

APPENDIX H



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8905194 [2682]
8940931 [2683]
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ALLOWED

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Your Reference:
K87/M006-031
Our References:
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Date:

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Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9, SECTION 56 AND SCHEDULE 11

AS AMENDED BY THE HOUSING AND PLANNING ACT 1986

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)

APPEALS AND APPLICATION FOR COSTS BY THE NETHERHALL EDUCATIONAL ASSOCIATION
PLANNING APPLICATION NOS: 8905191, HB/8970928, 8905194, and HB/8970931

1. As you know, I have been appointed by the Secretary of State for the Environment to determine these appeals, which are against the failure of the London Borough of Camden to determine within the prescribed period, firstly, a planning application for the erection of a new 3-storey building on the site of The Cottage, containing 32 hostel bedrooms and forming a basement under the existing garden at the rear of No.16 (garden to be replanted), providing seminar rooms, squash court and ancillary spaces; partial demolition and rebuilding of the rear of No.18 Netherhall Gardens and the erection of a 2-storey rear extension to provide 38 hostel bedrooms; and the extension of the existing Block 2 (Lakefield Homecraft Centre) to provide a lounge, classroom, cookery classroom and 5 bedrooms; described as Scheme C; secondly, an application for Conservation Area Consent for the demolition of The Cottage and partial demolition of the rear wall of No.18 Netherhall Gardens (associated with Scheme C); thirdly, a planning application for the erection of two 3-storey plus attic blocks on the site of No.18 and The Cottage comprising 11 and 6 flats respectively, with 17 car parking spaces beneath; the erection of a 3-storey plus attic block housing 60 study bedrooms on the site of No.16 Netherhall Gardens, the provision of seminar rooms, squash court and ancillary spaces for the hostel under the existing garden of No.16 (garden to be replanted); the extension of the present Block 2 (Lakefield Homecraft Centre) to house a lounge, classroom, cookery classroom and 5 bedrooms; described as Scheme D; and fourthly, an application for Conservation Area Consent for the demolition of Nos.16 and 18 Netherhall Gardens and The Cottage (associated with Scheme D), Hampstead, London NW3. I have considered the written representations made by you, the council, your European Member of Parliament and other interested persons and I held a local inquiry into the appeals on the 6th December 1989, concluding on the 5th January 1990. At the inquiry an application for an award of costs was made on behalf of the appellants, and I deal with this matter separately below.



Recycling Paper

APPEALS

2. Scheme A was an earlier proposal for the redevelopment of the Netherhall Gardens frontage, dismissed at appeal in 1987, whilst Scheme B was the subject of an appeal that was withdrawn by your letter of the 7th November 1989, on the grounds that in the opinion of the appellants advisors' it would prove to be uneconomic to refurbish No.18 Netherhall Gardens for flatted accommodation. Since the current appeals against non-determination were lodged, the council resolved on the 27th September 1989 to approve Scheme C subject to the imposition of 6 conditions, and to approve the Conservation Area Consent application associated with the development subject to one condition. The appellants agree with all but one of the council's conditions on Scheme C, that is condition 03 on the planning application, which states:

The building shall be used only for hostel and no other purpose, (including any other purpose within Class C1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order).

As you are aware, resolutions of the council, made after the appeal has been lodged are only treated as their views, objections or suggestions, but it is clear that there is only a small area of dispute over Scheme C, and I shall deal with the question of conditions later.

3. From the evidence that I have heard and read, and from my inspection of the appeal site and its surroundings, I find that the main issues to be decided in these appeals are, firstly, whether the proposals would preserve or enhance the character or appearance of the Conservation Area, and secondly, whether Scheme D would be unneighbourly to the occupants of No.20 Netherhall Gardens.

4. Although the whole site bounded by Netherhall Gardens, Nutley Terrace and Maresfield Gardens is in the ownership of the Netherhall Educational Association, it would appear that only the large 1960's block, Netherhall House and possibly The Cottage are occupied for their own purposes. No.18 Netherhall Gardens is disused, propped and partly boarded-up, whilst No.16 is used by the Hampstead International School. Thus the site presents a large modern building frontage to Maresfield Gardens and part of Nutley Terrace, and a mirrored pair of large brick 2-storey with attic villas of the late Victorian era onto Netherhall Gardens and its corner with Nutley Terrace. Between Nos.16 and 18 was originally a larger gap than normal in the streetscene where the Belsize New Tunnel passes underneath, but this was later infilled with the rather squat, hipped-roof building of the 1930's style, The Cottage, to which has been added a conspicuously tall yellow brick front wall.

5. A few minor alterations have been carried out to the front facades of Nos.16 and 18, notably 4 additional windows to No.18 and the white paint applied to No.16, but they remain typical examples of the period, and important components of the architectural and historic character of this part of the Conservation Area. These two detached houses are clearly part of the 1880's planned development of the area, and they are sited in a prominent position at the top of the steep part of Netherhall Gardens on the corner of Nutley Terrace. Although slightly spoilt in appearance by the proximity of the 1960's development, and the intrusion of The Cottage, these houses display typical characteristics of the locality, particularly their large scale appearance with articulated main facades, tall dormered roofs, expressed chimney stacks, fine brickwork details around doors and windows, and their settings in landscaped front drives enclosed by low brick and stone walls. This part of the Conservation Area abounds in such detail, and the buildings along both sides of Netherhall Gardens are well-preserved in the main, except for a few painted facades and the modern flat development, Imperial Tower on the opposite side of the road.

