

**LAND WEST OF ASHLEY COURT (FROGNAL GARAGES),  
FROGNAL LANE, LONDON NW3 7DX**

---

**A D V I C E**

---

**1. INTRODUCTION**

- 1.1. I am asked to advise Pollyshire Ltd in connection with its proposal to redevelop a site on Frognal Lane for two residential units. There are two particular points which I am asked to consider, in response to pre- and post-application communications with planning officers.
- 1.2. The description of the site and surrounding area is set out in the pre-application consultation responses as follows:

*“This application relates to a row of eight single garages on the south side of Frognal Lane, lying to the west of Ashley Court, a six-storey modern block of flats. The site is unlisted and lies just outside Redington Frognal Conservation Area, with the boundary of the conservation area ending at no. 2 Frognal Lane, which is adjacent to Ashley Court to the east.*

*Frognal Lane slopes downwards from east to west towards Finchley Road. As a result, there is a level change, where the garages step down in level twice along the length of the site. There is also a level change from front to back, with the building being two-storey in height to account for the drop in level to the rear of the property. The front building line along*

*Frognal Lane also steps forwards from east to west, with the front building line of the garages and Palace Court sitting further forward compared to Ashley Court. In front of the garages is an area of hard standing, which is also used for parking.*

*The site is identified as possible redevelopment opportunity within the Redington Frognal Neighbourhood Plan (2021), with an opportunity identified to redevelop the site with 'low-level residential development'."*

- 1.3. Pollyshire have negotiated with the occupiers of the 8 garages who, I understand, occupy nearby flats. Pollyshire have secured contracts for vacant possession contracts with 6 of them. Negotiations with the remaining owners have been partially successful in that they are each prepared to allow demolition of their existing garages, but they require them to be replaced on the site (one of them in the same position at the edge of the site) together with the grant of new, 999 year leases. A total of 4 garages will be reprovided, 2 on long leases, 2 to remain within the freehold (but not for occupation by the residents of the new homes).
- 1.4. The scheme proposes one 3-bed and one 4-bed residential unit constructed partly over four reprovided garages. Of those four, two are on the eastern and western edges of the site, reflecting the legal agreement with leaseholders. The central two garages would not be let on 999 year leases, but on licences.
- 1.5. Officers are concerned that retention of the garages and, particularly, the positions of the eastern and western retained garages fails to optimise the development potential of the site, both now and for the future. They have criticised what they characterise as 'piecemeal development' of the site. They would prefer to see a greater number of smaller units, citing Camden Local Plan

Policies G1 and H1 which provide that housing is the 'priority use of the Plan' (paragraph 2.13, supporting text to Policy G1) and expect the 'maximum reasonable provision of housing that is compatible with any other uses needed on the site' (Policy H1d). The most recent response letter of 1.2.2024 stated:

*"The Council recognises that gaining ownership of all garages is a difficult process however the development potential on site should not be hindered by this and there is still an expectation that any proposal on site can provide an adaptable and future proof scheme. This is clearly stated as part of Local Plan policy...Whilst small, this site does have the potential to provide much more than that. It is appreciated that not all of the garages can be used due to ownership problems however this should not justify inefficient or unadaptable development on site and therefore alternatives should be looked at. As stated above this is highlighted in various policies and could be something the Council would find concerning in any full application."*

Policies D1 and G1a and b are cited.

- 1.6. I gather that officers have also expressed the view that land control, being a private matter, is not a material planning consideration in this case.
- 1.7. I am not asked to comment on design implications as such. They are discussed in further detail in the pre-application correspondence. Rather, I am to consider the lawfulness of the officers' approach to land control.

## 2. **MATERIAL CONSIDERATIONS**

- 2.1. The Town and Country Planning Act S.70 (2) requires decision makers to have regard to the development plan so far as material and to any other material considerations. Planning and Compulsory Purchase Act 2004 S.38(6) requires

the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

2.2. Caselaw establishes that, in principle, ‘any consideration which relate to the use and development of land is capable of being a planning consideration’: *Stringer v MHLGH* [1971] 1AER.65. Planning control is concerned with landuse from the public, rather than the private perspective, but the distinction is not hard-edged, as the facts of *Stringer* itself demonstrate (protection of operation of Jodrell Bank). In *Great Portland Estates v. Westminster CC* [1985] AC 661, the exclusion of all such interests was described as ‘*inhuman pedantry*’. There are numerous other examples concerning matters such as rights of light and restrictive covenants, which are not treated as material planning considerations and hence are not barriers to the grant of planning permission, although they may constrain the developer’s ability to implement it. I do not consider it necessary to review those cases because the true issue here is different.

