
Appeal Decision

Hearing held on 12 July 2016

Site visit made on 12 July 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 7 October 2016

Appeal Ref: APP/X5210/W/16/3145922
26 Netherhall Gardens, London NW3 5TL

- 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 Dome Assets Ltd against the Council of the London Borough of Camden.
 - The application Ref 2015/3314/P is dated 11 June 2015.
 - The development proposed is the demolition of the existing property and redevelopment of the site to provide a four storey (plus basement storey) detached property comprising five self-contained residential units (4 x 2 bedroom and 1 x 3 bedroom); the proposals also include hard and soft landscaping, new boundary treatment and the provision of off-street car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It was agreed at the hearing that a more accurate description of development would include the phrase 'and sub-basement for plant' after 'plus basement storey'.
 3. It was confirmed at the start of the hearing that the Final Statement of Common Ground between the main parties was agreed, notwithstanding the fact that it still included the word 'draft'.
 4. The appeal was made on the basis of the Council's failure to determine the application within the prescribed period. Following the lodging of the appeal the Council indicated that they would have refused the scheme had they been in a position to determine the application.
 5. A signed and dated agreement in accordance with Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant during the hearing. This contains a number of obligations in respect of a Basement Construction Plan, sustainability measures, energy efficiency, highway contributions, construction management and car parking. I return to these matters later in my decision.
 6. The name of the conservation area within which the appeal site is situated has been variously referred to by the Council and the appellant. I have taken the
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form which is used in the Council's Conservation Area Statement, namely Fitzjohns / Netherhall.

Main Issues

7. The Council's putative reasons for refusal formed the basis of my initial identification of the main issues. The appellant indicted that the Council's second reason focusing on biodiversity was not covered. As the Council had framed this reason in terms of the conservation area context I had considered that it could be addressed as part of the third main issue. However, on reflection, I have identified this as a main issue in its own right.
8. The appellant also highlighted the fact that the Statement of Common Ground indicated that the impact of the proposed development would not be detrimental to the living conditions of neighbouring occupiers in respect of outlook or loss of light. Nevertheless, based on the representations of neighbours and the Council's comments about the outputs from the appellant's Daylight and Sunlight Study I consider it to be a main issue.
9. Consequently the main issues are:
 - a) the effect of the proposal on the living conditions of neighbouring residents with particular reference to outlook and daylight;
 - b) the effect of the proposal on trees along the boundary of 24a Netherhall Gardens;
 - c) whether the proposed development would preserve or enhance the character or appearance of the Fitzjohns / Netherhall Conservation Area;
 - d) whether the proposed basement development would affect the ability of the garden to contribute to the biodiversity function and landscape character; and
 - e) whether the proposed development would provide acceptable living conditions for future occupiers, with regard to outlook and daylight.

Reasons

Living Conditions for Neighbouring Residents

10. The SoCG confirmed the Council's view that the development's impact on the living conditions of neighbouring residents would not be significantly detrimental in respect of loss of outlook, privacy, overlooking or loss of light. Nevertheless, on the basis of the comments in the Council's statement and the objections from neighbouring occupiers I identified the effects in respect of outlook and daylight as a main issue.
11. The proposed development would extend further into the rear garden than the existing building. The proposed development would extend at ground, first and second floor levels no further than the existing rear elevation of 24a Netherhall Gardens. The side elevation facing no. 24a would be stepped such that towards the rear the building would be set back. At ground floor level the effect of the proposed development would be to reduce light levels to a room which serves as a link between the larger main living areas to the front and rear of the property and also leads to the stairs to first floor level. I saw during my visit that this space was much more than a hallway and in my view was a habitable

- room. As the side window to this room faces the ground floor of no. 26 and contains obscure glazing I do not consider that the outlook at ground floor level would be adversely affected to a significant degree although there would be an appreciable loss of daylight to a habitable room.
12. At first floor level of no. 24a the only window serving the bedroom closest to no. 26 is small and is angled at approximately 45 degrees toward the neighbouring property. The window adjoins a wall which extends eastwards which restricts daylight to the bedroom. Whilst setback from the southernmost extent of the proposed building, adjoining this bedroom the proposed development at first and second floor levels would, in my view, result in a material loss of daylight and an increased sense of enclosure.
 13. Adjacent to 28 Netherhall Gardens the proposed development would extend approximately 1.7 metres further towards the rear garden than the existing building. Although the existing development already extends to second floor level there would be a considerable loss of daylight to the ground floor windows on the southern façade of no. 28 which faces the appeal property with an additional impact on the windows facing the rear garden. The proposed development would also result in a significant loss of sunlight to this room, as indicated in the appellant's Daylight and Sunlight Study.
 14. Consequently I find that the loss of daylight and increased sense of enclosure experienced by occupiers of no. 24a and the loss of daylight and sunlight experienced by occupiers of no. 28 would be harmful to their living conditions. The proposals would therefore be contrary to Policy CS5 of the Camden Local Development Framework (LDF) Core Strategy, 2010 which seeks to protect the living conditions of residents and Policy DP26 of the LDF Development Policies, 2010 which aims to manage the impact of development on neighbours.

