

APPEAL BY MR J WALD

56 DARTMOUTH PARK ROAD  
LONDON NW5

PROPOSED DEMOLITION OF EXISTING REAR ADDITION  
AND CONSTRUCTION IN ITS PLACE  
OF SINGLE-STOREY REAR EXTENSION

LONDON BOROUGH OF CAMDEN  
APPLICATION REFERENCE 2018/3363/P

GROUND OF APPEAL

1 INTRODUCTION AND MAIN PLANNING FACTS

- 1.1 The appeal proposal seeks permission for the demolition of the existing single-storey addition, a largely glazed, flat-roofed structure built in 2007, and its replacement with a larger (in floor area) single-storey extension incorporating a fully glazed rear elevation.
- 1.2 The application property consists of a two-storey, detached Victorian house in a row of similar dwellings on the north side of Dartmouth Park Road. The property lies within a wholly residential area, equidistant (about 600 metres) from Gospel Oak underground station to the south-west and Tufnell Park underground station to the south-east.
- 1.3 The site lies in the Dartmouth Park Conservation Area. The house is not a listed building and there are no listed buildings in the immediate vicinity.
- 1.4 If the property were not in a conservation area, the proposed rear extension would be permitted development under Class A of Part 1 of Schedule 2 of the Town and

Country Planning (General Permitted Development) (England) Order 2015 (the GPDO); permission is required in this case because of the limitation imposed by paragraph A.2(b) of Class A, which affects a small part of the extension at the north-west corner of the building. The property is not subject to any Article 4 direction removing or varying permitted development rights under the GPDO.

- 1.5 A rear extension that is significantly larger in floor area than both the existing extension and the proposed extension could be constructed as permitted development under Class A of the GPDO, as explained in section 3 of the Design and Access Statement. This fall-back position is an important planning consideration and is addressed in further detail later in these grounds of appeal.
- 1.6 The application was refused planning permission on 11 October 2018. I attach, at appendix 1, a copy of the decision notice and, at appendix 2, a copy of the Planning Officer's delegated report.
- 1.7 The application documents and drawings are those listed on the front page of the decision notice and include a Design and Access Statement and a Joint Planning Statement and Heritage Statement.
- 1.8 The Council's consultation with neighbouring properties resulted in objections by the occupiers of 54 and 58 Dartmouth Park Road and I will comment on these representations in section 4 of these grounds of appeal.
- 1.9 It will be noted that no comments were made by the local amenity group, The Dartmouth Park Neighbourhood Forum.
- 1.10 The legal framework governing the consideration of the application, and this appeal, is set out at paragraphs 2.1 to 2.3 of the Planning and Heritage Statement.

## 2 PLANNING HISTORY

- 2.1 The planning history of the property is listed on page 3 of the delegated report and I would add the following comments.
- 2.2 The appellant has purchased the property recently and neither of the 2011 applications was submitted by him.
- 2.3 Application 2018/3591/P was an application for a lawful development certificate and was granted on 29 October 2018.
- 2.4 Application 2018/3444/P was a planning application and was granted permission on 10 October 2018.

## 3 PLANNING POLICIES

- 3.1 The development plan consists of:
- The London Plan 2016; and
  - Camden Local Plan 2017.
- 3.2 Also of relevance is the local supplementary planning guidance in the following documents:
- Camden Planning Guidance: Design (2018); and
  - Dartmouth Park Conservation Area Appraisal and Management Statement 2009.
- 3.3 At national level, the policies in the National Planning Policy Framework (the NPPF) published in July 2018 are also material considerations.
- 3.4 I consider that the following policies in the Camden Local Plan are relevant to the appeal:

- Policy A1 Managing the Impact of Development;
- Policy A3 Biodiversity;
- Policy D1 Design; and
- Policy D2 Heritage.

These policies are summarised at paragraphs 3.7 to 3.10 of the Planning and Heritage Statement.

