
Appeal Decision

Site visit made on 10 February 2015

by **David Smith BA(Hons) DMS MRTPI**

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

Decision date: 25 February 2015

Appeal Ref: APP/X5210/A/14/2222537
368-372 Finchley Road, London, NW3 7AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Tandridge Investments Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2013/6319/P, dated 1 October 2013, was refused by notice dated 24 January 2014.
 - The application sought planning permission for erection of 2 x four storey plus basement buildings, with a glazed infill extension for the provision of 22 residential units (4x affordable and 18 market)(following demolition of existing residential care homes) without complying with a condition attached to planning permission Ref 2012/1822/P, dated 8 July 2013.
 - The condition in dispute is Condition 2 which provides that development shall be carried out in accordance with the prescribed approved plans for the avoidance of doubt and in the interest of proper planning.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to the determination of the appeal application amended drawings were submitted. Subsequently a section 96A application (Ref 2014/3464/P) was refused in August 2014 on the basis that the alterations were significant and were not considered to be non-material amendments to the original permission from 2013. An application for non-compliance with Condition 2 was granted in September 2014 (Ref 2014/1632/P) which, amongst other things, agreed to an enlargement in the size of the basement for ancillary domestic storage. A further application under section 73A (Ref 2014/7038/P) is undetermined.
3. As far as this appeal is concerned the appellant wishes it to be based on the collated list of drawings. This includes the elevations that formed part of application Ref 2014/3464/P but which were not part of the appeal application. These have been used as the basis for the construction works that have taken place. Indeed, the development is at an advanced stage. Although the footprint is unchanged the development is about 700mm higher compared to the approved scheme. This is due to a more accurate survey, insulation requirements and an addition to the roof parapet.
4. Annex M of The Planning Inspectorate's Procedural Guide gives guidance about whether a proposed scheme can be amended and refers to the

Wheatcroft Principles (*Bernard Wheatcroft Ltd v SSE [JPL, 1982, p37]*).

Paragraph M.2.3 highlights that even minor changes can materially alter the nature of the application. From the correspondence received in connection with the appeal it is apparent that obtaining information about the appellant's proposals has been difficult. Given the applications submitted under different procedures it is not surprising that residents have requested clarification.

5. However, those living closest to the site are aware of the intention to increase the height of the development and are opposed to it. These representations will be taken into account in due course. At this stage it can be observed that those affected have been able to comment on the main change shown on the revised drawings compared to those submitted with the appeal application in October 2013. It follows that no prejudice would be caused in dealing with the appeal on the basis on the collated list of drawings and that is what I shall do.
6. The appeal is for non-compliance with Condition 2 of the original permission which set out the list of approved drawings. It is proposed to substitute these with the plans described above and, in effect, I am considering the entire development portrayed on those drawings and which is partly retrospective.
7. The appellant has provided 2 alternative unilateral undertakings as deeds of variation to the obligation accompanying the original 2013 permission. This is in order to ensure that any permission granted by this appeal and the relevant drawings are in line with its terms.
8. A construction management plan and an updated basement impact assessment have been provided and the related reasons for refusal are not now contested.

Main Issues

9. In light of the above the main issues are whether the proposed on-site parking arrangements would prejudice the achievement of sustainable travel having regard to national and local policy and other material considerations and also the effect of the development on the character and appearance of the area.

Reasons

10. The approved scheme made provision for 1 disabled parking space at the front. The basement area was to be used for the storage of refuse and bicycles. Under application Ref 2014/1632/P the size of the basement has been increased and it is proposed to use it for 10 parking spaces, 3 of which would be disabled spaces, as well as storage and services.
11. Policies in the Camden Core Strategy seek to promote sustainable and efficient travel (Policy CS11) and walking, cycling and public transport (Policy DP17) and to manage the impact of parking (Policy DP19). Policy DP18 is specifically concerned with limiting the availability of car parking. It provides that the minimum necessary parking provision will be sought and that developments are expected to be car free in the Central London Area, in certain town centres and other areas within Controlled Parking Zones (CPZ) that are easily accessible by public transport.
12. In the London Plan of 2011, Policy 6.13 refers to an appropriate balance being struck between promoting new development and preventing excessive car parking provision. However, it also provides that in locations with high public transport accessibility, car free development should be promoted. The Revised

