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## Appeal Decisions

Site visit made on 9 January 2024

**by Ben Plenty BSc (Hons) DipTP MRTPI**

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

**Decision date: 24 January 2024**

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### **Appeal A Ref: APP/Q0505/W/23/3305009**

#### **303 Histon Road, CAMBRIDGE, Cambridgeshire CB4 3NF**

- 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 303 Histon Road Cambridge LLP against the decision of Cambridge City Council.
  - The application Ref 22/00758/FUL, dated 9 February 2022, was refused by notice dated 25 May 2022.
  - The development proposed is erection of 9 dwellings within 1 apartment building comprising studios, one and two bedroom apartments, together with landscaping, parking arrangements, bike and bin provision and associated infrastructure (following demolition of the existing dwelling).
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### **Appeal B Ref: APP/Q0505/W/22/3317663**

#### **303 Histon Road, CAMBRIDGE, Cambridgeshire CB4 3NF**

- 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 303 Histon Road Cambridge LLP against the decision of Cambridge City Council.
  - The application Ref 22/04697/FUL, dated 25 October 2022, was refused by notice dated 13 January 2023.
  - The development proposed is erection of 9 dwellings within 1 apartment building comprising studios, one and two bedroom apartments, together with landscaping, parking arrangements, bike and bin provision and associated infrastructure (following demolition of the existing dwelling).
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### **Decision**

1. The appeals A and B are dismissed.

### **Preliminary Matters**

2. The proposed developments that relate to Appeals A and B are similar. Both schemes consist of a three-storey block of flats, with 9 units, and are of contemporary design. Scheme B was submitted in an attempt to resolve the Council's concerns with respect to Scheme A. Scheme B consists of a number of amendments to the first scheme. This includes a reduction of the building's ridge height and part of its eaves by around 0.5 metres, lowering the chimney, a change of materials to part of the south elevation, alterations to the porch, the addition of composite panelling and clarification as to the location of the Air Source Heat Pumps (ASHP). This second scheme was refused with three fewer reasons for refusal than Scheme A. Where relevant I will discuss the effects of each scheme separately and elsewhere, together, where they have shared/similar effects.

3. A revised version of the National Planning Policy Framework (The Framework) was published with immediate effect on 19 December 2023. Policies within the revised Framework are material considerations which should be taken into account in decision making. Main parties have been given an opportunity to comment on the new Framework and I have taken into account any subsequent comments received in arriving at my decision.
4. The Council's third RfR of appeal A refers to an adverse effect on the privacy of 1 Carisbrooke Road. However, the evidence suggests that overlooking to the southwest from the proposed balconies would look over properties of Tavistock Road instead. I have taken this into account in my consideration of the main issues.
5. An amended layout plan has been submitted showing the location of the ASHP for both schemes. This would be located to the rear of the cycle and bin store. This plan was not submitted during the application consideration process of Scheme A. However, this was part of the submission for Scheme B which was subject to public consultation. As the alteration does not alter the substance of the proposal, I have accepted the amended plans as part of the details of both schemes A and B, without causing prejudice to any party.

### **Main Issues for appeals A and B**

6. The main issues, for appeals A and B are:
  - The effect of the proposed development on the character and appearance of the area with particular regard to its design and scale,
  - The effect of the proposal on the living conditions of neighbouring occupiers with respect to privacy, with regard to the flank window towards 305 Histon Road (No 305) and noise effects in regard to the position of the ASHP,
  - The effect of the proposed development on the living conditions of future occupiers with regard to the provision of external space available to flats 3, 4, 7 and 8, and
  - The effect of the proposal on highway matters leading to whether the proposal would function well.
7. The main issues, only relevant to appeal A, are;
  - Whether the proposal would suitably address flood related matters,
  - The effect of the proposal on the living conditions of neighbouring occupiers with respect to privacy, from the proposed balconies towards No 305 and properties of Tavistock Road, and
  - The effect of the proposed development on the living conditions of future occupiers with regard to the size of flats 5 and 6.

