

Appeal Decision

Site visit made on 3 June 2014

by **M C J Nunn BA BPL LLB LLM BCL MRTPI**

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

Decision date: 3 July 2014

Appeal Ref: APP/X5210/A/14/2217555

43 King's Terrace, London, NW1 0JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by The Remet Company Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref: 2013/7486/P, dated 20 November 2013 was refused by notice dated 24 January 2014.
 - The development proposed is described as: "extension at third floor level of Nos 43-47 Kings Terrace to create two No 1-bed flats".
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issues

2. The appellant has annotated some minor revisions on certain plans as part of this appeal to address the Council's concerns regarding the effect on living conditions at existing properties. Neither the Council nor interested parties have commented on them. Therefore, in the interests of fairness, I have not considered them as part of this appeal, and have assessed the plans as they were originally submitted to the Council.
3. Although the appellant has indicated a willingness to provide a planning obligation to address certain of the Council's grounds for refusal, I have not been provided with one. I have proceeded accordingly.
4. The main issues are: (i) whether the proposal would preserve or enhance the character or appearance of the Camden Town Conservation Area; (ii) the effect of the proposal on the living conditions at existing properties, in terms of privacy and outlook; and (iii) whether a planning obligation is necessary to secure a financial contribution towards affordable housing, to ensure the development is 'car free', and to secure a construction management plan.

Reasons

Conservation Area

5. The appeal property is located within the Camden Town Conservation Area, a designated heritage asset. I understand the appeal building was originally granted permission in 2006, but has been subject to various amendments.
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Most recently, prior approval was granted to change part of the building's use from offices to residential. Although the wider site has a frontage on to Camden High Street, it is the element fronting King's Terrace that would be altered under this proposal.

6. King's Terrace is a narrow road which gives it an intimate character, and is characterised by a number of relatively small scale, densely developed mews buildings. These original buildings are predominantly two storeys in height, although some are higher. Many of the original mews buildings retain much of their character and architectural charm. However, there is some more modern infilling development which varies in quality.
7. The appeal building, although a modern structure, successfully integrates with the older, smaller scale buildings in King's Terrace. This is because its main elevation fronting King's Terrace is two storeys, with a 'set back' slate mansard roof at third storey level, punctuated by individual dormer sash windows. This traditional design approach takes its cues from the original buildings in the road, and sympathetically relates to them. The mansard roof with dormers breaks up the mass and bulk of the building, by providing interest and relief.
8. This scheme proposes replacing the mansard roof with a third storey set flush with the main elevation fronting King's Terrace, and a new 'recessed' glazed fourth floor level above. An additional storey is also proposed on the existing three storey flat roofed element adjacent to the Argos building. In my view, the resulting building would appear significantly more 'block-like' and bulky in form, and would harm the well-considered design of the existing building. I also consider that the recessed glazed top storey would be out of place in this location, as it is not characteristic of this part of the Conservation Area.
9. The existing building currently performs an important transitional role. At present, the main frontage relates well to the original smaller scale mews buildings to the south, including the neighbouring property which also has a mansard roof. The flat roofed three storey element also steps up to the larger adjacent Argos block. However, this 'transitional effect' would be weakened in this proposal, as there would be a more abrupt disjuncture with the adjacent property to the south. Consequently, the proposed scheme would disrupt the rhythm of the existing terrace. Although the appellant argues that the scheme would help reduce the impact of the large Argos building to the north, I am not persuaded this justifies harmful development within the Conservation Area.
10. I find on this issue that the proposal would fail to preserve the character or appearance of the Camden Town Conservation Area. It would conflict with Policy CS14 of the Core Strategy which requires development to be of the highest standard of design that respects local context and character; and for proposals to preserve and enhance the Borough's heritage assets, including Conservation Areas. It would also conflict with Policies DP24 and DP25 of the Development Policies which have similar aims.
11. The scheme would also fail to sustain and enhance the significance of this heritage asset, as required by the National Planning Policy Framework ('the Framework'), and would harm it. Whilst the harm may be less than 'substantial harm' referred to in the Framework, it nevertheless weighs against this proposal. Paragraph 134 of the Framework requires the harm in such

circumstances to be weighed against any public benefits of the proposal. I am not persuaded that the factors put forward by the appellant in support constitute public benefits that outweigh the harm I have identified.

Living Conditions – Existing Occupiers

12. The Council draws attention to the proximity of the proposed new units to existing flats, and has raised concerns in relation to privacy and outlook. However, I do not consider that there would be more overlooking than would be reasonably expected in a built up area such as this. The Council has suggested that certain windows could be obscure glazed to ensure the privacy of neighbours if permission were to be granted. I am also satisfied that there is sufficient separation between existing flats and the proposed units, so as not to significantly affect outlook for existing occupiers.
13. Therefore, I find on this issue that the proposal would not significantly detract from the living conditions at existing properties in terms of privacy or outlook. In these respects it would comply with Policy DP26 of the Development Policies, which requires the quality of life of occupiers and neighbours to be protected, including in terms of privacy, overlooking and outlook. However, this does not alter my concerns in relation to the first issue.

