
Appeal Decision

Hearing held on 7 May 2014

Site visit made on 7 May 2014

by C A Newmarch BA(Hons) MRICS MRTPI

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

Decision date: 5 June 2014

Appeal Ref: APP/X5210/A/14/2215624 2 Clorane Gardens, London NW3 7PR

- 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 Ms E Georgilis against the decision of the Council of the London Borough of Camden.
 - The application Ref 2013/6765/P, dated 21 October 2013, was refused by notice dated 17 December 2013.
 - The development proposed is the "demolition and the re-build of the existing dwelling house, retaining the existing front elevation and basement structures, including the existing extensions and alterations - previous consents 2012/5619/P, 2013/0927/P, 2012/3401/P, 2013/0959/P and 2013/0960/P."
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition and the re-build of the existing dwelling house, retaining the existing front elevation and basement structures, including the existing extensions and alterations - previous consents 2012/5619/P, 2013/0927/P, 2012/3401/P, 2013/0959/P and 2013/0960/P at 2 Clorane Gardens, London NW3 7PR in accordance with the terms of the application, Ref 2013/6765/P, dated 21 October 2013, subject to the conditions in the attached schedule.

Procedural matters

2. A unilateral undertaking has been submitted in favour of the Council. This is discussed further below.
3. The application was made by Ms E Georgilis, but in submitting the appeal she requested that her husband, Mr George Govotsis, be allowed to act as a 'substitute appellant' on her behalf. For legal reasons it is necessary for the appeal to be made in the same name as the application. I have determined the appeal on this basis, and consider that it does not harm the interests of any party.
4. The Council's third refusal reason refers to the absence of a Basement Impact Assessment. However, it now accepts that the Basement Impact Assessment, Ref 371242-01 (00), dated February 2014, which was submitted with the appeal, fully addresses its concerns regarding the effect on the built and natural environments and local amenity. I have no reason to disagree, and so this matter has formed no further part of my consideration of the appeal.

Background

5. It is a matter of common ground between the Council and the appellant that planning permission has been granted or Certificates of Lawful Development have been issued for a range of works at the property including:
 - the excavation of a basement (Ref 2011/6239/P);
 - the erection of a single storey ground floor level rear extension, the installation of a dormer window in the rear roof slope, the relocation of the garage door (following the demolition of the existing front ground floor extension), and the installation of a metal balustrade to the rear of the first floor level balcony (Ref 2012/3401/P);
 - the construction of a subterranean garden building to house incidental plant (Ref 2012/3821/P);
 - The installation of 8 x skylights. 3 x windows to front basement, 1 x door to side ground level, 1x window to rear kitchen, 5 x windows to 2 WCs, 1 x frameless window to rear elevation, 1 x window to first floor north west elevation including removal of pedestrian door to side of garage, removal of 2 x windows to first floor rear elevation, installation of garden wall and provision of new clear paving in front of garage (Ref 2012/5619/P);
 - Replacement conservatory at rear of existing dwelling house (Ref 2013/0959/P);
 - Erection of front porch (Ref 2013/0960/P);
 - Replacement of chimney to side/rear of existing single dwellinghouse (Ref 2013/0927/P).
6. Significant works have been carried out towards the implementation of the above proposals. These include:
 - The construction of the shell of the basement under the main house;
 - The construction of the shell of the garden building;
 - The rebuilding of the garage and porch openings;
 - The framework and sheathing of the rear extension;
 - Openings on the side elevation have been formed and rubble/stock brick work replaced;
 - Repairs to some two-thirds of the forward section of the side façade, including decorative brickwork;
 - The front elevation prepared for brickwork repair, together with restructuring of the lower bay;
 - The rear window openings have been commenced;
 - The rear conservatory has been removed.
7. These works appear to be broadly consistent with the submitted drawings. However, at the time of my visit, further work on site had been suspended pending the outcome of this appeal.

