the questionnaire.

1.5. The Council's recommended conditions in the event that the appeal is allowed are included at Appendix A and the rationale for the items required within a legal agreement (i.e. the third and fourth reasons for refusal) is included in Section 2 below. A copy of the completed S.106 Agreement between the Council and the owner has been sent to the Inspector and is also attached.

1.6. For the sake of clarity, we confirm that the following items in the Officer report remain exactly the same: Consultations, Site Description, Relevant History, Assessment.

1.7. The Relevant Policies feature two changes.

1.8. The NPPF was updated in December 2023. There are no changes from the version which was considered when the application was determined (2021) which are considered to be relevant to this appeal.

1.9. The Council has published a new Draft Camden Local Plan (incorporating Site Allocations) for consultation (DCLP). The DCLP is a material consideration and can be taken into account in the determination of planning applications but has limited weight at this stage. There are no Draft Consultation Local Plan policies which are considered to over-ride any of the 2017 Local Plan policies included within and which form the basis of the reasons for refusal.

## **2. Statement in relation to the third and fourth reasons for refusal**

### **Note:**

2.1. The Council and the owner have entered into a S.106 legal agreement which overcomes reasons for refusal 3 and 4 (which relate to the lack of a legal agreement to secure a Construction Management Plan, Construction Management Plan Implementation Support Contribution, Construction Management Plan Bond and Highways Contribution).

2.2. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the "CIL Regulations") creates statutory tests to determine whether a planning obligation is capable of being a reason for granting planning permission. Planning obligations must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

2.3. Current government guidance on planning obligations is contained in the Planning Practice Guidance (PPG) on Planning Obligations, and current government guidance on planning conditions is contained in the PPG on Use of Planning Conditions.

### **Reason for refusal 3**

2.4. Local Plan Policy A1 states that Construction Management Plans (CMPs) should be secured to demonstrate how developments would minimise impacts from the movement of goods and materials during the construction process (including any demolition works). The proposal would involve works which would have off-site impacts due to the nature of the works and the constraints of the site. A CMP would be required in order to address the issues around how the demolition and construction work would be carried out and how this work would be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations for pedestrians and other road users. The requirement to submit a CMP for the Council's approval and to carry out the construction of the development in accordance with the approved CMP has been secured by the S106 Agreement. Failure to secure a CMP as a planning obligation would give rise to conflicts with other road users and would be detrimental to the amenities of the area generally.

2.5. The backland nature of the proposed development, the relatively narrow means of access and the proximity of surrounding residential properties especially requires securing compliance with the CMP. Operations would be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the site. Potential impacts for the proposed works which should be controlled by a CMP include traffic generation from the removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.

2.6. The CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site and it may include land outside of the developer's control (i.e. public highway) in order to minimise as far as reasonably practicable the detrimental effects of construction works on local residential amenity and/or highway safety on the nearby roads. Planning Practice Guidance (PPG) on Use of Planning Conditions provides that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. As such it is considered that the requirement to submit a CMP for the Council's approval and comply with the approved document should be secured through a S106 Agreement and it has been secured in this manner.

2.7. A CMP Implementation Support Contribution in a sum of £4,194 has also been secured as a planning obligation by a legal agreement. This contribution must be paid prior to commencement of works. This contribution covers the ongoing review and monitoring elements of the CMP (which is a living document which can be updated as necessary) and site inspections, meetings with the developer and local stakeholders to ensure compliance. The amount of the implementation support contribution has been calculated to reflect the scale of the development and the complexity of the CMP (based on low level sites). The CMP Implementation Support Contribution rates are set out on the Council's website with £4,194 being indicated as the current rate for low impact sites :

[3a74dbed-d095-d5cb-882b-8560fe5135d3 \(camden.gov.uk\)](#)

2.8. Construction activity can cause disruption to daily activities. However, a well-run site that responds to the concerns of residents can greatly improve the situation. Whilst most sites deal quickly and robustly with complaints from residents and reinforce the requirements of the CMP with site operatives, there can be situations where this does not occur and officers in the Council are required to take action. CPG Developer Contributions states that: "In respect of developments raising particularly complex construction or management issues where the Council will have to allocate resources to monitor and support delivery of obligations the Council may require payment of an upfront financial bond which the Council can draw upon if needs be". The securing of a bond has received significant support, it fosters a confidence with residents that there is a clear incentive for contractors to abide by the CMP. The bond will be fully refundable on completion of works, with a charge only being taken where contractors fail take reasonable actions to remediate issues upon notice by the Council. In this case a bond of £8,000 is sought, which is the standard amount for "low impact / small developments" (e.g. below 10 dwellings). This level of contribution is explained on the Council's website:

