



---

## Appeal Decisions

Hearing Held 20-21 April 2021

Site visit made on 22 April 2021

**by H Butcher BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 May 2021

---

### **Appeal A: APP/X5210/W/20/3261840**

#### **Land adjacent to Jack Straws Castle, North End Way, London NW3 7ES**

- 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 Albany Homes UK against the decision of the Council of the London Borough of Camden.
  - The application Ref 2020/1828/P, dated 24 April 2020, was refused by notice dated 9 September 2020.
  - The development proposed is the erection of two x four bedroom residential dwellings of three storeys plus basement on west side of car park, and associated landscaping, refuse and cycle stores and reconfigured car parking on remainder of car park.
- 

### **Appeal B: APP/X5210/Y/20/3261841**

#### **Land adjacent to Jack Straws Castle, North End Way, London NW3 7ES**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Albany Homes UK against the decision of the Council of the London Borough of Camden.
  - The application Ref 2020/2577/L, dated 24 April 2020, was refused by notice dated 9 September 2020.
  - The works proposed are underpinning of adjacent existing basement.
- 

### **Decision**

1. Appeal A is allowed and planning permission is granted for the erection of two x four bedroom residential dwellings of three storeys plus basement on west side of car park and associated landscaping, refuse and cycle stores and reconfigured car parking on remainder of car park at Jack Straws Castle, North End Way, London NW3 7ES in accordance with the terms of the application, Ref 2020/1828/P, dated 24 April 2020, subject to the conditions in the attached schedule.
2. Appeal B is allowed and listed building consent is granted for underpinning of adjacent existing basement at Jack Straws Castle, North End Way, London NW3 7ES in accordance with the terms of the application Ref 2020/2577/L dated 24 April 2020 and the plans submitted with it subject to the conditions in the attached schedule.

### **Preliminary matters**

3. The reasons for refusal refer to harm to the setting of Old Court House (Grade II listed) but during the hearing the Council changed their position and said

that the proposal did not harm the setting of Old Court House, and suggested that perhaps the reason for refusal should have referred to the setting of Heath House (Grade II\* listed). However, the Council were not able to elaborate specifically on what harm to the setting of Heath House would arise from the development. Consequently, my main issues deal only with the effect of the development on the setting of Jack Straws Castle. In respect of the settings of other listed buildings in the vicinity of the appeal site I shall, nevertheless, have regard to my statutory duties and address these separately below.

4. Interested parties raised concerns about the living conditions of future occupiers of the proposed houses and the living conditions of existing residents of Jack Straws Castle, the latter having been converted to residential accommodation in 2002<sup>1</sup>. Although not included in the Council's reasons for refusal, from the evidence before me, and following an informal visit to the site before the hearing opened, I considered these matters to be significant. Consequently, they were raised in detail at the hearing and the main parties were given the opportunity to comment. No one would therefore be prejudiced by my taking these matters into consideration in the determination of this appeal.
5. S.7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that listed building consent is only required for any works for the demolition of a listed building, or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. The houses, as confirmed at the hearing, would directly abut, but take no support from, and would not be an extension of Jack Straws Castle. On that basis listed building consent is not required for the erection of the two houses.
6. The Council refused listed building consent on grounds of harm to the settings of Jack Straws Castle and Old Court House but these matters would not fall for consideration under a s.20 appeal. Listed building consent is required for the underpinning of the basement at Jack Straws Castle but the Council raised no objection to these works. With these points in mind there are no main issues for me to consider in respect of Appeal B. Nevertheless, to satisfy the requirements of s.16(2) of the Act I consider the effect of these works on the special architectural and historic interest of Jack Straws Castle in my other matters below.
7. In Appeal A the Council's decision notice sets out five reasons for refusal. Reasons 2-5 all relate to the absence of a legal agreement to secure various obligations. However, following discussions with the appellant these are no longer being pursued by the Council following the submission of a S106 agreement. I deal with this legal agreement later in my decision.

### **Main Issues**

8. The main issues in Appeal A are therefore:
  - The effect of the development on the setting of Jack Straws Castle (Grade II listed) and whether it would preserve or enhance the character or appearance of the Hampstead Conservation Area, and the effect of the development on the character and appearance of the surrounding area;

---

<sup>1</sup> PWX0102/LWX0102191

- The effect of the development on the living conditions of existing and future residents, having particular regard to outlook, light, privacy and outdoor space.

