



Appeal Decision

Site visit made on 14 January 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st May 2020.

Appeal Ref: APP/X5210/W/19/3236736 9 and 11 Mansfield Road, London NW3 2JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Hauser against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/1872/P, dated 19 April 2019, was refused by notice dated 11 July 2019.
 - The application sought planning permission for the erection of a part 2 storey, part 3 storey building with rear roof terrace at 1st floor level, to accommodate 3 x 2 bed and 1 x 1 bed flats, following the demolition of existing house, without complying with a condition attached to planning permission Ref 2013/7934/P, dated 27 October 2014.
 - The condition in dispute is No 3 which states that: the development hereby permitted shall be carried out in accordance with the approved plans: Site location plan, (1110-BA-) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112B, 113B, 114A, 115A, 116A, 117A, 118A, 119A, 120A, 121A, 122A, 123A, 124A, 125A, 126A, 127A, 128A, 129A, 130A.
 - The reason given for the condition is: for the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of a part 2 storey, part 3 storey building with rear roof terrace at 1st floor level, to accommodate 3 x 2 bed and 1 x 1 bed flats, following the demolition of existing house at 9 and 11 Mansfield Road in accordance with the application Ref 2018/1872/P made on the 19 April 2019 without complying with condition No 3 set out in planning permission No 2013/7934/P granted on 27 October 2014 by the Council of the London Borough of Camden, but otherwise subject to the conditions listed in the schedule at the end of this decision.

Procedural Matters

2. The application subject to this appeal is made under Section 73A of the Town and Country Planning Act 1990 (the Act) for minor material amendments. It seeks to revise the design of a development approved in 2014¹ (the 2014 permission). This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks

¹ Planning permission ref 2013/7934/P

variation of the condition and replacement with conditions specifying the plans that reflect the amended design.

3. A deed of variation has been submitted and signed by the Appellant and the Council that ties this development to the original planning obligation, including the provision to car cap the development. I have taken account of the details in the Planning Obligation and the accompanying deed of variation in my assessment.
4. The Council has drafted an enforcement notice in relation to the works that have been carried out, however, this has not been issued and is being currently held in abeyance. However, this has not had any bearing on my determination of this planning appeal under section 78 of the Act.

Background and Main Issues

5. Planning permission for the development described in the banner heading above was granted by the Council in 2014 (the approved scheme). Since that time a number of pre- commencement conditions have been discharged. Work has been undertaken on the site altering the envelope of the appeal building and confirmation has been given by the parties that the building is fully occupied and in use as four self-contained flats. I observed these changes during my site visit.
6. The current proposal is to vary condition 3 of the original planning permission which related to the compliance with the approved drawings. The main parties have agreed that the revised proposal result in increases to the height and depth of aspects of the building that range between 0.2m and 0.75m, while there has been a reduction of 0.3m to the building's width.
7. Additional amendments include the enlargement of roof lights on the front and rear elevations, the relocation of the bin stores to the front elevation and minor alterations to the fenestration on the front and rear elevations.
8. With that background there are three main issues in this appeal:
 - The effect of the development on the significance of the Mansfield Conservation Area and the character and appearance of the area;
 - The effect of the development on the living conditions of neighbouring occupiers, with particular regard to privacy;
 - The effect of the proposed parking arrangement on highway safety and sustainable modes of transport.

Reasons

Character and Appearance

9. The appeal site comprises a part two/part three storey building containing four self-contained flats with its main frontage facing Mansfield Road. The area around the appeal site has a mixed character, and includes terraced houses, a small parade of commercial uses, a primary school opposite and the Gospel Oak train station located a short distance to the north east. I noted from my site visit that there was no unifying scale or design associated with the buildings along this part of Mansfield Road, while there is a mix of architectural styles. This contrasts with the more homogenous residential character and appearance of

properties to the rear of the appeal site at Oak Village, and the streets of residential dwellings feeding off Mansfield Road, further to the west and north west.

