



Appeal Decisions

Inquiry held on 5 and 6 November
and 23 December 2009

Site visit made on 5 February 2010

by **John Felgate BA (Hons), MA, MRTPI**

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

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**Decision date:
8 March 2010**

Site: 18-20 Elsworthy Road and 15 Elsworthy Rise, London NW3 3DJ

- The appeals are made by Mr J A N Prenn, against the decisions of the Council of the London Borough of Camden, as follows.

Appeal 'A': Ref. APP/X5210/A/09/2107216

Appeal 'C': Ref. APP/X5210/A/09/2107218

- Appeals A and C are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant planning permission.
- The Appeal A application is Ref 2008/2470/P, dated 12 May 2008, which was refused by notice dated 27 January 2009.
- The Appeal C application is Ref 2008/5417/P, dated 29 October 2008, which was refused by notice dated 29 January 2009.
- The development proposed in each case is the demolition of the existing buildings, and the erection of new buildings comprising 2x five-bedroom, and 2x two-bedroom flats/maisonettes fronting Elsworthy Road; plus 1x one-bedroom, and 1x two-bedroom flats/maisonettes, garaging and parking, fronting Elsworthy Rise.

Appeal 'B': Ref. APP/X5210/A/09/2107217

Appeal 'D': Ref. APP/X5210/A/09/2107219

- Appeals B and D are made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The Appeal B application is Ref 2008/2744/C, dated 12 May 2008, which was refused by notice dated 27 January 2009.
- The Appeal D application is Ref 2008/5420/C, dated 29 October 2008, which was refused by notice dated 29 January 2009.
- The consent sought in each case is for the demolition of the existing buildings.

Decisions

1. I dismiss all of the appeals.

Preliminary matters

2. The description of the proposed development which appears above is summarised from that in the original application forms, for clarity and brevity.
 3. At the Inquiry, various amended or alternative plans were submitted. Whilst these do not form part of the formal applications before me, I have paid regard to them where appropriate, as indicated below.
 4. Applications for costs were made by both the appellant and the Council. Those applications are the subject of separate Decisions.
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Main issues

5. I consider that the main issues in these appeals are as follows:
 - the effects on the character and appearance of the Elsworthy Conservation Area, due to the proposed main new building, fronting onto Elsworthy Road;
 - the effects on the Conservation Area resulting from the proposed rear building, fronting Elsworthy Rise;
 - whether the proposed development would provide satisfactory living conditions for its own future occupiers; and
 - the effects on living conditions at No 91A King Henry's Road.

Reasons for decision

Effects on the Conservation Area - main building

6. The Elsworthy Conservation Area (CA) is primarily an area of mid-to-late Victorian middle and upper middle class speculative housing. The area as a whole is characterised by two- and three-storey villas and four-storey terraces. The appeal site is within the eastern section of Elsworthy Road, where Nos 2-20 form a discrete group of double-fronted, linked semi-detached houses. Most of this group have been heavily altered, by the addition of various types of flat-topped mansards or full-height dormers, with the resultant loss of the original front gables and roof slopes, together with new windows and other alterations. Although the group is not without some charm, the *CA Appraisal and Management Strategy (CAAMS)*¹ identifies only Nos 2-6 as 'positive buildings' (Appendix 8), while the rest are neither identified as positive nor negative.
7. On the appeal site, the existing building comprising Nos 18 and 20 (now converted to six flats) is the most altered in the group. The original roof has been replaced by a full third storey, with a flat roof and walls that continue uninterrupted from the lower storeys. The eaves line has thus been lost, and the building has an uncharacteristic box-like shape. A plant room has been added to the roof. The decorative half-timbered feature panel has been removed, and the main entrance door appears to have been moved from the front to the side, resulting in a loss of symmetry and balance in the front elevation. The flank wall adjacent to Elsworthy Rise has a particularly stark and utilitarian appearance, with a clutter of unsightly pipework and a somewhat incongruous porch. Consequently, whilst I accept that the building retains some residual similarities with Nos 2-16, I see no reason to disagree with the CAAMS assessment of its value to the area. In my view therefore, its contribution to the CA is no more than neutral.
8. *PPG15*² states that, where a building makes no positive contribution, its replacement should be seen as an opportunity to enhance the area, and as a stimulus to imaginative and high quality design. Any such new building should not necessarily imitate earlier styles, but have respect for the context (paragraph 4.17). This approach is reflected in Policy B7 and paragraphs 3.70 - 3.73 of the *UDP*³, and in paragraph 7.9 of CAAMS. In addition, the latter

¹ The Elsworthy Road Conservation Area Character Appraisal and Management Strategy, June 2009

² Planning Policy Guidance 15: Planning and the Historic Environment, 1994

³ The Camden Replacement Unitary Development Plan, adopted

sets out various matters to which regard should be paid, including the elevational treatment, scale and massing, traditional forms and rooflines, building alignment, rhythm and density (paragraphs 12.3 – 12.4).

