



Appeal Decisions

Inquiry held on 7 and 8 October 2008

Site visit made on 8 October 2008

by **Andrew Jeyes** BSc DipTP MRTPI

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

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Decision date:
20 October 2008

Appeal A: APP/X5210/A/08/2069663

22 Frognal Way, London NW3 6XE

- 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 Muller Property Holdings Ltd against the Council of the London Borough of Camden.
- The application Ref 2007/3790/P is dated 25 July 2007.
- The development proposed is the demolition of existing house, garage and swimming pool and erection of two new houses together with basement parking and associated landscaping.

Appeal B: APP/X5210/E/08/2072992

22 Frognal Way, London NW3 6XE

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
- The appeal is made by Muller Property Holdings Ltd against the Council of the London Borough of Camden.
- The application Ref 2007/3791/C is dated 20 July 2007.
- The demolition proposed is of the existing house, garage and swimming pool.

Decision

1. Appeal A: I dismiss the appeal and refuse planning permission for the demolition of existing house, garage and swimming pool and erection of two new houses together with basement parking and associated landscaping.
2. Appeal B: I dismiss the appeal and refuse conservation area consent for demolition of existing house, garage and swimming pool.

Main Issues

3. Both appeals are against non-determination by the Council. However, based on subsequent notices issued by the Council setting out their views on the applications, I am of the view that the main issues are: -

Appeals A and B

a] whether the proposals preserve or enhance the character or appearance of Hampstead Conservation Area;

Appeal A

b] the effect of the proposals on the setting of listed buildings in Church Row;

c] whether there is an excessive amount of on-site car parking proposed; and

d] the effect of the proposals on highway safety.

4. In the Statement of Common Ground, it was indicated that Issue 'c' could be overcome by use of a condition to restrict parking spaces on the site and that a Section 106 agreement would be submitted in respect of Issue 'd' to prevent use of the resident parking scheme and to ensure an acceptable Construction Management Plan. A Section 106 agreement was submitted at the Inquiry for consideration.

Reasons

Background

5. Frogнал Way is a wide private road with a gravel surface that has a turning head in front of No's 20 and 22. Frogнал Way continues to the north of No 22 as a footway running up the hill to Church Row, the footway having a high fence on its eastern side and a high brick retaining wall to the churchyard of St John's Church on the western side. Frogнал Way is characterised by individually designed and commissioned detached houses set in their own substantial plots. The styles and materials are highly individual and include a Grade II* listed building, the *Sun House*, at No 9, a Grade II building, *Shepherds' Well*, at No 5 and at the entrance to the road the Grade II* building at 66 Frogнал. In the wider setting, St John's Church is a Grade 1 listed building, and to the rear of the site, No's 15, 16, 17, 18 and 19 Church Row are all Grade II listed. The site is within Hampstead Conservation Area.
6. Frogнал Way is part of a large housing area on the steeply sloping south-west side of Hampstead, with Church Row being considerable higher than Frogнал Way. The existing house at No 22 is single storey with a central rotunda and three radiating wings set into the sloping site. The house has a low profile with a flat roof, other than a centrally protruding feature to the rotunda. A separate garage in the same style is attached to No 20, a house originally built for Gracie Fields. From Frogнал Way, the house has a low profile and appears more as an extension to No 20. The form of the building can be appreciated from higher viewpoints, including the churchyard and the rear of properties in Church Row.

Demolition of the existing building

7. PPG15¹ indicates that where a building makes little or no contribution to a conservation area, consent for demolition should not be given unless there are acceptable and detailed plans for any redevelopment. The detailed tests applied to the demolition of listed buildings would apply where the building makes a positive contribution. The Hampstead Conservation Area Statement [HCAS], adopted in 2001, indicates that No 22 had a neutral impact on the character and appearance of the conservation area.
8. Whilst the Council did not raise the question of demolition at pre-application stage with the appellants, they did consult English Heritage, who responded that the building made a positive contribution to architectural and historic interest and was by an architect of regional or local note. A separate English Heritage response from Elain Harwood, an acknowledged expert on post-war housing, indicated Philip Pank, a locally based architect, whose distinctive style is expressed in this building, designed the house; the architects are noted as Pank Goss Associates. The building has its own entry in the 'Buildings of England' and she considered that this is a good indication of its importance as an individual building within the conservation area. A further consultation to English Heritage on submission of the application confirmed these views.

