



Appeal Decision

Site visit made on 18 January 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2022.

Appeal Ref: APP/X5210/W/21/3282550

Garages to the South of 27a West End Lane, West Hampstead, London NW6 4QJ

- 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 AG Homes Ltd against the decision of London Borough of Camden.
 - The application Ref 2020/2782/P, dated 18 June 2020, was refused by notice dated 2 June 2021.
 - The development proposed was originally described as 'Demolition of existing garages and redevelopment of the site for residential use (Use Class C3) with associated amenity space, new landscaping, cycle store, bin store and other associated work.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description above is taken from the application form. However, during determination of the application the scheme was amended and the number of units reduced from 8 to 6. The Council determined the proposal on that basis and so shall I.
3. During the course of the appeal, a signed and completed Planning Obligation, by way of a Section 106¹ legal agreement (the 'S106 agreement') dated 19 January 2022 has been submitted by the appellant. This covers provision for affordable housing (by way of a financial contribution in-lieu of), Approval in Principle to ensure the structural stability of the public highway, car-free housing, highway works for the provision and safety of pedestrians, cyclists and vehicles, and securing a Construction Management Plan. The Council confirms that these matters, which were the basis of refusal reasons 2-6, have been acceptably addressed so that these reasons for refusal are overcome. From the evidence before me I concur and have taken the document into account in the determination of the appeal.

Background

4. Planning permission² was granted in 2016, subject to the signing of a S106 agreement for three 3-bedroom town houses (part two and part three storey). The external design and appearance of the approved building is very similar to the appeal scheme. The appellant states that all relevant pre-commencement

¹ Under section 106 of the Town and Country Planning Act 1990

² LPA Ref: 2016/5031/P

conditions associated with the approved application have been submitted to, and approved by, the Council and that a material start on site was made prior to the expiry of the planning permission. Even if a material start has been made the 'fallback' position is somewhat academic and of little practical consequence to the appellant's case as it only grants permission for 3 dwellings, and not 6 flats. Furthermore, the principle of residential development on the site and the external design and appearance of the building is not in dispute.

Main Issue

5. In light of the signed and sealed S106 agreement mentioned in paragraph 3 above, the main issue in this case is whether the proposed development would provide acceptable living conditions for future occupiers with regard to outlook, privacy and internal living space.

Reasons

6. There is no dispute between the parties that numerically the internal floor areas of the flats meet, and some even exceed, the National Housing Standards³ which are for a minimum Gross Internal Area. All of the units have access to some form of private outdoor amenity space in the form of balconies or terraces. Furthermore, there is general agreement that the flats have adequate light, in accordance with the requirements of the BRE guide⁴.
7. However, meeting or exceeding these standards alone does not necessarily indicate or describe the nature or suitability of the living environment that would be created as a whole and experienced by its users.
8. Although duplex units, the basement bedroom windows of Flats 1, 2, and 3 appear to be clear glazed but would open out onto the lightwells that serve as outside private amenity spaces. Even though bedrooms may be primarily used when it is dark and for sleeping in, they are still habitable rooms that should be afforded adequate outlook. Whilst the lightwells may be of good size and have adequate light, their high walls in close proximity would create an oppressive sense of enclosure and limited sense of openness that would create an unsatisfactory outlook from the bedrooms for its occupants. Furthermore, these lightwells would be the only outside spaces for Flats 1 and 3 and therefore would exacerbate the poor outlook for occupants of these flats.
9. All of the windows serving Flats 4, 5 and 6 would be fitted with privacy screens or louvres, including those to habitable rooms. Even the outside balcony spaces for these flats, two of which overlook the street, would have privacy screens. In addition, most of the windows for the ground floor living, kitchen and dining areas of Flats 1, 2 and 3 would have privacy screens of some kind, apart from the doors to the front balcony for Flat 2. For flats to have all their windows, or the majority of them, obscured in some way preventing unobstructed views to the outside would create an unduly enclosing and oppressive living environment for occupiers, even if the dimensions of flats and levels of light are deemed adequate. Trying to retain as much of the appearance and design of the previously approved building but adapting it to accommodate 6 flats,

³ *Technical housing standards – nationally described space standards* (March 2015) published by the Department for Communities and Local Government, amended May 2016

⁴ Building Research Establishment (BRE) guide *Site Layout Planning for Daylight and Sunlight: a guide to good practice* 2nd Edition (2011)

instead of 3 dwellings, would therefore materially compromise the living environment for future occupiers.

