

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
BRISTOL
BS1 6PN

My reference:

Your reference:

25th September 2019

Dear Sirs

5 and 6 Rossllyn Park Mews, London NW3 5NJ
Planning Appeal against refusal of planning permission (reference: 2019/0275/P)
Grounds of Appeal

1. This appeal concerns the following development proposal:

“Erection of new 2nd floor extension spanning nos. 5 & 6; erection of 3 storey extension to south east corner of no.6; erection of single storey extension at 2nd floor level above existing extension to south of no.5; alterations to windows and doors at no.6.”

2. The application was submitted on 18th January 2019 and refused on 20th June 2019.

3. The reasons for this refusal are as follows:

1) *The proposed roof extension, by reason of its siting, height, detailed design and massing, would be detrimental to the intimate scale of Rossllyn Park Mews and the character and appearance of this part of the Fitzjohn's and Netherhall Conservation Area, contrary to policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.*

2) *The proposed roof extension, by reason of its siting, height, and massing would cause unacceptable harm to the amenity of surrounding residential occupiers by way of loss of outlook and daylight/sunlight, contrary to policy A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017.*

Preliminary Matters

4. The planning application relates to a residential extension over two existing dwellings. The application was submitted as and dealt with by the Council as an application for full planning permission, including the submission of forms as a full planning application, and not as a Householder Application, as the application concerns more than one existing

dwelling. Therefore, the appropriate appeal time frame in this case is 6 months and not 12 weeks. This appeal has therefore been submitted within the relevant timeframe for this type of application.



Character of Site and Surroundings

5. The application site comprises 2 x 2 storey semi-detached post war 1960s properties which are located in a mews of an intimate scale to the south of Lyndhurst Road.
6. The buildings are not listed, but are located in the Fitzjohns Netherhall conservation area.
7. The application buildings are different to the prevailing architectural character of most properties in the conservation area, being of a more recent 1970s design. Planning permission was granted in 1966 for the redevelopment of the mews with the erection of three three-storey terrace houses, and two two-storey semi-detached houses and a three storey detached house (at No.4). The application proposals relate to the two two-storey demi-detached houses, which are located to the north side of the Mews. Therefore, only 5 and 6 Rosslyn Park Mews comprises two storeys.
8. The application site is located within Sub Area 2 (Rosslyn) of the Fitzjohn's Netherhall conservation area, which has a smaller and more intimate character than other parts of the conservation area. The Conservation Area Statement (CAS) describes Rosslyn Park Mews as being tucked away behind the larger Lyndhurst Road properties (nos. 12, 13, 14).
9. The CAS highlights insensitive roof alterations as being an issue in the conservation area, noting how these can harm the character of the roofscape with poor materials, intrusive dormers, inappropriate windows, and in many instances there is no further possibility of alterations. The CAS further states that roof extensions are unlikely to be acceptable where:
 - It would be detrimental to the form and character of the existing building.
 - The property forms part of a group of terrace which remains largely, but not necessarily completely unimpaired.
 - The property forms part of a symmetrical composition, the balance of which would be upset.
 - The roof is prominent, particularly in long views.
 - The building is higher than many of its surrounding neighbours
10. In this case, regard should be had to the relatively contemporary character of the existing property, the greater height of the houses on the other side of the mews, which are one storey higher, the high density of development in the area, and the limited degree to which these properties can be seen (especially in long views). It should be noted that 1,2 and 3 Rosslyn Park Mews, the detached house at 4 Rosslyn Park Mews and 12, 13 and 14 Lyndhurst Road all comprise taller buildings than Nos.5 and 6 Rosslyn Park Mews.

Planning history and background to the site

11. There has been no recorded planning history to No.6 Rosslyn Park Mews. To No.5, there has been one recorded decision:
 - 2015/3209/P - Erection of front two storey part width extension, conversion of garage to residential use including new window, new windows at second floor front and first

floor side elevations, replacement front door and awning, installation of two rear rooflights and replacement of two rear roofslope rooflights. Planning permission granted 16/07/2015.



12. The proposed extension would provide two additional bedrooms and a shower room for each dwellinghouse. Due to the shape of the roof extension, the highest central point of the room would have a floor to ceiling height of 2.3m which meets Camden's recommended minimum height; however, the majority of the floor to ceiling height would be less than 2.3m which would not be considered acceptable if this were a new dwelling. However, given the proposed roof extension is proposed to provide additional floorspace to existing dwellings, the Council acknowledges that this would not form a reason for refusal.

