

Appeal Statement, Appendix 28

Heritage and Conservation Analysis

1.1 No impact on the setting of the nearby listed buildings has been identified by the Council and this has not been advanced as a reason for refusal. The Appellant concurs that the setting of the listed buildings would not be affected and this matter is not considered further in this statement (although the submitted Heritage Statement does include an assessment in relation to the effects on the setting of the nearby listed buildings).

Statutory Heritage Tests

1.2 Legislation relating to listed buildings and conservation areas is contained in the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

1.3 According to Section 72, in relation to conservation areas:

“In the exercise, with respect to any buildings or other land in a General duty as conservation area [...] special attention shall be paid to the desirability of conservation preserving or enhancing the character or appearance of that area.”

1.4 It is a well established concept in case law that ‘preserving’ means doing no harm.

1.5 The Court of Appeal’s decision in *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council* [2014] (EWCA Civ 137) established that, having ‘special regard’ requires “*considerable importance and weight*” to be given to the matter of preservation. In a more recent judgement, Sales LJ in *Mordue v Secretary of State for Communities and Local Government* [2015] EWHC 539 found that generally, a decision-maker who works through the paragraphs of the NPPF in accordance with their terms will have complied with the duty in the 1990 Act.

National Policy Tests

- 1.6 Section 12 of the NPPF deals with conserving and enhancing the historic environment, in paragraphs 126 to 141.
- 1.7 According to paragraph 131 of the NPPF, when determining planning applications local planning authorities should take account of the following three things:
- i. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - ii. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - iii. the desirability of new development making a positive contribution to local character and distinctiveness.
- 1.8 It is important to note that the NPPF recognises in the third point that new development is capable of making a positive contribution to local character and distinctiveness. That is a well established concept and it obviously goes beyond simply preserving or conserving, but enhancing or improving on the status quo.
- 1.9 Paragraph 132 of the NPPF requires “*great weight*” to be given to the conserving the significance of a designated heritage asset when considering the impact of a proposed development. Any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional, and is not considered to be of relevance in this case.
- 1.10 Paragraph 133 deals with substantial harm to, or total loss of significance, of a designated heritage asset. The Planning Practice Guidance (PPG) describes the threshold for substantial harm as a “*high test*” which may not arise in many cases; the total or partial destruction of heritage assets are given as examples. LBC has not alleged or identified substantial harm in this case and the purported harm identified by it falls in the category ‘less than substantial’.

- 1.11 Paragraph 134 of the NPPF deals with less than substantial harm. Harm in this category should be weighed against the public benefits of the proposal. The PPG describes public benefits as “*anything that delivers economic, social or environmental progress*”.
- 1.12 According to paragraph 137 of the NPPF, local planning authorities should look for opportunities for new development within conservation areas to enhance or better reveal their significance.
- 1.13 According to paragraph 138 of the NPPF, not all elements of a conservation area will necessarily contribute to its significance. The loss of a building (or other element) which makes a positive contribution to the significance of the conservation area should be treated proportionally. That is, either as substantial harm under paragraph 133, or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the conservation area “*as a whole*”.
- 1.14 It is important to recognise that paragraph 138 of the NPPF deals with the loss of an element of a conservation area only. That is, a scenario in which the element is removed and not replaced. The paragraph does not deal with replacement as such, i.e. a scenario in which an element is not only removed, but replaced with something else (which may itself make an equal contribution, or a greater, or a lesser contribution to the area).
- 1.15 In this case the appeal scheme involves the replacement of an element of the conservation area with a building which preserves and enhances the character and appearance of the conservation area, not only the ‘loss of a building’. Instead, it is the overall effect of the development on the significance of the area which needs to be considered whole (i.e. both the demolition and the subsequent redevelopment).
- 1.16 The NPPF defines heritage assets in Annex 2 as:

“A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).”

1.17 The NPPF defines significance in Annex 2 as:

"The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting."

1.18 The statutory Section 72 test and NPPF requirements were taken into account in designing the scheme.

LB Camden Policy Tests

1.19 Heritage policies in the Camden development plan broadly align with policies set out in the Framework. These are summarised for information below.

1.20 Policy CS14 of the Camden Core Strategy 2010 - 2025 deals with promoting high quality places and heritage conservation. According to this policy the Council:

- a. requires development of the highest standard of design that respects local context and character;
- b. requires the preservation and enhancement of Camden's rich and diverse heritage assets, including conservation areas; and
- c. seeks the highest standards of access in all buildings and places and requires schemes to be designed to be inclusive and accessible.