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6. The statutory development plan for the area is the council's Borough Plan, approved in May 1987. The council has put forward no land-use objections to the proposals, and therefore the relevant policies in considering these appeals are those contained in Chapter 5 - Urban Design, Conservation and the Environment and the Camden Environmental Code. In addition, following the designation of the Fitzjohns/Netherhall Conservation Area in May 1984, the council approved draft guidelines for the control of the demolition of unlisted buildings in the Conservation Area, April 1987. This non-statutory policy emphasises a clear presumption against demolition in a Conservation Area except where the new building would positively enhance the Conservation Area to an appreciably greater extent than the existing building.

EFFECT ON THE CONSERVATION AREA

5. None of the buildings on the appeal site is listed as being of special architectural or historic interest, but the whole site lies within the Fitzjohns-/Netherhall Conservation Area. Therefore, in accordance with section 277(8) of the Town and Country Planning Act 1971, both proposed developments need to be assessed with special attention paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

SCHEME C

7. This proposal would replace The Cottage with a new 3-storey building for 32 hostel bedrooms, with a basement under the rear garden of No.16 comprising a squash court, seminar rooms and ancillary rooms, and it would include the refurbishment of No.18 Netherhall Gardens, rebuilding the rear of the building to form 38 hostel bedrooms. The extension of Block 2 (Lakefield Homecraft Centre) is common to all schemes. No.16 Netherhall Gardens is not included in Scheme C, although in evidence on behalf of the appellants it is explained that a considerable amount of refurbishment work would be required to render this building safe and useable, in the event of Scheme D not proceeding.

8. The council and local groups support Scheme C as an acceptable mixture of new building and refurbishment, but at the inquiry the appellants put forward the view that, as with Scheme B, the refurbishment of No.18 would not be economically feasible, and therefore would be unlikely to proceed. However, as the appeal has not been withdrawn, I am obliged to consider it as a firm proposal for the development of the site. In physical terms, I consider the replacement of The Cottage with the proposed 4-storey hostel building as being in keeping with the character of the Conservation Area. Its proposed siting, scale and bulk fits into the historic pattern of buildings along the east side of Netherhall Gardens, whereas the existing 1930's style cottage appears to be out of character, a break in the rhythm of the large Victorian villas, which are sited fairly close together.

9. The submitted elevational drawings of the new block lack detail, but I consider that the design incorporates many of the features to be found in Nos.16 and 18 Netherhall Gardens and other buildings in the locality; a projecting central bay with the main entrance door, upper windows and a gabled roof, indications of flat arches of gauged brickwork over openings, and dormer windows in a pitched roof with tall chimney stacks. Although 3 full storeys and an attic floor, rather than the usual 2 plus attic of the surrounding, older properties, the proposed elevations retain the same height and scale through having lower floor-to-ceiling heights. This design and the proposed replacement of the front garden wall to match the original, would be an improvement in the streetscene in my view, and the larger bulk of the replacement building would further screen from Netherhall Gardens the 1966 buildings at the rear. Whilst I consider Scheme C to represent a positive act of conservation that would enhance the appearance of the area, there is clearly a considerable amount of detail missing from the drawings, particularly the fenestration, brickwork detailing and external materials.

10. Subject to these details being satisfactory, I regard Scheme C as being an acceptable development of part of the site, including the basement accommodation to the rear of No.16 and the extension to the Lakefield Homecraft Centre. In addition to the proposal to refurbish No.18 Netherhall Gardens, Scheme C includes the partial demolition and rebuilding in the form of an extension of the rear part of the building. It is clear from the evidence and from my site inspection that the rear wall of No.18 is in poor structural condition, and it is essential to rebuild this facade. The proposed 2-storey extension is not objected to by any party, and I accept these alterations as being of overall benefit to the building and to the character of the Conservation Area.

SCHEME D

11. The main weight of objections from the council and local groups concerns the proposed demolition of Nos.16 and 18 Netherhall Gardens and their replacement with modern replica, or near-replica buildings. In this scheme the design and elevational treatment proposed for the replacement for The Cottage is quite different to Scheme C, being 2-storeys plus attic, to accommodate 6 self-contained flats. However, its elevational treatment appears to contain similar appropriate brickwork features, including rubbed-brick arches over 2 main windows, 2 projecting gabled bays, ornamental brickwork panels and string-course, dormer windows and chimneys. There are no objections to this part of the proposed development, and subject to satisfactory submission of further details, I find this design also to be appropriate in the Conservation Area.

12. The council objects to Scheme D on the grounds that the appellants have not made out a justifiable case for the demolition of Nos.16 and 18, and therefore their replacement with near replica buildings would neither preserve nor enhance the character or appearance of the Conservation Area. Policies UD3 and UD32 of the Borough Plan set out the council's main criteria for ensuring that all new development fits well into its surroundings. Policy UD3 aims for a good standard of design, sensitive to and compatible with the scale and character of the surrounding area, and a high quality of landscape design is an important consideration. UD32 seeks the correct scale and proportion to surrounding buildings, building lines, heights, existing gaps between buildings, building style and materials of the locality are important, and roof extensions and rear additions should relate to the form of the building and its neighbours. However, the council does not dispute that the proposals in Scheme D are of the same scale, height, bulk and siting as the existing buildings, and it was further agreed at the inquiry that the proposed replacements would be composed from the same architectural vocabulary as the historic parts of the surrounding Conservation Area, and therefore there are no objections to the proposed elevational treatments of the new buildings.

