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## Appeal Decisions

Site visit made on 18 August 2014

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

Decision date: 22 September 2014

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### **Appeal A Ref: APP/X5210/A/14/2221154**

#### **The Carob Tree, 15 Highgate Road, London NW5 1QX**

- 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 Fruition Properties against the decision of the Council of the London Borough of Camden.
  - The application Ref 2013/5645/P, dated 5 September 2013, was refused by notice dated 8 April 2014.
  - The development proposed is a single storey side extension to the Carob Tree restaurant.
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### **Appeal B Ref: APP/X5210/A/14/2221155**

#### **The Carob Tree, 15 Highgate Road, London NW5 1QX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Fruition Properties against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/0409/P, dated 15 January 2014, sought approval of details pursuant to condition No 9 of a planning permission Ref 2011/3819/P, granted on 30 March 2012.
  - The application was refused by notice dated 12 May 2014.
  - The development proposed is a change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2x2 and 1x3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation.
  - The details for which approval is sought are those of waste storage and removal facilities.
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### **Appeal C Ref: APP/X5210/A/14/2221156**

#### **The Carob Tree, 15 Highgate Road, London NW5 1QX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Fruition Properties against the decision of the Council of the London Borough of Camden.
- The application Ref 2014/0416/P, dated 16 January 2014, sought approval of details pursuant to condition No 10 of a planning permission Ref 2011/3819/P, granted on 30 March 2012.
- The application was refused by notice dated 12 May 2014.
- The development proposed is a change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2x2 and 1x3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension

to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation.

- The details for which approval is sought are those of cycle storage.
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### **Appeal D Ref: APP/X5210/A/14/2221157**

#### **The Carob Tree, 15 Highgate Road, London NW5 1QX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Fruition Properties against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/0422/P, dated 16 January 2014, sought approval of details pursuant to conditions Nos 9 and 10 of a planning permission Ref 2011/3819/P, granted on 30 March 2012.
  - The application was refused by notice dated 12 May 2014.
  - The development proposed is a change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2x2 and 1x3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation.
  - The details for which approval is sought are those of waste storage and removal and cycle storage.
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### **Appeal E Ref: APP/X5210/A/14/2221159**

#### **The Carob Tree, 15 Highgate Road, London NW5 1QX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Fruition Properties against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/738/P, dated 16 January 2014, sought approval of details pursuant to conditions Nos 9 and 10 of a planning permission Ref 2011/3819/P, granted on 30 March 2012.
  - The application was refused by notice dated 12 May 2014
  - The development proposed is a change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2x2 and 1x3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation.
  - The details for which approval is sought are those of waste storage and removal and cycle storage.
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## **Decisions**

### **Appeal A**

1. The appeal is allowed and planning permission is granted for a single storey side extension to the Carob Tree restaurant at The Carob Tree, 15 Highgate Road, London NW5 1QX in accordance with the terms of the application, Ref 2013/5645/P, dated 5 September 2013, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos Site Location Plan,

SA/PL/101/03A, SA/PL/101//04A, SA/PL/101/05B, 15HR/P106A, 15HR/P109A, 15HR/P110A, 15HR/P111 and 15HR/P112A except in respect of the waste and cycle storage details shown on plan Nos 15HR/P/106A and 15HR/110/A.

- 3) All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.
- 4) The area in front of the extension shown on drawing 15HR/P/106A shall be kept free for the storage of refuse in connection with the restaurant, and prior to the occupation of the extension hereby approved, a 1100L Eurobin and a 940L box paladin shall be provided within this area, and shall thereafter be retained in connection with the restaurant use.

### **Appeals B, C, D and E**

2. The appeals are dismissed.

### **Procedural matter**

3. A unilateral undertaking under S.106 of the Town and Country Planning Act 1990 has been submitted by the appellants, dealing with construction management. I shall refer to this further below.