9. In both of the present Appeals A and C, the proposed main building would occupy largely the same footprint as the existing, with the same width, depth and siting. In both schemes, the building would also be divided vertically as at present, and would respect the existing building lines, spacing, plot subdivision and development pattern. The detailing of windows, doors, bays, quoins, string courses and other design features would all generally reflect aspects of the Victorian idiom, and the overall composition would be pleasing. In all these respects, both schemes would in my opinion result in an acceptable form of development, in keeping with the surroundings.
10. With regard to height and massing, in the case of Appeal C, the new building's parapet line would be at much the same height as the mansards and other roofs of Nos 2-16 Elsworthy Road. The top of the new roof would rise about 3m above the parapet, but would be set back from the building's edges, and would recede at an angle of about 45 degrees on all sides. As a result, it seems to me that the parapet would be the more significant in views from street level. The proposed dormers in this scheme would be modest in size, and would be confined to the lower front and rear roof slopes. Consequently, although the new building would be taller than Nos 2-16, it would nevertheless relate satisfactorily to the group, and would not appear over-dominant or out of scale in that context. Given its position at the end of the row, it would not interrupt the visual relationship between the other buildings in the group, and would thus leave the integrity of the remaining group unharmed.
11. In addition, the Appeal C proposal would be similar in height to Nos 22-24 Elsworthy Road; and lower than most of the other surrounding buildings, including those elsewhere in Elsworthy Road itself, and in Elsworthy Terrace and King Henry's Road. Whilst the Inspector in the previous appeal, in 2008, found a comparison with No 22 unhelpful, the proposal in that case was for a more contemporary design, with a completely flat roof. In the present case, although the new roof would have a flat crown, its sloping sides would have more affinity with the traditional pitched roofs of the taller buildings around it. Consequently, I consider it right to take account of this wider context, especially since the majority of properties are within the same sub-area, as defined in CAAMS. This reinforces my view that, in Appeal C, the new building's height and resultant massing would be acceptable in its setting.
12. I agree that the alternative proposals in Appeal A would be unsatisfactory in this regard, due to the greater size and prominence of the roof, and the inclusion of a side-facing dormer, which would have an unbalancing effect. But these shortcomings do not affect my view of Appeal C.
13. I note the Council's concern regarding the 'ordered' flank elevation. But in my view this elevation (with exception of the dormer in Appeal A) would be clearly subordinate to the front and rear. I acknowledge all of the other design-related criticisms, including those matters relating to the building's depth, its proportions, the crown roof form, and the suggested lack of historical accuracy. But in the light of the advice that I have cited above, I do not consider it

necessary to require any new building to be an exact copy of any particular style. Rather, it should respect its surroundings and achieve a high standard of design in its own right. Although the proposed double basement would add to the building's floorspace, it would have little impact externally; and any such effect would be offset by the opportunity for new landscaping and boundary treatment. I have taken note of the existing permission for alterations and refurbishment to the existing building, but I must judge the present appeal schemes on their own merits.

14. Overall therefore, having regard to the policy criteria set out above, I conclude that in Appeal A, the Elsworthy Road building would cause harm, due to its height and the design of its roof and side dormer. However, in Appeal C the proposed design for this part of the site would be of an acceptably high quality, which would preserve the character and appearance of the CA. In these respects, Appeal C would accord with UDP Policy B7 and the relevant provisions of PPG15 and CAAMS.

