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# Appeal Decision

Site visit made on 21 July 2020

**by J Bowyer BSc(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> July 2020

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**Appeal Ref: APP/X5210/D/20/3252688**

**28 Harley Road, London NW3 3BN**

- 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 Sheikh Mohamed and Sheikh Hamdan Shaya Alhamed against the decision of the Council of the London Borough of Camden.
  - The application Ref 2019/4214/P, dated 15 August 2019, was refused by notice dated 6 March 2020.
  - The development proposed is formation of a new driveway access including a new vehicle cross over, associated boundary treatments and resurfacing of the existing driveway.
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## Decision

1. The appeal is allowed and planning permission is granted for formation of a new driveway access including a new vehicle cross over, associated boundary treatments and resurfacing of the existing driveway at 28 Harley Road, London NW3 3BN in accordance with the terms of the application, Ref 2019/4214/P, dated 15 August 2019, subject to the conditions set out in the attached schedule.

## Procedural Matters

2. As part of the appeal, the appellant has submitted an amended drawing showing 'Proposed Entrance and Driveway Plans' (ref 1163-211 rev A). This shows a reduction in the area of hardstanding to the front of the site in comparison to the drawing originally submitted to the Council and listed on the decision notice (ref 1163-211). I am mindful that the appeal process should not be used to evolve a scheme<sup>1</sup>. However, in this case, the amended plan reflects the layout indicated at Figure 1 and on the BS5837:2012 Tree Protection Plan ref MH269-003 included at Appendix E of the appellant's Arboricultural Report dated November 2019 (AR). The AR was before the Council and interested parties as part of the application. Given also the relatively minor changes which do not materially alter the development, I am satisfied that my consideration of this revised plan would not prejudice the interest of any party. I have therefore determined the appeal with reference to the amended plan ref 1163-211 rev A.

## Main Issues

3. The main issues are:
  - i) the effect of the proposal on the character and appearance of the Elsworth Road Conservation Area (CA) including with regard to the effect on trees; and

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<sup>1</sup> Annex M of the Procedural Guide Planning Appeals - England

- ii) whether or not the proposed access and parking arrangements would be acceptable with specific regard to drainage and the use of private motor vehicles.

## **Reasons**

### *Character and Appearance*

4. The appeal site is within the Elsworthy Road CA. The significance of the CA derives in part from the spacious leafy streets and generously laid out plot sizes, with buildings arranged within a mature landscape setting behind defined frontages. Marking the frontages, the Elsworthy Road Conservation Area Appraisal and Management Strategy 2009 (CAAMS) notes that the original boundary treatments of small walls, privet hedging, and wooden gates and gateposts were designed to increase the green, leafy environment of the quiet residential streets. Despite the replacement of some original front boundaries, including by brick gateposts or metal railings, the traditional uniform pattern of defining frontages which separate the pavement from front gardens and act as a setting for the built form behind has largely been retained.
5. Forward of No 28, the appeal site is predominantly laid as hardsurfacing, although an irregularly-shaped area of soft landscaping extends across most of the width of the front part of the site and includes a large horse chestnut tree. There is also further planting, including some smaller trees, along the boundaries at both sides of the site. Close to 30 Harley Road is a gated vehicular access, but the rest of the front site boundary is formed by a low brick wall with painted railings above, although at the time of my visit, there was also construction hoarding along the front of the site. The defined frontage of the site and mature horse chestnut tree which is a conspicuous feature in the street scene reflect and complement typical attributes of the CA. I therefore agree with the CAAMS which identifies that the site makes a positive contribution to the CA.
6. The proposal would increase the overall amount of hardsurfacing on the site. However, the increase would be relatively small. Moreover, although often complemented by landscaping to the margins, I saw that many buildings near to the site have frontages which consist in large part of varied forms of hardsurfacing. Against this context, neither the extent of hardsurfacing nor the proposed materials of granite setts would be out of keeping. Planting to the site's front and side boundaries would also help to soften the appearance of the frontage and would sustain a landscaped setting for the street and appeal building.
7. The AR reflects the site layout shown on the amended drawing ref 1163-211 rev A. It indicates that incursion of the new hardsurfacing within the root protection area (RPA) of the mature horse chestnut tree (T1) which is to be retained at the front of the site would in part be offset by the removal of an area of existing hardsurfacing. As a result, the AR notes the proposal would accord with guidelines within BS5837:2012 that new hard surfacing should not exceed 20% of any existing unsurfaced ground within the RPA.
8. The AR also specifies that removal of existing surfacing within the RPA of both the horse chestnut and a boxelder maple on the boundary with No 30 (T3) should not penetrate beneath the existing sub-base, but that if this is not possible then a no-dig construction methodology would be necessary. A

