
Appeal Decision

Hearing held on 11 September 2013

Site visit made on 11 September 2013

by Elaine Benson BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 November 2013

Appeal Ref: APP/X5210/A/13/2195725
120 Finchley Road, London NW3 5HT

- 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 Sisem Limited against the decision of London Borough of Camden Council.
 - The application Ref 2012/5608/P, dated 18 October 2012, was refused by notice dated 22 January 2013.
 - The development proposed is described as *Addition of 7th floor hostel accommodation to the consented building scheme (planning permission granted Ref 2010/0552/P, 30 April 2010)*.
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Decision

1. The appeal is dismissed.

Main Issues

2. Planning permission was granted in 2010 for the erection of a part 4 storey, part 7 storey building over two floors of basements to provide a hostel with commercial floorspace for flexible B1, A1, A2, A3, A4 uses, including hard and soft landscaping works¹. The appeal site has been cleared but the approved building has not yet been erected. It is proposed to amend its design by adding more hostel accommodation at roof level. The main issues in this appeal are the effect of this amendment on the design of the building as approved and on the character and appearance of the surrounding area.
3. The approved scheme was supported by a Section 106 Agreement (Agreement) entered into under the above Act. Following the Hearing, an updated Agreement (a Deed of Variation) was produced which primarily reflects the proposed amendments to the approved scheme. The Deed of Variation addresses the Council's second reason for refusal which related to its absence. It has been taken into account in this decision and is addressed further below.

Reasons

4. The proposed amendment to the approved scheme comprises the erection of an additional floor of 8 units of hostel accommodation. A proposal for a similar amendment was dismissed on appeal in 2011². The current appeal proposal

¹ LPA Ref 2010/0552/P

² LPA Ref 2010/3181/P, Appeal Ref APP/X5210/A /11/2148639

seeks to address the previous Inspector's concerns. The main differences between the 2 schemes of amendment are a reduction in the additional floor area and increased set backs from the front, rear and church-facing side elevation. In the previous scheme the stone cladding proposed for the side elevation as approved was extended to the 6th floor, with the 7th floor treated in a more lightweight manner. In the current appeal the elevations up to the 6th floor would remain as approved. The resulting development would be 1 storey higher than the neighbouring No 116-118 with an overall height similar to that refused in the previous appeal.

Effect on the approved building

5. The front elevations of the taller neighbouring buildings have strong horizontal elements which would be reflected in the design of the approved development. In particular, the projecting frame on the front elevation would relate to the height and proportions of the neighbouring building, No 116-118. Although this frame would remain, the overall horizontal emphasis would be diminished by the addition of a further storey, notwithstanding that it would be set in from the front, side and rear of the 6th floor. The top of the building would become a more dominant visual element above the 6th floor parapet line which as approved would follow that of the adjoining building. The proposed development would not tie in with No 116-118 as satisfactorily as in the approved scheme.
6. The articulation and arrangement of the approved front elevation successfully relieves the overall bulk of the building but this effect would be reduced by the addition of the proposed floor. The resulting more vertical form would have little relationship to the building below and would adversely affect its overall proportions and visual connection with the surrounding buildings. The top storey would appear bulky, top-heavy and unrelated in massing terms to the remainder of the building. This would result in an overly dominant feature which has the appearance of being an afterthought, rather than an integral element of the overall design.

Effect on the wider area

7. The appeal site is prominently located in the Finchley Road commercial centre, diagonally opposite the Tube station. To the one side it stands at the end of a row of buildings ranging in height between 5 and 7 storeys with a much lower bank building at the other end. The ages and designs of these buildings are varied, giving the row a disparate appearance. I am not convinced that a 'book-end' is required on a short run of irregular buildings of entirely different characters and varying heights. In my view the proposed amendment is not required to balance the height of the tall No 108-110 Finchley Road, the top 3 floors of which are tiered back in a sloping manner, particularly as the much smaller scale bank is at the end of the row. Furthermore, although the roof extension would be seen from most viewpoints and I have found it to be an unacceptable amendment, the set backs would limit the contribution of the additional floor to any book-end effect.
8. The impact of the proposed additional bulk and height would be increased by the building's location adjacent to the low rise Holy Trinity Church which forms a significant break in the frontage of otherwise taller buildings. The disparity in height between the church and the approved building would be exacerbated. This would significantly increase the dominance of the new building when

viewed obliquely along Finchley Road, particularly in the context of the much reduced scale of development towards the north. Furthermore, the spacious pedestrian frontage at the front of St John's Court on the opposite side of Finchley Road heightens the visibility and prominence of the appeal site, as does the wide junction of Canford Gardens with Finchley Road which neighbours it.