## **Reasons**

*Setting of Jack Straws Castle, Hampstead Conservation Area, and the character and appearance of the surrounding area.*

9. Jack Straws Castle is a Grade II listed building dating from 1962-64. It was originally built as a public house and replaced an earlier 18<sup>th</sup> century public house of the same name, on the same site, which was bombed in World War II. The building was designed by Raymond Erith, a well-known traditional architect, and the design was inspired by early 18<sup>th</sup> century coaching inns. Its overall proportions, however, and in particular, its wide principle elevation with three roughly evenly sized stories gives it a distinctive twentieth century quality. Due to its imposing size and form, its siting at a road junction, at a high point in the landscape, and adjacent to Hampstead Heath, Jack Straws Castle forms a prominent landmark in the immediate surrounding area.
10. The appeal site is located within the car park of Jack Straws Castle. The north side of Jack Straws Castle, formerly a kitchen garden, was levelled to create a car park as part of its re-build to facilitate vehicular access to the public house cellars. This area therefore has a functional and historic relationship with the listed building. The north side of Jack Straws Castle is also a prominent and visible elevation which can be appreciated from the immediate surrounding area to the property. The appeal site therefore clearly falls within the setting of Jack Straws Castle.
11. The appeal site also falls within Hampstead Conservation Area, specifically Sub-Area Seven: Whitestone Pond. The Hampstead Conservation Area Appraisal identifies Jack Straws Castle along with the Grade II listed Old Court House to the south and Grade II \* listed Heath House to the north-east as a distinguished group of buildings around the war memorial, also Grade II listed. This group of buildings of historic interest therefore contribute to the character and appearance of the conservation area.
12. The proposal is for two new houses to abut Jack Straws Castle on the north side elevation. They would have a classical, Georgian inspired design and would be set well back from the road junction to the front and sit lower than Jack Straws Castle itself. They would also have brick elevations which would contrast with and set them apart from the listed building which is predominantly clad with cream painted weatherboarding. The result would be that they would not interfere with the design of the listed building but would appear as separate and stand-alone dwellings which would be subservient to and would not detract from the 'landmark' character of Jack Straws Castle.
13. On the opposite side of Jack Straws Castle, the south elevation, is Old Court House (Grade II listed) which dates from the early 18<sup>th</sup> Century and has the appearance of a short terrace of Georgian style houses of varying sizes and designs. These are also set back from the main front elevation of Jack Straws Castle. In this context, the overall design, scale and juxtaposition of the proposed dwellings in conjunction with Jack Straws Castle would be broadly in-keeping with that at Old Court House, and thus, appropriate in context.

14. The proposed dwellings would be set sufficiently back so as to leave the principal elevation unaffected and the main body of the building on the north side exposed and visible, thereby retaining the imposing drama of the building here. Instead, the dwellings would abut a lower, rear, brick storey which is visually distinct and separate to the main body of the building due to its pared down design and different elevational treatment<sup>2</sup>. This part of Jack Straws Castle has also more recently been extended with an additional storey and crenulations<sup>3</sup>. Overall, therefore, the proposed dwellings would not detract from Erith's implemented design for Jack Straws Castle.
15. It is important to note at this juncture that the scheme architect is Quinlan Terry, one of the country's leading classical architects. In addition to this, and most notably in respect of this scheme, Mr Terry was trained by Erith himself and was in the office at the time Erith had Jack Straws' Castle on the drawing board. This has value as it provides a link between the proposal and Jack Straws Castle in terms of architectural lineage. Furthermore, rather than simply stopping at Erith, this scheme would allow the narrative of the site to continue through its sympathetic redevelopment by Erith's student. This therefore has value in terms of preserving and responding to the cultural value of the buildings in this area.
16. Although slightly reduced in size the car park would be largely retained in keeping with its historic use in connection with the listed building. It would also be improved visually with new permeable block paving, planting, and bicycle and bin storage. In this respect, the proposal would constitute a modest improvement to the setting of Jack Straws Castle and the wider conservation area by softening what is currently a tarmac car park complete with parked cars and bins.
17. Taking these points together I find no harm to the setting of Jack Straws Castle, rather the improvements to the carpark alongside the proposal would lead to a modest enhancement. That enhancement to the setting of the listed building would also lead to an enhancement of Hampstead Conservation Area. Bearing in mind the workings of s66(1) and 72(1) of the Act I give these matters significant weight.
18. In terms of the impact of the development on the wider character and appearance of the surrounding area, for the most part the houses would be seen against or in conjunction with the larger form of Jack Straws Castle. Given their deep set back from the main road junction to the front they would not appear dominant in this street scene. The houses would sit directly side on to Heath Brow which provides access to a public car park, and pedestrian access to Hampstead Heath, but their relatively narrow depth would mean they would not appear overly dominant when viewed from here either.
19. From the rear, when viewed from Hampstead Heath car park, existing mature shrubs would provide screening, and would be enhanced by the submitted landscaping scheme. The Heath here is quite heavily wooded so whilst the development might be visible from the edges of this, which, for the reasons set out above, I find to be acceptable, both the development and Jack Straws Castle quickly disappear from view once you move into the wider heath area.

