
Appeal Decision

Hearing held on 18 February 2015

Site visit made on 18 February 2015

by Louise Phillips MA (Cantab) MSc MRTPI

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

Decision date: 25 March 2015

Appeal Ref: APP/X5210/A/14/2223057

ASF Garages Limited, 138 Highgate Road, London NW5 1PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr G Meehan against the decision of the Council of the London Borough of Camden.
 - The application Ref 2014/1692/P, dated 28 February 2014, was refused by notice dated 2 June 2014.
 - The development proposed is the demolition of the existing garage and the construction of a new, three storey mixed-use building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision notice includes 12 reasons for refusal, eight of which concern the absence of financial contributions or other planning obligations which the Council would wish to see secured by means of a legal agreement. However, the Council confirmed before the Hearing that it would not be pursuing Reason 12, which relates to the provision of a local labour agreement (Council's Statement, paragraph 5.3).
3. In respect of Reasons 5-11, an executed legal agreement pursuant to S106 of the Act¹ (S106 Agreement), has now been provided. This would appear to address the Council's concerns and none of its provisions are disputed by the appellant. Therefore, while I have taken account of the S106 Agreement in reaching my decision, the matter of planning obligations is not a main issue for the appeal.
4. The Council has drawn my attention to inaccuracies on the plans whereby the window openings shown on the proposed first floor do not quite align with those shown on the proposed second floor or the east elevation. The drawings listed as Document No 1 at the end of my decision indicate that the problem amounts to a drafting error which appears to me to be rectifiable without any fundamental redesign. Consequently, while I am mindful of this issue in determining the appeal, it does not affect my decision.

¹ Town and Country Planning Act, 1990.

Main Issues

5. In light of the above, the main issues are:

- The effect of the proposed development upon the character and appearance of the area, including whether it would preserve or enhance that of the Dartmouth Park Conservation Area; and its effect on the setting of nearby Listed Buildings.
- Its effect on employment opportunities in the area.

Reasons

Character and Appearance

6. The appeal site comprises an MOT centre and petrol station with a covered forecourt on Highgate Road within the Dartmouth Park Conservation Area. Overall, the Conservation Area includes a variety of architecture, dating from the late 18th Century to the present day and so the Council's Appraisal² divides it into ten sub-areas.
7. The appeal site falls within Sub-Area 1: Highgate Road, which itself includes buildings of different ages and styles in both commercial and residential use. It is just to the north of the railway bridge on the eastern side of the road. Whilst the buildings near to the bridge on the western side come right up to the footway, the majority on the eastern side are set well back behind a strip of green space. There is a similar strip of green space on the western side of the road to the north of the buildings in commercial use at ground floor level. These spaces, which mostly contain mature trees, make an important contribution to the character and appearance of this part of the Conservation Area. They also contribute significantly to the setting of several listed buildings, including Grove End House and Nos 1-27a Grove Terrace which overlook them nearby to the north.
8. The site itself lies 'within' the green strip of land on the eastern side of Highgate Road, being bordered to the north and south by open space. The space to the north is protected under the London Squares Preservation Act, 1931 as part of the "Grove Terrace Squares", which extend to the northern end of Grove Terrace. The space to the south is not protected by statute, but it is designated public open space in the development plan. Unlike the northern Squares, it contains only one mature tree and is enclosed by railings, but it nonetheless provides continuity of character.
9. The existing petrol station on the appeal site is recorded within the Conservation Area Appraisal as a negative feature (paragraph 7.23) and certainly, the functional workshop and plastic canopy do not sit comfortably alongside the generally more attractive and traditionally constructed buildings. Moreover, its position on the Highgate Road frontage makes it conspicuous in near views and this detracts from the strength of the main building line to the east. Denyer House, to the immediate rear of the site, is an unlisted flatted development dating from 1936, but it follows the building line set by Grove Terrace and if it were not for the petrol station, it would overlook a similar green space. Thus the petrol station also disrupts the continuity of character described above.

² Dartmouth Park Conservation Area Appraisal and Management Statement, 22 January 2009.