¹ Planning Policy Guidance 15: *Planning and the Historic Environment* [PPG15]

9. In 2007, English Heritage also considered an application to statutory list No 22. Whilst listing did not result, the advisors report indicated that the building was of local importance and made a positive contribution to the conservation area as a good example of an architect designed house of the 1970's which complements the remarkable houses of earlier decades in the same street. The two countersigning advisors both indicated that the house is of undoubted interest and makes its own mark in this rich heritage environment. These views are further backed by detailed comments from Elaine Harwood to the Church Row Association.
10. The appellants indicate that the reports on the building by English Heritage contain a number of factual errors. I note that the appellants did not challenge the errors in the listing report on the basis that the building was not identified as suitable for listing. Firstly, English Heritage wrongly dated the HCAS as adopted in 1985 and therefore out of date and in need of revision. There is no obvious reason for this, although I note that the document was adopted in 2001 and published in 2002. PPG15 indicates that such documents should be regularly reviewed.
11. The building is different in certain respects from the original designs of Philip Pank. These changes include a front porch and differently angled canopy and a wider and longer subsidiary wall element to the lounge area, although I noted that the front kitchen window and door positions also varied from the plans provided to me, but showed no signs of subsequent alteration. An extension for nurses quarters, granted separate planning permission, has been added to the bedroom wing and throughout the house windows have been changed to aluminium frames, except for the front kitchen window. I do not consider that these alterations seriously erode the original form and design of the house. In my view, whilst the purity of the original design is of import in considering whether such a modern building is worthy of listed status, it is less so in considering whether it makes a positive contribution to the conservation area.
12. I have noted the extensive research carried out by the appellants into the work of Philip Pank and the lack of similar investigation by either English Heritage or the Council. No evidence was submitted to the Inquiry to demonstrate a growing interest in Philip Pank as an architect. In addition, the majority of Philip Pank's body of work was not in Camden, but he did live there, in a house he designed, and another of his designs in the area [attributed to Howard & Pank], 38 Millfield Lane, has been listed. To me this indicates an important relationship between the architect and the area. I also note that the current Philip Pank Practice is not a continuation of the architectural practice. Whilst these multiple errors are regrettable, I do not consider that they lessen the value of comments in respect of the design and appearance of the building.
13. It emerged at the Inquiry that neither the original English Heritage respondent nor Elaine Harwood had visited the site to assess the building within its setting and I consider that their views must therefore carry little weight. The officer responsible for considering listing the building carried out a full inspection on the 5 July 2007. As such, considerable weight should be given to the opinions expressed, including those in relation to the building's positive contribution to the conservation area.
14. In my view, the building is of interesting and distinctive design and appearance, designed by an architect of some local importance following a commission from a specific client with a disabled wife. Its form and design are assimilated into the site without detracting from the adjoining house and with little impact on important local views of Church Row and surrounds. As a commissioned house, it continues and adds to the theme of individual houses in Frognaal Way, which define its character. English Heritage, in considering listing, indicated that the house makes

a positive contribution to the conservation area and this reflects my own assessment of the building. Its inclusion in 'Buildings of England' further indicates its significance. In my opinion, it falls within the defined criteria for making a positive contribution contained within Appendix 2 of 'Guidance on Conservation Area Appraisals'.

15. In respect of Appeal B I conclude, for the above reasons, that the existing building makes a positive contribution to the character and appearance of the Hampstead Conservation Area and that its demolition would harm the character and appearance of the area. The proposals are not accompanied by evidence to demonstrate any specific reasons for demolition and the proposal therefore fails to comply with guidance in PPG15 or with Policy B7B of the adopted Camden Unitary Development Plan 2006 [UDP], which aims to ensure the retention of buildings that make a positive contribution unless there are exceptional circumstances.

