

Dr Mervyn Miller
CHARTERED ARCHITECT AND TOWN PLANNER
11 Silver Street, Ashwell, Baldock, Herts SG7 5QJ (01462) 742685
Email mervarch@aol.com

NETHERHALL GARDENS NEW3
SUPPLEMENTARY REPORT: PPS 5 IMPLICATIONS

Preamble

1. The purpose of this supplementary report on the conservation aspect of the present applications to develop 11 Netherhall Gardens, NW3, is to provide an interface with my comprehensive *Conservation Area appraisal and PPG 15 analysis*, dated August 2009. This was prepared in support of the proposals, the application for planning permission being Refused by Camden Borough Council, the other, for conservation area consent was undetermined. The subsequent Appeals were heard before an Inspector on 16 March 2010. The Appeals were dismissed by a decision dated 22 March 2010, for reasons unrelated to conservation matters.
2. The proposed development involves the part demolition and rebuilding of 11 Netherhall Gardens. The building is one which the Council identified as making a positive contribution to the character and appearance of the Fitzjohns/Netherall Conservation Area. Consequently the demolition required justification under paras. 3.19 (i)-(ii) of the Planning Guidance Note *PPG 15: Planning and the Historic Environment*. Such justification was sent out in detail in paras. 4.11-4.13 of my original Report. The delegated report on the planning application (ref: 2009/3889 P) stated that

A PPG 15 statement has been submitted to address the substantial demolition of the building. The 3 tests are considered to be met and the demolition is considered to be acceptable in principle, subject to an acceptable replacement scheme.

Consequently, justification of demolition was not an issue discussed at the hearing. Reference to demolition in the Inspector's decision was solely in context of whether the appeal proposals were an acceptable replacement in context.

3. PPS 5: Planning for the Historic Environment was published on 23 March 2010, the day after the date of the Inspector's decision letter. This is a long-awaited replacement for PPG 15, which was cancelled on publication of its successor. PPS 5 is a succinct statement of a range of policies applicable to all aspects of the historic environment. It is accompanied by a Historic Environment Practice Guide [HEPG], which supports the implementation of PPS 5 as national policy, and also acts as a guide to interpreting how policy should be applied.
4. This supplementary report recognises that the policy context for the historic environment has changed with the publication of PPS 5, and that fresh applications stand to be considered under its provisions. However, the present applications involve the submission of an identical scheme in physical terms to that which was

considered by the Council, and subsequently by the Inspector at the appeal hearing. I consider that what is now required to support the conservation area aspects of the proposals is a statement which clearly highlights the manner in which my original report complies with the newly introduced policies.

PPS 5 compliance

5. The publication of PPS 5 has altered the policy context, but has not amended the legal framework for decisionmaking. This is made plain by para. 20 of the Historic Environment Practice Guide, which also adds that *'nothing in the PPS changes those requirements and the interpretation of the words and phrases used'*. Consequently the prime obligation under s.72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 199, that in considering development proposals in conservation areas *'special attention shall be paid to the desirability of preserving or enhancing the conservation or appearance of the area'*, remains a prime test of acceptability. Likewise, in the interpretation of the discharge that responsibility, the commentary of paras. 4.19 and 4.20 still stand.

6. The Inspector stated that the main issue (a) of the appeal was

Whether the proposal would preserve or enhance the character or appearance of the Fitzjohns/Netherhall Conservation Area, within the appeal site is located.

Paras. 7-13 of the decision letter contained a detailed and interactive narrative of the manner in which he considered that the requirement to preserve or enhance the character or appearance of the area had been met. He stated that insensitive remodelling of the building had been compounded by its neglect (para.17) and that consequently the building detracted significantly from the visual qualities of the area (para. 8). While the replacement building would have greater bulk and would extend significantly further into the plot, its design had been carefully formulated, using local design references interpreted in a contemporary manner (para.9).

7. While mass had increased, the planning authority's concern with the roof treatment was found to be misplaced (para.10), and the net result

... would be to form a building of some presence and distinction that would sit comfortably within a road which already exhibits a number of other buildings of comparable size, mass and bulk (para.11).

The scheme would be complemented by landscaping which would *'provide a distinct improvement over the current situation, which impairs the visual qualities of the conservation area'* (para. 12).

8. The Inspector concluded that

the proposal would deliver a substantially remodelled building that would enhance the appearance of this part of the Fitzjohns/Netherhall conservation area.

This would be consistent with the objectives of the relevant saved policies of the UDP. It would also (although not specifically cited in the decision) fulfil the obligations under s.72(1) of the Plg (LB and CA) Act 1990. In so doing, I consider that this decision, reached on the eve of publication of PPS 5, will also meet the requirements of the new policy statement. Below, I analyse my original report (which contained an analysis of the proposals that was essentially similar to the conclusion reached by the Inspector) and point out compliance with individual PPS 5 policies.