construction exclusion zone during development is also identified. These measures would reduce the impact of development on the trees to be retained, and from the information before me, I have no reason to doubt that they would be effective. I am therefore satisfied that there would be adequate safeguarding of the retained trees.

9. Four trees would be removed. The AR identifies that a boxelder maple tree (T2) on the boundary with No 30 and prunus tree (T6) on the boundary with 26 Harley Road are unsuitable for retention. The Council have not disputed this assessment and from my visit, I also see no reason to disagree. The cherry laurel (T5) close to the boundary with No 26 is noted within the AR as of low quality, and while the palm (T4) is identified as of moderate quality with a life expectancy of at least 20 years, the AR observes that one leader is dead.
10. In all cases, the fairly small size of the trees to be removed limits their visibility from the surrounding area. Furthermore, where they are visible from Harley Road, they are for the most part seen in the context of the larger boxelder maple on the boundary with No 30 (T3) or the substantial horse chestnut (T1) which are to be retained on the site, as well as the established street trees opposite. Given these factors, I find that they add little to the tree-lined streetscape which the CAAMS identifies is particularly a feature of this western part of the CA, and their overall contribution to the verdant quality of the area beyond the appeal site is accordingly limited.
11. In place of these trees, new hedging would be planted to the boundaries of the site. The AR also suggests further ornamental planting close to the boundary with No 26 and to the central area of the site which should look to incorporate smaller trees and/or larger shrubs.
12. Although set behind the existing boundary railings, the close proximity of the hedge and planting to the front part of the site would be more visible alongside the street than the existing small trees, helping to reinforce the landscaped condition of the site and street scene. Planting of suitable size and species could be secured by an appropriately worded planning condition to ensure this. With regard to the evidence before me and the type and condition of the existing landscaping present, I am satisfied that this would also enable an increased mix of species which would benefit biodiversity and the nature conservation importance of the site overall.
13. Given these factors and their limited contribution to the character and appearance of the area, I consider that the proposed removal of trees would be justified in the context of the development. Together with the retention of the horse chestnut and larger boxelder maple on the site, I find that the verdant character and mature landscaped appearance of the area would be maintained.
14. Turning to consider the new vehicular access, a section of the existing low wall with railings above close to No 26 would be removed and replaced by a gate set between brick piers. There is significant diversity in the height and types of boundary treatments near to the appeal site where I saw hedges; railings set between brick piers; low walls topped by railings, hedges or fencing; as well as some open frontages. A number of sites also include multiple accesses, including both No 26 and No 30. I note that these dwellings have wider front boundaries than the appeal site and the differing circumstances highlighted by the Council in respect of the annex to the side of No 26 and that No 30 is positioned on the junction of Harley Road with Wadham Gardens.