### **Reasons**

#### *Character and appearance*

8. Histon Road is an arterial route into the city. Development around the appeal site largely consists of residential properties. These are mostly a combination of detached and semi-detached housing of various styles and scales, mostly of traditional form. Building heights are predominantly two-storey with some

three-storey development noted occasionally in the wider area. The street has a generally linear development pattern with a varied and disjointed front building line contributing to the area's diversity of style. The appeal site consists of a traditional detached house with brick walls and a tiled hipped roof. It is of interest but is not especially noteworthy. As such, the site makes a neutral contribution to the character and appearance of the area.

9. Policy 55 of the Cambridge Local Plan [2018] (LP), recognises that development will be supported where it responds positively to its context. Also, LP policy 56 requires development to be designed to be attractive and high quality. These themes are expanded in the National Design Guide (NDG) which states that high quality buildings and places is fundamental to the planning and development process. It seeks new development to adopt typical building forms, composition and proportions to help create a memorable sense of place. It also states that well designed development should relate well to, and enhance, local character.

### Scheme A

10. The general form of the building associated with both Schemes A and B are similar. Both would include a standing seam zinc pitched roof and buff brick elevations. The building would present two front facing gables and a two-storey flat roof rear projection, and a single storey rear projection. The side elevation, addressing Aingers Lane, would be viewed by observers leaving the Mews Estate and from Histon Road due to its corner location. This creates a setting with three of its elevations being seen within the public realm.
11. The proposal would include three floors of accommodation with the roof slope occupying the upper level and the building having two front gables. The roof would include a vertical façade between the gables of the same roof material. However, this feature would form a front elevation that would create a three-storey feature and therefore would be ineffective at reducing the scheme's overall mass. The gables would be relatively wide and tall components on the frontage. As a result, these would not integrate well with surrounding buildings that have smaller gable features. Accordingly, the scale of the proposal would sit somewhat uncomfortably in the streetscene.
12. The depth of the building would be substantial, appearing bulky and monolithic. The side elevation includes a grouping of elements that appear disorganised. These components would not complement each other and would undermine the simplicity of the building. Due to the highly visible nature of the side and rear, the building would present a disjointed form, conveying a harmful visual impact, on this prominent site.
13. The proposed building would be taller than the adjacent houses along this part of Histon Road, with wide gables that markedly emphasise the overall scale of the building. Increased height can be used effectively to celebrate a corner plot, but as the narrow Aingers Lane serves only a small access cul-de-sac, such an opportunity is not offered. Some development over two-storeys is evident locally, such as 188-192 Histon Road. However, these form occasional interventions that do not contribute strongly to the predominant pattern of two-storey development around the site. The Mews includes a three-storey block of flats. Nevertheless, this celebrates its height as a contained and well-designed block with a strong sense of proportion and balance. Therefore, whilst

the wider area is evolving, this does not form a clear reason to support the proposed scheme.

14. Consequently, the proposed building would be out of scale with other buildings along Histon Road and would intrude into the street. Furthermore, its deep floorplate would be uncharacteristic of the predominant grain of neighbouring development and its linear pattern along the highway. Although the use of zinc cladding and buff brick are not commonly seen materials locally, such variety would not, in itself, be harmful to the streetscene. Nonetheless, due to its scale and mass, in combination with its prominent corner site, the proposal would have an adverse effect on the streetscene as a dominant feature in conflict with the aspirations of the NDG.

#### Scheme B

15. Scheme B includes design alterations that include composite cladding to the first-floor rear elevations. This version has also been slightly reduced in scale, in comparison to Scheme A, with reduced height and the lowering of the chimney. The glass balustrades have been reduced in scale, resulting in diminished views from public vantage points, and simplifying the appearance of the side and rear elevation. Moreover, some materials have been altered in Scheme B to soften the building's form, including the introduction of composite cladding and perforated bricks around the corner. However, these alterations have not adequately mitigated the visual impact of the scheme's mass or its awkward side and rear elevations.

