

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL UNDER SECTION 78 BY MS ELENA KIZIEVA

**SITE AT KEBONY HOUSE, OAK HILL PARK,
LONDON NW3 7LP**

APPEAL STATEMENT – GROUNDS OF APPEAL

LPA REF: 2017/3900/P
CWA REF: 1286/1

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1. INTRODUCTION

1.1 This Appeal Statement relates to the appeal by Ms Elena Kizieva against the decision of Camden London Borough Council (“the LPA”) to refuse planning permission for the *‘construction of single storey garden room, single storey building containing sauna, outdoor plunge pool, and associated ground level terrace’* at Kebony House, Oak Hill Park, London NW3 7LP

1.2 This statement should be read in conjunction with the following application-stage documents:-

- The application drawings numbered CF-129-DR-1-0050-A, 0100-A, 0110-A, 0111-A, 0112-A, 0113-A, 0114-A, 0115-A & 0116-A prepared by Cooke & Fawcett Architects,;
- The Tree Survey & Report (AIA) prepared by Wassells Limited; and
- The Planning, Design & Access Statement (incorporating a Heritage Asset Impact Assessment).

2. THE APPEAL SITE AND THE SURROUNDING AREA

- 2.1 The appeal site, which is situated within the Hampstead Conservation Area, comprises a residential plot located to the rear and side of Oak Hill House, Oak Hill Park, Hampstead. Oak Hill House, which dates from the middle of the nineteenth century, has been divided into a number of self-contained flats.
- 2.2 The site is occupied by a recently constructed, single storey dwelling house (Use Class C3), known as Kebony House, which is served by a large L-shaped private garden to the north-west and north-east of the dwelling. Kebony House has a simple, contemporary appearance, and incorporates a flat roof (used as a garden) and substantial areas of glazing. The dwelling and garden are located at a lower level than Oak Hill House, and are reached via private steps which link the communal parking area in front of Oak Hill House to the appeal property. The main part of the rear garden to Kebony House is flat and open but the north-eastern section slopes up towards the car park, and includes a number of mature trees.
- 2.3 This part of the Hampstead Conservation Area is characterised by large residential properties, including twentieth century blocks of flats, set in extensive sloping and wooded plots. The 1960s flatted development and associated garden of Oakhill Lodge adjoin the north-eastern boundary of the appeal site. The north-western and south-western boundaries of the site adjoin the landscaped rear gardens of large detached properties in Redington Gardens and Redington Road respectively; these roads form part of the Redington/Frogna Conservation Area.

3. RELEVANT PLANNING HISTORY

- 3.1 Planning permission was granted on 8th October 2013 under reference 2013/3812/P for the *'erection of a single storey building to the rear of Oak Hill House to accommodate 4 bedroom dwelling (C3), including communal roof garden for use by occupants of Oak Hill House, together with provision of new communal bin store, cycle storage for two cycles, one additional car parking space and landscaping works'*. This consent, which was implemented (but see below), was subject to the removal of all householder and minor operational (A-C) permitted development rights.
- 3.2 During the course of construction, various minor material amendments to planning consent 2013/3812/P were approved on 28th May 2015 under reference 2014/4197/P. These amendments included elevational changes to the dwelling, and various alterations to its curtilage including the removal of a tree.

4. THE PROPOSAL, THE SUBJECT OF THIS APPEAL

- 4.1 The appeal scheme proposes the construction of two, single storey ancillary buildings to be constructed in the north-eastern corner of the appeal site. These outbuildings would comprise a garden room and a sauna which would be constructed close together, and which would provide for new incidental functions for private use by the occupiers of Kebony House. The garden room would have a gross internal area (GIA) of 39.5 square metres, and the sauna building would have a GIA of 11.6 square metres. The associated external terrace would have an area 26.6 square metres.
- 4.2 The main garden room would provide a south-facing internal space for use as an art studio or home office, with a small area for storage. The smaller adjacent structure would be used as a sauna. A small outdoor plunge pool would be located within a deck in the narrow area between the two structures. The two structures would be connected via an external terrace at the same level of the garden. Each outbuilding would have a mono-pitch roof, and would feature an angled plan form which would allow for the retention of important trees in this part of the curtilage.
- 4.3 The proposed structures would use a material palette of vertically-oriented, hardwood cladding, and would incorporate simple glazed openings. It is intended to finish the garden room structure in a light shade of wood stain treatment (similar to the tone of Kebony House itself), and to use a slightly darker shade of grey timber stain for the sauna structure. The roof would be a dark grey membrane or fibreglass finish. The doors to the Sauna and side door to the garden room would be solid and clad in stained hardwood to match the exterior, making them appear discreet. Windows and glazed doors are proposed to be of silver-anodised aluminium, and the glazing is proposed to have a slightly reflective finish, to reflect the garden and the trees when seen from the garden and Kebony House.
- 4.4 The external terrace surface would be a natural stone paving to complement the existing landscaping in Kebony House garden. The joints and sub-base build-up would be permeable to allow water to permeate the soil below. The wood burning stove located in the garden room would be 'DEFRA-approved', and would require a flue outlet of approximately 150mm thickness with a height of 1.8 metres clear

