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# Appeal Decision

Site visit made on 31 July 2024

**by P Storey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 2 October 2024**

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**Appeal Ref: APP/X5210/W/24/3337445**

**9D The Grove, London N6 6JU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Nir Cohen against the decision of the Council of the London Borough of Camden.
  - The application Ref is 2020/4307/P.
  - The development proposed is demolition of the existing dwelling and construction of a replacement dwelling with associated landscaping.
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## Decision

1. The appeal is dismissed.

## Applications for Costs

2. An application for costs has been submitted by Nir Cohen against the Council of the London Borough of Camden and is the subject of a separate decision.

## Preliminary Matters

3. The appeal site lies in the Highgate Village Conservation Area (the CA) and near to several listed buildings. Accordingly, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
4. The development proposals were amended during the Council's consideration of the planning application. Although the main parties agree that the correct drawings are listed on the Council's decision notice, there remains disagreement over whether the Council fully considered the amended plans. To clarify, my assessment of the appeal is based on the drawings cited in the Council's decision notice.
5. The Council has confirmed that concerns regarding the Basement Impact Assessment, which formed the 4<sup>th</sup> reason for refusal on the decision notice, have been resolved. This issue is therefore no longer in dispute between the main parties. While the Council reached this conclusion based on additional evidence submitted after the planning application was determined, it would not materially alter the proposed development. I have no substantive evidence to challenge the Council's conclusions on this issue, and I am therefore satisfied that this issue no longer forms a main issue in the appeal.

6. The 5<sup>th</sup> reason for refusal on the decision notice cited the absence of a legal agreement securing an affordable housing contribution. However, the Council's statement of case clarifies that this reason was included in error, and no affordable housing contribution is required. Accordingly, this matter is no longer in dispute and does not constitute a main issue in the appeal.
7. A completed Section 106 agreement, prepared by the Council, has been submitted with the appeal. Among other provisions, this would secure car-free housing, a construction management plan and a construction management plan bond, thereby addressing the 6<sup>th</sup> and 7<sup>th</sup> reasons for refusal on the decision notice. These issues are therefore no longer in dispute.

### **Main Issues**

8. The main issues are:
  - the effect of the proposed demolition and replacement dwelling on the character and appearance of the area, bearing in mind the extent to which it would preserve or enhance the character or appearance of the CA, and the special attention that should be paid to preserving the setting of nearby listed buildings; and
  - whether the proposed development would meet climate change objectives, with specific regard to the demolition of the existing dwelling and the use of active cooling in the replacement dwelling.

### **Reasons**

#### *Character and appearance*

9. The appeal site is occupied by a 2-storey flat-roofed house understood to date from the 1950s, with its primary access from Fitzroy Park, a private road with a barrier-controlled entrance from The Grove. Additionally, the property can be accessed via a gated archway from The Grove.
10. The site lies within the CA, which includes the commercial centre of Highgate Village; offering shops, restaurants and other public amenities; and the surrounding, predominantly residential areas. It also includes large areas of parkland and the expansive Highgate Cemetery. It is understood that the area expanded from the 17<sup>th</sup> century onwards as part of the wider expansion of London along the Great North Road.
11. Residential development varies within the CA but is predominantly characterised by verdant tree-lined streets. The Grove features large, semi-detached and terraced Georgian homes, typically between 3 and 4 storeys tall, with modest gated front gardens and spacious rear gardens. In contrast, Fitzroy Park is characterised by later, individually designed detached houses set in spacious plots.
12. Insofar as is relevant to the appeal, the significance of the CA lies in its traditional village feel, abundant greenery, and the distinct architectural and spatial characteristics of its various sub-areas. These elements combine to create a unique and cohesive environment.
13. Several Grade II listed buildings are near the site. These include Park House, a prominent semi-detached house adjacent to the south, and No 9B The

Grove, a single-storey dwelling with classical detailing on the corner of The Grove and Fitzroy Park, which originally formed the stables for Park House. Other nearby Grade II listed buildings include Nos 9, 9A, 10 and 11 The Grove, as well as the railings enclosing the water reservoir along the east side of The Grove.

