



Date: 28 August 2013
PINS Refs: APP/X5210/A/13/2201704 & APP/X5210/E/13/2201708
Our Ref: 2012/6795/P & 2012/6812/C
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Dear Mr. Ries,

**Appeal by Ms S Drews
Site at 59 Maresfield Gardens, London, NW3 5TE**

Summary

The application comprises a single family dwelling within the Fitzjohns/Netherhall Conservation Area. It located within a modest, small scale 1950's terrace. This is essentially a back land development, low key within the street scene and the conservation area. The area is predominantly residential.

The proposal is for erection of a four bedroom single family dwelling comprising of a double basement and partial sub basement, lower ground, ground and first floor levels.

On 03/06/2013 permission and conservation area consent were refused for the above scheme on grounds of i) over development ii) impact of basement on neighbours and iii) the absence of an approved scheme.

The Council's case is set out in the committee report dated 24 January 2013 and the committee meeting minutes dated 23 May 2013. The committee report details the site and surroundings and the site history. The committee minutes details the assessment of the proposal. A copy of the report was set with the questionnaire. Unfortunately, the committee minutes refusing the application were inadvertently omitted from documents send with the questionnaire and are attached now.

In addition to the information sent with the questionnaire I would be grateful if the Inspector would take into account the following information and comments before deciding the appeal.

Site

The site is within the Fitzjohns/Netherhall Conservation Area. It comprises a single family dwelling. It is the end property of a terrace of 3 properties i.e. Nos. 55-59 on the western side of Maresfield Gardens close to the junction with Netherhall Gardens. It dates from the mid 1950's It is described in the Conservation Area Statement as being "*a mid 1950s two storey terrace, on a sunken site that has little relationship with the surrounding area*". Although somewhat of an anomaly, the existing terrace of three houses, is nonetheless, considered to provide an appropriate transition between the form of No. 40 Netherhall Gardens (to the north) and Nos. 51 & 53 Maresfield Gardens (to the south), its low-key presence contributing to a noticeable degree of openness, particularly benefiting the rears of Nos. 36, 38 and 40 Netherhall Gardens. It is likely

that the terrace was built in the rear section of the back garden of No. 40 Netherhall Gardens.

Views, in both directions along Maresfield Gardens, are noted in the conservation area statement as being of importance.

Development Plan Policies

The 'Development Plan' for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 will be The Camden Core Strategy and Camden Development Policies of the Local Development Framework. The relevant LDF policies to this appeal are listed in the committee report already sent.

The Development Plan was adopted in November 2010 and is recent and up to date. It accords with paragraphs 214 – 216 (Annex 1) of the National Planning Policy Framework 2012 and should therefore be given full weight in the decision of this appeal.

There are no material differences between the council's policies and the NPPF in relation to this appeal. The NPPF states that development should be refused if the proposed development conflicts with the local plan unless other material considerations indicate otherwise

Camden Planning Guidance was fully adopted in December 2011 and accordingly is recent and up to date also.

Reasons for refusal

Planning application

It can be summarised that planning permission was refused for the following reasons:

1. The proposed development by virtue of its scale, depth and extent of site coverage below ground would result in overdevelopment of this plot, which is currently occupied by a modest infill development appropriate to this part of the conservation area, which would cause harm to the built environment.
2. The proposed development by virtue of the extent of excavation and basement construction would have a disproportionate impact on the amenity of neighbours and the structural integrity of their properties.

Conservation Area Consent application

1. The proposed demolition of this building in the absence of an approved scheme for its replacement would be likely to result in harm to the character and appearance of the surrounding conservation area.

Comments of the appellant's grounds of appeal

This statement will address the appellant's comments.

The grounds of appeal can be summarised as follows in italics and are subsequently addressed beneath.

The appellant states that the local planning authority has acknowledged that the application complies with current policy and has recommended approval. The

committee report states that the proposal is acceptable in terms of design and would not have an adverse impact on neighbour amenity.

It is the case that the application was originally recommended for approval when it was presented by officers to the planning committee. However, following discussion the committee members took a different view and resolved that the proposal was contrary to current policy on two grounds. Firstly that the extent of below ground development was overdevelopment of the site and that the extent of excavation and construction work would have a disproportionate impact on neighbours.

Specific comments in relation to reason for refusal 1 of the planning application

The appellant states that there is no quantifiable definition on 'scale, depth and extent of site coverage below ground' within policies DP26 and DP27.

Policy DP27 does not define the maximum scale at which a basement extension is likely to be suitable. This is because each application should be assessed on its own merits and in the context of the surrounding built and natural environmental and other policies such as DP24 and DP25.

Policy DP27 states that basement development should not harm the appearance or setting of the property or the established character of the surrounding area (criteria g). In particular, lightwells should not be granted where they would: harm architectural character of the building (criteria h), harm the character and appearance of the surrounding area (criteria j) or result in the loss of more than 50% of the front garden or amenity space (criteria k).

