



## Appeal Decision

Site visit made on 12 June 2019

by **Peter D Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2019

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### **Appeal Ref: APP/X5210/W/19/3225902 82 Fortune Green Road, London NW6 1DS**

- 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 Mr Steve Sun (Storm of London Ltd) against the decision of the London Borough of Camden Council.
  - The application Ref 2018/4008/P is dated 16 August 2018,
  - The development proposed is three storey dwelling to the rear of 82 Fortune Green Road.
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### **Decision**

1. The appeal is allowed and planning permission is granted for three storey dwelling to the rear of 82 Fortune Green Road, London, NW6 1DS in accordance with the terms of the application, Ref 2018/4008/P, dated 16 August 2018, the executed and certified S106 planning obligation and subject to the conditions at Schedule A.

### **Preliminary Matters**

2. The proposal is chargeable development in respect of the Community Infrastructure Levy (CIL). The collection of the CIL contribution is undertaken by the relevant charging authority on service of a notice that planning permission has been granted in relation to chargeable development. As such the requirement for and any enforcement of the payment of a contribution in relation to the development is not for consideration at this appeal.
3. The appellant has raised concerns regarding the process followed in assessing the application but I am determining the appeal on its planning merits and these concerns do not form part of my assessment. If the appellant wishes to pursue these concerns the normal complaint procedures of the Council should be followed.
4. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted in the Council's statement which confirms that it has objections in terms of the impact on the character and appearance of the area and on the living conditions of neighbouring occupants and also the absence of a planning obligation to secure car free housing and a construction management plan.

### **Main Issues**

5. The main issues are therefore:
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- the effect of the proposed development on the character and appearance of Rose Joan Mews;
- whether the development would have an adverse effect on the living conditions of present and future occupants of the flats in No 82 and the proposed dwelling in terms of proximity and privacy; and
- whether it would be appropriate to develop the site for housing without a planning obligation to secure car free housing and a construction management plan.

## Reasons

### *Character and appearance*

6. The appeal site sits to the rear of No 82 Fortune Green Road which is in use as a bar and restaurant. The site fronts onto Rose Joan Mews, a narrow lane which wraps around the rear of Fortune Green Road. From my site inspection the mews appear to have seen recent residential development of terraced houses in the rear of the plots on the east side of Fortune Green Road. Indeed the land immediately to the north of the appeal site is currently being developed for such housing.
7. The appeal site itself is currently occupied by a single storeyed storage building used in association with the restaurant kitchens. The appeal proposal would see this demolished, the kitchens reduced in terms of floorspace and a 3 bedroom, three storeyed house inserted facing onto the mews.
8. The property immediately adjacent, No 16, is currently only 2 storey but has permission (ref 2018/0282/P) for an upwards extension to provide a third storey. As this is the height of other properties immediately adjoining in the mews, the scale and mass of the proposal would be in keeping with properties in the mews.
9. It has been put to me that the proposal would have an enclosing effect on the mews as it would step forward of No 16. However, the appellant has revised the design following initial concerns and stepped the proposed house back further. Whilst it is true that the terraced properties south of the appeal site are stepped further back, those to the north are hard on the roadway. The appeal proposal therefore would provide a transition between the two groups and in its proposed position would also help to screen the external access stair to No 16.
10. Looking down the mews from the north end the house would not be seen as it is stepped back and looking up the mews from the south end it would, as stated, create a stepped building line. I am therefore not persuaded that the proposal would appear an incongruous addition to the mews given the existing context. Indeed the replacement of the single storey storage shed would constitute an improvement in the character and appearance of the mews.
11. The majority of the new mews buildings are finished in white render. Whilst brickwork is proposed for the external finish on the lower floors of the proposed house I would impose a condition in the event that the appeal is allowed, requiring the submission of details and samples of the external materials for approval. This would allow the Council to ensure the finished appearance would be in keeping with the surroundings.
12. Policy D1 of the *Camden Local Plan 2017* (CLP) seeks high quality design in development that respects the existing local context and character. The *Fortune*

