



Appeal Decision

Site visit made on 31 March 2015

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 28 April 2015

Appeal Ref: APP/X5210/W/14/3000546

Land to the rear of 100a and 102 Fellows Road, Kings College Road, London NW3 3JG

- 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 Dr Otto Chan against the decision of the Council of the London Borough of Camden.
 - The application Ref 2014/0586/P, dated 29 January 2014 was refused by notice dated 14 July 2014.
 - The development proposed is the erection of a building comprising basement, ground and first floor for use as a single family dwelling.
-

Procedural Matters

1. The application was accompanied by a number of supporting documents including: a Design and Access Statement (DAS); a Lifetime Homes Assessment; a Code for Sustainable Homes Assessment; a Daylight Assessment; a Basement Impact Assessment; a Tree Survey; a Waste Storage and Collection Assessment; a Construction Management Plan and a Planning Obligation.
2. The application was refused for 7 reasons. Reasons for Refusal (RFR) 1-4 relate to the absence of a legal agreement to secure (i) car-free housing (ii) a construction management plan (iii) a sustainability plan and (iv) a highways contribution. However, since the decision was issued the Appellant has submitted a signed and dated copy of a Planning Obligation Agreement under S106 of the Town and Country Planning Act which addresses the matters in RFR1-RFR4. It provides that no new resident of the dwelling shall be entitled to apply for a residents' parking permit; it provides for the submission and approval of a Construction Management Plan and a Sustainability Plan before the development is implemented and for a highways contribution. All the necessary information has been submitted and the legal agreement has been accepted by the Council. The S106 Agreement is dated 11 February 2015 and a copy was received by me as part of the appeal documentation. The S106 Agreement is a material consideration in this case and the Council accepts that it overcomes RFR1-RFR4. I have had regard to the S106 Agreement in coming to my decision in this case.

Decision

3. The appeal is allowed and planning permission is granted for the erection of a building comprising basement, ground and first floor for use as a single family

dwelling on land to the rear of 100a and 102 Fellows Road, Kings College Road, London NW3 3JG in accordance with the terms of the application, Ref 2014/0586/P, dated 29 January 2014 and the plans submitted with it, subject to the conditions set out in the attached schedule at Annex A.

Main Issues

4. I consider there are three main issues in this case. These are:
 - (i) whether the proposal would preserve or enhance the character or appearance of the Belsize Conservation Area;
 - (ii) the effect of the proposal on the living conditions of nearby residents in terms of outlook and dominance; and
 - (iii) whether adequate provision is made for future soft landscaping because of the excavation across the full extent of the site and the potential shallow depth of soil above the excavation.

Reasons

5. The appeal site comprises a long thin strip of unoccupied scrub land to the rear of Nos 100A and 102 Fellows Road with a 7m frontage to King's College Road, a short side street running between Fellows Road and Eton Avenue to the north within the Belsize Conservation Area. Both principal streets are fronted by large houses, many of which have been divided into flats. The site is identified in the Belsize Conservation Area Statement (CAS) as being in the Eton Avenue sub-area where all the buildings in the immediate vicinity are identified as making a positive contribution to the Conservation Area.
6. The development plan for the area comprises the London Plan (July 2011) incorporating the Further Alterations (March 2015) and the Revised Early Minor Alterations (October 2013). It also includes the Camden LDF Core Strategy and Development Policies (November 2010). The Council refers to a number of LDF policies insofar as they relate to the RFR. They also refer to supporting documentation in the Camden Planning Guidance 4 - Basements and Lightwells (September 2013) (CPG) and the Belsize Conservation Area Statement (2003) (CAS). The National Planning Policy Framework (NPPF) (2012) is a material consideration in this case.
7. The Council's policies are recent and up-to-date and there are no material differences between the NPPF and the Council policies in relation to this appeal. With regard to RFR5-RFR7, the Council highlights in particular Core Strategy Policies CS5 and CS14 together with Development Policies DP23, 24, 25, 26 and 27. I have taken these and other relevant Core Strategy and Development Policies into account along with relevant supplementary guidance in the CAS and CPG in coming to my decision in this case.
8. Both sides set out the planning history of the site. Suffice it to say that planning permission was granted on appeal for the erection of a basement, ground and first floor single dwelling house (Class C3) fronting King's College Road in July 2012.¹ In addition, the adjacent site at the rear of No 53 Eton Avenue has relevant planning history. In March 2013 planning permission was granted for the erection of a building comprising basement, ground floor and

¹ APP/X5210/A/12/2169260

first floor for use as a single-family dwelling house (Class C3).² As I saw on my site visit, this permission has now been implemented.