- 3.5 The decision notice cites policies D1 and D2 of the Camden Local Plan. I attach, at appendix 3, copies of policies A1, A3, D1 and D2.
- 3.6 I consider that the relevant part of the Camden Planning Guidance on Design (2018) is section 4 (on Extensions, Alterations and Conservatories), and especially paragraph 4.7 (which includes advice on the use of materials) and paragraph 4.10 (general principles on the design of rear extensions), and these are reproduced at paragraphs 3.11 and 3.12 of the Planning and Heritage Statement. In the event that the Council does not provide the Inspectorate with the relevant parts of the Camden Planning Guidance: Design, I attach, at appendix 4, a copy of Chapter 2 (Design Excellence), Chapter 3 (Heritage) and Chapter 4 (Extensions, Alterations and Conservatories).
- 3.7 The decision notice does not cite the Dartmouth Park Conservation Area Appraisal and Management Statement. I consider that the only part of this document that is of direct relevance to the appeal proposal is on page 56, relating to rear extensions within conservation areas, and this is reproduced at paragraph 3.13 of the Planning and Heritage Statement.
- 3.8 The Planning and Heritage Statement, which was prepared in early July 2018, cites part of the NPPF 2012 but that document was replaced by the revised NPPF 2018, published on 24 July 2018. I therefore set out below those parts of the NPPF 2018 that I consider to be relevant to this appeal:
- Chapter 11 Making effective use of land;
  - Chapter 12 Achieving well designed places;  
(and especially the guidance at paragraph 127);
  - Chapter 16 Conserving and enhancing the historic environment;  
(and especially paragraphs 189 to 196).

## 4 THE APPELLANT'S CASE

### 4.1 The reason for refusal states:

“The proposed rear extension, by reason of its bulk, scale and detailed design, combined with the cumulative visual impact of proposed and existing unsympathetic rear alterations, would result in a detrimental impact on the character and appearance of the host building, the unified character of the row of buildings which it forms part and the wider Dartmouth Park Conservation area, contrary to policies D1 (Design) and D2 (Heritage) of Camden Local Plan 2017.”

### 4.2 The Planning and Heritage Statement, at section 5, explains the planning arguments in support of the proposed rear extension. For convenience, I reproduce those arguments below, amended and extended as necessary to take into account the following:

- the stated reason for refusal;
- the comments in the Planning Officer's delegated report;
- the changes in the NPPF; and
- the objections by neighbouring occupiers.

### Permitted development fall-back position

### 4.3 Before addressing the planning merits of the proposed extension and the reason for refusal of permission, it is necessary to comment on the appellant's permitted development rights to construct a rear extension without the Council's consent and how such a permitted development addition compares with the extension that is proposed.

### 4.4 The Camden Planning Guidance on design acknowledges the availability of permitted development rights to alter and extend dwellings. Paragraph 4.4 confirms:

“You can make certain types of minor changes to your property without needing to apply for planning permission. These are called “permitted development rights” .....”.

### 4.5 The permitted development options that are available to the appellant represent a legitimate fall-back position that should be taken into account when assessing the planning merits of the appeal. It is clear from case law (e.g. *Burge v Secretary of*

*State for the Environment* [1988], *New Forest District Council v Secretary of State for the Environment* [1996], *Brentwood Borough Council v Secretary of State* [1996], *R v Secretary of State for the Environment Ex p. Ahern* [1998]) that a planning authority and the Secretary of State on appeal are entitled, and indeed obliged, to have regard to any fall-back position. In *Ahern*, the Court held that the decision-maker needs to ask the question: “is the proposed development in its implications for impact on the environment, or other relevant planning factors, likely to have effects worse than, or similar to, any development that could be carried out if the proposed scheme were refused permission?”.