9. Policy HE 1 deals with Heritage Assets and Climate Change. The retention of the most significant part of the existing building, the potential for recycling of some of its materials and features and the high energy efficiency of the replacement building, as described in the Design and Access Statement will comply with HE 1 in an appropriate and proportionate manner.
10. Policies HE 6-HE 12 deal with development management in relation to heritage assets. Under HE 6.1 local planning authorities should require applicants to provide a description of the heritage assets affected and the contribution of their setting to that significance, at a level of detail proportionate to the importance of the heritage asset, and no more than is sufficient to understand the potential impact of the proposal. Under HE 6.2 this information should be set out in the application. In addition to the comprehensive Design and Access Statement prepared by the architects, my original report contained a fully researched historical background (Section 2) with a building and area contextual appraisal. I consider that the information submitted with these revised applications is fully compliant with policy HE 6 of PPS 5.
11. The above material also represents a statement of significance, both of the heritage asset most immediately affected, an undesignated asset (locally listed buildings) within the context and setting of a designated heritage asset (the Fitzjohns/Netherhall Conservation Area). This significance was assessed by desktop research and site inspections, and complies with the advisory checklist in para. 58 of the HEPG.
12. Policy HE 7 contains policy principles guiding determination of applications relating to all heritage assets. I consider that my report, as I have already stated, provides the required information on the significance of the assets affected (HE 7); sets out the impact of the proposals on the assets involved in Section 3 paras. 3.9-3.12 (HE 7.2); in respect of the rebuilding involved, the desirability of new development making a contribution to the character and local distinctiveness of the historic environment, in Section 3 paras. 3.1-3.8 (HE 7.5). As noted above these aspects were affirmed by the Inspector's decision. While the property is run-down there has been no allegation of deliberate neglect, and consequently HE 7.6 does not apply. In terms of loss of significance, my report (particularly paras. 2.12-2.17 and 3.2-3.3) together with the Inspector's decision quoted above affirm that any loss of significance is marginal, and more than compensated by the merits of the proposed development, thus meeting HE 7.7.
13. Policy HE 8 applies in this instance to 11 Netherhall Gardens itself as an undesignated heritage asset. Section 3 of my report dealing with the impact of the proposals on the setting of the building and relationship to neighbouring properties indicates that HE 8 is met. This is also affirmed by the Inspector, whose comments are quoted above.

14. Policy HE 9 applies when designated heritage assets are involved. The designated asset in this instance is the Fitzjohns/Netherhall Conservation Area. Loss of significance or alleged harm under this policy will be related to this asset, rather than to 11 Netherhall Gardens which is considered under HE 8 above. Given the positive comments made by the Inspector on the overall enhancement of the conservation area by the proposed development of 11 Netherhall Gardens, which affirms the analysis in my original report, I do not consider that anything of marginal significance in terms of loss would be involved. Consequently, if policy HE 9.4 is applied, which would appear to cover any situation where there might be a degree of harm involved ranging from marginal to a level where a limit bordering on substantial would be reached (thus triggering the application of HE 9.2) I consider that HE 9.4 (i) and (ii) are fully met.
15. I have noted that the concept of appropriate and viable use for a heritage asset is introduced under HE 9.2 (substantial harm or total loss of significance) and evidence of marketing and other procedures is required under HE 9.3 in order to demonstrate that no viable use can be found. Together with HE 9.4 (and paras. 9.6 and 9.7 of the HEPG) this appears in part to cover the justification of demolition previously required under paras. 3.19 (i)-(iii) of PPG 15, now cancelled. However, under PPS 5, there appears to be no equivalent of para. 4.2 of PPG 15 which contained the Secretary of State's expectation that demolition of unlisted buildings held to make a positive contribution to the character and appearance of a conservation area would be justified under para. 3.19 (i)-(iii), which applied to statutory listed buildings. Thus, I do not consider that a justification under PPS 5 policy bundle HE 9 could be required as this section clearly relates to designated heritage assets, and could only be undertaken in the broader context of conservation area impact. In any case, as I have stated above, the Council accepted that the demolition case had been justified under PPG 15, and was not an issue they sought to raise at the Appeal. The public benefit to the character and appearance of the conservation area is demonstrably met by the fulfilment of the overarching obligations under s.72 (1) of the Plg (LB and CA) Act 1990.
16. Policy HE 10 refers to the setting of a designated heritage asset. 11 Netherhall Gardens is an undesignated asset and the policy cannot apply to this. Its setting is within the Fitzjohn/Netherhall Conservation Area. Strictly speaking this does not involve the statutory listed buildings in Netherhall Gardens, but these designated assets are too far distant from No. 11 for there to be any symbiosis of impact. I consider that policy HE 10 does not apply. The relationship of 11 Netherhall Gardens to its context has been fully described and analysed in my original Report.
17. The Inspector unequivocally stated in his decision letter, para. 13 that the proposed development was consistent with the objectives of the saved policies B1, B3 AND B7 of the Council's UDP. Compliance with those policies is dealt with and demonstrated in paras. 4.16-4.26 of my original report, and in the architect's Design and Access Statement. Circumstances have not changed, and they remain applicable and fully met.
18. In conclusion, this Supplementary Report affirms that my original report, together with the Inspector's affirmation of its content in respect of the conservation area

impact of the proposals, is demonstrably compliant with the policies and provisions of PPS 5: Planning for the Historic Environment.

Dr Mervyn Miller
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*Mervyn Miller PhD BA BArch (Hons) MUP MArch RIBA FRTPI IoHBC
VAT Registration No. 476 1152 49*