---

<sup>2</sup> Figure 14 of Planning and Heritage Statement

<sup>3</sup> planning ref PWX0102190/LWXO102191

- The development would not, therefore, detract from the heaths open and verdant character.
20. The Council raised concern over the iron railings to the front of the dwellings, but I find these to be entirely appropriate given railings appear in much of Hampstead Conservation Area generally. They would also help separate the dwellings from the remaining car park, which whilst not an ideal frontage, has a historic connection to Jack Straws Castle and as such should be, in part, retained.
  21. The Council assert that the Georgian style of the proposed dwellings is historically inaccurate. However, Jack Straws Castle is not an historically accurate representation of an 18<sup>th</sup> Century coaching inn, but rather reimagined by Erith. I accept that the proposals are not a slavish copy of any existing Georgian property, but rather, they take cues from this era in their design and construction in order to respond to the context of the appeal site. I therefore find no harm in this respect.
  22. I have had regard to the planning history of the site, in particular two previous appeals<sup>4</sup> from 2003 and 2004. These both dealt with what were effectively extensions to Jack Straws Castle and were designed as such, imitating the appearance of the listed building. In my view, this approach would have resulted in a more visually bulky development. Jack Straws Castle is already a large building in its own right and to further extend it would add to this exponentially. The proposals before me, however, have been designed to appear as entirely separate buildings to Jack Straws Castle and this, in conjunction with their being set further back than any of these previous schemes so as to better reveal the north side elevation, and the narrowing of the depth of the development as a result, has led to a materially different development which must be judged on its own merits.
  23. It is also pertinent to this appeal that in the 2004 decision the Inspector specifically notes "*...it would be wrong of me to suggest that no further development should take place in the car park as I can never know what ideas an imaginative architect, perhaps one as skilled as Erith, might dream up*". In my view, that is the scenario before me now.
  24. Taking all of the above points together I find no harm to the setting of Jack Straws Castle, in fact an enhancement, and I also find that the proposal would both preserve and enhance the character and appearance of the Hampstead Conservation Area, matters which I afford significant weight. I therefore find no conflict with policies D1 and D2 of the London Borough of Camden Local Plan 2017 (LP) and DH1 and DH2 of the Hampstead Neighbourhood Plan 2018 (NP). These policies seek high quality design which, amongst other things, preserves, and where possible, takes advantage of opportunities to enhance heritage assets, respects local context and character, and integrates well with surrounding streets and open spaces. Nor do I find conflict with Policies A2 of the LP and NE1 of the NP which seek to protect open spaces and their setting. The significance of these designated heritage assets would also be conserved as required by para 193 of the National Planning Policy Framework (the Framework).

---

<sup>4</sup> Linked decisions APP/X5210/E/03/1124779, APP/X5210/A/3/1124778, APP/X5210/E/03/1124781, APP/X5210/A/03/1124780 and APP/X5210/E/04/1151287 and APP/X5210/A/04/1151286

25. In coming to the above findings, I have also considered the effect of the proposal on the settings of Old Court House, Heath House Wall (Grade II listed), Heath House (Grade II\* listed) and Hampstead War Memorial (Grade II listed). For the same reasons as set out above, I find no harm to the setting of any of these listed buildings.