8. The appellant submits that the appeal proposal arises from the cumulative difficulties experienced in implementing the various permitted schemes due to the poor condition of the building, including the rough cast and the brickwork.
9. The original bricks remain in production. The Council does not dispute that these have been obtained and used in the works which have been carried out to date. However, the extent of the brick replacements which the appellant considered to be necessary has given rise to a concern that they could amount to the substantial demolition of the dwelling if further work is undertaken. The appellant refers to *Hewlett v SSE 1983* and *Sainty v MHLG 1963* to support the argument that the application, which is the subject of the appeal, was made not with the intention of demolishing the dwelling, but to be able to carry out the permitted and lawful developments without the risk of substantial demolition occurring in the course of work.
10. As such, the appellant maintains that the proposal would provide a fallback position in its own right, suggesting that it would only be carried out if the other permissions cannot be progressed. This is an unusual approach. To be given weight, there must be a realistic prospect of a fallback being implemented. This is discussed further below.

Main Issues

11. The main issues are:

- Whether the proposal would preserve or enhance the character or appearance of the Conservation Area with particular regard to (i) the demolition of the building; (ii) the front porch; (iii) the side wall; (iv) the window in the rear elevation.
- Whether the appellant's completed unilateral undertaking satisfies the Council's objections relating to (i) car free housing, (ii) a construction management plan, (iii) a sustainability plan, and (iv) whether the undertaking accords with paragraph 204 of the National Planning Policy Framework (NPPF).

Reasons

Whether the proposal would preserve or enhance the character or appearance of the Conservation Area

(i) The demolition of the dwelling

12. The appeal premises are within the Redington/Frognaal Conservation Area. This predominantly residential Conservation Area is characterised by the relationship between the streets and houses to the contours of the hills to the west of Hampstead Heath. As originally designated in 1985, the Council noted that the Conservation Area was an exceptional example of consistently distinguished Victorian and Edwardian architecture. I have no reason to disagree. However, additional areas were subsequently included within the Conservation Area. Clorane Gardens is within an extension added to the north-west boundary of the Conservation Area in 1992. The Council acknowledges that the houses in this part of the Conservation Area are modest in scale and character compared to those erected through the collaboration between the Arts and Crafts Architect, Quennell, and the builder, Hart, within the wider area.

13. No 2 Clorane Gardens is semi-detached to No 4. The appellant contends that it is of no historical interest, although a local objector, who was unable to attend the hearing, submitted a detailed written analysis of the dwellings in Clorane Gardens and Platt's Lane which indicates that the design of the street and its dwellings is consistent with Quennell's work. The objector further attributes the construction of all the houses in Clorane Gardens to the builder Robert Washington Hart. However, while these submissions are consistent with my inspection of the site and the surrounding area, it has not been possible to test this evidence. In any event, the property is not mentioned in the Redington/Frognal Conservation Area Statement, 2004, nor is it listed or included on the Council's consultation draft of 'Camden's Local List (October 2013)'. Nonetheless, I consider that it is a carefully detailed dwelling, which makes a positive contribution to the street scene and the Conservation Area.
14. Policy CS14 of the Council's Core Strategy (CS), 2010, seeks the preservation and enhancement of Camden's rich heritage assets including Conservation Areas, and policy DP24 of its Development Policies (DP), 2010, requires high quality design. More specifically, DP policy DP25 prevents the total or substantial demolition of an unlisted building in a Conservation Area which makes a positive contribution unless exceptional circumstances outweigh the case for retention.
15. The proposal, if implemented in full, would result in a greater loss of the original fabric of the building, particularly the roof, than the permitted and lawful development. While there would be no control over demolition of the house, other than the front elevation and basement structures, I do not agree with the Council's contention that the permissions and permitted development rights are theoretical. Instead, I give considerable weight to the extent and the quality of the works which have already been carried out. I accept that there is an intention to complete the proposed scheme of works, rather than to demolish original or new building fabric unnecessarily. While the appeal proposal does not represent a conventional fallback position, there is a realistic probability that the appellant would rely upon it, at least in part, to complete the dwelling.
16. At present, the house is not weather tight or in a fit condition for any beneficial use. There are no other plans or proposals for bringing the building back into residential use or enhancing its contribution to the character and appearance of the Conservation Area. While there is no evidence that the building is in imminent danger of collapse or total loss, it would deteriorate without additional work. This proposal provides an opportunity to restore it to provide family living accommodation. In my view, this amounts to exceptional circumstances, as allowed under DP policy DP25. The contribution to the supply of housing would amount to a public benefit. I consider that this clearly outweighs the less than substantial harm to the significance of the Conservation Area as a designated heritage asset, which was conceded by the Council at the hearing. As such, it would also accord with paragraph 134 of the NPPF.

