



Appeal Decision

Site visit made on 27 October 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2020

Appeal Ref: APP/X5210/W/19/3243692

St Matthews Lodge, 50 Oakley Square, London NW1 1NB

- 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 Oakley Square Development Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref:2019/4012/P, dated 5 August 2019, was refused by notice dated 11 November 2019.
 - The development proposed was originally described as the "construction of a roof-top extension to existing building to provide 5no residential units."
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two storey roof extension at 5th floor level to provide 7 flats (1 x 3-bed, 5 x 2-bed and 1 x 1-bed) with roof terraces facing Crowndale Road and Oakley Square (Class C3), including the erection of a lift shaft (to the rear) and a cycle store and an alteration to a waste store at St Matthews Lodge, 50 Oakley Square, London NW1 1NB in accordance with the terms of the application, Ref: 2019/4012/P, dated 5 August 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning application form. The proposal as is shown on the submitted plans shows 7 residential units, and this number is also referred to on the decision notice. As a result, I have considered the appeal on this basis, along with the remainder of the description on the decision notice, and this is reflected in my decision paragraph.
3. The appellant's submissions include street elevation drawings and computer generated images of the proposal. I have considered these on an indicative basis only.
4. The Council indicated that matters related to reasons for refusal 2 to 6 could be overcome through a Section 106 Agreement under the Town and Country Planning Act 1990 (as amended). Accordingly, the appellant submitted a completed Legal Agreement (the Legal Agreement) during the course of the appeal which contained the related planning obligations. I have considered this document in my decision.

5. During the course of the appeal, it also became clear that whilst the main parties agreed that air quality matters needed to be addressed, there was a dispute over how this was to be achieved. I also deal with this issue in my decision.

Main Issues

6. The main issues are (i) the effect of the proposal on the character and appearance of the building and the area, including the setting of the Camden Town Conservation Area; and (ii) whether it would preserve the setting of listed buildings, in particular the Old Vicarage, the terraces at 53-70 Oakley Square and 31-53¹ Crowndale Road, Oakley Square Gardens Lodge and the Working Men's College (all grade II listed).

Reasons

Character and Appearance

7. The appeal site is located at the corner of Oakley Square with Crowndale Road. The building is mainly 5 storeys and is of a flat roofed brown brick modern construction. The fifth floor contains prominent oriel windows which give the building a distinct top heavy appearance. Aside from the building, the site contains landscaping and a parking area, which also extends as an undercroft to the building. Both the pedestrian and vehicular accesses are found on the Oakley Square frontage. The building is well set in from the site boundaries with the neighbouring properties on Oakley Square and Crowndale Road, and there is also spacing up to the street corner.
8. The site lies in close juxtaposition to the boundary of the conservation area. This runs along the site boundary with the neighbouring property on Oakley Square and along the north side of Crowndale Road, opposite the site.
9. This part of the conservation area lies in sub area 2: residential in the Camden Town Conservation Area Appraisal and Management Strategy (2007). Formal terraces of mainly 19th century townhouses are found on parts of both Oakley Square and Crowndale Road. As with the appeal building, the townhouses on Oakley Square face over the communal gardens associated with the planned layout of the square on its northern side.
10. There is also a considerable variety of buildings in this part of the conservation area. These include the gothic revival styled former vicarage building located between the site and the Oakley Square townhouses. Opposite the site on Crowndale Road, is the imposing Working Men's College building. The variation also extends to the height of the buildings.
11. Taking these factors together, the significance of this part of the conservation area is largely defined by an urban setting of mainly 19th and early 20th century development, with a variety in terms of the building types and heights. The site is somewhat enveloped by the conservation area and forms part of its setting. Within this context, the current appeal building contributes neutrally to the significance of the setting.
12. The proposed roof extension would be largely set back from the existing parapet line of the roof. It would also be set in from the end elevations of the

¹ The Council's Camden Town Conservation Area Appraisal and Management Strategy (2007) refers this as the address for this listed building.

building on both Oakley Square and Crowndale Road. This would lessen the impacts that would arise by way of the addition to the height and bulk of the building to a satisfactory level. It would also reduce the top heavy appearance with the proposed roof extension increasing the height of the building above the oriel windows. The proportions of the building would appear in a more balanced form.