Effects on the Conservation Area - rear building

15. The existing rear building, No 15 Elsworthy Rise, is a modern flat-roofed building comprising garages with a flat above. The building is not in keeping with the style of the CA. However, despite fronting directly onto the road, it is relatively unobtrusive and gives the impression of being little more than an ancillary structure to Nos 18-20 Elsworthy Road. Like that building, it is not identified in CAAMS as either a positive or negative contributor, and I again consider its effect to be neutral.
16. In both Appeals A and C, the proposed replacement building on Elsworthy Rise would have a substantial pitched roof. It would have a projection to the front with a forward-facing gable above it, and further gables to the side and rear. In my view these differences would result in a new building of significantly greater mass than the existing, and one which would appear considerably more assertive and prominent.
17. Consequently, it seems to me that the new building would dominate the narrow gap between 18-20 Elsworthy Road and No 91a King Henry's Road, in a way that the current unassuming structure does not. In my view a building of such mass and presence, directly abutting the road, would appear excessively cramped within this small space. In combination with the main building, this would give the site as a whole an over-developed appearance, detracting from the openness and spaciousness of this part of the CA.
18. I accept that, in abstract terms, the new rear building now proposed would be more attractive than the existing. However, that does not outweigh its unsuitability for this site. I acknowledge that both the design and the siting would have some similarities to No 1 Lower Merton Rise. But this does not change my view as to the harm that would be caused in this particular case.
19. I therefore conclude that the proposed rear building would fail to respect the context of the Elsworthy Conservation Area, and would cause unacceptable harm to the CA's character and appearance. In this respect, both schemes A and C would conflict with the policies that I have identified at paragraph 8 above, relating to development in such areas.

Living conditions within the proposed development

20. In both schemes A and C, the proposed rear building would have side-facing windows which would have the potential both to cause overlooking and to be overlooked. In such circumstances, the Council's *supplementary guidance*⁴ states that there should normally be a minimum distance of 18m for privacy, although obscure glazing or screening may also be considered where appropriate. I consider this a reasonable approach, and give significant weight to the SPD as an adopted document. Policy SD6 of the UDP also seeks to protect the amenity of residential occupiers.
21. In the appeal proposals, the distance between the two new buildings would be significantly less than 18m. From the main building's third floor balcony, the distance would be no more than 13m; from the first and second floor windows and balconies it would be less than this, and at ground floor level the minimum would be only about 9.5m. The ground floor bedroom would be a further 2m away from the front building, but would still fall well short of the above standard.
22. In the plans submitted at the application stage, it is proposed that all of the facing windows be clear glazed, and that part of the boundary between the two buildings be left unscreened. In my view it is clear that, in the absence of any mitigation, these arrangements would cause unavoidable close-range overlooking between the two buildings, resulting in a severe lack of privacy to many of the proposed rooms and external spaces. The rooms affected would include not only the side-facing rooms of the rear building, on all three floors; but also the rear-facing habitable rooms of the main building, at least at ground and first floor levels. The rear gardens of the latter units would also be heavily overlooked, including the light wells and rooflights of the basement floors below. In all these respects, the submitted proposals would provide unsatisfactory living conditions.
23. I accept that some mitigation could be achieved by the measures shown on the alternative plans tabled at the inquiry. But, whilst I agree that obscure glazing would not be likely to affect natural light unduly, in my view it would significantly reduce the outlook from the affected rooms. In particular, the ground floor unit's main living/dining room would then look only onto a narrow, enclosed patio; and the first floor kitchen would have only a distant outlook, at the far end of the living area. If the obscured windows were to be fixed or have restricted opening, issues of solar gain and ventilation would also need to be addressed, given the southerly aspect. I accept that increasing the height of the fencing around the patio would give some additional screening to the ground floor bedroom, but this would not prevent that room being overlooked from upper floors. Additional landscaping within the proposed gardens might help to reduce overlooking, but could also adversely affect light or outlook; in any event, no further proposals of that kind are before me.
24. I therefore consider that all of these proposed mitigation measures would result in an unsatisfactory compromise. I note the suggestion that blinds could also be used, but in my view this merely acknowledges that living conditions within the development would be inadequate. I accept that some occupiers might be

⁴ 'Camden Planning Guidance', adopted as a Supplementary Planning Document in 2006

prepared to put up with such conditions, but that does not justify allowing new housing to be built to a poor standard.

25. I conclude that the proposed development would fail to provide acceptable living conditions for its future occupiers. As such, both appeal schemes A and C are contrary to Policy SD6.

