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## Appeal Decision

Hearing held on 24 February 2015

Site visit made on 24 February 2015

**by Jonathon Parsons MSc BSc (Hons) DipTP Cert(Urb) MRTPI**

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

**Decision date: 27 July 2015**

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**Appeal Ref: APP/X5210/W/14/3001424**  
**34A-36 Kilburn High Road, London NW6 5UA**

- 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 Helenium Holdings Ltd against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/2786/P, dated 10 April 2014, was refused by notice dated 26 September 2014.
  - The development proposed is the construction of an additional storey to provide 5 additional residential units.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of an additional storey to provide 5 additional residential units at 34A-36 Kilburn High Road, London NW6 5UA in accordance with the terms of the application, Ref 2014/2786/P, dated 10 April 2014, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the additional storey 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.
  - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 0787-101B; 0787-102; 0787-202A; 0787-203A; 0787-303A; 0787-304 and 0787-305.
  - 4) No development shall take place until a sustainability plan has been submitted to and approved in writing by the local planning authority. Such a plan shall detail a strategy and associated measures to reduce water consumption and carbon dioxide emissions. Before the first occupation of the flats hereby permitted, a verification report by a qualified person, certifying the plan's implementation, shall be submitted to and approved in writing by the local planning authority. The qualified person shall be approved in writing by the local planning authority before the submission of the verification report.

## **Procedural Matters**

2. The applicant's name on the application form is different to that of the appellant indicated on the appeal form. The original applicant has authorised Helenium Holdings Ltd to conduct the appeal on their behalf. I have determined the appeal on this basis.
3. A legal agreement dated 4 March 2015 under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted after the Hearing was closed. At the Hearing, a draft of this agreement was considered. This obligation seeks to address the Council's reasons for refusal relating to inadequate provision for a car-free development, construction management plan, education, sustainable building design and public open space. This obligation has been considered under the main issues in my decision.
4. Although this agreement requires contributions towards education and public open space, there is a clause within it that such contributions will not be required if the Council's Community Infrastructure Levy (CIL) Charging Schedule has taken effect. Such a clause was agreed by the Council. On 1 April 2015, the Council has started charging CIL and therefore there is no requirement for these contributions under the agreement. The Council's fourth and sixth reasons for refusal relate to these matters. As CIL charging has started, my detailed consideration shall therefore be confined to the issues set out in the remaining reasons for refusal as set out in paragraph 6 below.
5. On 25 March 2015, in a Written Ministerial Statement (WMS), the government announced a new policy for housing standards, including Transitional arrangements for its new policy between the Royal Assent of the Deregulation Act and 30 September 2015. Comments were sought from both main parties on this WMS and I have commented upon them under the headings of sustainable building design and conditions.

## **Main Issues**

6. The main issues are (a) the effects of the proposal on the character and appearance of the area and (b) whether or not provision for a car-free development, a construction management plan, and sustainable building design is required.

## **Reasons**

### *Character and appearance*

7. The appeal building consists of a 5 storey contemporary designed building at the corner of Kilburn High Road and Springfield Lane. It has largely flat unarticulated elevations with cladding and fenestration within an exterior steel girder frame which projects above a flat-roof in an exposed manner.
8. Along Kilburn High Road, building heights fall to part 2/part 3 storey to the north of the site and increase to 6-8 storeys in the other direction beyond the appeal site. There is a mixture of old and new buildings in the area but they are closely packed in alongside one another interspersed by some roads, such as Springfield Lane. There is a gradual downward slope in the ground levels southwards past the appeal building along Kilburn High Road.