Planning Obligation

14. The Council's reasons for refusal in part relate to the absence of a planning obligation to secure financial contributions to affordable housing, to secure a 'car free' development, and to provide for a construction management plan. Although the appellant has said a planning obligation will be prepared, I do not have one before me. I deal with the issues raised below.

Affordable housing

15. With regards to affordable housing provision, the Council refers to a previous legal agreement relating to the original permission granted in 2006¹ which stated:

"if at any time after the date of this Agreement any further planning permission is granted to develop any part of the Property for residential purposes the Owner shall not permit implementation of that planning permission until such time as it has entered into an agreement under Section 106 of the Act with the Council to secure a due proportion required by the Council's Development Plan policies in force at that time of total residential units approved by the Council within the property as a whole (excluding the two existing residential units forming part of the Planning Application) as Affordable Housing in accordance with the Council's adopted development plan policies".

16. The appellant states that there is no requirement to provide affordable housing in this proposal and draws attention to Policy CS6 of the Core Strategy and Policy DP3 of the Development Policies. This latter policy states that the Council will expect residential developments with a capacity for 10 or more additional dwellings to make a contribution to the supply of affordable housing. The appellant also draws attention to the supporting text of Policy DP3 which, when calculating the capacity of the site, excludes homes that already exist on

¹ I understand that a later revised legal agreement was also completed but this did not change provisions relating to affordable housing.

the site. The appellant's point is that, applying these policies, existing units on the site should be excluded in calculating any affordable housing provision. In other words, since only two new units would be created under this proposal, the affordable housing requirements of Policy DP3 would not be triggered.

17. I have carefully considered this matter. However, it would appear that the objective of the legal agreement was to ensure any additional units at the site, over and above those already permitted, made some provision for affordable housing. In other words, any new units should be assessed as part of the total units on the site, rather than as a discrete 'stand alone' element. On the information before me, given the provisions of the legal agreement, and in the absence of any variation to its terms in respect of affordable housing, I consider that further additional residential units provided at the site would not be exempt from the Council's requirements in relation to affordable housing.
18. The appellant has also argued that a financial contribution towards affordable housing would make the scheme unviable. However, no financial viability appraisal has been provided to substantiate this claim. I cannot conclude, therefore, that the Council's request in respect of affordable housing would render the scheme financially unviable.
19. I find that, having regard to the earlier legal agreement, the Council's requirements in respect of affordable housing are reasonable. Moreover, I am satisfied they that are necessary to make the development acceptable in planning terms, are directly related to the development and that they fairly and reasonably in scale and kind to the development, meeting the relevant tests in the Framework² and the Community Infrastructure Levy Regulations³. I am also satisfied such an approach would accord with Policy CS6 of the Core Strategy and Policy DP3 of the Development Policies.

'Car Free' development

20. Policy DP18 of the Development Policies states that the Council will expect developments to be 'car free' in certain areas, including at this location. The Council says an obligation is necessary to ensure the proposal is 'car free'. The appellant has raised no objection to this requirement, although as previously noted I have no planning obligation before me. Having regard to adopted policy, I am satisfied that a 'permit free' development is necessary in the interests of highway safety and to avoid parking problems.
21. However, any legal agreement in respect of this scheme would need to be drafted so as to address the problems identified in the *Westminster City Council v SSCLG & Acons*⁴ judgment, so that it could be construed as falling within the scope of s106 of the Town and Country Planning Act⁵. This would ensure that the legal agreement would be effective and enforceable.

² Paragraph 204

³ Regulation 122

⁴ [2013] EWHC 690 (Admin)

⁵ That case highlighted the difficulty in formulating an obligation to prevent an application for a car parking permit and found that such an obligation would fail to comply with s106 of the Act and therefore could not be enforced. It could not be construed as a planning obligation, but merely a personal undertaking.

Construction Management Plan

22. The Council has requested an obligation to cover this issue so as to comply with Policy DP20 of the Development Policies, which amongst other things seeks to reduce the movement of goods and materials by road during construction. The appellant has no objections to this approach. However, I see no reason why this could not be adequately secured by a suitably worded condition, were I minded to allow the appeal.

Summary on Planning Obligation

23. Although no planning obligation has been provided to me, given that I have already found the scheme unacceptable for other reasons, the appeal does not turn on this issue.

Other Matters

24. In reaching my decision, I have taken into account the appellant's submissions in support of the appeal including that the site is in an accessible location close to public transport links, with a range of shops and services nearby; that the appellant's Sunlight and Daylight Report concludes no significant harm would be caused to existing occupiers; that the proposal would comply with 'Lifetime Home' standards; that the flats would exceed the minimum space standards set out in local policy. However, these factors do not outweigh my concerns.

25. I have also considered the proposal in the context of the presumption in favour of sustainable development set out in the Framework. I acknowledge the Framework encourages the effective use of land that has been previously developed and that the scheme would contribute to the supply of housing in a sustainable location. It also cautions against imposing architectural styles or particular tastes. However, the Framework seeks to sustain or enhance heritage assets and promote or reinforce local distinctiveness. This proposal would fail to achieve those objectives.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

Matthew C J Nunn

INSPECTOR