



## Appeal Decision

Site visit made on 12 June 2019

by **Peter D Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2019

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### **Appeal Ref: APP/X5210/W/19/3225592 23 Ravenshaw Street, London NW6 1NP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Chris Taylor against the decision of the London Borough of Camden Council.
  - The application Ref 2017/0911/P, dated 10 February 2017,
  - The development proposed is demolition of existing end of terrace house and erection of a three storeys plus basement level 8 unit apartment block comprising 4 x 3 bed units and 4 x 2 bed units all with private and communal amenity space, no onsite parking and 100% car free.
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### **Decision**

1. The appeal is dismissed and permission is refused for demolition of existing end of terrace house and erection of a three storeys plus basement level 8 unit apartment block.

### **Preliminary Matters**

2. The appellant has raised concerns regarding the process followed in assessing the application but I am determining the appeal on its planning merits and these concerns do not form part of my assessment. If the appellant wishes to pursue these concerns the normal complaint procedures of the Council should be followed.
3. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted in the Council's statement which confirms that it has objections in terms of the impact on the character and appearance of the area and the absence of a planning obligation to secure contributions to affordable housing and highway works and to secure car free housing, a construction management plan and sustainable design and carbon reduction. There are also third party concerns regarding the effect of the development on living conditions for neighbouring occupants.

### **Main Issues**

3. The main issues are therefore:
  - the effect of the proposed development on the character and appearance of Ravenshaw Street;

- whether the proposed development would have an adverse effect on the living conditions of present and future occupants of the flats in No 21 and 25 in terms of light levels, proximity and outlook; and
- whether development of the site for housing would require a planning obligation to secure affordable housing, car free housing, a highways contribution, a construction management plan and sustainable design and carbon reduction.

## Reasons

### *Character and Appearance*

4. Ravenshaw Street is lined with traditional Victorian 2 storey terraced housing with the majority of properties having accommodation in the roof space lit by dormers and rooflights. Most of the properties have 2 storey outrigger extensions to the rear and are finished in brick or render with stucco detailing under slate or tile roofs. There is a strong uniformity to the scale and design of development in the street.
5. The street falls gradually over its length between Mill Lane and Broomsleigh Street and curves round to the south east at the point where the appeal site is located. As a result the appeal site widens out from a narrower frontage on the street to a wider rear section backing onto the railway tracks.
6. The site itself is occupied in part by No 23 which is divided into 2 flats and a car parking area which was the site of a former builder's yard. To its south side No 23 has an extant 3 storey extension.
7. The proposal is to redevelop No 23 to a contemporary design which would not be without precedent in the street as the redevelopment opposite at No 22 has adopted a similar approach. Whilst I acknowledge that good contemporary architecture can work well in traditional settings where the architecture is complementary to the character of the area and would be the better solution to a slavish pastiche of existing styles, the design must also reflect the development pattern, massing and urban grain of surrounding buildings and streets. Policy 2 of the 'made' *Fortune Green and West Hampstead Neighbourhood Plan* (FGWHNP) provides clear design principles which require these factors to be considered in all development.
8. The proposed apartment block would follow the overall height and form of the terrace frontage with the development stepping down in height across the site and the above ground elevational style and window positioning would also complement the adjacent more traditional forms. However it is proposed to introduce a full height basement level in the development. I acknowledge that from further back on the upper or lower sections of the street the basement level would be less visible. However, in closer views, when approaching the building, the effect of the basement over the full width of the building and given the size and depth of the open lightwells extending over most of the frontage area would be to significantly increase the apparent scale and mass of the frontage. This would result in a development entirely out of character in a street which is not characterised by basements and their lightwells.
9. I have been referred to the fact that the *Camden Planning Guidance – Basements 2018* (CPGB) does not in principle restrict basement lightwells in areas where they are not characteristic of the area. Whilst this is true, it does require that their

design is discreet and their size appropriate. At Paragraph 2.16 it states that “*in plots where the front garden is quite shallow, a lightwell is likely to consume much, or all, of the garden area. This is likely to be unacceptable in streets where lightwells are not part of the established character*”. Moreover the CPGB also requires that the windows are proportionate and subservient to the main windows above. Neither of these design objectives would be met by the proposal.