1.21 Policy DP25 of the Camden Development Policies 2010 provides for the Council, in relation to Conservation areas, to:

- a. take account of conservation area statements, appraisals and management plans when assessing applications within conservation areas;
- b. only permit development within conservation areas that preserves and enhances the character and appearance of the area;
- c. prevent the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area where

this harms the character or appearance of the conservation area, unless exceptional circumstances are shown that outweigh the case for retention; and

- d. preserve trees and garden spaces which contribute to the character of a conservation area and which provide a setting for Camden's architectural heritage.

1.22 The Camden Planning Guidance 1 (Design) is a material consideration in planning decisions, and paragraph 3.7 states that the Council will only permit development within conservation areas that preserves and enhances the character and appearance of the area. Importantly, this is in the context paragraph 3.5, which states that conservation areas are not designated to stop all future development or change, but to ensure that change is managed to conserve the historic significance of the area as a whole. This must mean that preservation can be achieved by replacing elements of a conservation area with a new element of equal or greater value / contribution, rather than an inherent limitation on any development that could be said to affect an element which is considered a positive contributor.

1.23 According to paragraph 3.15, conservation area statements, appraisals and management plans help guide the design of development in conservation areas and the Council will take these into account when assessing planning applications. The following paragraph (3.16) then states that each conservation area statement, appraisal or management plan contains, amongst other things, an identification of heritage assets and elements of the wider historic environment which give an area its historic significance.

1.24 According to Policy D2 of the Local Plan Submission Draft, the Council will preserve and, where appropriate, enhance Camden's heritage assets, including conservation areas. In relation to conservation areas the policy states that the Council will take account of conservation area statements, appraisals and management strategies when assessing applications within conservation areas. The Council will also:

- i. require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area;
- ii. resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area;

- iii. resist development outside of a conservation area that causes harm to the character or appearance of that conservation area; and
 - iv. preserve trees and garden spaces which contribute to the character and appearance of a conservation area or which provide a setting for Camden's architectural heritage.
- 1.25 Draft paragraph 7.46 recognises that the character of conservation areas derive from the combination of a number of factors, including scale, density, pattern of development, landscape, topography, open space, materials, architectural detailing and uses.
- 1.26 According to draft paragraph 7.48 the Council has a general presumption in favour of retaining buildings that make a positive contribution to the character or appearance of a conservation area. The Council will resist the total or substantial demolition of buildings which make a positive contribution to a conservation area unless circumstances are shown that outweigh the case for retention.

Assessment of Proposed Development

- 1.27 The starting point for the consideration of the heritage case is that the designated heritage asset is the Hampstead Conservation Area as a whole.
- 1.28 The local context of the application site and the most relevant part of the conservation area is Frogna Way. This street is only a small element of the conservation area as a whole (the designated heritage asset). The road was laid out in 1924 and it features two exceptional and remarkable interwar Modernist houses, both of which are listed (one is on Frogna, at No. 66, but has a presence on Frogna Way).
- 1.29 No. 22 was built several decades later, in c. 1975, by Camden based architect Philip Pank. The building is not therefore part of the Modernist legacy of Frogna Way, although there is a degree of commonality because of its modern, non-traditional architectural language and bespoke design as a one-off house.
- 1.30 The baseline planning context for the purposes of the application was taken to be the full implementation of the alterations granted permission in 2009 and currently part-implemented, rather than the house as built in c. 1975. The implications are explored

in detail in the submitted Heritage Statement. The Council has accepted this in the 2011 Delegated Report for the brickwork replacement consent (2011/0924/P) and the Delegated Report refusing the appeal scheme (2015/3530/P).