In this case the scale, depth and extent of site coverage below ground would be apparent above ground from within the application site, from Maresfield Gardens, and from windows at the neighbouring properties to the rear. Aspects of the basement would be visible from both the front and rear of the building. At the front the appeal scheme includes a two storey deep lightwell which would be visible from street level. The exposed basement level from the rear would give the impression of a three storey building from the rear rather than a modest two storey building and the spiral staircase leading down to the lower basement level visualises the extent of development below ground.

It is important to note that the current building on site forms part of a modest terrace 2 storeys in height. The terrace has a low key presence which maintains the openness of the site. The dominance of these buildings from Maresfield Gardens is further reduced by the fact that the site is sunken down a storey from street level. This results in only the first storey and roof being visible from many vantage points along Maresfield Gardens. The low height, modest scale and footprint of the existing building on the appeal site along with the other two buildings in the terrace (Nos. 55 & 57) is likely to have been intentional when the site was first developed. This is likely because, as stated above, the terrace was built in rear section of the back garden of No. 40 Netherhall Gardens. As such, the terrace would have been designed to be subservient to both the building at No. 40 Netherhall Gardens and the adjacent building on Maresfield Gardens (No. 53). The large and deep front and rear lightwells would be clearly visible and betray the true scale of the development. This would appear out of character for a modest site is therefore considered unacceptable.

The wider context of the appeal site should also be considered in assessing this appeal. The western side of the northern part of Maresfield Gardens is characterised by two storey dwellings which do not have basements which are manifested to the

front. As, such, the addition of the building with a lightwell, in which can be seen two levels of basement, would be an alien addition to the streetscene harming the character and appearance of the conservation area.

This view conforms with supporting text paragraph 24.12 of policy DP24 which states that, "within areas of distinctive character, development should reinforce those elements which create the character. Where townscape is particularly uniform attention should be paid to responding closely to the prevailing scale, form and proportions and materials. In areas of low quality or where no pattern prevails, development should improve the quality of an area and give a stronger identity."

To the rear of the building the basement level would be visible from the upper levels windows of the properties to the rear. It is considered that this additional floor and the spiral stair case which hints at the scale of development below ground would vastly increase the perceived scale of the building resulting in the building appearing unbalanced and out of character with the adjoining terrace and insubordinate garden backland site.

As such it is considered that the scale, depth and extent of site coverage which would be clearly visible from the public realm would appear as an alien addition harming the character and appearance of the conservation area contrary to policies DP24, DP25 and DP27 and Fitzjohns/Netherhall Conservation Area Conservation Area Statement policies F/N1 and F/N25.

Specific comments in relation to reason for refusal 2 of the planning application

The appellant states that the appeal scheme is compliant with Policy DP26. In particular in order to comply with criterion d, e, g and ,f which relate to neighbour amenity during construction the appellant has agreed to submit and comply with a Construction Management Plan which would be secured through a S106 agreement.

The proposed basement would have a length of 19 metres, a width of 8 metres and a maximum depth of 9.6 metres, with piles reaching to 14 metres. Excavation of a basement of this scale would result a significant amount of spoil being removed from the site. The Structural Engineer (ARUP) who reviewed the appellant's basement impact assessment advised that the proposed below ground excavation and construction works would take over a year to complete. The proposed site is surrounded by residential properties. This would result significant disturbance to these neighbours in terms of noise, vibrations and dust. It is not considered, given the time period over which the works would take place, and the residential nature of the area, that a Construction Management Plan could manage these impacts such that the development would not have a disproportionate impact on the amenity of neighbours. The works would also result in a large number of lorry movements to and from the site which would cause further disturbance to neighbours. As such, it is considered that the appeal scheme would be contrary to policy DP26.

The appellant states that the appeal scheme would maintain the structural integrity of the neighbour's properties and that this has been confirmed by ARUP.

It is noted that ARUP has confirmed that the basement could be constructed without adverse impact on the structural stability of the neighbouring properties. However, there is still an element of risk of damage to neighbouring properties during the construction phase given the scale of the basement excavation/construction. As the basement would adjoin the neighbouring property this risk could result in significant harm to the structural integrity of this neighbouring structure. Members considered that particularly given the content of the objections, and the position of the basement

directly adjoining the neighbouring property, the scheme had not demonstrated that all potential for risk had been eliminated. This risk coupled with the disturbance to neighbour in terms of noise, vibration, dust and lorry movements is considered to amount to a disproportionate adverse impact on neighbour amenity.

Conservation Area Consent

The appellant has not addressed the reason for refusal for the Conservation Area Consent application in their grounds of appeal.

The appeal site is neither identified as making a positive or negative contribution to the Conservation Area in the adopted 2001 Fitzjohns/Netherhall Conservation Area Conservation Area Statement. Where a building is considered to make little or no contribution to the character or appearance of a conservation area, the Council will assess the contribution made by any replacement building.

