

Appendix 7 – Appeal Decision in respect of 22 Frognal Way appeal

Appeal Decision

Hearing held on 15 & 16 November 2016

Site visit made on 16 November 2016

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 09 March 2017

Appeal Ref: APP/X5210/W/16/3150327
22 Frogal Way, Hampstead, London, NW3 6XE

- 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 Jez San OBE against the decision of the Council of the London Borough of Camden.
 - The application Ref 2015/3530/P, dated 19 June 2015, was refused by notice dated 18 March 2016.
 - The development proposed is demolition of existing dwelling house at 22 Frogal Way and redevelopment to provide a single detached family dwelling house and all other necessary works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling house at 22 Frogal Way and redevelopment to provide a single detached family dwelling house and all other necessary works at 22 Frogal Way, Hampstead, London, NW3 6XE in accordance with the terms of the application, Ref 2015/3530/P, dated 19 June 2015, subject to the conditions in Annex A.

Main Issue

2. The Council confirmed at the hearing that subject to the legal agreement being in place it would not be defending reasons 2 and 3 on the decision notice. I have been provided with an executed planning agreement made under section 106 of the Town and Country Planning Act 1990. This contains obligations relating to provision of a construction management plan and detailed basement construction plan. Accordingly the main issue is:
 - Whether the proposed development would preserve or enhance the character or appearance of the Hampstead Conservation Area (HCA), taking into account the effect of the loss of No 22 Frogal Way, a non designated heritage asset.

Reasons

3. The definition of heritage assets, as set out in the National Planning Policy Framework (the Framework), includes buildings, sites and places as having a degree of significance meriting consideration in planning decisions, because of their heritage interest. Heritage assets include designated heritage assets and non-designated heritage assets (NDHA) identified by the local planning authority. The Planning Practice Guidance (PPG) sets out that local authorities
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- may identify non-designated heritage assets. Local lists are given as one useful way of identifying these assets but it is clear that not being on a list would not preclude a building from being considered. Such assets have a degree of significance due to their heritage interest that merits consideration in the planning process.
4. There is no dispute that the building was built by Camden based architect Philip Pank for client Harold C. Cooper and that it represents an individual bespoke design. However, the resultant significance of No 22 is a key point of dispute with there being a wide difference of opinion between the main parties. In this case for the development to go ahead the building would have to be removed and would be lost. Therefore consideration of the scale of harm from its loss is required, having regard to its significance. There are a number of areas that contribute to the consideration of the significance of the building which I consider in turn.
 5. The Council have not placed the building on a local list of buildings of special or architectural and historic interest in the borough. English Heritage considered a request to have the building listed. Their conclusion was that it did not merit inclusion on the statutory list of buildings of special architectural and historical interest. The report does identify the local importance of the building.
 6. The dwelling was extended in the 1980s to provide additional accommodation. It is constructed from brick with stained wood and has flat roof forms and a central rotunda. It was pointed out at the hearing that, due to the connection to other buildings within the borough Pank cannot be dismissed as a mediocre architect. However, the English Heritage report highlights that many of his commissions were for private houses, the majority of which were in the London Borough of Camden. It identifies the most striking feature of No 22 as being its plan form, that is the rotunda and the three ranges or 'fingers' that radiate from it.
 7. It goes on to identify that unlike another building designed by Pank within the Borough No 22 does not display the same level of originality in the interior design, the building has been altered inside and out and that the interplay of natural materials and setting is not as fully developed at No 22 as in other Pank designs. I appreciate that these comments were made in response to the request for inclusion on the statutory list. Nevertheless, these observations contribute to understanding the significance of the building.
 8. It was established through a more recent appeal¹ that planning permission 2009/3168/P has been implemented. This was on the basis of material operations that had been carried out to the building albeit that work then ceased. This appeal decision also refers to the condition of the building. In particular that there is no evidence that the former owner's intention to run the building into a state of irretrievable disrepair. Planning permission was also granted² for '*...replacement of existing external brickwork of existing residential dwelling with custom manufactured bricks...*'
 9. At the hearing two 'baseline' positions were considered regarding the significance of the building. The first being that the building could be restored through implementation of the 2009 consent and a brick replacement. The

¹ APP/X/5210/C/15/3136490

² LPA Ref 2011/0924/P

second is restoration by works that would not require planning permission. In either case the building could be brought back into use as a dwelling without being demolished. I appreciate that if this were the case the building would retain the layout of a rotunda with fingers. Nevertheless, cumulatively the permitted alterations and a further application for the brick would markedly change the building from the original design. Fundamentally, it is clear that over time the building has been extended and altered and could lawfully be further altered.