9. There are two older more traditional designed buildings adjacent to the appeal building. The Old Bell public house on the other side of Springfield Lane lies to the north whilst the Red Lion public house lies to the south. The Red Lion is an attractive red brick building four stories high which has a noticeable tall pediment set between chimney stacks on the frontage. It has attractive horizontal banding and use of Italianate stucco dressing. The Old Bell is a two storey building of yellow brick construction with decorative red brick features and has a three storey hexagonal corner tower. Adjacent to the Red Lion building, there is a six storey building between Nos 24-32 Kilburn High Road. In the surrounding area, there is a terrace of nine Victorian buildings opposite the site which is decoratively detailed in an Italianate style and at No 42, there is an Edwardian building with a corner tower.
10. Within the street, these older traditional designed buildings are attractive by reason of their architectural decoration and interesting features. The more modern buildings are larger and generally more dominant in their appearance. This gives rise to a varied character and appearance in terms of scale and design. In the case of the appeal building, the elevations lack any significant visual interest, even compared to the other modern styled buildings along the street, and contribute little to the attractiveness of the street. In this respect, the exposed top of the existing roof-level steel girder has a visual awkwardness about it because of the way that it is exposed against the sky.
11. The additional storey would be stepped back from the outer edge of the flat-roof of the host building by approximately 2.3m on the Kilburn High Road frontage. It would also be similarly stepped back from the Springfield Lane frontage apart from a small section where there would be an enclosed staircase. The Design and Access Statement states that the new extension would be clad in semi-vertical translucent glass channels whilst the windows would be finished in a mirror finish stainless steel. Such materials are indicated to be reflective such that at street level, the extension will reflect the sky, lessening the apparent massing.
12. There would be views of the additional storey along Kilburn High Road from the north although it would be most evident between the part of the road, beneath which the railway lies, and the site, and the platforms of Kilburn High Road station. However, the fact that the additional storey building would be seen to be higher than the Old Bell or the Red Lion is not in itself harmful. The additional storey would be significantly stepped back from the edge of the appeal building which would reduce the extended building's scale and massing substantially. The use of light coloured and reflective materials would also lessen its visual prominence in the street. There would also be some visual benefit with the additional storey because it would largely remove the unsightly exposed appearance of the top part of the steel girder frame. The additional storey would also add some architectural interest to the building through the use of the reflective external facing materials.
13. By reason of the set back of the additional storey, there would be no significant squeezing of the Red Lion building between the appeal development and 24-32 Kilburn High Road. It is appreciated that the Council considers the six storey building at Nos 24-32 is a stark reminder of the impact that such a building has on the street scene. However the appeal building as extended would be considerably narrower than this recent development and despite the Council's comment, Nos 24-32 forms an existing element in the locality and thus

provides some context to the appeal proposal. Additionally the use of modern materials would not detrimentally emphasise the extra storey because this would be setback from edge of the host building.

14. An appeal<sup>1</sup> was dismissed in 2004 for the erection of a six storey building at the appeal site before the current building was built. The Inspector considered that the proposal would appear over large in comparison with the adjacent Red Lion and Old Bell public houses. In comparison with the proposal before me, the top floor was similarly designed as a lightweight structure. However, the stepping back of the top floor was to be approximately 0.9m whereas the appeal proposal would be far greater. Additionally, the street scene has changed with the redevelopment of Nos 24-32 which has resulted in a six storey building which has created more variation in building scale in the street scene compared to 2004. For these reasons, there are sufficient reasons to distinguish this current proposal from this previous one and I attach only limited weight to it here in my decision. In any case, each application and appeal proposal must be determined on its individual planning merits.
15. In conclusion, the development would not harm the character and appearance of the area. Accordingly, the proposal would comply with Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy (CS) 2010 and Policy DP24 of the London Borough of Camden Local Development Framework Development Policies (DP) 2010, which collectively and amongst other matters, requires development to be of the highest standard of design that respects local character, taking into account the form and scale of neighbouring buildings.

#### *Development requirements*

16. Planning obligations should only be sought where they meet the three tests within Paragraph 204 of the Framework, which are that the obligation should be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to it. These tests reflect the statutory tests for planning obligations under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (As Amended).

#### *Car free development*

17. CS Policy CS11 states that the Council will minimise provision for private parking in new developments, in particular through car free developments in the borough's most accessible locations, as part of its approach to minimising congestion and addressing the environmental impacts of travel. CS Policy CS19 further states that planning obligations will be used to support sustainable development. DP Policy DP18 states that legal agreements would be used to ensure that future occupants are aware they are not entitled to on-street parking permits. DP Policy DP19 states that development will be resisted which require detrimental amendment to existing or proposed Controlled Parking Zones.
18. Parking adjacent to the building, upon which the additional storey would be added to, would not be possible given the nature of surrounding roads. Beyond this, there is a Controlled Parking Zone where parking is generally

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<sup>1</sup> APP/X5210/A/04/1141190.

limited to residents on a permit only basis. At the Hearing, the Council confirmed that the streets were under "parking stress" because the number of available car parking spaces was not much greater than the demand for residential car parking permits. This was confirmed by my site visit where many of the residential permit parking spaces were occupied at the time of my site visit (in early afternoon) when I would have expected more to be available. The appeal site has a high Public Transport Accessibility Level of 6a and is within walking distance of Kilburn Park tube station and Kilburn High Road railway station. There are also a large number of services and facilities, including shops, along Kilburn High Road.