from the external surface of the roof. The finish of the flue would be stainless steel.

4.5 The proposed structures would not form a separate dwelling but rather would be for incidental use to Kebony House as a garden room and a sauna.

4.6 The planning application, the subject of this appeal, was refused by the LPA on 8th September 2017. The following two reasons for refusal were cited:-

- 1. The proposed development, by reason of its siting and excessive scale, bulk and mass would detract from the general openness of the rear garden area and appear as an incongruous form of development which would neither preserve nor enhance the character and appearance of the surrounding conservation Area, contrary to Policy H11 (front Gardens/Backland/Rear Gardens) of the Hampstead Conservation Area Statement, and policy A1 (Managing the impact of development), Policy (D1 Design) and Policy D2 (Heritage) of Camden Local Plan 2017.**
- 2. In the absence of sufficient detailing in the submitted arboricultural report, the applicant has failed to demonstrate that the proposed development would not harm the trees in close proximity to the outbuildings on site and in adjoining gardens, contrary to policy A1 (Managing the impact of development), Policy A3 (Biodiversity), Policy D2 (Heritage) of Camden Local Plan 2017, and Camden Tree Strategy, CPG1 (Section 6 – landscape/trees) and CPG3 (Biodiversity) of Camden’s Supplementary Planning Policies.**

5. PLANNING POLICY CONTEXT

The National Planning Policy Framework

- 5.1 The NPPF states that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Planning decisions should ensure that that developments function well, establish a strong sense of place, optimise the potential of the site, respond to local character while not preventing appropriate innovation, create safe and accessible environments, and are visually attractive as a result of good architecture and appropriate landscaping. Design policies should avoid unnecessary prescription of detail but should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access for new development in relation to the local area. LPAs should not impose architectural styles or tastes.
- 5.2 In determining applications, the NPPF states that LPAs should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. When considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

The statutory development plan

- 5.3 The statutory development plan for the area comprises the consolidated London Plan 2016 (incorporating Early Minor Alterations 2013 and Further Alterations 2015/16), and the Camden Local Plan which was adopted in June 2017. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications and appeals to be determined in accordance with the development plan unless material considerations indicate otherwise.

The London Plan

- 5.4 Policy 7.4 states that development should have regard to the form, function and structure of an area, place or street, and the scale, mass and orientation of buildings. Design should be a high quality and human scale that has regard to existing context. Policy 7.6 states that development should protect residential amenity, and should be of the highest architectural quality including details and materials that need not necessarily reflect local character. Policy 7.8 states that development affecting heritage assets should conserve their significance by being sympathetic to form, scale, materials and architectural detail.

The Camden Local Plan

- 5.5 The following policies of the Camden Local Plan, as summarised, are considered to be relevant to the issues raised by this appeal:-

- Policy A1 seeks to ensure that development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;
- Policy A3 states that the Council will seek to protect trees and vegetation, will resist proposals which may threaten the continued wellbeing of trees and vegetation, and will require retained trees to be satisfactorily protected during construction;
- Policy D1 states that the Council will require development to respect context and context, to preserve heritage assets, and to be of sustainable design and construction; and
- Policy D2 states that the Council will preserve heritage assets and their settings.

