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## Appeal Decision

Site visit made on 8 January 2018

**by Graham Chamberlain BA (Hons) MSc MRTPI**

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

**Decision date: 19<sup>th</sup> January 2018**

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**Appeal Ref: APP/X5210/D/17/3190488**

**Kebony House, Oak Hill Park, London NW3 7LP**

- 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 Ms Elena Kizieva against the decision of the Council of the London Borough of Camden.
  - The application Ref 2017/3900/P, dated 28 June 2017, was refused by notice dated 8 September 2017.
  - The development proposed is 'construction of single storey garden room, single storey building containing sauna, outdoor plunge pool, and associated ground level terrace'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters and Main Issues

2. Both the Council and appellant were afforded an opportunity to provide additional submissions on the appeal scheme's potential effect on biodiversity. I have had regard to the additional representations. The main issues in this appeal are: 1) The effect of the proposed development on biodiversity; and 2) Whether it would preserve or enhance the character or appearance of the Hampstead Conservation Area, including the effect on trees.

### Reasons

3. The proposal is to erect two single storey outbuildings in the north eastern corner of the garden of Kebony House. This part of the garden is planted with a number of reasonably mature trees. The larger of the two outbuildings would be a studio and the smaller a sauna. The buildings would be connected by an external terrace which would incorporate a plunge pool. The buildings would exhibit a similar architectural style to that of Kebony House.

#### *The effect on biodiversity*

4. During the Council's consideration of the planning application the Conservation Ecologist of the London Wildlife Trust stated that Pipistrelle bats have been recorded from the site. There is also a Site of Importance for Nature Conservation (SINC) nearby and some local residents have suggested the appeal site is part of a wildlife corridor.
5. The appeal site is generously landscaped and the proposed outbuildings would be located under reasonably mature trees. The Ecologist has therefore suggested that there is a reasonable likelihood that bats could be present

within the appeal site as they could be roosting in the trees or foraging beneath them. The Ecologist has opined that the presence of the proposed outbuildings would not directly cause harm to bats but then goes on to contradict this by stating that the presence of the structures, including any lighting, may interrupt feeding and that tree works could affect roosting bats. There is nothing of substance before me that casts doubt on these latter points or that light spillage from Kebony House and its access path would prevent bats from using the effected part of the garden to roost and/or forage.

6. The Planning Practice Guide (PPG) states<sup>1</sup> that *Local planning authorities should only require ecological surveys where clearly justified, for example if they consider there is a reasonable likelihood of a protected species being present and affected by development*. Consequently, as there is a reasonable likelihood of a protected species being present and affected by development, an ecological survey should have been undertaken to ascertain whether or not this is the case and identify any necessary mitigation. This would not result in an unreasonable delay or burden given bats have apparently been recorded at the site and it appears to be suitable bat habitat.
7. The appellant has not provided a survey as the appeal was submitted outside the main season for bat activity and she considers it is a matter that can be secured through a planning condition. I disagree. It is necessary to identify the presence or otherwise of protected species before granting planning permission so that any impacts and potential mitigation can be identified and fully understood before the planning application is determined. The absence of a survey is a significant omission. Without it, there is an unacceptable risk that the proposal could harm bats. As such, I cannot be certain the development would safeguard protected species and thus biodiversity.
8. The Council also intended to deal with this issue by requiring a bat survey through a planning condition had the scheme been otherwise acceptable. As such, the absence of a survey did not feature as a reason for refusal. However, it is unclear what guidance the Council has applied in arriving at this view. This is particularly pertinent as this approach is not supported by Circular 06/2005<sup>2</sup> other than in exceptional circumstances. Such circumstances have not been demonstrated by any party. I therefore conclude that the proposal would be contrary to Policy A3 of the Camden Local Plan 2017 (LP), supported by CPG3 (Biodiversity), which together seek to protect biodiversity, including priority species and sites of nature conservation value, such as gardens.

#### *The effect on the Hampstead Conservation Area, including trees*

9. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Hampstead Conservation Area (the 'CA'). In considering the significance of the CA, I have been directed to the Council's Conservation Area Statement for Hampstead (CAS). This document explains that the CA is focussed on the historic village of Hampstead and the adjoining heath and that it includes many fine and interesting examples of the architectural development of London. This, mixed with the topography, creates an area of considerable quality. I have no reason to doubt the analysis in the CAS.