13. The two storeys of the proposed roof extension would be constructed in varying external materials. The lower storey would be in matching brick to the existing building with the upper storey constructed of zinc standing seam. This would, in effect, give the top of the building a roof area with the use of the different material on what would be the highest storey. This would have the benefit of resulting in a less vertically abrupt appearance than the existing building. Balcony features on the upper storey would also incorporate matching brick to provide some connection between the different external materials on the two storeys.
14. The design of the proposed roof extension would also vary due to the fenestration arrangement. This already contrasts on the existing building due to the presence of the oriel windows. The offset of the windows across the two storeys of the proposed roof extension would align, by and large, with how the existing windows are arranged on the storeys below. The use of splayed brickwork and header courses around some of the windows would also be pleasing features compared to the plainer arrangement on many of the existing windows. The high degree of detailing contributes towards an overall appropriate design.
15. The Council consider that the adjacent buildings in the conservation area have a strong vertical hierarchy with proportions diminishing at roof level and also point to the finer grain of buildings around the site. I am less persuaded on both counts because of the variety of building types there are. Nevertheless, as the proposal would be set back from the existing roofline, the proportions would reduce at roof level compared to the rest of the building, whilst counteracting the existing top heavy appearance. The scale of the extended building would not be as such that it would disrupt the grain of buildings in the area, including the more modest terraces.
16. As the proposed roof extension would sit comfortably with the existing building, its prominence on a corner plot would not appear overly dominant as regards the conservation area. The height would be read to be similar to the Working Men's College building opposite and the introduction of fenestration to the short and largely blank elevation that faces east along Crowndale Road would benefit this entrance into the conservation area. The orientation of the proposed windows on the Oakley Square frontage over the gardens would also be reflective of the relationship between the buildings along this road and the gardens.
17. The proposal would also involve an extension to incorporate a lift. This would be well screened because it would be on the rear of the Oakley Square part of the building. The Crowndale Road elevation would also project past it. Its design would not require greater refinement or articulation as it would not be unacceptable as it stands.
18. Overall, the proposal would not detract from the significance of the setting of the conservation area. As the site does not lie in the conservation area, the

statutory duty² which concerns preserving or enhancing the character or appearance of that area does not apply. Nonetheless, harm would not arise with regard to this designated heritage asset.

19. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the building and the area, including the setting of the conservation area. Accordingly, it would comply with Policies D1 and D2 of the London Borough of Camden Local Plan (2017) (Local Plan) which concern high quality design, respecting local context and character, heritage assets and their settings, and resisting development outside of a conservation area that causes harm to the character or appearance of that conservation area, amongst other considerations.

Listed Buildings

20. The significance of the Old Vicarage lies in its decorative form and detailing which is consistent with its Gothic revival style. Of particular note is a pyramidal tower type structure closest to the site. It once had a historical connection with the appeal site in that it formed the vicarage for a former church on the site. When the close proximity is also considered, the appeal site falls within its setting.
21. The proposed roof extension would be well set in from the boundary with the Old Vicarage. Spacing would still be maintained between the building and this designated asset. The height of the proposed roof extension would also step up further away from this boundary and so even though it would be taller than the pyramidal tower, its presence would not be diminished. The proposal would not detract from the significance of this listed building.
22. The townhouses at 53-70 Oakley Square form an imposing row of 4 storey dwellings. They are constructed of yellow stock brick and stucco, with raised or arched porches over a further basement level. The ornate appearance includes the use of cast iron balconies. Their significance also extends to the relationship with the gardens which they overlook. The proposed roof extension would be separated from these townhouses by the Old Vicarage and it is at the margins of their setting. With this distancing and the building in between, the proposal would not appear out of scale with the townhouses, not least given their own overall scale when the length of the terrace is considered. It would not detract from their significance.
23. Oakley Square Gardens Lodge is a modest sized stucco building which lies at the end of the gardens closest to the site. Its significance clearly derives from its relationship with the gardens and this forms its setting, rather than the site. Hence, the proposal would not diminish from its significance.
24. The site falls within the setting of the townhouses at 31-53 Crowndale Road, with their relative proximity along the same side of this road. The townhouses are similar to those on Oakley Square, albeit they are of a lesser height and do not benefit from a juxtaposition to the gardens. The difference in scale with the existing building is already evident, in particular with the oriel windows. The townhouses also face over the road, rather than towards the site. A small car park is also found in between. Within this context and as the stepped form would result in the proposed roof extension angling further away from the

