

Development Control Service
London Borough of Camden
2nd Floor, 5 Pancras Square
c/o Town Hall
Judd Street
London
WC1H 9JE

My reference:

Your reference:

For the attention of David Peres da Costa

29 May 2019

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
26 NETHERHALL GARDENS, LONDON NW3 5TL (LPA reference: 2019/1515/P)
OBJECTION TO PLANNING APPLICATION**

1. I have been instructed by the occupiers of 24a Netherhall Gardens, which lies immediately adjacent to the development proposal site, to strongly object to this planning application.
2. This objection is based on the following issues:
 - a. Loss of trees of value to the character of this part of the Conservation Area.
 - b. Harm to the character and appearance of the Conservation Area from the loss of trees and impact that this will have on local amenity
 - c. Harm to outlook from rear extension into neighbouring garden affecting rear-facing habitable windows of No.24a.
 - d. Potential loss of privacy and unacceptable increase in the degree of overlooking arising from the development.
 - e. Concerns regarding the impact on the extent of basement sought on the amenity of adjacent land.
3. With regard to all of these objections, we strongly object to the proposed development and respectfully request that the Council refuses to grant planning permission.
4. The development proposal is the latest saga in the planning history of this land:
 - a. Erection of a four-storey plus basement detached building to provide 5 self-contained residential units comprising 4 x 2 bedroom and 1 x 3 bedroom units, including hard and soft landscaping, new boundary treatment and the provision of off street car parking, following demolition of the existing building (Class C3). Refused 19 January 2019 (reference: 2014/6224/P)

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- b. Erection of 4 storey plus basement detached building to provide 5 flats (4 x 2-bed and 1 x 3-bed) including front and rear roof terraces, hard and soft landscaping, boundary treatment and 3 car parking spaces, following demolition of the existing building (Class C3). Appeal dismissed (non-determination by LB Camden; would have refused) on 7 October 2016 (“the First Appeal”).
 - c. Erection of a four storey (plus basement) detached property to provide 5 flats (4 x 2 bedroom and 1 x 3 bedroom), including front and rear roof terraces, hard and soft landscaping, boundary treatment and 3 car parking spaces, following demolition of the existing building (Class C3). Appeal dismissed on 26 April 2019 (“the Second Appeal”).
5. The current proposal is described as:

“Erection of 3 storey extension plus basement to existing property to provide 4 flats (2x 1-bed and 2x 2-bed) (Class C3) with rear roof terraces and refuse and cycle store at the front, following demolition of 2 storey garage extension and 1-bed flat.”

Inconsistency of Planning Drawings & Misrepresentation

6. The plans appear to be inconsistent. The proposed section drawing (C645_S_AA_001) labels the storey at street level as ‘Ground Floor’ but appears to be at the same level as the existing garage. However, the existing ‘Ground Floor plan (JA12_P_00_001) shows that the existing garage is at lower ground floor level and the existing living accommodation above the garage is at ‘Ground floor level’. If the applicant is consistent between its plans then the existing accommodation to the rear, and thus the proposed ground floor plan, is actually at the same level as the First Floor level (compare also proposed section drawing C645_S_AA_001 with existing south elevation drawing JA12_E_S_001). Although there is clear change in levels within the proposed buildings which changes the proposed floor to ceiling heights, this is made all the more confusing by the fact that the proposed Ground floor plan (C645_P_00_001) shows that the ground floor would have a rear open paved terrace, whereas the proposed section drawing shows that the ground floor at the rear would open out to a lightwell and would not be at the rear garden level (as opposed to the first floor).
7. The proposed development would bring the rear extension nearest No.24a up to just over 2.5m further into the rear compared to the existing building at ground floor level, but would also include a paved rear ‘ground floor’ terrace a further 1m back, and would also bring the building line forward to roughly level with the house at No.24a.
8. This additional scale and bulk to the building on this side would lead to the loss of trees on the south boundary with No.24a, that currently shield the garden of No.24a from overlooking or the bulk of No.26, giving it a secluded and very private sense and setting.
9. The proposal also includes a proposed basement. This is referred to as lower ground floor plan whereas the section drawings appear to indicate that the new ground floor will actually be at ‘lower ground floor level’. On the street side, it is shown in the proposed section drawings as at the same level as the existing garage, which is marked on other plans as being at lower ground floor level. If the proposed ground floor plan and ground floor in the section plans are to be regarded as the lower ground floor level, particularly given its extent of excavation and apparent lightwell to the rear in proposed section drawing (C645_S_AA_001), then the area denoted in the plans as a ‘Lower Ground Floor’, below the supposed ‘ground floor’ is more properly described as a Basement.