10. Nevertheless, the petrol station building is set right at the back of the site, leaving the area adjacent to the highway relatively open. It is also single storey and cut into the rising ground so that Denyer House is elevated above it as well as being substantially taller. The similar building at Darcars Yard, which itself is registered as a negative feature in the Conservation Area, is likewise set back from the road and into the ground and this combination of design and position diminishes the prominence of both buildings in the street scene.
11. Whilst the canopy at the appeal site remains an incongruous feature on the frontage, it permits views through the site from north to south and east to west. Thus it is still possible to perceive a degree of connectivity between the areas of green space that the site separates and a clear view of Denyer House from the road remains. The appellant considers that views around and through the site are already significantly reduced by the existing development and by the density of the adjacent trees. The effect of this is depicted in several of the submitted verified views. However, on my visit, I could see clearly through the site from various vantage points, both in the distance and near at hand.
12. The proposed development would replace the petrol station building and canopy with a new building providing three retail units at ground floor level and two floors of residential apartments above. Given the lie of the land, while the building would be three storeys tall at the front, it would only appear as two storeys at the rear facing Denyer House. It would also be set away from the rear boundary of the site and a small 'garden' area would be created adjacent to College Lane, the narrow path which runs between the appeal site and Denyer House. This aspect of the proposal might improve the experience of anyone walking along College Lane, because the existing rear wall of the petrol station is somewhat oppressive.
13. However, the building would fill the width of the site and come close to the front boundary so that the upper floor balconies would be level with the Highgate Road footway. Notwithstanding that the height and use of the proposed building is informed by that of the three storey Victorian buildings on the opposite side of the road, the additional height and width that would be added to the frontage would be highly discordant. The Victorian buildings may well come right up to the footway, but the established pattern of development on the western side of the road is quite different. On the eastern side, a solid and substantial building of the type proposed would compete with the principal building line and detract even more than does the petrol station from the setting provided by the open space.
14. The appellant disputes the significance of the 'open' land occupied by and adjoining the appeal site in the context of the historical development of the area. On the basis of the evidence presented in its Heritage Report³, the parties agree that a garage building of some sort has been present on the site since 1924. Prior to this, it appears that it formed part of the private formal gardens of the St John's Farmhouse complex, which has since been demolished and replaced by Denyer House.
15. However, whether in private or public ownership, it is clear that the site has been open for much of its history and none of the Ordnance Survey Maps provided show the land to either side having been built upon. Thus I consider that the openness of this area as a whole is significant in terms of the pattern

³ Heritage Report, by Giles Quarme, dated 2014.

of development over time and, as I have suggested above, it is certainly important in terms of its visual appearance now. Therefore, it would not be of benefit for the new building to define the edges of the open space to its north and south. If a 'book-end' is required at the southern end of the strip to mirror that provided by the (now subdivided) semi-detached properties projecting in front of No 27a Grove Terrace to the north, the railway bridge seems to serve this purpose more than adequately. By contrast, the building proposed would just interrupt the flow.

16. In respect of its detailed design, the long vertical glazing panels which would span the first and second floors, would be intended to break up the bulk of the building and simulate the height of the surrounding properties. However, any benefits they might have in this regard would be offset by its overall appearance, which would be wholly out of keeping with its more traditional neighbours. I appreciate that the modern styling reflects a deliberate effort not to create a pastiche, but with its wide floor plan, flat roof and irregular pattern of fenestration, the building would lack the refinement and elegance which defines the area. The result would just draw attention to the fundamental incongruity of its location on the Highgate Road frontage.
17. In reaching my decision, I have taken account of the proposal to pollard a London Plane Tree adjacent to the northern boundary of the site⁴ in order to accommodate the development. The tree is a mature and attractive specimen and it makes a positive contribution to the Conservation Area, individually and as part of the wider group. Whilst pollarding is not uncommon in the Borough generally, the significant reduction in both the height and spread of the canopy would afford this particular tree a peculiar appearance next to those around it, which look more natural. Consequently this matter also weighs against the proposal, but its impact on the character and appearance of the Conservation Area would be far less than those which I have already described.
18. For the reasons above, I conclude that the proposed development would be significantly detrimental to the character and appearance of the area. It would fail to preserve the character and appearance of the Dartmouth Park Conservation Area, or the setting of the listed buildings which overlook the Grove Terrace Squares. In both respects, its effect would be worse than that of the existing garage and so the fact that it would replace an identified negative feature in the Conservation Area carries very limited weight in my decision.
19. Consequently the proposal would be contrary to Policy CS14 of the Camden Core Strategy, 2010-2025; and Policies DP24 and DP25 of the Camden Development Policies, 2010-2025. These seek to preserve and enhance the Borough's heritage assets and to ensure a high quality of design relative to the surrounding area. In that it would detract from the continuity of designated open space, it would also conflict with Policy CS15 of the Core Strategy.
20. In terms of the tests set out in Section 12 of the National Planning Policy Framework (the Framework), I consider that the harm which would be caused to the significance of the Conservation Area would be *less than substantial*. However, this is because there is no evidence before me to suggest that the harm would extend beyond Sub-Area 1. In the particular locality of the site,

⁴ Tree noted as T9 in the appellant's Arboricultural Impact Assessment & Tree Protection Plan, by BOSKY Trees, dated 20 February 2014.

the harm would be considerable. In respect of the Listed Buildings, the degree of harm would more clearly be *less than substantial*, because their prime setting is provided by the protected Squares. Nevertheless, I do not consider that the public benefit of the new retail and residential uses on the site would outweigh the *less than substantial* harm which would be caused.

