

Development Management
Regeneration and Planning
London Borough of Camden

BY EMAIL ONLY:

25th May 2021

Dear Sirs

14-19 Tottenham Mews, London W1T 4AA – 2020/5633/P

1. I write on behalf of the Tottenham Mews Residents Group (“the Association”) and further to their detailed (and clearly evidenced) objection to this Application. This letter should be read alongside that objection and the supporting reports, provided by and on behalf of the Association.
2. By way of a document dated 22nd March 2021 (submitted to the LPA), the Applicant set out a schedule of responses (“the SoR”) to the Association’s objection of 25th February 2021. I write in response to the SoR.
3. You will be aware that on 13th December 2012, consent was granted for the erection of a 5 storey building, including basement level and roof level plant enclosure to provide a Mental Health Resource Centre at the site (Ref: 2012/4786/P) (“the 2012 Consent”). Due to the passage of time, the 2012 Consent has now lapsed. The Association is particularly concerned with the Applicant’s continued reliance on this lapsed consent in support of its Application. Whilst it is noted that at Box 5 (page 10) of the SoR that the Applicant sets out that it considers that it does not “rely heavily” on the 2012 consent, this is clearly not the case at all - for example - the 2012 Consent appears to be relied on as a key, material consideration in the way the Applicant has sought to utilise it to present “...a *sensible baseline condition from which to consider the effects of the proposed scheme on the neighbouring residential properties (the ‘consented baseline’)* as it offers a *logical indication of the form of massing that has previously been considered appropriate for this site*” (see paragraph 4.2 of the Daylight and Sunlight Report dated November 2020, and supplied in support of the Application).

4. It is not accepted that the 2012 Consent provides a “sensible baseline” from which to consider the effects of the proposed scheme on 11-12 Tottenham Mews. The current situation at Tottenham Mews and the progression of the Council’s planning policy and guidance is such that the 2012 Consent can no longer be seen as a material consideration.
5. Put simply, it has been just under 9 years since the 2012 Consent was granted and the design and purpose of the development currently proposed, together with:
 - the current residential usage of Tottenham Mews (as opposed to that in 2012)
 - the adoption of:
 - the 2014 Fitzrovia Area Action Plan;
 - the 2017 Local Plan and the
 - 2021 Camden Planning Guidance – Amenity

makes it clear that circumstances at the site and current planning policy are now so significantly different from 2012 that permission for this development should be refused. For the reasons set out in this letter, and the earlier correspondence from, and on behalf of, the Association, the LPA is invited to distinguish the 2012 Consent and place little, if any, weight to it in considering the current application.

6. It is accepted that previous decisions can be material considerations. They are not, however, binding on future applications and as such (for the purposes of this Application) the LPA still retains the discretion to exercise its own judgment having had regard to the circumstances of the 2012 Consent. In considering the 2012 Consent, the LPA will have to decide whether or not there are grounds from departing from that earlier decision. As set out briefly above, the Association considers that, given the passage of time since the 2012 Consent was granted and the way in which the residents of Tottenham Mews inhabit their respective properties and make use of the rooms therein, together with the protection to local amenity afforded by the Fitzrovia Area Action Plan and the Local Plan (both of which were adopted after the 2021 Consent) the LPA is at liberty to, and indeed should, depart from that decision and is not bound to follow all, or any, of it.
7. The rationale behind treating previous decisions as being capable of forming material considerations to assist in protecting the principle of consistency in planning decisions – see *North Wiltshire District Council v Secretary of State for the Environment and Clover [1992] 3 PLR 113*. The principle of consistency is not an absolute principle, and an LPA may disagree with an earlier decision which is material and drawn to its

attention, provided that reasons for disagreeing are given and regard is had to the importance of consistency.

8. Similarity of previous decisions depend very much on the circumstances of each case – and whether a previous decision is “obviously material” is not the sole test for an LPA – see *St Albans City and District Council v Secretary of State for Communities and Local Government* [2015] EWHC 655 (Admin). Indeed, in *R v Secretary of State for the Environment ex parte Barber* [1996] JPL 1034 the Court identified an “acceptable” lower test of as to whether or not a previous decision was “sufficiently closely related” to oblige a decision-maker to have regard to it and to address it in their decision.
9. If a previous decision is distinguishable, then it can be said not to be a material consideration. The Association is firmly of the view that the 2012 Consent can be so distinguished.
10. Pages 16-26 of the Association’s Objection sets out very clearly the differences between the development for which the 2012 Consent allowed for, and the effect it has on 11-12 Tottenham Mews. Those matters are not repeated for the purposes of this letter.
11. However, the overriding concern is in the way the Applicant seeks to rely on the 2012 Consent to justify a departure from the BRE Guidance “*Site Layout Planning for Daylight and Sunlight: a good practice guide*” in the way it considers the LPA should deal with the clearly significant and harmful impact the proposed development will have upon 11-12 Tottenham Mews. In a short report, prepared by Right of Light Consulting (dated 8th January 2021) (“the Right of Light Report”), the impact that the proposed development will have upon the levels of daylight and sunlight currently available to the residents of 11-12 Tottenham Mews is set out in stark detail. The report identifies a number of moderate and major adverse impacts that will be experienced should the development be granted consent in its current form.
12. It is nearly 9 years since the 2012 Consent was granted. At the time the 2012 Consent was granted, the Officer considered (in some detail) the issue of daylight and sunlight on numbers 11-12 Tottenham Mews. The consideration included the assessment of Daylight and Sunlight reports that indicated serious non-compliance with the BRE Guidance (see paragraph 3.2 of the 2012 Daylight/Sunlight Report).
13. It is worth setting out the Officer’s analysis (insofar as it relates to 11-12 Tottenham Mews) from her 2012 report in full:



6.4.3 **Daylight and Sunlight** – The application is accompanied by two independent Daylight and Sunlight Reports by GVA which were undertaken to assess the impact on no. 10 Tottenham Mews (currently in residential use) and nos. 6 and 11-12 Tottenham Mews which currently have planning permission to convert to residential (references for the application are: 2010/4069/P – no. 6 and 2011/5279/P – no. 11-12).

...

6.4.6 **No. 11-12 Tottenham Mews** – In relation to 11-12 Tottenham Mews the report demonstrates that there would be a reduction in VSC that would not comply with the BRE guidelines. The rooms at lower ground and ground floor level would have access to daylight from the rear light well. The windows on the Mews elevation at ground floor level do not serve habitable rooms, therefore there is no daylight requirement for these rooms. The report demonstrates a reduction in VSC of around 45% at first floor level, 35% second floor level, and 21% at third floor level. However, the ADF demonstrates a high level of compliance to the majority of the living rooms and bedrooms with all bedrooms exceeding the suggested 1%. 3 of the open plan kitchen/living area fall below the suggested 2% (for kitchens) at 1.42%, 1.66% and 1.88%, however if the balcony was removed, as suggest in the BRE guidelines, the room which is shown as receiving 1.42% would receive a minimum of 1.5% meeting the standard for a living rooms. Good sunlight levels are achieved at first, second and third floor level. At 11-12 Tottenham Mews there would be a noticeable reduction in daylight when reviewing the VSC, however the ADF result show that the proposed condition maintains reasonable levels of daylight in most instances.

6.4.7 The daylight study shows that there would be a noticeable reduction to daylight levels at both No. 6 and 11-12. However, at present these units are not currently in residential use and therefore they do not have occupiers which have enjoyed a certain level of daylight. In view of this it is considered that as long as the units would maintain adequate ADF the units would still provide a good level of amenity for new residential accommodation. The daylight assessment shows that the residential units at Nos. 6 and 11-12 would maintain adequate ADF values, therefore it is considered that it would not be reasonable to refuse the proposal on loss of daylight to neighbouring properties.(emphasis added)

14. There are three important distinctions to make in the above passages to the position in 2012 in comparison to the position at 11-12 Tottenham Mews today:

- It is no longer the case (as set out in 6.4.6 above) that the windows at ground floor level do not serve habitable rooms. Flats 1 and 2 (the living area of each flat being a single double height living area on the lower ground and ground floors) are solely served by a single window (described as the “main window” at paragraph 7.35 of the Applicant's Daylight/Sunlight Report 2020) that allows light into the living area. A mezzanine bedroom in each flat does not directly look out of the main window and relies (apart from a small side window looking out onto a dark external corridor) on natural light being reflected from inside the building. As such, it is no longer the position that there is no daylight requirement for those rooms.
- In contrast with the 2012 position (as set out in 6.4.7) 11-12 Tottenham Mews is now fully occupied and the residents have enjoyed the current levels of daylight for a significant period of time.
- The third distinction concerns the level of reduction in VSC at 11-12 Tottenham Mews. As summarised at page 4 of the Right of Light Report:

The NSL results in Point 2's report also demonstrate that the above flats will experience major adverse impacts as a result of the proposed development. To summarise:

- *The LKD (room R1/19) at Flat 1 will experience a loss of 51.6% and be left with light to 45% of its area*
- *The LKD (room R1 /41) at Flat 3 will experience a loss of 68.8% and be left with light to 28% of its area*
- *The LKD (room R1/43) at Flat 7 will experience a loss of 18.2% and be left with light to 81 % of its area*
- *The bedroom (room R2/43) at Flat 7 will experience a loss of 58.1% and be left with light to 41 % of its area*
- *The bedroom (room R3/43) at Flat 7 will experience a loss of 8.2% and be left with light to 91 % of its area*

15. Clearly these findings represent a significant adverse effect on 11-12 Tottenham Mews:

- If this had been the position back in 2012, it would represent a more significant departure from the BRE Guidance.

- In 2021, when considered together with the factors identified above, it would amount to a clearly unacceptable departure from the BRE Guidance and one that gives rise to a clear reason for refusing permission.
- The change of circumstances at the site and Tottenham Mews generally but specifically 11-12, together with the findings in the Right of Light Report are such that it cannot possibly be said that 2012 Consent can be considered to be a material consideration at all, and certainly cannot be said to provide a sensible baseline for the purposes of measuring the effect of the development on Tottenham Mews. The levels of ADF, described as adequate in the 2012 Officer's Report, can no longer be so described, given the findings of the Right of Light Report.