*Green and West Hampstead Neighbourhood Plan* (FGWHNP) develops this at Policy 2 and sets out a range of design principles including the requirement that development should have regard to the form, function, structure and heritage of its context including the scale, mass, orientation, pattern and grain of surrounding buildings, streets and spaces. I accept that the proposal would constitute an intensification of development in the mews but, given the context and for the reasons above, I am satisfied that the proposal would not have an adverse impact on the character and appearance of the area and the criteria in CLP Policy D1 and FGWHNP Policy 2 would be met.

#### *Living conditions*

13. The proposed house would have a rear facing bedroom window at first floor and a stair/landing window at second floor looking towards the apartments above the restaurant at No 82 Fortune Green Road. It is proposed to construct an obscure glazed privacy screen at first floor to screen inward and outward views to and from the bedroom window and obscure glaze the proposed stair/landing window.
14. The upper flats at first and second floor in No 82 each have a rear facing bedroom window in the main part of the building which would look towards the new house with a separating distance of about 12 metres. Whilst this is closer than the normal standard separation distance it would not be untypical of the character of this part of Fortune Green Road and its mews which is one of closely interlocking properties which overlook each other at fairly close quarters.
15. There is however also a bedroom window in the first floor rear offshoot section of No 82. This would be closer to the first floor bedroom window of the new house at approximately 6 metres and is the reason why a privacy screen is proposed to prevent overlooking. It has been put to me that the screen would be enclosing and detrimental to the outlook from the first floor flat bedroom window in No 82 closest to the screen. However there would be space in front of the bedroom window and, for the new dwelling, a terrace in front of the first floor bedroom window before the privacy screen. Both windows would also have more open oblique views to the side past the screen. It is not entirely clear from the submitted drawings what would be the finished form and appearance of the obscure-glazed screen and accordingly, in the event the appeal is allowed, it would be appropriate to condition the detailed design of the screen. Given that the screen would maintain privacy, would be translucent and would only affect one bedroom in the first floor flat in No 82 and one in the new dwelling I am satisfied that there would not be a significant detrimental effect on outlook such as to warrant dismissal of the appeal.
16. With a condition controlling the design of the privacy screen in place the development would provide appropriate living conditions for present and future occupants of existing and new residential accommodation at No 82 Fortune Green Road. It would therefore comply with CLP Policy A1 which seeks to protect the quality of life of occupiers and neighbours.

#### *Delivering Car Free Housing and Other Policy Requirements*

17. One of the Council's potential reasons for refusal related to the fact that no mechanism, in the shape of a Section 106 planning obligation, was proposed to secure the development as car free housing. Other policy requirements of housing proposals, namely development in accordance with a construction management plan (CMP), were also not the subject of a legal agreement through a S106

planning obligation.

18. Although no planning obligation was proposed at the time the application was being considered, the appellant has completed a Section 106 Agreement in conjunction with the London Borough of Camden Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of *The Community Infrastructure Levy (CIL) Regulations 2010*. They relate to the following matters.
19. Car free housing: Policy T2 of the CLP 2017 requires development to operate on a car free basis in highly accessible areas of Camden and where no provision can be made on site for parking. The Council implements the policy through the use of S106 obligations which require the owner of the development to inform incoming occupiers that they are not eligible for a parking permit for on-street parking or to purchase a space in a Council controlled car park. The wording of the S106 agreement controls the use of the unit itself by restricting the type of occupier to someone who has no permit and is compliant with recent case law.
20. Construction Management: Policy A1 of the CLP requires the impacts of the construction phase to be taken into account through a CMP and Policy DM1 of the CLP commits the Council to using planning obligations to mitigate the impact of development. Because the proposed works would involve the removal and delivery of a significant amount of material and would have impacts beyond the application site in a predominantly residential area the construction impacts will be complicated and a CMP will be required. The CMP would require more detail than is normally contained in and controlled by a condition and therefore a planning obligation would provide a better mechanism of control. Moreover, in view of the need for inspection and monitoring of the CMP on submission and during implementation there would be a need for a CMP Implementation Support Contribution of £3,136 which would be best secured via a S106 obligation. As the fee relates to specific monitoring and management costs, it is appropriate to require this by obligation.
21. The S106 also requires payment of a monitoring charge to the Council of £1,144. In view of the complexities involved in monitoring the 2 principal areas of obligation I am satisfied that a monitoring charge would be necessary and reasonable in this case.
22. I consider that the above obligations are necessary given development plan policies. They are directly related to the development proposed and would be fairly and reasonably related to its scale and nature. They therefore pass the statutory tests of Regulation 122. The matters required by these obligations would be additional to any CIL contributions and there would be no overlap. Finally I am satisfied that the obligations contained in the S106 would be effective in delivering the policy outcomes sought and the existence of a completed S106 planning obligation is a material consideration in this case.

