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# Appeal Decision

Site visit made on 22 November 2011

**by Mike Robins MSc BSc(Hons) MRTPI**

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

**Decision date: 12 December 2011**

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**Appeal Ref: APP/X5210/A/11/2158407**  
**107 West End Lane, London NW6 4SY**

- 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 Mr Maurice Lawee against the decision of the Council of the London Borough of Camden.
  - The application Ref 2010/6697/P, dated 1 December 2010, was refused by notice dated 14 March 2011.
  - The development proposed is alterations to an existing house in multiple occupation (HMO) including a single-storey rear extension, new basement and associated light wells to create 11 bedrooms (10 double and 1 single) and associated ancillary accommodation (kitchen/lounge).
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The Council's representative failed to attend the site visit and as a result I undertook an unaccompanied site inspection. The appellant was content with this approach and after the visit the Council were contacted and they have not objected.
3. A draft Unilateral Undertaking, unsigned and undated, was submitted by the appellant under the provisions of the Town and Country Planning Act 1990. This was to address controls on construction management and to preclude future occupiers from applying for parking permits, as required by the Council. I have taken this into account in reaching my decision, although because it is incomplete it carries little weight.
4. A significant amount of new and further information has been submitted as part of this appeal. In addition there has been an alteration to the proposed front wall. While this latter matter has resolved the Council's original concern, and I see no reason to disagree, the further information has not.
5. Furthermore the Council suggest that the information should more properly have been submitted at the original application stage, when all interested parties would have had the opportunity to consider and comment on it. While I have sympathy for this, I do not consider that the technical reports, which the Council have commented on, nor the alterations to the front wall, change the development such that any party would be significantly disadvantaged or prejudiced by my acceptance of this information.

## **Main Issues**

6. I consider that there are five main issues in this case:

- The effect of the proposal on the living conditions of future occupants, with regard to outlook, daylight and privacy;
- Whether the proposed basement would be at significant risk of flooding;
- Whether the proposed basement would effect the structural stability of neighbouring properties;
- Whether adequate safeguards are in place to ensure that the proposal would not result in harm to the highway safety of users of the adjacent highway;
- Whether adequate safeguards are in place to ensure that the proposed works would not have unacceptable effects on on-street parking in the area.

## **Reasons**

7. This appeal relates to a substantial three-storey terraced house. The row of properties here is staggered slightly to respond to the curve of the road and they have relatively small front gardens. Most appear to have been converted to flats, although the appeal site itself was not occupied, and indeed was in the process of extensive renovation. Some of the properties are in poor condition, although evidence remains of some fine period detailing.
8. The site lies on the western boundary of the Swiss Cottage Conservation Area. The front gardens and façades along West End Lane form an important part of the character of the area. However, the only significant alteration to the façade would be a relatively small light well, there are no railings proposed and the original front wall would be retained. I am satisfied that the development would not harm the character or appearance, and thereby the objective of preserving or enhancing the conservation area would be met.
9. There is a slope down to the west and a slight slope along the road which results in No 99, on the southern end of the terrace, being set slightly higher relative to the road. This property has a basement with a small light well where the head of the associated window is set above ground level. A row of conifers, shown on the plans as being retained, had been removed prior to my site visit.
10. This proposal seeks to introduce a basement at No 107 with front and rear light wells, which would provide a communal lounge to the front and two extra bedrooms to the rear. A previous appeal<sup>1</sup> for a similar proposal was dismissed. The schemes differ in that this previous proposal included use of the basement as a single flat, with a much larger light well to the front, providing access to this flat.

## *Living Conditions*

11. Unlike that at No 99, the whole of the basement proposed here would be below ground level. As a result outlook and natural lighting are issues, and the appellant has commissioned an interior daylight assessment. On the basis of the assumptions made in this report it was suggested that there would be sufficient interior daylight in all three rooms, however, the Council have questioned the

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<sup>1</sup> APP/X5210/A/10/2126997

approach used. I have considered the report and I am not satisfied that it has properly addressed the situation that would arise as a result of this proposal.