*Living conditions - outlook*

26. Jack Straws Castle is a large and imposing building as touched upon above. It has a wide front elevation facing onto North End Way which is three storeys tall. The north side elevation is similarly deep as the front is wide. However, due to the lie of the land, which falls away to the rear of the building, on the north side elevation the brick plinth on which the three storey timber framed building is constructed on is exposed and clearly visible from the car park. On this elevation is also a tower which contains a lift, and this extends four storeys above the brick plinth. The north elevation has previously been described as 'a cliff like wall facing over the car park'<sup>5</sup>, and it is easy to see why when stood next to it given the depth of building in combination with its imposing height and features.

27. The proposal is to erect two houses immediately abutting the north side elevation of Jack Straws Castle. These would be set a considerable distance back from the front elevation in order to preserve views of the listed building. However, the consequence of this would be that the frontages of the houses would be visually dominated by this wide, tall and cliff like north elevation of Jack Straws Castle. Single aspect bedrooms facing out to the front of the houses and the balconies off of these would also be dominated by this view, as would any view which could be achieved from the basement kitchen/dining rooms.

28. As set out in Camden Planning Guidance (CPG) - Amenity, development should ensure that the proximity or size of any structures avoids having an overbearing and/or dominating effect that is detrimental to the enjoyment of occupiers of properties. This guidance is worded in a way that seems to refer specifically to new development and its effects on residents of existing properties only. Nevertheless, I consider it appropriate to also have regard to the outlook of future occupants of the houses in this appeal. Furthermore, Policy A1 of the LP requires that the amenity of both occupiers and neighbours is protected in respect of, amongst other things, outlook. For the reasons given, I therefore find harm to the amenity of future occupiers in respect of outlook.

*Daylight and sunlight*

29. Similarly, daylight and sunlight in the proposed dwellings would be affected by the location of Jack Straws Castle. In this case Jack Straws Castle would sit to the south of the new dwellings and would be taller, and significantly deeper, extending some 18.5m forward of the front elevations of the houses.

30. A daylight report was submitted by the appellant which shows that all rooms in the houses would meet the recommended Average Daylight Factor (ADF), with the exception of the kitchen of House 1. BRE Site Layout Planning for Daylight and Sunlight, A guide to good practice, (BRE guidance) recommends an ADF

---

<sup>5</sup> APP/X5210/E/04/1151287

for kitchens of 2% but the kitchen/dining room at House 1 would achieve only 1.7%. Whilst the dining area might meet the recommended ADF in terms of daylight if it were to be classed as a living room (1.5%) this does not alter the situation in respect of the kitchen.

31. The submitted daylight report omitted any study of sunlight in respect of the proposed dwellings. Given the relationship between Jack Straws Castle and the general guidance in CPG - Amenity the impact of development schemes on both daylight and sunlight levels should be considered. Following the lack of sunlight assessment being raised in the hearing sunlight calculations were submitted for the main living rooms in the proposed dwellings. These are, however, dual aspect rooms so it is no surprise that these would meet BRE guidance target values for sunlight. However, there remains no sunlight analysis to the other rooms in the proposed dwellings, namely: the bedrooms; particularly those with windows facing east and therefore most overshadowed by Jack Straws Castle; or the kitchen/dining rooms at the proposed dwellings which also face east.
32. Whilst, as set out in BRE Guidance, the main requirement for sunlight is in living rooms, that is not to say it is of no importance to other rooms. BRE guidance points out that sunlight is preferred in the mornings in bedrooms so there is a desire for some sunlight to such rooms. Furthermore, the kitchen/dining rooms in the proposed dwellings should be counted as a living room as they were in the daylight report<sup>6</sup> as this is where the main requirement for sunlight is as set out above, but these rooms are omitted from the sunlight report. I therefore find that it has not been demonstrated that the proposed dwellings would receive adequate daylight and sunlight.

