

**Appendix 6 – 50 Redington Road, NW3 – appeal decision**



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## Appeal Decisions

Hearing held on 4 June 2013

Site visit made on 4 June 2013

**by J C Chase MCD Dip Arch RIBA MRTPI**

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

**Decision date: 14 June 2013**

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### **Appeal A Ref: APP/X5210/A/12/2188302**

#### **50 Redington Road, London, NW3 7RS**

- 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 Marcus Donn against the decision of the Council of the London Borough of Camden.
  - The application Ref 2012/2489/P, dated 10 May 2012, was refused by notice dated 5 July 2012.
  - The development proposed is the demolition of the existing building and the erection of a new private single family dwelling house.
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### **Appeal B Ref: APP/X5210/E/12/2186816**

#### **50 Redington Road, London, NW3 7RS**

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
  - The appeal is made by Mr Marcus Donn against the decision of the Council of the London Borough of Camden.
  - The application Ref 2012/2542/C, dated 10 May 2012, was refused by notice dated 5 July 2012.
  - The demolition proposed is the existing building.
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## Decisions

### Appeal A

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and the erection of a new private single family dwelling house at 50 Redington Road, London, NW3 7RS in accordance with the terms of the application, Ref 2012/2489/P, dated 10 May 2012, subject to the conditions at the end of this decision.

### Appeal B

2. The appeal is allowed and conservation area consent granted for the demolition of the existing building at 50 Redington Road, London, NW3 7RS in accordance with the terms of the application Ref 2012/2542/C, dated 10 May 2012, and the plans submitted with it subject to the conditions at the end of this decision.

## Procedural Matter

3. At the Hearing an application for costs was made by Mr Marcus Donn against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

## **Main Issue**

4. The main issue, on the two appeals taken together, is the effect of the demolition and redevelopment on the character and appearance of the Conservation Area.

## **Reasons**

5. The appeal site falls within the Redington and Frogna Conservation Area, which is described in the Conservation Area Statement of 2003 as a prosperous late 19<sup>th</sup>/early 20<sup>th</sup> century suburb, with detached and semi-detached houses in architectural styles typical of their period. It notes that the part around Redington Road has the larger and more generously spaced examples, interspersed with mature landscaping, and this description was borne out by the site visit. The majority of the houses in the vicinity of the site are substantial detached properties, each to an individual pattern within an arts and crafts influenced architectural style, with a preponderance of brick and tile. There is relatively little influence from more recent development, so that the present building on the site is unusual, being of a post-war modernist type, with low pitched roofs and a horizontal, rectilinear form. Whilst of an entirely different appearance from the surrounding buildings, it has a relatively modest street frontage which restricts any harm to the prevailing character.
6. The Conservation Area Statement was adopted following public consultation and is entitled to be given weight in this appeal. It contains a schedule of buildings and groups of buildings that make a positive contribution to the Conservation Area, including the houses on either side of the appeal property. No 50 is not identified as making a positive contribution, and it would be reasonable to draw the conclusion that it is deemed to have a neutral impact.
7. This does not preclude a reassessment of the status of the existing house, and it is likely that the appreciation of 1960s architecture will increase over time. Nonetheless, there is no clear evidence that the existing house is a particularly strong example from that period, and the contention that it is the best surviving work of the architects, (Ted Levy, Benjamin and Partners) is not supported by the evidence presented to the appeal. From the site visit, the impression was gained that a significant part of the innovation and interest in the building is the spatial quality of the interior, but this aspect does not contribute to the Conservation Area, and there is no indication that internal alterations could be prevented. Policy DP25 of the Local Development Framework (LDF) requires applications to be considered in relation to the Conservation Area Statement, and there is insufficient support for the assertion that there have been such changes in attitude towards the role of post-war architecture in the area, or the importance of this particular building, as to justify a different assessment. There is not a substantial case that the building makes a positive contribution to the Conservation Area.
8. The replacement dwelling would be more traditional in appearance and layout, with three floor levels, including an extended semi-basement, and the vertical, gabled form of the adjoining properties. Whilst the Council are generally uncritical of the massing, they consider that the result would be unduly bland, and that individual aspects of the design, such as the positioning of bargeboards, and the absence of chimneys and window mullions, would fail to respect its surroundings.

