
Appeal Decisions

Hearing held on 30 June 2015

Site visit made on 30 June 2015

by Michael Boniface MSc MRTPI

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

Decision date: 5 August 2015

Appeal A: APP/X5210/W/15/3005758

11 Primrose Hill Road, London, NW3 3DG

- 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 Osoba against the decision of the Council of the London Borough of Camden.
 - The application Ref 2014/4514/P, dated 10 July 2014, was refused by notice dated 5 September 2014.
 - The development proposed is the erection of an end of terrace dwellinghouse comprising basement, ground and two upper storeys (Class C3) and associated works.
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Appeal B: APP/X5210/W/15/3016537

11 Primrose Hill Road, London, NW3 3DG

- 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 Osoba against the decision of the Council of the London Borough of Camden.
 - The application Ref 2014/7856/P, dated 21 December 2014, was refused by notice dated 7 April 2015.
 - The development proposed is the erection of an end of terrace dwellinghouse comprising ground and two upper storeys (Class C3) and associated works.
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Decisions

1. Both of the appeals are dismissed.

Preliminary Matters

2. As set out above, there are two appeals which differ only in the inclusion of a proposed basement with Appeal A. Although I have considered each proposal on its own merits, to avoid duplication I have dealt with the two schemes together in this document, except where otherwise indicated.
3. In both appeals, the planning application describes the site as 11 Primrose Hill Road but the subsequent appeal forms and the Council's decision refer to 11A Primrose Hill Road. As the site is currently garden land associated with 11 Primrose Hill Road this seems the most appropriate site address and I have used this in my decision.
4. Refusal reason 1 of the Council's decision notice makes reference to Policy DP25 of the Camden Development Policies 2010-2025 (DP) (2010) twice. The Council has since confirmed that this is a typographical error and that reference

to Policies DP24 and DP25 should have been made. The correct policies were identified in the main parties' cases as well as the Statement of Common Ground and I am satisfied that no party is prejudiced by this error.

Main Issues

5. Prior to the Hearing, the main parties agreed that the development should be 'car-free' to avoid additional parking stress in the area and to promote sustainable transport; that a Construction Management Plan would be necessary to avoid transport disruption and in the interests of highway safety; and that a post-construction sustainability review must be carried out to ensure energy efficiency and an efficient use of natural resources.
6. Furthermore, it was agreed that these matters could be satisfactorily dealt with by way of Planning Obligations so as to overcome the Council's refusal reasons 3, 4 and 5 in respect of Appeal A and reasons 2, 3 and 4 in respect of Appeal B. Completed Unilateral Undertakings were submitted by the appellant in these terms during the Hearing, along with an unsigned and undated S106 agreement produced by the Council. I shall return to this matter later.
7. In light of the above, the main issue common to both appeals is the effect of the development on the character and appearance of the area, including the setting of the adjacent Elsworthy Conservation Area. In relation to Appeal A only, the second main issue is the effect of the proposed basement on the built and natural environment, local amenity, flooding and ground instability.

Reasons

Character and appearance

8. The site stands within an area known as the Chalcots Estate which is predominantly residential in character. The estate comprises a range of building types but terraced three storey properties arranged in a perimeter block pattern are predominant in the immediate vicinity of the site. The Church of St Mary the Virgin, a Grade II listed building, stands across the road from the site and the Elsworthy Conservation Area encompasses it, along with residential properties on this side of King Henry's Road.
9. The appeal property and the terrace within which it stands are set well back from Primrose Hill Road served by a private road running parallel which is well screened from the public realm by tree and hedgerow planting. Despite this, the terrace presents a strongly defined building line which is evident in gaps between the planting on the highway boundary and this is also a feature of many of the surrounding streets.
10. King Henry's Road is more varied in the alignment of buildings fronting the highway with a more staggered appearance, largely due to the significant number of roads leading off it. Many of the properties in the vicinity of the site on the south side of the road, which stand within the conservation area, present their rear elevations with gardens and boundary fences extending up to the highway. Despite this varied arrangement, buildings tend to be set back from the highway edge behind either front, rear or side gardens which are often well landscaped creating a sense of openness in the streetscene, despite the presence of boundary treatments, and a pleasant verdant character.

