

# Appeal Decision

Site visit made on 10 April 2018

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 April 2018**

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**Appeal Ref: APP/X5210/W/18/3193541**

**A and B, 66 Fitzjohn's Avenue, London NW3 5LT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Seth Green and Mrs Kimberley Green against the decision of the Council of the London Borough of Camden.
  - The application Ref 2017/4366/P, dated 1 August 2017, was refused by notice dated 15 November 2017.
  - The development proposed is described as 'Amendment to planning permission ref 2015/5847/P 'Erection of pair of semi-detached, two storey 3-bed dwellings with basements, following demolition of existing pair of semi-detached dwellings' to include an additional storey at second floor level, set back from the front elevation.'
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues in this case are the effects of the proposal on:
  - the character and appearance of the surrounding buildings and the Fitzjohn's and Netherhall Conservation Area with particular regard to the height, bulk, siting and detailed design of the building as well as the size of the basement;
  - the living conditions of the occupiers of 64 Fitzjohn's Avenue and 12 Akenside with particular regard to outlook;
  - highway safety with particular regard to the access arrangements;and whether, the proposal would, in the absence of planning obligations:
  - to secure car free housing: help reduce air pollution, promote sustainable travel patterns and control demand for on-street parking;
  - to secure a Construction Management Plan and a financial contribution to public highways works: be detrimental to the living conditions of neighbouring occupiers, lead to conflicts with road users or damage the public highway;

## Reasons

3. Planning permission<sup>1</sup> has been granted for the demolition of the pair of semi-detached two storey dwellings on the site and the erection of a pair of semi-detached 3-bedroom dwellings. At ground and first floor levels the footprints of

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<sup>1</sup> Application ref: 2015/5847/P

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the existing and approved buildings would be broadly similar. However, the approved scheme includes a basement which would take in the entire footprint of the new building as well as projecting forward for most of its width. The size of the proposed building would be comparable to the approved scheme at basement, ground and first floor level, but includes an inset second floor.

*Character and Appearance – height, bulk, siting and detailed design of the building*

4. The extensive Conservation Area (CA) accommodates a variety of building types and numerous individually designed buildings. The quality, variety and, in many cases, scale of these buildings, together with the interest created by the area's hilly terrain contribute much to the architectural and historic significance of the heritage asset. The Conservation Area Statement (CAS) draws attention to the powerful impact of the scale, topography and architecture of Fitzjohn's Avenue. The imposing three storey plus basement Victorian semi-detached buildings adjoining the appeal site at No 62-64 contribute positively to the character of the road.
5. They form part of a row of similar buildings and the CAS also identifies the gaps between them which offer glimpses to the rear gardens. The access to the side of No 64 is one such gap. The view through this gap includes the existing two storey building on the site. However, mature planting is also visible, as is the rear of 12 Akenside Road. The view along the access, therefore, provides a valuable insight into the relationship between Fitzjohn's Avenue and the adjoining streets. Akenside Road runs at angle to Fitzjohn's Avenue and the buildings, including No 12, are generally of a smaller scale and are positioned less formally. Views of the appeal site and the rear of Nos 62-64 are available above the existing building and the fence adjoining No 12 and, again, reveal the relationship of buildings and spaces. The buildings and spaces around the appeal site therefore contribute to the architectural and historic significance of the heritage asset.
6. The CAS identifies No 66 as a negative feature although, read in context, it would appear that the reference is intended to be to the adjoining block of flats at Medresco House. Nevertheless, the existing building on the appeal site occupies a 'backland' location and, therefore, is not in keeping with the locally characteristic pattern of frontage development. That said, its modest scale and height, together with its unassuming appearance, allow it to remain subservient to the adjoining buildings and limit its impact on the wider area. Given its similarities in bulk and height, the above-ground effect of the approved building would be generally comparable.
7. The additional height of the proposed building would undermine this relationship. The flat roof of the new building would be almost as tall as No 12 and, notwithstanding the setback at second floor level, by virtue of its width and massing, would be considerably more bulky. As well as being significantly more prominent in views from Akenside Road and the access to the side of No 64, the taller building would exceed the scale of No 12 and compete with Nos 62-64. Given the building's backland siting, this would be detrimental to the characteristic pattern of development in the area. The additional height of the proposed building would also disrupt the views through the site, which I have found contribute positively to the understanding of the area generally, and to the appreciation of the rear of Nos 62-64.

