



Appeal Decision

Site visit made on 5 February 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th April 2019

Appeal Ref: APP/X5210/W/18/3204394

26 Netherhall Gardens, London NW3 5TL

- 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 Dome Assets Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2017/0579/P, dated 30 January 2017, was refused by notice dated 11 April 2018.
 - The development proposed is described as the demolition of the existing property and redevelopment of the site to provide a four storey (plus lower ground floor and part basement) detached property comprising five self-contained residential units (4 x 2 bedroom and 1 x 3 bedroom); the proposals also include hard and soft landscaping, new boundary treatment and the provision of off-street car parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The new National Planning Policy Framework (the Framework) was published in July 2018. The Framework was further revised in February 2019 and I have had regard to this in my consideration of the appeal proposal.

Main Issues

3. The main issues are:
 - The effect of the proposed basement and ground floor on the character of the area as a result of the level of excavation;
 - Whether the loss of the existing building has been sufficiently justified in terms of climate change and the optimisation of resources, and
 - The effect of the development on parking provision.

Reasons

Basement and Ground Floor

4. The appeal site is in a residential area, on Netherhall Gardens, which is within the Fitzjohns/Netherhall Conservation Area. It comprises a detached dwelling, with associated driveway to the front and garden to the rear. Adjacent to the site are existing properties. The land levels along this side of Netherhall Gardens slope upwards from the road.

5. The proposed development would involve the demolition of the existing property. It would be replaced by a four-storey property, with lower ground floor and basement to provide five self-contained residential units. The proposed basement would provide the bedrooms and bathrooms for the two duplex flats. It would extend into the rear of the appeal site beyond the existing structure and would involve the excavation of a reasonably extensive part of the existing garden.
6. I have had regard to the previous appeal decision (ref: APP/X5210/W/16/3145922) which concluded that there would be no harm to the garden setting of the property as a result of the proposed basement. However, since this appeal was determined, the Camden Local Plan (2017) (Local Plan) has been adopted. This has superseded the policies used in the previous determination and I have therefore considered the proposal against the newly adopted policies.
7. Policy A5 of the new Local Plan states that basements will only be permitted subject to a number of requirements. These include that the basement will not cause harm to the structural, ground or water conditions of the area, should not harm the character and amenity of the area and neighbouring properties, and should be subordinate to the host property. This is specified further within the Policy in parts h, i, j and k which provide size restrictions for basement developments. The Appellant considers that these objectives are not materially different to the requirements of previous Policy DP27. However, whilst Policy A5 appears to echo several of the previous criteria it also introduces a number of new criteria to be met over and above the previous requirements and is therefore more restrictive.
8. The Council have raised concerns over the proposed ground floor which would require some excavation of the steeply sloping rear garden. The Council and Appellant dispute that the ground floor should be considered against the basement Policy A5. I note that the ground floor is set at ground level at the front of the building. However, as a result of the incline in land levels up to the rear of the site, the Council have demonstrated that there would be a requirement to excavate a significant area of the rear garden to facilitate the ground floor of the proposed development and its rear garden area. The Camden Planning Guidance: Basements (2018) (CPG) in paragraph 1.5 states that a ground or lower ground floor with a floor level partly below the ground level (for example on a steeply sloping site) will generally be considered basement development. However, paragraph 1.8 states that where a building is located on sloping land and there is a change in level across the site, a storey which is accessed at ground level at one side of the site (with no steps or ramp) will generally not be considered a basement unless the site has been excavated to allow access to that floor.
9. I have had regard to both of these definitions. I acknowledge that the appeal site would not be excavated to the front at ground floor level and would therefore provide access from that level. However, the degree of excavation that would be required to the rear of the property to facilitate the ground floor level would be substantial. The land slopes significantly upwards which would result in a large area of excavation being required to allow for the ground floor level, as well as the lower basement level.

10. Consequently, based on the evidence before me and taking a precautionary approach to the guidance of what constitutes a basement development, I consider the requirements of Policy A5 to be relevant in the consideration of the proposed ground floor. The Council have raised concerns over the ability of the proposal to comply with parts h, k, l and m of Policy A5.
11. Parts l and m require the basement to be set back from neighbouring property boundaries where it extends beyond the footprint of the host building and the avoidance of the loss of garden space or trees of townscape or amenity value. The Policy also requires the basement to be subordinate to the host building and property. The Appellant has provided calculations to demonstrate that the proposed works would not extend into or underneath the garden further than 50% of the depth of the garden as required by policy A5 parts h and k.
12. However, from the information provided it would appear that excavation works would be carried out up to the side boundary with No 24A and to part of the rear boundary in order to provide the decking area and private garden for the duplex apartment 2. This level of excavation, whilst retaining some of the existing garden and allowing for the potential for landscaping to retain the garden character and amenity to comply with Part m, would not meet the requirements of Part l of the policy, and I find that the level of excavation proposed in its entirety would not be subservient to the host property. Furthermore, whilst the internal element of the ground floor would not exceed 50% of the depth of the garden, the provision of the decking and private garden area would appear to exceed this.
13. As such I find that the proposed development fails to comply with Policy A5. I have given weight to the previous appeal decision and find that it is a material consideration in this case, and I have considered the information contained within the CPG for Basements. However, I find that the aims of the new policy are to ensure that new basement construction is more tightly controlled and therefore I find that the previous appeal decision does not outweigh the conflict with the newly adopted policy in this regard.

