



5 Bolton Street
London
W1J 8BA
Tel: +44 (0) 20 7493 4002

Ben Farrant
Camden Council
5 Pancras Square
London
N1C 4AG

27 March 2020

Dear Ben

18A FROGNAL GARDENS – PLANNING APPLICATION REFERENCE 2019/5358/P

I write in connection with the letter from St John Legal dated 25th February 2020 in connection with the above application addressed to the applicants, and copied to you at the planning authority and Camden's legal department. The letter, written on behalf of the owners of No 18 B Frognal Gardens follows a letter of objection on their behalf dated 3rd December 2019 by Kaz Ryzner Associates. I take the opportunity to respond to the various issues raised as follows:

- The impact of the development on the character and appearance of the conservation area, including the principle of the demolition of the existing building;
- The alleged loss of light arising from the proposed development;
- Effects on privacy from placement of rear windows;
- The potential effect on the structural stability of the neighbouring property;
- The relevance of the stated covenants to the determination of the planning application;

THE IMPACT OF THE DEVELOPMENT ON THE CONSERVATION AREA, INCLUDING THE PRINCIPLE OF THE DEMOLITION OF THE EXISTING BUILDING

On 12th February 2020, Alison Brookes Architects submitted an Addendum Design Statement to the planning authority with Montagu Evans' input on conservation area and heritage matters. A discussion on the impact of the development on the character and appearance of the conservation area is set out in full in that document, and so is not repeated in full here. That document also included a full assessment of the existing building in accordance with guidelines set by Historic England.

The Addendum Design Statement concluded:

The Council has identified the existing building as making a 'neutral' contribution to the Conservation Area. We have nevertheless undertaken an assessment in accordance with Historic England guidelines and conclude that the building makes no more than a neutral contribution to the Conservation Area and a negative one in some regards. Given the limited broad brush appraisal in the Conservation Area Appraisal, our assessment goes into more detail than is possible within a wider Conservation Area Appraisal.

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In any event, the Council agrees that there is no in-principle objection to the demolition of the existing building. While the development must be considered as a whole, there cannot be any harm to any designated heritage asset arising from the demolition of the existing building. The demolition of the existing building does not engage the provisions relating to 'harm' as set out in the NPPF, and paragraph 196 would not apply.

...

This document, read with the DAS submitted with the application, sets out how the building has been designed to meet the client's brief with an exceptional piece of architecture appropriate in this location, and taking the opportunity to enhance the contribution that the site makes to the Conservation Area:

- *The overall picturesque design and massing reflects the composition of the surrounding Victorian Houses. This rhythm is present in the façade of the main building.*
- *The elevational treatment of the building is layered with some aspects stepping forward, some back, reflecting the layered building line of the nearby Victorian buildings formed by roofs, porches and bays.*
- *Other contextual details are reflected in the use of a chimney which references the rooflines of surrounding buildings, and the vertical and horizontal alignment of building elements generally, including its immediate neighbor at 18b.*
- *In this way the design is a contemporary interpretation of the compositional elements of the Victorian buildings in a proportionally appropriate manner. The proposal has been carefully designed to draw its references in form and detailed design in a playful manner from the surrounding architectural context.*
- *Thus the design draws on the surrounding historic context, with a striking modern building entirely appropriate in Hampstead as a location for architectural innovation.*
- *In terms of scale, the building mediates the consistent 5-6 storey context of the eastern side of the road and its lower neighbour at 18b. Its position just off the corner does not overwhelm the northern approach on Frogna Gardens but instead pleases the viewer with its gradual revelation in the context of mature foliage.*
- *In terms of materials, the tiles evoke the Victorian spirit of craft, with a bespoke high quality material. The properties of the material softly reflect (literally) the lush greenness of Frogna Gardens, presents animation and articulation in the façade and present interest to the viewer.*

The proposals accord with Policy D1 in that they represent excellence in design that respects local character and context, responds creatively to its context, uses high quality materials and is sustainable in design and construction (the building represents a substantial improvement over the environmental performance of the existing building). This document explains how the proposal responds positively to Hampstead's Character and the Character Area 2. These enhancements should be given great weight in the determination of the application.

On this basis we do not consider that the proposals harm the character and appearance of the Hampstead Conservation Area. Thus the grant of planning permission would be consistent with the duty set out in Section 72 of the Act and consistent with policies in the NPPF which encourage high quality design and architectural innovation.

In summary, we consider that the proposal at least preserves the character and appearance of the conservation area and complies with the statutory Section 72 duty, and the relevant development policies, including those contained within the Hampstead Neighbourhood Plan. The applicant is inviting the Council to come to the same judgement.



THE ALLEGED LOSS OF LIGHT ARISING FROM THE PROPOSED DEVELOPMENT

The application was accompanied by a Daylight/Sunlight and Overshadowing Report prepared by Delva Patman Surveyors. The report concludes that the development comfortably complies with the relevant British Research Establishment guidelines with regards to daylight/sunlight and overshadowing. Any objection on the grounds of loss of light is demonstrably and objectively unsustainable.

EFFECTS ON PRIVACY FROM PLACEMENT OF REAR WINDOWS

The proposals do not raise any particular amenity issues and do not materially worsen the overlooking relationship between the two properties which is normal for a dense semi-suburban environment. The proposed layout of the property and position of the windows in the proposed development does not alter significantly from the plane on which the existing windows are located. Any potential views are oblique from the dressing room which is not a main habitable space.

The proposals have been altered to respond to the pre-application advice issued by Camden by removing windows that more directly overlooked the garden next door. Notwithstanding our view that the proposal does not worsen the overlooking situation, if the Council considered it necessary the applicant would be happy to accept a planning condition that required the dressing room and landing windows to be obscure glazed to a height of 1.8m above floor level.

THE POTENTIAL EFFECT ON THE STRUCTURAL STABILITY OF THE NEIGHBOURING PROPERTY

As you know, the application was accompanied by a detailed Basement Impact Assessment prepared by Akera Engineers. As is usual, the package will be reviewed by the Council's own engineers. I understand that Campbell Reith Hill have been instructed in this regard and we are awaiting the outcome of their audit. While the applicants are confident that their instructed engineers have demonstrated no adverse effect in terms of the neighbouring properties, we will look forward to confirmation from CRH to this effect and will be pleased to discuss that with you in due course. We note that CRH's invoice has been paid and their review expected by 13th December 2019. This is now considerably overdue and we would appreciate an update on the progress of the CRH audit.

THE RELEVANCE OF THE RESTRICTIVE COVENANTS

As you will of course know, an application for planning permission must be determined in accordance with the adopted development plan unless other material considerations indicate otherwise, as set out in Section 70 (2) of the Town and Country Planning Act 1990 and Section 38 (6) of the Planning and Compulsory Purchase Act 2004.

Covenants placed on land are wholly irrelevant to the determination of any planning application and were the planning authority to have any regard to such covenants, they would be acting *ultra vires*. The assertion in the letter that the application cannot be lawfully approved and would be vulnerable to judicial review has no basis in law and we trust that the planning authority will rightfully put the matter of any alleged restrictive covenant to one side. The letter from Kaz Ryzner Associates itself acknowledges that the covenant is not a material consideration.

CLOSING

I trust that this letter addresses the principal issues raised in the correspondence on behalf of the neighbouring property owners. If you have any queries on any matter that you would like to discuss, please do let me know.



Yours sincerely,