Trees

15. There are a number of other trees on the boundary between nos. 26 and 24a as I saw during my site visit. The appellant indicated at the hearing that the trees were category C at best and therefore not worthy of retention. However, in the absence of accurate information about their condition and justification for their removal I find that it has not been demonstrated that their removal would not be contrary to Policy DP24 of the LDF Development Policies which seeks to secure high quality design and Policy DP25 which aims to conserve Camden's heritage. The Council also referred to Policy CS15 of the LDF Core Strategy in support of its position on this matter but as this policy applies to parks and open spaces rather than private gardens I do not see its relevance in this situation.

Character and Appearance

16. The existing property at 26 Netherhall Gardens is a three-storey building with additional accommodation within the roof space and an exposed basement / lower ground floor level. It has a steeply pitched roof containing two dormers to the front.
17. The building is within the Fitzjohns / Netherhall Conservation Area and dates from the late 1870s. It is identified within the Council's Fitzjohns / Netherhall Conservation Area Statement (the Statement), together with most of the other 19th century buildings in the area, as making a positive contribution to the

character and appearance of the conservation area. The conservation area is characterised by grand houses built in the 1880s and 1890s a number of which have been converted to flats or educational uses. These buildings are described as notable because of their value as local landmarks or as particularly good examples of the local building tradition. The Statement also recognises that the distinct quality of the conservation area is that it largely retains its homogenous mid-late 19th century architectural character.

18. Properties within Netherhall Gardens are generally closely spaced with a common building line. Front gardens containing trees and other vegetation together with street trees contribute to the character of the locality. Whilst individual buildings exhibit a variety of styles the predominant building material is brick. A particular feature of the area is the variety of pitched roof forms with chimneys also often being prominent. Large detached or semi-detached houses are generally laid out on substantial plots and demonstrate consistency in terms of scale, massing and to some degree the use of material. The Statement describes many of the buildings within Netherhall Gardens individually but very limited reference is made to no. 26.
19. Within Netherhall Gardens the topography is expressed both by the street rising to the north and falling away to the west. Consequently the buildings on the eastern side, including the appeal site are elevated above street level. However, extensions and alterations to the front garden of 26 Netherhall Gardens in the 1930s and 1950s involved excavations to reveal the exposed basement level. As a result the property appears taller than neighbours rather than elevated. In addition, the topography allows long views including along Netherhall Gardens, with oblique views of no. 26 contributing to this character.
20. The southern flank wall of the appeal property is plain and does little to contribute to the character of the conservation area. It has some prominence within the street scene because of the considerable gap at upper levels between no. 26 and no. 24a to the south. This gap is much larger than those between other properties in this part of the road and particularly those properties opposite the appeal site including nos. 19 to 34 which appear as a terrace in oblique views. It also allows views through the site to the mature trees to the rear of the appeal site which are a positive feature of the conservation area.
21. By virtue of its use, scale, roof form and use of materials which are characteristic of the locality, 26 Netherhall Gardens makes a positive contribution to the character of the conservation area. It contains elements which contribute to the architectural quality of the area including the rubbed brickwork embellishment, oriel window, projecting porch and elevated ground floor. Moreover, I find that the informal and asymmetrical composition of the front façade with Freestyle Arts and Crafts influences contributes to the aesthetic value of the building. The positive contribution of no.26 is also partly derived from its group value with other buildings sharing common architectural characteristics although any historical value arises only from being constructed at the same time as other buildings which the Statement indicates as having greater value.
22. However, this contribution is limited by virtue of the setting of the original building within its plot being compromised by the later alterations including the excavation of the basement level, flat roofed extension at ground level and the

