



## Appeal Decision

Site visit made on 16 June 2014

**by R Curnow MA(TCP), BSC(Hons), CMS, MRTPI**

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

Decision date: 5 September 2014

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### **Appeal Ref: APP/X5210/A/14/2211459**

### **28 King's Mews, London, WC1N 2JB**

- 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 Mr S MacDonagh against the decision of the London Borough of Camden.
  - The application Ref 2013/1368/P, dated 8 March 2013, was refused by notice dated 1 August 2013.
  - The development proposed is erection of 4 storey building with basement with terraces at front second and third floor levels to provide a maisonette at 1<sup>st</sup>-3<sup>rd</sup> floor levels (Class C3) and office/warehouse use at ground and basement levels (Class B1/B8) (following demolition of the existing building).
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### **Decision**

1. The appeal is allowed and planning permission is granted for erection of 4 storey building with basement with terraces at front second and third floor levels to provide a maisonette at 1<sup>st</sup>-3<sup>rd</sup> floor levels (Class C3) and office/warehouse use at ground and basement levels (Class B1/B8) (following demolition of the existing building) at 28 King's Mews, London, WC1N 2JB in accordance with the terms of the application, Ref 2013/1368/P, dated 8 March 2013, and the plans submitted with it, subject to the conditions set out in the attached schedule.

### **Procedural Matter**

2. Reasons 2 to 5 of the Council's decision notice relate to the lack of information and a legal agreement. An agreement and Deed of Variation were submitted with the appeal. This matter is considered further, below.
3. Whilst the application to which this appeal relates was originally made for conservation area consent and planning permission, the former was withdrawn at the application stage.
4. The Government's Planning Practice Guidance was published on 6 March 2014. I have considered the content of this guidance, but in the light of the facts of this case, the document does not alter my conclusions.

### **Main Issues**

5. The main issues in this appeal are whether the proposed development would preserve or enhance the character or appearance of the Bloomsbury
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Conservation Area, and whether a planning obligation relating to 'car-free' housing, construction and demolition associated with the proposed development, highways works and a level 4 code for sustainable homes rating is necessary.

## Reasons

### *Character and Appearance*

6. King's Mews is a narrow thoroughfare linking Northington Street with Theobald's Road, with its flanking properties backing onto Gray's Inn Road, to the east, and John Street, to the west. There is variety in the form and design of buildings along the Mews, as well as a mixture of commercial and residential uses. The appeal site comprises part of a disused commercial building that forms Nos 26-28 King's Mews. Its ground floor comprises a large open space with a large door providing access from the Mews; although it was not possible to access the first floor at the time of my visit, it appears that this has been used in conjunction with the ground floor commercial space.
7. Whilst the existing building has been identified as a 'Positive Contributor' in townscape terms<sup>1</sup>, the Council raises no objections to its removal; indeed, it has previously granted Conservation Area Consent for this. The Council does not take issue with the introduction of a basement level, the proposed uses within the building, nor the proposed building's façade; its concern, in terms of this issue, relates to the proposed third floor.
8. Among the various decisions made by the Council and at appeal that have been drawn to my attention is a scheme approved by the Council, (its reference 2009/0710/P). This was a comprehensive development scheme for Nos 23-30 Kings Mews and Nos 43-45 Gray's Inn Road. Part of this approved scheme allowed for the provision of four floors of accommodation at and above ground level on the appeal site and at Nos 29-30 Kings Mews. Whilst there are differences between that scheme and this, in terms of its comprehensive nature and land ownership for example, it demonstrates that the Council has found four floors of accommodation here to be acceptable.
9. Subsequently, the Council approved another scheme involving four floors of accommodation at Nos 29-30, (Council reference 2012/3877/P). It has also resolved to approve a scheme with three floors at No 27 King's Mews and a similar scheme was recommended for approval at No 26, though I have not been given information as to whether this was subsequently approved.
10. The outcome in this part of the Mews, were those schemes for Nos 26, 27, 29-30 and that which is the subject of this appeal to be built, would be very similar to that which would have resulted from the earlier approved comprehensive scheme. Whilst that scheme is no longer extant, it established that the Council considered that degree of height, massing and scale to be appropriate. I do not find this proposal to be less acceptable in these terms because it is not part of a comprehensive scheme, or because its living accommodation might be at different levels.

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<sup>1</sup> Bloomsbury Conservation Area Appraisal and Management Strategy

11. Whilst properties on Gray's Inn Road are not readily seen in context with the Mews, those on Theobald's Road are, they dominate the scene when looking south along King's Mews, and there are also views of those far larger buildings in John Street across a commercial yard in the Mews. In the light of these, one is aware of the relative importance of the streets and buildings in the area's townscape, and the ranking would not be affected by the proposed development and so the proposed development would preserve the hierarchy of buildings in the area.
12. Setting the proposed third floor back would mean that it would not be seen from street level along the majority of the Mews. It would be perceptible from its junction with Northington Street, but would not be at all prominent from here. Furthermore, from here it would be seen either against the approved development of Nos 29-30, were it to be built, or the very high buildings on Theobald's Road. In either eventuality, the resultant building, which I found to be at the southern end of the Mews rather than in its middle, would not appear incongruous or dominant in the street scene, and this would retain its intimate quality.
13. The dimension of the set back at the third floor level, combined with its elevation above street level and the narrow width of the Mews means that it would be very little seen. From where it might be appreciated, it would simply appear as another element in the varied appearance of the buildings along the Mews. For this reason, I do not find that having set backs at second and third floor levels would result in a fussy or contrived feature in the street scene. Furthermore, they would aid the transition between the approved three storeys at Nos 26 and 27 and the approved four storeys at Nos 29-30, in much the same manner as was approved in the comprehensive scheme. Although the latter scheme for Nos 29-30 would be the same height as the appeal proposal, those units would have a greater massing, when seen from the Mews, as they would not have a set-back at second floor level.
14. The scheme would result in a building that would provide large ground floor openings and would be sited immediately behind the edge of the street and would be of a simple robust design, which are all characteristic of King's Mews.
15. Whilst I was not able to access the upper floors of properties in Gray's Inn Road and John Street, from which the appeal site would be seen, the impact from these would be very similar to the previously approved comprehensive scheme, and I have no reason to find that this scheme would be harmful when seen from these properties.
16. On the first main issue, I conclude that the proposed development would represent the highest standard of design that would respect the area's context and character, which are amongst the terms of Policy CS14 of the Camden Core Strategy 2010-2025 (CS), and reflected in Policy DP24 of the Camden Development Policies 2010-2025 (DP). The requirements of CS Policy CS14 and DP Policy DP25 require development to preserve and enhance the character and appearance of conservation areas. They go further than the statutory test, with which, as it would preserve both the character and appearance of the Bloomsbury Conservation Area, the proposed development accords.

### *Planning Obligation*

17. Both parties agree to the need for a planning obligation relating to 'car-free' housing, construction and demolition associated with the proposed development, highways works and a level 4 code for sustainable homes rating. To this end, a legal agreement between the appellants and the Council, together with a Deed of Variation agreed by both parties, has been submitted. In the light of the evidence before me, I find that, with the exception discussed below, it accords with the statutory tests in regulation 122 of the Community Infrastructure Regulations 2010, which are reflected in paragraph 204 of the National Planning Policy Framework.
18. I have no issues with regards to the content of the agreement relating to construction and demolition, highways works and the sustainable homes rating which I find to be directly related to the development and fairly and reasonably related in scale and kind to it.
19. The Council has demonstrated the parking problems that exist in the area, and therefore the reasoning behind its aim for 'car free' housing here. However, I find that the provisions in this respect, in Section 4.4 of the agreement, do not amount to a Section 106 obligation.
20. It merely requires the owners to inform new residents of the Council's parking policy, but it provides no sanction relating to the use of the land if it is not complied with. Were enforcement action taken, it could only be to make the owner comply with the duty to inform new occupiers. There is no obligation on the occupiers, and others who derive title from the owner, not to apply for or hold a permit or to surrender one that has been wrongly issued. As such, it takes the form of a personal covenant.
21. In conclusion on this issue, I find that there is a need to address the four defined matters. However, the section which has been submitted with regards to "car free" development does not amount to an obligation. This does not cancel or invalidate the agreement which has been signed but it does mean that I can have no regard to that element of it. Notwithstanding this, the matter can be addressed through the use of a condition requiring the submission of an appropriate scheme to ensure this would be a 'car free' housing development.

### *Other Matters*

22. A report<sup>2</sup> into the effects of the development on daylight and sunlight reaching neighbouring properties shows that the impacts would be acceptable and, amongst other things, there would not be a substantial impact on the occupants of Nos 1, 2 and 4 King's Mews. I find no reason to disagree with its findings.
23. Given its restricted width, a degree of overlooking is inevitable with regards to properties on either side of King's Mews. There are already windows at first floor level and the proposed terraces would allow views down towards the properties opposite, rather than directly in to them. As such, the impact on those properties would be acceptable in this regard. The effect on the properties to the rear, in Gray's Inn Road, would be addressed through the use of obscure glazing, which I have conditioned.

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<sup>2</sup> Daylight and Sunlight Report – Waldrams Chartered Surveyors, 6 March 2013

24. In reaching my decision, I have also taken the following into account: Basement Impact Assessment: Screening and Scoping Report, June 2012, (Campbell Reith); Historic Environment Assessment, March 2013, (Museum of London Archaeology); and Code for Sustainable Homes Preliminary Assessment, February 2013, (Abba Energy Ltd).

### **Conclusions and Conditions**

25. The proposal would preserve the character and appearance of the Bloomsbury Conservation Area. Whilst there is a need to address issues of "car free" housing, construction and demolition works, highways works and the sustainable homes rating, the planning obligation which has been submitted is deficient in terms of the first of these. However, this is a matter that can be addressed through the use of a condition. Therefore, in the light of the above and taking all other matters raised into account, I allow the appeal.
26. The Council has proposed a number of conditions, and I have assessed these in the light of the tests of conditions in the Government's Planning Practice Guidance. There is a need for the statutory time limit condition and that requiring compliance with the approved plans, for the avoidance of doubt and in the interests of proper planning; though I do not find it necessary to mention the various supporting reports here. The plans referred to in the Council's proposed condition do not reflect those that were submitted for consideration; the condition I have attached regarding compliance with the approved plans addresses this.
27. Conditions relating to environmental measures and lifetime homes measures accord with the Council's policies, although I have slightly clarified these. Given the sensitive location, I am of the view that it is necessary that conditions relating to the use of materials and the sample panel are required, though I have slightly simplified these. I am not, however, convinced of the need for the need for a condition relating to the provision of details of a cycle space, as this is shown on Drawing 200\_03\_30A. I find similarly with regards to the provision of details relating to photovoltaic cells/solar water heaters; I find that appropriate details of these are shown in Drawings 200\_03\_31, 200\_03\_32A and 200\_03\_33; I have however attached a condition requiring the timing of their provision.
28. I have not been provided with evidence to show that the removal of permitted development rights is reasonable or necessary; in any event, given its nature, much of the rights that are proposed to be withdrawn would not apply to this development. Given its location, I agree that a condition regarding archaeology is required, but I am not persuaded that the proposed provisions relating to analysis, publication, dissemination and archiving are. The Campbell Reith report relating to the basement shows that the principle of its construction is acceptable. Given this and the fact that this is a matter controlled by other legislation, as recognised within the proposed condition, it is not necessary for me to attach this condition.

*R Curnow*

INSPECTOR

## **SCHEDULE OF 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: 200\_03\_101; 200\_03\_30 Rev A; 200\_03\_31; 200\_03\_32 Rev A; 200\_03\_33; 200\_03\_34 Rev A; 200\_03\_35 Rev A; 200\_03\_36 Rev A; 200\_03\_37 Rev A; and 200\_03\_38 Rev A.
- 3) The photovoltaic cells/solar water heaters shown on the approved plans shall be installed prior to the first occupation of the dwelling and permanently retained thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to the first occupation of the building a scheme showing details of the green roof including species, planting density, substrate and a section at scale 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for a scheme of maintenance shall be submitted to and approved in writing by the local planning authority. The green roof shall be provided fully in accordance with the approved details prior to first occupation of the building and thereafter retained and maintained in accordance with the approved scheme of maintenance.
- 5) Prior to the commencement of the development hereby approved, details of the facing materials to be used on the building shall be submitted to and approved in writing by the Council. The relevant parts of the works shall not be carried out otherwise than in accordance with the details thus approved.
- 6) A sample panel of the facing brickwork demonstrating the proposed colour, texture, face-bond and pointing shall be provided on site and approved in writing by the Council before any facing brickwork is applied and the development shall be carried out in accordance with the approved panel. The sample panel shall be retained on site until the work has been completed.
- 7) Prior to the commencement of development a programme of archaeological investigation including the details of the suitably qualified investigating body to carry out such archaeological works as required shall be submitted to and approved in writing by the local planning authority. The development shall then only take place in accordance with such details as have been approved. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation.
- 8) The lifetime homes features and facilities, as indicated on the drawings hereby approved and in Section 11.0 of the Design, Access and Planning Statements, March 2013, shall be provided in their entirety prior to the first occupation of the new residential unit.
- 9) All windows to the rear elevation shall be obscure glazed and non-opening, and permanently retained as such thereafter.
- 10) Notwithstanding the terms of Section 4.4 of the submitted Agreement between the appellants and the Council, made pursuant to Section 106 of

the Town and Country Planning Act (as amended), a scheme that prevents residents' parking permits and contracts for Council owned car parks being granted to occupiers of the approved building, (save for disabled persons), shall be submitted to and approved in writing by the Council prior to the occupation of the building.