### *Privacy*

33. I turn now to matters of privacy. The windows in bedroom 3 of House 1 would be in very close proximity and at a similar level to two first floor bedroom windows at a residential property in Jack Straws Castle. The close proximity of these windows would mean intrusive overlooking would occur. It is reasonable to expect good privacy levels in bedrooms therefore I find the lack of privacy here to be harmful to both existing and future residents.

### *Outdoor space*

34. Policy D1 of the LP requires high quality design in development which, amongst other things, incorporates outdoor amenity space. To provide further guidance on this CPG - Housing sets out that new homes should meet the open space standard of 9m<sup>2</sup> per resident. It was agreed at the hearing that the proposed houses had scope for six residents each therefore 54m<sup>2</sup> of outdoor space should be provided per house. The appeal scheme provides modest balconies and a small outside space in a lightwell off of the basement kitchen/dining room. Together these spaces would not meet the required open space standard set out in CPG – Housing by quite a significant margin. Furthermore the quality of these outdoor spaces and the ability of future occupiers to enjoy them would be diminished by their position in relation to Jack Straws Castle.
35. I accept the close proximity of Hampstead Heath and the potential for this to be used for recreation by future residents. However, even access to public

---

<sup>6</sup> Scheme Internal Daylight Report para 5.3

outdoor spaces can be heavily restricted in times of national lockdown such as we have experienced over the last 12 months or so. Consequently, I find the size and quality of private outdoor space provided for the two dwellings to be inadequate such that I find harm to the living conditions of future occupiers.

*Overall findings on living conditions*

36. Taking all of the above points together I find harm to the living conditions of future occupiers of the proposed development in terms of outlook, daylight and sunlight, privacy and outdoor space, and harm to existing residents in terms of privacy. It was put to me in the hearing that in areas such as Hampstead reduced outlook, privacy, light and outdoor space are to be expected. However, the policies I have referred to above in considering living conditions apply to this area therefore I find no reason to disregard them in this case.
37. Consequently I find conflict with Policies D1 and A1 of the LP which seek to protect the amenity of occupiers and neighbours in terms of visual privacy, outlook, sunlight, daylight, overshadowing, and outdoor amenity space. The proposal would also conflict with para 127f) of the Framework where it requires development to have a high standard of amenity for all existing and future users.
38. I have also had regard to all other living conditions matters raised but on the evidence before me I find no firm reason to conclude any of these would give rise to significant adverse effects.

**Legal agreement**

39. A signed and dated S106 agreement has been provided which seeks to secure various obligations. It is necessary for me to consider these in detail and reach a finding on them having regard to the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and the Framework at para 56.

*Car free development*

40. The proposal is to be for 'car-free housing'. This means no on-site car parking spaces are provided with the scheme and future occupiers are to be prevented from applying for permits to park nearby on-street. This is in line with Policy T2 of the LP which sets out that all new developments will be required to be car-free and to do that they will, as an authority, not issue on-street parking permits in connection with new developments and will use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits. The S106 before me secures this. I therefore find such an obligation necessary to make the development acceptable in planning terms.

*Affordable housing*

41. Policy H4 of the LP requires a contribution to affordable housing from all development that provides one or more additional homes and involves a total addition to residential floor space of 100m<sup>2</sup> Gross Internal Area or more. The appeal site meets these requirements. The maximum reasonable amount negotiated in this case based on various criteria set out in Policy H4 of the LP and having regard to CPG - Housing is £84,000. I am therefore satisfied the affordable housing contribution meets the relevant tests.



### *Construction Management Plan*

42. The S106 agreement requires the submission of a Construction Management Plan (CMP) and payment of a CMP Implementation Support Contribution of £3,136. This is necessary to enable the Council to manage the impacts of development as the site has a relatively tight access off of a busy junction. The amount sought corresponds with the indicative charging rates set by the Council. A CMP bond of £15,000 is also required in the event that the contractor fails to abide by the agreed CMP. I am satisfied, on the evidence before me, that these obligations meet the relevant tests.

### *Highway contribution*

43. A contribution of £20,799 for highway works is required to include carriageway resurfacing, footway resurfacing and new kerbs as a result of the development. The Council have provided a cost estimate for this. On this basis I am satisfied that the required highway contribution meets the relevant tests.