19. The obligation indicates that occupiers will not be entitled to a residents parking permit unless they are disabled, or buy a contract to park in a Council car park. Given the "parking stress" in the area, it would be reasonable to restrict the need for a car parking permit in the way set out in the obligation. The requirement would mitigate harm arising from the development and the proposal would comply with Policies CS11 and CS19 of the CS and Policies DP18 and DP19 of DP. Thus I am satisfied that the obligation requirements are necessary and meet the tests of paragraph 204 of the Framework. Accordingly, this part of the obligation has been taken into account.

#### *Construction management plan*

20. The additional storey would be above an existing five storey building which has hotel and residential uses. The Council have stated that the construction of an additional storey would have a significant impact on the living and working conditions of residents and workers in the vicinity, and highway users. The obligation requires a construction management plan to be submitted and approved giving details of environmental protection, highways safety and community liaison measures, as well as ensuring monitoring and review from time to time. It would require details of routes for construction traffic within the area outside of the site.
21. The nature of the roads surrounding the existing building, the difficulties of constructing at a high level, the multitude of different uses and occupiers in the direct vicinity would necessitate this type of construction plan. Although planning conditions can be used to require such plans, the requirements for monitoring and review, and satisfactory routes for construction traffic to the site would be best served by an obligation. Thus, the proposal would comply with Policies CS5, CS11 and CS19 of the CS and Policies DP20, DP21 and DP26 of DP, which collectively and amongst other matters, require mitigation measures, to protect the amenity of Camden's residents and those working and visiting through the use of planning obligations, if appropriate. For this reason, the obligation would satisfy the requirements of paragraph 204 of the Framework. Accordingly, this part of the obligation has been taken into account.

#### *Sustainable building design*

22. CS Policy CS13 states that all development would be required to take measures to minimise the effects of, and adapt to, climate change and encourage the highest feasible environmental standards. It requires minimal carbon emissions from redevelopment and developments to use less energy. CS Policy CS19 further states that planning obligations and other suitable mechanisms, where appropriate, will be used to support sustainable development. DP Policy

- DP22 requires development to incorporate suitable sustainable design and construction measures whilst DP Policy DP23 requires developments to reduce their water consumption and sewer network demand.
23. The Camden Planning Guidance 3 Sustainability (CPG3) requires an energy statement to be submitted to demonstrate that a minimum Code for Sustainable Homes (CSH) of Level 4, with certain minimum standards in Energy (50%), Water (50%) and Materials (50%). The CPG3 also requires a 40% improvement of the 2010 building Regulations with regard to the carbon dioxide reduction targets. The CPG3 also requires design stage assessment to certify that the sustainability measures are achievable and a post-construction assessment to confirm the required standards have been achieved.
  24. The obligation requires the submission of a sustainability plan which is to include a requirement to secure at least Level 4 under the CSH and attain at least 50% of the credits in each of the Energy, Water and Materials categories. It also secures a pre-implementation and post-construction review of the property by an appropriately qualified and recognised independent verification body. Furthermore, it requires the environmental design to be maintainable in the development's future management and occupation.
  25. The appellant's submitted energy statement<sup>2</sup> outlines a strategy to achieve a CSH Level 4, with expected credits in Energy (50.61%), Water (66.71%) and Materials (70.83%) and a 47.7% reduction in carbon emissions over that required in 2010 Building Regulations.
  26. The WMS requires planning permissions should not be granted requiring, or subject to conditions requiring, compliance with any technical standards other than for those areas where authorities have existing policies on access, internal space or water efficiency. On energy performance, local planning authorities may apply a standard that exceeds the energy performance requirements of Building Regulations but not higher than the outgoing CSH Level 4. In response to WMS, the appellant has stated that the obligation does not require anything over and above CSH Level 4 in compliance with the WMS. The Council states a requirement for CO<sub>2</sub> reduction of 35% beyond part L of the 2013 Building Regulations, 20% of this energy reduction to be from renewable sources, and water efficiency of 110 litres per person per day.
  27. The Council has development plan policies on sustainable/ environmental design but they pre-date a significant change in government policy. Consequently, the development plan requirements are outweighed by the WMS as a material consideration. With the changes in government policy, the only relevant requirements relate to water efficiency and CO<sub>2</sub> reduction. With regard to the WMS, the CO<sub>2</sub> reduction sought by the Council is higher than the outgoing CSH Level 4. To achieve the requirements, an appropriate strategy and measures, including physical adaptations to the design of the scheme, would need to be put in place. Given the small-scale nature of the scheme and reduced scope of the sustainability plan arising from the change in government policy, I am though not persuaded that the revised requirements cannot be secured by a planning condition rather than an obligation.
  28. For all these reasons, this part of the obligation would not meet requirements of paragraph 204 of the Framework and has not been taken into account.

