

Ref: 16.5072

5 August 2016

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24 Southwark Bridge Road
London
SE1 9HF

Nora-Andreea Constantinescu
Planning Development Management
London Borough of Camden
5 Pancras Square
London N1C 4AG

Dear Ms Constantinescu

1 Elsworthy Terrace London NW3 3DR
Objection to planning application by Mrs Miryam Nourani (LBC ref: 2016/3495/P)

We are instructed by the freehold owner and occupier of 23 Elsworthy Road, Dr Giovanni Gneccchi-Rusccone, to **object** to the above-referenced planning application to develop the rear garden of 1 Elsworthy Road NW3 3DR for:

Erection of two storey building with two basement levels and front lightwell for use as a single-family dwellinghouse (Class C3) and alteration to the front boundary wall to allow pedestrian access on site.

Background

Dr Gneccchi-Rusccone's property directly adjoins the application site, sharing a common boundary being the eastern (rear) boundary of the application site which is the western (side) boundary of his property.

The application site is an undeveloped residential garden serving the main property at 1 Elsworthy Terrace. To this end it is noted that the application address as published in your records should be revised to the following:

Garden land to rear of 1 Elsworthy Terrace London NW3 3DR

This approach is consistent with that taken with respect to the recent application to develop another site nearby, being the garages to the rear of 15 Elsworthy Terrace (re: 2011/1828/P).

We acted as planning advisors on the application to develop the garages to the rear of 15 Elsworthy Terrace, the permission for which the Applicant refers to in their application as setting a precedent for their proposals. As discussed in further detail below, we reject the significance of the permission to the rear of 15 Elsworthy Terrace as setting any relevant precedent for the current application since the circumstances of that development are significantly different to the current application. The rear of 15 Elsworthy Terrace was brownfield land which hosted buildings that detracted from the Elsworthy Conservation Area, the rear of 1



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Elsworthy Terrace is greenfield garden land that contributes positively to the Conservation Area.

Grounds of objection

Dr Gneccchi-Rusccone objects to the application in principle and in detail and requests that permission is refused.

In précis, the objection is on the grounds that the proposed development is an unacceptable development of undeveloped garden land which would cause substantial harm to the significance of the designated Elsworth Conservation Area, and would not bring about public benefits that outweigh that harm. The development would almost certainly result in the loss of trees protected by Tree Preservation Orders, and would be of an inappropriate design and, in particular height.

The grounds for objection are set out in more detail below.

1. Principle of development in greenfield garden land

The proposal is to erect a new house in the rear garden of the main residential dwelling at 1 Elsworth Terrace. The development would constitute "garden grabbing". Despite the previous owner's attempt to split the land from the main dwelling at 1 Elsworth Terrace, the land remains garden land, on which development for new dwellings is inappropriate development.

The land is not previously-developed land and development on it is not supported by the NPPF, which (paragraphs 17 and 111) encourages the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value. While it must be firmly recognised that the land is not previously developed (brownfield) land, a recent High Court decision (*Dartford Borough Council v Secretary of State for Communities & Local Government*(CO/4129/2015) into this matter is still relevant.

In this case the Court considered whether the definition of "previously developed land" (commonly known as "brownfield land") within the NPPF excluded all private residential gardens, or just those "in built up areas". The Deputy Judge held that the wording of the exemption to previously developed land within the NPPF was significant. The definition of Previously Developed Land reads (emphasis added):

Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.

As such, the Deputy Judge found that residential gardens within the "built-up area" were exempt from the definition of previously developed land whereas, residential gardens outside "built up areas" were "brownfield". Ergo, residential garden land in built-up areas cannot be considered to be brownfield land.

The Court held there to be a rational explanation for the distinction, namely that undeveloped land in the urban area was at more of a premium and thus required greater protection. Although such a consideration did not feature in the Written Ministerial Statement or Letter to Chief Planning Officers on the issue of "garden grabbing" which accompanied the amendments to national policy in 2010, those documents had to be read

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alongside the wording of the amendment to national policy (then contained within PPS3 "Housing") which, in common with the NPPF, preceded the exclusion of residential gardens with the phrase "land in built-up areas".

It therefore follows that development of undeveloped residential garden land in built up areas is inappropriate development.