Camden Planning Guidance

- 5.6 Camden Planning Guidance (Design) (CPG1) was adopted in July 2015. The guidance states that the Council is committed to excellence in design, and schemes should consider the context of the development and its surrounding area, the design and use of the building itself, and the materials used. Proposals should preserve the character and appearance of a conservation area and other heritage assets, and should allow for the retention and protection of trees which make an important contribution to visual amenity including the character and appearance of a conservation area.
- 5.7 CPG1 states that development in rear gardens should ensure that the siting, scale and design of development should have a minimal impact on, and be visually subordinate to, the host garden. Buildings should not detract from the open character and garden amenity of the area, and should use soft landscaping to reduce impact. The height of development should retain visibility over walls and fences. Buildings should use appropriate materials and minimise any impact on trees, and should not obstruct water run-off and ground water flows.
- 5.8 Camden Planning Guidance (Sustainability) (CPG3) includes a section of Biodiversity. The LPA's second reason for refusal incorrectly refers to this document as being entitled CPG (Biodiversity).

Hampstead Conservation Area Statement (HCAS)

- 5.9 The HCAS divides the Hampstead Conservation Area into a number of sub areas. The application site is located within Sub Area 6 known as 'Branch Hill/Oak Hill'. The statement describes Oak Hill Park as having been developed in around 1850 with an informal layout of plain but substantial Italianate villas of which only No. 1 Oak Hill Park and Oak Hill House remain. Other period properties were replaced in the 1960s by flats of little architectural note. These blocks are nevertheless pleasantly arranged on the grassy slopes and among mature trees of the older gardens. Policy H11 states that rear gardens and backlands contribute to the townscape of the Conservation Area and provide a significant amenity to residents and a habitat for wildlife. Development within gardens is likely to be unacceptable.

6. PLANNING CONSIDERATIONS

Presumed Common Ground

6.1 Having regard to the two reasons for refusal, it would appear to be a matter of common ground between the LPA and the Appellant that the proposed outbuildings would not give rise to any material harm to the living conditions of adjacent residents. This is because:-

- The proposed single-storey garden structures would be discretely located in the north-eastern corner of the garden within part of the wooded and sloping area. This proposed location has been selected because it offers a high level of privacy and visual seclusion. The main sliding glazed door openings would be orientated to face towards Kebony House, and on the rear elevation, a glazed window and rooflight are proposed which would face the dense tree screen in the corner of the site;
- The proposed structures would not overlook adjacent gardens, and their low single-storey form would ensure no material overshadowing of or loss of light to adjacent gardens. The nearest neighbouring dwellings to the south are the flats within Oak Hill House, and the closest to the east are the flats at Oak Hill Lodge. In both cases, these properties are at least 20 metres away, and are located on higher ground than the proposed outbuildings. To the north-west and west, the closest properties in Redington Gardens and Redington Road are at least 45 metres and 50 metres away respectively; and
- The use of the proposed outbuildings would not be a source of noise or other disturbance for neighbouring residents, in part due to the considerable separation distances to adjacent accommodation. It should be noted that the sauna would be electrically operated with no fumes or mechanical noise generation, and the small plunge pool would not include water jets. The outbuildings would be orientated towards Kebony House and its garden, and the proposed uses are

intrinsically low key and quiet, and of a domestic nature.

- 6.2 In addition, it is noted that the officer's report states that the removal of trees T9, T10 and T11 (as annotated in the application-stage Arboricultural Report) is acceptable in principle in planning terms.

The Main Issues

- 6.3 Having regard to the LPA's two reasons for refusal, the following two main planning issues arise in this appeal:-

1. Whether the proposal, by reason of its siting and size, would harm the character and appearance of the conservation area; and
2. Whether the foundations of the proposed outbuildings would harm the trees to be retained in the vicinity of the proposed structures.

These issues are addressed below.

Character and appearance

Existing character and appearance

- 6.4 The appeal site is situated within the Hampstead Conservation Area, and land to the north and west of the site falls within the Redington/Froggnal Conservation Area. No statutorily listed buildings have been identified in the immediate vicinity of the site.
- 6.5 Oak Hill House is identified in the HCAS as an unlisted building which makes a positive contribution to the character and appearance of the Hampstead Conservation Area. This imposing, four storey villa has a rectangular plan form and its symmetrical elevations are stuccoed. The garden setting of Oak Hill House has changed in recent years following the construction of Kebony House although the latter's low scale (with a roof garden) is architecturally subordinate to the former.

- 6.6 In addition, the properties at 1, 3 and 15 Redington Gardens, located to the north-west of the appeal site, and 24, 26 and 28 Redington Road, located to the south-west of the appeal site, are identified as positive contributors to the Redington/Frogna Conservation Area in the statement for that area.
- 6.7 The mature trees within the appeal site and within adjacent gardens are a significant and valued feature of both conservation areas. The garden of Kebony House has an area of approximately 725 square metres excluding the steps and access leading from the shared car park. Approximately 80% of this area is made up of relatively flat and open garden whereas the remaining 20% comprises sloping and wooded ground adjacent to the north-eastern site boundary.