4.6 As noted at paragraph 1.4 above, planning permission for the extension is required only because of the limitation under paragraph A.2(b) of Class A, which affects that part of the addition at the side. Section 3 of the Design and Access Statement explains in some detail what could be built at the rear as permitted development and provides evidence of the position of the original rear wall of the house. When deciding what is the original dwellinghouse for the purposes of Part 1 of Schedule 2 of the GPDO, the legal test is the balance of probability. It is clear that the evidence provided in the Design and Access Statement satisfies this test.

4.7 The Design and Access Statement shows that a rear extension that used the full Class A permitted development allowance:

- could be significantly larger in footprint and floorspace than the proposed extension;
- could project significantly further from the original rear wall than the proposed extension;
- could occupy a greater proportion of the rear garden than the proposed extension;
- could have a greater impact on the neighbouring property at 58 Dartmouth Park Road than the proposed extension;
- could, in common with the extension now proposed, incorporate an angled rear elevation; and
- could include a fully glazed rear elevation.

4.8 With regard to the fall-back position, the Officer’s delegated report states, at paragraph 5.1, that:

“This would not be considered in this instance as the building lies within a conservation area and [the] current scheme is dealt with under a householder planning application .....”.

The Council is wrong, as a matter of law and procedure, to assert that a potential fall-back position is not a material consideration where the site is within a conservation

area or where the application is a householder proposal. There is nothing in the established case law (see paragraph 4.4 above) or in the NPPF 2018 or in Planning Practice Guidance: Determining a Planning Application that supports the Council's view that a fall-back position is not a material consideration when assessing a householder application within a conservation area.

### Design and heritage

- 4.9 The proposed extension would appear as a subordinate element to the main house and its use of contemporary form, design and materials would create an innovative addition that is architecturally distinct from, and does not seek to mimic, the host building.
- 4.10 It should be stressed that the proposal involves the removal of the existing rear addition, thereby limiting the net increase in floorspace to about 13 square metres, which represents only 5% of the floorspace of the existing house.
- 4.11 It should also be noted that the existing rear extension (see figures 5 and 6 of the Design and Access Statement) is of a modern design with large areas of glazing so that, in general terms, the proposed replacement extension would be similar, albeit wider, in overall appearance to the current arrangement. There is no reason, in principle, why contemporary design, if carefully considered, cannot be acceptable within conservation areas.
- 4.12 The heritage asset that is potentially affected in this case is the Dartmouth Park Conservation Area. Paragraph 7.57 of the Dartmouth Park Conservation Area Appraisal and Management Statement (the DPCAAMS) describes the features of conservation significance in Dartmouth Park Road and includes the following:
- “The later north side has double-fronted two-storey detached houses and the earlier south side has three-storey semi-detached with semi-basements (Nos. 53-75, Smerdon, 1884-9) and detached double-fronted houses (Nos. 77-83, Smerdon, 1883). No. 55 was Smerdon's own house. The properties share similar features such as gault brick, Gothic porch, stucco window and porch surroundings. The semi-detached properties have prominent steps and raised front doors. Nos. 77-83 have double height bays with slate roofs that dominate the elevations. The gaps on both sides of the road provide views to the back gardens. And the street is enhanced by hedges to the front gardens.”
- 4.13 The extension that is proposed at the rear of 56 Dartmouth Park Road would have no adverse impact on the architectural and townscape features that are noted in the DPCAAMS. The street scene in the vicinity of the site would be unaffected by the

single-storey replacement rear extension at No. 56. The proposal would, therefore, in the context of the guidance at paragraphs 193 to 196 of the NPPF 2018, cause no harm at all to the significance of the heritage asset.

4.14 There are no policies or guidance in any of the relevant planning policy documents (see 3.1 and 3.2 above) that preclude the use of contemporary design in this Conservation Area.

4.15 Paragraph 3.1 of the Officer's delegated report includes:

“Policy D2 states that within conservation areas, the Council will only grant planning permission for development that ‘preserves and enhances’ its established character and appearance.”

This statement is incorrect and misleading. It would be unduly onerous and unreasonable for any planning policy to require that every new development not only preserves but also enhances the character and appearance of a conservation area. In fact, the policy, at item (e), states:

“[The Council will] require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area.”