The refusal should be therefore be upheld because the proposed scheme harms the character and appearance of the Conservation Area Consent. Paragraph 25.8 of policy DP25 state, "any replacement building should enhance the conservation area to an appreciably greater extent than the existing building. When a building makes little or no contribution to the character and appearance of a conservation area, any replacement building should enhance the conservation area to an appreciably greater extent than the existing building."

Conclusion

On the basis of information available and having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeals.

In accordance with Government advice and without prejudice to the Council's case, should the Inspector find in favour of the appellant the Council would seek to impose the following conditions and S106 obligations.

Conditions

Planning permission

- 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 Details of the external materials including windows, glazing, balconies, doors, render and boundary treatment to be used on the building shall not be otherwise than as those submitted to and approved in writing by the local planning authority before any work is commenced on the relevant part of the development. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development

Policies.

- 3 A sample materials board/panel of all facing materials shall be provided on site and approved in writing by the local planning authority before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The sample panel shall be retained on site until the work has been completed.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 4 The development hereby permitted shall be carried out in accordance with the following approved plans: 1/1095/100; 1067/101; 1067/102; 1067/103; 1067/104; 1067/105; 1095/106; 1095/107; 1095/108; 1095/200; 1095/201; 1095/202; 1095/203; 1095/204; 1095/205; 1095/206; 1095/207; 1095/208; 1095/209; 1095/210; 1095/211; 1095/212; 1095/213; 1095/214; 1095/302 and 1095/305.

Reason:

For the avoidance of doubt and in the interest of proper planning.

- 5 Prior to the commencement of any works on site, details demonstrating how trees to be retained (including the Lime Trees at front and rear of the site) shall be protected during construction work shall be submitted to and approved by the Council 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 policy CS15 of the London Borough of Camden Local Development Framework Core Strategy.

- 6 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. Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels. 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 policy CS14, CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 7 All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development. Any trees or areas of planting 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 policy CS14, CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 8 The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

- 9 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 2) (England) Order 2008 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-H) of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the local planning authority.

Reason: To safeguard the visual amenities of the area and to prevent over development of the site by controlling proposed extensions and alterations in order to ensure compliance with the requirements of policies CS14 and CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 10 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. The appointed engineer shall provide the local planning authority with written regular updates (at least every 3 months) during the course of construction. 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 policy CS14 of the London Borough of Camden Local Development Framework Development Policies and policy DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

- 11 Prior to commencement of development details of a sustainable urban drainage system shall be submitted to and approved in writing by the local planning authority. Such system shall be based on a 1:100 year event with 30% provision for climate change demonstrating 50% attenuation of all runoff demonstrating greenfield levels of runoff. The system shall be implemented as part of the development and thereafter retained and maintained.

Reason: To reduce the rate of surface water run-off from the buildings and limit the impact on the storm-water drainage system in accordance with policies CS13 and CS16

of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23 and DP32 of the London Borough of Camden Local Development Framework Development Policies.

- 12 The 1.8 metre high screen on the southern boundary of the rear raised ground floor terrace shall be erected in accordance with the approved plans prior to first commencement of the roof terrace and shall be permanently retained in position thereafter.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 13 The development hereby approved shall be carried out in strict accordance with the measures set out in the Basement Impact Assessment Report by Geotechnical and Environmental Associates, dated December 2012.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Development Policies and policy DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

- 14 The waste storage area hereby approved, at lower ground floor level, shall be provided prior to first occupation and permanently retained thereafter.

Reason: To ensure that sufficient provision for the storage and collection of waste has been made in accordance with the requirements of policy CS18 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26, and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 15 The covered cycle storage area for 2 cycles hereby approved at lower ground floor level shall be provided in its entirety prior to the first occupation of any of the new units, and thereafter permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

Conservation Area Consent

- 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 demolition hereby permitted shall not be undertaken before a contract for the carrying out of the works of redevelopment of the site has been made and full planning permission has been granted for the redevelopment for which the contract provides.

Reason: To protect the visual amenity of the area in accordance with the requirements of policy CS14 of the Local Development Framework Core Strategy 2010 and policies DP24 and DP25 of the Local Development Framework Development Polices 2010.

Legal agreement

A S106 legal agreement to secure the following:

- Code for sustainable homes – design and post construction review;
- Energy strategy (including plan of solar Pv's and solar thermal collection);
- Car-capped development;
- Construction Management Plan;
- Highways contribution;
- That the developer should make reasonable endeavours in the detailed design and construction stages to reduce the predicted category of damage for all adjacent structures from "slight" to "very slight".

The Council is currently working with the appellant to get a signed copy of the legal agreement to the Inspectorate prior to the appeal site visit.

If any further clarification of the appeal submissions are required please do not hesitate to contact Jenna Litherland on the above direct dial number or email address.

Yours sincerely,

Jenna Litherland
Senior Planning Officer
Culture and Environment Directorate

Appendix 1 – Committee Minutes 23 May 2013