Climate Change and Optimisation of Resources

14. The proposed development would result in the demolition of the existing property. Policy CC1 of the Local Plan requires that all development minimises the effects of climate change by requiring all proposals that involve substantial demolition to demonstrate that it is not possible to retain and improve the existing building, amongst other things.
15. The previous appeal decision did not raise concern over the loss of the existing dwelling, however subsequently the new Local Plan has introduced Policy CC1. The Appellant considers that this policy is not materially different to the previous Policy DP22.
16. The Appellant has provided a document in response to the requirements of Policy CC1 (part e) (Mecserve Ref P17-117, Sep 2018). This has provided calculations of the carbon emissions of the proposed building in comparison with the existing building, which concludes that there would be a significant reduction in the carbon emissions as a result of the proposed development. It also considers the potential emissions should the existing building be refurbished and demonstrates that the proposed new build would also achieve substantially lower emissions than a refurbishment of the new building.

17. Based on the evidence before me, I find that the submitted information satisfactorily demonstrates that the demolition and replacement of the dwelling would be justified in this instance and would therefore meet the aims of Policy CC1.

Parking

18. The appeal site is currently served by a driveway to the front of the site and the proposed development would provide three parking spaces to the front of the property. The appeal site is located within a Controlled Parking Zone (CPZ) and the area has a PTAL rating of 6 with good availability of public transport options. The Council have identified that 110 parking permits have been issued for every 100 estimated parking bays within the zone indicating a high level of parking stress within the CPZ.
19. Policy T2 of the Local Plan requires all new development in the borough to be car free. It also states that the Council will not issue on-street or on-site parking permits in connection with new development.
20. Whilst the existing property has the provision of an area of hardstanding to the front which could be used for parking, the proposed development would provide five separate units of accommodation. The provision of three parking spaces would preclude some of the occupiers of the flats from having an off-site parking space.
21. I note that as part of the submitted Unilateral Undertakings (dated 12 November 2018) (UU) Section 4.2 refers to car capped development and states that the occupiers of the development shall not be entitled to be granted more than one resident parking permit per residential unit to park a vehicle in a residents parking bay or buy more than one contract to park within any car park owned, controlled or licenced by the Council per residential unit. However, Policy T2 of the Local Plan makes it clear that the borough will not support new development which would provide car parking or require additional permits, which would encourage the use of the private car for some, if not all, of the future residents.
22. I have had regard, and given weight, to the previous Inspector's considerations in terms of the parking and highway safety issues. However, the adoption of the new Local Plan has introduced Policy T2 which seeks to limit parking to reduce car ownership and lead to reductions in air pollution and congestion.
23. Accordingly, I find that the inclusion of on-site parking spaces and the inclusion of the provision of up to one residents parking permit per unit within the UU would not comply with the requirements of Policy T2 to attempt to reduce congestion and air pollution, and to discourage the use of the private car in light of the good transport options available and would therefore be likely to adversely impact upon the already stressed CPZ.

Other Matters

24. Reasons 4, 5, 6, 7 and 8 of the Council's refusal relate to the absence of legal agreements for the provision of car-free housing, a highway contribution, a construction management plan, an affordable housing contribution and a basement construction plan.

25. In response to this the Appellant has provided two signed Unilateral Undertakings dated 12 November 2018 (UU). These make provision for an affordable housing contribution of £79,248.78, the submission of a construction management plan, the submission of a basement construction plan, a contribution of £9,951.80 towards highway works, and limits to the residents parking permit of no more than one per residential unit and no more than one contract per unit to park within a car park.
26. The Council have reviewed the documents but have raised concerns in respect of it being clear that the undertaking is to be made to them and that the provision of a maximum of one residential parking permit per unit does not comply with the policy requirements or overcome the original reason for refusal.
27. I have had regard to the provisions of the UUs and find that they make a number of references to the Council in terms of the payments and provision of the relevant documents, therefore I find that the UUs are acceptable in this regard. I note the concerns over the residents parking permit which I have considered above. The agreements would provide financial contributions towards highway works and affordable housing which would be a benefit, however I find that these benefits would not be sufficient to outweigh the harm identified above including the concerns over the residents parking permits.
28. The appeal site is located within the Fitzjohns/Netherhall Conservation Area. The Council have accepted the loss of the existing building and have raised no concerns over the design of the replacement property in terms of its impact on the character and appearance of the surroundings. I have little evidence before me that would lead me to conclude differently on this matter therefore the proposed development would preserve the character and appearance of the Conservation Area. The development would also provide 5 units of accommodation of a high standard. However, these considerations do not outweigh the harm and conflict with the development plan identified above.
29. I have had regard to the issues raised by local residents which include, in addition to the above matters, impacts on privacy, light, overlooking and loss of trees. However, as I am dismissing the appeal on the basis of the proposed ground floor, parking issues and the resulting conflict with the development plan, it is not necessary for me to conclude on these matters as they would not alter my findings in this instance.

Conclusion

30. For the reasons given above, and having had regard to all matters raised including the amendments made and the site history, I conclude that the appeal should be dismissed.

R Norman

INSPECTOR