The wording of policy D2(e) reflects the wording of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which states:

“In the exercise, with respect to any buildings or other land in a conservation area, of any [functions under or by virtue of] and of the provisions mentioned in sub-section (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

4.16 Therefore, in order to merit the grant of planning permission, it is necessary only for a proposed development to preserve the character or appearance of a conservation area. Enhancement of a conservation area is desirable but not essential.

4.17 Paragraph 3.4 of the delegated report argues that the proposed rear extension would be at odds with the “uniform group appearance” of the houses on the north side of Dartmouth Park Road. However, the report acknowledges at the same paragraph that the majority of properties on this side of the road have been altered or extended at the rear and cites examples of full-width rear additions at numbers 60 and 64. Furthermore, the appeal property is not in its original form, having a single-storey rear extension (built by a previous owner), which is not of traditional design. In this context, the construction of a replacement rear extension would not appear out of place or be damaging to any established pattern of development.



4.18 The criticism, at paragraph 3.5 of the delegated report, that the rear extension would be particularly conspicuous from some of the houses to the rear (in Laurier Road) because this is part of Dartmouth Park Road “where the rear gardens are also getting narrower”. Three points need to be made in response, as follows.

- The use of the word narrower is incorrect. I am sure that the Planning Officer means ‘shorter’, i.e. less deep, not narrower. The width of the rear garden of 56 Dartmouth Park Road is 11 metres, which is virtually the same as the other rear gardens in this part of the north side of Dartmouth Park Road (see drawing P-01). It is the depth of the rear gardens that reduces from west to east, not the width.
- The rear elevation of the existing rear addition projects into the rear garden (by reference to the position of the main rear wall) by approximately 3.5 metres, whereas the proposed replacement rear extension, which has a sloping rear elevation, would project a maximum of 3.8 metres and a minimum of 3.1 metres. The proposed rear extension would therefore be no more prominent than the existing extension when viewed from the houses in Laurier Road.
- The houses to the rear of the site were consulted by the Council but no objections to the proposal were made by the occupiers of those properties.

4.19 With regard to paragraphs 3.6 and 3.7 of the delegated report, I do not accept that the appeal property has been “subject to a number of insensitive and harmful rear alterations and additions through the years”. The alterations and extensions that have been carried out (by previous owners) are, in my opinion, inoffensive and have had no harmful impact on the appearance of the Conservation Area. It is the quality and uniformity of the front elevations of the houses in Dartmouth Park Road that are of heritage significance: the similar architectural features, detailing and materials creating the attractive street scene (see the description of this part of the Conservation Area in the DPCAAMS at paragraph 4.11 above). In this context, the rear elevations of the houses are of less significance to the character and appearance of the Conservation Area; indeed, no mention of the rear elevations of these houses is made in the DPCAAMS. This is not to say that the rear elevations are of no significance at all, rather that, in terms of their effect on the public realm and the appearance of the Conservation Area, alterations and extensions to the rear of these houses have only limited impact.

4.20 The final sentence of paragraph 3.6 of the delegated report states “There are no records to support the acceptability of these alterations, however they appear to have been in situ for many years.”. It is not surprising that the Council has no records of these alterations since it appears to me that most, if not all, of the alterations (including the existing rear extension) were carried out as permitted development under the provisions of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or its antecedent Orders).

When the Conservation Area was designated, the Council had the power to make an Article 4 direction removing or varying permitted development rights under Part 1, but it chose not to do so.

