



Appeal Decision

Site visit made on 14 June 2013

by **Gary Deane BSc(Hons) DipTP MRTPI**

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

Decision date: 18 July 2013

Appeal Ref: APP/X5210/A/13/2190084

1 Norfolk Road, London NW8 6AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Neil Carr against the Council of the London Borough of Camden.
 - The application Ref 2012/2720/P was dated 15 May 2012.
 - The development proposed is the demolition of an existing dwelling house including basement and its replacement with a new dwelling house and basement.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing dwelling house including basement and its replacement with a new dwelling house and basement at 1 Norfolk Road, London NW8 6AX in accordance with the terms of the application Ref 2012/2720/P dated 15 May 2012, subject to the conditions set out in the schedule to this decision.

Procedural matters

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.
3. The Council has confirmed that had the appeal not been lodged then planning permission would have been refused for the following reasons:

"The applicant has failed to demonstrate, by way of a sufficient basement impact assessment, that the construction works would maintain the structural stability of the neighbouring properties and would not adversely impact upon the local water environment run-off and drainage. The proposal is therefore contrary to policies CS5 (Managing the impact of growth and development) and CS13 (Tackling climate change through promoting higher environmental standards) of the London Borough of Camden Local Development Framework Core Strategy; and to policies DP23 (Water), DP26 (Managing the impact of development on occupiers and neighbours) and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.

The proposed development, in the absence of a Section 106 Legal Agreement securing an acceptable Construction Management Plan, would be likely to

contribute unacceptably to traffic disruption and be detrimental to general highway and pedestrian safety and residential amenity, contrary to policies CS5 (Managing the impact of growth and development) and CS11 (Promoting sustainable and efficient travel) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to the highway) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

The proposed development, in the absence of a Section 106 legal agreement to secure the new development as car-capped, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area contrary to policy CS11 (Promoting sustainable and efficient travel) of the London Borough of Camden Local Development Framework Core Strategy; and to policy DP18 (Parking standards and limiting the availability of parking) and DP19 (Managing the impact of parking) of the London Borough of Camden Local Development Framework Development Policies.

The proposed development, in the absence of a Section 106 legal agreement requiring a design stage Code for Sustainable Homes Assessment prior to works commencing on site and a post-construction review, would fail to be sustainable in its use of resources, contrary to policies CS13 (tackling climate change through promoting higher environmental standards) and CS16 (improving Camden's health and well being) of the London Borough of Camden Local Development Framework Core Strategy and policy DP22 (Promoting sustainable design and construction), DP23 (Water) and DP32 (Air quality and Camden's clear zone) of the London Borough of Camden Local Development Framework Development Policies.

The proposed development, in the absence of a Section 106 legal agreement to secure associated highway works, would fail to maintain the borough's transport infrastructure to the detriment of the safety of pedestrians, cyclists and vehicles, contrary to policies CS11 (promoting sustainable and efficient travel) and CS19 (delivering and monitoring the core strategy) of the London Borough of Camden Local Development Framework Core Strategy; and policies DP17 (walking, cycling and public transport) and DP21 (development connecting to the highway network) of the London Borough of Camden Local Development Framework Development Policies."

4. The majority of the reasons for refusal relate to the absence of a planning obligation, which has since been submitted as an appeal document. The obligation is in the form of an executed Agreement primarily under Section 106 of the Town and Country Planning Act 1990, as amended. The Agreement, dated 31 May 2013, designates the development as 'car capped' and includes provision for a Sustainability Plan, a Construction Management Plan and for a financial contribution towards highway improvements.

Main Issue

5. As the planning obligation seeks to address all but one of the Council's reasons for refusal, I consider that the main issue in this case is the effect of the proposed development on the character and appearance of the local area with

particular regard to the structural stability of neighbouring buildings and the local water environment, run off and drainage.