#### Summary of Schemes A and B

16. The proposed Schemes A and B would include the removal of the existing access and driveway onto Histon Road and their replacement with a garden area, increasing landscaping opportunities to the front of the site. This would introduce green infrastructure that would soften the visual impact of the building and add interest to the street. However, this gain would not offset the harmful visual impact of the proposal or include sufficient screening to substantially reduce its effect on the streetscene.
17. I have found that both Schemes A and B would be of a size that would not reflect the scale and appearance of existing development in the area. As a result, neither versions would adopt typical building forms, composition and proportions to assist in creating a memorable sense of place. As a result, both schemes A and B would fail to complement the character and appearance of the area. Accordingly, these would both conflict with LP policies 55, 56, 57 and 59, the National Design Guide and the Framework. These seek, among other matters, for development to have a positive impact on its setting and to be sympathetic to local character.

#### *Living conditions – existing, overlooking side window*

18. The proposal, for both Schemes A and B, would include a side window that serves a bedroom of unit 2. No 305 is a detached dwelling to the side of the site. This property has a side window that serves a kitchen that provides a view toward the side of the proposed building. The separation distance would be around 7 metres, separated by a fence of around 1.8 metres in height.
19. Scheme B proposes the addition of a trellis to the fence, such a feature could have been required by the imposition of a condition with respect to Scheme A.

As such, I have considered this relationship with the inclusion of a trellis for both Schemes A and B. During my visit I stood within the kitchen of No 305. I noted that the room was relatively long and narrow. The area adjacent to the window has kitchen units to both sides of the space, providing a corridor to the rear of the room. The kitchen is served by a side window and a rear facing window. The Council has not drawn my attention to any separation standards to be achieved between buildings, assessment of this is therefore a matter of planning judgement.

20. The boundary fence would maintain a certain level of privacy between these spaces, as demonstrated by the Appellant's Section AA indicative drawing 2033 402revA. Despite this, due to floor levels, it seems likely that an occupier of unit 2 would gain partial views of the neighbour's kitchen. However, such a view would be diffused by intervening planting and the trellis and would only provide views into a small section of the kitchen, for example the seating area would not be overlooked. The extent of overlooking from the proposed window would be limited due to its ground floor position. Furthermore, such overlooking could only take place from the bedroom of unit 2, of both schemes A and B, a space infrequently used in the daytime. As such, the occupiers of No 305 would result in extremely limited intervisibility and their living conditions would not be adversely affected.
21. Consequently, the proposal for both Schemes A and B, would comply with LP policies 55 and 56 and the Framework. These include the requirement for development to respond to its context, be designed to be high quality and to create a high standard of amenity for existing and future users.

#### *Living conditions – noise from ASHP*

22. Supporting information for both Schemes A and B show that the ASHP would be located alongside the bin and cycle store in the rear garden within an enclosed room. BS 4142, relates to an industry approach to methods for rating and assessing industrial and commercial sound. This establishes the noise limits for sensitive receptors should be subject to a maximum of 47 dB LAR, Tr in the daytime and 35 dB LAR, Tr at night.
23. A noise assessment<sup>1</sup> (NA), and the ASHP manufacture's specifications, have been submitted with the appeal evidence for both Schemes A and B. The NA undertook noise surveys on both Histon Road and Newmarket Road. At the time Histon Road was reduced to one lane each way due to road improvement works. As such, the Council advised that Newmarket Road gave more accurate readings for the typical noise levels that would normally be found on Histon Road, and so these have been applied in the NA as a datum.
24. On this surrogate basis, noise levels in the area in the daytime were found to be 72 dB LAeq and 63 dB LAeq at night. The Appellant has applied the requirements of BS 4142 assessment methodology. This requires the predicted or measured noise emissions, from proposed plant, to be deducted from the background noise level to determine the extent of effect. The lower the rating, the less likely it would be that the sound source would have an adverse impact on the sensitive receptor. The greater the difference the greater the magnitude of the impact.

