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## Appeal Decision

Site visit made on 10 October 2018

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 November 2018

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### Appeal Ref: **APP/X5210/W/18/3202412** **3 Kidderpore Avenue, London NW3 7SX**

- 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 Mr Shruga Michelson against the decision of the Council of the London Borough of Camden.
  - The application Ref 2016/2499/P, dated 3 May 2016, was refused by notice dated 10 November 2017.
  - The development proposed is the demolition of existing 19th century building and erection of a 3-storey traditional dwellinghouse in place.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Shruga Michelson against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### Procedural Matters

3. The latest version of the National Planning Policy Framework (the Framework) was issued on 24 July 2018, and this supplants the version of the document relevant at the date of the decision on the application that led to this appeal. The Framework makes clear<sup>1</sup> that it is a material consideration in planning decisions from the date of its publication. Accordingly, the comments of the parties were sought on the bearing of the new Framework on the planning merits of the appeal.
4. The Council supplied a suite of supplementary planning documents, with the generic title of *Camden Planning Guidance* (CPG), which were adopted, or in some cases updated, in March 2018 following the decision on the application that led to this appeal. As these were submitted in a timely fashion, allowing the appellant adequate opportunity to make comments on them, and are material planning considerations, I have taken them into account insofar as relevant to the subject matter and issues in this appeal.
5. The application that led to this appeal was refused for a number of reasons. Based on material submitted with the appeal and other considerations the

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<sup>1</sup> At paragraphs 2 and 212

Council indicated within its appeal statement that it wished to withdraw the reasons for refusal relating to the principle of the appeal building's demolition; and the effects of the proposed development on the availability of daylight to the occupants of a neighbouring property. Moreover, the Council indicated that its objections relating to the bicycle parking elements of the scheme could be addressed by the imposition of conditions. I have taken into account the Council's position on these matters and this is reflected in the main issues set out below.

6. Planning permission was granted at appeal<sup>2</sup> for a basement excavation at the property to provide additional residential accommodation. Some of the plans submitted with the application that led to this appeal include the basement for illustrative purposes, but do not seek permission for this element as it is common ground between the parties that the permission granted at appeal is extant. I have treated the submitted plans on this basis; and whilst I have also had regard to revised plans submitted with the appeal that omit representations of the permitted basement, those subsequent plans have not formed the basis for my decision in this case which is based on the merits of the plans presented with the application.

### **Main Issues**

7. From all I have seen and read in relation to this case, I consider the main issues to be firstly, whether the proposed development would preserve or enhance the character or appearance of the Redington/Froggnal Conservation Area; secondly, the effects of the proposed development on the living conditions of the occupants of 5, Kidderpore Avenue in terms of outlook; thirdly, whether the proposed development would make adequate arrangements for the reduction of CO<sub>2</sub> emissions and climate change mitigation with reference to the development plan; fourthly, whether the proposed development would make adequate arrangements for car parking; fifthly, whether the proposed development would make adequate arrangements for the maintenance of the highway; and finally, whether the proposed development would make acceptable arrangements for the management of its construction.

### **Reasons**

#### *The Conservation Area*

8. Set back from Kidderpore Avenue within generous grounds fringed by mature trees, the appeal site is currently occupied by a predominantly two-storey building, hipped roofed, albeit with a flat-roofed side extension. Faced in render, with flat roofed dormers and a high degree of glazing with a strongly vertical emphasis and simplicity of detailing in its principal elevation, the dwelling present at the appeal site offers a clear stylistic contrast to the predominant architectural characters of the wider Redington/Froggnal Conservation Area. Redington/Froggnal is a largely residential locale featuring examples of large dwellings, predominantly detached and semi-detached, in formal and free architectural styles of the late 19<sup>th</sup> Century, including arts and crafts and neo-Georgian typologies. The presence of dwellings in these architectural styles in the immediate surroundings of the appeal site, coupled with the generosity of their plots and the mature trees both to their street

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<sup>2</sup> Reference: APP/X5210/A/11/2166638