Early Minor Alterations of 2013 refer to the scope for greater flexibility and this is taken forward in the Housing Supplementary Planning Guidance (SPG). Applying Matrix 2 the development falls within the banding of “up to one space per unit” but the matrices are indicative only and should be used to establish the parameters of a broader appraisal. Therefore the SPG does not preclude car free housing in suitable circumstances and the Core Strategy is not inconsistent with more recent London-wide policies.

13. In common with most of the Borough the appeal site is within a CPZ and, as there are bus stops for services in both directions within about 70m, public transport is “easily accessible”. However, paragraph 18.2 of the Core Strategy refers to the expectation that in other areas with *high* [my emphasis] public transport accessibility developments are generally expected to be car free. The appellant draws attention to the differences in terminology but, as I see it, the supporting text provides an interpretation of what is meant by the policy.
14. Camden Planning Guidance (CPG) 7 on *Transport* adds further detail to the Core Strategy and indicates that highly accessible areas are those with a public transport accessibility level (PTAL) of 4 and above. Part of the rear garden area of the development is within PTAL 3 but the majority of the site, including the main entrance to the accommodation, has a PTAL rating of 4. This is the logical point of interest to use for this purpose although the site is clearly at the border of the zones. The policy references are to “areas” rather than individual sites but there is nothing to indicate that the PTAL measurement reduces along the Finchley Road “corridor”. Unsurprisingly the different PTAL ratings across the site distinguish between a major route and a more suburban hinterland.
15. In an appeal decision at Dumpton Place, NW1 (Ref: APP/X5210/C/13/2191732) the Inspector commented that to reach medium/high the PTAL score would have to exceed 15 and “to reach high exceed 20”. In this case the PTAL score at the northern access point is 15.85. The range from 15.01 to 20 is described by Transport for London as “Good” and does not use the descriptor “high”. I give greater weight to the categorisation in the CPG than the remarks made in another case where the PTAL was in Level 3. Although the appeal site is only just within PTAL 4 the line has to be drawn somewhere and this is the objective measure chosen by the Council to provide clarity. Whilst, like any system, it has limitations, the use of PTAL nevertheless allows for a consistent approach.
16. Therefore the proposal would be contrary to local policies that seek to promote alternative and more sustainable transport choices than the car. However, the appellant has put forward a number of other material considerations.
17. The National Planning Policy Framework does not seek to restrict car ownership but does stipulate that the transport system should be balanced in favour of sustainable transport modes. In setting their parking standards local planning authorities should take account, amongst other things, of both car ownership levels and the availability of and opportunities for public transport.
18. The Draft Further Alterations to the London Plan 2011 (FALP) were published for consultation in January 2014 and refer to aiming towards zero/car free in areas of highest accessibility. However, from the evidence before me and having regard to paragraph 216 of the Framework, the weight to be given to that note is limited. In any event, there is nothing in the emerging FALP or in the Parliamentary Under Secretary of State’s letter of April 2014 that prevents local planning authorities from securing car free development. Therefore

neither national nor emerging London policies outweigh the conflict with relevant development plan policy.