13. It was also agreed that Scheme D presented certain advantages or improvements over the existing setting in the Conservation Area:

- (a) The removal and replacement of The Cottage with a more appropriate building.
- (b) Replacement of the inappropriate yellow brick wall in front of The Cottage with a matching low stone and brick wall.
- (c) A more appropriate brick building at No.16 in place of the existing white painted facades.
- (d) The concrete area at the rear of No.18 to be replaced with a garden.
- (e) Tree planting along the frontage to replace dead trees in front of No.18.

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(f) The redevelopment would further screen from view the modern 1960's development behind it.

(g) The landscaping of the frontage gardens with grass and shrubs.

Whilst acknowledging these gains however, the council maintains an objection to the loss of the original fabric of the buildings, some details of brickwork and ornamentation and the patina of age, even if the new buildings are almost replicas. This objection stems from the council-approved policy for the control of the demolition of unlisted buildings in the Conservation Area, that there is a presumption against the demolition of these buildings unless the resultant scheme would be an enhancement of the Conservation Area.

14. From this policy the council infers that whenever a building is important to the character of the Conservation Area, then the policy would rule out its demolition, no matter how appropriate the design of its replacement. The duty imposed by section 277(8) of the Town and Country Planning Act 1971 is less precise than the test in the council's policy, and in my view circumstances will sometimes arise where it is appropriate to demolish buildings in the Conservation Area and redevelop their sites whilst at the same time preserving and enhancing the architectural and historic character of the area. It seems to me that the important part of the duty imposed by the Act is to look at whether the development would preserve or enhance the character or appearance of the Conservation Area as a whole, rather than to take the narrower view of its effect upon the individual building.

15. In the case of Scheme D, it appears to me that the appellants have taken a considerable amount of care to ensure that all 3 replacement buildings would be in keeping with the prevailing character of the area. The replacement for No.18 would have a replica of the existing front facade, but with a few improvements to remove later insertions of windows at first and second floor levels. It therefore retains the precise appearance and character of the area, and the facade includes original brickwork and ornamental panels, moulded brick string-courses, eaves and verges, rubbed brick arch over the main first floor window, projecting bay and gabled roof with ornate chimneys. As regards the proposal for replacing No.16 Netherhall Gardens, in this case a slightly different design has been proposed for the building. Whilst it has the same size and siting as the existing building, the proposed elevational treatment is somewhat plainer, with fewer brick ornamental details, whilst at the same time keeping similar features of the projecting bays, windows and roofscape.

16. At the inquiry substantial evidence was submitted on behalf of the appellants to show that both No.16 and 18 have serious structural problems caused by foundation failure and the ingress of rainwater over a considerable number of years. From my own inspection it was fairly evident that parts of these buildings are in a state of subsidence, with a high proportion of walls, windows and door frames out of plumb. Solid ground floors and brick walls have failed structurally, and I consider that to rectify such defects would not be practical without substantial rebuilding. These are not listed buildings of special architectural or historic interest, which have intrinsic value and importance, where it would be appropriate to underpin walls and save the fabric of the building at all cost. In this case I consider that duty of the owner lies in retaining the historic character of the locality in any new development. Although it was agreed by expert witnesses for the appellants that both buildings could be made structurally safe and the facades carefully patched, I consider that the end result would be less than satisfactory, a financial burden and an onerous responsibility for the future. Whatever the underlying cause of the structural failure of these buildings, it appears to affect all main elements, and I conclude that they are unfortunately in a state of terminal decline. Whilst that decline could be arrested by modern remedial techniques, as suggested by the

council, the distortions of walls and floors cannot be easily rectified. I take the view that these serious problems are an additional presumption in favour of the total redevelopment scheme.

17. Although not in as bad a structural condition as No.18, and still in constant use, No.16 displays remarkably similar cracking and subsidence of main supporting walls. Evidence of a number of steel tie-bars and plates through the building from gable wall to gable wall support your clients' view that there is considerable structural movement of No.16, also due to subsidence of its foundations. In addition I found that the white paint had been applied to the external brickwork of the building in order to remedy another serious problem. A significant proportion of the facing brickwork and ornamental bricks have suffered spalling of the front faces, and it is clearly a continuing problem, requiring re-painting at regular intervals. It therefore appears doubtful to me whether very much of the decorative brick details can be saved from the main facade, bearing in mind their generally poor condition and the difficulty of satisfactorily removing the layers of paint. Consequently I would not expect it to be possible to incorporate much of the existing brick details in a new building on this site, however I consider that this matter should be investigated before the detailed elevations are finalised.

