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# Appeal Decision

Site visit made on 3 March 2015

**by R J Marshall LLB DipTP MRTPI**

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

**Decision date: 31 March 2015**

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**Appeal Ref: APP/X5210/A/14/2227821**

**2, The Victoria, Mornington Terrace, London, NW1 7RR**

- 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 Thalaki Enterprise Ltd. against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/5093/P, dated 4 August 2014, was refused by notice dated 1 October 2014.
  - The development proposed is "Alterations during the course of construction, namely to form 2 no. lightwells fronting Mornington Terrace and Mornington Place to provide natural light, ventilation and outlook to the basement accommodation and internal re-arrangements to Flat 1 and 2 at ground floor and basement level".
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## Decision

1. The appeal is dismissed.

## Procedural matter

2. The application description given above is taken from the planning application form. The Council revised the application description to "installation of 3 lightwells fronting Mornington Terrace and Mornington Place and internal re-arrangements to flat 1 and 2 at ground floor and basement level". The appellant has no objection to this change. As it is a slight improvement in the application description I shall use it in this decision.

## Application for costs

3. An application for costs was made by Thalaki Enterprise Ltd against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

## Main Issue

4. The main issues in this decision are: **first**, the effect of the proposed development on the character and appearance of the Camden Town Conservation Area; and **second**, whether a legal agreement is necessary to secure a construction management plan and a financial contribution towards highway works/repairs.

## Reasons

### ***Character and appearance***

5. The appeal site is in the Camden Town Conservation Area. Until recently the appeal building was the Victoria public house. However, planning permission has recently been given for the conversion of the building to residential use including the provision of accommodation in the basement. Work is underway implementing that permission. Under the permitted scheme pavement lights were to provide light to the basement. In the proposal before me on appeal the appellant is seeking the provision of 3 light wells to serve this purpose as an alternative to the pavement lights. The site is in a corner location at the junction of Mornington Terrace and Mornington Place. Two of the proposed light wells would be on the Mornington Place frontage and one on the Mornington Terrace frontage. The light wells would be surrounded by railings.
6. The Camden Town Conservation Area is comprised of a mix of commercial and residential areas. The appeal site is in one of the residential areas. These were laid out in the period 1820 – 1850 and are largely homogenous in scale and character. Houses are generally in terraces, 3 storeys high raised on basements and with stucco finishes on the lower floors and London stock brick above. Taken individually the houses appear tall and narrow. This is generally the case in the vicinity of the appeal site, though there is also some 20<sup>th</sup> century residential development nearby and the 19<sup>th</sup> Century terrace in Mornington Place is not raised so high above the basement as is the case with some roads elsewhere. Given the quality of development in the area and its townscape the Camden Town Conservation Area is a Heritage Asset of considerable significance.
7. The appeal building has a solely render finish. There is no fine detailing around the windows. It has a wide frontage onto both roads at the road junction, and thus its proportions are quite different from the houses nearby. At roof level there is a distinctive parapet with railings above and a large core plinth. Although not retaining all the features of its past use in the way of signage etc. its past commercial use is evident. Given the above factors the appeal building has a different character and appearance to much of the housing in the Conservation Area, including along the 2 roads onto which it fronts.
8. The appeal building is not listed. Nor is it on any non-statutory list. As such I consider it not to be a non-designated heritage asset. It is, however, noted on the Conservation Area map as a positive building. And in the *Camden Town Conservation Area Appraisal and Management Strategy* it is said to give variety to the roads onto which it fronts. This was borne out by what I saw. Even with some of the public house features gone it provides, on this prominent corner site, a pleasant contrast to the predominant housing locally. As such although of insufficient importance in isolation to be a non-designated heritage asset it makes a positive contribution to the character and appearance of the Conservation Area.
9. The proposed development would leave much of the fabric of the building unchanged. However, the installation of the light wells and railings around them would, by introducing a design element common to the housing in the area, diminish the extent to which the appeal building stands out. It would look less like the public house that it once was, a building of a type not characterised by light wells providing light to residential accommodation. This

- diminution of variety in the area would be to the detriment of the character and appearance of the Conservation Area.
10. I have arrived at this conclusion on the basis of case before me. The 2 appeal decisions referred to by the Council, APP/X5210/A/06/2022362 and APP/X5210/A/08/2073462, are insufficiently comparable to indicate what may or may not be acceptable in this case.
  11. The degree of harm would, in terms of the Planning Policy Guidance (PPG) on *Conserving and Enhancing the historic environment* be less than substantial. However, considerable weight should be attached to even this level of harm in a Conservation Area. The only substantial benefit referred to is an improvement to the lighting of the basement accommodation. This is not a public benefit sufficient to outweigh the harm to the Conservation Area.
  12. It is concluded that the proposed development would harm the character and appearance of the Camden Town Conservation Area. As such it would fail to meet the statutory test that in such areas new development should preserve or enhance their character or appearance. There would be conflict with Policy CS14 of the Camden Core Strategy 2010 in so far that it requires new development to respect local context and character and with Policy DP24 of the Camden Development Policies LDF in so far that it has a similar objective.

### ***Necessity for a legal agreement***

13. I turn first to the Council's requirement for a legal agreement to provide a Construction Management Plan. It is commonplace now, where deemed necessary, to have method statements on such matters in place. They help preserve the living conditions of neighbours and prevent traffic congestion and harm to highway safety.
14. The appellant has provided a Unilateral Undertaking on the matter, though contending that it could and should have been dealt with by condition. On this I agree with the appellant. Whilst I note the Council's concerns on such an approach it is now common for conditions on Construction Method Statements to be imposed on applications, including on appeal. A form of condition commonly used on this covers a wide range of matters. For development of the relatively small scale proposed, off what appear to be quiet roads with opportunities for parking and loading and unloading without unduly impeding traffic movements, I see no reason why a condition in the form commonly used, or a variation thereof, would not be entirely acceptable.
15. I now turn to the Council's requirement for the legal agreement also to provide for the payment of money to ensure that the following is carried out at the appellant's expense: repairs to the adjoining highway; tying the proposed development into the surrounding highway network and improving the public realm adjoining the site. The Council initially asked for a Section 106 Agreement alone to cover this, and later at appeal stage said the agreement should also be under Section 278 of the Highways Act. The appellant has submitted an Undertaking making a financial contribution whilst contesting its necessity.
16. However, the building works are not on the highway and the Council has given no clear indication as to why damage would occur to the highway other than a broad reference to the proximity of the proposed lightwells to the pavement.

Nor has any substantial evidence been given to justify the sum of money sought. And even were damage to occur it seems to me that compensation for this would be addressed by other means. It is unclear precisely what is required in terms of tying the proposed development into the highway network. Thus the necessity for a legal agreement on this has not been made out. As for improving the public realm beyond the site this would not be directly related to the development. For all these reasons the planning obligation sought would not meet the tests in paragraph 204 of the Framework, that is that they must be necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related to it in scale and kind. Nor has the Council made it clear why, having introduced the matter at a late stage the matters it sought to have covered in the Section 106 Agreement needed to be duplicated by a Section 278 Agreement.

17. It is concluded that it has not been shown that a legal agreement is necessary to secure a construction management plan and a financial contribution towards highway works/repairs. I do not need, therefore, to address the Council's concerns on the wording of the agreement.
18. The fact that an agreement of the kind sought was provided with the previous application does not alter my conclusion above.

### **Conclusion**

19. Although I have found for the appellant on the second issue it is harm on the first issue that is the determinative factor in this appeal. For the reasons given above the appeal should be dismissed.

*R J Marshall*

INSPECTOR