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## Appeal Decision

Inquiry opened on 30 July 2014

Site visit made on 31 July 2014

**by Richard McCoy BSc MSc DipTP MRTPI IHBC**

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

**Decision date: 4 November 2014**

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**Appeal Ref: APP/X5210/A/14/2215857**  
**38 Heath Drive, London NW3 7SD**

- 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 Zen Developments Ltd against the decision of the Council of the London Borough of Camden.
  - The application Ref 2013/7355/P, dated 11 November 2013, was refused by notice dated 26 February 2014.
  - The development proposed is the demolition of the existing dwelling and erection of a part 3, 4 and 5 storey building comprising 21 residential units and associated landscaping.
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### Procedural matters

1. The parties agreed that the description of development in the Council's Decision Notice; "erection of a part 3, 4 and 5 storey building as well as basement level comprising 21 residential units (3 x 1 bed, 13 x 2 bed and 5 x 3 bed) basement swimming pool area as well as associated landscaping and formation of refuse recycling storage area adjacent to Heath Drive and conversion of existing garage to bike storage following the demolition of the existing dwelling", was more accurate than that set out above. I have dealt with the appeal on this basis.
2. A signed and dated S106 Unilateral Undertaking (UU) has been submitted by the appellant. This would secure a car free development, a Construction Management Plan and a Sustainability Plan. It would also secure contributions towards provision of affordable housing, public highway works, public realm and environmental improvements, public open space, and educational and community facilities. These are matters to which I return below. The Council confirmed at the Inquiry that as a result of the submission of the UU it was no longer pursuing its reasons for refusal nos. 6 – 14. I have dealt with the appeal on this basis.
3. At the opening of the Inquiry, the appellant requested that amended plans ref. 2979-050 Rev B, 2979- 051B, 2979-052A, 2979-057 and 2979-058, be substituted for the relevant plans originally submitted. In addition, a revised Basement Impact Assessment (BIA) was submitted. The substantive changes introduced by the amended plans are to convert flats 1, 2, 3, 4, 5 and 7 into duplex units at lower ground and ground floor levels which would improve the outlook from the main living areas, and to make flats 11 and 13 wheelchair

accessible. The Council did not object to this submission and as the modifications go towards addressing the reasons for refusal, I am satisfied that dealing with the appeal on the basis of the amended plans would not prejudice the interests of any party. Furthermore, the revised BIA has been independently verified and the main parties agreed that it demonstrates that the proposal would maintain the structural stability of the proposal and neighbouring properties; would not adversely affect the local water environment; and would avoid cumulative impacts on structural stability and the water environment in the local area. The Council confirmed that in the light of the amended plans and the revised BIA, it was no longer pursuing its reasons for refusal nos. 3, 4 and 5. I have dealt with the appeal on this basis although I note the concerns of neighbours regarding the proposed basement which I deal with below under *Other Matters*.

4. It was pointed out that interested parties had not been able to access the on-line version of the revised BIA from the Council's website. The document had been made available on the website on 25 July 2014. The Inquiry was therefore adjourned from 31 July to 30 September 2014 to afford the opportunity for the consideration of the document.

### **Decision**

5. The appeal is allowed and planning permission is granted for the erection of a part 3, 4 and 5 storey building as well as basement level comprising 21 residential units (3 x 1 bed, 13 x 2 bed and 5 x 3 bed) basement swimming pool area as well as associated landscaping and formation of refuse recycling storage area adjacent to Heath Drive and conversion of existing garage to bike storage following the demolition of the existing dwelling at 38 Heath Drive, London NW3 7SD in accordance with the terms of the application Ref 2013/7355/P, dated 11 November 2013, subject to the conditions set out in the annex to this decision.

### **Main Issue**

6. The main issue is whether the proposed development would preserve or enhance the character or appearance of the Redington/Frogna Conservation Area.