11. The appeal site involves an area of garden land to the side of 11 Primrose Hill Road and adjacent to King Henry's Road. It stands at a lower level than the adjacent public highway and a tall boundary fence surrounds the site. The existing property, No 11, stands well back from King Henry's Road and the existing side garden, although hard paved, contributes to the open character of the streetscene. Furthermore, there are a number of large trees to the front and rear of the site, as well as in the public highway which soften the built form of the terrace and contribute to the green character of the area.
12. The proposed development would introduce a new three storey dwelling which would infill the gap created by the existing side garden, extending to within 1 metre of the boundary according to the appellant. This would significantly erode the sense of openness in this part of the street, a prominent location at the junction with Primrose Hill Road. The remaining space between the building and the highway would be uncharacteristically small for this part of the street. Furthermore, the significant scale and height of the proposed building (albeit similar to that of No 11) with its blank flank elevation close to the road, would become a stark and visually intrusive feature that would undermine the character of the area that I have described. No 11 already extends beyond the front elevation of the closest houses on King Henry's Road and the proposed building would shift the built form significantly beyond the line of most other properties.
13. It is proposed that the side elevation would incorporate a planted 'green wall' so as to soften its visual impact from the public realm and that the remaining trees close to the site would be protected and retained. However, whilst the trees provide a good amount of screening, they would not be sufficient to mitigate the visual impact of the proposed building, particularly as their level of cover is likely to vary throughout the year. I also noted a considerable lack of tree cover to the side of the proposed development which would make the building particularly prominent in passing. Even, with the 'green wall' in place, which would likely take some time to become effective, the scale and form of the building would remain evident and this feature would not, therefore, be sufficient to mitigate the harm arising.
14. Both the Council and interested parties raised concerns that the development would block views into and out of the conservation area and I note that the Elsworthy Road Conservation Area Appraisal and Management Strategy (CAAMS) (2009) specifically identifies notable views and landmarks to include the view west along King Henry's Road and views of the Church of St Mary the Virgin to the west and north-west along King Henry's Road and Primrose Hill Road respectively.
15. The development would narrow views west along King Henry's Road and whilst I have had regard to the appellant's view that this would provide greater definition to the corner, it seems to me that it would serve only to erode the open character that is special to the area. The views of the church identified in the CAAMS are unlikely to be impacted given the location of the site but views would certainly be impinged on views towards the conservation area from Primrose Hill Road in close proximity to the site.
16. The development would be well removed from the church and seen in the context of the adjoining residential properties so that the special historic and architectural interest of the listed building, specifically its setting, would not be

harmed. However, the site does make a contribution to the setting of the adjacent conservation area by virtue of its openness which is consistent with the character of King Henry's Road, including those parts within the conservation area. This character would be harmfully eroded by the proposed development and it cannot, therefore, be said that the development would preserve the character or appearance of the area.

17. Whilst in the terms of paragraph 134 of the National Planning Policy Framework (the Framework) the harm arising to the conservation area would be less than substantial, and I recognise the public benefit arising from the provision of a dwelling in the context of an ongoing housing need in London, the benefit arising would not be sufficient to outweigh the harm in this instance.
18. I conclude that the development involved in both appeals would harm the character and appearance of the area, as well as the Elsworthy Conservation Area. This would be in conflict with Policy CS14 of the Camden Core Strategy 2010-2025 (CS) (2010) which seeks to deliver high quality places and conservation of heritage through high standards of design that respect local context and character, particularly in relation to conservation areas; and Policies DP24 and DP25 of the DP which have similar objectives and specifically resist development outside of conservation areas that would cause harm to its character and appearance.
19. It was put to me that a similar form of development had been granted planning permission by the Council at 65 Quickswood and I was able to view the site during my site visit, noting that a dwelling was currently under construction. Whilst I noted that the development involves a new dwelling on the end of an established terrace, the site is noticeably larger and a great deal more space would be retained to the side than in the current appeal proposals. Furthermore, there was a good amount of tree screening established within the site. Having considered these matters, the different site context and the differing relationship with the conservation area, I do not consider the two schemes to be directly comparable. Similarly, I noted a similar arrangement to that now proposed on the corner of Lower Merton Rise but again, that example is located in a somewhat differing context.

Basement impact (relevant to Appeal A only)

20. Policy DP27 of the DP deals with basements and lightwells, confirming that planning permission will only be granted for basements and other underground development that does not cause harm to the built and natural environment and local amenity and does not result in flooding or ground instability. The accompanying text to the policy states that the level of information required with applications will be commensurate with the scale and location of the scheme. It further suggests that for larger schemes, where a basement development extends beyond the footprint of the original building or is deeper than one full storey below ground level (approximately 3m in depth) the Council will require evidence, including geotechnical, structural engineering and hydrological investigations and modelling to demonstrate that no harm would result.
21. Although this advice is more applicable to basement developments below existing buildings, I see no reason why similar principles should not be applied where a new building is proposed, particularly where its design and footprint would reflect that of the adjoining neighbour. In this case, the proposed