8. The trees and vegetation within and adjoining the site would go some way to filtering views of the proposed building, particularly during the summer months. However, the effect would not be sufficient to mitigate the adverse impacts of its additional height and bulk, even during the summer. In the winter, there would be little filtering effect from the vegetation.
9. The Council has also expressed concern regarding the detailed design of the front elevation of the proposed building. Some of the vertical emphasis of the approved scheme has been lost as a result of changes to the cladding at first floor level and the openings at ground floor level. Nevertheless, the proposed elevation retains a simplicity which is appropriate to the building's backland location. In my view, the smaller number of larger openings on the ground floor is no less cohesive than the series of narrower openings in the approved scheme. Therefore, whilst the detailed design of the front elevation does not overcome my concerns regarding the increased height and bulk of the proposed building, I consider that the changes from the approved scheme are not, of themselves, objectionable.
10. Nevertheless, by virtue of its height, bulk and siting, I find that the proposed building would be harmful to the architectural and historic significance of the CA and to the character and appearance of surrounding buildings. As such, the proposal would conflict with Policies D1 and D2 of the Camden Local Plan 2017 (LP). These policies require development to achieve a high quality of design that respects local context and character and preserves or enhances the historic environment and heritage assets. Nor would the proposal accord with the statutory test at section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 or paragraph 131 of the National Planning Policy Framework (the Framework) insofar as they have similar aims. The harm to the significance of the heritage asset would be less than substantial and, therefore, Framework paragraph 134 requires it to be weighed against the public benefits of the proposal. I consider this matter in the Planning Balance below.
11. The first reason for refusal also refers to LP Policy A5. However, this policy is concerned with basements and I deal with that matter in the next main issue.

*Character and Appearance – size of the basement*

12. The basement elements of the approved and proposed schemes are the same. However, the LP has been adopted since permission was granted for the approved scheme. Policy A5 seeks to ensure that basements do not cause harm to neighbouring properties, the character of the area and the host building or the significance of heritage assets, amongst other things. The policy sets out criteria for basement development including its size in relation to the garden area of the property (h and j and k), the footprint of the host building (i) and proximity to neighbouring boundaries (l).
13. The appellant does not dispute that the proposed basement conflicts with criteria h, j and k. With regard to criterion i, the figure for the gross internal area (GIA) of the basement used in the appellant's statement is significantly less than the figure given for the GIA of the ground floor of the building, whereas the basement would extend under the ground floor and significantly beyond. Consequently, I prefer the Council's figure for the size of the basement. On that basis, even if the area of piling is not taken into account, the size of the basement would not comply with criterion i.

14. The walls of the proposed basement would be close to both side boundaries and the majority of the front boundary of the site. The appellant has suggested that the gate to the site could be moved to allow for increased private space in front of the new properties. However, this would not affect the proximity of the basement to the other boundaries. Consequently, the proposal would not comply with criterion I.
15. The basement would extend below the largest part of the external area at the front of the site and would, therefore, restrict the opportunity for planting and green space of a type which is characteristic of many of the private external spaces in this part of the CA. However, the external area in this case is currently largely hard-surfaced. Whilst the Council argues that this situation could be reserved and planting re-introduced, there is no substantive evidence to suggest that would be likely to happen were the appeal to be dismissed. The proposed scheme does allow for a limited amount of planting in front of the new building and adjoining the boundary with Nos 62-64. Moreover, there would be limited public views to the basement area. The proposal is supported by a Basement Impact Assessment and there is nothing to suggest that it would lead to other harms. Therefore, I find that the basement element of the scheme would result in limited harm to the character and appearance of the surrounding buildings and the CA. As such, it would conflict with LP Policies D1, D2 and A5, Framework paragraph 131 and the statutory test to a similarly limited degree. Nevertheless, I am required to give great weight to any harm to heritage assets.
16. However, the approved scheme would allow the creation of a basement which would be the same as the approved scheme and have the same effects. I note that the officer's report found that the approved basement scheme was not objectionable. There is nothing to suggest that implementation of the approved scheme does not represent a realistic fall-back position. As such, I give it significant weight. In view of the limited degree of harm in this case, I consider that the fall-back position is sufficient to outweigh that harm and the policy conflict.

### *Living Conditions*

17. The neighbouring building at No 64 has been converted into flats and the rear elevation includes windows serving rooms likely to be occupied for significant periods of the day at semi-basement, ground, first and second floor levels. The proposed building would be positioned directly opposite these windows. The second floor would be some 11.8m<sup>2</sup> from the neighbouring windows and the lower floors of the building would be some 2.5m closer. The new building would span the full width of the site. As such, it would take up a significant proportion of the view from the neighbouring windows in the horizontal plane. Given the three storey height of the proposed building, it would also take in a large proportion of the view in the vertical plane, particular for the lower level windows. Its effect would, therefore, be materially different from the two storey approved scheme.
18. The appellant argues that the proposed building would not infringe a notional 25 degree line drawn from the second floor windows. However, this measure is normally used to assess the effect of a proposal on daylight and sunlight, rather than outlook, which is the concern in this case. In any event, it is not claimed

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<sup>2</sup> According to the Council's statement. The figure is not disputed by the appellant.

that the proposal would meet the 25 degree test in respect of the lower level windows. Consequently, I find that the proposal would have an oppressive effect on the outlook from these windows, to the detriment of the living conditions of the occupiers of the affected flats.