10. Regarding the proposed rear elevation to the property, the scale, mass and overall width and depth of the block would be excessive and significantly at odds with the surrounding pattern of development which is comprised of smaller rear terrace forms. Whilst the proposal would not exceed the height as the existing main houses in the terrace, the existing rear outrigger extensions are for the most part lower and therefore subservient in terms of height and width to each main house. I acknowledge that the proposed block would not extend beyond the depth of these outrigger extensions but the height and width of the block to this depth would appear disproportionately large and out of keeping with the rear of the terrace.
11. It has been put to me that the rear elevation would not be easily seen from the public realm to the north west, west and south west, in the main because of the substantial tree screen along the railway embankment. Whilst this is true, the appellant’s own CGI images show that the incongruous scale and mass of the building would be apparent from the private realms of rear gardens in the street, and in private views from flats in Ellerton Tower on Mill Lane and from flats in the Brassey Road Estate to the south of the railway. Whilst I accept these would be at some distance and oblique in the case of the views from Ellerton Tower, from these positions the development would be seen as obtrusive and out of character in the context of the wider terrace.
12. In terms of the frontage to the building the insertion of the basement lightwell would have an adverse impact on the established character of the surrounding area. Therefore, whilst the structural issues regarding the basement reportedly would be satisfactory, the proposal would conflict with *Camden Local Plan (CLP) Policy A5* and the CPGB.
13. Taken as a whole the development would fail to comply with CLP Policy D1 which requires all development to respect local context and character. The supporting text to the policy explains how this is to be achieved by development considering character, setting, context, form and the prevailing pattern, density and scale of surrounding development. For the reasons above the scale, massing and extent of development proposed for this small infill plot would be over-intensive and would fail to achieve the policy objective. For the same reasons it would also fail to comply with the objective of the FGWHNP Policy 2 referred to above.

#### *Living Conditions*

14. The nature of the terrace on Ravenshaw Street is such that dwellings are in close proximity to each other and this places an onus on developers as required in the FGWHNP Policy 2 to ensure that infill development is in proportion with its context and setting and takes account of the relationship to adjoining properties.
15. With respect to No 21 Ravenshaw Street I acknowledge that the proposed single storey element of the apartment block and the first floor element would be similar distances from the ground floor kitchen window and living room window in the rear offshoot to No 21. However the proposed block would extend deeper into the plot by about another 3.5 metres beyond the living room window and the second floor

of the new building would also extend deeper than the existing second floor of the extension to No 23.

16. The new building would sit south of the living room and kitchen windows in the lower flat of No 21. Whilst the proposed chamfered roofs and tiered setback with each floor stepped slightly further away from No 21 would probably avoid any significant loss of sunlight, the effect of the block, given its height and increased depth would be enclosing and overbearing on the outlook from these windows.
17. Regarding No 25, the upper flat has a rear facing dormer window assumed to light a bedroom. The proximity of the second floor of the proposed building would be both overshadowing on this window when the sun is in the west and overbearing on it. In view of the third party objections I requested to view the proposal from the lower flat of No 25. The site inspection showed that, in terms of this flat, although its windows would not be affected, there would be a detrimental impact on living conditions as a result of the proximity, scale and mass of the new building which would be overbearing on the occupant's small garden and sitting out area. Assessed from the rear garden boundary between Nos 21 and 23 the development would also be overbearing on the garden at No 21.
18. It is clear from my site inspection and the appellant's Design and Access Statement that there would also be the potential for overlooking of these two neighbouring gardens from the proposed balconies of the properties. However given the potential for overlooking that already exists from upper windows in the terrace these garden areas do not have a high level of privacy and, provided obscure glazed privacy screens were in place, I am satisfied that the level of overlooking would not be substantially different to what currently exists.
19. The effect of the proposed development, because of its overall scale, mass and positioning would result in over-intensive development of the rear section of the site resulting in adverse impacts on the living conditions for present and future occupants of Nos 21 and 25. As such the development would conflict with CLP Policy A1 which seeks to manage the impacts of development and protect the quality of life of occupiers and neighbours.

#### *Delivering Affordable and Car Free Housing and Other Policy Requirements*

20. Five of the Council's potential reasons for refusal, had they determined the application, related to the fact that no mechanism, in the shape of a Section 106 planning obligation, was proposed to secure a financial contribution in lieu of affordable housing and to secure the development as car free housing. Other policy requirements of housing proposals, namely a financial contribution to making good the highway, development in accordance with a Construction Management Plan (CMP) and sustainable design and carbon reduction were also not secured through a S106 planning obligation.
21. Although no planning obligation was proposed at the time the application was being considered, the appellant has completed a Section 106 Agreement in conjunction with the London Borough of Camden Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of *The Community Infrastructure Levy (CIL) Regulations 2010*. They relate to the following matters.