- 1.31 However, lawful implementation of the 2009 planning permission is now being contested by LBC and the baseline must be taken to be one of two potential outcomes, as set out in paragraph 3.21 of the Statement of Case. The ‘Scenario A’ baseline is the implementation of the 2009/2011 permissions, as per the submitted Heritage Statement. The ‘Scenario B’ baseline would involve repairs to the building which would not require planning permission, for example the reinstatement of a flat roof.
- 1.32 Turning to the relative interest of the building, it was considered for listing in 2007 and the reasons given in the report on the rejection of the building included the “*unadventurous*” use of materials. In addition, the report found that “*while the composition is largely successful, there are places where the varying heights and angles of the ranges are unresolved*”. Nevertheless, the house at that time was described to be “*of local interest and makes a positive contribution to the character of the conservation area as a good example of an architect-designed house of the 1970s which complements the remarkable houses of earlier decades on the same street.* [emphasis added]”
- 1.33 The Inspector’s decision in relation to the dismissed appeal in 2008 indicates that the building, as it existed then, was considered a positive contributor to the conservation area. The Inspector also noted that the building’s form and design were assimilated into the site without detracting from the adjoining house and with little impact on important local views.
- 1.34 However, the baseline for the purposes of determining this appeal is either Scenario A (the implementation of the 2009/2011 permissions), or Scenario B. Neither of these represents the substantially original building that was considered by the Inspector in 2008, or reviewed for listing in 2007.
- 1.35 In Scenario A, the existing poor state of the building is not advanced as a reason, or justification, for its redevelopment. This assumes that the present state of the building is temporary, and that the permitted scheme will be implemented, together with the permission, granted in 2011, which allowed the external bricks to be replaced with very

different, bespoke new bricks as an amendment to the 2009 permission. Although the replacement of bricks as consented in 2011 has not commenced and has expired, there is no reason to assume that a new application for brick replacement would not be similarly approved by the Council. This baseline represents a building with a distinctly modern appearance and with considerable alteration and extensions, as compared with the original 1970s house.

- 1.36 Scenario B is essentially a continuation of the present state of the building, albeit with a roof in place. This would certainly not be anything like the substantially intact and largely unaltered 1970s house that was considered by the Inspector in 2008.
- 1.37 Scenario B has not been previously assessed in the submitted material because the state of the building was discounted, given that the lawful implementation of the 2009 permission was not questioned. This scenario represents a building left in an unsatisfactory state, with the original garage and porch removed, and with the site excavated and remodelled. Areas of foundation and brickwork that was originally below the ground level would remain exposed. It should be noted that this was such an unsatisfactory state that LBC granted permission in 2011 for the wholesale replacement of the building's brickwork to remedy the situation. In Scenario B the building therefore detracts from the character and appearance of the conservation area. The replacement house, by contrast, would be a marked improvement which would enhance the character and appearance of the conservation area.
- 1.38 Whilst the existing building would make a positive contribution in Scenario A, its contribution would be slight. The house would no longer be a 'good example' of an architect-designed house of the 1970s. Instead it would be an example of an adapted and substantially modified 1970s house because:
- i. It would have a different, modern character. It would be reconstructed but in new, distinctly modern materials and with modern additions, including sedum roofs, a two storey conservatory and a large roof lantern.
 - ii. Its proportions would be very different to that envisaged by Philip Pank in 1975.
 - iii. Its relationship with its site would also be different because of the extensive landscape remodelling to create two storey aspects.

- 1.39 In comparison with Scenario A, the appeal scheme would provide a replacement family house and make a significantly greater positive contribution to the character and appearance of the conservation area. That is particularly so, given Hampstead's longstanding tradition as a location for one-off houses and avant-garde architecture.
- 1.40 The starting point for the design of the Appeal Scheme as a replacement house was to improve on the existing baseline (Scenario A). The design was influenced from the outset by a rigorous assessment of the context, and importantly by the Inspector's conclusions in relation to the existing building's contribution at the 2008 appeal. To that end the three dimensional form and presence of the proposed building in relation to the area and the listed buildings were subject to careful scrutiny and consideration throughout the design process.
- 1.41 Officers have been extensively engaged in the preparation of the Appeal Scheme. Both previous conservation officers commented positively on the Appeal Scheme and were satisfied that it would enhance and preserve the character and appearance of the conservation area. The design and the quality of the architecture were described as carefully considered, and as appropriate for the site and the local context.
- 1.42 The Appellant's case is that the appeal scheme is considered to provide a replacement building which would preserve and enhance the character of the conservation area. The new house would in itself be a positive element in the conservation area, and act as an enhancement, for the following reasons:
- i. It is a high quality, bespoke and unique replacement modern house on a unique site, designed by an award-winning, Camden based architectural practice for a local resident client.
 - ii. Care has been taken in the use of materials and the articulation of the house to ensure it will be of the highest quality or design and an exemplar of contemporary architecture.
 - iii. The house is of distinctive form, which responds to the site and the surrounding area, and which expresses a very specific client brief that includes disabled access provision.
 - iv. Much care has been taken with the integration of the building into the site, to preserve and enhance the sense of the Appeal Site as a verdant backland and to

avoid being intrusive in view across the site, or taking in the site. This is borne out in the generally recessive appearance of the final design, when glimpsed in both public and private views.