Reasons

6. The proposal is to demolish and remove the appeal dwelling, which is an unassuming 2-storey property and to replace it with a 3-storey house with two sizeable basement levels. The site lies within a predominantly residential area and falls just outside but adjoins the St Johns Wood Conservation Area (CA), which is characterised by large detached houses within typically generous plots. Adjacent properties on one side of the site, 2 and 3 Norfolk Road, are listed buildings as are 34-37 Queens Grove, located beyond the rear of No 1, all of which lie within the CA.
7. The Council is primarily concerned that the excavation and construction necessary to redevelop the site as proposed could undermine the structural stability of neighbouring properties and adversely affect the local water environment. The absence of proof that the proposal would not cause harm in these ways, as required by Policy DP27 of the London Borough of Camden Local Development Framework Development Policies (DP), forms the basis of the first reason for refusal.
8. The appellant's Basement Impact Assessment (BIA) and the supporting technical reports provide cogent evidence that the proposed excavation and construction works would be feasible. It considers that there would be 'negligible' risk of ground instability of the surrounding land and sub soil and less than 'slight' risk of damage to adjacent listed structures and garden boundary walls. It also concludes that the construction works would cause no risk of significant disruption to surface water flows or increase the risk of flooding in Norfolk Road or of exacerbating current conditions in Avenue Road.
9. The appellant's Hydrology and Hydrogeology report advises that no significant quantities of ground water, if any, are anticipated at depths that would be reached by the proposal. It concludes that any discernable impact on ground water flow as a result of construction works would be 'highly unlikely'. It also suggests mitigation measures for the construction phase and the design of the structure to prevent localised sub-surface flooding. These measures include a drainage curtain to surround the new basement to allow water to flow around it.
10. The Council's independent review of the BIA appears not to question the feasibility of the construction works. It is, however, critical of some aspects of the procedure adopted and of the BIA's analysis especially with regard to ground water and land stability. It recommends several areas for further investigation notably to identify the foundation details of neighbouring properties, the disposition of soils around them and the presence of any high water table within the superficial soils. In the absence of this information, which it suggests could be secured by a planning condition, the review concludes that the BIA does not demonstrate sufficient detail and certainty to ensure compliance with DP Policy DP27.
11. In response, Price and Myers Consulting Engineers, has subsequently assessed each of these studies on behalf of the appellant. The reply addresses in some detail each of the points of concern identified in the review. In their assessment, Price and Myers conclude that while it is possible to take issue with

some of the factors in the preliminary pile design and the methodology and procedures of the work, the BIA nonetheless provides a reliable basis on which to proceed and that it is compliant with the Council's policies.

12. In other words, the BIA has been prepared to a level that is proportionate to the stage of development that has been reached. Subsequent phases including detailed design provide a further opportunity to examine the BIA's findings, in the context of building regulations and party wall legislation, and that exercise that may or may not reveal the need for additional investigation.
13. At this stage, it is inevitable that there will be some uncertainty about certain aspects of the proposed construction and excavation works. However, the specialist input so far from three separate reputable firms, each with considerable experience and expertise in this technical field, has subjected the proposal to detailed and rigorous testing, which has been peer reviewed. In my opinion, the results provide sufficient detail to understand the potential impact of the proposal and to gauge the likely level of risk of causing harm.
14. Having carefully considered each of these assessments and taken into account all of the evidence before me I consider that a high level of confidence can be placed on the BIA's key findings. In my opinion, there are convincing reasons to conclude that building regulations and party wall legislation, along with appropriate safeguards secured by conditions and the planning obligation with regard to construction management, would all combine to provide appropriate control over the construction of the proposal and to provide adequate mitigation. With these measures in place, I am satisfied that the risks posed by the proposal with regard to the structural stability of neighbouring properties and on the local water environment, fall within acceptable limits.
15. The new dwelling and its basement would also be close to the highway frontage of the site. As the proposed excavation and construction works would take place in the vicinity of Norfolk Road, it would be appropriate to ensure that the structural integrity of the highway is maintained primarily in the interests of public safety. This matter could be covered by condition if the proposal were otherwise acceptable.
16. Overall, I conclude that the appellant has met the requirements of DP Policy DP27 and demonstrated that the proposal would maintain the structural stability of neighbouring properties and avoid adversely affecting drainage and run off or cause other damage to the water environment. In these respects, the appeal scheme would not materially harm the character and appearance of the local area. Accordingly, the proposal would not conflict with Policies CS5 and CS13 of the London Borough of Camden Local Development Framework Core Strategy 2010–2025 (CS) and DP Policies DP23, DP26 and DP27. These policies aim to ensure that the impact of new development is managed by, amongst other things, protecting the environment and the living conditions of occupiers and neighbours, and requiring mitigating measures where necessary.

