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## Appeal Decision

Hearing held on 25 November 2015

Site visit made on 25 November 2015

**by Christa Masters MA (Hons) MRTPI**

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

**Decision date: 11 December 2015**

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**Appeal Ref: APP/X5210/W/15/3095453**

**The Leighton, 101 Brecknock Road, London N7 0DA**

- 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 Maximillian Cramer against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/5401/P, dated 20 August 2014, was refused by notice dated 25 March 2015.
  - The development proposed is two new build, 4 bedroom houses on a vacant site between 153 Torriano Avenue and 101 Brecknock Road.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing, an application for costs was made by Mr Maximillian Cramer against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### Procedural matters

3. A separate Hearing took place on 24 November 2015 to consider appeal reference APP/X5210/W/15/3095242. This proposal relates to the public house only. This appeal is subject to a separate decision.
4. A number of other appeal decisions<sup>1</sup> have been drawn to my attention by both the Council and the appellant. I have had regard to these decisions in reaching my conclusions below.
5. A revised plan reference BRE-PL-GA-18 was submitted with the appeal statement. This amendment sought to address the second reason for refusal regarding the effect of the proposal on living conditions of No 135 Torriano Avenue. The plan indicated the addition of louvers to the rear elevation of the two houses. To my mind, this is a significant alteration to the appearance of the rear of the building. In the interests of fairness, I have determined the appeal on the basis of the drawings considered by the Council, as to do otherwise would deprive those who should be consulted on the

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<sup>1</sup> APP/X5210/W/15/3003396, APP/X5210/A/14/2218740, APP/X5210/A/12/2184317, APP/C3240/A/13/2194804, APP/G2815/A/03/1128215

change, the opportunity of such consultation.

6. The Council confirmed at the Hearing that they would withdraw the third reason for refusal relating to the effect of the proposal on daylight and sunlight at No 135 Torriano Avenue. I shall return to this matter below.

### **Main Issues**

7. From the evidence presented and what I heard at the Hearing, this appeal has three main issues. Firstly, the effect of the proposal on the living conditions of:
  - (a) the existing and future occupiers of 135 Torriano Avenue with reference to overlooking and loss of privacy ;
  - (b) other residents in terms of noise and disturbance associated with the loss of the beer garden and the effect on on street activity;
8. Secondly, the effect of the proposal on the long term retention of the public house, recognised by development plan policies as a community facility. Finally, the effect of the proposal on the character and appearance of the area.

### **Reasons**

#### *Living conditions – effect on 135 Torriano Avenue*

9. The proposal would replace the existing beer garden with two 4 bedroomed houses. These properties would be flush to the existing flank elevation of 135 Torriano Avenue and would therefore give the appearance of continuing the terrace of properties.
10. 135 Torriano Avenue is a distinctive property and has a somewhat unusual ground floor extension at the rear. The extension has significant fenestration detailing. This includes 6 glazed windows which face directly onto appeal site with two pairs of full height glazed French doors either side of this creating a small but functional courtyard area. Although the rear elevation of the property has full height glazed doors facing onto the garden, the above arrangement provides an important outlook for both the kitchen and dining areas of the property.
11. In terms of amenity space, the property benefits from three outdoor amenity areas. The courtyard area which runs parallel to the appeal site is used for planting, storage and has a spiral staircase in the corner. This provides the only access to a roof garden which the occupier advised is well used, particularly in the summer months and is a generous size. The roof garden, which I was able to access during my site visit has a pleasant open feel, primarily because of its positioning at the end of the terrace. The property also has a rear garden. However, this is modest in size. In my view, all three areas of outdoor amenity space provide different functions and I am in no doubt that they are all valuable sources of private amenity space in this relatively dense urban location.
12. The two new dwellings would have traditional fenestration detailing to the front elevation. However, the rear of the properties would have a much more contemporary feel with extensive glazing. From the rear elevation of the nearest proposed dwelling, there would be a distance of only 6.5 metres between the fenestration detailing of this property and No 135. Taking into account this distance as well as the size and scale of the rear elevation glazing,

this would result in significant issues of overlooking and loss of privacy to the existing and future occupiers of No 135. This would be particularly acute from the first and second floor windows of the new dwelling which due to their positioning, would be afforded direct views into the kitchen and dining area of No 135, as well as the courtyard area. I note there is an existing trellis in place however this would provide a very limited degree of screening and would be insufficient to address the harm which would arise.

13. My attention was drawn to the Camden Supplementary Planning Guidance (SPG) 2013 which identifies at CPG6 that there should normally be a distance of 18m between the facing windows of habitable rooms that directly face each other. In this instance, the windows would not directly face each other. Therefore the extent to which this element of the SPG is applicable is in my view limited. However, the SPG does note at paragraph 7.4 that new buildings should be designed to avoid overlooking, and that the degree of overlooking will be dependent upon the distance and vertical angle of view. The guidance goes on to note that the most sensitive areas are kitchens and garden areas nearest to the house.
14. I am also concerned regarding the degree of mutual overlooking which would occur between the existing roof terrace and the new dwellings. Whilst I note that there are other roof terraces in the vicinity which have a close relationship with neighbouring windows, none of the windows are of the size and scale proposed at the appeal site.
15. The appellants included as part of their appeal statement, details of proposed louvre treatment to the rear elevation windows of the proposed houses to address this point, though the appellants were clear at the Hearing that they did not consider that they were necessary to address this issue. In my view, the addition of louvres could have a significant harmful effect on the appearance of the building, particularly as this rear elevation is readily visible from Leighton Grove. However, the louvres do not form part of this appeal and as such, my consideration of them has had no bearing on my decision.
16. I therefore conclude the proposal would have an unacceptable impact on the existing and future occupiers of No 135 in terms of overlooking and loss of privacy. Such is the degree of harm in relation to this matter, I am dismissing the appeal on this issue alone. Accordingly, the proposal would fail to accord with policy CS5 of the Core Strategy (CS) 2010 and in particular part (d) which seeks to, amongst other things, protect the amenity and quality of life of local communities.
17. Furthermore, the proposal would also conflict with policy DP26 of the Development Policies (DP) 2010. This policy advises that the Council will only grant planning permission for development that does not cause harm to amenity. Factors for consideration include, amongst other things, (a) visual privacy and overlooking. For the same reasons, the proposal would fail to accord with paragraph 17 of the Framework, which advises that developments should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

*Living conditions – effect on existing residents*

18. The proposal would result in the loss of the existing pub beer garden. The beer garden closed in August 2014 and has not been in use since this time. It was explained to me at the Hearing that the beer garden had become difficult to manage, with no direct visibility from the bar itself. The leaseholder advised at the Hearing that antisocial activity was taking place on a regular basis although a number of local residents disputed these claims. Although the premises are licensed until 1am, I was advised at the Hearing that the license restricts the use of the beer garden to 9pm only. The appellant explained that this restriction creates additional problems in terms of removing customers from the beer garden at this time, particular in the summer months. I can fully appreciate the difficulties that this situation may cause.
19. An example of a pub operating in the area with a successful beer garden was provided at the Hearing. This was the Rose and Crown on Torriano Avenue. I was able to visit these premises on the day of the site visit. This is a much smaller establishment, with clear glazing from the bar area to a very small terraced courtyard area, accessed via steps. It is not comparable in scale, size or positioning to the existing beer garden at the Leighton Public House. The similarities I can find between this operation and the appeal site are therefore very limited. In my view, even though the garden area may have at one time provided an attractive element to the appeal premises, this is no longer the case.
20. Concerns were expressed that the proposal would result in additional noise and disturbance as patrons stand and drink on the public highway. However, it is important to note that this activity is already taking place. To my mind, this is a situation evident outside many public houses in urban locations and is certainly not unique to the Leighton. Whilst there is currently no license in place for tables and chairs on the public highway, the merits or otherwise of this is not a matter for my deliberations. On the other hand, as noted by the officer's report to committee, there have been a number of complaints made by residents regarding noise and disturbance associated with the use of the beer garden. The issue is therefore finely balanced.
21. To my mind, I am not convinced that the appeal proposal would result in additional noise and disturbance to residents through the permanent removal of the beer garden. Moreover, I have no evidence before me to suggest that refusing the appeal on this basis would alter the existing pattern of activity already taking place in terms of patrons drinking and smoking outside of the Leighton. I also have evidence before me which suggest the beer garden itself has caused noise and disturbance to local residents.
22. For these reasons, the proposal would not result in material harm to existing residents in terms of increased noise and disturbance associated with the removal of the beer garden. The proposal would therefore comply with policy CS5 of the CS as well as DP26 of the DP in this regard.