### **Reasons**

#### *Background and policy*

7. The appeal site which extends to around 1,595m<sup>2</sup>, is located at the corner of Heath Drive with Finchley Road, and contains a detached dwelling. It is situated within the Redington/Frogna Conservation Area (RFCA) and stands opposite the West End Green/Parsifal Road Conservation Area (WPCA). The site frontage contains mature vegetation and trees. Proposed is the demolition of the existing dwelling and its replacement with a larger building providing flatted accommodation. The appeal site stands in an accessible location with a PTAL rating of Level 5. Public transport connections are situated nearby as are local shops and services.
8. Criterion b of Policy CS14 of the London Borough of Camden Core Strategy (CS) seeks to conserve Camden's heritage by preserving and enhancing its rich and diverse heritage assets including conservation areas. In addition, criterion b of Policy DP25 of the London Borough of Camden Development Policies (DP)

will only permit development within conservation areas that preserves and enhances the character and appearance of the area.

9. I heard that these policies are closely aligned with paragraphs 126, 131 and 137 of the National Planning Policy Framework (NPPF) which refer to the desirability of sustaining and enhancing the significance of heritage assets, and the desirability of new development making a positive contribution to local character and distinctiveness. However, the Glossary at Annex 2 of the NPPF defines conservation (for heritage policy) as "the process of maintaining and managing change to a heritage asset in a way that sustains, and where appropriate, enhances its significance".
10. It was common ground that the overarching consideration in this appeal is that of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (S72). This sets out a general duty as respects conservation areas in exercise of planning functions which states that "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".
11. In this regard, my attention was drawn to recent appeal decisions in the Borough wherein the Inspectors concluded that the preservation of the character and appearance of a conservation area was sufficient to accord with policies CS14 and DP25. In the light these decisions, S72 and the NPPF Annex 2 definition of conservation, I shall deal with this appeal on the basis of the main issue as set above, and agreed by the parties at the opening of the Inquiry.

#### *Conservation area*

12. The appeal site is located within sub area 5 of the RFCA. It was added to the conservation area in 2003 as part of a review of the RFCA boundary. The RFCA is characterised by large detached and semi-detached dwellings which form a prosperous late Victorian/early Edwardian suburb. Many buildings within the RFCA were designed by the architect Charles H B Quennell. The existing building at the appeal site is a single family dwelling of 2 storeys with further accommodation in the attic. It is built of red brick with a clay tiled roof, tall chimney stacks, dormer windows and neo Georgian detailing. I heard that while it is not thought to have been designed by Quennell it is in the Quennell style.
13. Despite the design cues taken from nearby buildings in the RFCA, no. 38 appeared to me to be detached from the rest of the dwellings on this side of Heath Drive. It is set back considerably from the site boundary and appeared to be physically divorced from the buildings on its side of Heath Drive (those being nos. 35, 36 and 37 which are arranged around spur off Heath Drive and face a different direction to no. 38). Furthermore, it appears to be more aligned with Finchley Road than Heath Drive in terms of its frontage and entrance.
14. I note the argument that the existing building makes a positive contribution to the RFCA and in this regard my attention was drawn to the English Heritage document *Conservation Principles* which sets out guidance on how to understand the values of a heritage asset. These are identified as evidential, historical, aesthetic and communal value. In my judgement, the later construction of no. 38 (it post-dates most of the dwellings which contribute