[e8d7f367-1cf9-dcb2-4187-72d19be84718 \(camden.gov.uk\)](#)

2.9. A Section 106 Agreement (rather than a condition) is considered to be the most appropriate mechanism to secure the CMP. The PPG on the Use of Planning Conditions clarifies that it is not appropriate to use conditions to secure financial amounts. As such, it would not be appropriate to secure the CMP Implementation Support Contribution or the CMP Bond as conditions.

2.10. It is concluded that a S.106 agreement securing CMP, CMP Implementation Support Contribution and CMP Bond meets the tests for planning obligations contained in regulation 122 of the CIL Regulations; as the obligations are considered to be necessary to make the development acceptable in planning terms. They are directly related to the development and are fairly and reasonably related in scale and kind to the development.

#### **Reason for refusal 4**

2.11. Policy A1 (Managing the impacts of development) of the Camden Local Plan includes a requirement for new development to 'adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network'. Policy T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan refers to the need to promote transport networks conducive to walking and cycling. Policy T3 (Transport Infrastructure) of the Camden Local Plan states that 'The Council will protect existing and proposed transport infrastructure, particularly routes and facilities for walking, cycling and public transport, from removal or severance'.

2.12. A financial contribution is required towards the cost of the highway works as it is considered that the proposal would lead to construction damage to the footway adjacent to the appeal site and the crossover to Hampstead Hill Gardens. As such, a financial contribution is necessary to repair the damage caused to the footway and Hampstead Hill Gardens (highway) in line with the policies stated in the reason for refusal.

- 2.13. The highways contribution for repaving the footway and crossover adjacent to the site is £4,599.09 (February 2022 prices). This amount has been secured by the legal agreement.
- 2.14. PPG on the Use of Conditions stipulates that it is not appropriate to impose conditions requiring payment of financial contributions and therefore a planning condition is not considered to be appropriate in this instance.
- 2.15. It is, however, appropriate to secure the highways contribution as a planning obligation given that it meets the tests for planning obligations set out in regulation 122 of the CIL Regulations. It is necessary to make the development acceptable in planning terms, it is directly related to the development and fairly and reasonably related in scale and kind to the development.

### **3. Conditions**

- 3.1. Should the inspector be minded to allow the appeal, it is requested that the conditions in Appendix A are attached the decision.

### **4. S106 Legal Agreement**

- 4.1. Similarly to 3.1 above, if the Inspector were mindful to overrule the Council's determination and grant planning permission, it is requested that the planning permission should be subject to the Section 106 legal agreement which has been entered into by the Council and the Owner, and which includes the following planning obligations:
- a) Construction Management Plan and Construction Management Plan Implementation Support Contribution in a sum of £4,194
  - b) Construction Management Plan Bond in a sum of £8,000
  - c) Highways Contribution in a sum of £4,599.09

Should any further clarification or submissions be required, please do not hesitate to contact Adam Greenhalgh by the direct dial telephone number or email address quoted in this letter.

Yours faithfully,

**Adam Greenhalgh**

Senior Planning Officer  
Supporting Communities Directorate

## Appendix A

### Recommended conditions: 2021/5750/P

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. The development hereby permitted shall be carried out in accordance with the following approved documents and drawings:

288-A001; 288-A010; 288-A011; 288-A012; 288-A013; 288-A014; 288-A015; 288-A020; 288-A021; 288-A022; 288-A023; 288-A024; 288-A025; 288-A026; 288-A030; 288-A031; 288-A032; 288-A033; 288-A034; 288-A100 Rev A; 288-A101 Rev A; 288-A102 Rev A; 288-A103 Rev A; 288-A104 Rev A; 288-A105 Rev A; 288-A106 Rev A; 288-A110 Rev A; 288-A200 Rev A; 288-A201 Rev A; 288-A202 Rev A; 288-A203 Rev A; 288-A204 Rev A; 288-A205 Rev A; 288-A206 Rev A; 288-A207 Rev A; 288-A208 Rev A; 288-A301 Rev A; 288-A302 Rev A; 288-A800 (Fire Statement); Tree survey - existing site (ref 21/061); Proposed site, ground floor and tree protection plan (TPP) (ref 21/061); Cover letter (SMPlanning), dated 23/11/2021; Design and Access Statement (Hayhurst & Co Architects), dated November 2021; Basement Impact Assessment Report (soiltechnics), dated July 2022; Structural Method Statement and Drainage Strategy (Price & Myers) Rev 04, dated March 2022; Ground Investigation Report (soiltechnics), dated June 2021; Draft Construction Management Plan, dated 18/11/2021; Daylight and Sunlight Matters report (The Chancery Group), dated 16/11/2021; Legal opinion Daniel Kolinsky QC , dated 15/11/2021; Arboriculture Report (Simon Pryce), dated 14/04/2021

Reason: For the avoidance of doubt and in the interest of proper planning

3. 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.

4. 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 before the relevant part of the work is begun:

- a) Plan, elevation and section drawings of all new doors and windows including jambs, head and cill, at a scale of 1:10 with typical moulding and architrave details at a scale of 1:1.
- b) Section drawings of the typical facade detailing cladding and facing materials at a scale of 1:10
- c) A sample panel for the brickwork (no less than 1m by 1m) showing the brick type, colour, bond, mortar mix, joint width and pointing type (to be provided on site for inspection by the local authority);
- d) Samples of all other facing materials
- e) Samples of any new paving materials
- f) Detailed specifications, including section and plan drawings, of the car lift;

The relevant part of the works shall be carried out in accordance with the details thus approved and permanently retained thereafter.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of Policies D1 and D2 of the London Borough of Camden Local Plan 2017 and Policies DH1, DH2 and DH3 of the Hampstead Neighbourhood Plan 2018.

5. No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies A2, A3, A5, D1 and D2 of the London Borough of Camden Local Plan 2017 and Policies DH1, DH3 and NE4 of the Hampstead Neighbourhood Plan 2018.

6. All hard and soft landscaping works shall be carried out in accordance with the approved landscape details prior to the occupation for the permitted use of the development. Any trees or areas of planting (including trees existing at the outset of the development other than those indicated to be removed) which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.

Reason: To ensure that the landscaping is carried out within a reasonable period and to maintain a high quality of visual amenity in the scheme in accordance with the requirements of policies A2, A3, D1 and D2 of the London Borough of Camden Local Plan 2017 and Policies DH1, DH3 and NE4 of the Hampstead Neighbourhood Plan 2018.

7. 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 and Policies DH1, DH3 and NE4 of the Hampstead Neighbourhood Plan 2018.

8. The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.

9. The basement development shall be constructed in accordance with the method and recommendations set out in the following documents: Basement Impact Assessment Report by Soiltechnics, ref: STT5321-R01 Rev D, dated November 2021 and the recommendations set out in Basement Impact Assessment Audit (Campbell Reith) 13693-33 F1 September 2022

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.

10. Prior to the commencement of the roof terrace on the single storey rear extension hereby permitted, details of screening to the part of the terrace close to the southern boundary with no. 10 Hampstead Hill Gardens shall be submitted to and approved by the Local Planning Authority, in writing. The approved details shall be provided prior to the occupation of the development and permanently retained thereafter.

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

11. The planters on the uppermost roof terrace shall be installed prior to the first use of the terrace and thereafter retained in perpetuity.

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

12. No external lighting shall be installed for the roof terraces or the external walls of the extensions hereby permitted unless details are submitted to and approved by the Local Planning Authority beforehand, in writing.

Reason: In order to prevent lightspill to the detriment of the amenity of neighbouring residential occupiers in accordance with policy A1 of the Camden Local Plan 2017.

13. In the event that, during groundworks, any visual and/or olfactory evidence of contamination is found, works will cease and the Local Planning Authorities' Environmental Protection Team will be contacted for guidance. Works should not recommence until a remediation methodology has been submitted to and approved by the Local Planning Authority, in writing.

Reason: In order to protect the health and amenity of occupiers at the site in accordance with policies A1 and C1 of the Camden Local Plan 2017.

