
Appeal Decisions

Site visit made on 8 December 2021

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal A Ref: APP/X5210/W/20/3265608

10 Primrose Hill Studios, Fitzroy Road, London NW1 8TR

- 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 Mrs Fiona Fisher against the Council of the London Borough of Camden.
 - The application Ref 2020/1280/P, is dated 11 March 2020.
 - The development proposed is the creation of a basement self-contained one-bedroomed flat.
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Appeal B Ref: APP/X5210/Y/20/3265609

10 Primrose Hill Studios, Fitzroy Road, London NW1 8TR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Mrs Fiona Fisher against the Council of the London Borough of Camden.
 - The application Ref 2020/1845/L, is dated 11 March 2020.
 - The works proposed are the creation of a basement self-contained one-bedroomed flat.
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Decisions

1. Appeals A and B are dismissed, and both planning permission and listed building consent for the creation of a basement self-contained one-bedroomed flat are refused.

Preliminary Matters

2. Since the application was made and the appeal lodged, The London Plan 2021 (London Plan) has been published and forms part of the development plan for the purposes of determining this appeal. The main parties had referred to the draft version, albeit that particular clauses cited remain similar in the published one. Consequently, no parties' interests will have been prejudiced by my taking it into account.
3. The Council did not make a decision on either application. However they advise that had they done so they would have refused both. Their reasons for doing so were that the development and works would harm the listed building and the Primrose Hill Conservation Area. Further, that the development would provide substandard accommodation in terms of outlook, daylight and outdoor space. The Council contend that it had not been demonstrated that the structural stability of the building and neighbouring properties, or structural,

ground and water conditions, would not be adversely affected. However, the Council's subsequent Audit of the appellant's revised Basement Impact Assessment (BIA) does not highlight an issue with water conditions.

4. The Council also objected on grounds that there was no planning obligation to secure a construction management plan, car free housing and a highways and street works contribution. They considered that as a result that construction would harm neighbours' living conditions and highway safety, and the development would fail to promote healthy and sustainable transport choices.

Main Issues

5. In light of the Council's notional refusal reasons, a main issue raised by Appeals A and B is the effect the development and works would have on the significance of the grade II listed Primrose Hill Studios and the Primrose Hill Conservation Area, including the effect the development would have on structural stability of buildings.
6. In addition, main issues raised by Appeal A are:
 - whether or not the development would provide acceptable living conditions for future occupiers, with particular reference to outlook, daylight and access to outdoor space;
 - whether or not car free housing and a construction management plan could be secured by way of a planning condition, and consequently the effect the development would have on transport choice, and neighbours' living conditions and highway safety; and,
 - whether or not a contribution to re-instate the footway adjacent to the site would be necessary.

Reasons

Designated heritage assets and structural stability

7. The appeal property is one of twelve purpose designed artists' studios of four distinct types arranged in two rows either side of a courtyard area. The appellant's Heritage Statement provides no more than a cursory overview of the special interest of the Listed Building and is not a rigorous appraisal of its significance. Nevertheless, from what information is before me and my observations the studios comprise a listed building with considerable significance as a designated heritage asset of national importance.
8. This significance is derived from aspects including its attractive architecture, the similarities within each group and variations between them, the plan form of studios and layout of the development, its traditional construction with brick and slate materials, its original purpose and historic associations with notable artists, writers and cultural figures who have occupied studios over the years.
9. The complex lies within the Primrose Hill Conservation Area. Imposing formal terraces of largely substantial nineteenth century houses together with smaller scale intervening buildings and more modern structures create an historic, attractive and distinctive townscape which combine to contribute to its significance as a designated heritage asset.
10. Originally built as single aspect studios due to other buildings present to their rear, 9-12 Primrose Hill Studios differ in detailing and configuration from the other groups of studios. Their rear elevations are therefore considerably plainer

than the front. They also retain the rendered remains of now demolished abutting buildings in contrast to the predominant brickwork elevations. Nevertheless, they display the distinctive gables of the pitched parts of their roofs and intervening parapets of the flat elements, along with small chimneys. These features consequently make a contribution to the significance and understanding of the listed building.

