

Appeal Decision

Hearing held on 14 March 2017

Site visit made on 14 March 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 27th April 2017

Appeal Ref: APP/X5210/W/16/3153020

Land to the rear of 128-130 Agar Grove, St Paul's Mews, London NW1 9TZ

- 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 St Paul's Mews (Islington) Limited against the Council of the London Borough of Camden.
 - The application Ref 2014/7710/P, is dated 4 March 2015.
 - The development proposed is erection of new house.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of new house at land to rear of 128-130 Agar Grove, St Paul's Mews, London, NW1 9TZ in accordance with the terms of the application Ref 2014/7710/P, dated 4 March 2016, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. As the Council issued its decision notice after the appeal was lodged, the appeal has proceeded as being against the failure of the Council to give notice of its decision within the appropriate 8 week period.
 3. At the hearing it was agreed that the site is located at the rear of 128-130 Agar Grove and that this should be included in the site address as it more accurately describes the location of the site than the address used in the application form. This is reflected in both my banner heading and decision above.
 4. Following the submission of the appeal against the Council's failure to determine the application, the Council issued a decision notice which sets out what its reasons for refusal would have been had it been in the position to determine the application. These relate to the loss of an asset of community value which serves the needs of the local community and the impact upon parking stress and congestion in the surrounding area.
 5. At the Hearing a completed s106 agreement was provided which purports to provide a car-free development (along with provision for a Construction Management Plan). The Council confirmed that this s106 agreement overcomes its objection relating to parking stress and congestion. I return to this matter later in this decision.
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Main Issues

6. The main issue is the extent of the community use of the site and the effect of its loss on the local community.

Reasons

7. Policy SC10 of the Camden Local Development Framework Core Strategy 2010-2025 (the Core Strategy) seeks to ensure that community facilities and services are provided for Camden's communities and supports the retention and enhancement of existing community, leisure and cultural facilities.
8. Policy DP15 of the Camden Local Development Framework Development Policies 2010-2025 (Development Policies) states that the loss of existing community facilities will be resisted unless a replacement facility that meets the needs of the local population is provided or the specific community facility is no longer in its current use.
9. Paragraph 70 of the National Planning Policy Framework (the Framework) states that planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs.
10. The planning permission granted in 1987 for the residential development now known as St Paul's Mews included the appeal site as a car parking area. A condition was attached to the planning permission reserving the use of the originally designated parking spaces within the appeal site for the parking of vehicles. The appellant has recently erected bollards which now prevents the use of the site for parking.
11. The appeal site is unlike many other more formalised community facilities as it was not designed for such a purpose. It is apparent that the use by residents for meetings and events etc. has occurred incrementally and informally over the last five years.
12. The site is located with access primarily available for the approximate 100 residents of St Paul's Mews. Whilst I understand that a small number of other residents from outside of St Paul's Mews have attended events at the site, I note that the gated access to St Paul's Mews limits its use by people living further afield. It is therefore of only limited value for the wider community.
13. The evidence provided by the Residents Association indicates that the use of the site by residents for community purposes commenced in 2012 when there were two residents meetings in November and December. The evidence goes on to show that there have been several residents meetings on the appeal site in each subsequent year, along with occasional events such as Summer BBQs and fireworks parties. I am also aware from representations made in writing and at the Hearing, along with photographs provided, that there has been additional informal use of the site by residents including their children.
14. From the evidence, it is clear that the site is used on a fairly regular basis by local residents, primarily the residents of St Paul's Mews. However, other than informal use, the events listed amount to less than one per month and not more than ten in one year. This does not appear to amount to an extensive use. Furthermore, the use of the site does not appear to extend to any considerable degree to other members of the community from the wider

locality. I am aware that the use of the site has been limited by works that have taken place upon it, such as the removal of paving stones, though note the efforts that have taken place by residents to seek to restore it for their use. Whilst items such as tables, sports equipment and barbecues have been erected on the site, these appear to be of a temporary nature. I acknowledge that on the one hand this reflects the flexibility of its use. However, this contributes to my view that the site is in informal use by local residents rather than it being a dedicated and established facility for the benefit of the wider community.

15. In the context of Paragraph 70 of the Framework, I acknowledge that the site provides a facility which is valued by residents. Nevertheless, whilst it appears to be available for use throughout the year, I am not persuaded from the evidence that its loss would significantly reduce the community's ability to meet its day to day needs. Although the gardens of properties in St Paul's Mews are of a limited size, they still offer opportunities for children to play and for outdoor activities to take place. Furthermore, other outdoor facilities are available within reasonable walking distance of the site which, although they not be as conveniently located for residents of St Paul's Mews and have a different character and function, they still appear to offer recreational and social opportunities. It also seems to me that its effectiveness of use for meetings would be likely to be restricted by it being an outdoor space with no protection from the weather.
16. Drawings were submitted by the Residents Association at the Hearing showing proposals to landscape and improve the site for recreational and community use. Whilst these show how the appearance and usability of the site could be enhanced, they are proposals for the future and do not reflect the current position. Furthermore, from the evidence before me there is no guarantee that such proposals would be able to be implemented and I have therefore only afforded them minimal weight.
17. Following nomination by the St Paul's Mews Residents Association, the Council designated the site as an Asset of Community Value (ACV) in January 2014. This designation demonstrates that local residents (albeit largely those residing in St Paul's Mews) and the Council consider that the use of the open space for recreation, socialising and meetings furthers the social wellbeing or social interests of the community. Nevertheless, the consideration of the planning application involves wider considerations than set out in the Council's ACV decision. I also note that the primary purpose of ACV listing is to afford to the community an opportunity to purchase the property, not to prevent otherwise acceptable development. Therefore, whilst I consider that the ACV listing carries some weight in my determination, it is not the overriding consideration.
18. The Council says that whilst car parks and squares are not referenced in the policies SC10 of the Core Strategy and DP15 of the Development Policies, the omission of reference to them does not mean that they cannot be a community facility. It goes on to state that these policies should therefore be apportioned a reasonable degree of weight.
19. The Council has also drawn my attention to policy C2 of the emerging Camden Local Plan which includes provisions seeking to protect community facilities which are generally similar to those set out in Development Policy DP15. This draft policy also states that the Council will take into account listing or

nomination of ACVs as a material planning consideration. The Council has recently consulted on modifications to this plan following the examining Inspector's report, which includes modifications to policy C2 though, from the information provided, these do not significantly change the considerations in this case. I have given this emerging policy limited weight, and find that it does not materially change my conclusions on the main issue in this appeal.

20. I have been referred to a recent appeal decision¹ in Westminster regarding the demolition of a public house. However, I consider the particular circumstances of that case to be significantly different to those of the current appeal proposal which I have considered on its individual merits.
21. Whilst the site is clearly used and enjoyed by residents, I have some doubt as to whether it offers the type of facility that policies SC10 of the Core Strategy and DP15 of the Development Policies primarily seek to protect. This is particularly as its use is largely informal in nature and it is available for and used mainly by the residents of St Paul's Mews and not the wider community. I do not consider that it is an established community facility in the same sense as, for example, a village hall or public park.
22. Based on the evidence the overall harm in this case in terms of the loss of a community use would only be modest. I therefore find that the proposed development would not result in any significant harm in the context of the policies SC10 and DP15. I carry this finding forward to the planning balance later in my decision.

Other Matters

Parking

23. The Council requires that the proposed dwelling should be a 'car-free' development and that provision for this should be included in a s106 agreement between the parties. I have considered the completed s106 agreement in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy ('CIL') Regulations 2010.
24. Policies CS11 of the Core Strategy and DP18 of the Development Policies generally seek car free housing in the most accessible areas where there is high public transport accessibility and where development could lead to on-street parking problems. The Council states that the site has a Public Transport Accessibility Level (PTAL) of 3 which indicates that it is moderately accessible by public transport. In the context of car free development, the Camden Planning Guidance 7 – Transport states that car free development should occur in highly accessible areas which it states are those areas with a PTAL level of 4 and above. I am not therefore persuaded that the location of the site is appropriate for car free development in this case as it is not a 'highly accessible' area.
25. Furthermore, the parking generated by this proposal for a single dwellinghouse is likely to be very modest. From the evidence before me it is not apparent that the parking generated by the proposal would be such as to result in any significant impacts upon parking stress and congestion in the locality of the site. Although I understand that existing garages within St Paul's Mews are small resulting in some on street parking within the mews, there is no clear

¹ APP/X5990/C/15/3130605

indication that additional parking generated by this proposal would lead to any significant parking stress problems. In addition, as St Paul's Mews is a private road, it is also relevant that any car free provision would not apply to cars parked upon it.

26. I therefore conclude that the car free obligation would not pass the test of being necessary in CIL Regulation 122. I am consequently unable to take this particular obligation into account in determining the appeal. However, even without this obligation, for the reasons set out above I do not consider that the proposal would result in any unacceptable parking stress or congestion in the surrounding area. I find that no significant harm would result in the context of the relevant parking and highway aims of policies CS11 and CS19 of the Core Strategy or policies DP18 and DP19 of the Development Policies.

Construction Management Plan

27. The s106 agreement also includes an obligation requiring that the development is constructed in accordance with a Construction Management Plan to be approved by the Council. At the Hearing the Council explained that this would need to be subject to a planning obligation rather than condition as it includes matters outside of the application site. The relevant development plan policies are CS5, CS11 and CS19 of the Core Strategy and DP20 and DP21 of the Development Policies. Given the potential disruption that might arise should the construction of the dwellinghouse not be properly managed, I consider this obligation passes the tests in CIL Regulation 122.
28. In addition, a Construction Management Plan Implementation Support Contribution is included in the s106. However, there is no specific statutory requirement for local planning authorities to secure compliance with planning controls. Review and monitoring are part of the everyday function of the local planning authority and I do not consider that the circumstances of this case are likely to result in an excessive burden upon it. I do not therefore consider in this instance that this contribution is necessary to make the development acceptable. Furthermore, there is no information before me of how the contribution has been calculated in this instance and therefore I cannot be sure that it is fairly and reasonably related in scale and kind to the development. Therefore, in this case, this obligation does not pass the tests of Regulation 122 of the CIL Regulations and I am unable to take it into account.

Other planning issues

29. The site is located within the Camden Square Conservation Area. The area around the site generally consists of both traditional and more contemporary terraced and semi-detached residential development. Located adjacent to existing rear gardens of properties on Agar Grove, the siting of the proposed dwelling does not fit seamlessly with the pattern and layout of existing surrounding development. However, I consider the dwellinghouse would be of a good quality contemporary design. It would be partially screened by existing boundary walls and its low profile would prevent it from appearing as unacceptably prominent or intrusive within the streetscene.
30. Whilst the site itself does not contain any trees of significant amenity value, there are trees located in adjacent gardens. Nevertheless, the evidence shows that trial pits dug along the boundary indicate that adjacent tree roots do not encroach on to the site. Therefore, I am satisfied that no adverse impacts

would result upon existing trees, subject to a condition securing appropriate tree protection measure as agreed by the main parties.

31. I therefore consider that the proposed development would preserve the character and appearance of the Conservation Area.
32. There is no detailed evidence before me of the site containing protected species and I am satisfied that no adverse biodiversity implications would result from the proposed development.
33. With respect to neighbouring living conditions, the low profile form of the dwellinghouse would be partially screened by existing boundary walls, and there would be generous separation distances to adjacent windows of existing residential properties. Impacts during construction would be managed by a Construction Management Plan secured in the s106 agreement. Therefore, I do not consider that any unacceptable impacts would result upon the living conditions of the occupiers of neighbouring properties with regards to outlook, light, privacy or disturbance.
34. The Basement Impact Assessment has concluded that the basement of the proposed dwellinghouse could be constructed without any adverse implications on surrounding land and property. The Council is satisfied with the information before it in this regard and I see no reason to disagree with such findings.
35. It has been put to me in written representations that the proposal would breach Article 8 the Human Rights Act. At the Hearing no party wished to make any further representations in this regard. Taking account of my reasoning earlier in this decision regarding the use of the site by residents, I do not consider that the proposal would represent any interference that would engage the operation of Article 8.

Planning Balance

36. The proposed development would provide a new dwellinghouse and would make an, albeit small, contribution to the supply of housing. Notwithstanding the concerns of residents and the Council regarding the use of the site, it would make an efficient use of previously developed land. I have given this moderate weight in favour of the proposal.
37. Against these benefits I have found that the proposal would prevent the future use of the site by local residents for recreational or social purposes. However, its use in this regard is largely informal and is not easily available for the use of the wider community. I do not consider that it would hinder the community's ability to meet its day to day needs. I have given only modest weight to the resulting harm in this regard.
38. Overall, in the context of the development plan I conclude that the benefits of the proposal would outweigh the disbenefits. The proposal would therefore comply with the development plan when considered as a whole.

Conditions

39. I have attached a condition limiting the life of the planning permission. I have imposed a condition specifying the approved plans as this provides certainty. I have not included the comprehensive list of the application documents as set

out in the Council's suggested condition, but where relevant and necessary I have referenced them in subsequent conditions.

40. A condition relating to cycle storage is necessary in order to promote sustainable means of transport. A tree protection condition is necessary in order to safeguard adjacent trees which contribute to the visual amenity of the area.
41. A condition requiring the approval of external materials is reasonable and necessary to ensure the satisfactory appearance of the development and to preserve the character and appearance of the Conservation Area. At the Hearing it was agreed that the Council's original suggestion for a panel of brickwork to be provided on site for approval would not be necessary. I agree that the submission of only samples would be necessary and not a panel.
42. A condition requiring the basement construction to comply with the relevant reports submitted with the application is necessary in order to safeguard the area around the site including the structural stability of neighbouring land and property. This condition is more precise and relates to the relevant documents submitted rather than the condition suggested by the Council relating to the basement, the wording of which I consider to be imprecise and does not appear to me to be wholly necessary in order to achieve an acceptable development.
43. A condition restricting the use of the roof of the dwellinghouse is necessary in order to prevent overlooking of neighbouring properties. Details of the proposed green roof need to be approved in order to promote biodiversity. A condition ensuring the erection of the proposed brick planter along the front boundary of the site is necessary in order to discourage the use of the private car.
44. At the hearing it was agreed that the Council's originally suggested condition restricting construction working hours is not necessary given that such matters could be included in the Construction Management Plan to be submitted for approval through the separate s106 agreement.
45. I have made alterations to some of the conditions suggested by the Council in the interests of preciseness and to avoid the use of unnecessary pre-commencement clauses, but these alterations do not alter the essence of such conditions.

Conclusion

46. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

David Cliff

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Chris Robinson

Kowloon Pacific

FOR THE LOCAL PLANNING AUTHORITY

Gideon Whittingham
Gary Bakall

Senior Planning Officer
Planning Enforcement Manager

INTERESTED PARTIES

Oliver Rook
Caroline Daley
Steve Brown
Jeffrey Feim
John Keeble
Oliver Rook
Colin Flemming
John Lettice

St Paul's Mews Residents Association
Counsel for St Pauls Mews Residents Association
Agar Grove Residents
Local resident
Local resident
Local resident
Local resident
Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed Statement of Common Ground
2. Signed s106 agreement
3. Transcript of speech for and on behalf of St Paul's Mews Resident's Association
4. Policy C2 of the emerging Camden Local Plan
5. Details of planning application PL/8903102
6. Folder of photographs and list of meetings (St Paul's Mews Residents Association)
7. Folder of photographs and landscape visualizations (St Paul's Mews Residents Association)

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, (00)_100 Rev. A, (00)_201 Rev. A, (00)_202 Rev. A, (00)_300 Rev. A, (00)_110 Rev. B, (00)_111 Rev. A, (00)_112 Rev. B, (00)_211 Rev. A, (00)_301 Rev. A, (00)_302 Rev. B, (00)_303 Rev. A, (00)_304 Rev. B, (00)_305 Rev. A.
3. No development other than excavation works shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby approved have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
4. Prior to the commencement of works above grade, details of a secure and covered cycle storage area for 2 cycles shall be submitted to and approved in writing by the local planning authority. The approved cycle storage area shall be provided in its entirety prior to the first occupation of the development hereby permitted, and retained for the lifetime of the development.
5. Prior to the commencement of works above grade, details of the green roof of the development hereby permitted shall be submitted to and be approved in writing by the local planning authority. The development shall not be occupied until the green roof has been constructed in accordance with the approved details and it shall be retained for the lifetime of the development.
6. The development hereby permitted shall be constructed in accordance with the tree protection measures set out in the Arboricultural Assessment and Method Protection Statement dated 14th April 2014 (prepared by ACS Consulting).
7. The construction of the basement of the dwellinghouse hereby approved shall accord with the Basement Impact Assessment dated February 2016 prepared by Card Geotechnics Limited, the Movement Monitoring Specification dated 10th February 2016 and the Structural Engineer's Construction Method Statement Rev P3.
8. The roof area of the development hereby permitted shall not be used as a balcony, roof garden or similar amenity area.
9. The brick planter along the front boundary of the development hereby permitted shall be erected prior to occupation of the dwellinghouse and shall be retained for the lifetime of the development.