- positively to the RFCA's late Victorian/early Edwardian suburban character) and its typical, rather than special, architectural detailing and finishes mean that it is of very limited evidential, historical and aesthetic value. In addition, it is not a civic or religious building and does not have special significance for any groups within society, and so must have very little communal value.
15. Against this background, rather than making a positive contribution to the character and appearance of the RFCA, its overall contribution to the RFCA is very muted. This is borne out by the fact that it is, in the main, obscured from view from the public realm by the dense, mature vegetation on the site boundary. Indeed, the parties agreed that a key feature of the appeal site is the mature London Plane trees that line the edge of the site boundary. These feature highly in views from both Heath Drive and Finchley Road and are a dominant feature, particularly when in full leaf. I consider that it is the trees, rather than the unremarkably plain building on the appeal site, that make the positive contribution to the character and appearance of the RFCA and these trees would be kept as part of the proposal (which could be secured by a condition were planning permission to be granted).
  16. With regard to the proposed design, the building would be of a scale that would address the corner site as it fronts onto Finchley Road and the mansion blocks opposite. It would then step down in height to address the domestic scale of the buildings further along Heath Drive. Its "cranked" footprint would enable it to respond to the 2 disparate frontages in terms of the larger, more commercial scale of Finchley Road with the smaller, more domestic scale of Heath Drive. By so doing, it would politely integrate itself with the buildings within the WPCA opposite and the buildings within the RFCA.
  17. The change in height would permit a portion of the proposed building to have greater massing fronting onto Finchley Road, reflecting the form and massing of the nearby Victorian mansion blocks, whilst stepping down to reflect the form and massing of the Quennell buildings on Heath Drive. I do not agree with the criticism that the taller portion would loom over the lower section as I consider the proposed proportions and massing of the roof-scape would successfully resolve the reduction in height across the building so that it would not be perceived as occurring abruptly. Furthermore, I consider that the amount of open space within the site would not be harmfully diminished over what is there at the moment while the massing of the proposed building would be softened by the existing boundary vegetation.
  18. The stylistic treatment, including the proposed dormers, takes its lead from the prevailing character of the RFCA. This informed the design which to my mind successfully resolves the issue of fitting a building onto the appeal site that responds to the marked differences in building scale and massing in the general vicinity. This approach to design intervention within a historic environment would result in a building that responds to its context, reinforcing local character while at the same time meeting modern standards of design. The proposed site layout would also enable the retention and enhancement of the boundary vegetation which is a key characteristic of the appeal site.
  19. Therefore, while I heard from the Council that there would be harm arising from the loss of the existing building which the appellant's planning witness described as less than substantial harm, I find myself in agreement with the appellant's heritage witness that the proposal would at the very least preserve

the character and appearance of the RFCA. Moreover, the proposal would offer an overall enhancement by providing a building that maintains the verdant nature of this corner site whilst successfully relating the design of the building to the Finchley Road and Heath Drive contexts.

20. Accordingly, the proposal would enhance the character and appearance of the RFCA, thereby making a positive contribution to local character and distinctiveness by sustaining and enhancing the significance of the heritage asset, in line with NPPF paragraphs 126, 131 and 136. As such, it would not conflict with CS Policy CS14 and DP Policy DP25.

#### *Other matters*

21. Concerns were raised in respect of the effect of the proposed basement on the stability of neighbouring properties and on the local water environment. In this regard, the appellant submitted a revised BIA (dated 29 June 2014) which was updated by Soiltechnics Environmental and Geotechnical Consultants. In paragraph 1.4 of the document it is claimed that it followed the advice in the Council's Camden Planning Guidance 4; *Basements and Lightwells* (CPG4), and *Guidance for Subterranean Development* produced for the Council by Arup. A letter in response from Mr Hagemans and Ms Morini (dated 12 August 2014) expressed concerns that existing ground conditions and cumulative impact may not have been adequately assessed.
22. I note that the revised BIA included an assessment of ground conditions and considered the impact on surrounding properties in the context of tree removal, ground movements following the basement installation and ground conditions/hydrology. Although the revised BIA did not address all of the 5 stages to be considered in a BIA as set out in CPG4, it was peer reviewed by 3 no. chartered geologists, (including LBH Wembley on behalf of the Council), who concluded that the proposed basement would have no adverse impact. On this basis, the Council was satisfied that its concerns had been addressed and accepted that it had been demonstrated that the proposal would not adversely affect structural stability and the local water environment.
23. Moreover, DP Policy DP27 does not require a cumulative assessment. In my judgement, the submitted evidence does not demonstrate that a cumulative assessment is necessary, and the expert opinion that has been garnered does not conclude that a cumulative assessment should be carried out. Indeed, the conclusion from the LBH Wembley Geotechnical and Environmental review of the revised BIA states that "although the revised submission does not include a discussion of cumulative impacts, it may be reasonably deduced that there is not sufficient concern for this to be required in this case".
24. From my assessment, I have no reason to disagree. Accordingly, in this regard, the proposal would not conflict with CS Policies CS5 and CS13, and DP Policies DP23 and DP27.
25. Concerns were also raised about the effect of the proposal on the living conditions of the occupiers of 272 Finchley Road. I observed that this property sits in the backland behind 270 Finchley Road and shares a boundary with no. 38. No. 272 is currently overlooked by surrounding properties including the existing building at no. 38. Given the existing degree of overlooking that exists and the proximity of the existing building on the appeal site to the boundary, I consider that there would be no harmful change in living conditions for the

occupiers of this dwelling. Furthermore, I note from the officer's delegated report that the proposed 18m window to window separation distance with no. 272 would be in line with the Council's advice in Camden Planning Guidance 6 *Amenity*. Against this background, I consider that the proposal would accord with CS Policy CS5 and DP Policy DP26.