Planning obligation

17. The planning obligation secures various measures that aim to mitigate the effects of the proposed development. In considering each of these matters, the Framework makes clear that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

18. The Framework also states that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to the development. These tests reflect those set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended, to which I have also had regard.

Highway works

19. The Council requires a financial contribution to pay for improvements to the highway in the vicinity of the site including the repaving the adjacent footway and reconstructing the crossover in like-for-like materials. The obligation secures the sum of £11,500 to cover these works. Any reasonable costs in excess of that figure are also covered. This contribution is necessary and is directly, fairly and reasonably related to the proposal. Therefore, the requirement meets the statutory tests. With a firm commitment to make this payment, the proposal would not undermine the Borough's transport infrastructure or conflict with CS Policies CS11 and CS19, and DP Policies DP17 and DP21. These policies aim to promote sustainable and efficient travel options and to protect highway safety.

Car Capping

20. The planning obligation designates the development as 'car capped' and so future occupiers of the new dwelling would not be entitled to a resident parking permit with the exception of people with disabilities. Without a permit free arrangement for future occupiers, the proposal would be likely to add to the demand for on-street parking space. The site lies within a Controlled Parking Zone with very high demand especially overnight. Extra competition for those spaces could lead to additional traffic circulating, which would add to congestion and possibly impede traffic flows, to the detriment of the safety of other highway users. In those circumstances, I consider that the permit free arrangement meets the relevant tests and complies with CS Policy CS11 and DP Policies DP18 and DP19. These policies seek to promote sustainable and efficient travel by managing the impact of vehicle parking and traffic.

Sustainability Plan

21. CS Policies CS13 and CS16, and DP Policies DP22, DP23 and DP32, seek to ensure that development is sustainable in its use of resources. In doing so, proposals should promote higher environmental standards and sustainable design and construction, improve the health and well being of Camden's population, minimise carbon dioxide emissions, and contribute to water conservation and sustainable urban drainage. To this end, a Sustainability Plan is included in the planning obligation, with a target of achieving at least Level 5 of the Code for Sustainable Homes and attaining at least 50% of the credits in each of the energy, water and materials categories. The obligation also includes provision for a post construction review of the development to check whether the measures in the Sustainability Plan have been attained.

22. I have little doubt that the requirement for a Sustainability Plan meets the relevant tests and that the most appropriate way of securing these measures is through the obligation rather than a planning condition. With the Sustainability Plan in place and adhered to, the proposal would comply with CS Policies CS13

and CS16, DP Policies DP22, DP23 and DP32 and the general principles of the Council's Planning Guidance 3, *Sustainability*.

Construction Management Plan

23. Interested parties are understandably concerned that the demolition and construction phases of the development would take place over a lengthy period and that the works and associated vehicle movements would detract from the visual amenity of the local area, disrupt traffic flows and unduly disturb the living conditions of the occupiers of nearby properties. As the site lies within a predominantly residential area and many nearby dwellings are suitable for families, there is also worry about road safety.
24. Inevitably, there would be some impact on the local area and nearby occupiers mainly caused by noise and general disturbance, both at the site and from vehicles going to and from the site. However, this potential disruption could be managed in a way that minimises the disturbance to others, the surrounding environment and to users of the highway network through a Construction Management Plan (CMP). While a CMP could be secured by a suitably worded condition, the measures outlined in the First Schedule of the planning obligation, could potentially relate to a wide geographical area. As such, an obligation provides a more appropriate way to deal with such matters rather than a planning condition.
25. CS Policies CS5 and CS11, and DP Policies DP20, DP21 and DP26, all support the requirement for a CMP in this case. These policies aim to manage the transport of goods and materials in a sustainable manner, to protect the safe operation of the highway network and to safeguard residential amenity. I am satisfied that the arrangements secured by the obligation meet the relevant tests. With the CMP in place and adhered to, the proposal would not contribute unacceptably to traffic disruption, prejudice highway safety or significantly harm residential amenity, in accordance with the policies to which I have referred.