18. To my mind the appearance of No.16 is not improved by the uniform painting over brickwork details and ornament, which are typically of a different colour to the larger areas of Flemish-bond brickwork, because it deprives the building of much charm and visual interest. With careful selection of new materials I consider that a replacement brick building in the form proposed would be likely to be an enhancement of this corner of the Conservation Area. It is not appropriate in my view to refer to the loss of the building's "patina of age", as this was irrevocably lost as soon as the building was first painted, and in any event even new brickwork, well executed, would acquire an "aged" appearance more successfully, and more gracefully than the painted building. On balance therefore, I consider that, subject again to the submission of acceptable details, the proposed replacement of No.16 Netherhall Gardens would provide a satisfactory, permanent solution to the future development of the site, and that Scheme D as a whole would preserve and enhance the character and appearance of this part of the Fitzjohns/Netherhall Conservation Area.

19. The council claimed that the problems of storing and reusing decorative brick, using modern bricks, poor quality of workmanship, possibly carried out by another developer in the case of No.18, would result in a less than satisfactory appearance in the Conservation Area. Furthermore, the drawings are so lacking in detail that the local planning authority would have little control over the development. But it appears to me that the imposition of suitable conditions to ensure that development does not proceed until all necessary details of elevational treatment are agreed would overcome this objection, as the council found in the case of Scheme C.

RETENTION OF NO.16 AS A SCHOOL

20. Mr Wilcox, the proprietor of Hampstead International School, objected to Scheme D on the grounds that No.16 could be economically repaired and retained as a private school, rather than be demolished. I note that the school has full planning permission but operates on a short lease, and although the school provides a valuable service to the foreign and local community, details of the lease show that the Association has protected its right to re-possess the site for its future use. Until Netherhall Gardens was included in the Conservation area in 1984 the appellants had in reserve the right to demolish these buildings and carry out "phase 2" of the 1966 Netherhall House scheme, and I do not accept that the recent use of the building for a school should stand in the way of an otherwise acceptable scheme for its redevelopment.

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21. If Scheme C was to proceed in preference, the school would be retained, and although I accept the evidence that Mr Wilcox has offered to purchase No.16 either in its present state or repaired, I consider that to be a matter to be resolved between the owners and lessee. I do not find that such considerations can have a significant bearing upon the planning merits of Scheme D, which I consider to have several important advantages for the character and appearance of the Conservation Area.

EFFECT ON ADJOINING DWELLINGS

22. Turning to the second main issue, the Scheme D replacement building for No.18 Netherhall Gardens includes a projection, some 3.5m beyond the position of the rear facade of the existing building, with a pitched roof at right-angles to the main building, and an eaves height at the north corner of about 6m above the garden level of the adjoining house No.20 Netherhall Gardens. The council's draft reason for refusal (04) for Scheme D was that daylighting standards and the access of natural light could not be complied with, to the detriment of the adjoining dwelling, but in evidence to the inquiry this was changed to an obstruction of sunlight reaching a ground floor double sash window on the south-facing flank wall of No.20. The Camder Environmental Code, paragraph A3, refers to the need for new developments to meet the standards laid down in the guidance offered in the DoE "Sunlight and Daylight" publication, but in paragraph 3.3 concerns the effects of new development on sunlight reaching neighbouring properties. This points out that the main criteria will be whether the proposal would result in an unreasonable deterioration of the existing situation, such that "new buildings and extensions that result in significant loss of daylight and sunlight to rooms (other than in flank walls) in neighbouring properties will not be permitted." The DoE guideline in "Sunlight and Daylight" is that in proposed residential building, sides facing south, or in any direction east or west of south, should have all points 2m above ground level accessible to sunlight for 3 hours on March 1st.

23. During my inspection on site, it was clear to me that Nos.18 and 20 Netherhall Gardens, were laid out in the late 19th century, so that their main aspects were towards the east and west. The south flank wall of No.20 is only about 2.5m from the common boundary and 5m from the northern flank wall of No.18. Such juxtaposition already creates a canyon effect between the tall gable walls, where there is a complete overshadowing of the side wall of No.20 for much of the year. The main habitable room windows of the property face east and west and would not be affected by the proposed redevelopment, but the particular ground floor bedroom window would undoubtedly lose part of the morning sunlight. It was agreed that about 1hr 30mins of sunlight would be lost between 9.55am and 11.29am on the 1st March, but that about 1hr 55mins sunlight would still reach the window between 8.00am and 9.55am. However, I find this to be flank wall of less importance than the main facades of the building, in a position where its sunlighting is already seriously impeded by a tall fence, the close proximity of No.18 and the presence of some large ash trees in the open area, at the acutely-angled position of the morning sun. It appears to me therefore that the reduction of morning sunlight to the neighbour's room would not be significant enough to warrant the refusal of Scheme for that reason alone.

24. I have taken into account all other matters raised in evidence in these appeals, including the adequacy of car parking arrangements, but I can find nothing of more importance than the consideration of the main issues that has led to my decisions. In conclusion, I find that the proposals would preserve the character and appearance of the Fitzjohns/Netherhall Conservation Area, and would contribute an overall enhancement to the streetscene.