26. The appellant's UU would secure a car free development in accordance with Policies CS11, CS19 and DP18. The Construction Management Plan would avoid highway safety conflicts and conflicts with other road users in accordance with Policies CS5, CS11, CS16, CS19, DP20, DP26 and CPG7. A design and post construction Sustainability Plan to achieve Level 4 Code for Sustainable Homes Assessment would accord with Policies CS13, CS19, DP22 and DP23. Furthermore, contributions towards public highway works, public realm and environmental improvements, public open space, educational facilities and community facilities would accord with Policies DP15, DP16, DP17, DP21, DP31, CS10, CS15, CS19 and CPG6.
27. In respect of affordable housing, DP Policy DP3 provides that where affordable housing cannot practically be achieved on site, the Council may accept off site provision or exceptionally a payment in-lieu. The appellant's *Financial Viability Appraisal* sets out an in-lieu contribution of £300,000 which would be equivalent of a 17% affordable housing provision. The appraisal was reviewed on the Council's behalf by BPS Surveyors who agreed the appellant's approach. Given the likely service charges for the proposed units and the high costs of the scheme, I agree with the Council that it is unlikely that a Registered Provider would be willing to take on a unit at this scheme and bridge the gap between the £300,000 offered and the market value, including the likely high service charge.
28. The BPS review noted that the amount offered by the appellant falls short of the policy requirement by £1,416,538. To overcome this, the UU sets out a deferred contribution. This is not a fixed amount but is capped at the shortfall between the amount of additional housing/affordable housing proposed and the Council's policy targets. The actual contribution would be determined by a further viability appraisal undertaken at an agreed point after planning permission is granted but before the scheme is fully occupied. The UU therefore sets out a contribution in-lieu for affordable housing of £300,000 with a further deferred contribution of up to £1,416,538 subject to viability. From my assessment, this would comply with the requirements of Policies CS6, CS19 and DP3.
29. In my judgement, the UU provisions are directly related to the development and reasonably related in scale and kind. As such the UU passes the tests set out in the NPPF and satisfies the requirements of regulation 122 of *The Community Infrastructure Levy Regulations 2010*. I can therefore give it considerable weight.

### *Conditions*

30. The Council suggested a number of conditions which were discussed at the Inquiry. I have considered all of the conditions in the light of the advice within the NPPF and the Planning Policy Guidance. In the interests of good planning, it is necessary to impose conditions setting out time limits for the development and to relate the development to the submitted plans. I shall also impose conditions in respect of the commencement of demolition works, the

submission of detail drawings and materials samples, and the provision of a sample brickwork panel, in the interests of visual amenity, along with a condition in respect of obscure glazing, in the interests of safeguarding residential amenity.

31. Conditions regarding tree protection and landscaping are necessary in the interests of visual amenity as are conditions to ensure the provision of lifetime homes standards and cycle parking in the interests of safeguarding the living conditions of future occupiers of the development. In addition, it is necessary to impose conditions in respect of securing a sustainable urban drainage system and waste storage and recycling in the interests of reducing surface water run off and providing sufficient space for waste storage and recycling respectively.
32. Conditions are also necessary to secure the inspection of structural works by a qualified engineer and to ensure that the development is carried out in accordance with the measures set out in the Basement Impact Assessment Report, in the interests of safeguarding the structural stability of nearby buildings. Finally, I shall attach a condition in respect of noise mitigation in the interest of safeguarding residential amenity.