14. Collectively, the special interest of the listed buildings (the LBs) on the west side of The Grove lies in their contribution to the period streetscape through their shared architectural features. No 9B, while lower, is a striking building that projects forward from its neighbours, accentuating the corner of The Grove and Fitzroy Park while reflecting its historic role as a subservient feature of Park House. The railings opposite provide an elegant enclosure to the covered reservoir which, despite being a utilitarian feature that is inaccessible to the public, contributes to the verdant sense of spaciousness in the area.
15. The appeal site sits at the intersection of the contrasting characteristics of The Grove and Fitzroy Park. When viewed from The Grove, the top of the existing building's brickwork is visible above No 9B. However, its modest scale and simple design, with limited visible fenestration and elevation details, make it largely unobtrusive. The elevation fronting Fitzroy Park is set back and largely screened by No 9B in views from The Grove, further limiting the building's visibility and prominence. As a result, the building draws limited attention to itself and does not detract from its comparatively grander neighbouring period properties.
16. The Highgate Conservation Area Appraisal and Management Proposals (CAAMP) document identifies the appeal site as a modern post-war building deliberately introverted on The Grove frontage, but a positive contributor to its surroundings by way of its rear first-floor balcony with a copper-clad canopy, looking down Fitzroy Park. However, the balcony is largely screened from public view and its simple form holds little aesthetic interest in the broader context of the area, meaning its overall contribution to the CA is limited. Other than the brief mention in the CAAMP, I am provided with limited substantive detail of its special interest.
17. Some submissions from interested parties highlight the appeal site's role as part of a group of modernist houses in the area designed by well known architects, but I have not been provided with substantive detail on this topic. While the existing building fits comfortably within its surroundings, its primary contribution to the CA comes from its simplicity and modesty. It sits unobtrusively within a confined plot and does not detract from the significance of the neighbouring LBs, allowing them to be appreciated in their own right. The building itself holds limited visual interest, and I am not convinced that its demolition would harm the character or appearance of the CA or the setting of the LBs.
18. Turning to the proposed replacement dwelling, the new design would have a larger footprint, extending closer to the LB of Park House, closer to the Fitzroy Park frontage, and further to the west into the already constrained garden area. When viewed from The Grove, the current dwelling appears above the neighbouring buildings as a very simple and modest brick structure that blends with the surrounding buildings. Although the proposed building would

not exceed the height of the existing structure, its overall massing would be notably larger, with contemporary fenestration and elevational detailing extending higher than the comparable features on the current building. As a result, these elements would be prominently visible above the neighbouring buildings from The Grove, drawing attention to the proposed development and competing uncomfortably with the neighbouring LBs.

19. By extending beyond the existing 2-storey building line fronting Fitzroy Park, the proposal would reduce the current sense of spaciousness along this narrow and enclosed road. Moreover, this elevation would become significantly more prominent from The Grove, visually competing with the neighbouring LBs and diminishing their contribution to the CA. Consequently, I find that the proposal would fail to preserve the special interest of the neighbouring LBs and the significance of the CA.
20. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Given my findings above, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
21. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal, which includes the securing of optimal viable use of LBs. The appellant argues that the proposal would bring the gates accessing the site from The Grove, which are Grade II listed as part of No 9B The Grove, back into regular use. While this may offer some public benefit, there is limited substantive evidence to suggest the development is necessary to achieve this outcome. Therefore, these public benefits carry limited weight and would not outweigh the harm to the LBs and CA, given the great weight that must be given to their conservation.
22. The appellant has cited several examples of development in the vicinity of the appeal site, some of which has recently been granted consent. However, the evidence provided does not convince me to alter my previous findings.
23. For the reasons given, although I find no harm in respect of the demolition of the existing building, I conclude that the proposed development would harm the character and appearance of the area and would fail to preserve the significance of the CA and the setting of the nearby LBs. Accordingly, the proposal would conflict with Policies D1 and D2 of the Camden Local Plan 2017 (the CLP), and Policy DH2 of 'A Plan for Highgate' – Highgate Neighbourhood Plan, Adopted Version, May 2017 (the HNP). Together these policies seek, in respect of this issue, to secure high quality design, and to preserve and where appropriate enhance heritage assets and their settings. It would also conflict with the relevant provisions of the Framework, which have previously been set out.
24. Although the Council's decision notice also refers to Policy DH1 of the HNP, which refers to demolition in conservation areas, I find no conflict with this

policy for the reasons previously set out. Similarly, the notice references Policies DH6, DH7 and DH8 of the HNP, which address front boundary treatments, basements and refuse storage. Given I have identified no specific conflict with these issues, the proposal would not conflict with these policies. However, the absence of harm in this respect is a neutral factor that does not alter my previous conclusions.