### **Background**

4. Planning permission Ref 2011/3819/P was granted for the change of use, enlargement and alteration of the upper floors above the restaurant to create 3 flats, subject to conditions which, amongst other things, required details of waste and cycle storage to be submitted to and approved by the Council. There were only two external areas where storage could be provided, on the Highgate Road frontage and in the service yard at the side of the restaurant accessed from Swains Lane.
5. The application subject of Appeal A seeks to extend the restaurant into most of the service yard, leaving an area nearest to Swains Lane, where it is proposed to site both waste and cycle storage. Approval of such an arrangement was sought through the application which is the subject of Appeal E. Alternative proposals were made in the applications subject of Appeals B (waste), C (cycle storage) and D, (waste and cycle storage), all involving the part of the site fronting Highgate Road.
6. Since the making of the appeals, approval in discharge of conditions 9 and 10 has been granted by the Council on 7 July 2014, Ref 2014/3461P, with both waste and cycle storage sited within the service yard accessed from Swains Lane. This approved solution would preclude the erection of the proposed extension, subject of Appeal A.

### **Main Issues**

7. The main issues are:
  - i) whether the cycle and waste storage arrangements would preserve or enhance the character and appearance of the Dartmouth Park Conservation Area, (Appeals B, C and D)

- ii) the acceptability of the proposed arrangements for the storage for cycles (Appeals A, C, D and E)
- iii) the acceptability of the proposed arrangements for the storage and removal of waste (Appeals A and E), and
- iv) whether suitable arrangements are in place to ensure that neighbours' living conditions and the convenience and safety of road users can be safeguarded during construction (Appeal A).

## Reasons

### **Character and appearance - Appeals B, C and D**

8. These proposals seek to provide storage for waste and cycles at the front of the premises, facing Highgate Road. Appeals B and C show the same layout, and seek approval for waste and cycle storage respectively, whilst Appeal D seeks approval of both waste and cycle storage in an alternative layout.
9. The Council's concern with all of these proposals relates to appearance. The appeal site is located on the corner of Highgate Road and Swains Lane, and opposite one of the pedestrian access points to Hampstead Heath. It is in a prominent position, and the forecourt of the site, which is mainly enclosed to the front by a 1m high wall, is readily visible to passers-by.
10. To the south of the appeal site is a block of flats, the front elevation of which is roughly in line with the front of the building on the appeal site. The front garden of the flats is bounded by a low wall and hedge, and is separated from the appeal site by a wall about 1.8m high. Accordingly, there is not a long, uninterrupted frontage along the Highgate Road, and whilst there are largely open frontages on the opposite side of Highgate Road, again, they are not uninterrupted.
11. The proposal subject of Appeals B and C would see a combined refuse and cycle store in a walled enclosure in front of the existing electricity sub-station. The plan shows planting in the 2m wide gap between the enclosure and the reduction in the height of the side wall. Whilst the enclosure would reduce some of the openness of the forecourt, it would not be in front of the main part of the building, but in front of the electricity sub-station, which is of secondary importance on the frontage.
12. I consider that the small loss of openness would be outweighed by its beneficial effect on the character and appearance of the area by virtue of opening up the frontage through the reduction in height of the side wall and through providing landscaping that would add to the attractiveness of the area and, in time, assist in hiding the unsightly curved, rotating metal blades on top of the front wall of the sub-station.
13. However, the acceptability of the proposals subject of Appeals B and C is dependent on the provision of substantial landscaping at the front of the site. The submitted plans and documents do not provide sufficient detail of the size and species of plants, whether they would be in containers or planted in the ground, a timetable for implementation or arrangements to secure their retention and replacement if necessary. It is not possible to impose a condition to secure the submission of further details on the discharge of a condition of

this nature, and without sufficient safeguards to ensure that the planting would provide a necessary and appropriate screen, I conclude that the proposals subject of Appeals B and C would not preserve the character and appearance of the Dartmouth Park Conservation Area, and would conflict with London Borough of Camden Local Development Framework Development Policies (DP) Policies DP24 and DP25, which respectively deal with securing high quality design and conserving Camden's heritage.

14. The proposal subject of Appeal D would result in a larger, but more open area to be used for the storage of bikes and refuse. The area would only be partly screened by planting, and this could not be relied upon to provide an effective means of preventing the bins and bikes being visible when seen from Highgate Road; this would appear cluttered and unsightly which would be out of keeping with the largely open nature and pleasing appearance of the forecourts in the vicinity.
15. I refer below to the need to ensure that the cycle storage area is under cover, and although in respect of the proposal in Appeals B and C, any such cover would be largely hidden by the front wall, in this proposal, there would be no wall to screen it, and the cover would be likely to add to the incongruity that I have found.
16. I therefore consider that the proposed storage arrangements which are the subject of Appeal D would not preserve or enhance the character or appearance of the Dartmouth Park Conservation Area, and would conflict with the design and heritage policies referred to above.