Employment Opportunities

21. Policy CS8 of the Core Strategy and Policy DP13 of the Development Policies document seek to safeguard existing sites and premises in the Borough in order to secure a strong economy and provide a range of employment opportunities. The definitions in paragraph 13.11 of the Development Policies document make it clear that the terms 'business' and 'employment' refer to general industrial uses falling within Use Class B2 of the Use Classes Order and similar uses classed as *sui generis*. Therefore, regardless of whether the MOT centre is considered as a single *sui generis* planning unit together with the petrol station, or as a separate B2 unit, the development plan policies referred to above apply to the proposal.
22. The policies relate specifically to employment sites which meet the needs of modern industry and thereby remain suitable for continued business use. Having regard to the advice in Section 7 of Camden Planning Guidance No 5⁵, the appellant's suggestion that the site would fall into Category 3, representing those which are most heavily compromised, is not unreasonable. Paragraph 7.14 of the Guidance states that such sites may not be suitable for continued industrial use when they become empty.
23. In this case, the site is not empty and I am not persuaded that any of its flaws when assessed against the categories in the Guidance would render it unsuitable for a similar small mechanic's business or indeed another petrol station. On this basis, and taking account of the findings of my colleague who determined an appeal in Charlotte Street, Camden⁶, the proposal would conflict with requirement of Policy DP13 to provide evidence that the possibility of retaining, reusing or redeveloping the site for a similar business has been fully explored.
24. However, the site presently provides just two jobs and at least one of those is akin to a job in the retail sector. In that the new development would provide three separate retail units, there is the potential for more jobs to be created overall, and Policy CS8 does recognise the importance of retail as an employment generating use. In this respect, I note that a couple of the existing retail units in the neighbourhood centre opposite the site are vacant, but I agree with the appellant that new, purpose built units are likely to be more attractive to potential occupiers.
25. Therefore, while I do not seek to undermine the value of one skilled job, I conclude that the actual harm which would be caused to employment opportunities in the area would be minor. Indeed, the creation of additional jobs in the retail sector might well be of greater benefit. This weighs against the conflict with Policy DP13 in this particular case and consequently, this matter alone would not cause me to dismiss the appeal. However, this neither outweighs nor alters my findings in relation to character and appearance.

⁵ On Town Centres, Retail and Employment.

⁶ Appeal ref APP/X5210/A/13/2198656.

Other Matters

26. As stated above, a S106 Agreement has been submitted a which would appear to address the Council's reasons for refusal Nos 5-11. However, while I have no reason to doubt that its provisions meet the relevant tests in law and policy⁷, given my findings in relation to the first main issue of the appeal, my decision does not turn on this matter. I have not, therefore, considered it in detail.
27. Similarly, while I have taken account of the other matters raised by interested parties, including outlook and loss of light at Denyer House as well as the potential for noise and congestion in the access road, the outcome of the appeal does not turn on these matters.

Conclusion

28. I have found in the appellant's favour in relation to the effect of the proposal upon employment opportunities in the area. However, my findings in respect of character and appearance are determinative, and so I conclude that the appeal should be dismissed.

Louise Phillips

INSPECTOR

⁷ As set out in regulation 122 of the Community Infrastructure Levy Regulations 2010; and paragraph 204 of the Framework.

APPEARANCES

FOR THE APPELLANT:

Kieran Rafferty	K R Planning
Graeme Keen	Of Counsel, Landmark Chambers
Stephanie Brooks	Brooks/Murray Architects
Giles Quarme	Giles Quarme and Associates

FOR THE LOCAL PLANNING AUTHORITY:

Rob Tulloch	Senior Planning Officer, Camden Council
Charles Rose	Senior Design & Conservation Officer, Camden Council
Nick Bell	Landscape Officer, Camden Council

INTERESTED PERSONS:

Patrick LeFevre	Chairman, Dartmouth Park Conservation Area Advisory Committee
Oliver Lewis	Councillor, Camden Council
E Howard	Local Resident
E Willmott	Local Resident

DOCUMENTS

1. Four drawings relating to window alignment.
2. Email from MLM Building Control, dated 17 February 2015.
3. Viewpoint Locations, by Preconstruct.
4. Table 3, Significance of Effects Matrix, from appellant's Heritage Report.
5. Image and text relating to No 7 Fitzroy Square.
6. London Squares Preservation Act, 1931.
7. Executed Unilateral Undertaking, dated 23 February 2015.
8. Executed S106 Agreement, dated 9 March 2015.