The effect of the proposals on the character and appearance of the area

16. The proposals involve the building of a pair of four-bedroom two-storey houses of distinctive modern design within the site, the houses aligned with the rear wall of the adjoining house, No 20, but offset from each other. The intention of the design is to give an impression of the houses emerging as layers from the sloping landscape. A basement to each house would provide a swimming pool and staff/guest accommodation with garaging for two cars serviced by a car lift. Access, as with the existing house, would be via a courtyard from Frogna Way.
17. The predominant wall materials would be glass, with red sandstone walls to some of the ground floor elevations. The houses would have flat roofs, partly covered in sedum but with the majority consisting of various photovoltaic panels with additional glazing features. The height of the buildings, as discussed with the Council on site and excluding the photovoltaic arrays, would be aligned with the wall at the rear of the garden and would equate with the height of the rear eaves line of No 20. The buildings would extend to some six metres above the level of the existing courtyard entrance, compared to the 3.4 metres of the existing building, although the small central element of the rotunda extends to some 5.7 metres.
18. The Council indicated that their concerns were in relation to the height, bulk and massing of the proposed houses and their impact on views. The existing house has a very low profile, is subordinate to No 20 and, through being partly set into the slope of the land, is recessive in the local landscape. The existing garden and other nearby gardens have extensive landscaping, including large trees, creating an open verdant appearance to the site in views from Frogna Way and in elevated views from the churchyard and Church Row gardens. The Council agreed that the proposals would not intrude into views of central London.
19. The HCAS identifies the rear view of Church Row from the footpath as an important local view and the existing house does not intrude into this view because of its low height and position within the landscape. Trees and vegetation within the gardens screen the eastern end of Church Row but the western end, adjacent to the footpath, is clearly visible with only the very lowest elements partly screened by garden vegetation. The proposed houses, because of their height and combined massing resulting from the offset between them, would create a higher and wider barrier to visibility and leave the Church Row houses projecting above the rooftops and visually divorced from their gardens.

20. The additional height of the proposed houses, together with the rectangular footprint and outline, would unacceptably increase the prominence of development on this site. They would have an intrusive appearance, which would vie for prominence with No 20 in views from Frogmal Way and which would intrude into the verdant setting of the existing garden to the extent that vegetation would not remain the dominant element that it now is. In views from the churchyard the offset of the buildings would create an impression of infilling the existing garden with more dominant buildings.
21. The proposed houses would be clearly visible above the fence line in views from the lower part of the footpath and would intrude into longer views from the upper reaches. They would also be very visible from the elevated churchyard, which has a pathway along the rear edge of the retaining wall and other paths leading up the slope to the church. Whilst the height of the existing building allows views of surrounding features, the increase in height together with the offset, would prevent such views and give the impression of filling the gap between No 20 and Church Row. This churchyard is much visited, having graves to several famous people, including John Constable, whose grave is located adjoining the footpath atop the retaining wall. Whilst I agree that the buildings would make an interesting addition to the diverse architecture of Frogmal Way, I do not consider that this would overcome my concerns in respect of the impact of the buildings.
22. Taking the above into account, I conclude that the proposed houses would harm the character and appearance of this part of the conservation area. The proposals would therefore be contrary to UDP Policies S1, S2, S7, B1, B7 and B9, which aim to ensure a high standard of design that preserves or enhances the character or appearance of the conservation area and that enhances important local views.

The effect on the setting of listed buildings

23. Church Row has a series of eighteenth century listed buildings on its south side, built into the escarpment slope of Hampstead, so that the five and six storey high rear elevations present an interesting and conspicuous feature rising from their rear gardens and the garden of No 22. These rear elevations are conspicuous in views from the end of Frogmal Way, the footpath connection to Church Row and from the outer footpath of the churchyard. The current view of the rear of the houses and their setting is not interrupted by the existing house at No 22. The slope of the land and openness to the south-west presents an unusual and rare public view of the rear of eighteenth century houses, normally hidden by other development.
24. As I have already indicated, I consider that the proposed new houses would unacceptable intrude into this view, when seen from Frogmal Way, the footpath and from the outer footpath of the churchyard. By obscuring the lower reaches of the buildings and their gardens and detracting from the open setting, I am of the view that the setting of these listed buildings would be harmed. Whilst the appellants indicated that existing vegetation could easily grow to screen a similar amount of the buildings, I do not consider this to be a reason that overcomes the harmful impact of the two proposed houses. Vegetation is softer, can be easily reduced in height and density and forms part of the existing natural verdant setting.
25. For the above reasons, I conclude that the proposed houses would harm the setting of nearby listed buildings. The proposals would therefore be contrary to UDP Policies B6 and B9, which aim to ensure that the setting of listed buildings is not harmed and that important local views of them are protected.