15. Even so, I saw little consistency in the width of plots or sections of boundaries to other sites nearby, and while there is a single wide crossover to the front of 9 Harley Road opposite the appeal site, there are still 2 2 vehicle access gates within the boundary of the dwelling which is dwelling is on a narrower plot than the appeal site. Given this lack of uniformity, the provision of 2 accesses to the appeal site and the width of retained wall between them would not be inconsistent or jarring. The similar design of the replacement boundary to the existing gate would additionally help it to blend in with the street, as well as retaining views into the site and the spacious character of the area.
16. I recognise that the CAAMS comments that low walls topped by railings or hedges retain an important linearity at street level, and that their loss would damage the character of the CA. The proposal would introduce a break in the wall, but the section of wall to be removed is of fairly limited width, and would be replaced by a gate on the same alignment. As a consequence, it would maintain a clear distinction between street and garden as well as the linearity in views along the street scene which the CAAMS notes is important. Moreover, planting and the hedging along the front boundary would also be sympathetic, softening the appearance of the site and reinforcing the landscaped vista along Harley Road into the CA which is identified as a notable view within the CAAMS. For these reasons, I find that the effect of the proposed boundary alterations on the character and the appearance of the CA would be neutral overall.
17. While I have not found harm in this regard, I also note that the Council has not disputed that the appeal site would benefit from permitted development rights under Schedule 2, Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This includes provision for the alteration of a gate, fence, wall or other means of enclosure and would allow for a similar replacement front boundary to that under the appeal proposal. The comparable effect of alterations through permitted development would further be a significant material consideration.
18. The proposal would not accord with advice within the CAAMS that alteration to front boundaries will be resisted, particularly if associated with the creation of hardstanding or parking. Nevertheless, while useful, this guidance is just that. The particular circumstances of this case mean that I find that the replacement boundary would not damage the character or appearance of the CA, outweighing the guidance within the CAAMS.
19. Taking all of these factors into consideration, the development would not cause unacceptable harm to trees and would assimilate well within the street scene. The significance of the CA would not therefore be adversely affected and I also find that the character and the appearance of the CA would be preserved as sought by the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
20. I therefore conclude on this main issue that the proposal would accord with Policies D1, D2 and A3 of the Camden Local Plan 2017 (CLP). Amongst other things, these policies seek high quality design that respects local character, trees and heritage and which protects features with nature conservation value. I also find no conflict with advice within Camden Planning Guidance Transport 2019 (CPG Transport) that installation of a crossover will not be acceptable where alterations to the boundary would have a detrimental impact on the street or on amenity, such as through felling of valuable trees.

### *Access and Parking*

21. The increased hardsurfacing on the site would largely result from the new access, while space available for parking would remain comparable to the current arrangement. There is currently a functioning vehicular access which serves this parking, and while the development may increase convenience for occupiers, the difference in practical terms from the existing situation is limited. As a consequence, I consider it unlikely that the development would encourage any meaningful increase in private vehicle use or associated impacts on air quality. Moreover, there is no compelling evidence to show that the proposal would be detrimental to provision for pedestrians, cyclists or public transport as sought by Policy T1 of the CLP.
22. CLP Policy T2 indicates that the development of boundary treatments and gardens to provide vehicle crossovers and on-site parking will be resisted, and concerns relevant to the application of this aspect of the policy are noted at paragraph 10.21 as effects on the character of areas, drainage systems and flood risk as well as through the loss of on-street parking.
23. I have already found no harm would be caused to the character of the area. Against the Council's concerns that the increase in hardsurfacing on the site would increase surface water runoff, the appellant has commented that the proposed surfacing would offer greater potential to reduce surface water runoff from the site in comparison to the existing impermeable surfacing. I agree, and given the evidence before me and the small increase in area of hardsurfacing, I see no reason that satisfactory provision for the management of surface water runoff could not be secured by way of a planning condition. This would ensure no unacceptable pressure on drainage systems or increased flood risk.
24. The site is within a controlled parking zone (CPZ). The new access would result in loss of part of an on-street parking bay. In this regard, the proposal would be contrary to section 7.5 of CPG Transport which advises that vehicular crossovers will not be acceptable in situations including where a loss of on-street parking would result. Nevertheless, this does not mean that the loss of parking would inevitably result in harm, and I have not been directed to any absolute requirement within the development plan to retain on-street parking. Instead, I note that the supporting text to CLP Policies A1 and T2 highlight a need to avoid creating a shortfall or loss of much needed on-street parking.
25. The appellant's Parking Survey and Statement dated 25 July 2019 indicates that the site is not within an area of parking stress. I accept that this is based on just 2 overnight surveys, but the Council has not sought to challenge the conclusions of this survey. At my visit which took place on a weekday morning, I also saw a large number of available on-street spaces nearby. I note that interested parties have referred to use of parking by visitors to surrounding properties and businesses and upcoming works associated with High Speed Two. However, there is no clear evidence before me that the proposal would add to any existing parking problems, or cause parking pressure which CPG Transport's key messages identify as situations where applications will not be approved. Nor do I have reason to consider that the development would be otherwise detrimental to highway safety or the operation of the CPZ.
26. I acknowledge that CPG Transport makes no specific allowance for parking survey outcomes. Nevertheless, in the absence of any identified harm relating to the loss of parking, I see no justification to withhold permission in this case.