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<sup>1</sup> Paragraph: 016 Reference ID: 8-016-20140612

<sup>2</sup> Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

10. The appeal site is located in the Branch Hill/Oak Hill character area as defined in the CAS. I observed that this area is particularly wooded and verdant with buildings generally playing a subordinate role to the generous areas of landscaping. Located to the north west of the appeal site are the large and abundantly landscaped gardens of the properties in Redington Gardens, which are located in the adjoining Redington/Frognaal Conservation Area.
11. Kebony House is a recently constructed single storey dwelling in a modernist style positioned behind and below Oak Hill House. The roof of Kebony House is a communal garden enclosed by generous planting. The property also benefits from a large lawned garden enclosed by extensive boundary planting. Thus, the property has a discrete presence and a verdant setting.
12. Oak Hill House is an imposing period property that has been converted to flats and is identified in the CAS as contributing positively to the CA. Both Kebony House and Oak Hill House are located within Oak Hill Park. This part of the CA was developed around 1850 with an informal layout of substantial villas that have largely been replaced in the 1960s by flats. Oakhill Lodge is one such block of flats and this is located to the immediate east of the appeal site. The 1960s flats are of no particular architectural interest but they are arranged around grassy slopes and mature trees and therefore this arrangement preserves the character and appearance of the wider CA.
13. The overall massing of the proposed outbuildings would be modest and fragmented as they would be viewed as separate entities with a low profile. The buildings would be significantly smaller than Kebony House and Oak Hill House. The appellant has suggested that the proposed outbuildings would cover around 7% of the existing garden area of Kebony House. The Council have not disputed this figure and therefore I am content to rely upon it. As such, the proposal would have minimal visual impact on, and be subservient to, Kebony House and its garden. Thus, the proposal would adhere to the Council's design guide CPG1, which advocates the subservience of outbuildings.
14. The impact of the outbuildings needs to be considered cumulatively as the erection of Kebony House has already eroded the original garden of Oak Hill House. However, the proposed structures would be discretely located in a recessed position in the corner of the garden in an area dominated by trees. They would also be located at the foot of a slope and would respond to this undulating topography. These factors would ensure the appeal scheme would not be unduly prominent in public views or positioned in a way that would adversely and insensitively erode the open and verdant setting of Oak Hill House and Kebony House. Thus, due to its siting in a group of trees, the small scale and the careful layout the cumulative impact of the appeal scheme would not harmfully alter the appeal sites relationship with the CA.
15. Some of the occupants of the flats in Oak Hill House would be able to see the structure but it would not be prominent in any direct views given the orientation of windows. Moreover, the aspect out of the flats towards the proposal would be softened and filtered by the dense tree cover, which would still provide some mitigation even when the trees are not in leaf. Consequently the proposed structures would not be a stark or discordant feature in public or private views. Moreover, the Council have conceded that the structure would be largely shielded from public view and the effects from external lighting could be addressed through a planning condition requiring details to be approved

- prior to installation. The use of dark colours to the roof and natural materials to the walls and terrace would ensure the structures blended into the wooded setting when viewed from vantage points nearby.
16. Policy 11 of the CAS states that development within gardens is likely to be unacceptable. Nevertheless, for the reasons already set out the appeal scheme would not result in harm to the significance of the CA. In this respect, it is a point of note that the Council have permitted outbuildings within the garden of 20 Frognal Road, a nearby property, and I have seen nothing of substance to suggest the proposal would have a greater impact than these approved structures or there are significant differences between the two schemes.
  17. The appellant has demonstrated through the submission of a Tree Report, supported by additional drawings and details, that the proposed structures can be constructed on mini-piled foundations. This seemingly addresses the main concerns of the Council's Tree Officer. The Council have not objected to the additional details. The Tree Report suggests three trees can be removed and the Council have not objected to this either. As such, the outbuildings could be constructed without harm to important trees subject to further details, such as a method statement and root survey, being submitted through the imposition of a suitably worded planning condition. Additionally, space would be retained around the trees to enable them to grow. This would ensure their longevity.
  18. There may be some post development nuisance caused by the trees shedding branches and leaves onto the outbuildings. The trees would also shade the structures. Nevertheless, this is unlikely to justify the removal of the relevant trees in the future as the outbuildings would be ancillary structures constructed in the full knowledge of the potential impacts and not primary accommodation in which the occupants of Kebony House would need to live.
  19. Thus, my overall conclusion is that the proposal would not harm the significance of the conservation area. The character or appearance of the CA would be preserved. Consequently, the proposal would adhere to Policies A1, D1 and D2 of the LP and Policy 3 of the Fortune Green and West Hampstead Neighbourhood Plan 2015, supported by CPG1, which together seek to secure high quality design that respects local character, trees and heritage.

### **Other Matters and Conclusion**

20. Various concerns have been raised by interested parties in respect of noise, disturbance and ground water, which I have noted. However, given my findings above it has not been necessary for me to address these matters further as the appeal has failed on one of the main issues.
21. To conclude, the appeal scheme would preserve the character or appearance of the CA but it has the potential to harm biodiversity. As a consequence, it would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, the proposal is not sustainable development and for this reason, the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

*Graham Chamberlain*  
INSPECTOR