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<sup>1</sup> Noise Impact Assessment, by Cass Allen Associates Ltd, February 2023

25. The ASHP would consist of 9 units. The NA identifies that each unit would create a maximum noise level of 52 dB SPL (at 1 metre). The assessment considers the cumulative noise effect of all units running simultaneously, to consider a 'worst case' scenario, and does not consider penalties for tonality, impulsivity or intermittency as it has been assumed these would run continuously. The units would be within a closed boarded timber enclosure creating a predicted noise reduction value of 6 dB.
26. The nearest noise sensitive receptors, being No 305 and plot 18 of the Mews Estate, are around 19 and 15 metres from the plant respectively. The calculation shown at table 5 of the NA demonstrates that noise levels at the sensitive receptors would be 30 and 32 dB at any time. These noise levels would be below the day and night maximum ratings in compliance with BS 4142. As a result, based on the evidence submitted, noise levels created by the ASHP would not be of sufficient magnitude to result in an adverse impact on local residential occupiers.
27. Consequently, the living conditions of neighbouring occupiers would not be adversely affected by noise from the ASHP. Accordingly, the proposal would comply with LP policies 35, 56 and 58 and the Framework. These seek, among other matters, for development to not lead to significant adverse effects on amenity from noise and to ensure a high quality of amenity is created for existing users.

*Living conditions – proposed*

28. LP policy 50 relates to residential space standards. In terms of external space standards, the policy does not establish numerical size requirements, but establishes four criteria for such space to achieve. This requires amenity space to consider the context of the development, its orientation, extent of privacy delivered and the overall design of the space in terms of size and shape.
29. Units 3, 4, 7 and 8 have access to winter gardens ranging from 4m<sup>2</sup> to 5.6m<sup>2</sup>. This provision is the same for both schemes A and B. The winter gardens are within the footprint of the building and overlook Histon Road. They provide dedicated assigned amenity space for each of the units. Noise levels could be adequately controlled by sound insulation to provide pleasant spaces. As such, these areas would make a useful contribution to the outside space available to occupiers.
30. In addition, occupiers of these units would also have access to the external space around the building. These areas would be to the rear, side and front of the building, creating useful additional areas as shared space. The largest area would be provided in front of the building. It would be landscaped and enclosed by hedging providing aesthetic and privacy benefits to users. Whilst the Council considers this area to not be private, it is a large area of garden, with the building recessed from the highway to an extent that would encourage use by occupiers for recreation.
31. Therefore, this would offer occupiers with a pleasant outdoor space that would supplement the other areas around the building and provide pleasant areas for recreation. Being shared space, the need for privacy of individual occupiers would be a less sensitive issue and not as important as the provision of a garden for a single family might be. Although most neighbouring dwellings have private amenity space to the rear there is no compelling reason why the

front garden in this case could not provide a shared garden area to the benefit of occupiers. Furthermore, whilst the rear garden would be adjacent to the car park, the areas are separated by landscaping and would be a quiet space with vehicles infrequently moving within the car park.

32. The submitted landscape scheme shows that the spaces to the rear and front would be enclosed by native staggered hedging, with trees strengthening the boundary. These measures would create a sense of separation from the car park at the rear and the public realm to the front. The provision of lawns would give occupiers places to enjoy the space in semi-private areas around the building.
33. Accordingly, the location, size and context of external amenity space, for Schemes A and B, would be suitable in support of the living conditions of future occupiers. As such, the proposal would comply with LP policies 50 and 56 and the Framework. These require development, *inter alia*, to provide direct access to private amenity space that complies with the set criteria, would be inclusive and safe and would provide a high standard of amenity for future users.

#### *Highway matters*

34. Both Schemes A and B include parking for six vehicles with access onto Histon Road via Aingers Lane. This lane acts as an access route to a housing estate of mews development, to the rear of the site, which is under construction. As part of the mews development, parking bays have been provided along part of Aingers Lane, including opposite the access into the appeal site. During my visit I noted that most construction work along Aingers Lane has been completed, this route provides a shared surface road for pedestrians and vehicles.
35. The shared surface would be used by limited numbers of vehicles accessing the site and the Mews beyond. The parking bays would reduce the width of the route. This combined with the lane being a shared surface would require vehicles to use the route at low speeds creating a safe pedestrian and cycle environment for both users of the site and members of the public.
36. Vehicles entering and leaving the site would pass closely to parked vehicles on Aingers Lane when turning into the site. Nonetheless, the Appellant's Swept path analysis diagrams<sup>2</sup> show turning into and out of the access onto Aingers Lane. These details demonstrate that these manoeuvres can be readily undertaken, assisted by the wide entrance to the site and turning space available within the site. This would allow vehicles to enter and exit the site in a forward gear in a safe manner without causing detriment to highway safety, I note that the Highway Authority takes a similar view.
37. As a result, the proposed development would operate in a safe manner in support of local highway safety for both vehicles, cyclists and pedestrians. Consequently, the proposal would comply with LP policy 80 and the Framework. These include the requirement for development to be accessible for all, provide a safe and appropriate access to adjoining roads and would function well.