2.3. In this case, the issue in question is neither the potential impact of a development on some private third party interest nor the ability of a proposed building to meet the personal needs of the applicant. Rather, it is about the amount of land available for residential development, that being the landuse favoured in the development plan.

2.4. The site is identified and promoted in the Neighbourhood Plan as ‘Possible Opportunity for Development RF4’ for ‘a low-level residential development’ The Plan states:

“Development, redevelopment or improvement of the following locations is encouraged. They are not intended as

site allocations, but guidance, in the event that any of the sites RF 1 to RF 9 come forward for development. Development should take account of the development principles set out below.’ The site specific principles repeat the suggested landuse, referring to its support in Local Plan Policy T1, but highlight as ‘Constraints’ the fact that ‘The garages are owned by residents of Palace Court, 250 Finchley Road’. As a made plan, this Neighbourhood Plan is part of the statutory development plan.”

- 2.5. The general development management policies of the Camden Local Plan highlighted by officers and, specifically, Policies G1 and H1, import planning judgments: supporting development that makes ‘best use of its site’, ‘resisting development that makes inefficient use of ...land’, expecting a mix of uses and ‘an element of self-contained housing where possible’ (G1); ‘where sites are underused or vacant, expecting the maximum reasonable provision of housing that is compatible with any other uses needed on the site’ (H1).
- 2.6. London Plan Policy D3, similarly, requires the application of ‘a design-led approach to determine the optimum development capacity of sites’ and proactive exploration of the ‘potential to intensify the use of land to support additional homes and workplaces’.
- 2.7. It is noticeable that, unlike some of the sites specifically allocated by Policy G1 of the Local Plan, there is no requirement for comprehensive development or masterplanning. The site specific guidance of the Neighbourhood Plan makes no such stipulation. On the contrary, it recognises that there are constraints associated with the existing landuse, specifically flagging land ownership.
- 2.8. Lawful application of the policies relied on by officers requires them to take account of all material considerations. The development plan itself (via

Neighbourhood Plan RF9) recognises the precise constraint in issue and does not include a requirement for - or even guidance as to the desirability of - comprehensive development. As part of the development plan, the Neighbourhood Plan's RF9 is a statutory material consideration to which the S.38(6) presumption applies. It accurately identifies the existence of a constraint and does not impose any requirements as to the comprehensivity or form of development, other than that it should be 'low level residential'. What is proposed are two residential units of part 2 / part 3 storeys, which constitutes 'low level' development in both senses of the phrase.

- 2.9. When considering whether or not the scheme 'makes best use of the site' or is efficient in terms of use of scarce land, the decision maker must proceed on the basis of reality, especially when that reality is flagged in the development plan. There is no suggestion that the Borough would consider using its land assembly powers to overcome the ownership constraint here. Similarly, 'maximum reasonable provision of housing' must be assessed reasonably, having regard to the facts. In this instance, in the absence of planning permission, the site will continue to be underused entirely for a landuse which is not favoured in policy. Planning permission is the key to removing four garages and delivering two self-contained dwellings. The best that the applicant has been able to negotiate with the eastern and western garage owners is reversion as part of an integrated scheme with the grant of 999 year leases. It is very difficult to see how officer objections based on lack of future flexibility are meaningful, given the length of leases, which more or less equate to freeholds. The DAS does, however, demonstrate the potential for the two end garages to be converted to residential floorspace in the event of sale.

2.10. London Plan Policy D3, with its requirements for ‘a design-led approach to determine the optimum development capacity of sites’ and proactive exploration of the ‘potential to intensify the use of land to support additional homes and workplaces’, is also relevant. The scheme’s architects have tested various different dispositions of space in response, specifically, to officers’ suggestions that it might be possible to increase the numbers of dwellings on the site. The results of this process are set out within a document prepared by the architects which is to be submitted to the planning officers, as I understand it, along with this Advice. Whilst design is not my professional expertise, it is clear from the architects’ document that the practical implications of very narrow properties resulting from the suggested approach would lead to constrained units suffering from a number of relevant defects, such as serious daylight/sunlight infringements. The material contained in the Note provides sufficient evidential basis for a finding that the process required by Policy D3 has been undertaken and has led to a sound design decision.

### 3. **CONCLUSION**

3.1. I shall be happy to advise further if necessary.

Francis Taylor Building  
Inner Temple  
London  
EC4Y 7BY

**DX 402 4DE**

MORAG ELLIS KC  
24.7.2024

**LAND WEST OF ASHLEY COURT  
(FROGNAL GARAGES), FROGNAL  
LANE, LONDON NW3 7DX**

---

**ADVICE**

---