#### **Adequacy of cycle storage (Appeals A, C, D and E)**

17. Appeals A and E propose providing both waste and cycle storage in part of an existing service yard accessed from Swains Lane. The size of the yard would be smaller than currently exists.
18. The cycle store is proposed to be sited to the rear of the waste storage area, in an area separated by gates/railings. The bike store area would measure about 1m by 3m and is intended to accommodate 4 bicycles. No details of the proposed bicycle stands have been provided, nor have specific drawings showing how 4 bikes could be accommodated. The layout as shown would not comply with the Council's guidance on space for cycle stands. From what I saw on my visit, I consider that the small space available would make it very difficult for occupiers to manoeuvre bikes in and out of the storage area, even if a steeply-angled type of rack were to be used.
19. Access to the cycle store through the restricted space in the waste storage area would also be difficult, especially if the bins were not placed right up against the side walls or if other rubbish were placed on the ground. I recognise that the need to access the bike store through the waste storage area could make it unpleasant if the waste becomes smelly. These factors could also deter use of the bike store. I therefore find that the cycle storage arrangements proposed in respect of Appeals A and E would be unacceptable.
20. Turning to Appeals C and D, the cycle storage would be located at the front of the site, facing Highgate Lane. The only concern that the Council has indicated about the adequacy of the proposed arrangements (as opposed to their

appearance) relates to the stands not being covered. I acknowledge that such an arrangement was proposed on the plans for the planning permission (Ref: 2011/3819/P), and that there was no criticism of them in the officer's report. However, the Council specifically required separate details to be provided for cycle storage, so there is no inconsistency in approach, although I recognise that the reason for requiring such details did not include ensuring their adequacy.

21. The Council's adopted Supplementary Planning Guidance (SPG) *Camden Planning Guidance 7* seeks cycle storage for residents to be within the building. There is no ability to provide internal storage in this case, and the Council accepts that external storage would be acceptable. However, in such circumstances I agree that it is important for bikes to be kept under cover, as bikes which are wet, or covered in frost or snow, are less likely to be used, and prolonged exposure to the elements would make it more difficult to maintain the bicycles in good order. Although not shown on the submitted plans, the appellants argue that a condition could be imposed to require the submission and approval of a cover. As referred to above, there is no power to enable me to impose conditions on the discharge of a condition.
22. I therefore find that the cycle storage arrangements proposed for Appeals A, C D and E would not be satisfactory. No on-site car parking is provided, and although the site is close to bus stops, I nevertheless consider that the provision of adequate bike storage facilities is important to provide sustainable travel choice and to comply with local and national policies which aim to promote cycling as a sustainable transport mode. This is a sufficient reason to dismiss Appeals C, D and E.
23. However, as I have found that Appeal C would provide a satisfactory location for a cycle store for residents, subject to the provision of a suitable cover, there is no necessity for cycle storage to be provided in the service yard off Swains Lane. Thus, there is no reason to withhold planning permission in respect of Appeal A for reasons relating to cycle storage.

#### **Adequacy of waste storage (Appeals A and E)**

24. Turning to waste storage, it is proposed to provide 3 bins in total, two 940L box paladins, one for the 3 flats and one for the restaurant, and a 1100L Eurobin for the restaurant, to be located in a reduced service yard accessed from Swains Lane. Officers confirmed in the report to Committee on this application that this level of provision complied with the standards set out in *Camden Planning Guidance: Design - Waste recycling and storage* (CPG16).
25. The siting would not comply with the advice in that guidance that such storage should be located within 10 metres of an external access, as the entrance to the flats is on the Highgate Road frontage. However, the Council objects to the siting of waste in that location, and thus the service yard is the only other location available. The approved scheme also fails to comply with this criterion. I therefore attach little weight to the failure to comply with this aspect of the advice.
26. The Council also argues that the area is too cramped, and would not comply with the advice in Figure 16 of CPG16 which says that the storage area should be accessible for collection purposes and not impede pedestrian or vehicular

access on public thoroughfares or to and from buildings. I consider that the bins could be sited within the area proposed, although the restricted size of the area would be likely to make it difficult, but not impossible, to manoeuvre them. However, if they were not placed exactly in the right position, or if additional waste were to be stored on the ground, the small size of the space would make it more difficult for the bins to be used or moved efficiently.

