



Appeal Decision

Inquiry held on 21-22 May 2009 with
site visit on 22 May 2009

by Roy Foster MA MRTPI

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

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**Decision date:
11 June 2009**

Appeal Ref: APP/X5210/A/08/2092837

1 Mill Lane, London NW6 1NT

- The appeal is made by SLLB Ltd under S78 of the Town and Country Planning Act 1990 and is against refusal of planning permission by the London Borough of Camden for the erection of a 5-storey building & a 2-storey building together containing 37 flats & 2 houses with associated car and cycle parking, amenity space and landscaping, including the creation of a new area of designated open land for nature conservation.
- The application [ref 2008/3963/P] was dated 1 August 2008 and refused by notice dated 15 December 2008.

Decision

1. I allow the appeal, and grant planning permission for the erection of a 5-storey building & a 2-storey building together containing 37 flats & 2 houses with associated car and cycle parking, amenity space and landscaping, including the creation of a new area of designated open land for nature conservation at 1 Mill Lane, London NW6 1NT in accordance with the terms of the application [ref 2008/3963/P], dated 1 August 2008, and the plans submitted with it, subject to the conditions set out in the schedule at the end of this decision.

Inspector's consideration of the appeal

2. From the submissions at the inquiry it became clear that only one of the original eight reasons for refusal still represented an outstanding matter of dispute between the principal parties, ie whether or not the proposal would be unduly dominant in the context of its surroundings.
3. The other seven reasons for refusal had been overcome by the content of the S106 agreement. This provides for 8 of the housing units (21%) to be in the "affordable" category - 6 social rented and 2 of intermediate forms of tenure. The agreement also provides a formula for a monetary contribution to be made towards additional affordable housing if the gross development margin exceeds a specified amount. Further matters secured through the agreement are the preparation and implementation of plans for construction management and sustainability issues, and agreed contributions towards community facilities, education provision, and necessary works related to highways and transport.
4. Finally, the agreement provides for a sum to be used to lay out an area for open space and nature conservation in accordance with a plan to be agreed with the Council, and for the land in question to be transferred to the authority for the purposes of managed public access and conservation activities. The main parties agree that these arrangements provide a suitable alternative distribution of developed/conserved land providing (a) adequate recompense for the loss to development of part of the land defined on the Unitary

Development Plan (UDP) Proposals Map and identified in UDP policy N2 as a private open space and Site of Nature Conservation Interest (Area 248) and (b) appropriate mitigation for the landowner's earlier clearance of the former stand of trees on the site.

5. I therefore turn to examine the outstanding issue between the main parties. The originally-submitted application was for a part-6/part-5 storey building containing 38 flats (with the two houses sited behind it). However, this was revised before the Council determined the scheme, such that the flatted element was amended to a 5-storey building with 37 flats. In reaching my decision on this revised scheme it is a significant material consideration that the Council has very recently resolved to grant planning permission for a further revision of the scheme in which the flatted block is reduced to 4-storeys containing a total of 26 units. This resolution is subject to various conditions, authorisation by the Government Office for London, and completion of a S106 agreement.
6. In design terms the differences between the appeal scheme and the more recent one are identified in the committee report as the removal of the top floor, the introduction of a pair of shallow vertical recesses on the south (Mill Road) and east (railway-facing) elevations and an adjustment of the unit mix, favouring larger units and reducing the number of one-bedroom units from 16 to 1. Apart from these changes, the location, footprint and elevations of the main building are the same in both schemes. This leaves the area of dispute both clearly-defined and of limited extent.
7. The Council considers that the presence of the proposed top floor would give the building an excessive scale and bulk, making the building unduly dominant in relation to its surroundings. In its view the retention of this feature would undermine the objectives of UDP policy B1 which seeks to ensure that new developments respect their settings, and improve the attractiveness of the locality rather than harming its appearance and character.
8. Mill Lane has considerable diversity of character, unlike Fordwych Road and Minster Road, which both have a more unified character, comprising fairly quiet streets of substantial Victorian houses. Near to the Shoot-Up Hill/Mill Lane junction larger-scale, taller mansion blocks predominate, although there is also a two-storey infill house. At its junction with Fordwych Road, Mill Lane has (on the north side) 4-storey blocks of flats on both corners and (on the south side) older, probably Victorian, houses facing Fordwych Road - 3 storeys with attic rooms and in one case with a semi-basement. Reaching the appeal site, No 1 is a 3-storey building with semi-basement facing south-east while around the corner on the other side is a distinctive curved terrace of 2-storey houses with semi-basements and attic rooms facing mainly north. After this the long railway bridge forms a break in the townscape until the urban street scene is resumed with Victorian houses on the north side and the tall, unattractive modern building (Ellerton) on the south side.
9. In its recent consideration of the 4-storey scheme the Council considered it appropriate for the design approach here to adopt modern themes, rather than employing styles from the Victorian era or the 1930s. The proposed building would be most visible in views approaching the appeal site across the bridge from the east. From this direction the site has considerable prominence and