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<sup>2</sup> Preliminary Assessment 34a-36 Kilburn High Road Code for Sustainable Homes Eight Associates 24.02.2014.

### *Monitoring costs*

29. The obligation sets out a monitoring fee of £2310 which did equate to £462 per for each of the main requirements detailed on the agreement, namely car free development, construction management plan, sustainable building design, education and public open space.
30. However, there is no evidence before me that any of the requirements would be exceptionally difficult to monitor with regard to compliance and for this reason, I am not convinced that the costs of monitoring cannot come within the scope of reasonable everyday functions of the local planning authority. For school and public open space provision, contributions are also no longer payable given the introduction of the Council's CIL schedule and therefore monitoring of these requirements would not be necessary. In the case of sustainable building design, I have concluded requirements can be met by a condition instead and would be much reduced due to changes in government policy. On this basis, the monitoring fees would not be necessary to make the development acceptable.
31. For these reasons, this part of the obligation would not meet the tests of Regulation 122 of CIL and has not been taken into account.

### *Other matters*

32. There have been objections regarding the loss of light, privacy and ventilation to a nearby block of flats to the south east of the development. I found that there was a considerable distance separating the flats from the development on my site visit and consequently any impact would not be significant. There have been comments about refuse being left outside the current flats at the appeal site, the playing of loud music and people shouting. Whilst I appreciate the proposal results in additional flats, it is inevitable that refuse would be left out on the day of collection and it will be for the Council to regulate this. I also have no reason to believe that the future occupiers of this development would be unneighbourly and in any case, these flats would be a considerable distance away at a higher level. Individually and cumulatively, these considerations would not outweigh my favourable findings on the scheme.

### **Conditions**

33. Suggested conditions have been considered in light of advice contained in Planning Practice Guidance; for clarity and to ensure compliance with the Guidance, I have amended some of the Council's suggested wording.
34. A condition requiring that the development is carried out in accordance with the approved plans is necessary in the interests of the proper planning and for the avoidance of doubt. In the interests of the visual qualities of the development, a condition has been imposed to secure the submission and approval of samples of materials, and construction in accordance with the approved details.
35. Subsequent to the Hearing, the Council suggested a condition on requiring the development to comply with CSH Level 4, including 50% of the targets in the water, materials and Energy categories. For the reasons already detailed, there have been changes in government policy on housing standards and therefore a condition on this basis has not been imposed. Nevertheless, a condition requiring a sustainability plan to secure water efficiency and CO<sub>2</sub> reduction in accordance with further comments is justified under the WMS and

has been imposed. As part of this, appropriate energy reduction from renewable sources can be detailed. To provide certainty that the strategy and associated measures have been put in place, a requirement for verification before the first occupation of the flats has been added to this condition. Within the condition, the qualified person to carry out this report has been specified to be approved beforehand to ensure satisfactory verification.

**Conclusion**

36. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jonathon Parsons*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT

C Handscomb      BSc (Hon) MA MRTPI      Savills

N De Lotbiniere      MRTPI MRICS      Savills

### FOR THE LOCAL PLANNING AUTHORITY

Z Haji-Ismail      London Borough of Camden

E Lakew      London Borough of Camden

### INTERESTED PARTIES

D Ajufo      Local resident

## **Documents**

1. S106 agreement
2. Appeal Application and documentation for decision APP/X5210/A/04/1141190.