9. The principle of a new house on the appeal site has already been established by the permission in July 2012. This is still a live consent. The Appellant has confirmed that it will be implemented if this appeal fails and the Council accepts that it is a fall-back position against which this appeal proposal must be judged. In my view the appeal proposal also has to be considered in the context of the newly constructed house on the adjacent site at the rear of No 53 Eton Avenue. It, like the 2012 appeal scheme and this appeal proposal, involves a building with its top floor at street level and others below street level and invisible to the public.
10. The proposal is for a property with 4 bedrooms and a number of other facilities and features. At 'lower lower ground floor' there would be a plant room and storage area to the rear of the site. Above this would be the lower ground floor with a large play area with a gym and utility area to the front. Above this would be the ground floor area where the main living rooms are found. This sits below the level of the street. The entrance to the unit is in this location and opens into a kitchen, dining and living area. The upper ground floor is slightly above pavement level. There is a front garden area and another entrance into the property where 4 bedrooms are found. A courtyard extends up to this floor. This floor is partly set back from the floors below.
11. At its highest point the building would be about 1.16m below the neighbouring property and about 3.67m above the pavement level. It would be mainly constructed of concrete with steel frame windows. There would be a long-slatted semi-translucent wood and glass screen facing properties on Fellows Road, with the northern elevation being concrete. The front and rear elevations would contain more glass. Compared with the approved building this proposal is about 3.3m longer over about half of the front elevation (the other half being on roughly the approved line), 3.4m longer at the rear and about 0.5m higher. The front projection is to allow a lift to be installed at some time in the future and to meet the Council's Lifetime Homes' policy.

Issue (i) Effect on the Belsize Conservation Area

12. The Council has concerns about the front building line of the proposal and its relationship with the side elevation of No 102 Fellows Road, its failure to respond to the existing staggered building line and the consequent views from Kings College Road. At my site visit I saw that projecting elements are common in Kings College Road - No 102 has two 2-storey side bays, its projecting single storey bay, the projecting single storey building on the opposite side of the road and the new dwelling at the rear of No 53 Eton Avenue. When viewed from Kings College Road³ the proposal would be seen behind the front garden wall, principally in the context of the newly constructed house. The transitional effect of the frontage setback and the unassertive reflective and semi-transparent quality of the glass frontage with its thin glazing bars would be plainly evident. I also consider there would be a very clear physical separation between the appeal proposal and the much taller No 102, which is built of entirely different, solid material with an eye catching red and white colour palette, contrasting quoins and a flamboyant

² Ref: 2012/5729/P

³ See the montage at Image 9 in the Appellant's statement

chimney stack. Together these features cause No 102 to be read as a very dominant and assertive corner building in complete contrast to the much lower and self-effacing appeal proposal.

13. The plan⁴ shows that the southern element of the appeal proposal would be on the building line established by No 102's side bay and its northern element would step back to make a transition to the line of the newly constructed house. The appeal proposal is completely consistent with the developing character of this part of the Conservation Area. It would have a positive effect in balancing the newly constructed house at the rear of No 53 and screening it in views from the south. I conclude on this issue that the proposal would preserve the character and appearance of the Conservation Area. There would be no conflict with Core Strategy and Development Policies CS14, DP24 and DP25 or the guidance in the CAS.

Issue (ii) Effect on the living conditions of neighbours

14. The Council is concerned about the impact of the building in views from the rear garden of 102 Fellows Road. It is argued that the bulk and massing would be overbearing because of its height and depth along the boundary with houses to the south. I disagree. I accept that the proposed scheme would now fill the entire width of the site at all floor levels but this is only critical in relation to the uppermost storey. A timber slatted privacy screen is proposed for this elevation and this approach would provide an elegant and high quality solution to the constraints of the site. Although the height and extent of the privacy screen would be visible from the rear garden of No 102 it would not be over-dominant or overbearing when viewed from the rear of this property or nearby properties.
15. There is no issue about the proposal affecting daylight or sunlight to the houses or gardens or loss of privacy – the sole issue is one of outlook. This has to be considered in the context of the existing outlook and use of the appeal site.⁵ I saw that the appeal site is used for storage of building materials and, from the evidence that is before me, it is often fly-tipped. The Council appears to accept that the site is an eyesore and has expressed a preference for the timber slatted design of the screen. The existing fence to the rear of Nos 100A and 102 is flimsy or non-existent. The retaining wall at the rear of No 53 Eaton Avenue is in a poor state of repair and the side elevation of the newly constructed house at the rear of No 53 is not particularly attractive. Drawing all of these matters together I conclude that the proposal would not harm the living conditions of neighbours nor would it conflict with the underlying objectives of Core Strategy and Development Policies CS5 and Policy DP26.

