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## Appeal Decisions

Site visit made on 10 July 2019

**by JP Tudor BA (Hons), Solicitor (non-practising)**

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

**Decision date: 24 September 2019**

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### **Appeal A - Ref: APP/X5210/W/19/3223871**

#### **Flat 1, 10 Lyndhurst Gardens, London NW3 5NR**

- 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 Mrs Carly Madhvani against the decision of the Council of the London Borough of Camden.
  - The application Ref: 2018/1905/P, dated 7 June 2018, was refused by notice dated 5 November 2018.
  - The development proposed is erection of outbuilding, incidental to the use of the host property; excavation of basement beneath proposed outbuilding and rear curtilage; formation of sedum roof on existing single storey rear extension.
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### **Appeal B - Ref: APP/X5210/Y/19/3223872**

#### **Flat 1, 10 Lyndhurst Gardens, London NW3 5NR**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mrs Carly Madhvani against the decision of the Council of the London Borough of Camden.
  - The application Ref: 2018/2707/L, dated 11 June 2018, was refused by notice dated 5 November 2018.
  - The works proposed are erection of outbuilding, incidental to the use of the host property; excavation of basement beneath proposed outbuilding and rear curtilage; formation of sedum roof on existing single storey rear extension.
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#### **Decision – Appeal A**

1. The appeal is dismissed.

#### **Decision – Appeal B**

2. The appeal is dismissed.

#### **Preliminary Matters**

3. The descriptions of development and works used in the banner headings above are taken from the Council's decision notices and the appeal forms, as they more succinctly and accurately describe the proposal than that contained in the application forms.
4. An updated version of the National Planning Policy Framework (the Framework) was published in February 2019, after the original applications were determined. However, the parties have had the opportunity to take account of any relevant changes during the course of the appeals.

5. As the appeals relate to a listed building within a conservation area, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also taken account of the guidance within section 16 of the Framework.

### **Main Issues**

6. The main issues in these appeals are as follows:

- Appeal A & B: whether the proposal would preserve the special interest of a Grade II listed building, 10 Lyndhurst Gardens, including its setting and whether it would preserve or enhance the character and appearance of the Fitzjohns/Netherhall Conservation Area (FNCA).
- Appeal A: the effect of the proposed basement on the host property, taking account of relevant development plan policies.

### **Reasons – both appeals**

#### *Listed building and conservation area*

7. 10 Lyndhurst Gardens is a grand, detached, Grade II listed building. The list description indicates that it dates from circa 1886 and refers to the notable asymmetrical composition of its Queen Anne style façade, consisting of 3 full storeys with dormers and features including a projecting square sided bay window, steeply hipped roof and tall chimneys on the flanks. It is one of a number of similarly designed, imposing houses along Lyndhurst Gardens built by William Willett and Son, which together, again drawing on the list description, form a compact and powerful group.
8. The site also lies within the FNCA. The Fitzjohns/Netherhall Conservation Area Statement (CAS)<sup>1</sup> says that overall the urban grain is characterised by '*large houses with generous gardens*', which is reflected in the scale and layout of this collection of houses along Lyndhurst Gardens. Combined with trees and hedges to the front of the properties the spacious rear gardens form an important aspect of the verdant setting of the listed buildings along the street.
9. Originally designed as a large detached family dwelling, No 10 now comprises six self-contained flats. The proposal relates to Flat 1, which enjoys sole use of the extensive rear garden. There appear to have been some alterations to the rear elevation of the building over time, most recently with the addition of a modern, glazed single-storey garden room extension to Flat 1. However, the listed building retains its essential form and grandeur, with its sizable garden confirming its status and providing a pleasant open setting which enables the building to be appreciated whilst also contributing to its character. The special interest of the listed building, insofar as it relates to these appeals, derives from a combination of the various factors detailed above.
10. Although the proposed outbuilding, housing a swimming pool and an access stair to the basement below, would be to the rear of the garden and of a similar design to the existing rear extension, it would occupy a significant area, notwithstanding the overall size of the garden. Moreover, its detached, block-like form, albeit glazed, and central rear positioning would make it a prominent

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<sup>1</sup> Adopted 2001

and intrusive feature in a garden largely devoid of buildings, aside from some small discreetly located timber sheds. It would also appear incongruous set against the backdrop of the majestic 5.2 metre-high brick Victorian wall, with its decorative arches and detailing, which forms the garden boundary and comprises part of the rear of the mews buildings along Belsize Court Garages.