11. In contrast, the rear elevations of Nos 7 and 8 are quite different reflecting the reverse of the semi-basements which were integral to their particular design and mentioned in the list description. Their distinctive appearance of formally arranged and balanced openings to the rear does not, therefore, create an arrangement of accommodation or fenestration pattern that necessarily means that illuminated basements to parts of the listed building where none currently exist would preserve its special interest.
12. Nevertheless, there are a small number of existing windows in the rear elevation including three serving the appeal building. Although not original, their limited number, incremental distribution and appearance in the context of the rear elevations of Nos 9-12 is not necessarily at odds with the significance of the listed building.
13. The proposed windows would be relatively small with cills at ground level and largely set within the rendered part of the rear elevation, giving them a degree of distinction from the rest of the rear elevation. Nevertheless, they would form a closely spaced line of openings and, along with the door, create a noticeable insertion within the most solid part of the rear elevation. One window would line up with the existing one above, others would be centred on the gable but offset from existing windows above and therefore only partly relate to the existing arrangement. The glazed door would appear uncomfortable with its opening breaking through the upper part of the rendered section into the brickwork above. The composition would appear somewhat cramped and bottom heavy in its context.
14. Whilst there might be some scope for sensitively considered additional openings, the proposed number, situation and distribution of window and door openings would create a proliferation of intrusive openings at odds with the current arrangement and detract from the significance that the listed building derives from its rear elevation. It follows that as the special interest of the listed building situated within the Conservation Area would be materially diminished, that the character and appearance of the Conservation Area as a whole would also be similarly, incrementally harmed.
15. Aside from noting recent interventions there is no assessment of the floor plan, interior spaces or features in terms of their historic significance, how they relate to original arrangement and its evolution. Outside, above the proposed door location is a chimney. Features within the current spare bedroom wall may well relate to the run of a flue from a blocked fireplace.
16. This would appear to frame the new door opening, but it is unclear to what extent this would affect internal features nor, if it would, whether this would adversely affect the building's significance. In the absence of evidence to the contrary it would, however, make an element of the building's composition and function presently appreciable from inside more difficult to understand even if the loss of historic fabric were limited. The insertion of a bulkhead to

accommodate the proposed stairwell serving the flat would appear as an awkward and clumsy intervention into the regular shaped room.

17. The drawings and BIA identify a void beneath the floor. It is not clear whether the series of airbricks to the front of the similarly designed Nos 9-12 provide ventilation to their respective underfloor areas, but given the age of the buildings, and in the absence of any evidence to the contrary, it cannot be certain that the floor is of solid slab construction as suggested. There is no indication in the appellant's Heritage Statement as to the existing construction of the floor nor what contribution it may make to the significance of the building.
18. In the absence of any evidence to the contrary there would be a risk that historic fabric would be lost by way of the proposed removal of the entire ground floor structure as the first phase of the construction sequence set out in the BIA. Furthermore, it is not possible to ascertain whether or not there would be any implications on the performance and ventilation of part of a building which has likely been built using traditional construction techniques and approaches.
19. The construction of a basement would be a complex process and the very nature of working underground in such a confined site would create uncertainty and risk. It is necessary, therefore, to consider very carefully whether construction would be likely to result in undue disturbance or damage, even if this is inadvertent, to the historic fabric of the listed building within which the site is located.
20. As neither the Heritage Statement nor BIA demonstrate an understanding of the historic significance of the structure it is understandable that the Council's Audit of the BIA identifies the absence of a more detailed structural survey than is contained within the BIA as a concern. The BIA assesses potential damage to neighbouring buildings from ground movement as 'very slight' and therefore within the range considered acceptable in the Camden Local Plan, 2017 (Local Plan) Policy A5. Nevertheless, in light of the deep excavations and interventions proposed, there cannot be any certainty that harm would be avoided without a more explicit assessment and understanding of any potential damage to the listed building.
21. The appellant considers that a planning condition could secure a more detailed structural report as necessary. Given that such an assessment may affect the principle or influence the detail and approach of the proposal, it would not be appropriate to rely on its preparation following permission or consent.
22. The National Planning Policy Framework (the Framework) points out that applicants need to describe the significance of any heritage assets. Although it goes on to say that it needs to be in no more detail than is sufficient to understand the potential impact of the proposal on the significance of the asset, in this case the Heritage Statement does not do this.
23. The internal alterations and new openings would harm the significance of the listed building and it has not been demonstrated that the basement works including floor removal would not further erode the significance of the listed building.