9. The setting of the substantially sized and distinctive St John's Court is materially different to the appeal site due to its angled set back from the road behind the wide pedestrian area. It does not form a significant part of the visual context of the appeal site in the most important views, although there are some wider townscape views of both it and the appeal site from various approaches along Finchley Road and particularly from higher land. Within this context the height and scale of St John's Court does not in my judgement justify the scale of the appeal scheme as it is proposed to be amended.
10. The proposed additional storey would be visible from views along Finchley Road and from its junction with Canfield gardens, although rear views would be restricted to private views from neighbouring flats. The introduction of a more vertical emphasis to the building and a height exceeding that of its neighbour would result in a bulky and top-heavy appearance when viewed in the context of the surrounding townscape. This would harm the character and appearance of the street scene. Despite the design alterations to the additional floor I conclude that the proposed extension would have a similar overall harmful effect on its surroundings as the previously dismissed scheme.
11. The rear of the site immediately adjoins the Fitzjohns/Netherhall conservation area. The approved development includes a lower element between the conservation area and the taller building which is the subject of this appeal. The smaller scale development would be unchanged. It is common ground between the two main parties that there would be no adverse impact on the character or appearance of the conservation area or its setting. The same conclusion was reached in the previous appeal decision. Notwithstanding the views of local residents to the contrary, from what I saw on site, including views from a balcony in Alban House to the rear, I am satisfied that the additional floor proposed on the front building would maintain the relationship that has already been approved. Within this context I conclude that the currently proposed development would preserve the character and appearance of the Fitzjohns/Netherhall conservation area and there would be no conflict with Core Strategy (CS) Policy DP25 which deals with heritage based design issues and in particular its criterion d). For the same reasons there would be no conflict with the objectives of the National Planning Policy (the Framework) to conserve heritage assets.
12. I conclude on the main issues that when compared to the previously dismissed proposal, the increased set backs and use of alternative materials in the side elevation would to a small degree reduce the overall visibility of the roof extension. However in my view the proposed alterations would not sufficiently diminish its visual impact or the harm arising from the more vertical emphasis it would introduce, the diminution of the effect of the frame in reducing the building's overall mass and the building's increased height above the neighbouring buildings. It is concluded that the proposed development would harm the character and appearance of the approved building and that of the wider area in conflict with CS Policies CS14 and DP24 which in summary

promote high quality design and places and encourage improvements to their quality where no pattern prevails. These policies are consistent with the design objectives of the Framework.

Section 106 Agreement

13. The Deed of Variation referred to above does not seek to change the substance of the already agreed obligations but recognises changed circumstances, including the additional floor which is the subject of this appeal, the change of name of the mortgagee and an updated site plan. Notwithstanding that some obligations have already been discharged following the commencement of the original development³, including the payment of some of the identified financial contributions, reliance can be placed on this latest Agreement as the revised financial contributions towards open space and highways have been sufficiently justified, as have the other obligations including the detailed management of the hostel; the prevention of the sale of hostel rooms; ensuring that the scheme remains a car free development and the provision of wheelchair units. The need for compliance with service management, sustainability and energy measures and construction management and travel plans has also been justified.
14. I conclude that the contributions and measures set out are reasonable, related to the development and necessary in accordance with the aims of CS Policy CS19⁴ and Paragraph 204 of the Framework. These matters would have attracted significant weight in this decision, had the scheme been acceptable in other respects.

Other matters

15. There was some discussion about whether the approved development had been implemented and attempts by the appellant to seek legal clarification have stalled. Nonetheless, some of the financial contributions identified in the original Agreement which were due at the point of commencement have been paid. There also appears to be an implicit assumption that it has been implemented; otherwise it seems unlikely that the Council would have entered into the Deed of Variation. These factors along with other evidence provided with this appeal and observed at the site visit, including the construction of a pile and a statutory declaration suggest to me that the scheme has been commenced.
16. There has been no material change to the relevant policy context since the decision to dismiss the earlier appeal. At that time the main parties were given the opportunity to comment on the Consultation Draft of the Framework which was published following the appeal hearing. The appellant's comments were taken into account in that decision.
17. I have had regard to all of the other comments made by local residents and associations in writing, at the hearing and at the site visit. The effects of the proposed amendments on daylight and sunlight would be similar to the approved scheme. Concerns about the mix of uses, their servicing, access for emergency vehicles, various types of noise that could be generated and the potential for general disturbance to be generated by the occupiers of the

³ See paragraph 15 relating to commencement

⁴ Among other things Policy CS19 sets out that planning obligations will be used to secure relevant infrastructure, services and facilities and to mitigate the impact of development

building were addressed in the previous approved scheme. They would not be substantially altered by the appeal proposal. A number of conditions were attached to the original consent and would have been replicated in this appeal, had it been successful. These include conditions controlling the locations and timings of delivery and requiring the submission of an overall management plan. I am satisfied that these measures would have satisfactorily addressed the concerns raised. The evidence given at the hearing is that issues regarding the location of the boundary and the condition of a retaining wall are being addressed under other legislation and processes.

Overall conclusion

18. All other matters raised have been taken into account. None are sufficient to outweigh the conclusions on the main issues which are set out above. Accordingly, the appeal is dismissed.

Elaine Benson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Evans
Gordon Jeffreys
Charles Moss
Alain Demol

Geoffrey Searle Planning Solicitors
KSR Architects
Bravo Management Limited
Bravo Management Limited

FOR THE LOCAL PLANNING AUTHORITY:

Elaine Quigley
Catherine Bond

Planning Officer, London Borough of Camden
Conservation and Design Planner, London
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INTERESTED PERSONS:

Cecil Elliston Ball

Town Planning Intelligence - representing Alban
House (Hampstead) Ltd

Gill McMillan
David McMillan
Edwin Robson
Joanna Warrand

Local Resident
Local Resident and Director of Alban House
Local Resident and Director of Alban House
Local Resident

DOCUMENTS

- 1 Updated list of appeal proposal drawings
- 2 Deed of Variation to S106 Agreement

PHOTOGRAPH

- 1 Photographs of appeal site from rear taken from Maughan House,
submitted by Mr Elliston Ball