11. Whilst not apparent from public vantage points, the outbuilding would be seen in views from flats in the listed building and from the rear upper floor windows of houses adjacent on either side. In any event, listed buildings are safeguarded for their inherent architectural and historic interest irrespective of whether or not public views can be gained. In terms of 'setting', the Planning Practice Guidance (PPG) advises that: *'The contribution that setting makes to the significance of the heritage asset does not depend on their being public rights of way or an ability to otherwise access or experience that setting. The contribution may vary over time.'*<sup>2</sup> The appellant makes much of the transparency offered by the glazed design of the outbuilding but the opaque sedum roof with bronze metal fascia would confirm the visual impression of a solid structure.
12. In this case, due to its size, positioning and design, the proposed outbuilding would adversely affect the historic relationship of the listed building with the openness of the garden and its soft landscaping, which forms part of its setting and reflects the purposeful layout of this striking late 19<sup>th</sup> century development. The outbuilding, with its swimming pool, would also form a distracting and incongruous feature compromising views back towards the listed building from some areas at the rear of the garden, to the detriment of its setting. Whilst it would be of similar design to the existing rear extension, the outbuilding would be a separate structure in a central, rear garden position away from the main house which would, consequently, have a different and adverse effect.
13. Turning now to consider the effect on the conservation area. The character and appearance of the FNCA is influenced by its position spread across the southern slopes of Hampstead with a variety of architectural styles set within a framework of broadly similar building types. In addition, the CAS advises that even whilst they are not always visible from the street, the rear gardens form large blocks of open land which make a significant contribution to the character of the area. Those aspects, therefore, contribute to the significance of the FNCA.
14. In that context, the scale, footprint and position of the proposed outbuilding would be a significant intrusion into that open garden land to the rear of the listed building, which notwithstanding limited public views is a recognised contributor to the character of the FNCA. In any case, as already established both the garden and the unsympathetic outbuilding would be visible from residential flats within No 10 and from the rear upper windows of houses immediately adjacent.
15. Moreover, it has not been suggested in evidence that there are comparable outbuildings in the gardens of other properties, many of which are also listed, along the road. Indeed, the Council refers to a relatively recent proposal for a smaller garden outbuilding at 12 Lyndhurst Gardens, also a Grade II listed

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<sup>2</sup> Paragraph: 013 Reference ID: 18a-013-20190723

building, which was refused planning permission<sup>3</sup> and subsequently dismissed on appeal.<sup>4</sup> Although I have limited details, the Council advises that the scale and impact of the outbuilding on the garden area were significant factors in that refusal.

16. The appellant submits that the proposal is site-specific and '*does not in any shape or form open the way for others to do the same.*'<sup>5</sup> However, in my view, if the proposal, which would include the outbuilding element, were approved, it could potentially set a precedent for similar outbuildings, which could harm the open setting of other listed buildings and have a cumulative adverse effect on the character and appearance of the FNCA.
17. Given the above factors, I conclude that the proposed outbuilding would harm the setting of the listed building and fail to preserve or enhance the character and appearance of the FNCA.
18. The Council does not appear to consider that the basement element of the proposal would have a clear or direct impact on the heritage significance of the listed building or the FNCA. Although extensive, given the, by definition, subterranean nature of the basement, and that its construction would not involve any alteration or loss of historic fabric within the listed building, I see no clear reason to take a different view from the Council on that specific aspect. However, I consider the basement element further later in this decision.
19. Paragraph 193 of the Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm.
20. The proposed outbuilding would not involve alterations to the listed building or its historic fabric. It would also be an essentially separate structure some distance from the main house towards the rear of the garden, with no clear public views from the highway. Therefore, although I have identified harm to the setting of the listed building and the character and appearance of the FNCA, I consider the level of that harm to be, in the language of the Framework, 'less than substantial'. I will return to that aspect of my findings later in this decision.