#### *Other Matters*

23. The intention is that the bar restaurant would continue to operate with a slightly reduced kitchen area. The proposal would not therefore adversely affect the operation of the restaurant.

24. Third party objections have been received expressing concern regarding over-development, parking congestion, impact on daylight and outlook for neighbouring occupiers and potential noise and disturbance in the mews particularly from construction.
25. In respect of these points the proposal would provide a dwelling that meets internal space standards and provides outdoor amenity space albeit very small. As already stated above the nature of the area is one of high density development and although the development would be an intensification of development in the mews I am satisfied that the proposal would not constitute over-development. The area is one with reasonable accessibility and a PTAL score of 4 indicating moderately good access to public transport. Subject to the S106 agreement requiring the property to operate on a car free basis it would not give rise to parking congestion in the mews. Given that the proposed dwelling would not extend any further back than adjacent properties and would be staggered to the frontage there would be no significant impact on daylight and outlook for adjacent neighbours. Finally, regarding noise and disturbance, the development of a house in this location would prevent any future use of Rose Joan Mews in association with the restaurant and the noise and disturbance that could arise as a result. Subject to the S106 obligation including the requirement for a Construction Management Plan any short term noise and disturbance from the construction process would be effectively controlled.
26. There was a further potential reason for refusal indicated by the council relating to the fact that insufficient detail had been provided to demonstrate that the development would be sustainable and would not impact adversely on the environment. However the nature of the Council's concerns in this regard is such that they can be adequately addressed by conditions requiring the submission of further detail for approval.

### **Conditions and Conclusion**

27. The Council suggested a number of conditions, which I have considered in the light of the advice in the Framework and *Planning Practice Guidance*. In some cases I have edited the suggested condition for clarity and enforceability. A condition requiring development to be carried out in accordance with the submitted plans is necessary in the interest of certainty. Control of the materials to be used on the exterior of the dwelling is also necessary to ensure the character and appearance of the mews is not harmed. In view of the limited detail provided regarding the privacy screen I have proposed an addition to Condition No 3 to also require submission of details in respect of the privacy screen. The parties were consulted on this addition and no objections have been raised.
28. As a result of the site operating on a car-free basis and notwithstanding the good accessibility by public transport, a condition is necessary to ensure provision is made for cycle storage to serve the property.
29. Given that the proposed house is tight on its plot and close to other properties it would be inappropriate for it to be altered or extended without permission, as could happen under permitted development (PD) rights. Therefore it is necessary to remove some PD rights by condition. The Council proposes that the rights in all the classes in Part 1 of Schedule 2 of the Order are removed. However PD rights should only be removed exceptionally and it is principally Classes A to E that could have detrimental impacts on the area and its occupants if taken up. I have therefore restricted the condition to these classes.