10. I appreciate that the building is of some architectural interest. Nevertheless No 22 is a low rise building that is mainly glimpsed within the street scene. As such it cannot reasonably be described as a 'landmark' building or having a significant impact in the immediate area. Overall, based on the evidence in this case, the significance of the building, whilst of some limited local heritage interest, does not weigh significantly in favour of retention.
11. Paragraph 135 of the Framework requires a balanced judgement which seeks in weighing applications that affect directly non designated heritage assets assessing the scale of any harm or loss and having regard to the significance of the heritage asset. The proposal result in the total loss of the building. The design of the replacement building would be acceptable and promote and reinforce local distinctiveness. Therefore, considering the reasons given above, there would not be an adverse impact from the total loss of the NDHA. I have taken this in account and with this in mind I consider the issue of the site location within the HCA.
12. The statutory duty under section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 sets out that special attention shall be paid to the desirability of preserving or enhancing the character and appearance of the conservation area.
13. In relation to the appeal scheme the HCA is a designated heritage asset and the appeal property is a non-designated heritage asset. The *Conservation Area Statement for Hampstead* (CAS) refers to Froggnal Way in 'Sub Area Five: Froggnal'. It is described as wide un adopted and relaxed road that has a variety of architecture. Therefore the significance of the HCA in this location is derived primarily from the contribution of the architectural contributions of the individual dwellings within Froggnal Way. The Framework states that when considering the impact of a proposal on the significance of a designated heritage asset great weight should be given to the asset's conservation.
14. At the Hearing a number of local residents raised the appearance of the site. They consider that demolition of the building and its replacement would remove important public views of a building with a design solution employed to keep it low level. However, No 22 is described with the CAS as being a 'neutral building'. The existing building is not prominent within long vistas along Froggnal Way. It comes into view when approaching on foot. The rotunda is glimpsed from the Froggnal Way and within the nearby churchyard. I have been referred to a number of previous decisions for the site. A scheme to demolish the existing property and replace it with two new dwellings and the associated conservation area consent³. Whilst the policy framework has changed since this decision it considered whether the building makes a positive contribution to the HCA. At that point the Inspector considered that the alterations did not

³ APP/X5210/A/08/2069663; APP/X5210/E/08/

seriously erode the form and depth of the house and that No 22 *'...As a commissioned house it continues and adds to the theme of individual house in Froggnal Way, which define its character'*. Nevertheless careful consideration is required of whether the removal of the existing building at this point and its replacement would preserve or enhance the contribution of the site to the character of the HCA in this area which is derived from the contribution of the individual detached dwellings.

15. The new dwelling proposed would also be a single detached property. It would be a low profile, accessible home. The design approach would respond to the site constraints. It would create a building that would read as single storey from ground level and be a high quality one off house. The appellant submits that it would be constructed to a high standard and have high sustainability credentials. The scale, massing and detailed design of the new dwelling would be appropriate within the context of its conservation area setting.
16. The existing building would be lost entirely. Whilst it is a large dwelling in the HCA in its own right I have identified in consideration of it as a NDHA that its positive contribution is limited. In this regard the net effect of the provision of the new dwelling and thereby its removal would at worst be neutral as what is special about the HCA would not be harmed. In this regard should it be constructed the appeal scheme would reflect the character of the HCA and preserve the part of the HCA it would be located in.
17. Therefore the scheme would not be in conflict with policy CS14 of the London Borough of Camden Local Development Framework and policy DP25 of the London Borough of Camden Local Development Framework Development Policies which amongst other things seek to preserve and enhance Camden's rich and diverse heritage assets, including conservation areas and paragraph 17 indicates that planning should conserve heritage assets in a manner appropriate to their significance.

Other matters

18. I have carefully considered the representations made by interested parties at the hearing. In particular, third parties raised the matter of 'deliberate neglect or damage' as set out in paragraph 130 of the Framework. Based on the information before me there is no doubt that the condition of the building has changed since the Inspector considered the site in 2008. However, as my colleague found in the most recent appeal there is no evidence that the current condition of the building is due to 'deliberate neglect or damage' but rather the cessation of the works that commenced to implement the 2009 consent⁴. I appreciate that residents are concerned that to allow the building to be removed could be seen as a precedent. However, my decision is based on the evidence put to me in this case and would not prevent the Council resisting future proposals on other sites.

Conditions

19. The Council has suggested a number of conditions which it considers would be appropriate were I minded to allow the appeal. The appellant has commented on these and they were discussed at the hearing. I have considered these in

⁴ 2009/3168/P

light of the Framework and PPG and for clarity some of the proposed wording is amended.