### *The basement*

21. The basement element of the proposal would include internal staircases at either end, one leading from the existing rear extension of the main house and the other leading from the new outbuilding. The basement would include a games room/cinema, gym, changing room and plant room.
22. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.<sup>6</sup> The Camden Local Plan (2017) (CLP) was relatively

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<sup>3</sup> Ref: 2014/4740/P

<sup>4</sup> APP/X5210/W/15/3002900

<sup>5</sup> Ref: 17.225.Supporting Information 2018/11905/P & 2018/2707/L: Justification Document

<sup>6</sup> S.70(2) Town and Country Planning Act 1990 and s.38(6) of the Planning and Compulsory Purchase Act 2004

recently adopted and underwent an independent process of public examination to assess its soundness and consistency with the Framework. Therefore, policies within it attract full weight.

23. Development of basements is a popular way of gaining additional living space in homes within Camden. Policy A5 of the CLP was specifically devised to address basement developments and indicates that: *'The siting, location, scale and design of basements must have minimal impact on, and be subordinate to, the host building and property.'* In order to achieve that it sets a number of criteria, which include that the basement development should:

*'j. extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation;*

*k. not extend into or underneath the garden further than 50% of the depth of the garden.'*

24. It is clear from the appellant's submissions that the content of CLP policy A5 was considered in some detail by the examining Inspector, prior to the CLP being found sound and adopted.
25. Supporting text to CLP policy A5 notes that: *'In addition to protecting against flooding, ground instability and damage to neighbouring buildings as set out above, the Council will also seek to control the overall size of basement development to protect the character and amenity of the area, the quality of gardens and vegetation and to minimise the impacts of construction on neighbouring properties. Larger excavations cause greater construction impacts and can have greater risks and complexity in construction.'*<sup>7</sup>
26. A supplementary planning document, Camden Planning Guidance: Basements (March 2018) (CPG), which supports the CLP says: *'Often with basement development, the only visual features are lightwells, skylights, or pavement lights, with the bulk of the development concealed wholly underground, away from public view. However, just as overly large extensions above the ground level can dominate a building, contributing to the over-development of a site, an extension below ground can be of an inappropriate scale.'*<sup>8</sup>
27. Given that background, it is clear that the various criteria from 'f-m' in policy A5 of the CLP are intended to control the size and extent of basements. The appellant accepts that the proposed basement does not meet criteria 'j' or 'k' of policy A5. Indeed, according to the Council the depth of the original (un-extended) host building is 17.2 metres, which would, applying criterion 'j', limit a projecting basement to a maximum depth of 8.6 metres, whereas the proposed basement would project some 28.6 metres into the garden. It would extend almost the full length of the large garden, finishing just 0.6 metres short of the rear boundary, occupying far in excess of the 50% depth limit specified in criterion 'k'. Those figures have not been specifically disputed. It is clear, therefore, that the proposed basement would substantially exceed the specified limits.
28. It is submitted by the appellant that there are 'special circumstances' which justify non-compliance with those criteria. Reference is made, amongst other

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<sup>7</sup> Paragraph 6.129

<sup>8</sup> Paragraph 2.1

things, to the topography of the site and surrounding land, ground water tracking, surface water attenuation, planting considerations. However, whilst it is understood that the proposal had to comply with a range of criteria and the technical requirements associated with a Basement Impact Assessment, the same would be so for any such scheme. The fact that the proposal may meet certain requirements does not necessarily justify departing from other criteria. Moreover, the size of the proposed basement does not just marginally exceed the limits deemed as acceptable by criteria 'j' and 'k' of policy A5, it is well in excess of them. Therefore, that does not constitute a marginal or *de minimis* policy breach.