Impact on character and appearance

- 6.8 CPG1 does not lay down a presumption against new garden outbuildings but seeks to ensure that such structures are located and designed to ensure that they have a minimal impact on, and are visually subordinate to, the host garden and surrounding gardens. Proposals should not detract from the character and amenity of the area.
- 6.9 The officer's report on the planning application, the subject of this appeal, asserts that the granting of planning approval for Kebony House effectively represented the maximum permissible amount of development within the original rear garden of Oak Hill House. However, the granting of permission for a new dwelling (Kebony House) with its own domestic curtilage has inevitably changed the character of Oak Hill House somewhat, and some limited and sensitive garden development to serve Kebony House, in the form of incidental garden structures, is considered to be justified. In combination, the proposed outbuildings would occupy just 7% out of a total garden area of Kebony House (excluding the steps and associated access path).
- 6.10 The officer's report also asserts that the proposed outbuildings and terrace would be highly visible. In the Appellant's submission, the structures would appear only as low level, incidental buildings occupying a recessed location in one corner of the garden of Kebony House. The outbuildings would be sited at the foot of the slope

of this part of the garden, and would be substantially screened by the existing trees, and thus not generally viewed from ground level from outside the appeal site. The compact structures would be largely concealed in the topography by virtue of their low profile and by using the undulating levels of the site. The roof profiles would follow the sloping landscape to rise and fall with the natural levels of the terrain. The existing dense tree canopy would shield the buildings in views from higher levels, and the outbuildings would be situated near the site boundary where the existing trees would afford the greatest degree of screening. By virtue of their scale and position, the outbuildings would therefore not be widely viewed even within their immediate setting, and would be of an entirely subordinate scale to Kebony House and other nearby residential buildings.

- 6.11 The design of the garden room would appear as two volumes externally, with the roof level dropping in height in the section nearest to the site's north-eastern boundary. This form would provide subtle and attractive fragmentation of the bulk, and would prevent the building from appearing too dominant, responding to the unique conditions of its context. The proposed sauna would occupy slightly higher ground but the highest point of its roof would sit below the roof level of Kebony House, as shown on application drawing 0112-A. Overall, the articulation of the roof levels and internal ceiling heights would allow the buildings to follow the sloping terrain without any large protrusions in their profile. The apparent volume of the sauna building would be further limited by being partially set into the slope by up to one metre on its south-eastern elevation.
- 6.12 The very limited visual impact of the proposed outbuildings would be further subdued by the use of sensitive and appropriate external materials. These have been chosen to respond to the existing hardwood timber cladding of Kebony House and its garden. The use of stained hardwood and reflective glazing is considered entirely appropriate to the wooded, garden setting of the outbuildings. Similarly, the use of natural stone for the external terrace would ensure that the compatibility of this feature with its garden setting. The development would have an attractive and contemporary architectural character which would blend successfully with its wooded context. It is noted that the officer's report confirms that there are no objections to the proposed materials.

- 6.13 By way of illustration of the limited visual impact of the scheme, including the modest scale and recessed location of the outbuildings, an existing photograph of the northern corner of the appeal site's rear garden, and a proposed CGI view of the proposed outbuildings in their context, are provided as Document 1.
- 6.14 The size, siting, design and appearance of the proposed outbuildings would therefore be sensitive to the setting of Kebony House and Oak Hill House, and other unlisted buildings in the vicinity. It is considered that the proposal would not harm the character or appearance of either conservation area.
- 6.15 It is noted that the LPA refers, in both the officer's report on the application and in its first reason for refusal, to Policy H11 of the HCAS which seeks to resist development in back gardens, and which refers to pressure for backland development on large plots. It is considered wholly misleading to characterise the proposed scheme as 'backland development', this being a term with clear connotations of new dwellings being constructed to the rear of existing residential development. By contrast, the appeal scheme proposes two single storey, incidental domestic outbuildings which would be sensitively located in one corner of an established residential curtilage.
- 6.16 It is evident that the LPA is prepared to grant planning permission for garden outbuildings to serve existing dwellings within the Hampstead Conservation Area, as illustrated by the recent grant of consent for an outbuilding at 20 Frognal Gardens, which is located a short distance to the south-east of the appeal site. The planning consent and approved drawings for this development are appended to this statement as Document 2. Permission was granted for the construction of a second incidental outbuilding to serve a private dwelling set within a smaller rear garden to that found at Kebony House.
- 6.17 For all the above reasons, it is submitted that the siting, size and design of the proposed outbuildings would preserve the character and appearance of the conservation area.