25. In resolving to approve Scheme C, the council suggested a list of six conditions to be imposed on the planning application and one on the Conservation Area Consent. Leaving aside the disputed condition No.03, already referred to above, I find the purpose and content of the other 5 conditions to be appropriate and relevant to the planning application, but it will be necessary to add the standard time limit condition, and I prefer the model landscape conditions to be found in Appendix A of Circular 1/85.
26. With regard to the Conservation Area Consent application for Scheme C, I find appropriate the council's draft condition to ensure that an unsightly gap in the Conservation Area would not occur, and again a time limit condition is mandatory in this case also.
27. At the inquiry the council suggested 5 conditions for Scheme D, including the same disputed condition No.03, and apart from a rewording of the landscape conditions and the introduction of a time limit, I find them to be broadly acceptable.
28. Your clients find the draft conditions 1a, 1b and 1c on the Conservation Area Consent application for Scheme D to be acceptable in principle apart from 2 points. On the first point, it is agreed by the council that condition 1a need not refer to a detailed photographic record of internal architectural features as these are not listed buildings. Secondly, however, as part of condition 1b the council requires to be informed of the place of storage of salvaged architectural items which are to be re-used in the new buildings, whilst you claim that this would be unnecessary. It seems to me that in this particular case, provided that the appellants obtain approval for the precise details of the restoration work to be incorporated into the design of the elevations, then the place of storage is of no real relevance in achieving the end result, and need not be controlled by the local planning authority. Apart from this matter I find these 3 conditions to be relevant to the granting of Conservation Area Consent.
29. In both cases the council's condition No.03 aims to prevent the respective buildings from being converted into any other use than a hostel, within Class C1 of the Town and Country Planning (Use Classes) Order 1987. I understand that "building" in Scheme C refers to both No.18 and the replacement for The Cottage, whereas in Scheme D it can only refer to No.16 Netherhall Gardens. The council expressed concern that a conversion of these buildings into a hotel use would seriously increase traffic and parking problems in the vicinity, to the detriment of the Conservation Area. I am aware that The Cottage, 18 Netherhall Gardens and the much larger Netherhall House, as they are currently in hostel use, could be converted to a hotel use in part or whole, without the need for planning permission. In these circumstances it does not seem appropriate to apply this condition to part of the whole complex that the owners wish to refurbish and upgrade as part of Scheme C. Therefore I do not consider the condition to be appropriately applied to the repair and refurbishment of No.18 in Scheme C, but the erection of a new building for 32 hostel bedrooms on the site of The Cottage represents a substantial increase in accommodation, which has no car parking in its own curtilage. Similarly, the new building in place of No.16 in Scheme D houses 60 study bedrooms and has no parking of its own.
30. As it would be feasible to sever the parts of the site occupied by these 2 proposed buildings from the rest of the hostel at a future date, I take the view that a condition as drafted, applied specifically to those new buildings, would ensure that car parking could be given due consideration as part of the planning process. I therefore consider that, aimed precisely at those new buildings, the draft condition would be necessary and appropriate.

the above reasons, and in exercise of powers transferred to me, I hereby
four appeals and grant planning permission for:

erection of a new 3-storey building on the site of The Cottage, containing 32
bedrooms and forming a basement under the existing garden at the rear of
No.16 (garden to be replanted), providing seminar rooms, squash court and ancillary
spaces; partial demolition and rebuilding of the rear of No.18 Netherhall Gardens
and the erection of a 2-storey rear extension to provide 38 hostel bedrooms; and
the extension of the existing Block 2 (Lakefield Homecraft Centre) to provide a
lounge, classroom, cookery classroom and 5 bedrooms; in accordance with planning
application No.8905191 dated 22nd February 1989 and the plans submitted therewith,
subject to the following conditions:

1. the development hereby permitted shall be begun not later than 5 years
from the date of this decision.
2. Development shall not commence until plans at 1:50 scale and details of
the elevations and facing materials of new buildings and the rear facade of
No.18 Netherhall Gardens have been submitted to and approved by the local
planning authority.
3. The new building on the site of The Cottage shall be used only for hostel
and for no other purpose, (including any other purpose within Class C1 of the
Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any
provision equivalent to that class in any Statutory Instrument revoking and
re-enacting that Order).
4. No development shall take place until there has been submitted to and
approved by the local planning authority a scheme of landscaping, which shall
include indications of all existing shrubs and trees on the land and details
of any to be retained, together with measures for their protection in the
course of the development.
5. All planting and seeding comprised in the approved details of the
landscaping shall be carried out in the first planting and seeding seasons
following the occupation of the buildings, or the completion of the buildings
whichever is the sooner; and any trees or plants 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 in the next planting season
with others of similar size and species, unless the local planning authority
gives written consent to any variation.

Scheme D:

The erection of two 3-storey plus attic blocks on the site of No.18 and The Cottage
comprising 11 and 6 flats respectively, with 17 car parking spaces beneath; the
erection of a 3-storey plus attic block housing 60 study bedrooms on the site of
No.16 Netherhall Gardens, the provision of seminar rooms, squash court and ancillary
spaces for the hostel under the existing garden of No.16 (garden to be replanted);
the extension of the present Block 2 (Lakefield Homecraft Centre) to house a lounge,
classroom, cookery classroom and 5 bedrooms; in accordance with planning application
No.8905191 dated 22nd February 1989 and the plans submitted therewith, subject to
the following conditions:

1. The development hereby permitted shall be begun not later than 5 years
from the date of this decision.

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Before demolition or development commences, full details at an appropriate scale of the detailed design and materials of all elevations and roofs shall be submitted to and approved by the local planning authority.

