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## Appeal Decisions

Inquiry held on 2-5, 9-11 December 2014

Site visit made on 5 December 2014

**by John Chase MCD DipArch RIBA MRTPI**

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

**Decision date: 2 February 2015**

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### **Appeal A Ref: APP/X5210/A/14/2218243**

#### **New End Nurses Home, 29 New End, London, NW3 1JD**

- 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 Karawana Holdings Ltd against the decision of the Council of the London Borough of Camden.
  - The application Ref 2012/3089/P, dated 13 June 2012, was refused by notice dated 16 December 2013.
  - The development proposed is the demolition of the existing building at 29 New End and creation of 17 residential (C3) units over lower ground, ground, first, second, third, fourth and fifth floor levels; creation of a new vehicular access and access to basement parking; works to boundary wall; works to soft and hard landscaping; and other incidental works.
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### **Appeal B Ref: APP/X5210/E/14/2218267**

#### **New End Nurses Home, 29 New End, London, NW3 1JD**

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
  - The appeal is made by Karawana Holdings Ltd against the decision of the Council of the London Borough of Camden.
  - The application Ref 2012/3092/C, dated 13 June 2012, was refused by notice dated 16 December 2013.
  - The demolition proposed is the existing building at 29 New End.
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## **Decisions**

### **Appeal A**

1. The appeal is allowed and planning permission is granted for the demolition of the existing building at 29 New End and creation of 17 residential (C3) units over lower ground, ground, first, second, third, fourth and fifth floor levels; creation of a new vehicular access and access to basement parking; works to boundary wall; works to soft and hard landscaping; and other incidental works at New End Nurses Home, 29 New End, London, NW3 1JD in accordance with the terms of the application, Ref 2012/3089/P, dated 13 June 2012, subject to the conditions in Annex 3 at the end of this decision.

### **Appeal B**

2. The appeal is allowed and conservation area consent is granted for the demolition of the existing building at New End Nurses Home, 29 New End,

London, NW3 1JD in accordance with the terms of the application Ref 2012/3092/C, dated 13 June 2012, subject to the conditions that 1) the demolition hereby permitted shall begin not later than three years from the date of this decision, and 2) 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.

### **Procedural Matters**

3. The appellants have submitted an undertaking, in accordance with Section 106 of the Town and Country Planning Act, 1990, creating obligations to contribute to the provision of infrastructure and affordable housing, and to restrict the use of parking permits.

### **Main Issues**

4. The main issues are: i) whether the proposal would preserve or enhance the character and appearance of the Conservation Area and the setting of Listed Buildings in the locality, ii) the effect of on-site parking provision on traffic and street parking and the dependence on motor vehicles, and iii) the effect of the outlook from the basement flats on the living conditions of their future residents. The suggested main issues presented at the beginning of the Inquiry also included whether, and on what terms, the development should contribute to the supply of affordable housing. However, the appellants produced an obligation for this purpose during the course of the Inquiry, in consultation with the Council, and no witness evidence was presented on this point. It is not retained as a main issue, but the justification for the contribution is considered later in this decision.

### **Reasons**

#### *Character and Appearance*

5. The site falls within the Hampstead Conservation Area, this part of which is described in the Area Statement as containing a great variety of building types, ages and styles, along roads which follow the contours of the sloping land, interconnected by steps and footpaths. These characteristics are apparent in the vicinity of the site, with 18<sup>th</sup> century houses alongside institutional buildings and 20<sup>th</sup> century flats, and the narrow and curving road give the area an intimate and close knit character. Christ Church Passage, rising alongside the site, provides access to the church and primary school at the rear, both of which are Grade II Listed. Other Grade II Listed Buildings in the immediate locality include the former Parish Workhouse and a terrace of town houses at Nos 10-14 New End, and, on the western boundary of the site, Lawn House, and former stables at 10-14 Elm Row. With a need to preserve the setting of these Listed Buildings, and the character and appearance of the Conservation Area as a whole, the site is in a sensitive location.
6. The appeal building was constructed as a hostel for nurses in the late 1930s, associated with the Royal Free Hospital which occupied the former Parish Workhouse and other buildings in a complex adjoining New End. The hospital has now moved, and the buildings converted to other uses, whilst the hostel has remained vacant since about 2005. It is a tall, T shaped structure, set back from the road on a higher level of the rising ground, the most notable

features of which are a regular pattern of windows in the brick façade, a prominent chimney on the eastern wall, and curved staircase protrusions. It is described in the Conservation Area Statement as being a plain building, with an overbearing quality which looms over the street, detracting from the Conservation Area. The Camden Site Allocations DPD, 2013, identifies the building as suitable for either redevelopment or refurbishment, confirming that it does not make a positive contribution to the Conservation Area, but that its relationship with adjoining buildings and high quality of construction confer a neutral impact on the area.