Affect on the Character of Rosslyn Park Mews and the Conservation Area

13. The properties in Rosslyn Park Mews are not symmetrical, with those to the south side being a storey taller than the application buildings.
14. The Council speculates a theory that the scale, design and height of nos.5 and 6 were intentionally limited to 2 storeys with no rear windows in direct response to the relationship with the properties along Lyndhurst Road which are located less than 6m away at their closest point. However, there is no clear evidence available from the planning record that this was the initial design intention and the Council points to no other planning determination to create any precedent.
15. Although it is not disputed that the affect of the proposal on the amenity of neighbouring residents to nos.12 – 14 Lyndhurst Road, and the intimacy of its character and scale in townscape terms are material considerations, they need to be assessed properly on the merits of the case before the Council (albeit now by the Inspector in this appeal). Other than such speculation as to the original intent in design terms, for which there is no genuine proof of such express intent, the proposal has to be assessed on the basis of the current proposals and policies. Furthermore, for the reasons set out below in terms of amenity, it is not clear if any earlier designs of this terrace would have considered all possible other alternatives for an additional storey including the profile of the present roof proposals. Therefore, the Council's statement in this respect is weak without knowing more about how the original design may have been conceived, discussed with the then determining authority and then tested through the planning process.
16. Although, the curved rear roofslope would be visible from Lyndhurst Road, this would only be in limited and generally fleeting views and would only appear more obvious on approach to Rosslyn Park Mews. The appearance of No.5 and 6 is mostly hidden from view on Lyndhurst Road, by the bulk and overbearing impact of the block of flats in the foreground, and long views up the approach road to Rosslyn Park Mews are instead dominated by the neighbouring 3 storey buildings seen at the end of the access road.
17. Although the appearance of this roof in profile would be unconventional in this location, the Council admits that "*the application buildings are different to the prevailing architectural character of most properties in the conservation area, being of a more recent 1970s design*". Furthermore, the proposed materials would reflect those of the neighbouring buildings as well as match the host building. The Council also acknowledges that the "*detailed design of the extensions to the front elevation would be sympathetic to the host and neighbouring buildings in terms of detailed design*". Therefore, the proposals would not harm the intimate scale of the Mews within which the application site is located, with regard to policies D1 and D2 of the Camden Local Plan.

Affect on the Outlook, Sunlight and Daylight of Neighbours

18. Policy A1 seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered and would not harm the amenity of neighbouring residents. This includes privacy, outlook, noise, daylight and sunlight.
19. No new windows are proposed to the rear elevation and all new windows to the south, east, and west elevations are in a similar location to existing windows and would serve the same dwellinghouse. As such, the proposals are not considered to materially increase the opportunity for overlooking of neighbouring properties.
20. A Daylight and Sunlight Study has been submitted in support of the application which assesses the impact of the development on the light receivable by the neighbouring residential properties and 1 to 4 Rosslyn Park Mews, 12, 12c and 13 – 15 Lyndhurst Road. The study is based on the BRE guide 'Site layout planning for daylight and sunlight: a guide to good practice' 2011. The report concludes that the development would have a relatively low impact on the light receivable by neighbouring properties and that there is no daylight/sunlight related reason why planning permission should not be granted.
21. The findings of this report were challenged by neighbouring residents in a letter from Alex Schatunowski & Co dated 26th April 2019, submitted by objectors at Flat 1 of No.14 Lyndhurst Road. This report comments that many of the ground floor windows and gardens to the adjacent flats at Lyndhurst Road that face the rear of No.5 and 6 Rosslyn Park Mews already experience poor levels of light.
22. The appellant's case though must be seen in the context of the impact on the neighbours as a whole and its overall affect on the character and amenity of the surrounding area. We respectfully submit that to assess the overall degree of compliance against only a limited number of nearby units is 'conveniently' selective.
23. This does however raise the question in the context of current and emerging policy as to what extent any degree of non-compliance with the BRE Guidelines can be tolerated before a development's impact on its neighbours should warrant grounds for refusal. In particular, the letter by Alex Schatunowski & Co concludes that "*the impacts are material and that is a justification for refusing planning consent.*" We would respectfully disagree with this conclusion as there is no support in policy that any material loss of sunlight and daylight should in all cases warrant refusal.
24. Paragraph 118(e) of the NPPF (2019) states as follows:

"Planning policies and decision should support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers."
25. Paragraph 123(c) supports this in stating that:

"In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards)."

26. Therefore, a refusal based on a 'material loss of sunlight and daylight' is not supported by national planning policy. The burden of proof is to the standard of "acceptable living standards", which infers that the sunlight and daylight levels to neighbouring housing might be materially affected but in some cases this may still be, on balance, acceptable. The circumstances suggested by national planning policy indicate that the overall design of the proposal and its urban form may provide some degree of justification. This is further explained by the Planning Practice Guidance:

"All developments should maintain acceptable living standards. What this means in practice, in relation to assessing appropriate levels of sunlight and daylight, will depend to some extent on the context for the development as well as its detailed design. For example in areas of high-density historic buildings, or city centre locations where tall modern buildings predominate, lower daylight and daylight and sunlight levels at some windows may be unavoidable if new developments are to be in keeping with the general form of their surroundings." (Reference ID: 66-007-20190722)

27. This is indeed the case here as with the existing low levels of sunlight and daylight to the rear gardens and ground floor windows to some of the affected units in Lyndhurst Road, with the current urban form and high density of development, further impact to these units cannot be avoided, but is limited.

28. Furthermore, the Council's SPG on Amenity (March 2018) at paragraph 3.22 and 3.23 supports the need for a similar degree of flexibility:

"The Council notes the intentions of the BRE document is to provide advice to developers and decision makers and therefore it should be regarded as a guide rather than policy..."