3. The new building on the site of No.16 Netherhall Gardens shall be used only for hostel and for no other purpose, (including any other purpose within Class C1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that class in any Statutory Instrument revoking and re-enacting that Order).

4. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include boundary walls, gates and indications of all existing shrubs and trees on the land and details of any to be retained, together with measures for their protection in the course of the development.

5. All planting and seeding comprised in the approved details of the landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings, or the completion of the buildings whichever is the sooner; and any trees or plants 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 in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

32. I hereby grant Conservation Area Consent for Scheme C, the demolition of The Cottage and partial demolition of the rear wall of No.18 Netherhall Gardens in accordance with application No.HB/8970931 dated 22nd February 1989 and the plans submitted therewith, subject to the following conditions:

1. The development hereby permitted shall be begun not later than 5 years from the date of this decision.

2. No works of demolition shall take place until contracts have been exchanged for the redevelopment of the site, in accordance with the scheme for which planning permission has been granted.

33. I also grant Conservation Area Consent for Scheme D, the demolition of Nos.16 and 18 Netherhall Gardens and The Cottage, in accordance with application No.HB/8970928 dated 22nd February 1989 and the plans submitted therewith, subject to the following conditions:

1. The development hereby permitted shall be begun not later than 5 years from the date of this decision.

2. Demolition shall not take place until a fully detailed photographic record of all the external elevations of Nos.16 and 18 Netherhall Gardens has been undertaken and submitted to the local planning authority for its records.

3. Demolition shall not commence until plans and schedules of the external architectural features of Nos.16 and 18 to be salvaged, retained, restored and replaced on the facades of the new buildings, have been submitted to and approved by the council.

4. No demolition shall take place until contracts have been exchanged for the development in accordance with the scheme for which planning permission has been granted.

34. Attention is drawn to the fact that an application for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

35. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than sections 23 and 277A of the Town and Country Planning Act 1971.

APPLICATION FOR COSTS

36. At the inquiry you made an application for costs on behalf of the appellants concerning the council's draft reason for refusal No.04 with regard to Scheme D, which referred to an infringement of daylighting standards caused by the proposed rear projection of the replacement No.18 Netherhall Gardens. In its draft Pre-Inquiry Statement, received by the appellants on the 13th November 1989, and the final Statement, received on the 28th November 1989, the council referred to "a significant reduction in sunlight/daylight to windows in the flank wall of No.20 Netherhall Gardens" in paragraph 4.5, but no evidence was put forward at the inquiry to regarding the alleged loss of daylight to substantiate reason for refusal No.04. In a telephone conversation on the 17th November 1989, an assistant to the appellants' planning witness, Mr Warner, was refused help from the Planning Department to clarify this matter. Subsequently, a letter of 22nd November from the appellants' solicitor sought clarification as to whether the council alleged a loss of sunlight, daylight or both, and a reply was received from the council, dated the 23rd November, stating that the reason for refusal would be maintained at the inquiry and that the council's case would refer to a sunlight infringement to the particular windows. A partial award of costs is claimed on the basis that it was unreasonable to include "daylight loss" in the draft reason for refusal of Scheme D if this was not to be substantiated at the inquiry. The Pre-Inquiry Statement from the council was not delivered in the proper time, and therefore it was not known until too late, through the exchange of letters, that daylighting had been dropped from the council's case. This resulted in a waste of some 6 or 7 hours of preparation work by the appellants' planning witness, Mr Warner.

37. The council rebutted the claim, although the factual matters of statements, telephone calls and letters are agreed. The appellants could have asked for clarification before the 22nd November letter, and it should be noted that the last paragraph of the letter states that the information was required because the appellants were obtaining professional assistance with specific regard to this matter. The council's response was immediately helpful, and its behaviour cannot be said to be unreasonable.

CONCLUSIONS

38. In determining your application for costs, I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are awarded only on the grounds of unreasonable behaviour. Accordingly, I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties, and all the relevant circumstances in these appeals. In considering the council's Environmental Code and the DoE Guide "Sunlight and Daylight", there are different criteria and methods of assessing the effects of loss of sunlight as compared to daylight, and it is clear to me that the assessment of both would have been more time-consuming for the appellants' expert witness. That the council failed to produce its Rule 6 Statement within 6 weeks of the "relevant date", by the 3rd July 1989, is not in doubt, nor is there any doubt that in the final version of the Statement, sent to the Inspectorate on the 21st November 1989, the council still insisted upon reason for refusal 04, and that evidence would be given on daylighting

matters. Bearing in mind that the council did not clarify the point until only 2 weeks before the inquiry date, I accept that a significant amount of research into the daylighting matter could have already been carried out on the appellants' behalf. Advice in Circular 2/87 points out that reasons for refusal should be complete, precise, specific and relevant to the application. Whilst I accept that in this case there were only draft reasons for refusal of Scheme D, as the appeal was made against non-determination, reason 04 later became part of the Rule 6 Statement, to which the appellants were bound to respond in evidence to the inquiry, and accordingly, I would have expected the council to produce evidence to substantiate this reason for refusal. In this case the council failed to support part of one of its reasons for refusal, but produced evidence to substantiate all others, and I find that a partial award of costs should be awarded against the council, limited to the extra time spent in preparing evidence on daylighting, in order to refute reason for refusal No.04, which was unnecessary for the inquiry.