² Planning (Listed Buildings and Conservation Areas) Act 1990, Section 72 (1)

nearest boundary with these townhouses, the effect on the significance would not be unacceptable.

25. The Working Men's College is a large red brick building with a mansard slate roof. A noticeable feature is a louvred lantern type chimney. It is institutional in its appearance and contains a prominent frieze depicting its name. As the site lies partly opposite this building, it lies within its setting. The proposal would not, though, weaken its significance, despite that the appeal building would be slightly higher in overall terms. The Working Men's College would remain a bold and somewhat untypical building in its immediate surroundings with its form, materials and features.
26. The variation in buildings and heights there are in the area also has some bearing in relation to the significance of the setting of these listed buildings. However, it is incumbent on the decision-maker, in considering whether to grant planning permission for the proposal, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
27. In applying this statutory duty, I conclude that the proposal would preserve the setting of the listed buildings. No harm would arise to their significance. For similar reasons, the proposal would comply with Policies D1 and D2 of the Local Plan in relation to design and the protection they afford listed buildings, including resisting development that would cause harm to the significance of a listed building through an effect on its setting.

Other Matters

Other Heritage Matters

28. The Council has referred to that Oakley Square Gardens is locally listed. The gardens provide open relief to the built up nature of its surroundings. The associated character and relative tranquillity would not, though, be adversely impacted. The proposal would be separated from the gardens by the road and with its scale and design, it would not appear visually obtrusive and over dominant. Harm would not occur to this non-designated asset.
29. A previous planning permission³ for a single storey roof extension has been referred to by both main parties. Irrespective of that approved development, the proposal is to be judged on its own merits and, for the reasons that I have set out above, it would not be unacceptable. Similarly, the recent changes to the permitted development regime do not factor in my conclusion. As there would not be harm to heritage assets, there is also not a need to consider the public benefits in a balancing exercise.

Legal Agreement

30. The Legal Agreement relates to a financial contribution for the provision of affordable housing. It also secures car free housing, a construction management plan and an associated financial contribution, an energy efficiency and renewable energy plan, and a sustainability plan. The Legal Agreement binds the owner to covenants with the Council.

