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# Appeal Decision

Site visit made on 10 July 2019

**by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 August 2019**

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**Appeal Ref: APP/X5990/W/19/3225003**

**5-8 Cochrane Mews, London NW8 6NY**

- 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 Octavia Living Ltd against the decision of the City of Westminster Council.
  - The application Ref 18/10293/FULL, dated 30 November 2018, was refused by notice dated 5 February 2019.
  - The development proposed is the demolition of existing building and redevelopment of the site to provide two dwellinghouses (Class C3).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the description of the proposal from the appellant's appeal form which corresponds with the description on the Council's Decision Notice as this more accurately describes the proposed development.
3. During the course of the appeal, the appellant submitted a Daylight Distribution Test<sup>1</sup> in order to provide further clarification with regards to Reason for Refusal No1 which concerns loss of light. In accordance with the 'Wheatcroft Principles,'<sup>2</sup> this further information submitted by the appellant provides additional clarification to a main issue and does not result in changes to the scheme. Whilst the Council have provided further comment on this new information in their statement, I find that the acceptance of this further information would be appropriate and not deprive those who should have been consulted or the opportunity of such consultation. As such, I will accept this further information and will base my decision upon it.

## Main Issues

4. The main issues are the effect of the proposed development on the living conditions of the existing occupiers as a result of:
  - daylight; and
  - outlook, and sense of enclosure.

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<sup>1</sup> Daylight Distribution Test, By GA Surveyors, Dated 13/11/2018

<sup>2</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

## Reasons

### Daylight

5. The appeal property consists of a long and narrow single storey building which has a frontage along Cochrane Mews with no setback from the road. Cochrane Mews is a narrow cul-de-sac which is approximately 3 metres wide with residential terraced buildings opposite the appeal site with no setback from the road. The opposite side of the appeal property fronts onto the rear car parking area of Cicely House, a large block of apartments.
6. I have been referred to Policy ENV13 of the City of Westminster Unitary Development Plan 2007 (UDP) where Criterion (D) says the Council will ensure that both new and replacement accommodation, particularly residential, receives adequate daylight and sunlight, and criterion (E) which says the Council will normally resist proposals which result in a material loss of daylight/sunlight, particularly to existing dwellings. In cases where the resulting level is unacceptable, permission will be refused. The accompanying text to this policy also states that where windows to habitable rooms such as bedsits, living rooms, studies or kitchens are already below the recommendations set out for daylight in the Building Research Establishment (BRE) publication '*Site layout planning for daylight and sunlight*';<sup>3</sup> that any loss of light may be unacceptable. Amongst other matters Policy S29 of the Westminster City Plan (WCP) says that development will not result in an unacceptable material loss of residential amenity and developments should aim to improve the residential environment.
7. The appellant's numerical assessment of daylight/sunlight impact is based on the BRE guide. This is cited as being an appropriate basis for assessment in the accompanying text to Policy ENV1 of the UDP. The BRE guidance is not itself policy, and acknowledges that the criterion and guidance are to be applied flexibly and to help rather than constrain design. The numerical guidelines and technical advice in the BRE publication are purely advisory and should be considered in the context of other site layout constraints.
8. The BRE guidance details The Vertical Sky Component (VSC) which is a measure of the amount of light at the window wall. Target values of 27% VSC and a reduction of no more than 20% of the existing VSC are given: if these are not met, occupants of the existing building will notice the reduction in the amount of skylight. The impact on daylight distribution can be measured by plotting the 'No Sky Line' for an individual room. The area beyond the No Sky Line will usually look dark and gloomy, and an increase in this by 20% or more will be noticeable to occupants.
9. The submitted daylight/sunlight report<sup>4</sup> and daylight distribution test shows that for a number of the buildings, particularly along Cochrane Mews, the layouts of rooms is unknown and hence some windows have not been measured as it has been assumed that they are not habitable and other windows have been guessed as there was no apparent attempt to gain access to any of the properties to undertake the tests. The Council highlights concerns with the methodology in that there is no evidence that the report has correctly

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<sup>3</sup> It is noted that the text in the Council's Development Plan refers to the 1991 version, which has since been updated to the 2011 document.

<sup>4</sup> Proposed redevelopment of 5-8 Cochrane Mews, London BRE Daylight/Sunlight Report, By GA Surveyors, 19 November 2018

identified whether the windows are habitable/ non-habitable. According to the appellant's sunlight report, a number of the properties along Cochrane Mews, particularly Nos 9, 10, 11, and 12 already have VSC levels which are less than the suggested 27% from the BRE guidance from any main window on the first and ground floor levels.