this would be seen as a substantial structure, with its Mill Lane and railway-facing elevations sometimes both visible together, albeit to different extents (and against different backgrounds) according to the changing views afforded with passage along the road. From this direction I consider that the building would be seen as an elegant, well-designed structure of its time with its bulk broken down by the chosen pattern of fenestration and balconies, the inclusion of some articulation, and the use of a variety of materials - reconstituted stone at ground floor level, brick on the middle floors (with horizontal stone bands separating individual storeys) and the use of a light heavily-glazed structure for the "additional" top floor, set back to various degrees behind terraces and/or planters. Although the building would be prominent in views from this direction I do not consider that it would be "unduly dominant" in its local context.

10. In the approach from Shoot-Up Hill the building would be seen at the top of a slight rise, sometimes as the end-point of views in the varied townscape of this part of Mill Lane. Here again, I do not consider that the prominence of the building would exceed what is appropriate for the location and characteristics of the site and its surroundings.
11. From the bridge at Minster Road the building would be oblique to the direction of travel and seen only at some distance and with different degrees of clarity depending upon the height and location of the observer and the season of the year. In the wider-sky panoramas available at this point in the area of the railway cutting the building would have less overall prominence in the urban scene. I therefore conclude that from all the above viewpoints the appeal scheme would not be unduly dominant in its setting or undermine the objectives of UDP policy B1.
12. Nearby residents have expressed concern about the impact of the building on their living conditions. However, in resolving to grant permission for the 4-storey scheme the Council has considered the distance between the existing dwellings at Mill Court and 111 Fordwych Road and the side elevation of the proposed block, the small number of windows to habitable rooms in the new side elevation, and the adequacy of the proposals for retaining the two intervening off-site trees (lime and tree of heaven). Bearing in mind both the presence of these trees and the set-back of the windows in the habitable rooms on the top floor, as well as the latter's relationship to the roof level of the above two buildings, I do not consider that the inclusion of the additional floor would materially increase the appeal scheme's impact on existing residents, as compared with the 4-storey scheme.
13. Turning to the terraced houses starting at 2 Mill Lane, the front elevations of these buildings face the railway cutting, so that none faces full-on to the appeal site. In my view the presence of the top floor would again make no material difference to the privacy or outlook of residents of these buildings as compared with the recent scheme. I therefore find that the proposal would not conflict with the aims of UDP policy SD6 with regard to the protection of amenity.
14. Consequently I will allow the appeal. With regard to points raised by residents, I see no reason for this to be a car-free scheme, bearing in mind that this is not identified as an area of on-street parking stress. As for concerns about the potential for subsidence of nearby properties, Planning Policy Guidance Note 14 *Development on Unstable Land* discusses circumstances in which this issue

may or may not bear significant weight in planning applications. In my view the findings of the ground investigation report commissioned by the appellants (together with their approach to insurance liability) do not make this a case justifying refusal of planning permission or the imposition of a planning condition.