**Conclusion**

33. For the reasons given above, I conclude that the appeal should be allowed.

*Richard McCoy*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr G Atkinson of Counsel	Instructed by Head of Legal Services, Council of the London Borough of Camden
He called	
Ms H Walker BA(Hons), MSc	Principal Conservation Officer, Council of the London Borough of Camden
Ms J Litherland BA(Hons), MA	Senior Planning Officer, Council of the London Borough of Camden

### FOR THE APPELLANT:

Mr R Wald of Counsel	Instructed by Mr J Cunnane
He called	
Mr J Cunnane BA(Hons), MRTPI	Senior Partner, Cunnane Town Planning
Dr C Miele MRTPI, IHBC, FRHS, FSA	Senior Partner, Montagu Evans LLP
Mr D Green RIBA	Director, MR Partnerships Ltd Architects

### INTERESTED PERSONS:

Mr Malet-Bates	Architect, local resident, Member of the Hampstead Conservation Area Advisory Committee, Member of the Redington and Froggnal Residents Association
Mr A Jain	Local resident
Mr R Hagemans	Local resident

## **DOCUMENTS**

- 1 Council's letter of notification of the Inquiry
- 2 Report to Committee regarding the Redington/Froggnal Conservation Area Statement
- 3 Bundle of recent appeal decision in the Borough
- 4 Committee report for planning application 2013/0685/P
- 5 Housing delivery targets
- 6 Signed and dated Unilateral Undertaking
- 7 Evidence of Mr Malet-Bates
- 8 Letter from Mr Hagemans and Ms Morini dated 12 August 2014
- 9 Amended basement condition
- 10 Letter from Sioltechnics dated 30 September 2014

## **PLANS**

- 1 Site area comparison plan
- 2 Kings College plan
- 3 Amended plans



## **ANNEX**

### Conditions

- 1) The development hereby permitted must be begun no later than the end of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1768-1; TPP/38HDL/010-A; (Prefix 2979-) 001, 002, 010, 020, 021, 050-B, 051-B, 052-A, 053, 054, 054, 055, 056, 057, 058, 060, 061 and 062.
- 3) The demolition hereby permitted shall not be undertaken before a contract for the carrying out of the works of redevelopment of the site has been made and full planning permission has been granted for the redevelopment for which the contract provides.
- 4) Detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the Council before the relevant part of the work is begun: a) details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site); and b) details of all windows and external doors. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.
- 5) 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 local planning authority before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The approved panel shall be retained on site until the work has been completed.
- 6) Prior to occupation of the residential units the windows on the south east elevation at second floor level and above and all windows on the north elevation at first floor level and above shall be fitted with obscure glazing and fixed shut. The windows shall be permanently retained and maintained as obscurely glazed and fixed shut thereafter.
- 7) Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.
- 8) No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

- 9) All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development. Any trees or areas of planting 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 as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.
- 10) The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.
- 11) Full details of the cycle parking layout shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The cycle parking shall then be provided in its entirety prior to the first occupation of any of the new dwellings, and permanently maintained and retained thereafter.
- 12) Prior to commencement of development details of a sustainable urban drainage system and a rainwater harvesting system shall be submitted to and approved in writing by the local planning authority. The system shall be implemented as part of the development and thereafter retained and maintained.
- 13) Prior to commencement of the development, details of the location, design and method of waste storage and removal including recycled materials, shall be submitted to and approved by the local planning authority in writing. The facility as approved shall be provided prior to the first occupation of any of the new units and permanently retained thereafter.
- 14) The development hereby approved shall not commence until such time as a suitably qualified chartered engineer(s) with membership of the appropriate professional body (as specified in paragraph 2.11 of Camden Planning Guidance 4: *Basements and lightwells*) has been appointed to inspect, approve and monitor the critical elements of construction of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. The appointment shall be confirmed in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.
- 15) The development hereby approved shall be carried out in strict accordance with the measures set out in the Basement Impact Assessment Report, Updated, by Soiltechnics, Ref: STK260-BIA, Revision 4, dated 29th June 2014 and the Supplemental Structural Stability Report, by Jampel Davison & Bell, Ref: 1768-PO1, dated 25th June 2014.
- 16) Prior to commencement of the development, a scheme of mitigation against noise with the development, including details of acoustic screening, shall be submitted to, and approved in writing by, the local planning authority. The scheme of mitigation shall include details of how noise levels within each unit shall comply with the relevant standards.

The development shall thereafter not be carried out other than in complete compliance with the approved scheme and no unit shall be occupied until the mitigation measures relevant to that unit have been installed.