Other matters

26. Like the Council, I consider that the existing building is of insufficient merit to warrant retention in terms of its contribution to the local area. The new addition would be a largely symmetrical villa in a traditional style with 2-storey stucco faced front and rear elevations with accommodation in the roof space served by dormers. While interested parties have criticised the design of the proposal, I find it to be acceptable. To my mind, the new building would make a positive contribution to the local area to the extent that it would more closely reflect the rhythm and appearance of the prevailing architecture than the existing dwelling. The new house although larger than the building to be replaced, would sit comfortably within the site. It would respect the building and roof forms of properties on both sides, with good-sized front and rear gardens and adequate visual separation with the adjacent buildings. Furthermore, most trees on the site would be retained with some additional planting to soften the new built form.
27. The new basement would extend under the rear garden and be covered with soil of sufficient depth to sustain mature growth of planting within it. As a significant part of the new built form would not be evident from above ground

level beyond the site there would be no obvious perception of an overly intense form of development.

28. Overall, I consider that the proposed development would be successfully assimilated into the prevailing character of the local area. It would do so in a way that respects the pattern of existing development and maintains the spacious feel to the local street scene of which the site forms part. For all of these reasons, I consider that the proposed demolition and redevelopment would preserve the setting, character and appearance of the adjacent listed buildings and the CA.
29. Therefore, I conclude that the proposal would meet the objectives of CS Policies CS14, DP24 and relevant parts of DP25, which require development to achieve the highest standards of design and not to cause harm to the character and appearance of a conservation area or to the setting of a listed building. It would also accord with the general principles of the Council's Camden Planning Guidance 1, *Design*.
30. The appellant's light assessment dated April 2012 and subsequent update letter of 13 July 2012, confirm that there would be no appreciable loss of sunlight and daylight to the buildings that would surround the new dwelling, notably 1A and 2 Norfolk Road, and the rear garden of 37 Queens Road. I have no reason to disagree with this conclusion. Third parties raise a number of other concerns about the effect of the development on residential amenity, but the location and form of the new building, and the positioning of windows and the screening provided by existing vegetation, would avoid any undue loss of privacy and outlook. Hence the living conditions of the occupiers of nearby properties would not be materially reduced by the appeal scheme.
31. The appellant's acoustic report, dated May 2012, demonstrates that the plant and equipment to be installed and the associated sound attenuation measures would meet the Council's guidelines. This matter could be covered by a condition to safeguard residential amenity if the proposal were found to be acceptable.

Summary

32. With appropriate mitigation in place, as proposed, and secured by conditions I consider that the proposed development would not undermine the structural stability of neighbouring buildings and the local water environment. For the reasons given, the appeal scheme would preserve the character, appearance and setting of the CA and nearby listed buildings. In addition, I have found that the financial contribution and other arrangements secured in the planning obligation are justified by the development proposed, with reference to the Council's guidance and policies. There are no other matters that are sufficient to justify withholding planning permission.

Conditions

33. With regard to conditions, I have regard to national guidance including the Framework and Circular 11/95, *The Use of Conditions in Planning Permissions*. I have attached a condition requiring that the development be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. To ensure the satisfactory appearance of the

development, conditions are imposed requiring details of external materials, architectural detailing, earthworks and landscaping. For the same reason, and to safeguard trees, a condition is attached requiring details of the tree protection measures.