FORMAL DECISION ON COSTS

39. Accordingly, a formal order, which I have made in exercise of my powers under Section 250(5) of the Local Government Act 1972 and Section 36 of, and paragraph 5 of Schedule 9 to, the Town and Country Planning Act 1971 as amended by the Housing and Planning Act 1986, is enclosed with this letter. You are invited to submit to the Chief Executive of the council, to whom a copy of this letter and order has been sent, details of the costs referred to, with a view to reaching agreement on the amount. A copy of the guidance notice on taxation procedure, referred to in Circular 2/87 (paragraph 28), is also enclosed.

I am Gentlemen
Your obedient Servant

C. I. Cochrane.

C I COCHRANE DipArch MSc MRTPI
INSPECTOR

APPEARANCES

FILE REFS: T/APP/X5210/A/89/124898 & 124899/P7
T/APP/X5210/E/89/804633 & 804634/P7

FOR THE APPELLANTS

Mr A Trevelyan Thomas

- Of Counsel, instructed by:

Titmuss, Sainer and Webb, Solicitors,
2 Serjeants' Inn, London EC4Y 1LT.

He called:

Mr A J Hegarty MA

- Director of Netherhall Educational
Association.

Mr J Castanon BA AADip RIBA

- Architect

Mr D J Crowdell FRICS

- Principal of Crowdell and Associates,
Building Surveyors.

Mr G A Rickman BSc CEng MICE MISTructE

- Associate Director of Cameron Taylor
Partners, Consulting Civil and
Structural Engineers.

Mr A J Warner FRICS DipTP

- Principal of The Warner Partnership,
Town Planning and Development
Consultants.

FOR THE LOCAL AUTHORITY

Mr R Langham

- Of Counsel, instructed by:

Mr C Nickson, Chief Executive
Officer, London Borough of Camden.

He called:

Mr B A Morton CEng MICE DipConsAA

- Principal of Brian A Morton &
Partners, Consulting Civil and
Structural Engineers.

Mr D Marsh DipArch RIBA DipTP

- Area Co-ordinator, Planning and
Communications Department, London
Borough of Camden.

Mr J Davies BA MRTPI

- Principal Development Control
Officer, London Borough of Camden.

FOR THE HAMPSTEAD INTERNATIONAL SCHOOL
(No 16 Netherhall Gardens)

Mr J Milner

-Of Counsel, instructed by:

Messrs Black, Graf and Co, Solicitors,
14-15 College Crescent, London NW3.

APPEARANCES (Contd)

He called:

Mr W H Wilcox

Mr I Haywood MSc RIBA MRTPI

- Proprietor of Hampstead International School, and leaseholder of 16 Netherhall Gardens.

- Ian Haywood and Associates, Architects and Town Planning Consultants.

FOR THE NETHERHALL NEIGHBOURHOOD ASSOCIATION

Dr Mayer Hillman PhD BA Arch DipTP

- Chairman of Netherhall Neighbourhood Association, The Coach House, 7a Netherhall Gardens, Hampstead NW3.

Mr C Leekham BArch(Hons) DipArchUD RIBA

- Submitted a written proof of evidence - did not appear, on behalf of the Netherhall Neighbourhood Association.

INTERESTED PERSONS/PARTIES

Mr J Warshaw BArch DipTP AADipCons MRTPI

- Chairman of Planning Applications Panel, Hampstead Conservation Area Advisory Committee, Heathdene, Vale of Health, Hampstead NW3.

Councillor R E King

- Fitzjohns Ward Councillor, 1-2 Baynes Mews, Hampstead NW3.

DOCUMENTS

- | | | |
|----------|----|--|
| Document | 1 | Lists of persons attending the local inquiry. |
| " | 2 | Council's letter of notification and list of addresses. |
| " | 3 | Copy of previous decision letter of 21st August 1987. |
| " | 4 | Bundle of letters received before the inquiry. |
| " | 5 | Bundle of letters received after inquiry date. |
| " | 6 | Borough Plan - extract of Urban Design, Conservation and the Environment Policies. |
| " | 7 | Extract of A Plan For Camden - The Environmental Code. |
| " | 8 | Correspondence between the council and the appellants. |
| " | 9 | Appeal site decision notices and planning history. |
| " | 10 | Appellants calculations of sunlight in Scheme D. |
| " | 11 | List of brick manufacturers of matching bricks. |
| " | 12 | Mr Rickman's evidence on the structural condition of Nos.16 and 18 Netherhall Gardens, photographs and plans. |
| " | 13 | Estimates of the costs of repairing Nos.16 and 18 Netherhall Gardens. |
| " | 14 | Appellants' estimates of financial implications of undertaking Schemes C and D. |
| " | 15 | Detailed breakdown of the appellants' estimate of the costs of repairing and converting Nos.16 and 18 Netherhall Gardens. |
| " | 16 | Ideal specifications for student accommodation - SLOSH Ltd. |
| " | 17 | Council's policy on the Demolition of Un-Listed Buildings in Conservation Areas, and public response to policy - April 1987. |