*The effect of the proposal on the long term retention of the public house, recognised by development plan policies as a community facility.*

23. The proposal would result in the permanent loss of the beer garden which is currently not in use. The Council contend that the loss of the beer garden

- would effect the long term viability of the pub, recognised as making a valuable contribution to the local community.
24. Policy DP15 of the DP relates to protecting community and leisure uses within the borough. There is no specific reference to beer gardens within this policy or the supporting text. Reference was also made to the emerging Local Plan (LP) and in particular, policy C3 which is a specific policy to protect public houses within the borough. Within the supporting text to this policy, the importance of outdoor amenity space associated with pubs is recognised. However, this policy is at an early stage of preparation and as such, this limits the weight to which I can attach to it.
25. My attention has been drawn to a recent appeal decision at 97 Haverstock Hill. Here, in the same borough, the Inspector concluded that the loss of the beer garden would result in the loss of a valued community facility. However, in that particular case, the Inspector notes the area was a popular attraction used for regular BBQ's. Importantly there also does not appear to have been any inherent conflict between the use of the beer garden resulting in noise and disturbance to adjoining residents as is the case in relation to this appeal. Furthermore, this decision also included a number of other aspects including the removal of the first floor function rooms. The similarities I can draw between the two cases are therefore limited.
26. Turning to consider the Framework, paragraph 70 makes it clear that planning decisions should plan positively for facilities, such as public houses, ensuring that facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community. The public house would not be effected by the appeal proposal. The community use, afforded protection through the development plan, would therefore be retained. I therefore conclude the proposal would not effect on the long term retention of the public house. It would accord with the provisions of policy DP15 of the DP outlined above. The other policy references provided by the Council on this matter are not directly related to this issue.

#### *Character and appearance*

27. The Council contend that the proposal would lead to the loss of an important townscape gap which defines the historic urban grain of the area. The terraced nature of properties in the immediate vicinity of the appeal site mean that where gaps do occur, they are small scale and not of a comparable size to the appeal site. The roads provided as examples of open corners within the Council's appeal statement are entirely different in density and form and to my mind are not directly comparable to the pattern of the urban grain along Torriano Avenue.
28. I accept that there is a small gap behind the appeal site on Leighton Grove. However, this is covered to a large extent by extensions to the host property so that in any event, only a small rear garden remains. It is not comparable in size or scale to the appeal site. I also accept that the existing beer garden provides an element of breathing space between the pub and the terrace of residential properties. However, this is not a distinguishing feature of the area and does not reflect the historic grain of the area as the Council suggest. From what I saw on the site visit, the pattern of development is characterised by closed corners, as shown by the buildings directly opposite the appeal site along Torriano Avenue.

