

Appeal Decision

Site visit made on 13 October 2020

by Mr C J Tivey BSc (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2020

Appeal Ref: APP/X5210/W/20/3247384

5 The Hexagon, Fitzroy Park, London N6 6HR

- 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 Miss Rachel Munro-Peebles against the London Borough of Camden Council.
 - The application Ref 2019/0508/P was dated 28 January 2019.
 - The development proposed is for the extension of existing house and internal reconfiguration to create open plan ground floor and 4 bedrooms to the first floor. The proposal includes the demolition of an existing garage as well as the erection of 2no single storey extensions to the side and front of the existing property and a two storey extension at the rear.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Miss Munro-Peebles against the London Borough of Camden Council; and a further application was also made by the Council against the appellant. These are the subject of separate decisions.

Preliminary Matters

3. The appeal is against the failure of the council to give notice within the prescribed period of a decision on the planning application, the subject of this decision. Within its statement the Council sets out the reasons for refusal that it would have cited, had it been in a position to determine the application; these reasons focus solely upon the lack of a planning obligation to secure a Construction Management Plan (CMP) and an associated implementation support financial contribution.
4. It is common ground that the provision of a CMP is necessary for the development proposed, moreover it is the mechanism by which it should be secured which is the subject of disagreement between the parties.
5. Notwithstanding this, a draft agreement subject to section 106 of the Town and Country Planning Act 1990 (the 'Act') has been submitted, which seeks to secure these provisions, although this has not been executed. I have determined the appeal on this basis.

Main Issue

6. The main issue is whether a planning obligation to secure a CMP and implementation support contribution is necessary, reasonable and directly related to the development¹.

Reasons

7. The appeal site relates to a two storey detached house situated within a private residential estate within the Highgate Village Conservation Area; and forms part of a residential cul-de-sac, The Hexagon. This comprises 6no dwellings in total which are connected to Fitzroy Park, a narrow private highway with limited and restricted space for the parking and passing of vehicles. Indeed at the time of my site visit I was subjected to a delay of almost 5 minutes waiting for a 7.5 tonne delivery lorry to reverse along Fitzroy Park back to its junction with Merton Lane and Millfield Lane. This demonstrated to me the sensitivities of the use of Fitzroy Park by commercial vehicles, which provides access not only to local residents, but other individuals visiting and passing through the area on foot and by cycle.
8. Policy A1 of the Camden Local Plan 2017 (LP) is concerned with managing the impact of development, in order to seek to protect the quality of life of occupiers and neighbours. The LP states, amongst other things, that development will be resisted that fails to adequately assess and address transport impacts effecting communities, occupiers, neighbours and the existing transport network; and requires mitigation measures where necessary. Factors to take into consideration include, the impact of the construction phase, including the use of CMPs.
9. Policy TR2 of the Highgate Neighbourhood Plan Adoption Version 2017 (NP) seeks to control the movement of Heavy Goods Vehicles (HGVs) and where concerning smaller developments, states that the Council will consider the requirement for a CMP, having regard to access issues and the potential impact on the local road network, as well as the impact on properties in the vicinity of the development site. These CMPs will be secured through a condition or through a section 106 planning obligation wherever possible, and should avoid the need for additional movement of vehicles over 7.5 tonnes in predominantly residential areas. CMPs must make every effort to accommodate goods and service vehicles on site during construction; and seek opportunities to minimize disruption for the local community through effective management, including through the optimisation of collection and delivery timings, cleaning roads of building-related waste and the use of low emission vehicles for deliveries.
10. The appellant considers that a planning condition should suffice in order to secure a CMP. However, whilst operatives associated with the proposed development itself would be able to control the use and parking of their own vehicles on the application site (which is limited in its scope) and on the public highway, Fitzroy Park and The Hexagon are privately owned with very limiting restrictions for on-street parking. It would also be more challenging to control vehicle movements associated with construction waste and building material deliveries from third party companies, how they should be routed or the time that such lorries would arrive. Therefore, in such a constrained location logistics would be key, bearing in mind the likelihood of other commercial

¹ The tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL regs).

vehicles visiting the estate, for other ongoing developments, as well as for more routine deliveries and servicing, in addition to access for emergency vehicles.