- frontages and within their rear gardens give the streetscene a spacious and suburban appearance strongly characteristic of the Conservation Area and a considerable degree of its significance derives from these aspects of the area.
9. The proposed development would demolish the existing dwelling at the site in favour of a two-storey dwelling. At its apex the roof would be flat, hipped on the side closest to No 5 with a gable element projecting from its front and rear. The proposed development would include flat-roofed dormers in all of its planes, and French doors and Juliet balconies within at the front and rear of the gable. An external flight of stairs would be at the front of the property, situated between the proposed flank wall and the boundary with No 5, with a flat-roofed element recessed beyond those stairs. I note that the design of the proposed development evolved during pre-application discussions with the Council, which the appellant states included positive comments.
  10. Whereas the building at the site is a stylistic contrast to the wider Conservation Area, its scale, the size and disposition of its plot, combined with the stepping down of its overall scale and depth due to the flat roof extension at the side, means that it does not have a visually jarring relationship with the streetscene. Whilst I note the findings of the appellant's assessment based on the Historic England publication *Conservation Area Designation-Appraisal and Historic Management*, my observations of the appeal site lead me to the view that the existing dwelling has a neutral effect on the wider streetscene rather than a negative one.
  11. I saw that the roofscape of the existing dwelling at the appeal site does not share the elegance of the articulation of the roofs of the buildings on either side of it, nevertheless like them, the step down in scale between the main pitched roof and the lower height of its side-wing creates a sense of spaciousness between it and the adjoining plot. Unlike the existing dwelling the proposed development would introduce a roof of considerable scale and bulk, which, although relating to a facade with a similar overall width to that of the existing dwelling would impart a cramped character to the appeal site and a dominant appearance to the proposed building. The proposed development would thus diminish the spacious appearance of the streetscene to the detriment of its character. The proposed development's effects in these respects would be exacerbated by its excessive depth and the consequent erosion of the rear plot.
  12. Moreover, within the appeal site's immediate surroundings buildings are articulated not only at the roof level, but also in terms of their recessive street-facing elevations due in part to their varied footprints, some of which are broadly L-shaped. The elevational treatment of these larger buildings serves to break up their massing and bulk. The appeal scheme would be a clear contrast, with a squarer footprint, which when taken together with its overall scale would result in a blocky, bulky and dominant appearance, strongly at odds with the streetscene's development pattern.
  13. I saw other larger more modern buildings both present and under construction further along Kidderpore Avenue, however, these related to part of the street that is characterised, in the main, by more substantial blocks and terraces of buildings rather than the detached and semi-detached buildings within the appeal site's immediate environs. For these reasons, those other structures do not serve as either a precedent or context for the proposed development in this case.

14. Whilst the proposed development would introduce features at the appeal site akin to elements elsewhere within the Conservation Area, including chimney stacks and the use of brick, it would also include the prominent external flight of stairs, which would be an unusual feature, at strong variance with street-facing elevations within its environs, and would therefore be a visually jarring element.
15. I note that the Council consider the existing building at the site has a neutral effect on the Conservation Area, and for the above reasons, I concur with this assessment. Nevertheless the proposed development would be a dominant and unsympathetic element of the streetscene which would cause harm to its character and appearance. Accordingly, mindful of the statutory duty arising from section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, these considerations lead me to the conclusion on this main issue that the proposed development would fail to preserve the character and appearance of the Redington/Froggnal Conservation Area. For these reasons too, the proposed development would clearly conflict with Policies D1 and D2 of Camden's Local Plan (adopted July 2017) (the Local Plan) insofar as they require, amongst other things development to preserve, and where appropriate enhance, Camden's rich and diverse heritage assets, and to respect local context and character.

#### *Living Conditions*

16. I saw that a tall boundary wall currently exists between Nos 3 and 5. However, the proposed development would introduce flank walling of considerable depth and of a scale materially in excess of the existing boundary wall in close proximity to it. As a result, the proposed development would loom large over the boundary wall and its effects in these regards would be most marked near to No 5's rear windows and the portion of garden adjacent to the rear of that house. Consequently, it would create an overbearing sense of enclosure that would materially reduce the quality of the outlook available to the occupants of No 5 from its rear windows, and adjacent portions of the garden. These considerations lead me to the conclusion on this main issue that the proposed development would clearly cause harm to the living conditions of the occupants of No 5 in this regard. For these reasons, the proposed development would conflict with Policy A1 of the Local Plan insofar as it seeks to ensure that development does not cause unacceptable harm to amenity.

#### *CO<sub>2</sub> Emissions and Climate Change*

17. Policy CC1 of the Local Plan requires development proposals to reduce carbon emissions, based on an energy hierarchy of using less energy (be lean); supplying energy efficiently (be clean); and using renewable energy (be green). The supporting text of the policy states that a 20% reduction in carbon dioxide emissions is expected from on-site renewable energy generation, unless it can be demonstrated that such provision is not feasible at the 'be green' stage of the hierarchy calculated after energy efficiency measures entailed in the 'be lean' stage and any reduction in CO<sub>2</sub> occurring as a result of decentralised energy initiatives at the 'be clean' stage. Policy CC2 expects developments to be resilient to climate change and include measures to reduce the impact of urban and dwelling overheating, according to a cooling hierarchy. The supporting text to the policy sets out that active cooling such as air conditioning would only be permissible where dynamic thermal modelling