³ Council ref: 2018/4230/P

31. The Community Infrastructure Levy Regulations (as amended, 2019) (CIL) require that any planning obligation providing for contributions must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These same tests are set out in the National Planning Policy Framework (Framework) to be applied to all planning obligations.
32. An affordable housing contribution of £273,427 would be secured. This would be required in order for the proposal to comply with Policies H4 and DM1 of the Local Plan. Under Policy H4, affordable housing is sought below the threshold that is set out in the Framework, as one or more additional homes is sufficient to trigger the requirement under the policy. In such circumstances, it is for the Inspector to take account of the evidence that has been put forward to see if there is justification for such an approach.
33. It is evident that the Council was aware of the higher national threshold when Policy H4 was adopted, as a similar threshold was also in place at that time through government guidance. The supporting text to Policy H4 justifies this differing local approach on the basis of the scale of affordable housing need, estimated to be around 10,000 over the plan period, and sets a strategic target of 5,300 additional affordable housing homes. I have no substantive evidence that the need for affordable housing has diminished since the Local Plan was adopted. The contribution would impact favourably on addressing this need. It would enable provision for those who would not be able to obtain general market housing.
34. On this basis, there is adequate justification for the Council's approach, as set out in the Local Plan, in relation to this proposal. In addition, the provision of affordable housing would accord with the Framework as far as the need to provide housing for different groups. The contribution meets the tests under CIL and the Framework.
35. The Legal Agreement would ensure that the proposal would be car free. Future occupiers would not be able to obtain a parking permit for on-street parking. The effect would be to encourage the use of modes of transport other than the car. Such a mechanism would be required for the proposal to accord with Policy T2 of the Local Plan. The Legal Agreement is also pursuant to Section 16 of the Greater London Council (General Powers) Act 1974, which does not require a restriction on land, but only that an agreement has a connection with the land or property. This is an effective way to achieve a car free proposal. This obligation meets the tests under the Framework.
36. The Construction Management Plan (CMP) would set out measures to ensure that the construction would be carried out safely and with minimal possible impact and disturbance to the surrounding environment and the highway network. It would be required for the proposal to accord with Policies A1 and T4 of the Local Plan. It would also adequately address concerns that have been raised by an interested party with regard to the effect on the living conditions of the occupiers of the existing apartments in the appeal building due to noise, dust and general disturbance. The associated financial contribution would be for the Council to review and verify the proper operation of the approved CMP. This obligation meets the CIL and Framework tests.
37. The energy efficiency and renewable energy, and sustainability, plans concern the reduction of carbon emissions compared to the 2013 Building Regulations

and involve renewable energy technologies, amongst other measures. They would be required for the proposal to accord with Policies CC1, CC2, CC3, CC4 and DM1 of the Local Plan in respect of climate change, water and flooding, and air quality. These obligations meet the Framework tests.

Air Quality

38. The site lies within an Air Quality Management Area (AQMA), which was designated for the exceedance of Nitrogen Dioxide (NO₂) and with regard to Particulates (PM). Accordingly, the appellant submitted an Air Quality Assessment Report⁴ (AQA) with the planning application. The AQA finds that the construction activities would lead to a 'Medium Risk' concerning dust soiling and 'Low Risk' in relation to human health. The AQA thereafter details a number of associated mitigation measures.
39. On the basis of the level of risk that the AQA identifies, the Council consider that 3 months of air quality monitoring prior to construction commencing is required to establish baseline data and points to the Camden Planning Guidance Air Quality Supplementary Planning Document (2019) (SPD) in this regard.
40. The appellant considers this approach to be too onerous, citing the Planning Practice Guidance: *Use of Conditions*, viability and that the site should be deemed a 'smaller site' under the Greater London Authority's Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance (SPG) (2014).
41. Without collating baseline data prior to construction, though, it is not apparent how the existing air quality conditions could be understood, given the level of risk that the AQA has identified. Visual monitoring may form part of this approach, although this would still need to be controlled and reported. Even if it is a 'smaller site', the SPG also states that the need to monitor NO₂ and PM will be determined on a case by case basis. This is pertinent given it is these pollutants that led to the AQMA designation.
42. The evidence submitted in relation to why the air quality monitoring time period would jeopardise the viability of the proposal is of a limited nature. The proposal would have the benefit of providing new housing, but this still needs to be achieved in a way that is consistent with air quality safeguards. However, this remains a matter that can be dealt with by way of a planning condition that would require full details of air quality monitors to be submitted and agreed in writing with the Council. Such details can include the period for monitoring. Such a condition would be reasonable and necessary.
43. With such a condition, the proposal would comply with Policy CC4 of the Local Plan and the related guidance in the Framework concerning the impact of development on air quality, as well as with the SPD and the SPG.

Conditions

44. I have imposed a condition which concerns the statutory time limit. In the interests of certainty, I have also imposed a condition concerning the approved plans. This excludes the existing and indicative plans.