15. Turning to the more general matter of conditions, I support the general gist of most of those put forward by the Council, although with some simplification and amalgamation and the deletion of inappropriate references to maintenance issues. However, I consider it unnecessary to impose the Council's suggested condition 11 as this would involve excessive micro-control by the authority of detailed on-site management arrangements.
16. In my view the subject matter of the rest of the conditions is necessary to ensure the detailed acceptability of the development in terms of secure cycle storage (No 2), hard and soft landscaping and the improvement of biodiversity (Nos 3-5 & 9), freedom from contamination (No 6), protection from railway noise (No 7), the treatment of site boundaries including that to 21 Minster Road (No 8), provision of waste disposal arrangements (No 10) and detailed issues of construction (Nos 11-12).

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Before the commencement of the development hereby permitted, details of the proposed cycle storage areas, including motorised access doors and lighting and security measures, shall be submitted to and approved by the local planning authority. The approved cycle storage facilities shall be completed before the first occupation of any house or flat and thereafter retained permanently available for use.
- 3) Before the commencement of the development hereby permitted, details of the hard and soft landscaping works and a timetable for implementing them shall be submitted to and approved by the local planning authority. The details shall include (a) any land grading, mounding and any other changes in ground levels, and (b) the means of protecting trees to be retained both on and off the site, including the design of foundations and the location of service trenches with a potential effect on such trees. All the approved works shall thereafter be carried out in accordance with the approved details.
- 4) Any trees or areas of planting which within a period of 5 years from the completion of the landscaping works die, are removed or become seriously damaged or diseased shall be replaced as soon as reasonably practicable with others of similar size and species unless the local planning authority gives written consent to any variation.
- 5) Before the commencement of the development hereby permitted, details of the proposed green and brown roofs shall be submitted to and approved by the local planning authority. The approved roof treatments shall thereafter be completed before the first occupation of any house or flat and thereafter permanently retained.
- 6) Before the commencement of the development hereby permitted, a programme of investigation for the presence of (a) contaminated soil or

groundwater and (b) landfill gas shall be carried out in accordance with a scheme which shall previously have been submitted to and approved in writing by the local planning authority. The results of the investigation shall be presented to the local planning authority, and any remedial works found by the authority to be necessary as a result of the investigation shall be implemented and thereafter verified complete in accordance with a timetable to be agreed in writing with the local planning authority.

7) Before the commencement of the development hereby permitted, a scheme to insulate the flats and houses from sound emanating from the railway shall be submitted to and approved by the local planning authority in writing. The measures within the scheme shall be completed before the first occupation of any house or flat identified in the scheme as requiring insulation.

8) Before the commencement of the development hereby permitted, details of the means of enclosure both of the external boundaries of the site and of the internal boundaries within it shall be submitted to and approved in writing by the local planning authority, and the works shall thereafter be carried out in accordance with the approved details before the first occupation of any house or flat.

9) Before the commencement of the development hereby permitted, details of nesting boxes for bats and birds to be installed on the site and a timetable for their installation shall be submitted to and approved in writing by the local planning authority, and the boxes shall thereafter be installed in accordance with the approved details.

10) Before the commencement of the development hereby permitted, details of the proposed waste disposal facilities (including recycling facilities), including their location and design, shall be submitted to and approved in writing by the local planning authority. These arrangements shall be put in place before the occupation of any house or flat and thereafter permanently retained.

11) Before the commencement of the development hereby permitted, details of the materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the local planning authority. A sample panel of the approved facing materials including the colour, texture, face-bond and pointing of the brickwork shall be erected on site before commencement of the relevant parts of the work and the development shall thereafter be completed in accordance with all the approved details.