### *Climate change*

25. The Council contends that the application should have been supported by a condition and feasibility study to demonstrate the retention of the existing building would not be feasible. Although requested, such a study was not provided, as the appellant argued it was not required by policy.
26. The application was, however, supported by a Whole Life Carbon Assessment (the WLCA), which compared the carbon emissions of 3 options over the building's 60 year life cycle: retrofitting the existing dwelling, replacing it, or extending and retrofitting it.
27. The WLCA concluded that retrofitting the existing building would result in the lowest carbon emissions over its life cycle. However, as the existing building has a considerably smaller internal area than the proposed new building, the WLCA suggested that the option of extending and retrofitting the dwelling would offer a more accurate like-for-like comparison.
28. While the WLCA found that the proposed replacement dwelling would have slightly lower carbon emissions over the 60 year period than extending and retrofitting, the difference was not substantial. Moreover, because the option of extending and retrofitting is based on a theoretical proposal, the comparison appears to be based on several design assumptions which may not be a true reflection of the effects of development.
29. Policy CC1 of the CLP requires all development to minimise the effects of climate change, specifically mandating that all proposals involving substantial demolition demonstrate that it is not possible to retain and improve the existing building. While Policy CC1 does not explicitly call for a condition and feasibility study, it does clearly require justification for why the existing building cannot be retained and improved.
30. Accordingly, even if the conclusions of the WLCA were accepted, they do not address the core requirement of Policy CC1. Although the submission includes other documents, such as the Design & Access Statement and Energy Statement, which compare the proposed development to redesign and retrofit options, the evidence presented does not sufficiently convince me that retaining and improving the existing building is not possible. Therefore, the proposal does not meet the requirements of Policy CC1.
31. Regarding the issue of active cooling, there is disagreement between the parties as to whether this would actually form part of the proposed development. The proposal includes a Mechanical Ventilation and Heat Recovery (MVHR) system, which the appellant acknowledges provides cooling but asserts it is passive, rather than active.
32. The Council, however, references the MVHR system cited in the submitted Energy Statement, noting that the system's technical data indicates it has an

active cooling function. While the Energy Statement acknowledges the cooling capabilities of the proposed system, no technical data has been provided to substantiate this.

33. The supporting text to Policy CC2 of the CLP states that active cooling (air conditioning) will only be permitted where dynamic thermal modelling demonstrates there is a clear need for it after all of the preferred measures are incorporated in line with the cooling hierarchy. The submitted Sustainability Statement acknowledges the MVHR unit's cooling function but clarifies that it is not equivalent to air conditioning, as it would only cool incoming air by up to 10°C, rather than cooling the air in a room to a specified temperature.
34. Since Policy CC2 refers to active cooling specifically in the sense of air conditioning, I am not convinced the proposed MVHR system falls under the type of active cooling that the policy seeks to restrict. Therefore, there would be no policy conflict in this regard.
35. For the reasons given above, while I find no issue with the proposed cooling system, I conclude that the proposal fails to adequately justify why the existing building cannot be retained and improved, and it would consequently fail to accord with climate change objectives. As such, it would conflict with Policy CC1 of the CLP, the aims of which have previously been set out.
36. The Council's decision notice also refers to Policies DH7 and DH9 of the HNP in relation to this issue. These policies relate to basement development and the living conditions of residents. I find no conflict with these policies in relation to this issue, but the absence of harm in this respect does not alter my previous conclusions.

### **Conclusion**

37. For the reasons given above, the proposed development would conflict with the development plan as a whole and there are no other considerations to lead me to a decision other than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed.

*P Storey*

INSPECTOR