19. The rear elevation of the proposed building would be positioned very close to the boundary with No 12 and some 11.5m away from its rear elevation. Part of this elevation is angled away from the proposed building and this would help to reduce effect of the proposal on the outlook from some of the rear windows. Nevertheless, the proposed building would present an essentially blank, three storey elevation extending the full width of the property hard up against the shared boundary with No 12. The outlook from the rear of that dwelling and its garden is currently constrained by the presence of substantial trees. I consider that the proposed building would have an additional enclosing effect which would adversely affect the living conditions of the occupiers.
20. By virtue of its effect on the living conditions of the occupiers of the lower level flats at No 64 and No 12, the proposal would conflict with LP Policy A1. This policy seeks to protect the quality of life of neighbouring occupiers with regard to outlook, amongst other things.

#### *Highway Safety*

21. In view of the restricted visibility at the site access, particularly looking north, and the proximity of the site to the entrance to St Mary's School, vehicles reversing out of the access could pose a risk to the safety of users of the Fitzjohn's Avenue footpath. The Council considers that the site layout of the approved scheme would allow cars to enter and leave the site in forward gear. The proposed scheme amends the layout by removing a chamfer to a lawn area. The Council considers that this would prevent a car from turning within the site. However, I note that, in the proposed scheme, the path leading to the front door of the dwelling closest to the turning area is further from the northern site boundary than in the approved scheme, thereby creating more space for vehicles. This, together with a minor adjustment to the shape of the adjoining lawn area, would result a manoeuvring space comparable with the approved scheme which the Council found to be acceptable.
22. Since the necessary adjustment to the lawn area would not be significant, had I been minded to allow the appeal, it could have been secured by condition. The appellant has confirmed in its final comments that it would find such a condition acceptable. This would overcome the Council's concern on this issue. On this basis, the proposal would not have a detrimental effect on highway safety and would not conflict with LP Policies T1 or A1 insofar as they require development to address transport impacts and secure safe environments for pedestrians and cyclists.

#### *Planning Obligation – car free housing*

23. The purpose of LP Policy T2 is to reduce air pollution, promote sustainable travel patterns and control demand for on-street parking. It therefore seeks to limit the availability of on-site parking and requires legal agreements to ensure that future occupiers of new developments are aware that they are not entitled to on-street parking permits.

24. The proposal includes two on-site car parking spaces and, to that extent, would not comply with Policy T2. However, the existing dwellings and the approved scheme also have two parking spaces. The appellant argues that this is a significant material consideration. I have already found that the fall-back position created by the approved scheme carries significant weight.
25. Nevertheless, I understand that the approved scheme is also subject to a legal agreement to prevent future occupiers from applying for parking permits, except in limited circumstances. Whilst the appellant is content to enter into a legal agreement to similar effect, there is no completed agreement before me. In the absence of a completed agreement the proposed scheme would not restrict applications for parking permits and would not, therefore, accord with LP Policy T2, irrespective of the fall-back position created by the approved scheme. Consequently, the proposal would not adequately help to reduce air pollution, promote sustainable travel patterns or control demand for on-street parking. As such, I find the requirement for a planning obligation to restrict applications for parking permits meets the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010.

*Planning Obligation – Construction Management Plan and highway works contribution*

26. The appeal site is located in a fairly densely developed area and I have already noted the close proximity of adjoining residential buildings, as well as the potential for conflict between traffic visiting the site and footpath users. In these circumstances, I consider that the construction works should be regulated through the use of a Construction Management Plan. Heavy vehicle movements associated with the construction works also have the potential to damage the public highway adjoining the site. The Council is seeking a refundable contribution to make good any damage. The appellant does not dispute these matters and has indicated that it is willing to enter into planning obligations to secure the requirements sought. However, there is no completed agreement before me. In the absence of such an agreement, or any other mechanism, the proposal would be likely to have detrimental impacts on the living conditions of neighbouring occupiers, highway safety and the public highway. It would, therefore, conflict with LP Policies A1 and T4 to the extent that they seek to protect the amenity of neighbours and require development to address transport impacts. I consider that the planning obligations sought would meet the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010.
27. Reason for refusal 6 also cites LP Policy A5. Since this policy is concerned with basement development, it is of little assistance in my consideration of this issue.

**Planning Balance and Conclusion**

28. The proposal would increase the size of the accommodation proposed and, to that extent, benefit future occupiers who may be growing families able to stay in the accommodation for a longer time. However, it has not been shown that there is an identified need for larger houses in the area. This limits the weight I can attach to the increased in the size of the dwellings as a public benefit.
29. The appellant also argues that the proposed dwellings would be highly sustainable since they would be more energy efficient than the existing

buildings, use sustainably sourced materials and have green roofs. However, those benefits could also be attributed to the approved scheme. Nor has an assessment been made of the sustainability costs of demolishing and rebuilding the existing building. Whilst that building may be not highly energy efficient, there is no substantive evidence to suggest that it is reaching the end of its viable life. Consequently, it has not been adequately demonstrated that the sustainability credentials of the proposal would amount to a significant public benefit.

30. In terms of the test at paragraph 134 of the Framework therefore, I find that the public benefits of the proposal would not outweigh the less than substantial harm to the CA. Whilst I have found that the basement element of the proposal and the effect of the access arrangements on highway safety would not be objectionable, that does not overcome the other concerns set out above. For those reasons, the appeal should be dismissed.

*Simon Warder*

INSPECTOR