2. Precedent or "balancing" the development to the rear of 15 Elsworthy Terrace

The Applicant places significant emphasis in their application (e.g. paragraph 4 of the letter from DRK Planning) on the proposed development being acceptable by virtue of the 2012 decision to redevelop the garages to the rear of 15 Elsworthy Terrace, and that the proposals offer the opportunity to "balance" the rhythm in the street frontage. We refute this claim on a number of grounds, which are:

- a. The land to the rear of 15 Elsworthy Terrace was previously developed land, and furthermore was occupied by garages that were identified in the Elsworthy Conservation Area Appraisal (June 2009) as detracting from the character and appearance of the Conservation Area. The Council acknowledged in their report to Development Control Committee that:

The site was originally a rear garden to the property at 15 Elsworthy Terrace. Objectors have requested that the site be returned to use as a garden or its appearance improved whilst maintaining the garage use. It would be desirable to see the site returned to green space for open space amenity and visual benefits. However the presence of an existing structure on the site, borough wide development pressures, the site's desirable location and current land values mean that there is no reasonable prospect of the site being returned to a solely domestic amenity or green space. Therefore it is considered that the next most appropriate use for the site would be a change to residential, subject to the proposals delivering acceptable benefits in respect of all other considerations. The change from domestic garages to a new single family dwelling is therefore considered to be acceptable.

It is therefore clear that the site's particular circumstances which are not common with the current application site were of great importance in the Council's consideration of the acceptability of the proposals to the rear of no.15. The decision to grant permission at no.15 should therefore be given no weight in terms of establishing a "precedent" for the development in the rear garden of no.1.

- b. There is no imperative to provide "balance" between the now-developed site to the rear of no.15 Elsworthy Terrace and the application site. No assessment has been provided by the Applicant that demonstrates what positive impact such a "balancing" would create, and we question strongly whether there is any public or private vantage point from which the two sites could be appreciated as a single composition where any sort of balance would be appreciated or bring benefit. We consider no weight should be afforded to this purported benefit or opportunity.

Conversely, approving the proposed development in the garden of 1 Elsworthy Terrace would set a very unwelcome precedent in Camden. It would open the door to residential gardens of this type being subdivided and developed, drastically eroding the value of garden land and harming the character and appearance of the borough.

3. Heritage considerations

It is troubling that the Applicant has provided no meaningful assessment of the impact of the proposed development on the significance of the Elsworthy Conservation Area, which is a designated heritage asset. The Applicant has not attempted to engage with the principles of the NPPF or the "great weight" (paragraph

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132) that should be afforded to the conservation of heritage assets. The Applicant does not seem to acknowledge the sensitivity of the Conservation Area to development of this type.

The Elsworthy Conservation Area Appraisal (paragraph 3.7) states that "The area's spatial character derives from the spacious leafy streets and generously laid out plot sizes, complemented by areas of semi-private communal amenity space." Paragraph 3.27 states "The Conservation Area has a spacious layout of residential character, with many street trees, and planting in public and private open space, reinforced by the proximity to the green of the Royal Park at Primrose Hill, which is defined in the London Borough of Camden [Local Plan] as Metropolitan Open Land and a Site of Nature Conservation Importance." Paragraph 4.5 reiterates the "essential pattern of the Conservation Area is of terraced townhouses and semi-detached villas in the north and east, and larger detached houses in the west. The urban grain comprises a spacious layout of streets and buildings".

It is evident from the Appraisal that the garden spaces that make up the spatial arrangement of properties in the Conservation Area make a substantial contribution to its significance. Furthermore, the street pattern in the CA is typical of Victorian suburbs where terraces of properties abut each other at the perpendicular, creating gaps such as between the rear façade of 1 Elsworthy Terrace and the side boundary of 23 Elsworthy Road. These characteristic gaps are typically gardens, or in some cases mews, although mews are not characteristic of the Elsworthy CA (paragraph 3.11).

Paragraphs 12.3 and 12.4 state that new development within the Conservation Area should show special consideration to the elevational treatment, scale, bulk and massing of buildings and where possible respect the traditional forms and rooflines of the Conservation Area. Future additions and development must take care not to break away or detract from the traditional alignment and elevation of the existing building typology and form.

New development should reflect and reinforce the original rhythm and density of development of the streetscape. Subdivision of existing plots will be discouraged where it interrupts the rhythm and form of development of both buildings and boundary treatments or results in the loss of features that contribute to the character of the area. Where original plots have been amalgamated to create larger units the Council will look favourably on proposals to reinstate the historical layout of the plots which restore the original rhythm and character.

The current proposals would introduce a new building to rear garden, in a manner inconsistent with the existing pattern of development. It would interrupt the rhythm and form of development and result in the loss of open garden land, which contributes significantly to the conservation area. We therefore conclude that the proposals would cause substantial harm to the significance of the heritage asset.