7. It is the view of the Rule 6 (6) and other interested parties that the building is entitled to further reappraisal, drawing attention, amongst other matters, to its historical associations with the former hospital; to its provenance as an example of the institutional building type produced by the London County Council (LCC) before World War 2, and in particular the renown of its chief architect, Edwin Wheeler; and the intrinsic composition and balance of its design.
8. However, the evidence falls short of proving that the relationship of the building with the former hospital is of such recognised cultural or historic significance as to justify its retention, nor does it form a clear and identifiable group or curtilage with the other parts of that complex. In age, location and style it appears as a separate element. There is not a compelling case that Edwin Wheeler made a particular contribution to the design of the hostel, which was one of a great many buildings produced by the LCC at that time, nor that it is an especially good example of its type. Rather, the criticisms in the Conservation Area Statement appear sound. The building has a relatively plain and featureless appearance, not assisted by the unrelieved repetition of identical windows, and the elevated position separates it from the street whilst emphasising the overbearing character referred to in the Statement. There is no substantial reason to conclude that it makes a positive contribution to the Conservation Area.
9. Turning to the replacement building, it is proposed to reproduce the T shaped plan form of the existing block, but with a significant increase in floor area (estimated by the Rule 6 (6) Party to amount to 85%), largely achieved by excavating into the hillside to accommodate three floors below ground level at the rear, and one floor below at the front, with the lowest two floors extending beyond the T shape to occupy the majority of the front portion of the site. The upper floors, from the first to the fifth, would have a diminishing plan form, creating a series of terraces. It would be constructed in brickwork, but with the recessed fifth floor, and part of the fourth floor, in a contrasting slate material. The whole would accommodate 17 flats, of varying sizes, and 17 car parking spaces at basement level, served by a ramp with access from New End.
10. A range of criticisms have been levelled at the physical characteristics of the proposal, many of which relate to its scale and bulk, and the implications of the subterranean construction. Nonetheless, as illustrated in the appellants' verified views of the scheme, the accuracy of which has not been seriously challenged, the retention of the T shape would lead to a not dissimilar massing to the existing building, but with the benefit that the relatively austere vertical face of the hostel would be replaced by a more articulated façade. There would be terraces and set-back floors, to better lead the eye from street level and to break up the massing, as well as reflecting the rising topography of the site. It

is certainly true that the window forms, the upper floors and the balconies would not replicate historic features in the area, but there is sufficient architectural variety to accommodate a different design which would not, on the other hand, be discordant with the form, massing and materials of surrounding buildings.

11. Whilst the extent of the excavated basement levels has structural implications, which will be considered below, it would, by its nature, have a limited effect on the appearance of the building and its impact on the surrounding area. The clearest indication would be the vehicle entrance at the front of the site, but this is a feature seen elsewhere in the street, and, although the introduction of security gates can be a detrimental feature, their use in this instance would help to maintain the continuity of the façade. The building would be seen in the round, including from Christ Church Passage and Elm Row/Hampstead Square, but, again, there would not be a significantly more imposing appearance than the existing building, and the elevations would benefit from greater variety and articulation.
12. In addition to the specific architectural and historic qualities of the surrounding Listed Buildings, it is clear that part of their significance derives from the location in this part of Hampstead, both in terms of the joint contribution to its character and appearance, and from the role they have played in the development of the town. The appeal site forms part of this setting. To the extent that the new building would not have a greater impact on its environs than the existing block, and there would be some benefit arising out of a more interesting and balanced appearance, it follows that it would not be more harmful to the setting of these Listed Buildings. It is the case that parts of the upper floors would come closer to the heritage assets, but not to such a degree as to unduly influence views to and from them, and there would be some compensation by the setback of the highest, and potentially most dominating, floor levels. There is no indication that consideration of the setting of other heritage assets in the wider area would lead to a different conclusion on this point.
13. Whilst the proposed basement would not significantly alter the visible setting of the Listed Buildings, there is a concern that the excavation and construction could have a detrimental effect on the structure of Lawn House and its neighbours in Elm Row, as well as the church to the rear, which shows evidence of structural failure in its southern wall. To address this concern, and in compliance with Policy DP27 of the adopted Local Development Framework (LDF), the appellants have prepared a Basement Impact Assessment to investigate and recommend means of minimising any potential damage arising out of the construction. The report has been subject to independent review by two firms of structural engineers, appointed respectively by the Council and by the appellants, the conclusions of which are that, in principle, the basement construction would be feasible.
14. It is appreciated that the structural report commissioned by the Rule 6 (6) Party raises a number of concerns, especially in respect of unknown factors which might arise during the course of construction, and there is a possibility that the methodology would require adjustment as site conditions are encountered. Nonetheless, there are adequate grounds to conclude that it would be possible to carry out the basement works without undue risks to the structural stability of surrounding buildings, and it is also noted that the