24. The Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires¹ that special regard is had to preserving the listed building or any features of special architectural or historic interest it possesses in considering whether to grant planning permission or listed building consent. It also requires² that special attention be paid to preserving or enhancing the character and appearance of a Conservation Area. In doing so, the proposal would not preserve the Listed Building nor the character and appearance of the Conservation Area.
25. These harmful effects would not extend to the whole of the listed building and would be experienced within the extensive Conservation Area. The harm would therefore be considered as less than substantial in the terms of the Framework. The Framework requires such harm to be weighed against the public benefits of the proposal.
26. The creation of a new dwelling would be a public benefit but would be a limited one. There is no substantive evidence that the introduction of additional windows would necessarily improve the security of the parking area which is already overlooked by existing windows in the flats opposite and the host building. This would not be a public benefit.
27. The Framework requires that great weight should be given to designated heritage assets' conservation and the harm I have identified carries considerable importance and weight. The limited public benefit would not outweigh the harm that would be done to both designated heritage assets.
28. The proposal would be contrary to Local Plan Policies D1 and D2 which together, and amongst other criteria, seek to resist alterations to listed buildings which would harm their special interest, require development to preserve or enhance Conservation Areas, and respect local context and character. It would also be contrary to Local Plan Policy A5 overall as it has not been demonstrated that the proposal would avoid harm to character and amenity of the area, the architectural character of the building and the significance of heritage assets.
29. The development would not fully accord with The Camden Planning Guidance: Basements, 2021 (Basements Guidance). This would be particularly in terms of its emphasis of preservation of the existing fabric, structural integrity, layout, interrelationships and hierarchy of spaces, and any features that are architecturally or historically important for basements to listed buildings.

Future occupiers' living conditions

30. The proposed dwelling would be single aspect and would only have modest sized windows and a glazed door to provide natural light. The windows would be at high level in relation to the living space and bedroom they would serve. They would be situated directly to the back of a footway, beyond which is a car and cycle parking area. Passers-by and users of the parking would have a direct view down into those, the only habitable rooms. Furthermore, occupants of flats opposite in close proximity would also be able to see into those rooms. These are circumstances where future occupiers are very likely to have some form of blinds, curtains or similar enclosures in order to give a degree of privacy throughout the day.

¹ Sections 16(2) and 66(1).

² Section 72(1).

