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# Appeal Decision

Site visit made on 6 November 2018

**by I Radcliffe BSc(Hons) MRTPI MCIEH DMS**

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

**Decision date: 30 November 2018**

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**Appeal Ref: APP/X5210/W/18/3200554**

**128-130 Grafton Road, Kentish Town, London NW5 4BA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by ETA BRIDGING LTD against the Council of the London Borough of Camden.
  - The application Ref 2017/4293/P is dated 25 July 2017.
  - The development proposed is demolition of existing two-storey industrial building at 128-130 Grafton Road and erection of a 6-storey (including basement) residential building to comprise 6 x 2-bed and 3 x 3-bed apartments.
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## Decision

1. The appeal is dismissed.

## Procedural matters

2. The revised National Planning Policy Framework (the Framework') was published on 24 July 2018. The parties were invited by letter on 14 August 2018 to comment on the Framework in relation to the proposed development. The comments received by the deadline of 28 August 2018 have been taken into account in the determination of this appeal.
3. The statutory determination date for the planning application was 7 March 2018. The appeal was lodged with the Planning Inspectorate on 16 April 2018 on the basis that the local planning authority failed to give notice of its decision on the planning application within the appropriate period. The Council subsequently issued a decision notice on the application which was received by the appellant on 23 April. On the basis that the Planning Inspectorate letter validating the appeal was not issued until the following day, 24 April 2018, the local planning authority states that its decision notice is valid.
4. Ultimately, this matter is moot. The appeal was lodged by the appellant on the basis that the application had not been determined by the local planning authority within the appropriate period. The fact that the Council subsequently issued a decision notice does not alter this. As a result, I have dealt with the appeal on the basis applied for. I have, however, taken the reasons given on the decision notice into account as they explain why the application would have been refused had the Council issued a decision notice in advance of the appeal being submitted.
5. The description of the development that appears on the decision notice and on the appeal form is 'demolition of existing two-storey industrial building at (Class B8) and erection of a 5-storey plus basement residential building

comprising 6 x 2-bed and 3 x 3-bed flats (Class C3).’ I am content that this amended description adequately describes the proposal and I shall use it in the determination of this appeal.

### **Application for costs**

6. An application for costs was made by ETA BRIDGING LTD against the Council of the London Borough of Camden. This application will be the subject of a separate Decision.

### **Main Issues**

7. The main issues in this appeal are:
  - the effect of the proposed development on the supply of employment sites within the Borough;
  - whether the proposal would result in acceptable living conditions for future occupiers with regard to privacy, outlook and levels of natural light;
  - the effect of the proposed development on the character and appearance of the area;
  - whether adequate cycle parking would be provided;
  - whether it has been demonstrated that construction of the basement to the development would maintain the structural stability of adjacent properties and avoid harm to the water environment;
  - whether the effect of the proposed development during construction on the highway users and the amenities of the area, and after construction on the pedestrian environment, on-street parking and climate change, would be mitigated; and, whether the proposed development would make adequate provision for affordable housing.

### **Reasons**

#### *Employment sites*

8. Policy E2 of the Camden Local Plan protects business premises that are suitable for continued business use from redevelopment for other uses. However, if the building is no longer suitable for its existing business use, and the possibility of reusing or redeveloping the site or building for other business uses has been fully explored, then redevelopment for a different use will be supported.
9. The appeal premises is a tall single storey brick built building with a forecourt. It is currently occupied by a scaffolding business (Use Class B8) and, on the basis of the application form, has a gross internal floorspace of 340sqm. Permission was granted on appeal in 2003 for redevelopment of the site for seven flats<sup>1</sup>. However, that permission was not implemented and it has long since lapsed.
10. The building is not in good condition and access to the building and its design do not meet modern standards. However, the last Inspector’s conclusion that the building is not suitable for employment use is belied by two considerations. Firstly, the fact that some 15 years later it is still in business use. Secondly, that there have been no letters of support for the proposed development on

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<sup>1</sup> Ref APP/X5210/A/02/1095059

the basis of problems that the current use causes for neighbouring residents or occupiers.