### *Other matters*

44. In Appeal B there were no main issues to consider. The Council raised no objection to the underpinning works and on my analysis, being structural in nature and underground, they would have no adverse impact on the special architectural and historic importance of Jack Straws Castle. From all that I have read, heard and seen I therefore find no reason to withhold listed building consent subject to appropriate conditions.

45. The proposal makes no provision for disabled parking and there is no suitable on-street parking in the immediate vicinity of the appeal site for blue badge holders. Policy T2 of the LP is clear that on-site parking for disabled people be provided where necessary. This can, however, be secured by condition.

46. The carpark as proposed would enable vehicles to turn on site. Heath Brow is not a fast or excessively busy road such that drivers of vehicles would not be able to navigate slowly and safely in and out of the car park. The car park is to be reduced in size, but that in itself should not preclude the development given Camden as an authority are seeking to limit parking within the borough to reduce car ownership and therefore lead to reductions in air pollution and congestion as well as encourage wider health benefits from walking and cycling.

47. The part of Hampstead in which the appeal site is located is also quite accessible insofar as there is an underground station within direct and relatively easy walking distance through Hampstead village as well as local bus services. Whilst the existing parking spaces might be subject to a condition on a previous planning permission this is not a matter for me to determine under this S78 appeal.

48. Bin storage in line with Camden guidance is to be provided and can be secured by way of a suitable condition. The Council also raised no concerns in this regard. It was clarified at the hearing that the appeal site immediately abuts but does not encroach onto Metropolitan Open Land.

49. Any future maintenance of the dwellings to the rear would likely be short lived and infrequent and would not warrant refusal of planning permission. I have had regard to submitted Tree and Ecology surveys and am satisfied no material

harm would arise from the development. The Council also raised no issue in this respect.

### **Planning balance**

50. In Appeal A I have found no harm to the setting of Jack Straws Castle, rather an enhancement, and that it would both preserve and enhance the character and appearance of the Hampstead Conservation Area. I have also found no harm to the settings of any other listed buildings nor any harm to the character and appearance of the surrounding area. I have, however, found harm to the living conditions of existing residents of Jack Straws Castle and future occupiers of the proposed houses. Therefore, whilst there is compliance with the development plan in some areas there are failings in others. Overall, therefore, I find conflict with the development plan when considered as a whole.
51. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.
52. The Council confirmed at the hearing that they could not demonstrate a 5-year supply of housing land. Paragraph 11d) of the Framework is therefore engaged because, as per footnote 7, if the Council cannot demonstrate a five year supply of deliverable housing sites the policies most important for determining the application must be considered out-of-date. Given my findings in respect of heritage assets there are no policies in the Framework that protect areas or assets of particular importance and provide a clear reason for refusing the development proposed as set out in footnote 6 of para 11d)i. Consequently, it falls for me to determine if the adverse impacts of granting permission in this case would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole as per para 11d)ii).
53. There are a number of adverse impacts I have identified in terms of living conditions. However, these issues are countered somewhat by the fact that they are created largely due to the sensitive nature of the site and the need to preserve the special architectural and historic interest of Jack Straws Castle and I can see no way to overcome these harmful impacts on living conditions with an alternative design. With this in mind I therefore give these adverse impacts moderate weight.
54. In terms of benefits, the proposal provides two good sized four-bed family houses on brownfield land within Hampstead, an area with an undersupply of housing. Development of this nature would also bring with it short and long-term economic benefits. These are moderate benefits in the circumstances. In addition to this the proposal would bring about improvements to the setting of Jack Straws Castle and the conservation area due to the improvements to the car park; works which there is nothing to indicate would be carried out otherwise. I give these latter benefits significant weight.
55. I am also conscious of the rare circumstances of this case whereby the houses to be sited in the setting of Jack Straws Castle have been designed by an architect who was the student of the architect of this listed building. This

speaks to the high quality of the design of the development and offers further weight to the proposal which I have also taken into account.

56. In light of my findings the adverse impacts do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development as set out in paragraph 11 of the Framework therefore indicates that permission should be granted in respect of Appeal A.
57. As previously stated, I have found no adverse impact to Jack Straws Castle in respect of Appeal B as the underpinning works would preserve the special architectural and historic interest of the building. Planning permission should therefore also be granted for Appeal B.