11. As a general rule unless 'Grampian' style (negative) conditions are imposed upon a planning permission, conditions should only relate to an application/appeal site or other land within the ownership and/or control of the applicant/appellant. Quite clearly, the proposed development, whilst relatively small scale, has the potential to be highly disruptive to local residents and other users of Fitzroy Park, as well as The Hexagon, and would affect land that is outside the ownership and control of the appellant. In view of this, I consider that the use of a planning condition to secure a CMP in this instance would not be enforceable and therefore would also be unreasonable. The proposal conflicts with the Camden Planning Guidance 'Amenity' March 2018 (CPG) which highlights that planning conditions can only be used to control matters within the boundary of a site and as the range of matters typically covered by a CMP, particularly in relation to highways lie outside of the site boundary, a CMP will be secured through section 106 legal agreement in most cases.
12. I have been referred to Planning Practice Guidance (PPG) paragraph: 023 Reference ID:23b-023-20190901 that states that planning obligations should not be sought from any development consisting only of the construction of a residential annex or an extension to an existing home. The text that precedes that paragraph relates to affordable housing, which should only be sought for major residential developments; and within that section it provides links to affordable housing related policy within paragraph 63 of the National Planning Policy Framework (the 'Framework'). Therefore I question its relevance to the case in hand, notwithstanding the informal opinion sent in an email to the appellant's agent from a Civil Servant at MHCLG. However, even if my interpretation is not correct, ultimately, the PPG is guidance and does not override the status of the development plan, pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004.
13. A planning obligation can be sought, and entered into, for any form of development provided that it meets the tests set out within the CIL Regs. In addition, from 1 September 2017 authorities have been permitted to charge a fee as part of a section 106 agreement to cover the cost of monitoring and reporting on the implementation of a planning obligation, pursuant to Regulation 10 of the CIL (Amendment) (England) (No.2) Regulations 2019.
14. Due to the complexity of the site's location and the need for the appellant and Council to consult and communicate with local residents on the logistics of construction related traffic, to ensure that this is coordinated with other developments and activities going on within Fitzroy Park (so as to minimise congestion that could not only impact upon the amenities of residents within the area, but also to ensure the safe and operation of the highway network both private and public), I consider that it would be both necessary and reasonable to require a financial CMP implementation support contribution to facilitate this.
15. I note that in addition to the principle, the appellant considers that the £3136.00 charge set by the Council is too high for the nature of development proposed, however it is a relatively modest sum in the grand scheme of things.

16. The PPG² states that no payment of money or other consideration can be acquired when granting planning permission through the use of positively worded conditions. I accept that the PPG highlights that it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken, for example, the entering into of a planning obligation requiring a payment of a financial contribution towards the provision of supporting infrastructure. However that essentially takes me back to square one and that of the main issue as set out above.
17. Notwithstanding this, a draft legal agreement has been submitted, although this cannot be relied upon to secure the identified obligations as it has not been signed and dated by any of the parties, therefore I am not satisfied that it would make adequate provision for a CMP or its monitoring contribution. Reference has been made to there only being four neighbouring properties on The Hexagon and therefore the requirement for the Council to monitor the effects of construction within the CMP is considered unnecessary by the appellant. I agree that paragraph 2.4 (iii) probably goes beyond what would be fairly and reasonably required in scale and kind to the development due to its relatively modest nature, however I consider it necessary for amelioration and monitoring measures over construction traffic, because even modest domestic extensions can still generate a reasonable amount of HGV traffic which could give rise to the obstructions to the private highway to the detriment of all its users, including hindering emergency access.
18. I have had regard to those other appeals referred to me however each case must be assessed on its own merits and whilst ultimately the proposed extensions are relatively small scale it is the site's location on a private residential estate served by narrow roads which is the key determining factor in this appeal.
19. Having regard to the development plan and the specific characteristics of the proposal before me, including its geographical location, I consider that a planning obligation to secure a CMP and associated implementation support contribution would meet the CIL tests ie. they would be: necessary to make the development acceptable in planning terms; fairly and reasonably related in scale and kind; and directly related to the development. As such they accord with the provisions of the CIL Regs, as well paragraph 56 of the Framework.
20. I acknowledge that the appellant's mortgage company has refused to enter into a section 106 agreement and I have sympathy with them in this respect. However in the absence of such an agreement, the proposal would have unacceptable impacts upon local residential amenity and highway safety. Consequently, the proposal is in direct conflict not only with LP policy A1, but also LP policy DM1 which, amongst other things, seeks to use planning contributions where appropriate to mitigate the impact of development; and NP policy TR2 as previously summarised.

² Paragraph:005 Reference ID:21a-005-20190723

Other Matters

21. The site falls within the Highgate Village Conservation Area, no objections have been raised by the Council with regard to the development's impacts upon the designated heritage asset and I have been given no substantive reason to come to a different conclusion on this matter. Therefore I conclude that the proposal would preserve the character and appearance of the conservation area, if it were not for the absence of an executed legal agreement to secure a CMP and associated implementation support contribution.

Conclusion

22. Having regard to the above and all other matters raised, I conclude that the appeal be dismissed.

C J Tivey

INSPECTOR