- demonstrates that there is a clear need for it after all other preferred measures have been incorporated.
18. The appeal is supported by an *Energy and Sustainability Document*<sup>3</sup> (the ESD), which demonstrates at Table 2, that the proposed development could result in a 22% reduction in CO<sub>2</sub> emissions when assessed against the Building Regulations baseline. According to Table 2 of the ESD, 15% of the savings would come from renewable energy, in this case roof mounted photovoltaic panels, as opposed to the 20% target set out in the supporting text to Policy CC1.
  19. I am mindful of the statement in the appellant's final comments that the potential output of the photovoltaic panels would exceed the typical domestic consumption values of a high consumption property- however, the figure included in the final comments for the output of the photovoltaic panels (4,820 KWh/year) is considerably in excess of the figure included in the ESD (3,799.93 KWh/year). Whilst the reason for this disparity is not readily apparent, the higher figure would not only serve to reduce the proposed development's CO<sub>2</sub> emissions further, but would also slightly exceed the likely Typical Domestic Consumption Values, as identified by Ofgem for a dwelling with an assumed high level of consumption.
  20. On the basis of this higher figure it has not been demonstrated that the deployment of further photovoltaics would be necessary to meet the needs of the scheme, and I am cognisant of the appellant's comments about the cessation of the feed in tariff scheme for the handling of excess energy arising from such renewable measures. Moreover, I consider, were other aspects of the appeal scheme to be acceptable in planning terms, that conditions could be attached to secure the approval of any details in relation to the specification of the mooted photovoltaics combined with an assessment of their likely output. These considerations lead me to the view that a deeper probing of the feasibility of the use of air source heat pumps would not be necessary in this case- although in arriving at this view I am mindful of the appellant's final comments which state that the potential noise of such measures lead the designers to discount them due to their possible impacts to the residential amenity of the surroundings.
  21. The proposed development would have a relatively low ratio of glazing to solid wall in its elevations, and would have openable windows. Consequently, I readily accept the findings of the ESD insofar as it establishes that the risk of the property overheating would be slight. On this basis, whilst the Council consider that the proposed development's employment of the 'comfort cooling' mentioned in the ESD would not comply with Policy CC2's restrictions on active cooling, I consider that it would not be necessary to mitigate the potentially harmful effects of climate change. Therefore, were other aspects of the proposed development to be acceptable in planning terms, measures to control the installation of active cooling could be controlled by condition.
  22. These considerations, taken together, lead me to the conclusion on this main issue that the proposed development would make adequate arrangements for the reduction of CO<sub>2</sub> emissions and climate change mitigation, and would therefore not conflict with Policies CC1 and CC2 of the Local Plan.

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<sup>3</sup> Produced by Hoare Lee, dated 13 April 2018

### *Parking*

23. Policy T2 of the Local Plan seeks to limit on-site car-parking and require all new developments to be car-free, including restricting the availability of on-street parking permits. However, the supporting text of the policy sets out that the Council would consider the retention or re-provision of existing parking where the existing occupiers return to the property once redeveloped, and that if the development would also include new occupiers that this element should be car-free
24. The appeal scheme would result in the redevelopment of the site, and the existing occupiers intend to return. The appellant has submitted a planning obligation, which amongst other things would restrict the ability of future occupants from accessing parking permits. However, as the redevelopment would not result in an intensification of the number of dwellings at the site, but would instead replace one dwelling with another it would not result in any 'new occupants'- any subsequent owners of the property would be successors in title to the appellant, and not additional households occupying the appeal site at the same time. Neither would the proposed development result in a material increase in parking demand arising from the appeal site.
25. For these reasons, I consider that the restriction of on-street car parking permits for future occupants of the proposed development is not necessary in this instance, and leads me to the conclusion on this main issue that the appeal scheme would make acceptable arrangements for car parking without being bound by the terms of the obligation. Consequently, as the proposed development would retain existing car-parking provision for returning occupiers, this is a material consideration that justifies a departure from the car-free development aims of Policy T2 in this instance. In reaching this view I have taken into account the Council's references to the Court judgements<sup>4</sup> on the use of planning obligations and other powers to control the supply of parking permits.