- unsatisfactory arrangement of steps to the front elevation, the effect of which has been to detract from the grand appearance which is characteristic of neighbouring properties. The ridge height of no. 26 being slightly higher than its immediate neighbours also detracts to a limited degree from the prevailing scale.
23. The later alterations to no. 26 do not contribute positively to the conservation area and significantly detract from the positive contributor status of the original building and the wider conservation area. Whilst it may be possible to reverse the nature of these changes with a more sympathetic scheme to enhance the host building as suggested by the Council, that is not the scheme before me for consideration. The fact that unsympathetic changes to the building were made prior to the designation of the conservation area does not mean that they were not harmful and they continue to be harmful to the appearance of the conservation area.
24. The replacement building would be appropriate in the street scene in terms of scale, styling and detailed design. It would respond appropriately to its context and would appear as a large detached property in keeping with other grand houses in the locality. It would respect the prevailing building line to the street frontage and the different buildings lines provided by neighbouring properties to the rear. In terms of its ridge height it would complement nos. 28 and 24, whilst a lower section to the south would respect the lower height of 24a Netherhall Gardens. I find that to a degree the proposed development would appear as a pair with no. 28.
25. The proposed massing and articulation of elements reflects neighbouring properties through the inclusion of a pitched roof with dormers, a large gable with a projecting bay and lower projecting elements to the west, south and east. In terms of materials and detailing the proposal would also address the characteristics of the immediate locality and the proposed forecourt and landscaping would also respond appropriately to the setting. A further benefit would be the closure of the gap at upper levels between nos. 26 and 24a and which would reduce the prominence of the flank wall.
26. I find that the proposed development would overcome a number of the negative features of the existing development and its contribution to the conservation area including the various alterations made to the original building. It would therefore enhance the conservation area and make a positive contribution to local character and distinctiveness.
27. The proposal would see the main trees which contribute to the character of the conservation area, namely the lime tree in the front garden, the street tree adjacent to the front boundary and the protected trees to the rear retained. Whilst concern has been raised about the effect of the proposals on trees in neighbouring gardens I have no evidence that they would be adversely affected. In respect of the other trees on the boundary with no. 24a, I have addressed these above.
28. I find that whilst making a positive contribution to the significance of the conservation area the existing building's contribution is more limited than that of other buildings in the area and makes a limited contribution to the character and appearance of the conservation area. I therefore find that the harm to the significance of the conservation area as a designated heritage asset as a result of the loss of the existing building would be less than substantial.

29. Paragraph 134 of the National Planning Policy Framework (the Framework) requires that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. In this case I have found that the public benefits arising from the development of a high quality residential building which responds positively to the site and its neighbours would outweigh the less than substantial harm to the character and appearance of the conservation area. In doing so it would also address the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area and to which I attach significant weight.
30. I therefore find that the proposed development would not conflict with Policy CS14 of the LDF Core Strategy which seeks to promote high quality places whilst conserving the borough's heritage. Additionally there would be no conflict with Policy DP24 of the LDF Development Policies, which seeks to secure high quality design and Policy DP25 which establishes a presumption in favour of retaining buildings which make a positive contribution to the character and appearance of a conservation area, unless exceptional circumstances are shown that outweigh the case for retention. The proposals would also be in line with the requirements of policies DP24 and DP25 which require developments to take account of trees and to preserve trees which make a significant contribution to the character of the conservation area respectively.

Biodiversity and Landscape Character

31. The Statement recognises that rear gardens contribute to the townscape of the conservation area and provide significant amenity to residents and habitats for wildlife. It also advises that extending into basement areas will only be acceptable where it would not involve harm to the character of the building or its setting recognising that basement development can reduce the ability of a garden to support trees and other vegetation.
32. The proposed basement would extend under the majority of the garden, and to within less than a metre of the southern boundary. The Council's concern is that the margin between the site boundary and basement construction would be insufficient to support the characteristic tree species and vegetation of the area.
33. Policy DP27 of the LDF Development Policies sets out the policy requirement to provide satisfactory landscaping including adequate soil depth. The supporting text states that it is expected that a minimum of 0.5 metres of soil will be provided above the basement development where it extends beyond the footprint of the building, to enable garden planting. Camden Planning Guidance (CPG) 4: Basements and Lightwells, seeks sufficient margins and a minimum of 1m of soil above basements in order to provide satisfactory landscaping.
34. With regard to the provision of landscaping I have no evidence that the extent of the garden above the basement, or the distance between the site boundary and basement construction would prevent satisfactory landscaping. Furthermore, given the area of the garden and the ability to address landscaping through a condition it has not been demonstrated that the basement construction would be in conflict with the requirements of Policy

DP27 in respect of landscaping. Whilst conflict with CPG 4 has been identified I consider that this would be limited and as guidance I attach less weight to this than I do to Policy DP27.