Car parking and highway safety

26. The Section 106 Agreement relating to these proposals covers the submission of a Construction Management Plan and I noted that the Council indicated at the Inquiry a willingness to consult local residents on any submission in relation to this. The agreement would also prevent, except in cases of disability, the occupiers of one of the houses from applying for a residents parking permit for use in surrounding streets. It is also suggested as a condition that parking for each property be restricted to one vehicle only at a time. The objective of these parking restraints is set out in UDP Policies T7, T8 and T9, which aim to restrict parking availability to ensure less reliance on the car and the use of other alternative modes of transport.
27. In this case, even if the proposed double garage parking for each property were reduced to one garage space, there would still be room to park in front of the car lift so that in practical terms the amount of parking available would not be restricted to one space per dwelling. Enforcement of the number of cars parking on the site would be difficult. In addition, restricting one dwelling from applying for a residents parking permit would not effectively reduce parking availability, as Froggnal Way, a private road, does not have any parking restrictions and therefore unrestricting on-street parking could occur. This road is heavily used by pedestrians at present, using a paved at-grade footway along the northern side as far as the entrance barrier. Additional on-street parking could compromise highway safety and, in my view, the proposed condition and the section 106 agreement would not achieve the objectives of UDP policies.

Conclusions

28. In respect of Appeal A, I conclude that the proposed development would harm the character and appearance of this part of the conservation area and would interrupt important local views and views from St John's churchyard. I also conclude that the proposed houses would harm the setting of nearby listed buildings and I am not convinced that the suggested condition and Section 106 agreement would restrict parking availability to ensure less reliance on the car and the use of other alternative modes of transport. For these reasons, I conclude that Appeal A should be dismissed and planning permission refused.
29. In respect of Appeal B, I conclude that the existing building makes a positive contribution to the character and appearance of the Hampstead Conservation Area and that its demolition would harm the character and appearance of the area. The proposal was not accompanied by evidence to demonstrate any over-riding specific reasons for demolition. The proposal fails to comply with guidance in PPG15 or with UDP policy and, for these reasons, I conclude that the Appeal B should fail and that conservation consent should be refused.

Andrew Jeyes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Alexander Booth	Of Counsel, instructed by Karen Jones, Cushman & Wakefield, 43/45 Portland Square, London W1A 3BG
He called	
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Andrew Brown	Woodhall Planning and Conservation, Woodhall, Woodhall Lane, Calverley, Leeds LS28 5NY
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FOR THE APPELLANT:

Emmaline Lambert	Of Counsel, instructed by Andrew Maughan, Head of Legal Services, Council of the London Borough of Camden.
She called	
Cassie Plumridge	Planning officer, Council of the London Borough of Camden.
BSc[Hons] MPIA	
Joanna Ecclestone	Manager of Conservation & Urban Design Team, Council of the London Borough of Camden.
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INTERESTED PERSONS:

Professor Nicola Lacey	Representing the Church Row Association; 19 Church Row, London NW3 6UP
Martin Woollacott	Representing the Church Row Association; 26 Church Row, London NW3 6UP
Dr Jenny Stratford	Representing the Church Row Association; 17 Church Row, London NW3 6UP
Lynne Woolfson	Representing the Church Row Association; 16 Church Row, London NW3 6UP
Douglas Maxwell	Representing the Froggnal Way Residents Association; 14 Froggnal Way, London NW3 6XE

DOCUMENTS

- 1 Lists of persons attending the Inquiry on the 7 and 8 October 2008.
- 2 Letter from Jonathan Mance and Mary Arden of 11 Froggnal Lane, London NW3 7DG.
- 3 Submission on behalf of the Church Row Association including summaries of evidence of Martin Woollacott, Professor Lacey, Dr Stratford and Lynne Woolfson together with eight appendices; submitted by Professor Lacey.
- 4 Notice of the time and place of the Inquiry; submitted by the Council.
- 5 Section 106 agreement; submitted by the Council.
- 6 Draft conditions; submitted by the Council.
- 7 Opening statement of Mr Booth for the appellant.
- 8 Opening statement of Ms Lambert for the Council.
- 9 Series of six photographs and six photomontages; submitted by the appellant.
- 10 Submission on behalf of the Froggnal Way Residents Association; submitted by Mr Maxwell.
- 11 Letter from Michael Patchett-Joyce and Marika Cobbold of 25 Church Row, London NW3 6UP