### *Highways*

26. Amongst other things the submitted planning obligation includes a contribution towards post-construction highway maintenance. I note the appellant's comments that a highway contribution has previously been secured in relation to the site in connection with the approved basement excavation. Consequently, I consider that it has not been demonstrated in this case that a highway contribution is necessary to make the development acceptable in planning terms, and thus it has not been established that a obligation to secure this would meet the statutory tests set out in the Community Infrastructure Regulations 2010 (as amended)<sup>5</sup> (the Regulations), or the policy set out in the Framework<sup>6</sup>. For these reasons I conclude that adequate arrangements for the maintenance of the highway would be made without the contribution secured by the obligation. I therefore can find no conflict with Policies T1 and T3 of the Local Plan, insofar as amongst other matters, they seek to ensure that developments improve the walking environment and protect existing transport infrastructure.

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<sup>4</sup> *Westminster City Council v Secretary of State for Communities and Local Government & Mrs Marilyn Acons* [2013] EWHC 690 (Admin); *R (oao Khodari) v Royal Borough of Kensington and Chelsea & Cedarpark Inc* [2017] EWCA Civ 333.

<sup>5</sup> At Regulation 122(2)

<sup>6</sup> At paragraph 56

### *Construction Management*

27. Policies A4 and T4 of the Local Plan, taken together, and amongst other matters seek to support the sustainable movement of goods and materials, and to ensure that the amenity of occupiers, neighbours and communities is protected including considerations of the effects of the construction phase of development. The *Camden Planning Guidance 8: Planning Obligations* Supplementary Planning Document (adopted July 2015- update March 2018) (CPG 8), sets out that planning obligations could seek to secure funding for monitoring the effectiveness of construction management plans.
28. The appellant's submitted planning obligation makes provision for the production of a construction management plan and monitoring fee. My attention has been drawn, however, to the Framework, which states<sup>7</sup> that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
29. However, I am mindful that aspects which a construction management plan would seek to control, including transport routes, are on land outside of the appellant's ownership, as highlighted in *Camden Planning Guidance: Amenity* (adopted March 2018), which references off-site measures; and that the protection of amenity and highway safety are planning considerations which necessitate such controls. Moreover, I am not persuaded that a condition could secure the fee sought to monitor the effectiveness of the construction management plan, which is an activity directly related to the proposed development. These considerations, taken together, lead me to the view that a planning obligation would be necessary to make the proposed development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The obligation would thus meet the relevant statutory tests of the Regulations and the policy of the Framework in these regards.
30. Consequently, I conclude on this main issue, that the planning obligation that accompanies the appeal scheme would make acceptable arrangements for the management of the appeal scheme's construction. In these terms, the proposed development would therefore accord with Policies A4 and T4 of the Local Plan insofar as they seek to protect the amenities of communities and neighbours during the construction process, and to encourage the sustainable transport of materials.

### **Other Matter**

31. I have taken into account the findings of the appellant's *Daylight and Sunlight Assessment*<sup>8</sup>, which is based on established industry-standard methodologies. Whilst this establishes that the proposed development would avoid a material reduction in sunlight and daylight to neighbouring properties, the absence of harm in these regards is not a positive benefit of the scheme and thus has only neutral effect on the overall planning balance.

### **Planning Balance and Conclusion**

32. The proposed development would make acceptable arrangements in respect of car parking, highway maintenance and construction management- however,

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<sup>7</sup> At paragraph 54

<sup>8</sup> Produced by Brook Vincent + Partners, dated September 2016

these aspects are indicative of a lack of harm in these respects and have only a neutral effect on the overall planning balance. The appeal scheme's use of renewable energy and energy efficiency is a positive aspect, but as it has not been established that its measures would exceed the policy requirements of the development plan to any material extent, it is a matter that weighs in its favour to only a limited degree.

33. The Framework anticipates that when harm to the significance of a heritage asset, such as a conservation area, has been identified that the magnitude of that harm should be assessed. In the current case, the proposed development would clearly cause less than substantial harm to the Conservation Area taken as a whole- nevertheless the Framework makes clear<sup>9</sup> that great weight should be given to an asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Moreover, the harm should be weighed against the public benefits of a proposal<sup>10</sup>. In the current case no public benefits have been identified sufficient to tip the balance in favour of the proposed development when set against the harm it would cause to the significance of the Conservation Area, a matter of great weight and considerable importance. For these reasons, the proposed development would conflict with the Framework insofar as it requires heritage assets to be conserved in a manner appropriate to their significance.
34. Moreover, no material considerations have been advanced of a sufficient weight to justify a decision other than in accordance with the development plan, with which, in terms of the above-cited Conservation Area and living conditions related policies the appeal scheme would clearly conflict.
35. Accordingly, for the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*G J Fort*

INSPECTOR

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<sup>9</sup> At paragraph 193

<sup>10</sup> Per paragraph 196 of the Framework