



Appeal Decisions

Site visit made on 22 April 2014

by **Philip Willmer BSc Dip Arch RIBA**

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

Decision date: 9 July 2014

Appeal A Ref: APP/X5210/A/13/2206940 16A Lyndhurst Gardens, London, NW3 5NR.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Lyndhurst Gardens LLP against the Council of the London Borough of Camden.
 - The application Ref 2013/4232/P is dated 5 July 2013.
 - The development proposed is the erection of a single storey dwelling including excavation at basement and sub basement level following demolition of dwelling (C3).
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Appeal B Ref: APP/X5210/E/13/2206945 16A Lyndhurst Gardens, London, NW3 5NR.

- The appeal is made under section 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
 - The appeal is made by Lyndhurst Gardens LLP against the Council of the London Borough of Camden.
 - The application Ref 2013/4779/C is dated 5 July 2013.
 - The works proposed are described as erection of a single storey dwelling including excavation at basement and sub basement level following demolition of dwelling (C3).
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Decisions

1. The appeals are dismissed.

Procedural Matters

2. The Council did not determine the applications within the prescribed period. However, in its appeal statement it indicates that subject to a section 106 agreement it was minded to approve both the applications. Although the appellant has submitted a unilateral undertaking it does not allow for the development to be car-capped or for a Construction Working Group to be convened as required by the Council. Accordingly, the Council subsequently considers that the proposed development would not meet the objectives of Policy DP18 the London Borough of Camden Local Development Framework-*Development Policies* adopted November 2010 (LDF-DP).
 3. Further, as the appeal site is located in the Fitzjohns/Netherhall Conservation Area, I shall pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
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4. Accordingly the main issues in these appeals will be as set out in 5 below.

Main Issues

5. I consider the main issues to be:

Appeal A

- a) the effect of the development on local parking; and
- b) whether a Construction Working Group is necessary and should be convened.

Appeal B

- a) whether the demolition of the existing dwelling would have a detrimental impact on the character and appearance of the conservation area.

Reasons

- 6. The property the subject of these appeals, 16A Lyndhurst Gardens, is a detached two bedroom bungalow built in the 1970's. It is situated between numbers 16 and 18, substantial 19C four/five storey semi-detached properties with basements. The site is located in the Fitzjohns/Netherhall Conservation Area. As identified by the Council there are two large institutions nearby, the Marie Curie Hospice and St Christopher's School.
- 7. The appellant proposes to demolish the existing bungalow and to erect a replacement single storey dwelling over a two-storey basement.

Appeal A

Parking

- 8. LDF-DP Policy DP18 states that the Council expects new developments, in areas of high on-site parking stress, to be either car-free or car-capped. Car-capped developments are defined as ones having a limited amount of on-site car parking with no access to on-street parking permits in order to avoid any impact on on-street parking. The Council's purpose of such requirements is to facilitate sustainability and to help promote alternative, more sustainable methods of transport.
- 9. The Council states, and this is not challenged by the appellant, that the appeal site is situated in a Controlled Parking Zone (CPZ) where, by definition, there is a high level of parking stress with more than 100 permits (112) issued for every 100 parking bays and overnight demand is in excess of 90%.
- 10. The appellant proposes to retain the existing one off-street parking space. This would meet the Council's parking standards in this area, which is a maximum of one off-street parking space per dwelling. The Council contends that the development should also be car-capped to avoid any increase in demand for on-street parking in a CPZ as a result of the development.
- 11. The Council states that it considers that a planning obligation, rather than a condition, is the most appropriate mechanism for securing the development as car-capped as it relates to controls that are outside the development site. Further, as the section 106 legal agreement would be registered as a land charge, it is also the mechanism it uses to identify that the property is designated car-capped and therefore an on-street parking permit can be withheld from future residents.