Living conditions of adjoining occupiers

26. In the application plans, the rear building would include a roof terrace at first floor level. This feature as proposed would cause unacceptable overlooking of No 91a King Henry's Road. However, I accept that the terrace could be omitted as shown in the amended plans. I agree that this amendment, which could be secured by condition, would overcome any unacceptable impacts on adjoining occupiers. However, it does not overcome the other harm that I have identified.

The planning obligation

27. A legal agreement has been entered into by the appellant and the Council. Amongst other things, the agreement requires the development to be carried out in accordance with a construction management plan, a sustainability plan, and a 'Lifetime Homes' plan. However, under paragraph 3.5 of the agreement, these provisions would come into effect only if I find them necessary.
28. I have considered these matters in the light of *Circular 05/2005, Planning Obligations*. Paragraph B5 of that Circular states that obligations should be, amongst other things, relevant to planning, and necessary to make the proposed development acceptable in planning terms. Paragraph B2 advises that conditions should be used in preference to obligations, where possible.
29. The requirement for a Lifetime Homes plan (section 4.3 of the agreement) would secure compliance with UDP Policy H7 and Part 24 of the Camden Planning Guidance SPD. At the inquiry however, the Council's witness accepted that compliance could equally have been secured by condition. I agree with that view. It therefore follows that it is unnecessary for this provision to be included in the agreement.
30. The requirement for a sustainability plan (section 4.2) is stated to be to ensure that the development achieves level 3 of the Code for Sustainable Homes. But that aim could also be secured by condition, in accordance with the approach set out in the *Supplement to PPS1*⁵. In my view, such a condition would also satisfy UDP Policy SD9 (c), which encourages the conservation of energy and other resources. I therefore find it unnecessary for the agreement to include the provisions relating to the sustainability plan.
31. The provision for a 'construction management plan' (section 4.1) is said to be to ensure that construction could be carried out safely, and with minimal impact and disturbance to the environment and highway network (paragraph 2.6). I agree that these are desirable aims. But similar purposes are often achieved by condition; and indeed one such example, relating to 'construction method statements', is included in the model conditions on the Planning

⁵ Supplement to Planning Policy Statement 1: Planning and Climate Change, December 2007

Inspectorate's website. I appreciate that the management plan sought by the Council would go further than that model condition. But matters relating to construction safety, nuisance and obstruction are primarily controlled by other legislation. In any event, there is no evidence that the appeal scheme would cause danger or disruption, such as to warrant the additional measures now proposed by the Council. Although UDP Policy T12 is referred to, that policy relates to developments affecting highway land, and is not relevant here. In all the circumstances, I am not persuaded that the provisions in section 4.1 of the agreement are necessary to make the development acceptable.

32. I note the Council's comments as to the enforceability of conditions compared to an obligation. But provided that the conditions in question were reasonable in all respects, and met the tests in Circular 11/95, I see no reason why conditions dealing with the above matters should not be enforceable.
33. The agreement's remaining requirement relates to the payment of a highways contribution, for alterations to the footway and kerb. I agree that this provision meets the tests in the Circular, and accordingly should be afforded some weight. However, I do not consider that the benefits of the agreement as a whole are such as to outweigh the harm that would be caused by the proposed development, in the ways that I have identified earlier.

Other matters

34. I accept that the appeal site is previously developed land, and that the proposed development would maximise its use, in accordance with the aims of planning policies. I also agree that there is little doubt that the new units would be taken up by the local housing market. But in my view, these benefits do not outweigh the harm, particularly since the scheme would result in a reduction in housing units, compared to the existing situation.
35. I have taken account of all the other matters raised, both at the inquiry and in writing, including the presence of underground streams in the area, the possible risk of flooding, concerns regarding the two railway tunnels, and the effects of deep basements. However, the evidence before me on all these matters is limited. In the circumstances, I consider that none is sufficient to influence my conclusions on the appeal.

Conclusions – Appeals A and C

36. For the reasons set out above I have come to the view that, in Appeal C, the proposed main building fronting Elsworthy Road would be acceptable in terms of its effect on the Conservation Area. However, the rear building fronting Elsworthy Rise would have a harmful effect on the CA's character and appearance; and the development as a whole would fail to provide satisfactory living conditions for its own future occupiers, due to overlooking between the two proposed buildings.
37. In Appeal A, the effects would be the same, except that in that scheme, both of the new buildings would cause unacceptable harm to the CA. If the rear terrace were omitted, neither scheme would cause undue harm to adjoining occupiers, but this would not overcome the harm caused to occupiers within the development itself, and to the CA.