Paragraph 133 of the NPPF therefore become relevant:

133. *Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

- *the nature of the heritage asset prevents all reasonable uses of the site; and*
- *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- *conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and*
- *the harm or loss is outweighed by the benefit of bringing the site back into use.*

The application makes no attempt to engage with tests of paragraph 133 and does not, in our view, pass any of them.

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The only public benefit that would be brought by the development would be the creation of a single high-value private dwelling, which is extremely limited when considered against Camden's annual housing target of 889 homes per year, a target that Camden has planned adequately for without developments on sites such as this having to come forward. We therefore considered the public benefit to be negligible. No other public benefits would be forthcoming save for temporary economic benefits during construction (i.e. construction jobs and supply chain), which are again negligible when weighed against the harm to the CA.

We therefore conclude that on heritage grounds the application should be refused, and furthermore that no alternative suitable development of the site for residential dwellings could come forward that would address the harm caused to the Elsworthy Conservation Area.

4. Impact on trees

It is deeply troubling that the Applicant's Arboricultural Report submitted with the application makes no reference to four of the trees on the site being subject to Tree Preservation Order, these being:

- 34H-T22 – Mature Birch confirmed 11/11/57
- 34H-T23 – Mature Lime confirmed 11/11/57
- 34H-T24 – Mature Lime confirmed 11/11/57
- 34H-T25 - Mature Thorn confirmed 11/11/57

While the proposals seek to retain and protect trees on the site, the proposed development would involve substantial works of excavation and disturbance of the site in order to construct the building.

The writers are not expert in matters of tree protection or construction, but nevertheless hold considerable experience in development in London, including on sites where trees need to be protected and retained and on sites where substantial amounts of excavation are necessary. It is our opinion that the Applicant's assertions that the trees can be safely protected through the development of the site are wholly unrealistic. We also request that significantly more detail on the means of excavation and construction of the development be sought before any decision can be made on these matters.

In any case we consider that the application must be considered on the basis that some or all of the trees will be lost, and the implications of the loss of the TPO trees be weighed in the application's determination. We consider the loss of the trees would be unacceptable in this context and their loss is further grounds for objection.

5. Design and height

Without prejudice to the above in-principle objections to the proposed development, the proposal's detailed design and in particular its height is unacceptable.

Development to a height of two storeys on this site is wholly inappropriate. The second storey would block the public view from Elsworthy Road across the rear gardens of houses on Elsworthy Terrace through to Primrose Hill to the south, further harming these semi-public elements of the heritage asset.

The two-storey height would also cause significant and harmful overbearing to the garden of 2 Elsworthy Terrace. Currently the garden enjoys a suburban open character typical of the area, and it cannot be reasonably argued that the owner of that property should legitimately expect that open character to be affected by the development.

The second floor would also be built from brick which would add to its apparent bulk. It would appear unduly

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heavy and not be characteristic of other roof-level forms in the Conservation Area. Should it be considered it is appropriate to develop the site for a house the design should be more lightweight in general appearance. The current proposals are generally heavyweight in appearance with window proportions that do not reflect the proportions of buildings that characterise the CA.

Furthermore, the building line of the proposed development at ground floor level would be forward of the established building line set by 23 Elsworthy Road, which is inappropriate as it fails to respect the form and urban grain of development in the street.

6. Lack of public engagement

While not a reason to refuse permission, per se, it is dismayed that the Applicant has made no attempt to engage with local people on development of this sensitive site. The Elsworthy Conservation Area is served by an active and engaging Residents' Association who can be readily identified and contacted using Camden's online resource.

Summary

The land subject of this application is a residential garden, on which only buildings ancillary to the main residential use of the host dwelling can be acceptable. Despite attempts to subdivide it from its host dwelling, no change in this use has taken place.

The site is undeveloped land that makes a positive contribution to the Elsworthy Conservation Area, the loss of which would be harmful to the heritage asset. The development of the land for a residential dwellinghouse would cause substantial harm to the heritage asset without any meaningful public benefit or imperative.

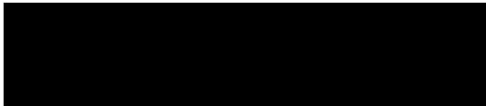
For the reasons set out above we request that the application is refused. We request that we are notified of the Council's decision or in the event it is referred to the Council's Planning Committee.

Please call if you have any questions about the content of this letter.

Yours sincerely



Grant Leggett
Director, Head of Boyer London



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