10. The appeal property is located on the opposite side of the road to the southern boundary of the Mansfield Conservation Area (MCA). The rear elevation of the appeal building faces the rear gardens of Oak Village.
11. The MCA management strategy² divides the CA into two sub areas of distinctly different character. Sub Area 2 is described as the Late Victorian Core and is predominantly residential in character. Three storey terraced dwellings with basements are laid out on a loose grid pattern with long roads running from east to west. The dwellings are predominantly uniform in their basic design and scale incorporating two storey bay windows, prominent chimney stacks and recessed paired entrance doors. Shallow landscaped front gardens bordered by low rise walls occupy the space between the dwellings and the road. This part of the CA derives its significance from the grandeur of the Victorian houses, the uniform arrangement of streets and the neatly landscaped front gardens.
12. The dwellings located along Oak Village to the south of the appeal site, are non-designated heritage assets (NDHA) and comprise a series of terrace cottages arranged around a perimeter block that are notable for their early Victorian architectural detailing. They present themselves to the street as predominantly pairs of hipped roofed semi-detached dwellings with shallow landscaped front gardens. With their matching chimney stacks, vertical sash windows and firmly aligned front boundary and building lines the frontages have a pleasing harmonious rhythm when viewed from the street.
13. During my site visit, I observed the appeal building, from the eastern edge of what is defined as Sub Area 2 along Mansfield Road and Savernake Road. Located on the opposite side of Mansfield Road and with its frontage facing away from the dwellings that define this part of the MCA, the appeal building appears physically unconnected from the heritage asset. While the appeal building's roof and frontage were visible, it did not appear as a dominant or unsettling presence from where I viewed it. Moreover, the space between the Sub Area and the appeal site is interrupted by buildings that are intrinsically more modern in contrast, which themselves have an encroaching effect on the MCA. Overall, I did not consider that the appeal building alters the general experience and understanding of the elements that contribute to the MCA's significance, and therefore I found no harm to its setting.
14. I did not observe any clear views of the frontages of dwellings facing Oak Village and the corresponding elevation of the appeal property. Nevertheless, there were glimpsed views of the corner of the appeal building through the gap between the side elevation of 15 Oak Village and the rear of 15 Mansfield Road. The scale of the physical changes to the building's envelope did not appear overtly greater or incongruous at this location.
15. More prominent views of the appeal building's rear elevation are present from some of the rear gardens of Oak Village. My observations were confined to Nos 7 and 16 Oak Village, however, it was obvious from the relatively undeveloped, landscaped and open setting of adjoining gardens that the appeal building is visible from some of these spaces also. The appeal building's design

² Mansfield Conservation Area Appraisal and Management Strategy, December 2008

concept of large window openings, balustrading, expansive areas of light render and the rear elevation's cascade of parapet walls remains unchanged by the alterations to the building. The increase in its dimensions, notably its height, although perceptible did not result in the building taking on a fundamentally different design and scale that harms the immediate setting of the built environment when viewed from amenity spaces in this part of Oak Village. My site visit also took in views from Lamble Street, however, the changes to the building were not obvious or perceptible due to physical interruptions in the views from trees and boundary walls.

16. In considering the effect on the character and appearance in more general terms, the Council's concerns centre on the increased scale of the appeal building being out of harmony with the surroundings. However, the appeal building sits amongst properties of contrasting architectural styles and scales, while the approved scheme was taller than the parade of two storey commercial properties at Nos 1-7 Mansfield Road. Although the appeal building now rises above the ridgeline of Nos 13 and 15 Mansfield Road, the height increase is marginal and it has not amounted to the appeal building excessively projecting above the neighbouring roof when viewed from short and medium range views from Mansfield Road. Moreover, the width of the appeal building, and its three-storey height remains comparable to that of its neighbour.
17. The two-storey side element incorporates a greater increase in height than the main three storey part of the building, however, it continues to occupy a concealed position set back from the front building line and below the parapet wall of the three-storey element. Views of this part of the proposal are limited from the street due to its position, while it will respect the scale of the adjoining building at Nos 13 and 15 by aligning with the eaves height and being set below its ridgeline. Overall, the massing and height of the building is appropriate in its setting and displays a coherent and appropriate architectural language that does not unacceptably detract from the approved scheme.
18. For all these reasons, I conclude that the appeal development will be acceptable in terms of its impact upon the character and appearance of the area, including the setting of the MCA and the NDHA. It therefore accords with Policies A1, D1 and D2 of the Local Plan. These when taken together and amongst other criteria, require development to respect local context and character, while resisting development that causes harm to a conservation area. The development will also comply with the Framework which requires heritage assets to be conserved in a manner appropriate to their significance.