11. Moreover, on the basis of the Inspector's reasoning, policy E2 of the Local Plan appears to be more exacting than the economic development policies of the development plan that applied in 2003. This is because policy E2 requires that alternative types and sizes of business use, including redevelopment of the site, are fully explored before a change of use to a non-business use will be supported. Given that such work has not been carried out, and for the reasons given in the previous paragraph, I therefore conclude that the proposed residential redevelopment of the site would harm the supply of employment premises / sites contrary to policy E2 of the Local Plan.

#### *Living conditions*

12. The proposed development would result in flats on the ground to third floors whose lounge area windows would directly face each other at close distance across a lightwell. This would result in unacceptable levels of overlooking and an overbearing outlook.
13. In relation to levels of natural light, the aforementioned windows would be the sole source of natural light serving the lounge, kitchen and dining areas of the flats on the first, second and third floors. Even allowing for a flexible approach on this issue, in the absence of a Daylight and Sunlight Report I am not persuaded that adequate levels of light via the light well would enter these main living areas. As a result, the proposed development would result in a living environment within many of its flats that would lack privacy, have a poor outlook and provide darker living conditions within most of the affected flats than it is reasonable to expect.
14. The proposed development would therefore result in unacceptable living conditions for future occupiers of the proposed development. This would be contrary to policies A1 and D1 of the Local Plan and policy 3.5 of the London Plan which seek to prevent such harm. It would also be contrary to the Framework which seeks a high standard of amenity for occupiers of new development.

#### *Character and appearance*

15. Development along the even numbered side of the road, where the appeal property is located, is characterised on one side of No 128- 130 by four storey apartment buildings and on the other side by two storey buildings. In this regard, the proposed five storey building, with its low floor to ceiling heights reducing the overall height of the building and set back top storey, would be in keeping with development along the road. However, it is a notable feature of development on this side of the road that apartment buildings and houses are set back from the highway behind shallow front gardens. Whilst the proposed building would also be set back the land to the front of the building, other than for the central entrance, would be taken up completely by two lightwells. On a street where such features are not characteristic lightwells of this size would be excessive and in views from the pavement overly dominant and harmful to the streetscene.
16. Notwithstanding my favourable findings therefore in relation to the scale of the building this does not overcome the harm that would be caused by lightwells of the size proposed in the scheme. I therefore conclude that the proposed development would cause demonstrable harm to the character and appearance

of the area, contrary to policies D1 and A5 of the Local Plan and Camden Planning Guidance Basements (CPG). Policies D1 and A5 requires the protection of the character and appearance of a locality through high quality design that respects local design features. The CPG opposes lightwells of an excessive size where lightwells are not part of a street's established character.

*Cycle parking*

17. Policy T1 of the Local Plan requires that cycle parking is provided in accordance with the minimum requirements of the London Plan and the design requirements in 'Camden Planning Guidance - Transport'. The submitted plans show storage space for 14 bicycles whereas the development plan requires a storage space large enough to contain a minimum of 18 bicycles. Given the limited size of the cycle store, and that increasing its size would encroach upon an adjacent bedroom or terrace in the basement flats, I am not persuaded that this matter could be dealt with by condition without harming the standard of accommodation of neighbouring flats. The proposed development would in failing to provide adequate cycle parking facilities would therefore fail to promote sustainable transport also be contrary to policy T1 of the Local Plan.

*Structural stability and the water environment*

18. In order to ensure that a basement development would not harm the structure of neighbouring properties and the water environment of the area policy A5 of the Local Plan requires a Basement Impact Assessment (BIA). However, a full independently audited BIA has not been provided by the appellant. As a result, it has not been demonstrated that the proposed development would maintain the structural stability of neighbouring properties and protect the water environment in compliance with policy A5 of the Local Plan. Given that this issue is fundamental to the acceptability of the scheme this matter needs to be addressed at application stage and should not be dealt with by condition.