19. If on-site parking were provided as proposed the total trip generation from the development would be less than the previous care home use. The impact on congestion and air quality would therefore be reduced. However, paragraph 5.20 of the CPG confirms that if a development is to have new occupiers, Policy DP18 will apply rather than existing parking rights. This allows for a fresh approach to be taken as to whether car free or car capped development can be achieved as opposed to being stymied by historic levels of use. This is in line with the core planning principle in the Framework of making the fullest possible use of public transport, walking and cycling.
20. The town centres in the Borough have PTAL scores of 6a or 6b which is defined as "Excellent". Hampstead is excluded from this list and has a PTAL of 4 which is the same as the appeal site. However, paragraph 6 of the appeal decision at 47 Belsize Square, NW3 (Ref: APP/X5210/A/13/2203859) indicates that there are specific considerations which lead the Council to conclude that Hampstead is not able to support car free development. There is no suggestion that any of these considerations obtain in this part of Finchley Road. Therefore the policy treatment of Hampstead town centre does not justify the proposal.
21. The PTAL output identifies that there are no Underground or rail services within the 'cut-off' walk distance of 960m. Golders Green Underground station and Finchley and Frognal Overground station are about 1.4 km from the site equivalent to 18 minutes walking time and Cricklewood Thameslink station is about 1.2km away or a 16 minute walk. However, the bus services are frequent and offer access to both the Underground and Overground stations and also to West Hampstead station to the south. So whilst the public transport options for those living at the appeal site would be skewed towards buses they do link up with the wider network.
22. Census data for the Frognal and Fitzjohns Ward from 2011 indicates that the proportion of residents who use their car for work (17%) is much less than average car ownership per household (83%). A study published by WSP in January 2014 entitled *Does Car Ownership Increase Car Use?* concludes that there is no apparent or simple relationship between car ownership, car usage and access to public transport. However, paragraph 6.43 of The London Plan of 2011 observes that there is evidence that car use reduces as access to public transport (as measured by PTALs) increases.
23. The demand for parking due to car ownership may hinge on a range of factors rather than simply site location or accessibility. Nevertheless, policy responses to facilitate greater use of public transport may need to contain both 'sticks' and 'carrots'. The WSP study also notes that parking availability is one of the variables which car ownership is dependent on. Further work on this topic may allow for more sophisticated policy mechanisms to be devised but that is not the current situation. Indeed, whatever the availability of on-street parking nearby, the Council has taken a 'balanced' approach to the provision of parking based on local circumstances.
24. In summary the proposed on-site parking arrangements would prejudice the achievement of sustainable travel. By providing for basement parking (other than the spaces to serve the flats designed for disabled people) the proposal would undermine the attempts being made to promote and encourage cycling,

walking and public transport use. It would be contrary to Policy DP18 of the Core Strategy and at odds with the wider aims of Policies CS11 and DP17. There are no other material considerations, including national and emerging London-wide policies, which outweigh the policy conflict.

Character and appearance

25. The exterior of the building is more or less complete. It comprises a modern block divided into two distinct sections by a recessed glazed link. Along the Finchley Road frontage the development is stepped back in a series of 'tiers' and the use of different materials to contrast with the predominantly brick elevations also provides visual interest. The upper floors are plainer than the lower part of the building but the overall composition is pleasing.
26. The Council's objection relates specifically to the use of smaller windows, taller spandrels and the omission of brick detailing within window reveals. The plans I am considering sought to reinstate some of the architectural features identified by the Council as being of merit and construction has proceeded on that basis. I saw, for example, that brick window features have been built. Indeed, the development is not ill-proportioned and is of sufficiently high quality to meet the design objectives in Policy CS14 of the Core Strategy and Policy DP24 of the Camden Development Policies. As such, the effect of the development on the character and appearance of the area is acceptable.
27. The appeal site backs onto Redington and Frogna Conservation Area. Given that a 4-storey building has previously been accepted I am satisfied that the setting of this heritage asset is not harmed by the development and that its character and appearance is preserved.

Other Matters

28. As mentioned before the development is about 700mm higher than originally permitted. The houses directly to the rear of the site in Clorane Gardens are at a higher level. Having regard to the lie of the land, the separation distance between buildings and what was previously permitted the development does not have an overbearing impact. In common with the approved scheme, balconies are included in the rear façade and there is little material difference between the two for the living conditions of those nearby. Consequently, there is no reason to oppose the development on amenity grounds.

Conclusions

29. The effect of the development on the character and appearance of the area is acceptable. However, for the reasons given, the on-site parking arrangements would prejudice the achievement of sustainable travel. This is a compelling objection such that the appeal should not succeed.

David Smith

INSPECTOR