38. I have considered whether, in the case of Appeal C, a split decision could be issued. However, at the inquiry, that possibility was expressly rejected by both main parties, on the grounds that the two proposed buildings would be interdependent in terms of car parking. I therefore conclude that both appeals A and C should be dismissed in their entirety.

Conclusions – Appeals B and D

39. With regard to Appeals B and D, I have come to the view that both of the existing buildings make a neutral contribution to the CA. It follows in my view that their demolition could be allowed, if an acceptable replacement scheme were available. However, in this case neither of the alternative schemes A or C has been found acceptable.

40. It was common ground at the inquiry that, in the absence of an acceptable replacement scheme, the loss of the existing buildings would cause harm to the Conservation Area, and that in those circumstances, consent for their demolition should not be granted. I agree, and therefore conclude that appeals B and D must also fail.

John Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr William Upton (of Counsel)	Instructed by London Borough of Camden Legal Services
He called:	
Ms Bethany Arbery, BSc(Hons), MPhil, MRTPI	Principal Planning Officer
Mr Edward Jarvis, BA(Hons), PGDip(Arch)	Senior Conservation and Design Officer

FOR THE APPELLANT:

Mr James Pereira (of Counsel)	Instructed by Russell Cook Solicitors
He called:	
Mr James Lambert, MA(Cantab), RIBA	Principal, James Lambert Architects (Agents for the appellant)
Mr Michael Lowndes, BA(Hons), DipTP, MSc, DipCons(AA), MRTPI, IHBC, FRSA	Director, Turley Associates

FOR THE ELSWORTHY CONSERVATION AREA RESIDENTS LLP:

Mr Robert Starr	Local Resident
Mr Brian Waters, MA, DipArch(Cantab), DipTP, RIBA, MRTPI, ACArch, FRSA	Principal, BWCP Architects

INTERESTED PERSONS:

Ms Karen Whelan	Local resident
Ms Hilary Bach	Local resident
Lady Valerie Solti	Local resident
Mrs Françoise Findlay	Local resident

DOCUMENTS TABLED AT THE INQUIRY

- 1 Council's notification letters to interested parties regarding the appeal, dated 22 July and 20 October 2009.
- 2 Section 106 agreement, dated 4 November 2009.
- 3 Statement of Common Ground (agreed version).
- 4 Set of two A3 plans, submitted by the appellant, incorporating amendments to Elsworthy Rise building (obscure glazing, raised fencing, omission of balcony).
- 5 Set of three A3-size plans, comparing proposals with existing building height and footprint (for the appellant).
- 6 Letter from GIA Consultants, dated 4 November 2009, regarding effects of obscure glazing on internal daylight (for the appellant).
- 7 Composite street view photograph of Nos 2-20 Elsworthy Road (for the appellant).
- 8 Updated list of supporters of Elsworthy CA Residents (tabled by Mr Starr).
- 9 Comparison of floorspace figures (Mr Starr).
- 10 Set of diagrams and computer-generated images submitted by Mr Waters (for ECAR)
- 11 Elsworthy Road CA Character Appraisal and Management Strategy, June 2009.
- 12 Appeal decision re Seven Dials Hotel, Monmouth Street (Ref APP/X5210/A/09/2104812), tabled by the Council.
- 13 Officers' report to Executive (Environment) Sub-Group meeting on 14 July 2009, recommending adoption of the CA Appraisal and Strategy.
- 14 Minutes of the above meeting.
- 15 Extracts from Camden Planning Guidance, adopted December 2006
- 16 Notification letter giving details of inquiry resumption, 10 November 2009.
- 17 Letter from Turley Associates dated 16 December 2009, and set of five A3 plans, including survey measurements of adjoining building.
- 18 List of additional conditions requested by the Council
- 19 Images of previous appeal scheme, and schedule of accommodation, tabled by Mr Lambert.
- 20 Analysis of corner sites in Elsworthy CA, tabled by ECAR.
- 21 Additional conditions to replace Planning Obligation (tabled by Mr Lowndes).
- 22 Closing submissions by Mr Upton, on behalf of the Council.
- 23 Closing submissions by Mr Pereira, on behalf of the appellant.
- 24 Closing submissions by Mr Starr, on behalf of ECAR.