- 4.21 The Council's objection, at paragraph 3.7 of the delegated report, to a full-width rear extension is illogical and unreasonable since a full-width rear addition could be built as permitted development under Class A (see the arguments regarding fall-back positions at paragraphs 4.3 to 4.8 above). Alternatively, the existing rear addition could be enlarged, again as permitted development, so as to fill in the north-east corner between the existing extension and the boundary with No. 58. Such alterations and extensions would be carried out in a piecemeal fashion and would be less desirable than the comprehensive and coherent rear extension that is the subject of this appeal.
- 4.22 The Council's criticism of the extent of glazing, expressed at paragraph 3.8 of the delegated report, is also unjustified, for the following reasons.
- The existing rear extension includes almost fully glazed elevations on the north and east sides (see figures 4, 5 and 6 in the Design and Access Statement). The replacement extension would continue this design theme.
  - The proposed extension, including the glazed elevation, would be of exceptional quality in its design, detailing and materials, and would make a positive contribution to the appearance of the house.
  - As noted at paragraph 4.21 above, a full-width rear extension, whether in the form of a glazed addition/conservatory or otherwise, could be erected as permitted development under the GPDO 2015.
  - If the use of fully glazed extensions at the houses in this part of the Conservation Area were considered by the local planning authority to be so harmful to heritage interests (a proposition that I do not accept), the Council could have made an Article 4 direction removing or varying permitted development rights in respect of such developments (i.e. removing rights under Class A), but it has not done so. The Council has acknowledged that other glazed extensions have been constructed in this part of Dartmouth Park Road (see paragraph 3.4 of the delegated report).
- 4.23 At paragraph 3.9 of the delegated report, the Council acknowledges that the proposed green roof would contribute positively to biodiversity and sustainability objectives, and that the replacement of the existing UPVC windows with timber-framed windows would be beneficial in design terms. As I have argued at paragraph 4.13 above, the proposed extension would cause no harm to the significance of the heritage asset. It therefore follows that there is no need, in the context of the approach required by paragraph 196 of the NPPF 2018, to consider whether there are any public benefits

that might be weighed against any harm. However, if the Planning Inspector were to conclude that the proposed extension would cause less than substantial harm, I submit that these two public benefits (i.e. the provision of the green roof and the replacement of the UPVC windows with timber-framed windows) are together sufficient to outweigh such harm.

#### Amenities of neighbouring properties

- 4.24 The reason for refusal of permission does not allege that the proposed extension would harm the amenities of the neighbouring houses. I consider that, having regard to the position, depth and height of the proposed extension, the amenities of the neighbouring properties, including outlook, privacy, daylight and sunlight, would not be harmed.
- 4.25 The delegated report, at paragraphs 4.1 to 4.4, acknowledges that the proposal would cause no harm to the occupiers of 54 and 58 Dartmouth Park Road.
- 4.26 I have checked the Council's website and there are objections from the occupiers of No. 54 and No. 58 Dartmouth Park Road. I understand that copies of these objections will be forwarded to the Inspectorate by the Council. There is nothing in these third party comments that would justify the refusal of planning permission.
- 4.27 At the appeal site visit, the Inspector will have the opportunity to consider the effect of the proposed extension on the amenities of the neighbouring houses.

#### Conclusion

- 4.28 For the reasons explained in these grounds of appeal and in the Design and Access Statement and the Planning and Heritage Statement, the proposed extension would:
- (i) be well designed and enhance the appearance and living conditions of the house;
  - (ii) preserve and enhance the character and appearance of the Conservation Area;
  - (iii) represent an improvement in both size and design on the extensions that could be built as permitted development;
  - (iv) not harm the amenities of any of the neighbouring houses; and
  - (v) comply with the following statutory requirements and planning policies:

- section 38(6) of the Planning and Compulsory Purchase Act 2004;
- section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- The London Plan policies 7.4, 7.6 and 7.8;
- Camden Local Plan policies A1, A3, D1 and D2;
- Camden Planning Guidance: Design, paragraph 4.10; and
- sections 12 (design) and 16 (historic environment) of the NPPF 2018.

4.29 The Secretary of State is therefore requested to allow this appeal and grant full planning permission subject to appropriate conditions.

ANTHONY R J KEEN  
BA MSc DipTP DipPhil MRICS MRTPI

November 2018