22. Affordable Housing: Policy H4 of the CLP requires a contribution to the provision of affordable housing from all sites involving a total addition of 100 m<sup>2</sup> or more. In the case of sites less than 10 units, which would be the case here, the contribution can be a financial one paid through a planning obligation. I acknowledge that the Framework states at paragraph 63 that affordable housing provision should not be sought on sites less than 10 units. However the Framework does not change the statutory status of the Development Plan as the starting point for decision-making. Policy H4 reflects the significant scale of affordable housing need in the Borough and, given this, the Council's aspiration is that as many residential developments as possible should provide affordable housing. The CLP was found sound and adopted, including Policy H4, after the 10 unit threshold became part of national policy and there is no other material consideration that in this case would warrant removing the provision. Although the appellant initially objected to this aspect of the obligation he has agreed to the payment of the affordable housing financial contribution of £193,298.
23. Car free housing: Policy T2 of the CLP 2017 requires development to operate on a car free basis in highly accessible areas of Camden and where no provision can be made on site for parking. The Council implements the policy through the use of S106 obligations which require the owner of the development to inform incoming occupiers that they are not eligible for a parking permit for on-street parking or to purchase a space in a Council controlled car park. The wording of the S106 agreement controls the use of the unit itself by restricting the type of occupier to someone who has no permit and is compliant with recent case law.
24. Basement approval in principle contribution and contribution to the repair of the highway: Policies A1, T3 and DM1 of the CLP require development to have regard to the impacts of the construction phase and in particular to protect transport infrastructure. It is reasonable that the appellant should pay the fair and relevant costs involved in the Highway Authority approving the design for the construction of the basement (£3000) and making good any impact on the Highway as a result of construction estimated at £7,273.
25. Construction Management: Policy A1 of the CLP requires the impacts of the construction phase to be taken into account through a CMP and Policy DM1 of the CLP commits the Council to using planning obligations to mitigate the impact of development. Because the proposed works would involve the removal and delivery of a significant amount of material and would have impacts beyond the application site in a predominantly residential area the construction impacts will be complicated and a CMP will be required. The CMP would require more detail than is normally contained in and controlled by a condition and therefore a planning obligation would provide a better mechanism of control. Moreover, in view of the need for inspection and monitoring of the CMP on submission and during implementation there would be a need for a CMP Implementation Support Contribution of £3,136 which would be best secured via a S106 obligation. As the fee relates to specific monitoring and management costs, it is appropriate to require this by obligation.
26. Sustainability and Energy Efficiency and Renewable Energy Plans: Policies CC1 -4 of the CLP and Policy DM1 seek to ensure that development reduces energy consumption and to be in all respects sustainable. Whilst this part of the obligation, requiring submission of detailed plans, could be secured by condition, the requirements sought by the Council are detailed and as the S106 planning

obligation is in place for other purposes anyway it is reasonable to include this, reducing the need for conditions.

27. The S106 also requires payment of monitoring and certification of compliance charges to the Council of £4,084. In view of the complexities involved in monitoring the principal areas of obligation I am satisfied that a monitoring and certification of compliance charge would be necessary and reasonable in this case.
28. I consider that the above obligations would be necessary given the Development Plan policies. They are directly related to the development proposed and would be fairly and reasonably related to the scale and nature of development proposed. They therefore all pass the statutory tests of Regulation 122. The matters required by these obligations would be additional to any CIL contributions and there would be no overlap. Finally I am satisfied that the obligations contained in the S106 would be effective in delivering the policy outcomes sought and the existence of a completed S106 planning obligation is a material consideration in this case. However its existence merely responds to those aspects of the development required to be controlled by obligation and missing at the time of application. It does not outweigh the harm the development would have overall in respect of the other main issues.

#### *Other Matters*

29. I acknowledge that the proposal would contribute 8 apartments in place of the two existing flats in a sustainable location. In that way it would make a contribution to meeting housing needs in Camden and London as a whole as sought by CLP Policy H1 and *London Plan* (LP) Policy 3.3. I acknowledge that it would constitute the effective use of land on small housing sites encouraged by the *National Planning Policy Framework* (the Framework) at Paragraphs 68 and 117 and in LP Policy 3.4. However Paragraph 122 of the Framework requires that making efficient use of land must take into account the desirability of maintaining an area's prevailing character and setting including residential gardens and in this case the proposal fails. The LP carries a similar caveat at Policy 3.4.

#### **Conclusion**

30. While the principle of redeveloping and infilling the site of No 23 would be acceptable, the harm arising from the proposed method of doing so, in terms of character and appearance and living conditions, would outweigh the housing benefits arising from the scheme and the appeal should be dismissed.

*P. D. Biggers*

INSPECTOR