9. It is certainly true that the design does not break new ground, but in the context of this location, where there is a clearly established architectural character, it is not essential that attention should be drawn to a new building by innovational or eye catching design. On the other hand, it need not be a pastiche of Edwardian Architecture, and there is no clear necessity to reproduce features such as window mullions and chimneys which are no longer functionally required: the building would appear as a modern interpretation of the traditional form. It would be possible, by the use of a planning condition, to control the quality of the materials and detailing. Overall, the proposal would meet the design objectives of LDF Policies CS14 and DP24.
10. Policy DP25 includes the requirement that development within the Conservation Area should preserve *and* enhance the character and appearance, in excess of the statutory duty to have regard to preserving *or* enhancing. The appellant suggests that it would be difficult to preserve and enhance at the same time. Nonetheless, the policy forms part of the adopted development plan, and there is some support in the National Planning Policy Framework (paras. 64 and 137 for example) for the need to take the opportunities available to enhance the environment. In this instance, the new building would make a positive contribution to the extent that it would more closely reflect the rhythm and appearance of the prevailing architecture than the existing building on the site. It is therefore concluded, in respect of both appeals taken together, that the demolition and redevelopment would preserve and enhance the character and appearance of the Conservation Area.

### **Other Matters**

11. An agreement under Section 106 of the Town and Country Planning Act 1990 makes provision for the reinstatement of the road and footpath, and the preparation of a demolition and construction management plan, in order to overcome the third and fourth reasons for refusal. There is no reason to consider that these matters have not been adequately addressed by the agreement, nor that it does not meet the tests in Regulation 122 of the Community Infrastructure Regulations 2010.
12. The second ground of refusal of the planning application concerned the absence of proof that the proposed basement would avoid harm to the water environment and the structural stability of adjoining property, as required by LDF Policy DP27. The appellant has subsequently submitted a Basement Impact Assessment to show that the construction is feasible, and the Council have withdrawn their objection. There are adequate reasons to consider that building and party wall legislation, along with the provisions of the Section 106 agreement with respect to construction management, would provide appropriate control over the technical aspects of the scheme without the necessity for conditions on a planning permission.
13. Third parties have raised a number of concerns about the effect of the development on residential amenity, but the location and form of the building, and the positioning of windows, would avoid any undue harm to neighbours' living conditions.

### **Conditions**

14. The Council's suggested planning conditions have been assessed in relation to the provisions of Circular 11/95, and the discussion at the hearing. Conditions

are necessary to control the materials and details of the development, to require a landscaping scheme and protection of existing trees, and to make provision for refuse storage, for the appearance of the development in the Conservation Area. The design should comply with Lifetime Homes standards, should provide a SUDS drainage scheme, and should meet the requirements of the Code for Sustainable Homes, all for the long term sustainability of the development. In the latter case, a final certificate showing compliance with the Code would provide sufficient control without the need for other submissions or the disaggregation of data, and account is taken of the appellant's contention that perpetual compliance with the Code would not necessarily be reasonable or enforceable.

15. It is indicated that there is a possibility of ground contamination on the site, which should be investigated and, if necessary, remediated, prior to occupation of the house. The approved plans are specified for the avoidance of doubt and in the interests of proper planning, but a general reference to all other supporting material would be too imprecise and difficult to enforce. A condition on the Conservation Area Consent to ensure that demolition does not take place until an approved redevelopment scheme is put in hand is necessary to avoid the harmful effect of a vacant site on the character and appearance of the Conservation Area.

*John Chase*

INSPECTOR

### **Schedules of Conditions**

#### Appeal A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The following aspects of construction shall be carried out in accordance with details/samples which have first been submitted to and approved in writing by the local planning authority: i) plans, elevations and section details of all external windows and doors at a scale not less than 1:10, with larger details to show frame and mullion profiles, ii) samples of all external facing materials, which shall include a 1mx1m panel showing facing brickwork, including a window junction and any decorative detail, erected on site for inspection by the Council and thereafter retained until the completion of brickwork construction, and iii) plans, elevations, sections and materials samples of the front boundary enclosure, including gates, at a scale of not less than 1:20.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: E101-030 then DEMO1, DEMO2, DEMO3, DEMO4, P01C, P02B, P03C, P04C, P05C, P05B C, P06C, P07C, P08C, P09C, P10, P101, S01A, S02A, S03A, S04A, S05A, S06A, S07A, S08A, S09A, S10, S100, S101.
- 4) No development shall take place until i) a written programme of ground investigation for the presence of soil and groundwater contamination and landfill gas has been submitted to and approved in writing by the local planning authority, and ii) an investigation has been carried out in

accordance with the approved programme and the results and a written scheme of remediation (if necessary) has been submitted to and approved in writing by the local planning authority. The dwelling shall not be occupied until the remediation measures have been carried out in accordance with the approved scheme, and a written verification report has been submitted to and approved in writing by the local planning authority. In the event that additional significant contamination is found during the course of construction the local planning authority shall be advised immediately in writing, and the dwelling shall not be occupied until an investigation and risk assessment report and a scheme of any necessary remediation has been submitted to and approved in writing by the local planning authority, and the remediation carried out in accordance with the approved details.

- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping. Details shall include replacement tree planting, means of enclosure of all open areas, and any proposed earthworks including grading, mounding and changes in ground level. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation. The dwelling shall not be occupied until the hard landscaping scheme has been carried out in accordance with the approved details.
- 6) No development shall take place until tree protection measures have been put in place in accordance with the details shown in the Arboricultural Report: Impact Assessment and Method Statement by Crown Consultants Ltd dated 1 February 2011, and such measures shall be retained throughout the course of external construction.
- 7) Notwithstanding the submitted details, no development shall take place until a written report indicating compliance with the Lifetime Homes standards has been submitted to and approved in writing by the local planning authority. The development shall proceed in accordance with the approved details.
- 8) The dwelling shall achieve Level 4 of the Code for Sustainable Homes. The dwelling shall not be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
- 9) No development shall take place until details of the implementation, maintenance and management of a sustainable drainage scheme (SUDS) have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented prior to occupation of the building and thereafter managed and maintained in accordance with the approved details.
- 10) The refuse storage details shown on the approved drawings shall be put in place prior to occupation of the dwelling, and thereafter retained for their intended purpose.

Appeal B

- 1) The works hereby authorised shall begin not later than three years from the date of this consent.
- 2) The works of demolition hereby authorised shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

## **APPEARANCES**

### FOR THE APPELLANT:

Dr C Miele MRTPI, IHBC, FRHS, FSA	Montagu Evans LLP
Mr T Miles MRTPI	Montagu Evans LLP
Mr I Hudson MEng, MA, CEng, MIStructE	Michael Alexander Consulting Engineers
Mr T Monan BSc, DipArch, RIBA	Osel Architects
Mr M Donn	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Ms H Walker BA MSc	Planning Department, L B of Camden
Ms A Olcar-Chamberlin BSc, MSc, MRTPI	Planning Department, L B of Camden
Mr P Kelly	Solicitor, L B of Camden

### INTERESTED PERSON:

Mr S Klein RIBA	On behalf of local resident
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## **DOCUMENTS**

- 1 Council's schedule of suggested planning conditions
- 2 Emails between main parties
- 3 Completed copy of Section 106 Agreement





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## Costs Decision

Hearing held on 4 June 2013

Site visit made on 4 June 2013

**by J C Chase MCD Dip Arch RIBA MRTPI**

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

**Decision date: 14 June 2013**

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**Costs application in relation to Appeals Ref: APP/X5210/A/12/2188302  
and APP/X5210/E/12/2186816  
50 Redington Road, London, NW3 7RS**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 74, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Marcus Donn for a full award of costs against the Council of the London Borough of Camden.
  - The hearing was in connection with an appeal against the refusal of planning permission and conservation area consent for the demolition of the existing building and the erection of a new private single family dwelling house.
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### Decision

1. The application for an award of costs is refused.

### The submissions of the parties

2. The submission of the appellants and the response by the Council were made orally at the hearing.

### Reasons

3. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
4. Para. B15 of the Circular indicates that the Council is at the risk of an award of costs if they prevent or delay development which should clearly be permitted having regard to the development plan, national policy statements and any other material considerations. Para. B16 goes on to require that the decision notice should be carefully framed to contain complete, precise and specific reasons for refusal, which should be supported by evidence at appeal.
5. The decision notices met this latter requirement with respect to the effect on the Conservation Area, by clearly setting out the grounds for refusal and referring to relevant development plan policy. Whilst there may be dispute about the weight to be given to the National Planning Policy Framework and other material considerations, the Council had due regard to these matters, and supported their decisions by the evidence given at appeal. It was acknowledged that the assessment did not wholly conform to the Conservation Area Statement, but there was adequate justification for the alternative

approach, and the overall case did not so wholly rest on personal judgement as to amount to the vague, generalised and inaccurate assertions referred to in para. B18 of the Circular. There was adequate discussion about the building in its context to comply with para. B19. Overall, the Council were entitled to take a different view from the appellant about the acceptability of the scheme on the basis of planning policy and other evidence, and there was no reason to consider that the applications should clearly have been allowed.

6. The Council would have needed to consider the effect of any changes to the detailing of the replacement building before reaching a decision on it, especially as some of the suggestions, such as the introduction of chimneys, would have had a significant effect on the appearance. In any event, there was a wider concern about the blandness of the design. It would not have been realistic to expect these matters to have been resolved by a planning condition to require an amended design, and the evidence falls short of a clear indication that the appeals could have been avoided by consultations about an alternative planning application.
7. The appellant's claim does not raise specific concerns about the second, third and fourth reasons for refusal of the planning permission, which were subsidiary to the Conservation Area issue, and which were resolved by the submission of further information and preparation of a Section 106 agreement.
8. The Council did not act unreasonably so as to cause the appellant unnecessary expense and the claim for an award of costs is refused.

*John Chase*

INSPECTOR