10. Access to some of the terraces and balconies is only possible by going through bedrooms. This has implications for the mutual privacy of occupiers of both the flats and the bedrooms. Furthermore, some terraces/balconies are sited adjacent to large bedroom windows they are not accessed off, thus reducing the privacy of both users of the outside spaces and the rooms they adjoin. This would be an unsatisfactory arrangement for occupants.
11. Whilst occupiers of the flats would be able to furnish the rooms as they wish, the illustrative layouts help show, to scale, how basic furniture requirements, such as beds, sofas and dining tables, could be arranged and indicate how spaces would likely function and how practical they would be. I accept there are no requirements for there to be separate hallways and that it is not uncommon to find front doors opening directly into main habitable rooms. Nonetheless, the submitted layouts show that, once furnished, a number of flats would have a confined layout with little discernible separation between areas and limited room to comfortably move about the space, particularly given the proposed number of occupants. This would exacerbate the oppressive living conditions that future occupants would experience from poor outlook.
12. The appellant refers me to a number of examples where the Council has approved similar residential accommodation. Making numerical comparisons does not take account of the differences between the examples and the appeal scheme, such as the different numbers of residential units and the different site contexts, constraints and circumstances. In particular, what may be similar relationships in relation to lightwells and windows and garden space and considered in isolation on the examples given, does not take into account the cumulative impact in the number of issues I have raised and the overall quality of living space to be provided. Whilst consistency in decision-making is important, all decisions turn on their own particular merits based on the facts before each decision-maker at the time. The examples are therefore not directly comparable to the appeal scheme before me and do not set a precedent or justify allowing harmful development.
13. The appellant's letter from Savills suggests that the proposed flats would comprise high quality spacious environments for which there would be strong occupier demand. There may well be people who would be willing to occupy the flats, but that does not overcome the harm I have identified.
14. For the reasons above, I conclude that the proposal would not provide acceptable living conditions for future occupiers with regard to outlook, privacy and internal living space. Accordingly, the proposal would be contrary to Camden Local Plan Policies D1 and H6. These collectively seek, amongst other things, to ensure that new housing development is of a high quality and provides a high standard of accommodation.

Planning Balance and Conclusion

15. According to the appellant the Council does not have a 5 year supply of housing land, although the Council has not commented. Therefore, policies which are most important for determining the application are to be considered out-of-date and the 'tilted balance' set out within paragraph 11d)ii of the National Planning Policy Framework (the Framework) is engaged.

16. The proposal would bring forward a small site and contribute 6 new dwellings of an appropriate mix to the local housing supply, which would see a modest increase of 3 residential units over the previously approved scheme. The S106 agreement would provide a financial contribution in lieu of on-site affordable housing provision. The site would also see development of previously developed land within an accessible urban location in an area with an 'excellent' PTAL⁵ rating of 6a. The replacement of the garages with the new development would provide some visual enhancement to the street scene, but this would be achieved in any event by the previous grant of planning permission for a similar building for 3 houses, so such claims are of little significance. Overall, the benefits of the proposal carry moderate weight.
17. However, the proposed development would not provide appropriate living conditions for future occupants undermining the delivery of good quality homes and the Framework's promotion of well-designed places with a high standard of amenity for future users. I find this weighs considerably against the environmental and social aims of the Framework and against the proposal.
18. Therefore, the adverse impacts of granting permission for 6 flats would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
19. In conclusion, the proposal would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations, including the provisions of the Framework and paragraph 11 in particular. Therefore, the appeal should be dismissed.

K Stephens
INSPECTOR

⁵ Public Transport Accessibility Levels