- basement would be contained beneath the footprint of the proposed building and would extend to a depth of 3m. Nevertheless, even for smaller schemes, applications must provide sufficient information to demonstrate that harm would not result to site specific concerns.
22. The application is accompanied by a Land Stability Report (9613/AW/SCW) and a Basement Impact Assessment (BIA) (62633R1) which deals with surface water and groundwater. The Land Stability Report identifies a number of matters that would need careful consideration at the design and construction stage involving the underlying London clay, tree removal, shrink/swell, the adjacent highway, differential depth of foundations relative to the neighbour and the presence of an underground railway tunnel. However, the report concludes that the overall risk to ground stability would be low. Subject to more thorough consideration and the use of appropriate construction techniques, there is no indication that these matters would represent insurmountable problems for the implementation of the scheme whilst avoiding unacceptable harm to the surrounding environment, including local amenity.
 23. Similarly, the BIA identifies a low risk of flooding in respect of both surface water and groundwater flows. Although no detailed on-site investigation has been carried out in these regards, the report utilises historical information from the local area including historical borehole data. No previous flooding has been identified at the site and the hard surfaced area of the site would not be increased.
 24. Network Rail has confirmed that a tunnel runs beneath the site and further survey works would be necessary to ensure that the development would not impact either during construction or following the development. The appellant suggests that the required information in these regards, as well as for further survey works are very costly and time consuming. Whilst these are not matters that add weight to the appellant's argument, or detract from the need for appropriate survey works to establish the impacts of a development, I understand that the appellant is seeking to establish the principle of development before pursuing these matters in detail.
 25. I have considered the Council's view that the full impacts of the development should be identified before the grant of planning permission and have had regard to the Basement Impact Assessment Audit (June 2015) provided. This document identifies a range of additional information that would be beneficial in considering the impacts of the development, but again, I have seen nothing that suggests significant impacts are likely or that any impacts arising might render the development unacceptable in principle.
 26. In this instance, I am satisfied that the level of information provided is commensurate with the scale and location of the scheme. Whilst the full impacts of the development and the required mitigation/avoidance techniques would need to be established, this could be secured by way of a condition if planning permission were to be granted.
 27. As such, I find no material conflict with Policies CS5 and CS14 of the CS which, amongst other things, seek to manage the impacts of growth, including to neighbours; Policies DP23, DP26 and DP27 of the DP, which seek to avoid flooding, protect the living conditions of neighbours and avoid harm arising from basement development; or Camden Planning Guidance 4, Basements and Lightwells (CPG4) (2013), which provides detailed advice in these regards.

However, this does not alter or outweigh my conclusions with regard to the first main issue.

Other matters

28. As set out above, Unilateral Undertakings pursuant to both applications were submitted during the Hearing. Both parties agree that the Obligations submitted accord with the Council's adopted policies and are necessary to make the development acceptable in planning terms.
29. Although the obligations were agreed, the Council raised a number of concerns in respect of the construction and detailed wording contained in the Undertakings, which it explained did not follow the Council's standard wording for these types of obligations, amongst other concerns. It submitted an unsigned and undated S106 agreement which it preferred but recognised that this was not agreed by the appellant and was incapable of taking effect.
30. Given my conclusion with regard to the main issue, I see no reason to consider this matter further.
31. I have had regard to the presumption in favour of sustainable development advocated by the Framework but the development would not support the environmental objectives of the Framework, instead resulting in significant environmental harm. As such, it cannot be considered to be sustainable development. I have considered the objective of the Framework to boost significantly the supply of housing, but this does not outweigh the harm that I have identified.

Conclusion

32. In the case of Appeal A, the development would not harm the built and natural environment, local amenity, flooding and ground instability. However, both appeals would result in significant harm to the character and appearance of the area, as well as the setting of the Elsworthy Conservation Area.
33. In light of the above, and having considered all other matters, both the appeals are dismissed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gary Brook	Agent
Graham Oliver	Agent
Victoria Perry	Heritage Consultant
Vicky Webster	Heritage Consultant
Rob Atkin-House	Solicitor
Luke Chandresinghe	Architect

FOR THE LOCAL PLANNING AUTHORITY:

Jonathon McClue	Planning Officer
Victoria Pound	Conservation & Design Officer
Emily Shelton-Agar	Legal Advisor
Jagdish Akhaja	Planning Technician

INTERESTED PERSONS:

Lillian Shapiro	Local resident
David Shorrocks	Local resident and Director of Chalcots Estate Ltd
Richard Dessar	Local resident

DOCUMENTS

Document 1	Unilateral Undertaking pursuant to Appeal A
Document 2	Unilateral Undertaking pursuant to Appeal B
Document 3	Draft S106 agreement pursuant to Appeal B
Document 4	Council's points on the submitted Unilateral Undertaking
Document 5	Note prepared by the Council on the case of Westminster City Council v SSCLG and Acons [2013]