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<sup>2</sup> Drawings reference: PL101 Proposed cross over, swept path analysis SP101 and SP202

### Summary of main issues associated with Schemes A and B

38. In summary, I have found that both schemes A and B would fail to complement the character and appearance of the area. However, I have also found that these would not have an adverse impact on the living conditions of No 305 in terms of privacy, would not affect local occupiers in terms of noise impact from the ASHP, would create a suitable level of external amenity space for future occupiers, and would create a safe and appropriate arrangement for highway and pedestrian safety.

#### *Flood matters*

39. LP policy 32, with respect to the potential flood risk from development, establishes a range of criteria to be satisfied. This includes the requirement for development to demonstrate that the peak run-off is no greater for the development site than it was for the undeveloped site. It also requires for where post-development run-off would be greater, discharge rates should not exceed 2 litre/s/ha. The site is within flood zone 1 and less than one hectare. However, the Council has indicated that the site is in an area that suffers surface water flooding.
40. The Council's Flood and Water Supplementary Planning Document (SPD) [2016] expands on the Council's policy. With respect to managing the flood risk of development, section 4.3 of the guidance states that in areas of flood risk those proposing development are responsible for providing a site-specific flood risk assessment (FRA). This is to enable the scheme to accommodate flood risk management measures that ensure that the site can be developed and occupied safely.
41. The Appellant's FRA shows that the site is at low to medium risk of surface water flooding using the Environment Agency's maps. A low risk of surface water flooding means that the site would have a chance of flooding of between 0.1% and 1%, and a medium risk being between 1% and 3.3%. The FRA concludes that mitigation measures for the worst-case design of storm return period can be accommodated by on site attenuation. The appended surface water drainage strategy demonstrates how on-site attenuation could be accommodated. The drainage strategy illustrates that storage would be provided within the car park of the scheme, via an open graded subbase construction with a separate attenuation tank located within the landscaped area to the front of the site. These measures would limit rainwater runoff protecting nearby areas.
42. Accordingly, subject to the implementation of a suitable sustainable drainage solution, the proposal would not present a flood risk to the site or wider area. As such, the proposal would comply with LP policy 32, the Council's Flood and Water SPD and the Framework. These seek, *inter alia*, for development to sustainably manage the off-site discharge rates of peak rainfall and to use opportunities provided by new development to reduce the causes and impacts of flooding.

#### *Living conditions existing, overlooking from balconies*

43. Scheme A was refused partly on the basis that it would result in substantial overlooking from the first and second floor rear facing balconies of units 5, 6 and 9. Units 5 and 6 have small balcony areas on the rear elevation at first

floor level. Elevation plans show that these would include privacy screens to the sides. Plans also show that unit 9 would include similar side screens to its large rear balcony. Specific screening details for the balconies were not disclosed in the submission during the Council's consideration of this scheme.