16. It should also be noted that the entire length of Tottenham Mews, facing the development, will be affected by a loss of light and not just the flats within 11-12 Tottenham Mews. It is anticipated that much of the loss of light to the other properties within Tottenham Mews will be in line with the losses identified in the Right of Light Report.

17. It is understood that a second report has been commissioned by the Applicant (seemingly at the behest of the Association through their evidence submitted in support of their objection) in respect of the actual loss of light to the properties in Tottenham Mews (and it is also noted that an invitation to inspect Flat 1 has not, for reasons best known to the Applicant, been accepted until recently). This will be the first time that the Applicant has undertaken an up to date and real time evaluation of the current levels of light within some of the flats within Tottenham Mews – as opposed to the over reliance on floor plans used previously to produce the Daylight/Sunlight Report 2020.

18. In respect of this second report, the LPA should not consider the Application until it has been submitted and the Association has had an opportunity to consider it, and if needs be, addressed the LPA in respect of its findings. Failure to allow this opportunity would clearly be a reach of natural justice, which would indicate a need for each “side” to be heard, with legal implications should that be denied. There is some indication that the Application may be heard at Committee on 10th June 2021 and, if that is so, it is clearly too late for the Association to access its rights.

19. In addition to the circumstances at the site and Tottenham Mews, since the 2012 Consent, the LPA has adopted the following plans, policies and guidance:

- a. The Fitzrovia Area Action Plan (“the FAAP”)*

- b. The 2017 Camden Local Plan ("the Local Plan")
- c. The Camden Planning Guidance - Amenity ("the CPGA")

which the Application falls to be considered in the light of.

20. The purpose and scope of the FAAP is to help shape the future of Fitzrovia and the western part of Bloomsbury. It aims to do this, in part, by means of *"ensuring that growth takes place in a way that balances the need for residential, institutional and commercial uses whilst supporting the residential community and its facilities and future needs and protecting and enhancing its amenity and quality of life"* (emphasis added). In respect of the significant, adverse reduction to the levels of daylight and sunlight currently enjoyed by 11-12 Tottenham Mews (and in respect of the other points raised in the Objection Letter) the development is clearly not one which could be said to be protecting and enhancing the amenity and quality of life for the residential community.
21. In respect of the Local Plan - Policy A1: Managing the Impact of Development details how the Council will *"...seek to protect the quality of life of occupiers and neighbours. We will grant permission for development unless this causes unacceptable harm to amenity"*. In considering the application of this policy sunlight, daylight and overshadowing are factors to be taken into account.
22. In considering Sunlight, daylight and overshadowing under Policy A1, paragraph 6.5 provides that:
- "Loss of daylight and sunlight can be caused if spaces are overshadowed by development. To assess whether acceptable levels of daylight and sunlight are available to habitable, outdoor amenity and open spaces, the Council will take into account the most recent guidance published by the Building Research Establishment (currently the Building Research Establishment's Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice 2011). Further detail can be found within our supplementary planning document Camden Planning Guidance on amenity."*
23. Clearly, taking into account the BRE Guidance and the significant adverse impact on daylight and sunlight that the development has upon 11-12 Tottenham mews, the development is not acceptable under Policy A1.
24. Section 3 of the CPGA deals with how the Council expects the impact of developments on daylight and sunlight levels to be considered by Applicants. The central tenet of the CPGA is that the LPA's default position is that issues of Daylight and Sunlight are to be assessed with the BRE guidance. Whilst appreciating the flexible approach to that guidance, the

LPA should be reluctant to depart from it - particularly where following the calculations in the guidance results in significant losses in VSC being identified.

25. The reports that have been provided by the Applicant do not demonstrate that the development can provide adequate levels of daylight and sunlight in accordance with Policy A1 - for the reasons set out in the Right of Light Report.

26. In conclusion the Association's position is that:

- the weight to be attached to the 2012 Consent is minimal, if indeed it can be said that any weight should be attached to it at all. For the reasons set out in this letter, and earlier correspondence sent on behalf of the Association, the decision can, and has, been sufficiently distinguished such that the LPA should depart from its conclusions.
- In order to ensure that any development brought forward is in accordance with current planning policy (as opposed to 2012 planning policy) namely the FRAAP, the Local Plan and, indeed, the CPGA it is the Application should be refused given:
 - the circumstances identified by the Officer in her 2012 report (as quoted above) that she considered would allow for permission to be granted at the time no longer applying and
 - the very significant reductions in daylight identified by the reports filed in support of the Application to date.

To grant consent to the Application currently before the LPA would result in granting consent to a development that is clearly not in line with national and local planning policy and, indeed, fails adequately to address and resolve the very significant reductions in light to properties within Tottenham Mews.

Yours faithfully

Simon Bell
Barrister