12) Detailed drawings or samples of the following shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is commenced and all works shall thereafter be completed in accordance with the approved details:- typical elevations and sections of the balustrade at scale 1:5; typical plan, elevation and section drawings of windows at scale 1:10 with typical glazing bar details at 1:2; typical parapet details at a scale of 1:5; typical balcony details at a scale of 1:5 including elevations, sections and fixings; and front entrance canopy details at a scale of 1:5, including elevations, sections and fixings

Roy Foster

Inspector

PERSONS APPEARING AT THE INQUIRY

FOR THE LOCAL PLANNING AUTHORITY

William Upton, of Counsel	instructed by the LB Camden
He called:	
Max Smith MSc MRTPI	Senior Planning Officer
Charlie Rose BA	Design & Conservation Officer

FOR THE APPELLANT

Eian Caws, of Counsel	instructed by Derek Horne
He called:	
Daniel Smith MA ARIBA AIA	Director, SLLB Architects
Derek Horne DipTP MRTPI	Principal, Derek Horne & Assocs

INTERESTED PERSONS

James Earl	4 Canberra Court, Fordwych Road, NW6
Jane Evans	21A Minster Road, NW6
P Collins	14 Mill Lane NW6

DOCUMENTS

- 1 Letters from the Council notifying local people of the inquiry, and circulation list
- 2 Proof of evidence of M Smith
- 3 Proof of evidence of C Rose
- 4 Appendices to the evidence of C Rose
- 5 Evidence prepared by Neil Cleary on affordable housing (not given)
- 6 Proof of evidence of D Smith
- 7 Proof of evidence of D Horne
- 8 Appendices to the evidence of D Horne
- 9 Evidence prepared on affordable housing by David Parker (not given)
- 10 Statement of common ground, including agreed list of conditions

- 11 Folder containing the application form, a "sustainable resources and energy proposal", planning statement, design and access statement, photographs of the site and surroundings, pre-planning correspondence, transport statement, environmental site assessment, sustainability report, noise assessment, daylight & sunlight report, and ground investigation report.
- 12 Folder containing an analysis of compliance with Part L of the Building Regulations
- 13 Folder containing correspondence of November 2008, environmental and sustainability documents, and affordable housing analysis
- 14 Folder of drawings from the application as originally submitted
- 15 Frames 1-16 of the graphics shown at the Planning Committee meeting
- 16 LBC committee report on the Council's position on the affordable housing element of the scheme
- 17 Extract from the UDP Proposals Map showing open space site 248
- 18 OS extract showing site 248 in more detail
- 19 Description of the nature conservation interest of the area known as West Hampstead Railsides and Westbere Copse
- 20 Application, plans, report, LPA decision, and appeal decision concerning 2 Mill Lane
- 21 Letter from Camden to D Smith 10 November 2008
- 22 LBC Committee report concerning the recent application 2009/0177/P for a 4-storey 28-unit scheme.
- 23 S106 agreement

APPLICATION DRAWINGS

A	DAT/9.0	Site survey
B	A100c	Site plan as proposed
C	A101c	Basement plan
D	A102c	GF plan
E	A103c	1 st F plan
F	A104c	2 nd F plan
G	A105c	3 rd F plan
H	A106c	4 th F plan
I	A107c	Roof plan
J	A201c	Elevations N and S
K	A202c	Elevations W and E
L	A203c	Longitudinal and cross sections
M	A204c	Houses – elevations and sections

N	A205c	Elevations in context
O	A206c	Detail elevations
P	A501c	Green and brown roof details
Q	A502d	Unit ownership at first floor (replaced by 503e)
R	A503d	Unit ownership at ground floor (replaced by 503e)
S	A503e	Revised unit occupancy at ground/first floor level
T	A603	Heat recovery system
U	A801c	Visualisations
V	EC/201	North and west elevation as existing
W	EC/202	South and east elevation as existing
X	EC/203	Section as existing
Y	EC/204	Minster Road entrance as existing and proposed
Z	981-02c	Open space- outline landscape proposals
AA	981-03c	Soft landscape proposals
BB	981-04c	Hard landscape proposals
CC		Bundle of drawings relating to the recent 4-storey application

PHOTOS

- 1 Site from side of 2 Mill Lane
- 2-4 Views along Mill Lane