- process would be subject to separate control under building and party wall legislation, as well as the private liabilities of the property owner.
15. It is suggested that there are other forms of development which would better suit the locality. However, this appeal is limited to an assessment of the building which has been applied for, and it is not possible to speculate on other potential solutions, which may not be physically or economically practicable.
  16. With respect to the arboricultural implications of the development, the appellants have identified 14 trees (numbered T1-T14), of which 2 on the site require removal because of poor condition, and 9 due to the proposed scheme. Those to be retained include 2 sycamores (T6 & T7) which are remote from the building works, and T1, a large Horse Chestnut at the front of the site which makes a significant contribution to the appearance of the street, along with T4, a Copper Beech on adjoining land, which is subject to a Tree Preservation Order.
  17. In the latter case, the tree is adjacent to a retaining wall, and at a higher level than the site. There was considerable discussion at the Inquiry as to the likelihood of roots occurring in the vicinity of the basement construction, and the implications of access for piling equipment. The trial trenches did not show evidence of significant rooting in this direction and, whilst it may be possible for roots to occur below this level, the evidence indicated the greater probability that they would have been apparent nearer to the surface. There was some criticism of the proposal to introduce temporary sheet piling to protect the tree, which the appellants indicated had been introduced at the Council's request, but there are alternative means of retaining the ground during the basement construction, if necessary. It was apparent during the site visit that part of the crown of the tree would require removal to allow access for piling equipment, but the tree has grown further in this direction than over the neighbouring property, and there is no indication that its form or long term survival would be unduly compromised by the necessary arboricultural work.
  18. The trees to be removed were identified by the appellants as British Standard category U, unsuitable for retention, or C, being of low quality and value, or young trees. However attention was drawn by the opposing parties to the amenity value of a number of examples, including a sycamore (T10) which presently overhangs Christ Church Passage and provides some softening of the view, and an elm (T2) which helps to screen Lawn House. These points are taken, and the contribution of trees to the Conservation Area is recognised. Nonetheless, having regard to the quality of the trees to be removed, that those of greater significance would be retained, and that there would be the potential within the proposed planting scheme to replace and enhance the landscaping of the site, there is reason to consider that the proposals would not be unduly harmful to the overall appearance of the area. In addition, the garden at the rear of the property, which is designated as an open space to be protected, would be retained, and a landscaping scheme would improve its present, derelict character.
  19. For the reasons set out above, there are adequate grounds to conclude that the scheme would comply with the identified Policies CS14, CS15, DP24 and DP25 of the Camden Local Development Framework (LDF), the broad thrust of which is to seek high quality design that has due regard for its surroundings, and which protects the historic environment and valuable open space. The proposal

would preserve or enhance the character and appearance of the Conservation Area and the setting of Listed Buildings in the locality. This decision is taken in the context of the statutory duties concerning the need to preserve and enhance heritage assets, and the great weight given by the National Planning Policy Framework (NPPF) to their conservation.

### *Parking*

20. The Council's third reason for refusal refers to the increase in traffic generation, parking stress and congestion in the surrounding area, and an over-dependence on the use of motor vehicles, arising from the introduction of on-site parking. LDF Policy CS11 seeks to minimise congestion and environmental impact by, amongst other measures, promoting car free development in the most accessible locations, which are defined in Policy DP18 as within identified town centres, and other areas that are easily accessible by public transport. In the latter case, Camden Planning Guidance 7 (CPG 7), Transport, defines highly accessible areas as those with a Public Transport Accessibility Level (PTAL) of 4 and above.
21. In this case, the site falls outside the nominated town centres, and the Council agree that the PTAL rating is 3. Whilst this latter is contested by the Rule 6 (6) Party and other objectors, on the basis that it is, in practice, an easily accessible area, there is no clear indication that the assessment has been incorrectly carried out. Indeed, the Council's witness acknowledged that the rating would fall to PTAL 2 if measured from the centre of the site, and that the Core Strategy specifically excludes Hampstead town centre, which might be expected to have greater accessibility than the site, from the area where car free housing should be sought.
22. Nor is there support for applying a lower maximum parking standard than that envisaged by the appeal scheme. LDF Policy DP18 requires compliance with the Council's parking standards, set out in Appendix 2 of the Development Policies document, indicating a maximum level of 1 space per dwelling throughout the Borough except in low parking provision areas, defined as the more accessible locations, which exclude the appeal site.
23. However, LDF Policies DP19 and DP21 resist development that would harm existing on-street parking conditions. CPG 7 indicates that the imposition of a car free restriction would be justified where the loss of street parking to provide vehicle access into the site would result in unacceptable parking pressure. In this case, there would be the removal of one or two street spaces at the driveway serving the basement parking, and the Council records show that, in 2013, there were 111 residents permits issued for every 100 spaces in the parking zone, indicating a level of parking stress which would be exacerbated by the loss of spaces.
24. The appellants dispute that the issue of permits reflects the actual use of the street parking, referring to a parking survey carried out in February 2012, which revealed that occupation of bays ranged from 78% to 86%. Whilst the Council have not carried out a comparable survey to support their view that the research understates the actual demand, it is likely that usage would be subject to daily and seasonal variations, and that the level is not far below the threshold where stress would occur.