While we strongly support the aims of the BRE methodology for assessing sunlight and daylight we will consider the outcomes of the assessments flexibility where appropriate, taking into account site specific circumstances and context. For example, to enable new development to respect the existing layout and form in some historic areas, it may be necessary to consider exceptions to the recommendations cited in the BRE guidance. Any exceptions will assessed on a case-by-case basis."

29. A review of the detailed daylight distribution calculations show that a number of windows serving habitable rooms 13 Lyndhurst Road would experience a reduction in daylight and/or sunlight. Window 61 serving a bedroom and windows 62, 63, 64 serving a living room at no.13 would see slight reductions equating 0.78 their former value for the bedroom window (which is not generally used as daytime living space in any event), and 0.75 times their former value for the living room windows. BRE guidelines state that a ratio loss of 0.8 or more would generally be noticeable, and as such, the proposed development would only marginally exceed the recommended degree of sunlight and daylight loss in the BRE Guidance.

30. It is acknowledged that the proposed development would also result in increased overshadowing of the rear gardens of nos.12 – 14 Lyndhurst Road. However, as noted by the Council, these gardens already receive less sunlight than recommended in the BRE guidelines and it is thus relatively easy for objectors to present a marginal impact on the amenity of neighbouring gardens in amplified terms when the amount of sunlight and daylight received by the same garden space is already at a low level. For instance, a 5% loss of sunlight and daylight to a garden that already receives the recommended BRE target of at least 50% of the garden receiving at least 2 hours of sunlight on 21st March, would equate to a 10% loss of sunlight and daylight; but this figure increases to a more dramatic 50% in the case of the gardens that already only achieve values of 10% to their

gardens. The Council refers to no.13, in that the area of garden receiving daylight would reduce from 12% of the garden to 7% of the garden – a loss of 58% of the sunlight available on March 21st.



31. However, it is not at all clear that this loss of 5% is likely to be significantly noticeable in the context of a garden that already suffers from significant overshadowing from the existing building form in the immediate area. It is important to note that it is not a case of making a constrained situation significantly worse. It is instead our case that the standard to be achieved is on balance to ensure the maintenance of 'acceptable living standards' according to the NPPF; a 5% loss of sunlight and daylight to a garden that already falls woefully short of the BRE Guidance for amenity to gardens by more than half its recommended target values cannot be seen as resulting in a poor standard of sunlight and daylight to the same garden.
32. In assessing the Daylight Distribution impact on the flats in Lyndhurst Road, the letter from Alex Schatunowski & Co comments on the lack of Daylight Distribution results for 14 Lyndhurst Road. The BRE guide states that where room layouts are known, the impact on the daylighting distribution can be found by plotting the 'no sky line' in each of the main rooms. Therefore, we are of the opinion that the application of the test is not a requirement of the BRE guide where room layouts are not known. This again reflects the flexibility that is endorsed by the Council's SPG policies in how sunlight and daylight is to be assessed with regards to the circumstances of the case. As we are unable to confirm the room layouts for 14 Lyndhurst Road (and other properties) we have not undertaken the daylight distribution calculations. Furthermore, we don't endorse the practice of applying the test based on assumed room layouts, because the test is very sensitive to the size and layout of the room and the results are likely to be misleading.
33. The Council also comments in its delegated report on the proposed roof extensions with regard to Policy A1 of the Camden Local Plan and the impact on the outlook from 12-14 Lyndhurst Road. We enclose with this appeal a section through the amended profile of the proposed additional storey, which is curved and set back from the edge of the rear elevation to the building. See drawing reference AP503/R0 dated 18th September 2019.
34. Furthermore, the Inspector's attention is drawn to the Reduced Roof 3D visual and the comparison in the images with the scale, height and bulk of the initially proposed roof extension.
35. According to the explanatory text on outlook in the Camden SPG on Amenity paragraphs 2.13-2.15, no specific test or standard is applied and the judgement is one of fact and degree based on current circumstances. The section indicates that a relatively small percentage of the outlook from the ground floor habitable room windows facing the development in Lyndhurst Road (arguably, those likely to be most affected by the proposal) would be affected by that part comprised in the proposed extension. This would be further affected by the use of non-reflective roof tiles and the curved roof away from the edge of the rear elevation.

The development would make use of high quality materials and would provide additional accommodation making efficient use of airspace in this high density location. The proposed shape of the roof would be unconventional to the rear but this would not be seen from wider public viewpoints in the Conservation Area, and its actual profile might only be really appreciated from fleeting views from the side on approach to Rosslyn Park Mews. Meanwhile, the proposed extension would reinforce the intimacy of these mews and match the height of the mews terrace opposite.



The proposal would therefore respect the local context and character of this area, and would create a symmetry and uniformity to the height on either side of Rosslyn Park Mews. Therefore, we respectfully request that the appeal is allowed and that planning permission is granted in this case.

Yours faithfully,

David Kemp BSc(Hons) PGDL MRICS Barrister (non-practising)
Director
DRK Planning Ltd