10. The results appear to show that the scheme in the majority of cases for surrounding properties at Cecily House and 94-96 Cochrane Street would not result in loss of light to main windows; however for Cochrane Mews, the loss of light would be a marginal decrease from the current poor levels being experienced. It is evident in the submitted report that the majority of windows along Cochrane Mews are already below the recommended standard of the BRE guidance. To me, the further reduction in daylight to windows which already have a poor VSC would in this situation be a material loss that would exacerbate the already poor living conditions experienced, causing significant detriment to the existing occupant's living conditions in Nos 9-12 (consecutive) Cochrane Mews as a result of loss of daylight.
11. Consequently, I therefore conclude on this issue that the proposed development would materially harm the living conditions of the occupiers of Nos 9-12 (Consecutive) Cochrane Mews as a result of an unacceptable loss of light. As such, it would conflict with UDP Policy ENV13 (D) and (E) and Policy S29 of the WCP.

#### *Outlook and sense of enclosure*

12. According to the appellant's calculations the existing single storey building would be 400 millimetres taller than the ridge of the existing building, however would have a wall height 1 metre taller along Cochrane Mews. Given the restrictive 3 metre distance between the proposed building and the dwellings opposite; the level of outlook and enclosure experienced by windows of Nos 9-12 (consecutive) Cochrane Mews is already quite poor.
13. Whilst I note that the appellant feels that an additional metre in wall height along Cochrane Mews would be 'minimal' and 'not be readily visible;' given the already poor conditions experienced, the small increase in height and visual bulk does have a significant impact, particularly to the outlook and sense of enclosure from the ground and first floor levels of Nos 9-12 (consecutive) Cochrane Mews from main windows. The proposed building may only be 400 millimetres taller, however, the current building has a greater pitch which rises away from the front wall which reduces its visual presence and form from the dwellings opposite. The proposal would be much more visually bulky combined with the greater wall height which would increase the sense of enclosure to ground and first floor level windows of Nos 9-12 (consecutive) and significantly decreases the already poor level of outlook experienced to an unacceptable level.
14. Consequently, I therefore conclude on this issue that the proposed development would materially harm the living conditions of the occupiers of Nos 9-12 Cochrane Mews as a result of a poor level of outlook and unacceptable sense of enclosure. As such, it would conflict with Policy ENV13 (F) of the UDP which seeks to restrict development which has a significant increase in the sense of enclosure; and Policy S29 of the WCP which amongst a number of principles, seeks to resist proposals that would result in an unacceptable loss of residential amenity.

## **Other Matters**

15. I note the appellant's concerns with regards to transparency in the way the application was assessed in that they felt that the various tests of the BRE guidance were not required as in other schemes<sup>5</sup>. According to the appellant, in these schemes the Council had not requested such tests or applied different requirements in order to demonstrate whether the scheme was appropriate in terms of loss of light. Whilst there is no further clarification provided by Policy ENV13 of the UDP beyond seeking advice from the BRE guidelines, to me, it would appear that the Council have required the tests based upon the merits of the scheme. In this particular instance it is very clear that one of the main contentions is the proximity of the proposed scheme and its impact as a result of loss of light. The Council felt that in order to fully justify the acceptability of the scheme that it was reasonable and necessary to seek the scheme address all of the tests requested within the BRE guidance to fully understand the impact caused.
16. I note that the Framework encourages the development of small sites and making effective use of urban land. The proposal would also deliver a further two dwellings which will make a modest contribution to meeting housing need, as well as result in short term employment opportunities in the construction of the dwellings, and the contribution to local expenditure from future occupiers. These factors weigh in favour of the development, however do not outweigh the harm that I have identified.
17. I note comments that the site is owned by a not-for-profit affordable housing provider and whilst it has not been shown that the appeal proposal would be used for affordable housing; that any profits made from the approval of the appeal scheme would be used to fund other affordable housing schemes throughout London. This is not a planning matter and has therefore not been factored into this decision.

## **Conclusion**

18. For the reasons given above, I conclude that the appeal be dismissed.

*J Somers*

INSPECTOR

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<sup>5</sup> Ordnance Mews; 59-61 Hamilton Terrace; Finchley Road.