44. Occupiers of units 5 and 6 would have a rear view out over the appeal site and towards the rear elevations and gardens of properties on Tavistock Road and the rear garden of No 305. Tavistock Road includes properties with relatively small gardens and rear windows that are close to their rear boundaries. Views from both the first and second floor balconies would be partially screened by rear boundary planting on neighbouring plots. However, due to the short distance and absence of dense screening, a loss of privacy would occur to occupiers of both Tavistock Road and No 305. This would provide relatively open views into the habitable rooms of dwellings of Tavistock Road, over a short distance.
45. The Appellant has confirmed that the design of the balconies included the provision of 1.8 metre opaque glass screening to the sides and 1.2 metre screens to the rear. The use of such screening would reduce views towards the gardens and rear elevations of surrounding dwellings. However, as the balconies extend to the edge of the building, future occupiers would be able to stand on the balcony edge and overlook neighbouring land. Although, details of obscure glazing could be secured by condition, the extent of overlooking to the rear would be substantial. This would result in harm to the living conditions of neighbouring occupiers.
46. The Council's third RfR of Scheme A was overcome in Scheme B through the addition of 1.8 metre high obscure glazing to the sides of the balconies and reductions to their footprint. The balconies size reductions have moved them away from the edge of the building, reducing the extent of overlooking possible. I therefore concur with the Council that this matter has been suitably addressed in Scheme B.
47. Nonetheless, the proposal associated with Scheme A would result in overlooking that would erode the privacy currently enjoyed by adjacent residential occupiers of Tavistock Road and No 305. Consequently, scheme A would conflict with the Framework which seeks, among other matters, for development to achieve a high standard of amenity for existing users.

*Living conditions, proposed size of flats*

48. Units 5 and 6, would be located to the rear of the building's first floor. These would be studio flats suitable for a single occupier. These units would have a floor area of 37m<sup>2</sup>, below the minimum threshold for a studio flat with a bathroom. The Council has adopted the National Described Space Standards. These include minimum internal space standards for different types of accommodation. This is described by LP Policy 50 which requires, at table 6.3, a one person (one bedroom) unit to be a minimum of 39m<sup>2</sup> or 37m<sup>2</sup> if a shower room is included instead of a bathroom.
49. The Appellant has explained that the Council has misunderstood the plans and rather than showing a bath, these show double length showers. An amended plan could have been secured by planning condition to reflect this purpose had I been minded to allow the appeal of Scheme A.

50. As such, the internal layout of units 5 and 6 associated with Scheme A would be acceptable. Consequently, the proposal would comply with the Framework which requires development to achieve a high standard of amenity for future users and to function well.

Summary of main issues only affecting Scheme A

51. In summary of those matters that affect only Scheme A, the proposal would not increase off-site surface water flooding due to sustainable drainage measures, would not adversely affect the living conditions of future occupiers, but would result in demonstrable overlooking, harming the living conditions of occupiers of dwellings on both Tavistock Road and No 305.

**Planning balance and conclusion for appeals A and B**

52. The Framework seeks to significantly boost the supply of housing. The proposal would result in a net gain of 8 dwellings on previously developed land and would make efficient use of land. The development would also garner support from the Framework in recognising the important contribution made by small to medium sized sites to housing provision, which can often be brought forward relatively quickly. The schemes would include solar panels and ASHPs, which would include sustainable energy creation/management features. These measures would support of climate change objectives and deliver more than a 19% reduction in CO<sub>2</sub> over Building Regulation requirements of 2013.
53. Furthermore, both schemes would add investment into the local economy during both construction and upon completion through new occupiers spending in the area. The schemes would also deliver some environmental improvements to the frontage of the site. These benefits weigh in favour of the proposal. However, the delivery of additional dwellings would only be of moderate favourable weight as the Council can demonstrate a 5-year Housing Land Supply. The other benefits are of moderate to limited weight for both schemes.
54. In contrast, I have found that the proposal, with respect to both Schemes A and B, would result in significant harm to the character and appearance of the area in conflict with the development plan, the NDG and the Framework. This conflict is of substantial weight. I have also found that Scheme A would result in harm to the living conditions of neighbouring occupiers by way of overlooking. Despite finding no conflict with policy for most of the Council's Reasons for Refusal, an absence of harm in these respects can only be considered as neutral factors in the planning balance.
55. Although the proposal of Schemes A and B, would comply with many policies in the development plan, this has not outweighed the conflict I have found with the relevant planning policies. Consequently, the proposals associated with both Schemes A and B would conflict with the development plan when taken as a whole.
56. For the above reasons, appeals A and B are dismissed.

*Ben Plenty*

INSPECTOR