35. I also consider that the proposed basement development would not conflict with Policy CS14 in respect of preserving and enhancing the Fitzjohns / Netherhall Conservation Area because harm to the biodiversity function and landscape character of the site has not been demonstrated. For the same reasons I find no conflict with policies DP24 and DP25 of the LDF Development Policies which seek to achieve high quality design and the conservation of Camden's heritage, respectively. The Council also made reference to Policy CS15 of the LDF Core Strategy which seeks to protect open spaces and encourage biodiversity but as this policy applies to parks and open spaces rather than private gardens I do not see its relevance in this situation.

Living Conditions for Future Occupiers

36. The proposed development would provide two duplex flats with bedrooms and various non-habitable rooms at basement level and other living space at ground floor level. For one of the duplex flats, the basement windows serving one of the bedrooms, would look out onto a lightwell which would have a wall approximately two metres from the windows. Furthermore, at ground floor level there would be a projecting bay extending over the majority of the lightwell.
37. Both the Council and neighbouring residents challenged the credibility of the appellant's daylight and sunlight report based on the Building Research Establishment (BRE) guidance on Site Layout Planning for Sunlight and Daylight. It was suggested that the Average Daylight Factor targets were incorrect in view of the depth of the proposed lightwell and the projecting bay above. However, noting that the BRE guidance states that the standards are intended to be used flexibly and in the absence of clear evidence to challenge the results of the tests I give little weight to these concerns. Based on the evidence which I heard, I find that the assessment had taken account of the concerns raised and that there would be no adverse effect on future occupiers in terms of daylight.
38. However, I find that the proximity of the wall to the basement windows and the presence of the bay above would adversely affect outlook but only to a limited degree. There would therefore be limited harm in terms of Paragraph 4.20 of CPG 2, Housing which states that residential developments should maximise sunlight and daylight whilst paragraph 4.26 states that all rooms within a basement should have adequate access to natural lighting with walls of lightwells being no closer than three metres. This is particularly relevant in a new build situation rather than a conversion.

Nevertheless, as a substantial duplex apartment with a large rear lightwell to basement bedroom two, a ceiling height for the basement rooms which is well in excess of the minimum standards and the provision of the main accommodation at ground floor level I find that in overall terms the proposal would meet the requirements of Policy DP26 which aims to manage the impact of development on occupiers, avoiding harm in respect of overshadowing and outlook, and daylight among other factors. Similarly, I do not find conflict with Policy CS5 of the LDF Core Strategy which seeks to ensure that the impact of development on occupiers is fully considered in order to protect residential

amenity. Consequently, I find that future occupiers would be likely to experience acceptable living conditions in terms of the provision of internal living space.

Other Matters

39. A number of other matters were identified by the Council and other parties including the effects of the construction, energy efficiency and sustainability, highway works and sustainable transport matters. The appellant sought to address these through the submission of a Section 106 agreement which was signed by the Council and the appellant and provided during the hearing. As I have found conflict with the development plan it is not necessary for me to consider the details of the agreement as the matters addressed in the agreement would not overcome the harm which I have identified.

Conclusion

40. I have found that the proposed development would enhance the character of the Fitzjohns / Netherhall Conservation Area and would not be contrary to biodiversity objectives or landscape character. In addition I have found that future occupiers of the proposed development would be likely to experience acceptable living conditions. However, these benefits are not outweighed by the harm which I have identified to the living conditions of occupiers of 24a Netherhall Gardens in respect of the loss of daylight and to habitable rooms and no. 28 in respect of loss of daylight and sunlight. In addition that lack of justification for the removal of trees between nos. 26 and 24a also weighs against the scheme.

41. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

Kevin Gleeson

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Simon Wallis	Savills
Gareth Jones	Peter Stewart Consultancy
Giles Heather	Squire and Partners
Robert Bochel	Squire and Partners
Ivan Button	Crown Consultants Ltd.
Andreas Kaimakamis	Dome Assets Ltd
Jonathan Ray	Right of Light Consulting
Aimee Squires	Savills
Richard Ground QC	2-3 Gray's Inn Square

FOR THE LOCAL PLANNING AUTHORITY

David Peres da Costa	London Borough of Camden
Catherine Bond	London Borough of Camden
Zoe Trower	London Borough of Camden

INTERESTED PARTIES

Miriam Madar	Neighbouring Resident
Billie Bacall	Neighbouring Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal Decisions APP/X5210/E/11/2161175 and APP/X5210/E/11/21611752, 18 Reddington Road, London NW3 7RG, submitted by the Appellant.
2. Appeal Decision APP/X5210/4/11/2215857, 38 Heath Drive, London NW3 7SD, submitted by the Appellant.
3. Design and Access Statement Aide Memoire, submitted by the Appellant.
4. Section 106 Agreement, submitted by the Appellant.
5. Closing Summary, submitted by the Appellant.