### **Conditions**

58. In addition to the standard time limit conditions, I have included a plans condition as this provides certainty. In Appeal B I have also included conditions to protect the historic fabric of Jack Straws Castle.
59. In Appeal A, to ensure a satisfactory form of development and protect the living conditions of future occupants it is necessary to include conditions relating to ground contamination and the construction of the approved basements and it is also necessary for these to be pre-commencement conditions for the same reasons. For similar reasons I have also included a condition concerning SUDS. Conditions requiring additional information in respect of specific construction details, material samples, and details in respect of photovoltaic cells are also necessary to ensure a satisfactory appearance, as is restricting external fixings to the buildings.
60. There is no need for the submission of hard and soft landscaping details as these have already been submitted. However, conditions securing these works and the protection of trees are necessary to ensure a satisfactory form of development. The removal of permitted development rights is justified in this case given the restricted nature of the site and its sensitive location.
61. To protect biodiversity conditions are necessary to ensure the development is carried out in accordance with the submitted Ecological Appraisal and for bird and bat boxes to be installed on site. Furthermore, to ensure waste and cycle storage is provided along with car parking and disabled car parking, conditions are included to this effect. I have also included a condition to ensure the houses are built to be accessible to all, and conditions to meet local requirements in relation to water and energy efficiency.
62. I do not consider it to be reasonable to restrict the installation of external lights on the dwellings and permitted development rights in respect of the installation of flues, vents and pipes have been removed under a separate condition. It is also not possible to reasonably enforce against the loading or unloading of goods on the adjacent carriageway.
63. I have, however, included a condition relating to hours of construction to protect the living conditions of adjoining occupiers.

## **Conclusion**

64. The appeals are allowed.

*Hayley Butcher*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT:

Mr Thomas Hill QC

Mr Quinlan Terry

Mr James Kon

Dr Chris Miele

Morgan Taylor

Mr Adam Hollis

Mrs Lucy Archer

Mr Kenneth Powell

Dr Alan Powers

Eric Cartwright

Daniel Drukarz

Eleanor Mazzon

Mr James Huish

FOR THE COUNCIL:

Miss Antonia Powell

Kristina Smith

Mr William Bartlett

Deirdre Traynor

INTERESTED PARTIES:

Mr Marc Hutchinson

Mr David Altaras

Mr John Beyer

Professor Jeff Waage

Mr David Castle

Janine Griffis

Lisa Lindsley

Miss Caroline Daly

Paul O'Neill

Laura Goddard

Bob Warnock

Adrian Brooker

Michael Da Costa

Pascal Dubois Pelerin

Harry Taylor

Sam Volpe

#### **DOCUMENTS SUBMITTED AT THE HEARING**

1. Site location views – site photos
2. Conservation Area Statement – Hampstead
3. Listing description for Old Court House
4. Up to date Housing Land Supply position
5. Suggested wording for listed building consent conditions 3 and 4
6. Supporting information for S106 agreement
7. CPD – Housing 2021
8. Details of windows at Jack Straws Castle
9. Sunlight report
10. Scanned S106 agreement

## **Schedule of Conditions**

### **Appeal A:**

- 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: 1370/3 O, 1370/4 A, 1370/5 B, 1370/6 A, 1370/10, 1370/11, 1370/2/2, 1370/2/7, 06-681-200-01 Revision R, 1370/13.
- 3) Prior to the commencement of development a written programme of ground investigation for the presence of soil and groundwater contamination, and landfill gas, shall be submitted to and approved in writing by the local planning authority. The site investigation shall be carried out in accordance with the approved programme and the results and a written scheme of remediation measures, if necessary, shall be submitted to and approved in writing by the local planning authority also prior to the commencement of development. If required the remediation measures shall be implemented strictly in accordance with the approved scheme and a written report detailing the remediation shall be submitted to and approved in writing by the local planning authority prior to occupation.
- 4) Prior to the commencement of development details of a suitably qualified chartered engineer with membership of an appropriate professional body shall be submitted to and approved in writing by the local planning authority. The approved person shall be appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works at the appeal site throughout their duration to ensure compliance with the design which shall have been checked and approved by a building control body. Any subsequent reappointment shall be confirmed at the earliest opportunity with the local planning authority.
- 5) Before the relevant part of the work is begun detailed drawings or samples of materials as appropriate in respect of the following shall be submitted to and approved in writing by the local planning authority:
  - a) Details including sections at 1:10 of all windows (including jambs, head and cill), external doors, balconies and railings;
  - b) Details of all facing materials and roof tiles with samples of those materials to be provided on site.
- 6) No meter boxes, telecommunications equipment, alarm boxes, television aerials, satellite dishes or rooftop 'mansafe' rails shall be fixed or installed on the external face of the buildings.
- 7) Before the brickwork is commenced a sample panel of the facing brickwork demonstrating the proposed colour, texture, face-bond and pointing shall be provided on site and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The approved panel shall be retained on site until the relevant works have been completed.
- 8) The approved hard and soft landscaping works as shown on Hard and Soft Landscape Proposals drawing number 06-681-200-01 revision R shall be carried out in accordance with the approved details prior to