27. The Council's principal concern is that the restricted nature of the refuse storage would lead to waste being left out on the footway, impeding pedestrian traffic. Notwithstanding my view that the proposed arrangements would be satisfactory, even if waste were to be left on the footway, the Council has a range of powers under the Highways Act 1980 to deal with it.
28. The shortcomings that I have identified add to my concerns about inadequacy of the cycle storage arrangements in relation to the proposed solutions in Appeals A and E. In isolation, these shortcomings would not be sufficient to dismiss the appeals, but if I were to allow it, it would leave inadequate space for cycle storage within the service yard.
29. However, I consider that the waste and cycle storage proposals subject of Appeals B and C are broadly satisfactory, and accordingly, the remaining area of the service yard as proposed under Appeal A would be sufficient to accommodate the waste storage for the restaurant, and therefore a condition could be imposed to require that the service yard be used for the storage of waste, and the provision of a 1100L Eurobin and a 940L box paladin, facilities which the Council accept to be satisfactory to serve the restaurant.
30. I therefore conclude that the proposed waste storage arrangements in respect of Appeal A would be satisfactory and would not conflict with DP Policies CS5 (Managing the impact of growth and development), DP17 (Walking, cycling and public transport), DP18 (Parking standards and limiting the availability of car parking) or DP26 (Managing the impact of development on occupiers and neighbours). The proposed waste storage arrangements in respect of Appeal E would leave insufficient cycle storage space, and would not be satisfactory, and would conflict with the above mentioned policies.

### **Construction management (Appeal A)**

31. The unilateral undertaking submitted by the appellants sets out measures that aim to mitigate adverse effects of construction on nearby occupiers and users of the highway. The Council has no objection to the substantive part of the obligation, but has raised concerns about legal issues in respect of the wording of the obligation. The most significant of these points concerns the parties to the obligation, but the appellants have explained that whilst the lessees of the restaurant are not party to the agreement, they do not have a legal interest in the part of the land where the development is proposed. I am thus satisfied that the obligation would be valid and enforceable.
32. The other criticisms of the obligation, whilst not without foundation, do not undermine the validity, content or enforceability of the obligation. I am therefore satisfied that it is sound, and otherwise meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. However, the Council has not explained why the provisions of the obligation

could not be achieved through the imposition of a condition, and this limits the weight that I attach to it.

### **Conditions**

33. The Council has suggested a number of conditions which I have considered in the light of national guidance. A condition to require matching materials is required in the interests of appearance. I have referred to the need to impose a condition relating to refuse storage above. A condition to require the development to be carried out in accordance with the approved plans is needed in the interests of good planning and for the avoidance of doubt.

### **Conclusions**

34. The interrelated nature of these appeals gives rise to some complexity. However, to pull the threads together, I find that although the cycle and waste storage arrangements shown on the plans for Appeal A would result in inadequate cycle storage for residents, as I have found that a satisfactory solution could be satisfactorily achieved by providing waste and cycle storage on the Highgate Road frontage, and by providing restaurant waste storage in the service yard accessed off Swains Lane, there is no impediment to granting permission for the proposed extension. Thus, I shall allow Appeal A but dismiss Appeal E, as the proposed cycle storage arrangements would not be satisfactory.
35. The waste and storage arrangements subject of Appeals B and C could only be made satisfactory if further details of landscaping and a covered cycle storage area were to be provided, something which cannot be achieved through an appeal under s.78. As these are necessary in order to arrive at a satisfactory provision of cycle and waste storage, Appeals B and C must also be dismissed.
36. The proposals subject of Appeal D would harm the character and appearance of the conservation area and it is unacceptable for that reason, and this too must be dismissed.
37. Accordingly, for the reasons given above, Appeal A is allowed, and Appeals B, C, D and E are dismissed.

*JP Roberts*

INSPECTOR