*Highway users, amenities of the area, pedestrian environment, on-street parking, climate change and affordable housing*

19. The proposed development would involve significant works due to the demolition of the existing building and construction of a larger replacement residential building. Thus the potential for traffic disruption and harm to highway safety exists. In such circumstances, policy A1 of the Local Plan requires a Construction Management Plan. A financial contribution is necessary towards the cost of assessing and ensuring successful implementation of the plan.
20. Policies T1 and T3 of the Local Plan protect transport infrastructure, particularly for pedestrians. Development of the site is likely to adversely affect the highway immediately next to it. The most effective way of securing proper management of the area affected by construction, securing repairs and ensuring that work to the highway is carried out to the required standard is via a planning obligation.
21. Policy T2 of the Local Plan requires all developments in the Borough to be car free. In practice this means ensuring that occupiers of new residential schemes do not receive on-street parking permits. As it is impractical to amend relevant Traffic Management Orders every time a new dwelling is built, and to avoid future occupiers not being aware that no parking permits are available, planning obligations are necessary.

22. Policy CC1 of the Local Plan requires through the implementation of an Energy Efficiency Plan a reduction in energy use and the use of renewable energy. Where the submitted plan demonstrates that the required target of 20% reduction in CO2 emissions cannot be secured on site a financial contribution is required to secure compensatory carbon reduction measures elsewhere in the Borough. Policy CC2 of the Local Plan requires that new buildings are resilient to climate change.
23. In relation to affordable housing, the Framework is an important consideration. It states that provision of affordable housing should not be sought for residential development that is not major development (i.e. provision should not be sought in schemes below a threshold of 10 homes). However, policy H4 of the Local Plan, which requires a contribution towards affordable housing from all residential development, was prepared and examined in the context of this national policy when it formed a Written Ministerial Statement.
24. A great need for affordable housing exists in the Borough. The London Plan encourages Boroughs to seek lower affordable housing thresholds and the Borough's Viability Study found that there was no basis for a threshold in Camden. In light of these factors, I attach little weight to the conflict between the Framework and the Local Plan on this matter and find that it is insufficient to justify an approach that is different to that of the development plan. In order to comply with policy H4 of the Local Plan a contribution towards affordable housing is therefore required.
25. The contributions sought are necessary to make the development acceptable in planning terms and are directly related to the proposed development. Whilst in relation to affordable housing there is disagreement as to the actual gross external area the difference between the parties of only 13sqm in a scheme of over 1000sqm is very small. As a result, I find that the sum sought in relation to affordable housing is reasonably related in scale and kind to the proposed development. In relation to the other contributions and actions sought they are reasonably related in scale and kind to the proposal. As a result, the contributions and actions sought comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 56 of the Framework.
26. In relation to Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 (as amended) as the measures that require funding are specific to the proposed development no pooling of contributions would occur. As a consequence, the restrictions of this regulation do not apply.
27. The appellant has not secured the financial contributions sought by the submission of planning obligations. Instead the company proposes that these matters could be dealt with by condition. However, Planning Practice Guidance advises that conditions cannot be used to require the payment of money<sup>2</sup>. It also advises that use of a condition, which in effect limits the development that can take place until a planning obligation has been agreed, is unlikely to be appropriate other than in exceptional circumstances, such as in the case of more complex and strategically important development where there is clear

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<sup>2</sup> Paragraph: 005 Reference ID: 21a-005-20140306 *Are there any circumstances where planning conditions should not be used?*

evidence that the delivery of the development would be put at risk<sup>3</sup>. Such circumstances do not exist in this case.

28. I therefore find that conditions should not be used to secure the contributions, plans and actions necessary to mitigate the effect of the proposed development on the highway, amenities, on-street parking and climate change, nor should a condition be used to secure the provision of affordable housing. In the absence of obligations securing these matters the development would cause harm in relation to these issues contrary to policies A1, T1, T2, T3, CC1, H4 and DM1 of the Local Plan. Policy DM1 advises that the Borough will use planning obligations to secure necessary infrastructure and mitigate the effect of development.

### **Conclusion**

29. The proposal would make efficient use of previously developed land in an urban area and provide housing for which there is a need. The proposal though would result in the loss of an employment site which is in use and which the development plan seeks to protect. The design of the scheme and absence of planning obligations would also cause demonstrable harm to a range of material planning matters detailed above, contrary to the development plan. As a result, I find that the proposed development would be contrary to the development plan considered as a whole. I therefore conclude that the appeal should be dismissed.

*Ian Radcliffe*

Inspector

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<sup>3</sup> Paragraph: 010 Reference ID: 21a-010-20140306 *Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?*