25. However, even if there were pressure for parking in the area, there is a plausible argument that the residents of a hostel would be eligible for parking permits, if the existing use were reinstated. Even a small proportionate take-up from the 75 rooms would have a significantly greater impact on parking stress than the loss of two street spaces, whereas the development proposal includes an agreement that the residents will not apply for permits. Whilst the Council have questioned whether a hostel use represents a realistic fall-back position, there is little evidence that it would not, as the building appears to be in sound structural condition and it is credible that there would be a demand for such accommodation in this location. The additional point is made that Policy DP18 and associated text require the provision of parking for the disabled, the on-site provision of which would also require access, resulting in the loss of street spaces.
26. Therefore, whilst it is the broad thrust of development plan policy to minimise the use of private vehicles, this is in the context of the published guidance, and the particular circumstances of the site. There are adequate grounds to consider that the parking as proposed would not be contrary to the nominated policy. Nor is there any indication that the additional traffic generated by the use of the on-site parking would have such an effect on the level of congestion as to amount to the severe circumstances identified in NPPF para 32. The potential impact of construction traffic is considered elsewhere in this decision.
27. In terms of the second main issue, the on-site parking provision would not have an unduly detrimental effect on traffic and street parking and the dependence on motor vehicles.

#### *Outlook*

28. Proposed units 3 and 4 are studio flats at basement level, which are served, in each case, by a small courtyard. There is no dispute that the arrangement would provide adequate daylight, but the outlook would be limited, with the depth of the courtyard approximately 2.5x3.0m for Unit 4, and 4.0x3.0m for Unit 3. In both cases, the courtyard would be flanked by a single storey wall on one side, and by 2 or 3 storey walls on the other, so that, at best, there would be a limited sky view from within the rooms.
29. LDF Policy CS5 and the accompanying text require that the amenity of occupiers is fully considered and that any harmful effects are adequately ameliorated. Policy DP26 refers specifically to the need to achieve satisfactory outlook, with supplementary guidance in CPG 6 indicating that it should have a pleasant quality, and that single aspect units are particularly sensitive.
30. The guidance does not set out specific standards, and it is clear that each case is considered on its merits. In this instance, there are a number of mitigating factors. Part of the room surrounding the courtyard would be a conservatory with a glazed roof, to increase the sense of spaciousness, and the courtyard itself would be accessible for private occupation. The units would not be intended for family use. It is also recognised that, in relatively densely developed parts of London, the use of basement accommodation and light wells is not uncommon.
31. Overall, there are grounds to conclude that the need to maintain residential amenity has been adequately considered in the design, and that the outlook

from the basement flats would not have an unduly harmful effect on the living conditions of the future residents.

## **Other Matters**

### *Disruption during Construction*

32. A significant part of the public opposition to the scheme relates to the disruption that would arise out of the construction process and, in particular, the implications of access for heavy vehicles and the potential loss of amenity from noise and dust generation. It is suggested that the situation would be exacerbated by the scale of engineering works and movement of materials necessitated by the basement construction. Not only is there housing surrounding the site, but a number of other sensitive uses, including school buildings, with the attendant implications of children arriving and departing, and walking between buildings during the day.
33. The level of concern is recognised, and a number of development plan policies, including DP20, DP21, and DP26, are intended to protect amenity and road safety. However, whilst these would justify the imposition of measures to ameliorate the harmful effects arising during construction, the identified policies are mainly intended to guide the location of permanent development, rather than to specifically address the temporary impact of a construction project. There is a need to enable new development within urban areas, to respond to changing circumstances and obsolescence, and the situation in this case is neither so extreme nor unusual as to justify refusal of planning permission because of the short term consequences of the construction process, provided the maximum is done to mitigate their effect on the local community.
34. To this end, the appellants have prepared a draft Construction Management Plan in consultation with the Council, and the Unilateral Undertaking would require the approval of a final version. Amongst the measures put forward are traffic management proposals to minimise the disruption to traffic, parking and pedestrian movement, and arrangements to address the loss of amenity in the area, including restrictions on working times, and suppression of noise and dust, along with a consultation procedure to allow monitoring of the situation and participation by local residents. Provided these measures are put in place, there are not grounds to consider that the construction impact of the development would be a reason to dismiss the appeal.

### *Affordable Housing*

35. LDF Policy CS6 creates the expectation that new development will contribute to the supply of affordable housing, with Policy DP3 indicating that such a contribution will be sought from all schemes over 10 dwellings, on a sliding scale from 10% to 50% of floor space, depending on the size of the project. However, delivery is subject to the circumstances of the site, including the economic viability of the scheme. In the present case, there is no dispute between the main parties that the project would not currently show a sufficient financial return to fund any affordable housing, and, having regard to the need in both national and local planning policy to boost the supply of housing, there would be no justification to prevent the development for this reason.



36. However, it is the Council's view that economic conditions could change in favour of the development if implementation is delayed, enabling a contribution to affordable housing at a later date which would not be possible now. To reflect this requirement, the Unilateral Undertaking makes provision for an updated financial appraisal to be submitted to the Council in the event that the development is started later than 20 months from the grant of planning permission, or is not completed within 36 months of the start of construction. In these circumstances a contribution towards affordable housing is payable if the revised appraisal shows an adequate return, subject to an upper limit based on the Council's assessment methodology.
37. London Plan Policy 3.12 refers to the need for affordable housing obligations to take account of the individual circumstances of the development, including the possibility of re-appraising viability prior to implementation, and the Greater London Authority Housing SPG, 2012, suggests the use of Section 106 clauses to trigger a review of viability if a scheme is not completed by a certain date. Camden's own housing guidance, CPG 2, sets out a detailed procedure for the payment of deferred contributions.
38. It is the case that Planning Practice Guidance para 10-016 refers to the use of such mechanisms solely in relation to phased developments, which would not apply to the present proposal. However, although the scheme amounts to only 17 dwellings, their nature and location creates a high capital value, and the size and complexity of the scheme would result in a relatively lengthy development programme. The viability of the project would be sensitive to changes in the market, with Camden experiencing a rapid rise in house prices in recent times, and the financial picture could look entirely different by the end of the term of a planning permission. In the particular circumstances of this case, reassessment of the ability to contribute to affordable housing if implementation is delayed would help to meet the objectives of LDF Policy CS6.

#### *Amenity*

39. Amongst the matters raised is a concern about increased overlooking from the windows and terraces of the new building. This particularly applies to the windows on the eastern elevation, which face residential development on the far side of Christ Church Passage. It is certainly true that the existing block has a great many windows in this direction, but the projecting wing closest to Carnegie House contains only one set of windows at each floor level by comparison with the greater number proposed, and the existing windows closest to Christ Church Cottage serve a staircase, which would be likely to result in more transitory loss of privacy than the habitable rooms now intended. In both cases, the opposing distance would be less than the normally accepted separation to maintain privacy. There is justification for the need for obscured glazing in the windows identified on drawing NEN-SK-05, and no clear need to defer this decision for a later site visit, as indicated in the accompanying note.
40. It is also suggested that a condition is necessary to provide 1.8m high screens alongside roof terraces. With respect to the terrace on the eastern elevation at first floor level, the adjoining part of Carnegie House is already partially overlooked by the existing public footpath, and there would be sufficient potential in the use of the planting strip shown outside the terrace to achieve a softening of the view. At second and third floor levels the proposed terrace

would be offset from both Christ Church Cottage and Carnegie House, so as to reduce the impact of overlooking. The accessible part of the roof terrace at fourth floor level would be narrow, so as to diminish the likelihood that it would be preferred for sitting out to the south facing terrace, and, again, there would be a planting area to soften the view. At the same level, the terrace at the rear of the building would be mainly orientated to the north, with only a narrow frontage to the east, which would not justify a requirement for screening in this direction. Overall, the need for privacy screens has not been sufficiently justified, and there is a risk that they would have a harmful impact on the appearance of the building.

41. Concerns have also been expressed about the potential loss of light to existing windows, and in particular a basement window on the eastern side of Lawn House. However, this is a small window, which provides limited light, and there are other windows serving the room. Overall, there is not a compelling case that any loss of light in either this room, or the other cases identified, would be of such an extent as to render the scheme unacceptable.

### **Unilateral Undertaking**

42. At the Inquiry, the Rule 6 (6) Party drew attention to the offshore status of the appellant company, in response to which a legal opinion concerning the relationship of British Virgin Islands and home law was produced. The Council did not raise any objection on this basis, and there is no reason to consider that the terms of the Unilateral Undertaking could not be effectively enforced.
43. The Undertaking refers to a range of obligations, including provision of affordable housing, in the terms set out above, and contributions towards education and the public realm; the withdrawal of residents' rights to parking permits; the setting up of a construction working party; and the preparation and approval of construction management, sustainability, and energy efficiency plans. In the majority of cases, the obligations are subject to this decision finding that they meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations, 2010.
44. For the reasons set out above, measures to enable deferred contributions to the supply of affordable housing, and to adopt a Construction Management Plan, are necessary for the development to proceed, as are those requirements intended to minimise energy use and achieve a sustainable form of development. Restriction of access to parking permits is needed to limit the pressure on street parking, and to justify the loss of existing spaces, as discussed under the main issues. The public realm contribution would help to fund pedestrian, cycling and environmental improvements in the vicinity which would directly benefit the occupants of the block and would encourage the use of alternatives to private vehicles. The education contribution is calculated in accordance with the formula in supplementary guidance CPG 8, and is intended to address the needs of the new residents in an area where there is pressure on existing school capacity. Overall, these, and the other obligations proposed, satisfy the tests in Regulation 122 and may be taken into account in determining the appeal.

### **Conditions**

45. The suggested planning conditions have been considered in relation to the discussion at the Inquiry, and the advice in the Planning Practice Guidance.

Conditions are needed to require approval of architectural and window details; to regulate the use of materials and external utility, air conditioning and solar panels equipment; to obtain a landscaping scheme and to ensure the protection of existing trees to be retained, including the location of underground foundations and services; to obtain details of waste and recycling storage; and to approve building levels, all for the benefit of the appearance of the building within the Conservation Area.

46. The installation of external lights; restrictions on the use of roofs and terraces; obscured glazing to limit overlooking; control of noise from plant and equipment; and the preparation of a Basement Impact Assessment (BIA), including the appointment of a suitably qualified engineer, are necessary to protect the amenity of adjoining residents and, in the case of the BIA, to ensure the structural stability of adjoining property. In addition, measures to optimise the sustainability of the scheme include the installation of green roofs and photoelectric cells; meeting Lifetime Homes standards; the use of a sustainable urban drainage scheme; and the provision of electric vehicle charging points and storage for bicycles. The need to meet Code 4 of the Code for Sustainable Homes forms part of the Unilateral Undertaking obligations.
47. The car parking should be retained for its intended purpose, and works carried out to reinstate the highway, to avoid additional pressure on street parking in the area and for the benefit of road safety. The installation of bat and bird boxes is necessary for the maintenance of biodiversity, and the protection of any archaeological finds on the site should be ensured by a survey prior to construction. The approved drawings are specified for the avoidance of doubt and in the interests of proper planning.
48. Amongst the additional conditions proposed by the Rule 6 (6) Party, those relating to the conduct of the construction works may be adequately regulated by the provisions of a Construction Management Plan, which forms part of the obligations in the Unilateral Undertaking. The previous uses of the site do not indicate a necessity for a land contamination survey. In other respects, the suggested additions and amendments have been incorporated into the wording of the conditions, to the extent that they are necessary to allow the development to proceed.

### **Conservation Area Consent**

49. For the reasons set out under the first main issue, there are not grounds to resist the demolition of the existing building, which does not make a positive contribution to the Conservation Area. However, a cleared site could have a detrimental effect on the appearance of the area unless there are approved proposals for a replacement building, and therefore it is necessary for the consent to be conditional upon the making of a building contract for the new work. The wording of this condition reflects the limits imposed by the tests in the Planning Practice Guidance.

### **Conclusions**

50. The proposal would meet the social and economic objectives of sustainability by providing new dwellings on a site which has not been in use for some period, and the environmental aims by preserving the character and appearance of the Conservation Area, and the setting of Listed Buildings. Whilst the concerns about the potential risks of the construction works and the

basement excavation are recognised, there is sufficient evidence to indicate that any harm could be adequately controlled and mitigated. Neither this, nor the effect on parking in the area and on the living conditions of future residents, nor any other matters raised, would justify dismissal of the appeal.

*John Chase*

INSPECTOR

## **ANNEX 1**

### **APPEARANCES**

#### FOR THE LOCAL PLANNING AUTHORITY:

Mr R Walton	of Counsel
He called	
Mr C Rose BA	Conservation and Heritage Officer
Mr N Bell ND Arb	Tree and Landscape Officer
Mr S Cardno BSC, IHE	Principal Transport Planner
Mr D Fowler BA, DipTP	Principal Planning Officer

#### FOR THE APPELLANTS:

Mr R Harris QC	
He called	
Prof R Tavernor BA, DipArch, PhD, RIBA	Tavernor Consultancy
Mr G Jefferys BArch, RIBA	KSR Architects
Mr A Hollis MSc, ARB, MICFor, FArbor, A MRICS, C Env	Landmark Trees
Mr N Bond BEng, MSc, MCILT	TTP Consulting
Mr N Sharpe BA, DipTP, MCD, MRTPI	Montagu Evans LLP

#### FOR THE RULE 6 (6) PARTIES:

Ms M Cook	of Counsel
She called	
Mr S Levrant RIBA, AADip, IHBC, DipCons, ACArch, FRSA	Heritage Architecture Ltd
Ms M MacQueen BSc, CBiol, MSB, MICFor, CEnv, MAE	Consultant Arboriculturist
Mr P Robinson LLB	Herbert Smith Freehills LLP

#### INTERESTED PERSONS GIVING EVIDENCE:

Dr R Bowdler, MA, PhD, DipCons, FSA	Local Resident
Cllr R Freeman	Borough Councillor
Ms M Remus	Head teacher, Heathside Preparatory School
Dr D Turner	Local Resident

Ms J Learmond-Criqui  
Mr P Goss

Ms A Costanzelli  
Mr I Fitzsimmons  
Ms V Harding  
Mr S Wocker  
Cllr S Vincent  
Ms B Santacruz

Chair of Hampstead Town Team  
Church Warden on behalf of the Parochial Church  
Council of Christ Church Hampstead  
Governor of Christ Church Primary School  
Local Resident  
On behalf of Heath and Hampstead Society  
Local Resident  
Borough Councillor  
Local Resident

## **ANNEX 2**

### **DOCUMENTS**

#### **From the Appellants**

- A1 Schedule of Appearances
- A2 Opening Submissions
- A3 Draft Unilateral Undertaking
- A4 Clarification of sheet piling requirements
- A5 Temporary Sheet Piling Clarification and Alternatives
- A6 Draft Unilateral Undertaking, revised
- A7 Draft Unilateral Undertaking, revised with tracking changes
- A8 Plan accompanying Draft Unilateral Undertaking
- A9 First Schedule of Unilateral Undertaking
- A10 Second Schedule of Unilateral Undertaking
- A11 Opinion as to British Virgin Islands Law
- A12 Proposed Planning Conditions (jointly with the Council)
- A13 Proposed Conservation Area Consent Conditions (jointly with the Council)
- A14 Clarification points arising out of Conditions discussion: use of terraces, green roof locations, privacy screen locations, relevant basement impact assessment reports, Lifetime Homes details
- A15 Further draft Unilateral Undertaking with tracking changes
- A16 Further draft Unilateral Undertaking
- A17 Suggested revised wording of condition concerning off-site highway works
- A18 Completed Unilateral Undertaking: signed and dated 11 December 2014
- A19 Closing submissions on behalf of the appellants

#### **From the Rule 6 (6) Party**

- B1 Opening Submissions
- B2 Area uplift calculations
- B3 Photographs of surroundings
- B4 BSI Publication Trees in Relation to Design, Demolition and Construction – Recommendations
- B5 Tree Roots in the Built Environment
- B6 Comments on proposed conditions and Unilateral Undertaking
- B7 Closing submissions on behalf of the Rule 6 (6) Party

#### **From the Council**

- C1 List of Appearances
- C2 Erratum to proof of Mr Rose
- C3 Opening Submissions
- C4 Schedule of sources of evidence on CIL compliance
- C5 Appeal Decision Ref APP/X5210/A/12/2173598
- C6 Unilateral Undertaking related to above appeal decision
- C7 Suggested wording for electric charging points condition
- C8 Closing submissions on behalf of the Council

#### **From Other Parties**

- D1 Statement to the Inspector on behalf of the Highgate Society
- D2 Statement of Case by The Heath and Hampstead Society
- D3 Report on Christ Church Hampstead by Sinclair Johnston and Partners Ltd
- D4 Statement on behalf of Christ Church Primary School
- D5 Statement from Steve Coxshall, Proprietor of Duke of Hamilton Pub

- D6 Statement by Melissa Remus, Heathside Preparatory School, and written representation enclosing air quality report
- D7 Statement by David Turner
- D8 Statement by Ian Fitzsimmons
- D9 Statement on behalf of Christ Church Primary School
- D10 Statement by Paul Goss on behalf of the Parochial Church Council of Christ Church, Hampstead
- D11 Statement by Jessica Learmond-Criqui on behalf of the Hampstead Town Team
- D12 Technical Report by Sound Research Laboratories
- D13 Statement by Cllr Roger Freeman
- D14 Statement by Roger Bowdler



### **ANNEX 3**

#### **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, or as modified in compliance with other conditions in this schedule: Site plan NEN-PL-001B; Proposed plans NEN-PL-003B, 090P, 100M, 110L, 120L, 130L, 140K, 150J, 160I, 200E, 210N, 220H, 230G, 240G, 300E, 310G, 320F, 330E, 340E, 350D, 370D, 380D; Landscaping plans 1375-11-01 rev 1, 1375-11-02 rev 1; On street parking layout 2011-1007-CR-004; Overlooking plan NEN-SK-05.
- 3) Detailed drawings in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun: i) elevation drawings at a minimum scale of 1:10 of each window type, door type, balcony and balcony balustrade/handrail; ii) plans and sections at a minimum scale of 1:5 of all typical fenestration and door details (jambs (including stone surrounds), heads (including stone surrounds), cills, frame profiles); iii) plans, sections and elevations at a minimum scale of 1:5 of all dressing details (including parapet copings), and of junctions. The relevant parts of the works shall be carried out in accordance with the details thus approved.
- 4) No meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes, shall be fixed or installed on the external face of the building, without the prior approval in writing of the local planning authority.
- 5) No external lights shall be installed except in accordance with details which have first been submitted to and approved in writing by the local planning authority.
- 6) A sample board and product information, showing all facing materials including a 1m x 1m panel of brickwork (demonstrating the proposed colour, texture, face-bond and pointing), natural slate, stone dressings, balcony and handrail sections, windows and external doors 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 samples shall be retained on site until the work has been completed.
- 7) Roofs, roof terraces and parts of roof terraces shown in Appendix 1 of Appeal Document A14 to be roofs, planting areas or non-accessible roof terraces shall provide access only for maintenance or planting and shall not be used as amenity space.
- 8) Notwithstanding the note referring to the obscured glazing on drawing No NEN-SK-05, the windows marked 'O' on that drawing shall be fitted with obscure glazing prior to occupation of the dwellings served by those windows, and the obscured glazing shall be permanently retained thereafter.
- 9) No dwelling shall be occupied until hard and soft landscaping and means of enclosure (including external gates) have been carried out in accordance with details which have first been submitted to and approved in writing by the local

planning authority. Such details shall include any proposed earthworks including grading, mounding and other changes in ground levels, and planting of roof terraces. 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, unless the local planning authority gives written approval to any variation.