20. Conditions are necessary that relate to the standard time limits and requiring development to be carried out in accordance with the approved plans. In the interests of the character and appearance of the area conditions are necessary that require the submission of the detail of the green roof, a detailed landscaping scheme and relevant tree protection measures.
21. The appellants suggested a personal permission at the hearing. However, the PPG is clear that such an approach would rarely be justified as planning permission runs with the land. I have not heard anything that would suggest such a condition would be necessary or reasonable in this case.

Conclusion

22. For the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jez San OBE	Appellant
Natasha San	Appellant
Rupert Warren QC	Instructed by Brechers LLP
Anjana Guosh	Brecher LLP
Wesley Fongenjie	Brecher LLP
Matthew Gibb	DP9
Ignus Froneman	Heritage Collective
Richard Soloman	KSR Architects
Guy Ailion	KSR Architects
Matthew Penfold	GEA
Steve Branch BSc MSc CGeol	GEA
FGS	Price Myers
Paul Batty	

FOR THE LOCAL PLANNING AUTHORITY:

Mark Beard	Six Pump Court
Catherine Bond BA Hons, MTP, Grad DipCons AA IHBC	London Borough of Camden
John Sheehy	London Borough of Camden
Pritej Mistry	London Borough of Camden

INTERESTED PERSONS:

Richard Harwood QC	39 Essex Chambers
Ashleigh Murray	Donald Insall Associates
Robert Gowing	Berwin Leighton Paisner
Emily Pittaway	Berwin Leighton Paisner
Alec Forshaw MRTPI IHBC	Church Row Residents Association
Douglas Maxwell	Local resident
Lewis Cadji	Local resident
Monique Cadji	Local resident
Mabel Lee	Local resident
Ben Sherman	Local resident
Nicola Lacey	Local resident
David Soskice	Local resident
Helen Sherman	Local resident
David Margulies	Local resident
Emanuel Monday	Local resident
Martin Horradine	Local resident
Ashley Bailey	Local resident
Dr Jenny Stratford	Local resident
Mr Felber	Local resident
Neil Stratford	Local resident
David Milne	Local resident
Hutch Nathanson	Local resident
David Bearman	Local resident
Martin Woollacott	Local resident

Sam Sanson	Local resident
James Sanson	Local resident
Michael Hockley	Local resident
Anthony Todd	Local resident
Antonia Aaron	Local resident
Anat Shafran	Local resident
Jeremy Karpel	Local resident
Bruce Denny	Local resident
Tim Cohen	Local resident
Richard Jankel	Local resident
Neil Norris	Local resident
Paivi Bjorklund	Local resident
Dr Christopher Williams	Local resident
Bryan Edery	Local resident
Amoreena Campbell	Local resident
Katrina Lamont	London Borough of Camden
Gilpa Beechook	London Borough of Camden

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Letter from Andrew Lavery
- 2 Comprehensive list of suggested conditions
- 3 Statement of Common Ground dated November 2016
- 4 English Heritage Advice Report
- 5 Email dated 11 March 2016 from Neil McDonald, London Borough of Camden
- 6 Photographs from Mr Lacey
- 7 Example of Bauder Rood Garden System from KSR Architects
- 8 Closing submission on behalf of the Church Row Residents Association
- 9 Closing submission by Mr Harwood QC on behalf of Mr and Mrs Nathanson
- 10 Closing submission by Mr Beard on behalf of the Council
- 11 Closing submission by Mr Warren QC on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE HEARING CLOSED

- 1 Certified copy of the planning obligation dated 30 November 2016

Annex A – Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: KSR Architects Design and Access Statement (dated June 2015), Skelly and Couch Energy and Sustainability Report (dated June 2015), Heritage Collective Archaeological Desk Based Study (dated June 2015), Heritage Collective Heritage Statement (dated June 2015), Motion Draft CMP, Deloitte Daylight and Sunlight Report (dated June 2015), DP9 Planning Statement (dated June 2015), Motion Transport Statement (dated June 2015) and Price and Myers Basement Impact Assessment and Construction Method Statement (dated April 2015), Arboricultural Impact Assessment (dated June 2015).
- 3) No development shall take place (except for demolition of the existing building) until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.
- 4) All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development. Any trees or areas of planting 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 as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.
- 5) All work shall be carried out in accordance with the relevant recommendations of British Standard 3998: 2010. (Recommendation for Tree Work)
- 6) Details of the design of building foundations and the layout, with dimensions and levels, of service trenches and other excavations on site in so far as these items may affect trees on or adjoining the site, shall be submitted to and approved in writing by the local planning authority before any works on site are commenced. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.
- 7) Prior to the first occupation of the building a plan showing details of the green roof including species, planting density, substrate and a section at scale 1:20 showing that adequate

depth is available in terms of the construction and long term viability of the green roof, and a programme for a scheme of maintenance shall be submitted to and approved in writing by the local planning authority. The green roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance.