



## Appeal Decision

Site visit made on 25 October 2017

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5<sup>th</sup> December 2017.

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**Appeal Ref: APP/X5210/W/17/3177331**

**Rear of 1 Elsworthy Terrace, Camden, London NW3 3DR**

- 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 Mrs Caroline Nourani against the decision of the Council of the London Borough of Camden.
  - The application Ref 2016/3495/P, dated 22 June 2016, was refused by notice dated 6 December 2016.
  - The development proposed is construction of a new family single dwellinghouse.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. With reference to the decision notice, the Council based its decision on Rev F of drawing Nos 433-A-001 to 433-A-015. The revised drawings have resulted in the above ground floor height of the proposed dwelling being reduced from two storey to one storey. Third parties have had the opportunity to comment on the revised drawings as part of the appeal process. In the interests of clarity I have determined the appeal on the basis of the revised drawings.
3. During the appeal, the Camden Local Plan (LP) was adopted. The parties have had the opportunity to comment on the effect of this matter on the appeal. Accordingly the appeal has been determined taking into account policies of the LP.

### Main Issues

4. The main issues are:
  - Whether the proposal would preserve or enhance the character or appearance of the Elsworthy Conservation Area (ECA), including the effect of the proposal on trees subject to a Tree Preservation Order (TPO);
  - Whether sufficient information has been provided to demonstrate that the proposal would not compromise the structural integrity of neighbouring properties or the water environment in the local area; and,
  - The effect of the proposal on the living conditions of future occupants and neighbours residing at Nos 1 and 2 Elsworthy Terrace, with particular reference to outlook.

## Reasons

### *Conservation Area*

5. The appeal site comprises a relatively open and overgrown parcel of land between No 23 Elsworthy Road and No 1 Elsworthy Terrace. The site is located in an area characterised by historic Victorian terraced, detached and semi-detached properties that have reasonable sized gardens. The Council's Delegated Report states that the site was separated from the garden of No 1 Elsworthy Terrace in 2015. My site visit observations confirm that the overgrown appeal site is separate from the garden area of No 1.
6. The Conservation Area Appraisal (CAA) states that the spatial character of the area derives from the spacious leafy streets and generously laid out plot sizes. The CCA identifies Nos 1-15 Elsworthy Terrace and Nos 21, 23 and 28-42 Elsworthy Road as positive contributors to the ECA. The brick boundary wall at the site is also identified as an element of streetscape interest. Views out of the ECA towards the summit of Primrose Hill from the end of Elsworthy Terrace are identified as notable views and landmarks by the CAA. The CAA states that the visual relationship with the complementary, open rural aspect of Primrose Hill is a marked characteristic of the ECA, and as such, any rear extensions or harmful alterations will be strongly discouraged. The CAA also states that the subdivision of existing plots will be discouraged where it interprets the rhythm and form of development of both buildings and boundary treatments.
7. With the above in mind, and based on my site visit observations, the open and verdant appearance of the appeal site, appreciable from the adjoining highway, contributes positively to the character and appearance of the ECA. I also agree with the Council that the openness of the appeal site is an important feature in providing a visual break to the general unbroken and substantial frontages in the surrounding area. Whilst the appeal site cannot be seen from Primrose Hill (and vice versa), in conjunction with garden areas to the rear of Nos 1-7 Elsworthy Terrace, the site nonetheless contributes positively to the visual relationship between the ECA and Primrose Hill. The positive contribution of the site to the ECA is not diminished by the presence of patios or ancillary features to the rear of Elsworthy Terrace, some of which I saw from neighbouring properties during my site visit.
8. The appeal site contains three trees subject to a TPO which the Council consider have significant importance for the amenity of surrounding properties and the ECA. In my view the TPO trees at the site make a positive contribution to the character and appearance of the ECA, as described above. I note that the appellant's Arboriculture Report (AR dated 20 October 2015) has been undertaken by a consultant with considerable experience and expertise. The AR states that it is reasonable to treat the Root Protection Areas (RPAs) as circle shapes and that the RPAs of the lime trees will have been reduced by the adjoining carriageway. The AR states that cracks in the front and side boundary walls indicate that roots have spread under them. The AR also concludes that the useful life of the birch tree is limited.
9. Based on the proximity of the TPO trees to the adjoining highway, and with reference to paragraph 4.6.2 of BS5837:2012 'Trees in relation to design, demolition and construction', the Council are concerned that existing site conditions have not been taken into account in determining the RPAs. Paragraph 4.6.3 of BS5837:2012 states that any deviation in the RPA from a

circular plot should take into account a number of factors, one of which relates to the morphology and disposition of the roots, when influenced by past or existing site conditions such as the presence of roads. The submitted AR states that trial pits were dug along the boundary with No 2 Elsworthy Terrace and opposite the holly tree in the rear garden of No 2. However, taking into account the adjoining carriageway and the location of the trial pits outside the annotated RPAs, I share the Council's concern regarding the accuracy of the RPAs as plotted in the AR.

10. The AR states that the proposal would make insignificant incursions into the lime tree RPAs and that the incursion into the RPA of the birch tree would be within tolerable limits. However, no substantive site specific and specialist advice is before me to demonstrate that the subterranean construction proposed would meet the relevant guidance set out in paragraphs 7.6.1 to 7.6.2 of BS5837:2012. In this light, based on the two storey scale of excavation proposed and in conjunction with my reasoning above, the use of a condition to obtain an arboriculture method statement would not provide sufficient certainty to fully ensure the retention or health of the TPO trees at the site. As a result, based on the evidence before me, the proposal would have a harmful effect on the TPO trees at the site.
11. The proposal would be single storey in height and set back from the highway. However, a predominantly glazed elevation would face towards Elsworthy Road and expand across the full width of the plot. This elevation would also project beyond the front elevation of No 23 and the overall roadside side elevation of No 1. In this respect, the proposal would be contrary to the pattern of surrounding development and thus would harm the extent of openness across the rear gardens at Nos 1-7 Elsworthy Terrace. Consequently the proposal would have a harmful effect on the spacious and verdant character of the ECA and its visual relationship with Primrose Hill. The use of a green roof, a green wall, reclaimed yellow bricks and the intended light weight design of the proposal would not fully mitigate the resultant loss of the open and verdant appearance of the appeal site.
12. The harm identified above would be appreciable from the adjoining highway as the proposed dwelling would remain visible above the roadside boundary wall. In addition, based on my reasoning above, the proposal would have a harmful effect on the TPO trees at the site. Consequently the trees at the site cannot be relied upon to sufficiently screen the proposed dwelling from views along Elsworthy Road. Furthermore, the trees would not fully screen the proposal during winter months when leaf cover would be reduced. Nor would the replacement planting of the birch tree fully screen the proposal.
13. In the context of paragraphs 131 - 134 of the National Planning Policy Framework (the Framework), I consider the extent of harm to the significance of the ECA as a whole to be less than substantial. In such circumstances, the Framework advises to weigh harm against the public benefits associated with the proposal. The submitted Unilateral Undertaking<sup>1</sup> (UU) would secure a contribution towards the provision of off-site affordable housing. The proposal would also contribute a family home towards housing supply and, in the context of paragraph 50 of the Framework, would widen housing choice.

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<sup>1</sup> Concerns have been raised regarding the submitted UU. For the purpose of the public benefit exercise required by the Framework I have assumed that the submitted UU accords with the statutory tests and is implementable. This is a matter I return to later in the decision letter.

- Economic benefits would also arise via support to construction employment and local shops and services.
14. Whilst the harm of the proposal to the ECA would be less than substantial, the Planning (Listed Buildings and Conservation Areas) Act 1990 is clear that such harm should be given considerable importance and weight. In this context, the considerable weight afforded to the harm of the proposal to the ECA would outweigh the combined weight afforded to the benefits described above.
  15. In reaching this view, I have taken into account and viewed the single storey dwelling to the rear of No 15 Elsworthy Terrace. It is put to me that the appeal proposal would be a more sensitive design that would balance the rhythm of the street frontage. It is also contended that the dwelling at No 15 is significantly larger than the three garages it replaced and it is highlighted that the CAA required sensitive redevelopment of the site. However, the appeal before me does not involve the replacement of three garages identified as features that detract from the conservation area by the CAA. Consequently the appeal proposal materially differs to the development at No 15. Moreover, the development to the rear of No 15 does not justify or reduce the harm to the ECA identified above.
  16. I have also taken into account the permissions granted at 1B Ellerdale Road, 100a Fellows Road, 53 Eton Avenue and 41 Ferncroft Avenue which the appellant considers to be similar to the appeal proposal. The appellant contends that these permissions set a precedent with subsequent changes to national and local planning policy being immaterial. It is also highlighted that the Inspector determining the appeal at 100a Fellows Road gave full weight to the permission granted to the rear of Eton Avenue. However these cases are located some distance away from the appeal site and involve different conservation areas where a different character prevails. Moreover I must determine the appeal before me on its own merits.
  17. Therefore the proposal would neither preserve nor enhance the character or appearance of the ECA and would have a harmful effect on trees subject to a TPO. Consequently the proposal would not meet the requirements of LP policies D1 and D2 which require development to secure a high quality design that preserves and enhances the character or appearance of the conservation area.

#### *Structural Integrity and Water Environment*

18. Of relevance, LP Policy A5 states that the Council will only permit basement development where it is demonstrated that the proposal would not cause harm to the structural, ground or water conditions of the area. Policy A5 goes on to state that the Council will require an assessment of the scheme's impact on drainage, flooding, groundwater and structural conditions in the form of a Basement Impact Assessment (BIA). Section 6.117 accompanying Policy A5 explains that in order to provide the Council with greater certainty over the potential impacts of proposed basement development, it is generally expected that the applicant will fund an independent verification of the BIA. With reference to the circumstances listed in section 6.117, which set out when an independent verification of a BIA is required, the Council state that as the screening stage revealed high risk impacts, the proposal should be subject to an independently verified BIA.

19. The initial independent verification of the BIA on behalf of the Council raised a number of concerns. These are set out in the Council's Delegated Report as 'input of an individual with C.WEM or CEng MICE qualification with respect to hydrology, works programme not included, factual site investigation data not provided, incomplete screening carried forward, inconsistent and incorrect information provided not linked with the Flood Risk Assessment, no definitive proposals on surface water management plan, presence or absence of basement beneath neighbouring properties not confirmed in BIA and foundations depth not determined, no structural details or construction sequence sketches provided, stiffness parameters not included in retaining wall parameters, full input and output from Oasys Xdisp not provided, further mitigation measures required for walls indicated to fall within Category 1 damage, heave movements not calculated, movement monitoring proposal not provided'.
20. Since receipt of these comments, the appellant has updated the BIA and undertaken a Building Damage Assessment Report (BDA). My attention is also directed to the submitted Basement Construction Method Statement (December 2015) and Flood Risk Assessment (June 2016) which concludes that the proposal would not increase flood risk at the site or elsewhere, subject to appropriate sustainable urban drainage methods. Furthermore, the BDA concludes that as a worst case category of damage and with good construction and controls, the basement excavation would cause negligible to slight damage to adjoining structures, based on the Burland Scale. In this context I note that criterion n) of Policy A5 requires a BIA to show that a scheme poses a risk of damage to neighbouring properties no higher than Burland Scale 1 'very slight'.
21. The appellant contends that the revised, additional and cited information overcomes the concerns raised during the initial independent verification stage. The appellant has also provided an updated position<sup>2</sup> with commentary which the Council contend that it is not an original response as part of the independent verification process. However, in any event, as set out by the Council, the additional information has not been subject to independent verification. Consequently the information before me does not provide the level of certainty required by LP Policy A5 to ascertain the potential impacts of the proposed basement development. On this basis, the proposal would be contrary to Policy A5.
22. In reaching this view, I have taken into account applications at Royal Free Hospital and at 24 Redington Gardens. Whilst the respective decision notices have been provided for these cases, based on the limited information, I am unable to fully compare both applications with the appeal before me.
23. However, as set out by the Council, subsequent reviews and amendments to the application at Royal Free Hospital ensured that it complied with the revised CPGP4, which I understand formally introduced the need to assess the impact of basement excavations as part of an independent audit. In addition, the BIA accompanying the application at No 24 was accepted by the Council's independent verifier. On this basis, both of these applications are not fully comparable with the proposal before me.
24. Therefore sufficient information has not been provided to demonstrate that the proposal would not compromise the structural integrity of neighbouring

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<sup>2</sup> Appendix 9, appellant's Appeal Statement

properties or the water environment in the local area. Consequently the proposal would be contrary to LP Policy A5, the requirements of which are set out above.

### *Living Conditions*

25. During my site visit I observed the appeal site from the raised ground floor living room window and first floor bedroom window at No 1 Elsworthy Terrace. The outlook from both windows is currently across the verdant appeal site towards No 23 Elsworthy Road and open. Views from the garden area at No 1 include the wooden boundary fence shared with the appeal site.
26. Based on the height of the windows at No 1 and the single storey scale of the proposed dwelling, the outlook for neighbours from the facing bedroom and living room at No 1 would remain mostly open. Taking into account the remaining open aspect to the north west of the garden, an open outlook would also remain from the garden area at No 1. In this respect, the proposal would not have a harmful effect on the outlook of neighbours residing at No 1.
27. I also viewed the appeal site from No 2 Elsworthy Terrace, including from a balcony, bedroom, garden area and living room. The height of the proposed dwelling would be over twice the height of the brick wall that runs along the boundary of No 2 and the appeal site. Owing to the angle and height of the living room bay window at No 2, neighbours would have some views across and over the proposed dwelling. Nonetheless a sufficient open outlook across the garden area of No 2 towards No 23 would remain from the balcony and living room. Based on the single storey height proposed, the linear layout of the garden serving No 2 and the remaining open aspect to the north east and south east, an open outlook would also remain from the bedroom and garden area.
28. The Council refer to the London Housing Supplementary Planning Guidance (SPG) document which states that single aspect dwellings that contain three or more bedrooms should be avoided. In this respect, none of the proposed habitable rooms would have dual aspects and all four basement bedrooms would be open only to the light well for outlook. The Council also state that the bedroom on the second basement level would have an outlook angle above 50 degrees. Concern is also raised regarding the absence of a vertical sky component as part of the submitted Daylight and Sunlight assessment. Based on the appellant's calculations, bedrooms 4 and 5 would be approximately 5.25m from the courtyard wall whilst bedrooms 2 and 3 would be nearly 3m from the courtyard wall.
29. The appellant states that the lower basement rooms for the development granted to the rear of 15 Elsworthy Terrace, which included a habitable room, was approved by the Council despite being served by roof lights only. In addition, in comparison with the appeal proposal, a smaller sunken courtyard used to serve bedrooms at 41 Ferncroft Avenue is cited by the appellant. The Council do not refute that this is the case and offer a limited rebuttal, asserting that satisfactory information was submitted with the cited applications. In my view, based on the cases cited by the appellant and with no substantive reasoning to the contrary, a suitably worded condition to secure landscaping for the sunken courtyard would ensure a sufficient outlook for future occupants. On this basis, notwithstanding the noted conflict of the proposal



with the London Housing SPG, the proposal would accord with LP Policy A1 by protecting the quality of life of future occupiers.

30. Therefore the proposal would not have a harmful effect on the living conditions of future occupants and neighbours residing at Nos 1 and 2 Elsworthy Terrace, with particular reference to outlook. Consequently the proposal would meet the requirements of LP policy A1 which seek to ensure that the amenity of neighbours and occupiers is protected, including factors such as outlook.

#### *Planning Obligation*

31. The submitted UU seeks to secure a financial contribution towards off-site affordable housing and ensure the delivery of car free housing, public highway works and a construction management plan. However, the Council require the appellant to pay a fee to cover its costs for providing comments on the submitted UU.
32. In the overall balance, the mitigation measures and the public benefits (in the form of a contribution towards off site affordable housing) set out in the submitted UU would not have changed the outcome of the appeal. Therefore, whilst I have noted the Council's concern in this respect and notwithstanding my conclusion in relation to the public benefit exercise undertaken at paragraph 13 above, I do not need to reach a firm conclusion regarding the effectiveness and suitability of the submitted UU. Consequently I have not pursued this matter any further.

#### *Other Matters*

33. I have identified no harm to the outlook of neighbours residing at Nos 1 and 2 and future occupants. However an absence of harm in these respects can only be considered as neutral factors, and thus do not affect the overall planning balance and outcome of the appeal.
34. The Framework identifies three dimensions<sup>3</sup> to sustainable development that should be sought simultaneously through the planning system. However, based on the harm identified to the ECA above and in respect of the second main issue, the proposal would be deficient in respect of the environmental dimension. Consequently the proposal would not represent sustainable development as defined and sought by the Framework.

#### **Conclusion**

35. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

*B Bowker*

INSPECTOR

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<sup>3</sup> Economic, social and environmental