Living Conditions

19. When the Council made its assessment of the application, it was evident that the mitigation to overcome privacy concerns as set out in conditions in the 2014 permission were not in place. From my site visit, I noted that the external balustrading, boundary screens and planting were in position at first floor level, whilst a Juliette balcony has been installed across the second-floor patio doors. These appendages provide an acceptable level of screening that prevent harmful overlooking into the neighbouring garden areas at Oak Village, whilst the external outdoor areas restricted to maintenance use can be controlled by a condition.
20. Consequently, I conclude that the appeal development will not harm the living conditions of neighbouring occupiers in respect of privacy. It will therefore

accord with Policies A1 and D1 of the Local Plan, that amongst other considerations require that development proposals protect the amenity of neighbours.

Parking

21. The area surrounding the appeal site is currently experiencing parking stress and further on-street parking will exacerbate this situation. I note that a commitment was made by the developer to prevent residents from obtaining parking permits. Parking for the development will otherwise be limited to one off street space and 1 parking permit. Preventing residents from obtaining parking permits will promote walking, cycling and the use of public transport.
22. The Appellant has provided a deed of variation to the planning obligation relating to the 2014 permission. Such agreements are considered the only lawful and enforceable means of restricting access to parking permits, given that they need to control activities outside the development site, which is not something that a planning condition can achieve. I am satisfied that this will provide an adequate means of controlling parking and encourage occupiers of the flats to use non-car related modes of transport. I have assessed the terms of the planning obligation that will secure this, further below.
23. The development will consequently result in acceptable parking arrangements being secured that will not harm highway safety, while at the same time will promote sustainable modes of transport. It therefore accords with Policies T1, T2, A1 and DM1 of the Local Plan, which in part seek to limit the availability of parking and promote walking, cycling and public transport, while mitigating the impact of car parking through a legal agreement.

Other Matters

24. Reference has been made to roller shutters added to windows on the rear elevation of the appeal building. These are not shown on the submitted drawings and have not formed part of my assessment. The Appellant also indicates that permission for these will be pursued with the Council separately.
25. I have assessed the alterations to the appeal building from Nos 7 and 16 Oak Village. Where the building's height has increased an adequate distance from neighbouring gardens will be maintained such that the alterations do not unacceptably enclose the space or result in a more dominant structure over and above that approved by the approved scheme. I do not therefore consider that the outlook of neighbouring occupiers is harmed.

Planning Obligation and Conditions

26. The submitted deed of variation effectively replicates the matters set out in the planning obligation which related to the 2014 permission. No objections were raised to the provisions of the new obligation, and based on the evidence before me, I conclude that it meets the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore taken it into account and given weight to those matters which go beyond mitigation related to the impact of the development.
27. I have considered those conditions imposed on the 2014 permission and further conditions suggested to me, amending them were necessary in accordance with the Planning Practice Guidance (PPG). I have also sought the views of the main