⁴ Report No: EGE_182 Revision D

45. I have also imposed a condition concerning the protection of retained trees on the site. This is in the interests of protecting the amenity value of the trees and to protect the character and appearance of the area.
46. Also in the interests of protecting the character and appearance of the area, I have imposed a condition with regard to the implementation of the details of the external surfaces of the proposal, as shown on the approved plans. The Council requested conditions requiring the submission of further details, and samples of materials and brickwork. However, this is already shown in sufficient detail on these plans.
47. I have imposed a condition relating to the implementation of the cycle parking, as shown on the approved plans, in the interests of promoting the use of transport modes other than the car. I have also imposed conditions concerning air quality, external and internal noise levels, and the installation of the proposed air source heat pumps, in the interests of protecting the living conditions of the occupiers of the neighbouring properties.
48. A condition is imposed concerning the proposed solar photovoltaic cells, in the interests of climate change mitigation. A condition is also imposed with regard to the proposed brown roof, in the interests of biodiversity and avoiding harm to the water environment.
49. The tree protection and air quality conditions are imposed as pre-commencement conditions as these are matters that would be required to be attended to before or at the start of the construction phase.
50. I have not imposed a CMP condition as this is already satisfactorily addressed through the Legal Agreement. Where I have altered the wording of the remainder of the conditions put forward by the Council, I have done so in the interests of precision and without changing their overall meaning.

Conclusion

51. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2106-PL-100; 112 A; 113; 114; 116; 117; 118; 119; 120; 121.
- 3) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 4) The development hereby permitted shall not commence until full details of the air quality monitors have been submitted to and approved in writing by the local planning authority. Such details shall include the location, number and specification of the monitors, when they would be implemented, the period for monitoring and their retention in accordance with guidance outlined in the GLA's Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance. The air quality monitors shall be installed in accordance with the approved details.
- 5) The external surfaces of the development hereby permitted shall be constructed in accordance with the materials and detailing shown on plan nos. 2106-PL-120 and 121.
- 6) The development hereby permitted shall not be occupied until space has been laid out within the site for 9 long stay and 2 short stay bicycles to be parked in accordance with plan no. 2106-PL-112 A. That space shall thereafter be kept available for the parking of bicycles.
- 7) Noise levels at a point 1 metre external to sensitive facades shall be at least 10dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 15dB(A) below the LA90, expressed in dB(A).
- 8) Prior to the installation of the air source heat pumps (ASHPs), full details of the ASHPs including manufacturer's specifications, noise levels, attenuation, anti-vibration measures and an acoustic report (demonstrating that the ASHPs would comply with the Noise and vibration thresholds in Appendix 3 of the Camden Local Plan), shall be submitted to and approved in writing by the local planning authority. The ASHPs shall be implemented in accordance with the approved details and shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.

- 9) The development hereby permitted shall not be occupied until drawings and data sheets showing the location, extent and predicted energy generation of photovoltaic cells and associated equipment to be installed on the building have been submitted to and approved in writing by the local planning authority. The measures shall include the installation of a meter to monitor the energy output from the approved renewable energy systems. A site-specific lifetime maintenance schedule for each system, including safe roof access arrangements, shall be provided. The photovoltaic cells shall be implemented in accordance with the approved details and shall thereafter be retained and maintained.

- 10) The flats hereby permitted adjacent to lifts shall be designed in accordance with BS 8233:2014 (or in an equivalent British Standard if replaced) to attain the following internal noise levels:

Room Max noise level (dB LAmax, F)

Bedroom 25

Living room 30

Other areas 35

The development hereby permitted shall not be occupied until evidence demonstrating that the flats have been designed to attain the required internal noise levels has been submitted to and approved in writing by the local planning authority.

- 11) The development hereby permitted shall not be occupied until the brown roof as indicated on plan no: 2106-PL-119 has been implemented in accordance with details that have been previously submitted to and approved in writing by the local planning authority. These shall include:

- i) a detailed scheme of maintenance;
- ii) sections at a scale of 1:20 with manufacturers details demonstrating the construction and materials used and showing a variation of substrate depth with peaks and troughs; and
- iii) full details of planting species and density.

Thereafter the brown roof shall be retained and maintained in accordance with the approved details.