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# Appeal Decision

Site visit made on 16 October 2017

**by Zoe Raygen Dip URP MRTPI**

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

**Decision date: 14<sup>th</sup> November 2017**

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**Appeal Ref: APP/X5210/Q/17/3174501**

**1 Northern Heights, Trinity Walk, London NW3 5SQ**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
- The appeal is made by Jeremy Church against the decision of the Council of the London Borough of Camden.
- The development to which the planning obligation relates is erection of a new 2 story, plus basement single dwelling house to the rear of 106 Finchley Road.
- The planning obligation, dated 13 July 2010, was made between The Mayor and Burgesses of the London Borough of Camden and Jeremy Church.
- The application Ref 2016/4662/P, dated 23 August 2016, was refused by notice dated 1 November 2016.
- The application sought to have the planning obligation modified as follows: The removal of part 4.1 of the planning obligation which states that

#### *4.1 Car free*

*4.1.1 The owner hereby covenants with the Council to ensure that prior to occupying the residential unit forming part of the development, each new resident of the development is informed by the owner of the councils policy that they shall not be entitled (unless they are holder of a disabled persons badge issued pursuant to section 21 of the chronically sick and disabled persons act 1970) to be granted a residents parking permit to park a vehicle in a residents bay, and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.*

*4.1.2 The owner for itself and its successors in title to the property hereby acknowledges that the provision in clause 4.1.1 above will remain permanently.*

*4.1.3 On or prior to the occupation date, the owner shall inform the Councils planning obligations monitoring officer of the official unit number of the residential unit forming the development, identifying that this residential unit is in the owners opinion affected by the owners obligations in clause 4.1.1 of this agreement*

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## Decision

1. The appeal is dismissed.

## Preliminary matter

2. The application the subject of this appeal was assessed against the London Borough of Camden Local Development Framework Core Strategy 2010-2025 (2010) and the London Borough of Camden Local Development Framework Development Policies 2010 which constituted the development plan at that time. I am advised by the Council that The Camden Local Plan 2017 (LP) was formally adopted on the 3 July 2017. I therefore requested that the Council submit copies of the Policies in the LP which it considered relevant to the

appeal and gave the appellant opportunity to comment on the new Policies. I have therefore had regard to the LP in the determination of the appeal.

### **Background and Main Issue**

3. Planning permission under reference 2009/4045/P was granted on 13 July 2010 for the erection of a two storey plus basement single dwelling house on the appeal site on the proviso that the approved development be car-free. The car-free element of the scheme was secured by a Section 106 Legal Agreement (S106) co-signed by the appellant on 13 July 2010. The appellant now wishes to modify the S106 so that occupiers would be entitled to apply for resident's car parking permits.
4. The main issue is, therefore, whether part 4.1 of the planning obligation still serves a useful purpose in requiring each resident of the development to not be entitled to a resident's car parking permit.

### **Reasons**

5. No 1 Northern Heights is a three bedroom house located off Trinity Walk, a pedestrian way between Maresfield Gardens and Finchley Road. As a result there is no vehicle access to the property and therefore no on-site parking available. The site is within the Controlled Parking Zone (CPZ) CA-B (Belsize).
6. Finchley Road is a Red Route and therefore has no parking bays. At the time of my site visit, there was some parking available on Maresfield Gardens, both within the residential parking bays and the pay and display parking areas. Although parking spaces were more limited within the residential parking bays, there were, nevertheless, spaces available. I appreciate that this is a snap shot in time and that other times the situation may be different.
7. The appellant has submitted a Parking Study 2016 carried out to the Lambeth methodology which demonstrates that roads close to the appeal site are not subject to serious parking stress and there would be capacity for residents of No 1 to own more than one car and still not contribute to parking stress in the local area. This is reinforced by a number of properties on Maresfield Gardens having off street parking, in contrast to properties elsewhere in the CPZ which have limited off street parking available, and therefore occupiers place more pressure on residents parking bays.
8. The Council consider that the Parking Study is limited given it was only carried out over two days in the year. It states that for every 100 parking bays within the Belsize CPZ 113 car park permits have been issued representing an overprovision and therefore representing parking stress. Nevertheless, the Council's data relates to the CPZ as a whole, rather than individual areas of parking stress. The Parking Study, although only carried out over two days, nonetheless mirrors my findings on site that parking would be available for occupiers of the appeal site without significantly contributing to parking stress within the immediate vicinity of the site rather than the whole CPZ.
9. Nonetheless, Policy T2 of the LP states that the Council will limit the availability of parking and require all new development in the Borough to be car free, not only to reduce parking stress, but also to encourage and promote active, healthy and sustainable lifestyles while helping to minimise motor vehicle trips in the borough and their associated impacts on the environment in terms of air quality and traffic congestion.