31. The result would be that the outlook from habitable rooms would be constrained and the accommodation likely to feel overly confined and oppressive for much of the time. Even without any screening the outlook would be limited as a result of the windows' size and situation with glimpses of sky only likely to be afforded from those parts of the rooms closest to the windows. Whilst views of the street tree outside would add a degree of interest to the outlook this would do little to relieve the constrained aspect.
32. In the absence of any substantive evidence to the contrary, these constraints would also mean that, despite its south eastern aspect, those parts of the living space farthest from the windows would likely be dark particularly on overcast or dull days and require artificial light to be used for much of the time in the inner parts of the flat.
33. Notwithstanding the Council's officer report, there is no indication that occupiers would have access to any outdoor private space. Future occupiers would have nowhere to relax outside in private or undertake outdoor domestic tasks. Even if it were available, the limited outdoor space within the Studios' courtyard would require a convoluted route to reach and very unlikely to be convenient. Occupiers would be within a short distance of public parks however these would not offer private space. Together, these circumstances his would not create acceptable living conditions for future occupants.
34. Consequently, the proposal would be contrary to Local Plan Policy A1 which, amongst other criteria, seeks to protect the amenity of occupiers including consideration of outlook and daylight.
35. The small dwelling would contribute to providing homes of a range of sizes and it is not contended that the interior would not meet space standards. Therefore, although mentioned in the Council's notional refusal reason, there would not be conflict with the provisions of Local Plan Policies H6 and H7 in this respect.

Car free housing

36. It is not a matter in dispute between the main parties that the dwelling should be a 'car free' development nor that a construction management plan would be necessary. The appellant considers that both could be secured by way of planning conditions rather than a legal planning obligation.
37. There is no space for parking on the site and no indication that future occupants would be able to take advantage of the already well used parking area within the Studio complex nor nearby private parking areas for surrounding housing. It would be likely that, should they have one, occupants with a car would seek a permit to park on surrounding streets. Therefore, in order to ensure that occupiers were unlikely to have access to a car a suitable mechanism would be required to ensure that anyone living there would not be eligible to apply for a residents' parking permit.
38. Although seeking to do this, the appellant's suggested car free parking condition would not be enforceable or reasonable. Access to parking permits is not something that can be directly controlled through planning legislation. Rather, the issue of permits would be the responsibility of highway authorities and subject to Traffic Management Orders or similar. Merely stating in the suggested condition that occupiers would not be entitled to a permit would be

insufficient to ensure that any Order in place would prevent them from doing so.

39. A requirement in the suggested condition to notify the Council on completion could be a trigger to give the highway authority an opportunity to amend or revise any Order to preclude that property from eligibility for a permit. However, I have insufficient evidence that this would necessarily occur including any obligation or commitment for the authority to amend any Order should details be provided. In this case I am not convinced that an alternatively worded condition could effectively prevent future occupiers from obtaining a permit thereby negating the aim of the new dwelling to be car free.
40. Were future occupants to obtain a parking permit they would be less likely to use more sustainable alternatives to travel making reducing congestion and air pollution less likely. The development would consequently be contrary to Local Plan Policy T2 which requires all new developments to be car free. Although the Council commits to not issuing on-street parking permits as part of the Policy it states that it will use legal agreements to do so.

Construction Management Plan

41. The appellant's suggested condition would not be enforceable as drafted. However, hours of operation and many aspects of construction activity could be required to be approved within such a Plan secured by a planning condition, and indeed commonly are.
42. Nevertheless, the ability for the Council to enforce any activities taking place outside the site might be less certain. In this case there is no space within the site other than the footprint to be excavated. It is unclear where the majority of construction activity would be focused. However, the construction would no doubt involve the excavation of a considerable amount of material and extensive concrete installations.
43. Whether this were to take place from the small courtyard to the front which is accessed by a narrow private lane or the rear from public highway, access to either would have its own restrictions along residential streets where residents would be sensitive to waiting and moving vehicles. Whilst main contractors may be able to control the use of their own vehicles and plant on the public highway, they may have little control over how deliveries from other companies should be routed or the times such deliveries would arrive. Given the narrow access to the Studios from Fitzroy Road with limited visibility and the narrow and constrained configuration of Kingstown Street, poorly timed or co-ordinated construction and delivery vehicles could create conflicts with other highway users.
44. Whilst other legislation would enable control over any inappropriate or unauthorised use of public highway for storage or construction purposes, I have no evidence to suggest that this would extend to vehicle movements or other activities. In these circumstances the ability to control activities outside the site in a manner which would limit or mitigate any adverse effects on all highway users and the occupiers of the many residential properties near the site would mean that relying on a planning condition would not satisfactorily ensure that those matters would be adequately addressed, nor that a planning condition would be enforceable.