27. For these reasons, I conclude on this main issue that the proposed access and parking arrangements would be acceptable. In this respect, I find no conflict with Policies T1, CC3, CC4 or A1 of the CLP and the development would broadly comply with Policy T2. Amongst other matters, these policies seek to promote sustainable transport and ensure that development would not be detrimental to provision for parking, flood risk and air quality.

### **Other Matters**

28. No storage for cycles, refuse or recycling is shown to the front of the site, but this reflects the existing situation so would not justify withholding permission.
29. My attention has been drawn to appeal decisions relating to new vehicle crossovers and alterations to boundary treatment. From the limited information before me, the appeals concern different conservation areas, though my conclusions on the main issues would appear consistent with the decision at 6 Cleve Road<sup>2</sup> where no harm was identified to the character or appearance of the area or vehicle use. The decision at 1 Lyndhurst Road<sup>3</sup> also refers to increased provision for parking on the site and alludes to the loss of an original detailed front boundary wall and increased visibility of hardstanding and parking detracting from the locality. The circumstances are not therefore directly comparable with those which apply in this appeal. I have in any case reached my own conclusions on the appeal according to the evidence.

### **Conditions and Conclusion**

30. I have considered the Council's suggested conditions with regard to the tests outlined at paragraph 55 of the National Planning Policy Framework. In addition to the standard time limit condition (1), I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interests of certainty (2). A condition to control the external materials is also necessary in the interests of the character and appearance of the area (3) but the proposed hardsurfacing would not match the existing and so for the sake of clarity, I have amended the Council's suggested condition to refer to the use of materials as shown on the submitted plans.
31. Conditions to secure replacement planting (4) and surface water drainage (5) are also necessary in the interests of the character and appearance of the area and to ensure that flood risk is not increased. Condition 4 is a pre-commencement condition as details need to be agreed before any works take place to ensure that they are satisfactory, and the appellant has agreed to this. I have also taken into account comments made by the appellant on the wording of condition 5, with an amendment to require implementation of the agreed works. Finally, a condition to require development in accordance with the submitted AR (6) is also necessary to protect retained trees.
32. Subject to these conditions, and for the reasons given above, the proposal would comply with the development plan when it is read as a whole. I therefore conclude that the appeal should be allowed.

*J Bowyer*

INSPECTOR

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<sup>2</sup> Appeal reference APP/X5210/W/19/333752

<sup>3</sup> Appeal reference APP/X5210/W/19/3229977

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1163-200, 1163-201 and 1163-211 rev A.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan ref 1163-211 rev A.
- 4) No works or development shall commence until a full specification of all proposed tree planting and soft landscape works has been submitted to and approved in writing by the Local Planning Authority. The specification shall include the quantity, size, species, and positions or density of all trees and soft landscape planting, how they will be planted and protected and the proposed time of planting. The planting shall be carried out in accordance with the approved specification.

If within a period of 5 years from the date of planting, any tree or hedge (or any tree or hedge planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree or hedge of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or hedge unless the Local Planning Authority gives its written consent to any variation.

- 5) The new access, cross over and driveway hereby permitted shall not be brought into use until details of the surface materials and management of surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter maintained in accordance with the approved details.
- 6) The development shall be carried out in accordance with the submitted BS5837:2012 Arboricultural Report, reference GHA/DS/12260:18, dated November 2019 and the appended BS5837:2012 Tree Protection Plan ref MH7269-003.