(ii) The front porch

17. The appearance of the front elevation of the dwelling has differed from its original design and from the general appearance of the semi-detached homes in Clorane Gardens at least since the introduction of an integral garage

following the grant of permission in 1938. This, in itself, did not affect the inclusion of the building with the Conservation Area. However, the original front porch and canopy, with transom window above, have been removed. The proposed design and materials for the replacement porch, while differing from the original and the neighbouring porches, would have a limited visual impact on the pair of non-matching semi-detached houses and the street scene. The porch design and materials were deemed to be lawful by the Certificate of Lawful Development, Ref 2013/0960/P, which was granted by the Council. This is a material consideration of significant weight.

18. In addition, the proposal would provide for a step-free transition from the level of the front boundary of the site to the finished floor level of the dwelling. A further consideration is that the Conservation Area already accommodates change successfully as demonstrated by the modern studio development at No 2A Clorane Gardens.
19. Accordingly, I find that the porch would have a neutral effect on the Conservation Area, and thus its character and appearance would be preserved.

(iii) The side elevation

20. Some two thirds of the forward section of the flank wall, including perforated brickwork, has been constructed. Extremely limited glimpses of the perforated brickwork wall were visible from the junction of Clorane Gardens and Platt's Lane at the time of my visit. It will also be visible from the public domain immediately opposite the property once the site hording has been removed. However, this formed part of the Certificate of Lawful Development, Ref 2012/5619/P, granted by the Council, which is a significant material consideration.
21. Repairs and brick replacement to the remaining section of this wall have yet to take place. It was apparent from the external brick spalling, particularly towards the base of the wall, that the many bricks are no longer serviceable and will need to be replaced. The internal face of this solid wall reveals extensive areas of very poor quality bricks and pointing. I agree with the appellant's concern that the insertion of a window into the wall, as previously certified to be lawful, may not be feasible without rebuilding the wall. The materials, bonding and pointing could be controlled by a condition.
22. The Council granted planning permission, Ref 2013/0927/P, for a replacement chimney to the side/rear of the dwellinghouse. The Council's submissions contend that greater efforts to repair rather than replace the chimney should be made. However, its brickwork is in a similarly poor condition as the flank wall of which it forms an integral part. Since details of its proposed reconstruction and detailed appearance are included in the submitted drawings, which could be specified in planning conditions, I do not consider that the rebuilding of the chimney would be result in material harm.

(iv) The rear window

23. The Council's second refusal reason further refers to the windows in the rear elevation of the closet wing of the house, but this is an error as it objects only to the single first floor window in this elevation. The window would slightly diminish the balance and rhythm of the pair of semi-detached houses, albeit that they are not identical at present. However, it would not be visible from

the public domain, and would be filtered to some degree from the private views from adjoining homes and gardens by the garden trees in the area. In addition, the installation of a frameless window in this position is certified as lawful under 2012/5619/P.

24. At the hearing the appellant indicated that the window could be re-designed and re-positioned within the rear elevation to achieve a more symmetrical and traditional appearance. The appellant and the Council would each be agreeable to a condition to this effect. However, since the window as proposed would be the same as the lawful design, I consider that such a condition would not be necessary to make the development acceptable in planning terms. The condition would, therefore, conflict with paragraph 206 of the NPPF.

Conclusions on the first main issue

25. Although the Council has not had the opportunity to consider the merits of the lawful and permitted developments within their context, to influence their design or attach conditions, they are by definition acceptable in planning terms. Accordingly, the proposal would have a neutral effect on the character and appearance of the Conservation Area. Moreover, the Council accepts that it would give rise to less than substantial harm to the significance of the Conservation Area as a designated heritage asset. It would not, therefore, conflict with CS policy 14 or DP policies 24 or 25, or paragraph 134 of the NPPF.