34. The appointment of a properly qualified engineer is needed to ensure that the construction of the basement in particular does not undermine any neighbouring buildings or adversely affect the local water environment. To ensure no damage to the adjacent highway, further detail is required regarding the retention and if necessary making safe of the Norfolk Road, in the interests of public safety and safe operation of the road. To protect the living conditions of nearby residents, it is necessary to ensure that the first floor bathroom window in the side elevation is obscurely glazed and that all mechanical plant is installed in accordance with approved details and that noise levels are contained to acceptable limits that relate to background levels.
35. Additional extensions and alterations to the new dwelling or the erection of outbuildings within the curtilage could affect the visual character and setting of the adjacent listed buildings and the CA as well as the living conditions of nearby residents. Therefore, it is necessary to remove some permitted development rights by condition to safeguard the character of the local area, the setting of designated heritage assets and residential amenity.
36. Where appropriate I have amended the Council's suggested conditions to more closely reflect national guidance. The Council has put forward a further condition to require additional information regarding foundation details and disposition of soils below neighbouring properties and the presence of any high water table within the superficial soils. Given my findings in relation to the main issue, I consider that this requirement is unnecessary and so it would not meet at least one of the tests set out in the Framework.

Conclusion

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

Gary Deane

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs 001, 010, 011, 012, 013, 015, 016, 017, P200P, P201P, P203P, P110P, P204SK K, P205PB, P209-2p, P210pA, P211Pa, P212pB, P213pA, P230P, P231P, P232P, P233P, P236P, P238P, P239P, P240P, P241P, P400P, SK202p, P401p and P402p.
- 3) 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.
- 4) No development shall take place until full particulars of the elevations, fenestration, railings and architectural detailing including quoins and stucco vermiculation to the windows have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 5) No development shall take place until details of earthworks have been submitted to and approved in writing by the local planning authority. These details shall include the proposed grading and mounding of land areas including the finished levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with the approved details.
 - 6) 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. Where appropriate, these details shall include: means of enclosure; car parking layout; pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting); and proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports). Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers and densities where appropriate; and an implementation programme.
 - 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development or in accordance with a programme previously agreed in writing by the local planning authority. All new tree plantings shall be positioned in accordance with the requirements of British Standard BS5837: 2012, *Trees in Relation to Construction: Recommendations*. Any trees, shrubs, hedges or plants which within a period of 5-years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
 - 8) No ground clearance, demolition or construction work (including any tree felling, tree pruning, earthworks, temporary access construction and/or widening, or any operations involving the use of motorised vehicles or construction machinery) shall commence until protective fencing that meets the requirements of BS 5837: 2012 has been erected around each tree/tree group or hedge to be preserved on the site or on adjoining land, and no work shall be carried out on the site until the written approval of the local planning authority has been issued confirming that the protective fencing has been erected in accordance with this condition.

Within the areas so fenced, the existing ground level shall be neither raised nor lowered. Roots with a diameter of more than 25 millimetres shall be left unsevered. There shall be no construction work, development or development related activity, including the deposit of spoil, disposal of liquids, fires or the storage of materials or machinery within the protected areas. The protective fencing shall be permanently retained during the construction of the development hereby permitted.

- 9) The development hereby permitted shall not commence until a Chartered Civil Engineer or Chartered Structural Engineer has been appointed to supervise the basement construction works throughout their duration and the appointment confirmed in writing to the local planning authority. If the appointed engineer ceases to perform that role for whatever reason before the basement construction works are completed those works shall cease until a replacement chartered engineer of the afore-described qualification has been appointed to supervise their completion and their appointment confirmed in writing to the local planning authority. At no time shall any basement construction work take place unless an engineer is at that time currently appointed and their appointment has been notified to the local planning authority in accordance with this condition.
- 10) The development hereby permitted shall not be carried out other than in accordance with a scheme, including section drawings and structural calculations, showing the retention and making safe of the highway known as Norfolk Road in the vicinity of the site, which shall previously have been submitted to and approved in writing by the local planning authority.
- 11) Before the occupation of the development hereby permitted the window serving the first floor bathroom in the side elevation shall be fitted with obscured glass and with the exception of a top hung fanlight(s) shall remain permanently fixed shut and shall be permanently retained in that condition.
- 12) Noise attributable to the operation of plant and equipment hereby permitted when measured at 1-metre from external sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation, unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps) in which instance, the noise levels from that piece of plant/equipment at any external sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development within Part 1 (Classes A-H) of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the local planning authority.