occupation of the development. Any trees or areas of planting which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.

- 9) All parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved tree protection details (within Tree Survey Report dated Dec 2016 revised 13.3.18 by RGS) and guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction".
- 10) The development shall be carried out in accordance with the methodologies, recommendations and requirements of the ecological documents hereby approved (Preliminary Ecological Appraisal dated March 2017 by Greengage, letters from Greengage dated 30.8.17 and 22.3.18).
- 11) Prior to first occupation of the development details of bird and bat boxes shall be submitted to and approved in writing by the local planning authority. The boxes shall be installed as approved prior to the occupation of the development and thereafter permanently retained.
- 12) The waste and cycle storage facilities shown on the submitted Hard and Soft Landscape Proposals drawing number 06-681-200-01 revision R shall be provided prior to the first occupation of the development and thereafter permanently retained.
- 13) The basements hereby approved shall be implemented in accordance with the methodologies, recommendations and requirements of the Basement Impact Assessment documents hereby approved (Structural Methodology Report dated April 2020 by Richard Tant Associates, Ground Investigation and Basement Impact Assessment report dated March 2020 Issue 4 by GEA).
- 14) Prior to occupation of the development a revised parking layout to include disabled parking shall be submitted to and approved in writing by the local planning authority. The approved parking layout shall be implemented prior to first occupation and shall be retained thereafter and used for no purpose other than for the parking of vehicles.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Part 1 (Classes A-H) and Part 2 (Classes A-C) of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the local planning authority.
- 16) Prior to occupation of the development all the measures contained in the Energy and Sustainability Statement dated April 2020 by XC02 shall have been implemented on site. Such measures shall be permanently retained and maintained thereafter.

- 17) Prior to occupation of the development detailed plans showing the location and extent of photovoltaic cells to be installed on the building shall have been submitted to and approved in writing by the local planning authority. The details shall include the installation of a meter to monitor the energy output from the approved renewable energy systems. The cells shall be installed in full prior to occupation in accordance with the approved details and permanently retained and maintained thereafter.
- 18) Prior to occupation of the development all sustainable urban drainage system measures in the Surface Water Drainage and SUDS strategy dated April 2020 by Evens shall have been implemented on site. Such measures shall be permanently retained and maintained thereafter.
- 19) The development hereby approved shall achieve a maximum internal water use of 110 litres/person/day. The dwellings shall not be occupied until the Building Regulation optional requirement has been complied with.
- 20) The houses hereby approved shall be designed and constructed in accordance with Building Regulations Part M4(2). Evidence demonstrating compliance shall be submitted to and approved in writing by the local planning authority prior to occupation.
- 21) Construction works shall take place only between 07:00 and 18:00 Monday-Friday, and 08:00 – 12:00 Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

### **Appeal B**

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) Prior to the commencement of works full details of the underpinning of the basement at Jack Straws Castle, including detailed drawings and a method statement, shall be submitted to and approved in writing by the local planning authority. The underpinning works shall be carried out as approved prior to any excavation works associated with the erection of the two dwelling houses granted planning permission under APP/X5210/W/20/3261840.
- 3) Upon completion of the works authorised by this consent any works of making good to Jack Straws Building shall be carried within 3 months and shall match the existing adjacent work as closely as possible in materials and detailed execution.