12. The appellant says that the property has been in a CPZ for many years and currently, although no evidence has been submitted to support this view, that there is no restriction on the number of parking permits that can be applied for. Accordingly, he considers that the Council is seeking to use its planning powers to secure an improvement of a pre-existing situation and its requirement for the development to be car-capped is an unreasonable exclusion, given that the occupancy level for the proposed three bedroom dwelling would be similar to that of the existing two bedroom property to be demolished.
13. Whilst I note the appellant's arguments, the key objective of the National Planning Policy Framework (the Framework) is for the planning system to contribute to the achievement of sustainable development. In that respect since the original dwelling was constructed in the 1970's car ownership has increased considerably and the need for new development to be sustainable by, amongst other things, promoting alternative more sustainable methods of transport is now a key consideration. In any case, in my view, a third bedroom may well result in a higher level of occupancy than the existing two bedroom unit and, therefore, I consider the Council's requirement for a car-capped scheme is on balance appropriate in the circumstances.
14. The appellant has provided a signed and dated unilateral undertaking. However, it does not include for the obligations required by the Council in respect of the development being car-capped, which I have found to be necessary and appropriate in this case. I therefore conclude, in respect of the first main issue, that the proposed development would not accord with the objectives of LDF-DP Policy DP18.

Construction Working Group

15. The property is located in a generally built-up residential enclave. Immediately to the north east of the appeal site is St Christopher's School and located on the opposite side of Lyndhurst Gardens is a hospice. The Council considers, and I do not disagree, that these are both sensitive sites whose occupants, along with residential neighbours, may well be adversely affected by the construction process, in terms of vehicle movements, noise and general disturbance. It therefore considers, given this context, that a Local Construction Working Group (CWG) should be part of the Construction Management Plan (CMP) in order to help identify and thereby inform the management of the construction impacts that may be encountered during the building contract.
16. The Council wishes to secure the establishment of the CWG by way of a section 106 agreement. However, the appellant considers that the combination of the restrictive conditions proposed by the Council, and the requirements of the CMP required by a section 106 agreement, provide an adequate safeguard for the amenity of local residents, the school and hospice.
17. The development proposed is for the demolition of a single storey dwelling and the construction of a three-storey property, comprising basement, sub-basement and just one level of accommodation above ground level. The site is constrained by reason of surrounding development and the formation of the basement and sub-basement would add marginally to the complexity of the project. Although I recognise that there are sensitive neighbours whose amenity would need to be protected, the project, which is domestic in scale, is not in my judgement overly complicated or technically difficult.
18. The Council states that the CWG would be required to address such matters as working hours and times of delivery to the site. Policy CPG6 of the Camden

Planning Guidance 6-Amenity (SPD) at paragraph 8.14 says that 'sometimes' the section 106 will link the CMP with a requirement to convene a CWG. However, I am not persuaded, bearing in mind the limited evidence submitted by the Council in support of this issue, that matters of concern such as working hours and site deliveries could not be dealt with by way of appropriate conditions. In addition, the appellant is agreeable to the provision of a CMP. To my mind, together with the available normal statutory controls, a CMP along with appropriately worded conditions would serve to secure an adequate level of protection for the neighbours' amenity without the need for a CWG. In this respect, I tend to agree with the appellant that the introduction of a CWG, in this case, may have the potential to be divisive and not be conducive to the proper management of what to my mind would be a modest building contract. Accordingly, I do not consider that a CWG is either necessary or appropriate here.

Conclusions

19. I have concluded that a CWG is not required in this case to safeguard the amenities of neighbouring occupiers. However, I consider that the development should be car-capped as proposed by the Council and a section 106 agreement is necessary to secure this provision. In the circumstances, I therefore consider that the proposal would undermine the strategy in respect of parking standards and limiting the availability of car parking contrary to the aims of LDF-DP Policy DP18.

Appeal B

Character and appearance of the conservation area

20. The appellant proposes the demolition of the existing dwelling on this site which is located within the Fitzjohns/Netherhall Conservation Area. The original application, and subsequently this appeal, has been made in conjunction with a proposal to develop the site to provide a replacement detached dwelling.

21. As the scheme of redevelopment cannot proceed for the reasons set out above, it would not be appropriate to allow the demolition of the existing dwelling as this would, in my opinion, cause significant harm to the visual appearance of the conservation area. The proposal would therefore fail to serve to preserve or enhance the character or appearance of the conservation area contrary to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Overall conclusion

22. The *planning guidance* was published on the 6 March 2014 and applies from the date of publication. The content of the guidance has been considered but in light of the facts in this case it does not alter my conclusions.

23. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should not succeed.

Philip Willmer

INSPECTOR