



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: 20 April 2022

Appeal Ref: APP/X5210/W/21/3281530

23 Ravenshaw Street, London NW6 1NP

- 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 Mr Christopher Taylor against the decision of London Borough of Camden.
- The application Ref 2020/2936/P, dated 30 June 2020, was refused by notice dated 3 March 2021.
- The development proposed is described as "The development involves the demolition of an existing late Victorian end of terrace house (2 flats of GIA 69.7m² and 94.5m²) with an accompanying car park and erection of a three stories plus basement level 7 unit apartment block comprising 4 x 3 Bed units and 3 x 2 Bed units. All flats would have access to private and communal amenity space. No on-site parking is provided and the development would be 100% car free."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal, the appellant has submitted a completed and dated Planning Obligation¹, by way of a Unilateral Undertaking (the 'UU'). This deals with refusal reasons 3-7. The Council confirms that the UU now overcomes refusal reasons 3 (Construction Management Plan), 4 (car-free housing), 6 (highway contribution) and 7 (Basement Approval in Principle). However, the Council considers it does not fully overcome refusal reason 5 for Affordable Housing due to the trigger for payment of the financial contribution being in dispute. From the evidence before me I concur with the Council regarding refusal reasons 3, 4, 6 and 7 and these no longer form main issues in this case.

Background

3. A previous application was dismissed on appeal² for a similar scheme. The current proposal has sought to address the previous issues: the number of units has been reduced from 8 to 7, front lightwells (to the basement level) have now been covered with metal grilles surrounded by an aggregate surface, and the entrance bridge from the pavement has been reduced in size and would be part tiled and

¹ Made under section 106 of the Town and Country Planning Act 1990

² Appeal ref: APP/X5210/W/19/3225592 dated 12 June 2019

part sand-blasted glass. Moreover, the form and design of the rear elevation has been reworked.

4. The Council confirms that flooding did not form part of the previous application and appeal decision as the Lead Local Flood Authority (LLFA) was not consulted in error.

Main Issues

5. The main issues in this case are:

- The effect of the proposed development on the character and appearance of the area;
- Whether the site would be a suitable location for basement flats with regard to flooding, and
- Whether the proposal would make adequate provision for affordable housing.

Reasons

Character and appearance

6. The appeal site comprises a two-storey end of terrace property (No.23) with accommodation in the roof and a tarmac driveway to the side. The property has been altered over time with various two and three storey flat-roof extensions. It sits within a predominantly residential area in a street of similar Victorian properties. Due to the curve in the street, the appeal site is broadly triangular in shape, widening towards the rear of the site, which backs onto the vegetated railway embankment and train tracks.
7. From the appellant's aerial photographs and from what I saw on my visit, some properties have rear dormer windows and most have two-storey outrigger extensions at the rear. Although some have been altered, extended or raised in height over the years, and despite some variety in design and detailing, they are nonetheless a characteristic feature of the terrace, and a general uniformity of design, pattern and rhythm persists.
8. The proposal involves the demolition of No.23, and the erection of a building for 7 flats over four floors, including 2 flats in a new basement and a flat in the roof space. The design of the rear elevation is more contemporary and includes various dormers, balconies and lightwells. It is clear from the submitted evidence and reason for refusal that it is the design of the re-worked rear elevation that is of concern to the Council.
9. The rear elevation is intended to appear as two or three dwellings as part of the terrace that have been altered over time. The site is wider than the neighbouring ones and due to the shape of the site the rear elevation cranks round the corner, such that the plot becomes even wider and does not share the same proportions as neighbouring ones.
10. The block closest to No.21 has some poorly proportioned fenestration that does not respect the vertical emphasis of the prevailing traditional building form and windows. This block, however, includes a traditional styled two-storey pitched-roof outrigger which helps mitigate against the enlarged massing and bulk of the development.

11. The part of the building closest to No.25 is designed differently and incorporates more of the irregular and wider part of the site as it cranks round. Instead of a pitched-roof outrigger, there would be an overly tall and wide flat-roof bulky projection that would extend across the width of the building. Despite the rear elevation being stepped, it lacks the scale and form of a traditional outrigger and consequently is an unsympathetic addition. The central recessed balconies would further disrupt the outrigger rhythm. Furthermore, whilst there are a variety of dormers in the terrace as a whole, the proposed flat-roof dormer with balcony would extend across the width of the roof and most of its slope, creating an unduly dominant and bulky roof form.
12. The building would not exceed the roof heights of the neighbouring properties and the roofline steps down with the street as others do. I understand the dormer windows have been reduced in size and the outrigger and balconies re-designed from the previous appeal scheme. I also acknowledge that the site's unconventional shape offers some design challenges.
13. However, taken together the various dormers, rear projections, balconies and detailing are too numerous and appear somewhat unrelated such that they do not create a cohesive whole. Instead, the result is a disconnected and confusing assortment of competing features. In combination with the bulk and massing of the building across a wide splayed plot, the design of the building and its manifestation in the rear elevation would result in a building that would be out of keeping with the prevailing plot sizes, urban grain and the form of traditional rear elevations along this part of Ravenshaw Street. Consequently, the proposed development would harm the character and appearance of the rear elevation, the terrace in which it sits and in turn the wider area.
14. From my site visit and walking along Mill Lane Bridge, Wayne Kirkham Way and Brassey Road, I saw that public views of the rear of the appeal site were limited. Occupiers of properties in Brassey Road would be able to look across the railway tracks towards the rear elevation, just as I was able to look across at them from the rear garden. Residents of the nearby flats in Ellerton Tower would be able to look down towards the site. As the appellant's stills from a video show there would be fleeting views from passing trains. It was also clear from my site visit and from the appellant's CGI montages that occupiers of neighbouring properties would also be able to see the development, albeit not as a single continuous elevation. Whilst observers from these various vantage points would have limited views of the rear elevation, and those further away would likely see the appeal site as part of wider townscape, there would nonetheless be views of it. Just because public views would be limited does not mean the development is not capable of causing harm.
15. Accordingly, the proposal would be contrary to Policy D1 of the London Borough of Camden Local Plan (the 'Local Plan') and Policy 2 of the Fortune Green & West Hampstead Neighbourhood Plan. These collectively seek to ensure that new development respects local context and character and has regard to the scale, mass, pattern and grain of surrounding buildings.

Flooding

16. Local Plan Policy CC3 (Water and Flooding) seeks to ensure that development does not increase flood risk and reduces the risk of flooding where possible, and that vulnerable development is not located in flood-prone areas. The supporting text explains the key flood risk in Camden is from surface water flooding. Areas

considered at risk from flooding are Local Flood Risk Zones (LFRZs) and previously flooded streets shown on Local Plan Map 6: Historic flooding and Local Flood Risk Zones ('Map 6'). The LFRZs are defined as discrete areas of flooding that do not exceed the national criteria for a 'Flood Risk Area' but still affect houses, business or infrastructure.

17. Local Plan Policy A5 (Basements) states that the Council will not permit basement schemes which include habitable rooms and other sensitive uses in areas prone to flooding. The supporting text reiterates this, but clarifies that no parts of the borough are currently identified by the Environment Agency as being prone to flooding from waterways, although some areas are subject to localised surface water flooding as shown on the above mentioned Map 6. For basement development within flood risk areas identified on Map 6, the Council requires the submission of a development-specific flood risk assessment.
18. Regardless of whether the 2 basement units are considered self-contained units or not, the fact remains that vulnerable habitable accommodation is being proposed at basement level. It is necessary to establish if the site and the basement flats are prone to flooding, and if so, whether appropriate mitigation can be incorporated to make them safe.
19. The Council has confirmed the site lies within the Sumatra Road LFRZ and within a Critical Drainage Area. The LLFA has been consulted and advise that as there would be flats at basement level the development would be contrary to Local Plan Policies A5 and CC3.
20. The appellant has submitted a bespoke Flood Risk Assessment (FRA)³ and Basement Impact Assessment (BIA) with his application as required by policy. In its Delegated Report the Council refers to the FRA in respect of sustainable drainage and that the BIA has a different focus. However, neither the Council or the LLFA have provided any conclusive commentary on the content and findings of the FRA with particular regard to flooding.
21. The FRA refers to Camden's Strategic Flood Risk Assessment and that historically there has been no flooding events between 1975 and 2002. It also advises that the entire site lies within Flood Zone 1 (Low Probability) which means it has less than a 1 in 1000 annual probability of flooding from rivers. The Camden's Strategic Flood Risk Assessment states that no bedroom accommodation should be below street level in areas at "high" risk of surface water flooding. The Environment Agency's map for 'Risk of Flooding from Surface Water', referred to in the FRA, suggests the site itself is at "very low" risk of flooding from surface water, and Ravenshaw Street adjacent to the site is at "low" and "medium" risk. Consequently, the site and proposed basement bedrooms and flats fall outside a "high" risk zone.
22. Furthermore, the FRA draws attention to the Environment Agency modelling of surface water flow directions. These show that surface water runs from Mill Lane, downhill along Ravenshaw Street to a pond by the Black Path near the railway tracks, and that surface water does not flow from Ravenshaw Street onto the site itself. There is no evidence that the site has flooded from groundwater and the BIA confirms the site is at low risk from flooding.

³ By UNDA Consulting Ltd dated December 2020

23. The appellant is proposing a number of mitigation factors to deal with any residual surface water flood risk. The existing dropped kerb would be replaced by a new kerb upstand. In addition, the entrance floor level, and hence entrance points to the basement flats, would be raised 0.22m above the maximum predicted depth of surface water flooding for both 1 in 100 year and 1 in 1000 year events. In addition, a range of permanent and temporary flood-proofing measures would be installed on site to help ensure there are no active surface water flow paths to the basement or ground floor flats. There will also be rainwater harvesting and green roofs. Additional surface water runoff from hard standings and roofs will be directed to an attenuation tank in the rear garden as part of a wider sustainable drainage system, to which the Council raises no objection.
24. To conclude, whilst the site lies within a LFRA, a bespoke FRA has been submitted that demonstrates the site is not prone to flooding. Additional mitigation measures to safeguard the flats from any residual flood risk have also been proposed, which can be conditioned if I was minded to allow the appeal. In the absence of any substantive evidence to the contrary from either the Council or the LLFA, I am satisfied that the site is not prone to flooding and hence would be a suitable location for basement flats. Accordingly, there would be no conflict with Local Plan Policies A5 and CC3, whose aims are outlined above.

Affordable housing

25. Local Plan Policy H4 (Maximising the supply of affordable housing) requires a contribution to affordable housing from all developments that provide one or more additional homes. An affordable housing contribution (the 'housing contribution') of £264,950 would be required in this instance in-lieu of on and off-site provision of affordable housing. As agreement to this the appellant has submitted a UU planning obligation as part of his appeal.
26. However, the dispute is over when the housing contribution is to be paid. The submitted UU states that the housing contribution would be paid in full 'on or prior to the occupation of the fifth flat'. The Council want the housing contribution paid on or before the development commences.
27. The appellant refers to national guidance relating to Covid⁴ and payments required by planning obligations. It was brought in by the government and gave Community Infrastructure Levy (CIL) charging authorities the discretion, for a limited time (in certain prescribed circumstances and if it is considered appropriate) to defer CIL payments to help ease the financial burden on developers, particularly smaller developers. However, the guidance was withdrawn on 11 April 2022 and Covid restrictions have now been lifted. I have not been advised of any particular cashflow problems due to Covid in relation to this project
28. The Council refers to advice in its Camden Planning Guidance on Housing (January 2021) that financial obligations are generally expected to be paid when implementation of a development commences, particularly for payments towards affordable housing in order to enable affordable housing to be delivered in tandem with non-residential development and market housing to maintain mixed, inclusive and sustainable communities.

⁴ The Coronavirus (COVID-19): Community Infrastructure Levy published 11 May 2020, last updated August 2020.

29. Deferment of payments in accordance with other time triggers can occur and it is not uncommon for them to be used for large scale developments, those with long site preparation times or long construction times and which might need to be phased, for example.
30. However, the appeal development is for a single building on a small site that would provide a 'shell' within which 7 flats would be created and not 7 free-standing buildings. I have not been made aware that there would be any particularly difficult or protracted site preparation or construction. Furthermore, I have not been provided with a financial viability appraisal or any compelling evidence to demonstrate that there would be significant cashflow problems or viability issues to necessitate deferring the payment of the housing contribution until on or before occupation of the fifth flat.
31. Under the appellant's suggested payment trigger, the entire building could be completed and capable of occupation, but there would be nothing to prevent the fifth, sixth and seventh flats from remaining unoccupied indefinitely. As a result, the housing contribution may never be paid and the delivery of much needed affordable housing would be hampered. The payment on commencement provides the security that affordable housing provision can continue to be provided whilst the new development proceeds.
32. There is insufficient evidence to demonstrate that payment of the housing contribution cannot be made prior to or on commencement of the development, in line with the Council's housing advice. Accordingly, having a later payment trigger would not make adequate provision for affordable housing, as required by Local Plan Policy H4.

Other Matters

33. The Council raises other issues with the UU regarding its general drafting. As the appeal is being dismissed for other substantive issues and whilst a planning obligation in the form of a UU has been submitted, it is not necessary for me to look at it in detail or comment on those other aspects of the terms of the UU in dispute, given that the proposal is unacceptable for other reasons.

Planning Balance and Conclusion

34. The principle of redeveloping an urban infill site in an accessible residential location for 7 flats is not in dispute. The proposal would provide an acceptable mix of 2 and 3 bed units and see an increase of 5 residential units overall. This would contribute to the borough's housing supply whilst making efficient use of land. There would also be a financial contribution towards the provision of much needed affordable housing. These factors count in favour of the development.
35. I have found the proposal would be acceptable in terms of flood risk. The internal floor areas of the flats would meet or exceed the national minimum floorspace requirements and the flats would meet the Building Research Establishment recommendations in terms of Average Daylight Factor and receive adequate daylight and sunlight. All of the units would have adequate private external amenity spaces in the form of balconies or patio gardens, with access to a communal garden as well. There would not be an adverse effect on the amenities of neighbouring occupiers. However, these factors carry neutral weight in my consideration of the proposal. The planning obligations, with the exception of the

affordable housing contribution, are required to mitigate potential adverse effects from the development and are therefore not a benefit.

36. However, the design of the building would harm the character and appearance of the area and be a lasting blight on the local area. This outweighs the benefits of the scheme. The proposed development would not accord with the development plan and there are no other considerations which outweigh this finding.
37. Accordingly, for the reasons given the appeal should not succeed.

K. Stephens
INSPECTOR