45. Therefore, in order to avoid harm to the living conditions of occupiers of residential properties nearby and along access routes in the vicinity of the site and all users of footways and roads in the vicinity it would appear that a planning obligation would be necessary to adequately ensure this occurs in this case. In the absence of an appropriate mechanism to mitigate such harm the development would be contrary to Local Plan Policy A1 which seeks to manage the impact of development and protect the amenity of communities and neighbours, considering factors including impacts of the construction phase.
46. The Council also cited Local Plan Policy T4 but this relates to the sustainable movement of goods and materials on a more strategic level and it is less pertinent to this particular issue. Indeed, the supporting text indicates Local Plan Policy A1 as being appropriate in respect of Construction Management Plans.

Highway contribution

47. Although the BIA would appear to suggest that the door opening to the rear elevation would come at the end of construction work there are no explicit details of how and from where construction access would take place, particularly bearing in mind the limited space within the courtyard.
48. Any excavations or damage within the public highway including the footway which runs alongside the rear wall of the property would need to be properly re-instated to protect the safety of those using the footway and the character and appearance of the area recognised in its Conservation Area status. The Council is correct that a planning condition would be unsuitable to secure a financial contribution for any such works.
49. However, there is very little evidence as to why any works within the public highway would not be properly regulated by different highways legislation, nor that any planning permission that might be granted would negate or override any other consents or requirements for excavations and so on in the public highway. I note that the Council's Basements Guidance points out that a license under the Highways Act for any work under a footway or other part of the highway would be necessary.
50. The footway appears to be surfaced with in situ cast concrete slabs beyond which is the tarmac surfaced car and cycle parking. These materials do not appear to be unusual or specialist, and they do not make any particular positive contribution to the character and appearance of the Conservation Area. Whilst poorly repaired or detailed reinstatement of footways can be unsightly or even dangerous there is no evidence that such aspects cannot be controlled by other legislation, if indeed this were to occur. Presumably the Council could be faced with carrying out remedial works themselves in certain circumstances, but no substantive evidence has been provided that any public monies spent could not attempt to be recovered through other means as opposed to relying on an up-front and non-returnable payment.
51. Therefore, on the basis of the evidence before me, such an obligation would not meet the CIL Regulations³ and Framework tests of being necessary in planning terms nor being fairly and reasonably related in scale and kind to the development. The development would not conflict with Local Plan Policy T1.

³ The Community Infrastructure Levy Regulations 2010.

However, an absence of harm in this respect does not alter my findings on other issues.

Conclusions

52. Given my findings above, the site cannot be considered as a suitable brownfield one in terms of London Plan Policy H1's encouragement to optimise the potential for housing delivery on such sites. The supporting text to London Plan Policy D10 highlights many of the potential adverse effects of basement development. Whilst it notes that smaller-scale basement excavations can contribute to the efficient use of land and provide extra space without occupiers needing to move house, it caveats this with saying that they should be appropriately designed and constructed, and in any event this proposal is for a separate dwelling rather than an extension.
53. For the above reasons, the proposal would fail to preserve the listed building or any features of architectural or historic interest which it possesses and would harm the character and appearance of the Conservation Area, contrary to the Act, the development plan taken as a whole, council guidance and the Framework overall. Furthermore, the development would fail to provide acceptable living conditions for future occupiers, and it has not been demonstrated that the development would be secured as car-free nor that any effects of the construction phase could be adequately mitigated, thereby failing to deliver transport choice and harming neighbours' living conditions and highway safety, contrary to the development plan taken as a whole.
54. There are no material considerations that indicate the decision on the proposed development should be made other than in accordance with the development plan. Both Appeals are therefore dismissed.

Geoff Underwood

INSPECTOR