10. Such inconsistencies hardly inspire confidence in my client or other neighbours that are likely to be significantly affected by the proposals, or that harm to the Conservation Area will be avoided or properly mitigated.

Impact on Trees

11. The proposed development would lead to the loss of trees of value on the boundary with No.24a.
12. Kim Gifford's Arboricultural Assessment already submitted against this application strongly rebuts the opinion of the applicant's tree assessor and arrives at the following key conclusions:
 - a. The applicant's measurements are not accurate and are misleading; none of the trees neighbouring No.24a (T6, T7, T8, T9 and T10) are small trees
 - b. Trees in the rear garden to No.24a have not been accurately surveyed, such as the Magnolia and the RPAs are incorrect in some cases
 - c. All of these trees can either be seen from public vantage points or appreciated from private views by neighbours
 - d. Tree T8 is more likely a Category B tree and the group as a whole offers an important local amenity in visual and heritage terms for their contribution to the character and appearance of the Conservation Area
 - e. The applicant's tree assessor undervalues the importance of these trees and they should all be retained
13. The potential harm to the trees was considered in the First Appeal (paragraphs 15 and 27). Although the point was not given very great weight at the time, this was due to the absence of evidence to support this objection. Nevertheless, the Inspector concluded at paragraph 40 of that decision that:

"In addition that lack of justification for the removal of trees between nos. 26 and 24a also weighs against the scheme."
14. This evidence is now adduced and the point should be given very significant weight in support of an objection on this ground.
15. The proposed development would therefore be contrary to Policy A3 (Biodiversity) due to the loss of trees of significant value and the failure to ensure their protecting or replacement in the scheme.

Harm to the Conservation Area & Impact on existing trees

16. The application property falls within the Fitzjohns/Netherhall Conservation Area. No.26 is identified as making a positive contribution to the Conservation Area.
17. In paragraph 20 of the Second Appeal, the Inspector commented as follows:

*"The southern flank wall of the appeal property is plain and does little to contribute to the character of the conservation area. It has some prominence within the street scene because of the considerable gap at upper levels between no. 26 and no. 24a to the south. This gap is much larger than those between other properties in this part of the road and particularly those properties opposite the appeal site including nos. 19 to 34 which appear as a terrace in oblique views. **It also allows views through the***

site to the mature trees to the rear of the appeal site which are a positive feature of the conservation area." [emphasis added]



18. This observation supports the findings of Kim Gifford that (a) the trees on the boundary are 'mature' specimens and (b) that they contribute positively to the character and appearance of the Conservation Area.
19. The appeal Inspector opined at the time that he considered that the retention of the trees on the boundary to the rear would be a significant benefit to that scheme.
20. However, with the evidence that these trees will be removed, this would constitute an element of significant harm to the character and appearance of the Conservation Area.
21. Paragraph 196 of the NPPF 2018 states that where the harm to a Conservation Area would be 'less than substantial', then the effects of that harm should be weighed against the public benefits of the proposal. In this respect, although the proposal would provide additional housing, the Council already meets its 5-year housing land supply, so this would carry little weight on balance.
22. Furthermore, Policy D1 (Design) and Policy D2 (Heritage) support each other in this respect. Both policies seek to protect the character and appearance of heritage assets (in this case, the Conservation Area). In particular, Policy D2 states that the Council will resist trees and garden spaces that contribute to the character of the Conservation Area. As noted below, not only would there be the loss of trees of amenity and townscape value, but also the loss of the depth of more than half of the existing garden space through excavation. The proposal should therefore be refused also with regard to these policies.

Harm to outlook and sunlight and daylight of Neighbours

23. The proposal would comprise a significant increase in the scale, massing and height to No.26 nearest to the boundary with No.24a. Notwithstanding the design intent to mitigate this through stepping in and back of upper floors, the increased bulk to the rear of the building would be easily perceptible to the occupiers of No.24a.
24. The master double bedroom has a Juliette Balcony and with the loss of trees on this boundary views of the increased bulk and mass of the development would be far more perceptible and would create a greater sense of unwelcome enclosure and urbanisation. In particular, the current sense of enjoyment of this internal space comes from the enclosed and secluded nature of the rear garden, which is currently well-shielded from No.26 to the north. This semi-rural idyll would be destroyed by the loss of these trees and the enjoyment of this private space lost.
25. Similarly, the corner rear first floor bedroom window to the rear single bedroom of No.24a will no longer look predominantly over open garden area, but the outlook would instead be significantly encroached upon by the excessive further development inherent to this proposal and, as the Inspector opined in the First Appeal, would suffer loss of sunlight and daylight.
26. The proposals under consideration by the Inspector in the First Appeal exhibited a similar profile on this side. The current proposals, together with the proposed terrace especially at second floor level would extend a roughly equivalent depth into the rear garden as was proposed in the First Appeal and the relationship to the rear single bedroom window at second floor level that is angled toward No.26 would also be similar. In this respect, the Inspector in that appeal opined at paragraph 12:

*“At first floor level of no. 24a the only window serving the bedroom closest to no. 26 is small and is angled at approximately 45 degrees toward the neighbouring property. The window adjoins a wall which extends eastwards which restricts daylight to the bedroom. Whilst setback from the southernmost extent of the proposed building, adjoining this bedroom **the proposed development at first and second floor levels would, in my view, result in a material loss of daylight and an increased sense of enclosure.**” [emphasis added]*

27. The Inspector considered also that the ground floor of No.24a would also suffer from the development then proposed in the First Appeal, and the current design does nothing to mitigate or avoid these concerns. In particular, the link room between the living areas to the front and those to the rear of the property was held by the Inspector to qualify as a *habitable room* and as such the impact on its sunlight and daylight (by possibly as much as 50%) was a material consideration. The Inspector considered that the development would be harmful to this area and, given the similar profile of development on this side we consider that it is likely that these proposals would result in similar harm to this space:

*“At ground floor level the effect of the proposed development would be to reduce light levels to a room which serves as a link between the larger main living areas to the front and rear of the property and also leads to the stairs to first floor level. I saw during my visit that this space was much more than a hallway and in my view was a habitable room. As the side window to this room faces the ground floor of no. 26 and contains obscure glazing, I do not consider that the outlook at ground floor level would be adversely affected to a significant degree although **there would be an appreciable loss of daylight to a habitable room.**” [emphasis added]*

28. The proposed development would therefore be contrary to Policy A1 of the Local Plan in respect to harm to outlook and sunlight and daylight of neighbours.

Loss of Privacy & Unacceptable Increase in Overlooking

29. The proposed terraces to the rear of the new build would create opportunities for overlooking across and into the garden of No.24a, which is currently protected by the group of trees along this edge, but as stated above would be lost under these proposals.
30. There may also be the opportunity to look back from the second floor terrace in to the rear bedroom window (shown at second floor level – drawing reference C645_P_02_001).
31. The proposed development would therefore be contrary to Policy A1 of the Local Plan in respect of the possible loss of privacy that would arise as a result.

Harm from the impact of the proposed basement

32. The neighbouring occupiers have had to endure an accumulation of basement works to properties and remain very concerned as to the cumulative effect that this is having on the structural integrity of their own properties. This has included cracking, subsidence and underpinning of properties in the street, and the need to rebuild the front walls to some properties such as at No.21.
33. In addition, the proposed basement would also comprise a lightwell with a depth of 1.5m serving habitable rooms to the front (bedrooms). This would give rise to poor living conditions or future occupants and a poor standard of amenity, particularly given likely pedestrian and vehicular movements to several separate units and the intense degree of

comings and goings likely, only metres from the lightwell to this basement accommodation.



34. The previous proposal at 'ground floor level' in the Second Appeal showed the development of this level. This would have extended a significant way into the garden and the extent of excavation to the rear would have comprised more than 50% of the rear garden space, as well as disturbing trees and landscaping of importance to the character of the site. This excavation would not have only comprised new internal floor space but also excavation in order to create the new terrace to the rear and associated landscaping would have been necessary. Notwithstanding that no excavation was required to allow for ground floor access on the street side, the Inspector in the Second Appeal took the view that this degree of excavation to the rear of the ground floor level meant that the ground level also fell to be considered against the same terms of the Council's policy on basements as the lower ground floor/ basement. On this basis, ***comparing the proposed ground floor extension including the depth of the sunken terrace, with the existing garden depth, the proposed rear extension would result in approximately a 55% loss of the existing rear garden depth.***
35. The proposed development would therefore breach conditions (k) and (m) of Policy A5 to the Local Plan, as the basement with regard also to the ground floor rear excavation would extend too deeply in to the garden and would result in the loss of garden space and trees of local amenity and townscape value.

Overall, we are profoundly concerned about the potential harm arising from this application and respectfully ask the Council to refuse planning permission with reference to Policies A1, A3, A5, D1 and D2 of the Local Plan and Camden Supplementary Planning Guidance, London Plan and the NPPF.

Please keep us informed of any changes proposed in the course of this application and, if a decision is to be taken, please advise us in advance of what the recommendation of officers is likely to be and whether it is likely to be referred to the Council's Planning Committee for determination.

If you have any further queries in respect of this submission or require any further information to support or clarify matters set out herein, please contact me at david@drkplanning.co.uk or on 07711 672185.

Yours faithfully

David Kemp BSc(Hons) PGDL MRICS Barrister*
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