Impact on trees

- 6.18 A detailed Tree Report was lodged with the planning application. The report confirms that most of the existing trees within and adjacent to the location of the proposed outbuilding contribute positively to visual amenity generally, and therefore to the character and appearance of the conservation areas. As previously stated, the LPA accepts that the three trees identified in the report as not worthy of retention can be removed without planning harm.
- 6.19 The proposed plan form of the outbuildings reflects the constraints and opportunities of their wooded setting. The Architects have worked closely with the Arboriculturalist in this regard, and the locations of key existing trees inform the angled geometry of the structures. Specific offsets are incorporated to allow sufficient clear space for future tree growth.
- 6.20 The LPA's sole concern is that insufficient information has been provided with regard to the foundation design of the proposed outbuildings. The officer's report suggests that mini-piles would be preferable to strip foundations.
- 6.21 The Appellant suggests that the detailing of the foundation design should be subject to a planning condition including a method statement. However, proposed indicative details of the foundation design, to comprise small footings in line with the comments of the Council's Tree Officer, are provided with this appeal statement, as Document 3. The proposed foundation design would be minimally invasive, and would ensure no impact on tree roots in the vicinity of the proposed outbuildings. The precise position of the individual mini piles would only be ascertained following a careful root survey, and this would take place in line with the method statement required by and approved pursuant to a condition.
- 6.22 For these reasons, the proposal would not give rise to harm to retained trees in the vicinity of the outbuildings.

Planning Conditions

- 6.23 The officer's report on the planning application notes that, on behalf of the Camden

Nature Conservation Service, the London Wildlife Trust has raised concerns with regard to the impact of the development on protected species. However, the application, the subject of this appeal, was not refused on this ground, and no information in this regard was requested by the LPA at validation stage. If the Inspector is minded to allow the appeal, the Appellant would suggest the imposition of a planning condition requiring a bat survey to be undertaken prior to the commencement of development.

6.24 The following pre-commencement planning conditions are suggested by the Appellant:-

- Bat survey;
- Details of foundations;
- Details of external materials.

6.25 The officer's report suggests that a Construction Management Plan (CMP) would be required in respect of this proposal. In the Appellant's view, given that other suggested conditions would protect biodiversity and arboricultural interests, a CMP should not be required for minor garden development of this kind, in particular given the limited extent and minimally invasive method of foundation excavation proposed. It should also be noted that the construction of the timber outbuildings would not require the presence of large vehicles on site. However, in the event that the Inspector finds that a CMP is necessary, the Appellant considers that this could be secured by way of a planning condition.

7. CONCLUSIONS

- 7.1 The appeal scheme proposes the construction of two incidental outbuildings of modest footprint and height. The outbuildings would be located so as to minimise their visual impact, and to retain the open and landscaped character of the garden of Kebony House. The outbuildings would be faced in high quality materials, appropriate to their verdant setting. The proposal would allow for the retention of important trees, and the outbuildings would be constructed so as to ensure no harm to the welfare of the retained trees.
- 7.2 The appeal proposal would therefore preserve the character and appearance of this part of the Hampstead Conservation Area, and protect retained trees. As such, the proposal represents sustainable development which accords with the NPPF, with Camden Local Plan Policies A1, A3, D1, and D2, and with local planning guidance.
- 7.3 The Inspector is therefore respectfully requested to allow this appeal.

CHRISTOPHER WICKHAM ASSOCIATES **November 2017**

The following documents are appended to this appeal statement:-

1. Photograph (CF-129-SK-1711-002) of northern corner of garden of appeal site, and CGI view (CF-129-SK-1711-003) of proposal in this context ;
2. Planning consent and approved drawings for garden outbuilding at 20 Frognaal Gardens, NW3;
3. Plans (CF-129-SK-1709-001 section RevC, CF-129-SK-1709-002 RevB structural-base, and CF-129-SK-1709-003 sauna-slab) showing indicative foundation design for the proposed outbuildings.