Whether the appellant's completed unilateral undertaking satisfies the Council's objections and whether it accords with paragraph 204 of the NPPF

(i) Car Free housing

26. The appeal premises are within a controlled parking zone, but are not affected by any restriction on applying for or obtaining a permit for the controlled parking zone. However, as the proposal would result in a new replacement dwelling the Council maintains that a legal agreement to secure car-free housing is necessary on the basis that the development would contribute unacceptably to parking stress and congestion in the vicinity.
27. The appellant's unilateral undertaking includes a covenant to inform each new resident of the property that they shall not be entitled (unless they are the holder of a disabled person's badge) to be permitted to park a vehicle in a residents' parking bay or to buy a contract to park within any car park owned by the Council. The Council accepts that the undertaking would overcome its fourth refusal reason. However, the covenant would not restrict the development or the use of the land, require specific operations or activities, require the land to be used in any specified way or require a sum to be paid to the Council. In my view, it would not, therefore, be enforceable under the terms of s106 of the Town and Country Planning Act 1990.
28. Although the proposed dwelling would have a greater number of habitable rooms than the original dwelling, it would include an integral garage for off street parking. By contrast, the garage permitted in 1938 was too narrow for a modern vehicle, and its headroom had been compromised by bomb-shelter reinforcements apparently introduced in World War II. These material considerations do not persuade me that it would be reasonable or necessary to require an undertaking in relation to the controlled parking zone, and outweigh

the requirements of DP policy DP18, which provides for car free development, in this instance.

(ii) Construction Management Plan

29. The unilateral undertaking provides that no demolition shall take place until the Council approves a written construction management plan. Schedule 2 of the unilateral undertaking sets out the detailed matters to be included in the construction management plan. The Council accepts that this overcomes the conflict identified with the CS and DP policies in its fifth refusal reason. I have no reason to disagree, and have taken this covenant into account in reaching my decision.

(iii) Sustainability Plan

30. The unilateral undertaking provides for the submission of a sustainability plan to the Council and includes a covenant precluding the occupation of the dwelling until its measures have been incorporated into the property to the Council's satisfaction. The Council accepts that this overcomes the conflict with CS and DP policies identified in its sixth refusal reason, and I have no reason to disagree.

(iv) Whether the undertaking accords with paragraph 204 of the NPPF

31. The covenants relating to the construction management plan and the sustainability plan are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. They meet the tests set out in paragraph 204 of the NPPF, and I have taken them into account in reaching my decision.
32. For the reasons explained above, the car free housing covenant is not necessary and is not consistent with paragraph 204 of the NPPF. I have not taken the car free development covenant into account in reaching my decision.

Other matters

33. The Council and objectors query how the works commenced to implement the planning permissions and works covered by the Certificates of Lawful Development in the absence of detailed structural assessments. This is not a matter for me.
34. I have taken account of the concern raised by the Council and local people that granting planning permission would create a precedent since there are many other semi-detached houses of a similar scale within Conservation Areas with cement mortar. However, I take this to be a generalised concern since no directly comparable examples have been brought to my attention. Accordingly, I give this matter limited weight.
35. Residents are also concerned that the dwelling could be extended further in the future, resulting in harm to their living conditions and the local character. However, a condition to remove permitted development rights would give the Council control over future proposals. The undertaking relating to a construction management plan will address the concerns raised about the effect on the living conditions of local people during construction work.

36. A resident has raised the question of whether the Basement Impact Assessment has taken into consideration the 'Grant of Rights of Sewage' dated 18 June 1956 made to No 27 Platt's Lane, but this is a private matter, which is not for me in my consideration of the appeal.

Conditions

37. The conditions suggested by the Council were discussed at the hearing. The Council did not initially consider that a time limiting condition would be necessary as similar works are in progress. However, in response to concerns that the scheme could be implemented by others, or that further demolition would take place, the appellant would accept a time limiting condition of 18 months rather than 3 years for the start of development. A time limiting condition is necessary as, despite its similarity to the works which have already been carried out, this appeal is distinct from the permitted and lawful development, and the short time limit is relevant because the development is proposed as a fallback.
38. Otherwise than as set out in this decision and conditions, it is necessary that the development be carried out in accordance with the approved plans and the Basement Impact Assessment, for the avoidance of doubt and in the interests of proper planning.
39. Conditions requiring samples of the external materials to be agreed in writing and for sample panels to be erected on site are necessary in the interests of the character and appearance of the Conservation Area.
40. A condition precluding the occupation of the dwelling prior to the construction of the refuse store shown on drawing PA3 002 is necessary for the provision of adequate refuse storage facilities. Similarly, a condition requiring the installation of the green roof to be carried out in accordance with details to be agreed before the occupation of the house is necessary in the interests of biodiversity and water management.
41. Conditions to control the details and implementation of the boundary treatment and landscaping at the front of the dwelling are necessary in the interests of the character and appearance of the Conservation Area. Conditions to control the landscaping of the private amenity area at the rear of dwelling are not necessary.
42. Given the setting of the dwelling, a condition to remove permitted development rights to extend or modify the dwelling or carry out minor operations is necessary in the interests of the character and appearance of the area and the living conditions of neighbouring residents.
43. A condition requiring the dwelling to be constructed in accordance with the standards for Lifetime Homes is necessary in the interests of the living conditions of future occupiers, and to accord with policy DP6 of the Camden Development Policies 2010-2015 Local Development Framework. This is broadly consistent with the requirement for inclusivity in paragraph 61 of the NPPF.
44. The Council's suggested condition requiring the appointment of an engineer to supervise the construction of the basement is not necessary as it accepts the Basement Impact Assessment report referred to in condition 2. A condition requiring the colour, texture, face bonding and pointing and other details of the