- parties on conditions that require the agreement and implementation of further details relating to the appeal development.
28. The plans condition is necessary as the development has been undertaken and I have listed the plans in the Decision.
 29. The submitted plans show an area that can be used for the storage of bicycles; however, I have no details of the type of cycle parking or the layout and I consider it necessary that details for the provision of 7 bicycles is provided within the time limit I have imposed. This will ensure that alternative modes of transport such as bicycles can be effectively stored within the site. Similarly, I have imposed a condition requiring the agreement and implementation of an area for the storage of bins within a specified time period. This is necessary to ensure adequate facilities are provided for residents and that an acceptable location is agreed.
 30. The cycle and bin storage conditions are imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the cycle and bin storage areas before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met.
 31. I note that the appellant has suggested a different form of wording for the cycle and bin storage conditions, that does not include a clause outlining the consequence of the conditions not being complied with within the time limit imposed. The omission of such a clause would render the conditions unenforceable. Accordingly, and without an alternative form of phrasing suggested by the appellant, I have worded the conditions to include such a clause thus making them compliant with the test of enforceability set out in the PPG.
 32. It is necessary in the interests of protecting the privacy of the occupiers at Oak Village that the original condition requiring the planting along the balconies is safeguarded and I have amended it slightly for clarity. I have also imposed a condition which restricts parts of the balcony areas to maintenance purposes to further protect neighbouring privacy. I note that the balustrading and privacy screens have been installed on the appeal building, however, given the elevated siting of these areas and the proximity to neighbouring occupiers I consider it necessary that a stand-alone condition is imposed to ensure that these fixtures remain in order to safeguard neighbouring privacy. Furthermore, there was no suggestion, from my site visit, that the physical requirements of the conditions I have imposed to safeguard privacy could not be complied with.
 33. I have reapplied the condition that restricts the installation of external fixtures to the building. This is considered necessary to control the appearance of the building and the surrounding area.
 34. Since the development has been completed and is occupied it is not necessary to impose a time limit for implementation condition, and materials and construction management plan conditions. Moreover, I am satisfied that soft and hard landscape details have been implemented, therefore this condition is also not necessary.

35. The appellant has confirmed that the features and facilities required by the Lifetime Homes condition of the previous permission have been implemented. The Council has not contradicted this and therefore I have no reason to dispute the condition's implementation. On this basis, I do not consider that it is necessary to further impose it.

Conclusions

36. For the reasons given above, and having considered all matters raised, I conclude that the appeal should succeed. I have granted a new planning permission without the disputed condition but substituting it with another and reinstating those undisputed conditions that are still subsisting and capable of taking effect.

R E Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 1110-BA-101; 1110-BA-102; 1110-BA-103; 1110-BA-104; 1110-BA-105; 1110-BA-106; 1110-BA-107; 1110-BA-108; 1110-BA-109; 1110-BA-110; 1110-BA-111; 110-BA-112 C; 1110-BA-113 C; 1110-BA-114 B; 1110-BA115 B; 1110- BA-116 B; 1110-BA-117 B; 1110-BA-118 B; 1110-BA-119 B; 1110-BA-120 B; 1110-BA-121 B; 1110-BA-122 B; 1110-BA-123 B; 1110-BA-124 B; 1110-BA-125 B; 1110-BA-126 B; 1110-BA-127 B; 1110-BA-128 B; 1110-BA-129 B, 1110-BA-130 B and Design and Access Statement dated 19th April 2018.

2. Unless within 6 months of the date of this decision a scheme for cycle parking within the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the occupation of the building as residential flats shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the occupation of the building as residential flats shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved cycle parking scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3. Notwithstanding the approved drawings, unless within 6 months of the date of this decision a scheme for the storage of bins within the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the occupation of the building as residential flats shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the occupation of the building as residential flats shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved cycle parking scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4. The privacy screens, glass balustrades and Juliette balcony on the rear elevation as shown on plan nos 1110-BA-114 B; 1110-BA115 B; 1110-BA-119 B; 1110-BA-120 B; 1110-BA-121 B shall be permanently retained.

5. The planting on the 1st floor rear balconies in accordance with plan nos 1110-BA-114 B and 1110-BA-128 B shall be permanently maintained and retained.
6. The flat roofs marked 'A and B' at 1st floor level shown on plan no 1110-BA-114 B and the flat roof at 2nd floor level shown on plan no 1110-BA-115 B shall not be used as roof terraces and shall be used for maintenance purposes only.
7. No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes shall be fixed or installed on the external face of the buildings without the prior approval in writing of the local planning authority.

End of Schedule