DOCUMENTS (Contd)

- Document 18 Consultations received by council on applications.
- " 19 Plan of designated Fitzjohns/Netherhall Conservation Area.
- " 20 Appeal site photographs.
- " 21 Council's sunlight calculation diagram.
- " 22 Mr Morton's evidence on the structural condition of Nos 16 and 18 Netherhall Gardens.
- " 23 Mr Morton's previous evidence to the 1987 appeal inquiry.
- " 24 Letter of 29th November 1989 from Camden District Surveyor, regarding the condition of the buildings.
- " 25 Letter of 1st June 1987 and structural report of 13th November 1980 on behalf of American Community Schools, London.
- " 26 Council's suggested conditions for Scheme D.
- " 27 Description of pupils and the activities of the Hampstead International School.
- " 28 Structural surveys of No.16 Netherhall Gardens, carried on behalf of the Hampstead International School in 1989 and 1977, by F Samuely and Partners, Consulting Engineers.
- " 29 Evidence of Mr C Leekham on behalf of the Netherhall Neighbourhood Association.
- " 30 Additional written evidence on traffic generation of Scheme D, submitted by Dr Mayer Hillman.
- " 31 Netherhall Neighbourhood Association Newsletter No.28, December 1989.
- " 32 Conservation Areas and "Steinberg" - The Inspectorate's Response, JPL 1989.
- " 33 Map of local signatories to petition.
- " 34 Bundle of letters objecting to Scheme D - submitted by the Netherhall Neighbourhood Association.
- " 35 Report of the Director of Planning & Communications 31 January 1984 - Conservation Area Extensions.
- " 36 The Times Law Report - 5th October 1989.
- " 37 Appeal decisions: APP/K5030/A/88/089225 & E/88/803073
APP/X5990/A/86/045276
T/APP/D3830/A/89/123097/P4
T/APP/X5120/A/88/101397/P4 & E/88/803537/P4
- " 38 Law Report: Havering LBC and London Equitable Developments Ltd-PAD2
- " 39 Set of photographs of ornamental brickwork and details of the existing buildings.

PLANS

- Plans A Submitted plans of Scheme C.
- Plans B Submitted plans of Scheme D.
- Plan C Elevation of 1986 scheme dismissed at appeal in 1987.
- Plans D Photographic composite elevations to Netherhall Gardens, as existing and as proposed in Scheme D.

Gardens, the provision of seminar rooms, square court and ancillary spaces for the hostel under the existing garden of No.16 (garden to be replanted); the extension of the present Block (Lakefield Homecraft Centre) to house a lounge, classroom, cookery classroom and 5 bedrooms; described as Scheme D; and fourthly, an application for Conservation Area Consent for the demolition of Nos.16 and 18 Netherhall Gardens and The Cottage (associated with Scheme D), Hampstead, London NW3.

Inquiry date

6th-8th December 1989, and 4th-5th January 1990

Signed: *C.I. Codrington*

Date: 15.1.90.

INSPECTOR

FILE REFS :T/APF/X5210/A/89/124898/P7
" A/89/124899/P7
" E/89/804633/P7
" E/89/804634/P7

LOCAL GOVERNMENT ACT 1972
TOWN AND COUNTRY PLANNING ACT 1971, AS AMENDED BY THE LOCAL GOVERNMENT AND PLANNING
(AMENDMENT) ACT 1981, AND BY THE HOUSING AND PLANNING ACT 1986

ORDER AS TO COSTS
LONDON BOROUGH OF CAMDEN

I, Clive Ian Cochrane, in exercise of my powers under section 250(5) of the Local Government Act 1972 and section 36 of and paragraph 5 of Schedule 9 to the Town and Country Planning Act 1971 as amended by section 49 of, and paragraph 8 of Schedule 11 to the Housing and Planning Act 1986, and of all other enabling powers, HEREBY ORDER that the London Borough of Camden Council (hereinafter called "the council") shall pay to the Netherhall Educational Association their costs incurred in refuting that part of the council's reason for refusal number 04 relating to the effect of the proposed development (Scheme D) upon daylighting of the adjoining property, such costs to be taxed in default of agreement as to the amount thereof.

Subject of the inquiry

Four appeals under sections 36 and 56 of the said Act of 1971 against the failure of the council to determine within the prescribed period, firstly, a planning application for the erection of a new 3-storey building on the site of The Cottage, containing 32 hostel bedrooms and forming a basement under the existing garden at the rear of No.16 (garden to be replanted), providing seminar rooms, squash court and ancillary spaces; partial demolition and rebuilding of the rear of No.18 Netherhall Gardens and the erection of a 2-storey rear extension to provide 38 hostel bedrooms; and the extension of the existing Block 2 (Lakefield Homecraft Centre) to provide a lounge, classroom, cookery classroom and 5 bedrooms; described as Scheme C; secondly, an application for Conservation Area Consent for the demolition of The Cottage and partial demolition of the rear wall of No.18 Netherhall Gardens (associated with Scheme C); thirdly, a planning application for the erection of two 3-storey plus attic blocks on the site of No.18 and The Cottage comprising 11 and 6 flats respectively, with 17 car parking spaces beneath; the erection of a 3-storey plus attic block housing 60 study bedrooms on the site of No.16 Netherhall