chimney to match the corresponding chimney at No 4 Clorane Gardens is not necessary as its appearance would be controlled by conditions 2, 3 and 4.

Overall conclusions

45. I have considered all other matters raised, but for the reasons given, the proposal would not materially conflict with local or national policies. It would amount to sustainable development, the public benefits of which would exceed the less than substantial harm to the significance of the heritage asset, and would have a neutral effect on the Redington/Frognal Conservation Area. I conclude that the appeal should be allowed, subject to the conditions discussed.

CA Newmarch

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 18 months from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: EX 000 (1:1,250 @ A3), EX 100 (1:250 @ A3), EX 001 (1:100 @ A3), EX 002 (1:100 @ A3), EX 003 (1:100 @ A3), EX 004 (1:100 @ A3), EX 005 (1:100 @ A3), EX 006 (1:100 @ A3), EX 007 (1:100 @ A3), EX 008 (1:100 @ A3), EX 012 (1:100 @ A3), PA3 100 (1:250 @ A3), PA3 001 (1:100 @ A3), PA3 002 (1:100 @ A3), PA3 003 (1:100 @ A3), PA3 004 (1:100 @ A3), PA3 005 (1:100 @ A3), PA3 006 (1:100 @ A3), PA3 007 (1:100 @ A3), PA3 008 (1:100 @ A3), PA3 012 (1:100 @ A3) and the Basement Impact Assessment (Ref 371242-01 (00), dated February 2014)), and retained as such thereafter.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The samples shall include a sample panel of brickwork to demonstrate colour, texture, bond and pointing. Development shall be carried out in accordance with the approved details, and retained as such thereafter.
- 4) No development shall take place until detailed plans, sections and elevations of all new external doors and windows have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, and retained as such thereafter.
- 5) A sample panel of all the external facing materials shall be erected on site before the relevant part of the work begins and shall be retained on site until the works have been completed.
- 6) The dwelling shall not be occupied until the refuse storage shown on drawing Ref PA3 002 has been constructed in accordance with the approved plans. The refuse store shall be retained as such thereafter.

- 7) Details of the green roof, including the mix of plants, and the depth of the build-up of the substrate thereto, shall be submitted to and approved in writing by the local planning authority before the erection of the part of the development which it will cover shall begin. The dwelling shall not be occupied until the green roof has been installed in accordance with the approved plans. The roof shall be retained as such thereafter.
- 8) Details of the proposed boundary treatment and all hard and soft landscaping to the front of the dwelling shall be submitted to the local planning authority within 6 months of the date of this decision. Details shall include any proposed earthworks including grading, mounding and other changes in ground levels.
- 9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. 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.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development within Part 1 (Classes A-H) and Part 2 (Classes A-C) of Schedule 2 of that Order shall be made.
- 11) Notwithstanding the details shown on the approved drawings listed in Condition 2, the dwelling shall not be occupied until measures to comply with lifetime homes standards have been incorporated in accordance with details to be submitted to and approved in writing by the local planning authority. These measures shall be retained as such thereafter.

APPEARANCES

FOR THE APPELLANT:

Alister Henderson	Partner, Planning Perspectives
Robert Dye	Architect
Liz Stephen	Heritage Collective Consultant
Jason Coleman	Project Architect

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Heather	West Area Planning Officer
Hannah Walker	Principal Conservation & Design Officer

DOCUMENTS

- 1 No 2 Clorane Gardens 'What has been done'
- 2 Signed and dated Statement of Common Ground