10. To achieve this on street or on-site parking permits will not be issued and legal agreements used to ensure future occupants are aware they are not entitled to car parking permits. The Council acknowledges that some people and businesses rely on cars as their only transport option and therefore parking provision for disabled persons and essential uses will be considered where necessary.
11. There is some dispute between the parties as to whether the site is within an area with a Public Transport Accessibility Level (PTAL) of 6a (the Council) or 5 (the appellant). Nevertheless, I saw that the appeal site is within walking distance of bus stops and a tube station on Finchley Road. The appellant disputes that these facilities provide services at night, or to hard to reach locations. However, I have seen no substantive evidence of this. Furthermore, there are a number of services and facilities on Finchley Road to meet the day to day needs of occupiers of No 1.
12. As a result, irrespective of the exact PTAL rating, the combination of good public transport links, and the presence of local services means I am satisfied that the appeal site is located within a highly accessible location where the need for a car would not be essential. Furthermore, I have seen nothing to suggest that occupiers of the house would rely on cars as their only transport option.
13. The Council state that parts of Camden have some of the poorest air quality levels in London. As a result, since 2000 the whole of the borough of Camden has been declared an Air Quality Management Area (AQMA) for both NO<sub>2</sub> (Nitrogen Dioxide) and PM<sub>10</sub> (Particulate Matter). One part of supporting an improvement in Camden's air quality is by requiring all new development in the Borough to be car free. The Council's Air Quality Action Plan identifies actions and mitigating measures to be implemented by the Council and partners to reduce NO<sub>2</sub> and PM<sub>10</sub> from the four main emission sources of the borough, one of which is road transport. Given that the existing air quality is poor I have seen nothing to suggest that modifying the S106 to allow occupiers to apply for parking permits would not exacerbate the existing situation.
14. I acknowledge that up to three vehicles may be registered to one parking permit, but only one of those vehicles may be parked in the CPZ at any one time. Nevertheless, the Council confirms that each resident of the property who met the qualifying criteria would be able to obtain a parking permit. As a result, as the property is a large three bedroom house it is likely that there could be more than one qualifying resident and there would be no restriction in the number of permits to be issued. Even if permits could be restricted, there would still be a number, however small, of permits issued to the property which would result in increased car use in association with the appeal property.
15. In addition, I have considered the Council's argument that the current proposal would set a precedent for other S106 agreements to be modified to allow residents to apply for permits. Whilst each application and appeal should be treated on its own merits, I can appreciate the Council's concern that withdrawing the restriction on this S106 agreement could be used to support other requests, given the restriction on car parking permits in the Borough. Allowing this appeal would make it more difficult to resist further applications to modify S106 agreements, and I consider that the cumulative effect would materially exacerbate harm to congestion and air pollution reducing the

- effectiveness of car free development as part of the overall strategy to tackle poor air quality and the use of alternative modes of transport to the car.
16. The appeal site was formerly part of 106 Finchley Road which was part commercial and part residential use. Paragraph 10.20 of the LP allows that where existing occupiers will be relocated on the same site as part of a redevelopment scheme then the Council will consider retaining or reproviding parking provision. However, if the development is to have new occupiers, as in the case of the appeal site then it should be car free.
  17. The appellant considers that the Policies against which the original planning application was considered in 2010 were at a conceptual stage in relation to car free development. Nonetheless, from the chronology supplied by the Council it would appear that car free development has been the subject of Policy within the development plan since 2006. In particular Policy T8 of the Replacement Unitary Development Plan 2006 (UDP) concerns car free housing and car capped housing. While the appellant points to Policies within the UDP which he considers supports his case, the UDP is no longer part of the development plan. I have, therefore, had regard to the current development plan which has very recently been adopted and seeks to restrict car use within the Borough.
  18. For the reasons above, I conclude that part 4.1 of the planning obligation still serves a useful purpose in requiring each resident of the development to not be entitled to a resident's car parking permit, particularly with regard to the Council's strategy to reduce congestion and air pollution and encourage alternative modes of transport in accessible locations. Allowing a modification to the S106 to remove part 4.1 would therefore be contrary to Policies T2 and CC4 of the LP. These require that development is car free and impact of development on air quality is mitigated and ensure that exposure to poor air quality is reduced in the Borough.

### **Other matters**

19. I have had regard to the financial information submitted by the appellant detailing initial valuations of the property and subsequent reductions which the appellant attributes to the lack of a parking permit for a family house resulting in a 17% reduction in the value of the property. This he states is far in excess of the 0.48-3.92% reduction in value envisaged by the Camden Local Plan Evidence Report for Car Free Development 2016, and has resulted in the development not being viable.
20. Having reviewed the information, and, in particular the valuation report by De Villiers 2013 (VR) I am not persuaded that the reduction in value is entirely down to the lack of availability of car parking permits for occupiers. While the VR does acknowledge the lack of parking it also refers to the current state of the property requiring some further work. In addition, the VR refers to the location of the property down a pedestrian walkway with no vehicular access and being overlooked both from the pavement and near to commercial users and a primary school. The unusual location along a pedestrian walkway, in particular, would appear to have contributed to the lower valuation when compared to more traditional town houses. The other submitted valuations are not sufficiently detailed to reach any meaningful conclusions. Accordingly, I give this issue limited weight in my consideration which would not outweigh the potential for harm to congestion and air quality across the Borough, caused by allowing residents of the appeal site to be able to apply for car parking permits.

**Conclusion**

21. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Zoe Raygen*

INSPECTOR