30. A number of conditions are necessary to ensure appropriate standards are met by the development to protect the local environment and achieve sustainable development. A scheme of hard and soft landscaping is necessary in order to ensure that the development contributes positively to the character and appearance of the area and for the same reason a condition controlling the provision and maintenance of the 'living roof' will be applied. A condition relating to water consumption is necessary in order to comply with Policy 5.15 of the London Plan. There is also a need for a condition requiring an energy strategy for the development in order to secure appropriate energy and resource efficiency measures and on-site renewable energy generation. The appellant has raised concerns regarding this condition in particular that it is unenforceable. The objective of the condition is justified by CLP Policy CC1 as the policy seeks to ensure new development operates with a lower level of CO<sup>2</sup> emissions than required in Building Regulations Part L. However the proposed condition is imprecisely worded and I have amended the wording so that the condition is now enforceable.
31. It would be inappropriate for the roof terraces to be used before installation of the privacy screens and therefore a condition is necessary preventing occupation before these are in place.
32. The council proposed a condition to ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time and to require evidence that Building Regulations Part M4(2) has been complied with prior to occupation. Whilst the Council's objective is to be applauded, in this instance the restrictions of the plot and the ground floor area available in the proposed dwelling would prevent Part M4(2) being fully complied with. Part M4(2) is optional and it would be unreasonable in the circumstances to impose the condition.
33. The Council also proposed the imposition of a condition restricting the erection of any equipment on the external face of the building. I am not satisfied that this would be reasonable. The area is not a Conservation Area or otherwise designated for its character and the imposition would be unduly restrictive and unnecessary. I have therefore not imposed the condition.
34. I have considered the matters before me and, notwithstanding that the proposal would result in an increase in development on the site, for the reasons given above, I conclude that the appeal should be allowed. Permission is granted for the new dwelling subject to the conditions set out in Schedule A, together with the agreed, completed planning obligation under Section 106 in relation to the development hereby permitted.

*P. D. Biggers*

INSPECTOR

### **Schedule A – Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of approval.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1762E01 REVB, 1762P01 REVD and 1762-PLN-16-08-18.

3) No development above ground (floor slab level) shall take place until detailed drawings, or samples of materials as appropriate, have been submitted to and approved in writing by the local planning authority in respect of the following:

- a) Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).
- b) Details and specifications of the privacy screen to be constructed to the rear first floor terrace.

The dwelling shall be constructed in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

4) Before the first occupation of the new dwelling, details of secure and covered cycle storage for 2 cycles shall be submitted to and approved by the local planning authority in writing. The approved facility shall be provided in its entirety and be permanently retained thereafter.

5) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-E) and Part 2 (Classes A-C) of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the Local Planning Authority.

6) No development above ground (floor slab level) shall take place 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 development shall be carried out in accordance with the details thus approved.

7) No development above ground (floor slab level) shall take place until full details in respect of the living roof as indicated on the approved roof plan have been submitted to and approved by the Local Planning Authority. The details shall include:

- i. a detailed scheme of maintenance
- ii. sections at a scale of 1:20 showing a variation of substrate depth with peaks and troughs
- iii. full details of planting species and density.

The living roofs 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.

8) The development hereby approved shall achieve a maximum internal water use of 110 litres/person/day. The dwelling shall not be occupied until the Building Regulation optional requirement has been complied with.

9) No development above ground (floor slab level) shall take place until a comprehensive energy strategy for the development has been submitted to and approved in writing by the Local Planning Authority to include:

- (a) energy efficiency measures
- (b) appropriate renewable or low carbon sustainable energy sources with the aim of reducing the development's CO<sup>2</sup> emissions by at least 19% below the levels required in Part L of the Building Regulations 2013.

The development shall thereafter not proceed other than in complete accordance with all the measures in the approved strategy, which shall be retained and utilised as the

main power sources for the development. The measures shall include the installation of a meter to monitor the energy output from the approved systems.

10) The use of sections of the roof as roof terraces shall not commence until the privacy screens, as shown on the approved drawings, have been constructed. The screens shall be permanently retained thereafter.