- 10) 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. The trees shall be protected throughout the course of construction in accordance with the recommendations of the Tree Projects Arboricultural Report dated March 2012 and shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". No tree shown to be retained shall be pruned, lopped or otherwise altered except in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 11) Prior to the commencement of any works on site evidence in the form of photographs and an arboricultural report, demonstrating that tree protection measures have been implemented in accordance with the approved details, shall be submitted to and approved in writing by the local planning authority.
- 12) Details of the design of building foundations and the layout, with dimensions and levels, of service trenches and other excavations on site, in so far as these items may affect trees on or adjoining the site, shall be submitted to and approved in writing by the local planning authority before any excavation works on site are commenced, and the development shall proceed in accordance with the approved details.
- 13) Noise generated by plant or equipment shall not exceed 5dB(A) (or 10dB(A) where there is a distinguishable continuous note or distinct impulse) lower than the existing background level (LA90) expressed in dB(A), when measured at 1m external to any facade containing openings of a dwelling within the development hereby approved or any occupied building on adjoining land.
- 14) No external roof plant, ventilation or air conditioning equipment shall be installed except in accordance with details which have first been submitted to and approved in writing by the local planning authority.
- 15) No dwelling shall be occupied until facilities for waste and recycled materials storage and removal have been installed in accordance with details submitted to and approved in writing by the local planning authority, and the facilities shall be retained thereafter.
- 16) The development shall not be occupied until the whole of the car parking provision (including the 2 disabled bays) shown on the approved drawings is provided. Thereafter the whole of the car parking provision shall be retained and used for no purpose other than for the parking of vehicles of the occupiers and users of the development, and the 2 disabled bays shall be kept available for the use of occupiers with a Camden issued blue badge.
- 17) No dwelling shall be occupied until storage facilities for 28 cycles in the basement and of 4 additional cycle stands for occupiers and visitors at ground level have been installed in accordance with details first submitted to and

- approved in writing by the local planning authority, and the facilities shall be retained thereafter.
- 18) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
  - 19) No dwelling shall be occupied until bat and bird boxes have been installed in accordance with details, including location and species to be accommodated, that have first been submitted to and approved in writing by the local planning authority.
  - 20) No dwelling shall be occupied until the green roofs shown at Appendix 1 of Appeal Document A14 have been installed in accordance with details which have first been submitted to and approved in writing by the local planning authority. The details shall include species, planting density, substrate and a section at a scale of 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, along with a programme for a scheme of maintenance. The roofs shall thereafter be retained and maintained in accordance with the approved details.
  - 21) The development shall not commence until a suitably qualified Chartered Engineer with membership of an appropriate professional body has been appointed to inspect, approve and monitor the permanent and temporary basement construction works throughout their duration. The appointment shall be confirmed in writing to the local planning authority prior to the commencement of development and any subsequent change shall be confirmed forthwith for the duration of the basement construction works.
  - 22) No development shall take place until a revised Basement Impact Assessment (BIA) has been submitted to and approved in writing by the local planning authority. The revised BIA shall have regard to the recommendations of the following reports: TWS BIA May 2012, Arup Review 12/6/2012, Letter from TWS 8/10/2012, TWS Addendum BIA 26/9/2012, RKD Report 27/9/2012, TWS Addendum BIA April 2013, Arup Review 3/5/2013, TWS Report 24/9/2013, and RKD Review Report 2013. The development shall be constructed and monitored in accordance with the approved revised BIA.
  - 23) No development, including demolition, shall commence before a contract has been entered into with the Local Highway Authority to secure the proposed changes to the highway and parking layout, which shall include the following works: repaving footways/carriageways; level thresholds with the public highway; provision of a new crossover; changes to on-street parking bays as shown on drawing no.2011-1007-CR-004 (or any other variation subsequently approved by the Council); removal/relocation of street furniture; kerb build out and drainage; and any Traffic Management Orders required in connection with the development. The new units hereby permitted shall not be occupied until the works that are the subject of that contract have been completed.
  - 24) No development shall take place until details of levels of the development at the boundary of the property with the public highway have been submitted to and approved in writing by the local planning authority, and the development shall proceed in accordance with the approved details.
  - 25) No dwelling shall be occupied until 4 active and 4 passive electric vehicle charging points for the car spaces have been installed in accordance with

details which have been first been submitted to and approved in writing by the local planning authority, and the charging points shall thereafter be retained in working condition.

- 26) The lifetime homes features and facilities, as indicated on the approved drawings and at para 6.1 of the KSR Design and Access Statement, shall be provided in their entirety prior to the first occupation of any of the new residential units.
- 27) No development shall take place until details of the location and extent of photovoltaic cells to be installed on the building have been submitted to and approved in writing by the local planning authority. The cells shall be installed in accordance with the approved details prior to the occupation of any dwelling, and thereafter retained and maintained in working condition.
- 28) No development shall take place until details of a Sustainable Urban Drainage System (SUDS) have been submitted to and approved in writing by the local planning authority. The System shall be implemented in accordance with the approved details prior to occupation of any dwelling and thereafter retained and maintained in working condition.