Issue (iii) Provision for future soft landscaping

16. The Council is concerned that the proposed development, by virtue of the excavation across the full extent of the site and the potential shallow depth of soil above the excavation, would fail to provide opportunities for future soft landscaping. Reference is made to CPG4 – Basements and Lightwells which indicates that basement development should provide an appropriate

⁴ See Image 10 in the Appellant's statement

⁵ See Image 11 in the Appellant's statement

proportion of planted material to allow for rain water to be absorbed and/or to compensate for a loss of biodiversity caused by the development.

17. I do not share the Council's concern on this matter for several reasons. First, it was accepted by the Inspector in the appeal decision dated 17 July 2012⁶ that even if the basement were to be set back from the street it is unlikely that it would be reasonable to expect that much could be planted that would be capable of achieving any height. This was confirmed by the Appellant's arboriculturalist. This calls into question the possibility of achieving any worthwhile planting in the basement area. Secondly, the proposal has a green roof and an atrium that would be planted. This can reduce the environmental impact of the building and create habitat for native flora and fauna. Thirdly, the Appellant has shown how the proposal can satisfy this consideration if required.⁷ The plan shows that 1m of soil could be replaced over the projecting basement at the rear of the site and 0.5m is shown over the projecting basement at the front of the site. This is sufficient for the garden planting sought by CPG4 if required and can be secured by condition.
18. Fourthly, I am aware that CPG4⁸ indicates that sufficient margins should be left between the site boundaries and any basement construction to enable natural processes to occur and for vegetation to grow. However, while this may be a desirable aim in conventional suburban gardens it is inappropriate in the particular circumstances of this case. This is a narrow site well below street level with a high wall on one side, subject to fly-tipping and with no worthwhile biodiversity. Even if the site remained undeveloped around its boundaries I consider that nothing would grow on the remaining land because it would be in deep shadow. There are already trees on its northern boundary in the gardens of the houses on Eton Avenue.
19. Finally, the extant decision has to be taken into account as a fall-back position and its weight is increased because it was not made in a fundamentally differently policy context to now. The Council does not argue that the proposal is deficient in open space when measured against any relevant standard. For all of these reasons I conclude on this issue that there would be no conflict with Policies DP23, DP24 and DP27 or the NPPF.

Planning obligations

20. The Appellant has submitted a S106 Agreement providing obligations for various matters relating to the development. The tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL) and in the NPPF require that a planning obligation may only constitute a reason for granting planning permission where it is necessary to make the development acceptable in planning terms, is directly related to and fairly related in scale and kind to the development.
21. The construction impact of the development is likely to be significant and much of it would take place outside of the site and therefore beyond the control of a planning condition. A planning obligation is therefore an appropriate mechanism to require the submission and implementation of a Construction Management Plan. As there might be damage to the highway

⁶ APP/X5210/A/12/2169260 paragraphs 22 and 23

⁷ See the section at Image 13 of the Appellant's statement

⁸ See paragraph 2.65

outside the site during construction, the obligation provides for a developer's contribution of £4,000 towards any necessary repairs to pay for these works. Both obligations meet the CIL tests and can be taken into account.

22. Policy DP18 states that the Council expects all development to be car free in areas of high public transport accessibility in order to facilitate sustainability and to help promote alternative, more sustainable methods of transport. The appeal site is located within an area with a high public transport accessibility level (PTAL score 4). This site is also located within a Controlled Parking Zone (CPZ) which suffers from high levels of parking stress. In that the obligation provides that future occupants of the new dwelling would not be entitled to apply for a residents' parking permit, it directly relates to the development and is necessary to make it acceptable in planning terms.
23. Core Strategy Policy CS13 sets out the Council's overall approach to tackling climate change, which includes provision for higher environmental standards in design and construction. Policy DP22 provides details of the sustainability standards. The Agreement provides for the submission and approval of a Sustainability Plan prior to occupation of the new dwelling to secure Code for Sustainable Homes 4. This is a matter that is often addressed by means of a planning condition. However, in that the Sustainability Plan would provide for subsequent management and maintenance to maintain that standard, it would meet the CIL tests and can be taken into account. Finally, the Council has confirmed that the proposal does not include a developer contribution to a specific infrastructure project, or a provision for a type of infrastructure funded through standard SPD/SPG- based tariffs.⁹