- 1.43 It is central to the appellant’s case that the appeal proposal must be considered on the whole. That is, a balanced and proper assessment of the redevelopment proposal, not simply consideration of the importance of the existing building, or only the effect of its demolition. The wording of the first reason for refusal indicates that only the first step in the process was taken, rather than a more holistic analysis of the appeal scheme as a whole (i.e. the effect of the scheme when completed, compared with Scenario A or Scenario B).
- 1.44 In summary the appeal scheme will deliver a high quality house of unique and distinctly modern design. It would fit in well within the local context of Frogmal Way, which includes bespoke, high quality and one-off houses and examples of exceptional Modernist architecture. The design was informed by, and responds positively to, the sensitivities of the appeal site. The house would be a model of present-day sustainability, contemporary architectural design and landscape integration. This was recognised by two previous conservation officers, both of whom would have recommended the scheme for approval.
- 1.45 In policy terms, the proposed building would constitute an enhancement to the conservation area compared with both of the baselines (namely Scenario A and Scenario B). It is not only a bespoke house that complements the earlier houses on the same street, but greater emphasis has been given to the quality of materials, articulation, appearance and integration into the site and the area, when compared with the Scenario A baseline.
- 1.46 Commentary on the Officer’s Delegated Report is provided below:
- a. At paragraph 3.4 the officer describes the statutory duty contained in s.72 of the Planning Listed Buildings and Conservation Areas Act 1990, namely that “...*Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.* [emphasis added]” It is correct to say,

as the officer did, that the Council must give considerable importance and weight to any harm to the character and appearance of the conservation area in their balanced judgement of the application.

However, the appellant would add that s.72 does not only deal with harm. It primarily deals with preservation and enhancement. Like preservation, the decision maker must equally give considerable importance and weight to any enhancement to the character and appearance of the conservation area. This is critically important in terms of the overall balancing exercise.

- b. In paragraph 3.6 the Officer describes the applications for alterations that were consented by in 2009 and 2011. The paragraph then states that “*The 2009 consent [sensitively extended and adapted] rather than remodelling the existing building to such a degree that it takes on the appearance of a new building.*” While this refers to the 2009 permission it does not account for the 2011 permission. The 2011 permission would see the existing building entirely reconstructed in very different brick so that it would, indeed, take on the appearance of a new building. In paragraph 3.12 the officer states that “... *any proposed replacement building must preserve and enhance the character and appearance of the conservation area to an appreciably greater extent.*” In fact the correct position, based on the 1990 Act, is that any proposed replacement building must preserve *or* enhance the character and appearance of the conservation area. There is no basis in law for the assertion that preservation and enhancement to an appreciably greater extent is a requirement, as long as the development preserves the character of the area. Critically though, there is no acceptable threshold for enhancement, or a requirement that this must be to ‘an appreciably greater extent’ in order to be relevant or material to the consideration of the application.
- c. Officers consider the proposal would result in the “*total loss of the unique form of the building at ground floor level*” however the analysis from KSR Architects shows that significant amendments to the form of the building have already been permitted through the 2009 scheme (Scenario A).
- d. The following relevant and material circumstances are applicable in this case:
 - Froggnal Way is an unusual pocket of 20th century development in the Hampstead CA. It is a unique street.

- the Appeal Site is a unique site, even in the unusual context of Frogmal Way.
- The circumstances involving the baseline of No. 22 are material in that it is either a detracting eyesore or a slight positive element of substantially modern (i.e. 21st century) appearance and character.
- Given the above even a 21st century house would be consistent with the evolution of Frogmal Way and the unique role of the appeal site in that evolution.
- Both the original and the proposed houses were designed by local Camden based architects.
- Both clients have requirements for disabled access.
- Jez is an ‘important’ or ‘historically significant’ individual as recognised by the OBE and potentially a future blue plaque candidate. He is a longstanding local resident.