29. Other design possibilities are discussed by the appellant, which it is suggested could meet relevant basement policy criteria but be larger and potentially more harmful than the proposed scheme. Much emphasis is also placed on the fact that the basement would not be directly below the existing listed building and, therefore, avoid any potential interference with, or loss of historic fabric, or plan form. However, it may be that an acceptable solution could be found that was closer, or even beneath the existing building, without having negative effects. The proposed removal of some small garden sheds is not a significant factor in favour of the proposal.
30. In any event, many of the appellant's submissions are posited on the false premise that some form of basement development is essential. It is on that dubious foundation that various alternative basement designs are discussed and compared, which would allegedly be more harmful than the appeal scheme or not meet other critical policy criteria. However, the alternative possibility of not developing a large basement, which would remove potential negative consequences, is not countenanced in that hypothetical exercise, which largely undermines any logical force that it may claim to have.
31. Therefore, whilst I have fully considered the various submissions made, I am not persuaded that there are 'special circumstances' in this case, which might also be termed 'other material considerations', that would justify a clear departure from specific criteria within a recently adopted development plan policy, directed at controlling basement proposals.
32. The appellant also makes the point that the original pre-application advice was generally supportive of the scheme, including the basement element. However, I understand that advice was issued some time ago and prior to the adoption of the current CLP and CPG. Such advice is informal, based on the information available at the time and ultimately not binding on the Council, as explained in the disclaimer note which accompanied it.
33. Whilst it is unfortunate that the time-line for the design and submission of the proposal spanned a period which included changes in relevant development plan policies, it appears that the appellant was fully aware that the basement design conflicted with criteria 'j' and 'k' of CLP policy A5 at the time the applications were submitted. In any event, I am required to determine the appeal against the refusal of planning permission on the basis of the current development plan.
34. Therefore, I conclude that the size and scale of the proposed basement element would be unsympathetic to the host property and fail to comply with policy A5 of the CLP which, amongst other things, seeks to ensure that basements are of an appropriate size and remain subordinate to host buildings.



## Conclusions

35. Framework paragraph 194 says that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting should require clear and convincing justification.
36. As I have found that the harm to the setting of the listed building and to the FNCA caused by the outbuilding would be 'less than substantial', paragraph 196 of the Framework advises that the harm should be weighed against the public benefits of the proposal, which can include the optimum viable use of the listed building.
37. The PPG advises that public benefits should be of a nature or scale to be of benefit to the public at large and not just be of private benefit.<sup>9</sup> Here the proposal would in essence be for the private benefit of the appellant. Whilst it would provide additional facilities for occupiers of Flat 1, it has not been submitted and is not tenable that the provision of a swimming pool, cinema/games room and gym are necessary to secure the optimum viable use of the heritage asset or its long-term conservation. The residential use of the existing building does not appear to be in jeopardy and there is no reason why it should not continue at a prime location which has good transport links.
38. Some small garden sheds would be removed, but they are located to the corner and side of the garden. They are not obtrusive and do not adversely affect the setting of the listed building or the character and appearance of the FNCA. Therefore, their removal as part of the scheme would not be of particular or significant benefit.
39. There would be some limited economic benefits during the construction period in the provision of short-term employment opportunities and from the purchase of building materials. However, those and any other supposed benefits would be limited and would not outweigh the harm caused by the proposed outbuilding to the setting of the listed building and the character and appearance of the FNCA, which although 'less than substantial' must be given great weight.
40. Although, as established above, the basement element would not cause material heritage harm, its excessive size would, by a considerable margin, fail to comply with specific criteria within CLP policy A5.
41. Overall therefore, the proposal as a whole would be contrary to policies D1, D2 and A5 of the CLP. Amongst other things, those policies seek to secure high quality design which respects local context and character and resist development that would cause harm to the significance of a listed building through an effect on its setting. They also aim to preserve garden spaces, where they contribute to the character and appearance of a conservation area or the setting of a heritage asset. Finally, they seek to ensure that basement developments are of an appropriate size. In addition, the scheme would fail to satisfy the requirements of the Act and paragraph 192 of the Framework.
42. Although the Council did not object to the formation of a sedum roof on the existing single-storey rear extension and I see no reason to think that it would be harmful, it appears that the primary aim of that change was to match the

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<sup>9</sup> Paragraph: 020 Reference ID: 18a-020-20190723

sedum roof proposed for the new outbuilding. Therefore, there would appear to be little purpose in exercising my discretion to issue a split decision to allow that minor element of the proposal. Moreover, the appellant has not expressed an interest in me pursuing such a course.

43. For the reasons given above, and having regard to all other matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

*JP Tudor*

INSPECTOR