12. As regards the communal lounge to the front, it is not clear that the assessment considered the metal grate that would enclose the light well or the presence of refuse bins in the front yard, nor do I consider that a suitable figure was adopted for the length of the room. I concur with my colleague, who considered the previous appeal with a considerably larger light well, that this room would still receive very limited levels of natural lighting. In addition, with the window wholly below ground level, there is no effective outlook from this room beyond the short distance to the walls of the light well.
13. Turning to the bedrooms to the rear, the light well here would be considerably larger, however, the rooms would be in separate ownership and the courtyard would be shared. This would introduce significant privacy issues which could only be dealt with through internal or external screening which would reduce both outlook and light. Furthermore I am unsure that the overlap of the rear elevation of No 105 and its substantial rear projection, lying immediately to the south, has been accounted for in the assessment. The future occupiers of these rooms, which would be the only private areas available to them and likely to be used the majority of the time, would experience a poor quality of lighting, outlook and privacy.
14. While the appellant points to other rooms being available, these would be either the communal lounge, which, as set out above, may also be deficient in both outlook and light, or the kitchen on the first floor. This room would be a functional one and in itself would have limited outlook. I do not consider that this would provide an adequate respite for future occupiers of the basement units.
15. The appellant refers to two schemes which have received permission for basements, and has supplied plans for these suggesting that the Council has been inconsistent in its decision making. I have considered the limited information before me and note that the proposals relate to flats where basement rooms are either only part of the accommodation available or where there is no conflict in occupier's access to courtyard light wells; I have insufficient information to assess lighting levels associated with these schemes. In any case each application or appeal must be considered on its own merits.
16. The scheme would therefore conflict with Policy CS5 of the Camden Local Development Framework Core Strategy, adopted 2010 (the CS) and Policy D26 of the Camden Local Development Framework Development Policies, adopted 2010 (the DP). These policies seek to ensure that new development fully considers the impact on occupiers including privacy, outlook and light.

#### *Flood Risk*

17. The Council have identified that the road is at risk of surface water flooding, identifying a previous occurrence in 2002. The appellant has submitted a flood risk assessment, (FRA), to the appeal, however, this does not adequately address surface water flooding. I do not consider that the upstands around the light well can be considered as acceptable without a proper analysis of the risk associated with the surface water flooding and the proposed use of pumps is not appropriate to manage such a risk. The FRA does not accord with Planning Policy Statement 25 – *Development and Flood Risk*. The proposal would conflict with DP Policy DP27, which states that the Council will not permit basement schemes in areas prone to flooding which include habitable rooms, and DP23 which identifies areas at risk.

### *Structural Stability*

18. Subsidence in the buildings has been reported by local residents and there is significant evidence visible, for example in the failing front bay of No 111 and the vertical cracks through lintels in both the appeal site and its neighbours. This indicates that a proper structural assessment of the risk to the buildings should have been carried out. DP Policy DP27 explicitly states that developers should demonstrate methodologies appropriate to the site which would maintain the structural stability of the property and neighbouring properties. To this end the appellants have submitted a construction management plan, a site investigation report and a design philosophy. The latter document addresses structural issues but does so on the basis of there being no site specific investigation data.
19. As a result this is a desk-based analysis and it does not reflect on the existing and obvious signs of subsidence present; accordingly I do not consider that it sufficiently addresses this risk and would conflict with Policy DP27 in this regard.

### *Highway Safety*

20. West End Lane is a busy road and there is a bus stop located immediately outside of the appeal site. In the previous appeal, my colleague identified the risk of disruption to traffic and the necessity for adequate safeguards to be in place prior to permission being granted. A construction management plan has been put forward and the Council have indicated that subject to final agreement the Unilateral Undertaking would address their concerns regarding the impact on the safe and free flow of traffic on West End Lane during construction.
21. The undertaking, however, is incomplete, and in these circumstances I conclude that the proposed works have not been shown to be able to be undertaken without harm to the highway safety of users of the adjacent highway. The proposal conflicts with CS Policies CS5 and CS11, as well as DP Policies DP20 and DP21. These policies seek to ensure that the impact of development is fully considered, transport infrastructure protected and disruption of the highway network avoided.

### *Parking*

22. This part of West End Lane has no parking and it is tightly controlled in the surrounding streets. In such circumstances the Council seeks to promote car-free developments and I note their acceptance of the principle of the restrictions on access to parking permits set out in the draft undertaking.
23. The undertaking as set out cannot carry weight in my decision, and the car-free approach could not be enforced. Accordingly I conclude that the proposal would lead to increased demands for on-street parking space, contrary to CS Policy CS11 and DP Policies DP18 and DP19. These policies seek to manage the impact of parking, restricting new developments to the minimum necessary car parking provision and promoting more sustainable travel.

### **Conclusion**

24. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Mike Robins*

INSPECTOR