29. A number of additional concerns were raised by interested parties regarding the design of the two dwellings. These concerns relate to the height, bulk and overall form of the dwellings as well as detailing such as the boundary treatment, size of fenestration and positioning of doors. The statement of common ground makes it clear that the Council consider that the design and materials proposed are in keeping with the area and are considered an appropriate addition to the road.
30. The design of these properties has been influenced to a significant degree by the existing residential dwellings along Torriano Avenue. In my view, the dwellings proposed would reflect the existing architectural style of the area. The size, scale and proportions of the dwellings have been influenced by No 135, which in my view is an entirely logical approach. The dwellings would be proportionate in scale and form to the dwellings within the vicinity of the appeal site. Whilst the boundary treatment and detailing maybe different, there is a clear mixture of detailing along the road itself. Some dwellings have steps up to the front door and separate front gardens, others do not. In my view, it is important that the frontage of the proposed dwellings follow the street pattern established by No 135 and in townscape terms, the proposal would achieve this objective.
31. I therefore conclude the proposal would not result in material harm to the character and appearance of the area. It would, as a result, accord with policy CS14 of the CS as well as policy DP24 of the DP. Policy CS14 emphasises the importance of promoting high quality places. Policy DP24 is a general policy which seeks to ensure development secures high quality design. It requires development, amongst other things, to consider the character, setting, context, form and scale of neighbouring buildings.

*Other matters*

32. Third parties have raised concerns regarding overlooking to other properties close to the appeal site. However, taking into account the separation distances involved, I am not convinced that the proposal would result in any material harm in terms of overlooking to other properties along Brecknock Road.
33. Additional concerns raised by third parties include the effect of the proposal on street parking provision, as well as daylight and sunlight concerns. I deal with each of these matters in turn.
34. In relation to car parking, I am satisfied that in accordance with the conclusions drawn by the Council, the appellants commitment to provide a car free development would adequate address this issue.
35. In terms of daylight and sunlight, detailed evidence was presented in relation to this issue by the appellants. This assessment included the Vertical Sky Component Assessment of the impact of the development on neighbouring properties. The conclusions reached are that whilst there would be some effect on adjacent properties, these would be entirely in accordance with the BRE Second Edition 2011 guidelines. I am satisfied that on the basis of this evidence, the effect on the proposal in relation to this matter would be acceptable. Similarly, the appellants daylight and sunlight report dated October 2014 addressed the impact of the proposal on 103 Brecknock Road. This report concluded that as a consequence of the existing terrace of properties in place, there would be no discernable difference in daylight and

sunlight to this property. As No 105 Brecknock Road is situated further way from the appeal site, I see no reason why the same conclusions should not apply to this property.

36. A signed and dated planning obligation was submitted at the Hearing. This document addressed a number of matters including contributions towards environmental improvements and a highways contribution. It also provided a commitment to a construction management plan and car free housing. However, the obligation before me does not overcome the harm identified above in terms of the impact of the proposal on the living conditions of No 135 Torriano Avenue. Accordingly, it is not necessary for me to assess the content of the obligation against the relevant tests set out in the Community Infrastructure Levy 2010.
37. I accept that the proposal would deliver two houses to the supply of housing within the area. I have accordingly apportioned a modest portion of weight in favour of the proposal. However, this would not outweigh the harm I have identified above in relation to the main issues before me.

**Conclusion**

38. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

*Christa Masters*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr M Cramer	Appellant
Ms J Brosnan	Leaseholder of the Leighton PH
Mr S Satwick	Appellant
Mr M Evans	Martin Evans Architects
Mr D Norris	Planning Consultant
Mr R Staig	Dixon Payne

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr R Tullock	London Borough of Camden
Ms C Bond BA (Hons) B Arch Hons MTP Grad Dip Cons AA IHBC	London Borough of Camden

### **INTERESTED PARTIES**

Mr & Mrs A Paterson	Local Resident
Mr & Mrs R Fairley	Local Resident
Mr C McWatters	Local Resident
Cllr J Headlam-Wells	Ward Councillor

### **DOCUMENTS SUBMITTED AT THE HEARING**

1. Signed Section 106 Agreement dated 23 November 2015
2. Email correspondence between the Council and appellant regarding daylight and sunlight issues
3. Notification of Hearing letter
4. Statement prepared by Mr Paterson on behalf of the local residents
5. Statement of Common Ground
6. Schedule of highways works contributions