Conditions

24. I have considered the conditions suggested by the Council in the light of the advice in paragraphs 203 and 206 of the NPPF, the model conditions retained at Annex A of the cancelled Circular 11/95 and the Government's Planning Practice Guidance on the use of planning conditions.
25. For the avoidance of doubt development shall be restricted to the approved plans and the package of supporting documentation for the design of the dwelling. Conditions on materials, foundations and slab levels, privacy screens, landscaping, cycle parking, refuse storage areas and the green roof are all necessary to secure an appropriate standard of development. There are trees on the adjoining site and in the street that could be damaged by plant during piling and construction works and a scheme is required for their protection during the course of building works.

Conclusion

26. The appeal proposal would make effective use of the site in a highly accessible location and would contribute to housing provision in the Borough whilst providing satisfactory living conditions for its future occupants. It would preserve the character and appearance of the Conservation Area and be in keeping with the street scene without adverse impact on surrounding residents or on the adjoining trees. As such it would comply with the objectives of the Camden Core Strategy, the London Plan and the Council's Development Policies, the Camden Planning Guidance and the Belsize CAS. I

⁹ Community Infrastructure Levy (CIL) Regulation 123(3) (as amended)

have taken into account all other matters raised but none are of such weight as to override my conclusions for the reasons given above that the appeal should be allowed.

Harold Stephens

INSPECTOR

Annex A

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than the end of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the approved drawings: PLANNING APPLICATION PACKAGE (14 January 2014) - Appendix 1 - Design and Access Statement. Appendix 2 - Drawings and montages (01 Rev 3; 2a Rev 3; 2b Rev 3; 03 Rev 3; 04 Rev 3; 05 Rev 3; 06 Rev 3; 07 Rev 3; 08 Rev 3; 09 Rev 3; 10 Rev 3; 11 Rev 3; 12 Rev 3; 13 Rev 3; 14a Rev 3; 14b Rev 3; 15 Rev 3). Appendix 3 - Lifetime Homes. Appendix 4 - Code for Sustainable Homes. Appendix 5 - Daylight Assessment. Appendix 6 - Basement Impact Assessment. Appendix 7 - Tree Survey. Appendix 8 - Waste Storage and Collection. Appendix 9 - Construction Management Plan. Appendix 10 – Planning Obligations.
- 3) Notwithstanding Condition 2 no development shall take place until details of all external facing and roofing materials (including windows, doors and balustrades) to be used on the building have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding Condition 2 no development shall take place until details of the design of the foundations and the proposed slab levels of the building in relation to the existing and proposed levels of the site and the surrounding land have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) Prior to the first occupation of the house, the privacy screens on the southern elevation, as indicated on the approved plans, shall be installed and permanently retained thereafter.
- 7) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include means of enclosure; the layout, with dimensions and levels, of the pedestrian access ramp and the timber decked terrace on the site; and hard surfacing materials.
- 8) All trees on the site, or parts of trees growing over the site from adjoining sites, unless shown on the approved plans as being removed, shall be retained and protected from damage. No development shall take place until details have been submitted to and approved in writing by the Local Planning Authority to demonstrate how the trees to be retained and those trees outside

but adjoining the site are to be protected during construction works. Such details shall follow the guidelines and standards set out in BS 5837:2012 Trees in Relation to Design, Demolition and Construction. During construction works the trees shall be protected in accordance with the approved details.

- 9) No development shall take on site until details of the proposed cycle storage area for 2 cycles have been submitted to and approved in writing by the Local Planning Authority. The cycle storage area shall be provided in accordance with the approved details prior to the first occupation of the new dwelling and permanently retained thereafter.
- 10) No development shall take on site until details of the proposed refuse storage area have been submitted to and approved in writing by the Local Planning Authority. The refuse storage area shall be provided in accordance with the approved details prior to the first occupation of the new dwelling and permanently retained thereafter.
- 11) Full details in respect of the green roof in the area indicated on the approved roof plan shall be submitted to and approved by the Local Planning Authority before the relevant part of the development commences. The buildings shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.