
Appeal Decision

Site visit made on 4 March 2024

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21.03.2024

Appeal Ref: APP/X5210/D/23/3334298

8A Hampstead Hill Gardens, London NW3 2PL

- 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 Mr Daniel Jaffe against the decision of the Council of the London Borough of Camden.
 - The application Ref 2021/5750/P, dated 24 November 2021, was refused by notice dated 11 September 2023.
 - The development proposed is replacement of existing garage with new building to provide living accommodation with garden roof terrace and basement to incorporate garage and cinema, single storey link extension to existing house, 3rd floor extension, 4th floor roof terrace and external alterations to front of property.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of existing garage with new building to provide living accommodation with garden roof terrace and basement to incorporate garage and cinema, single storey link extension to existing house, 3rd floor extension, 4th floor roof terrace and external alterations to front of property in accordance with the terms of the application Ref 2021/5750/P, dated 24 November 2021 and subject to the conditions set out in the attached Schedule.

Preliminary matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023, during consideration of the appeal. Having regard to the changes in the Framework and to the scale and nature of this appeal proposal, I consider that further consultation on this matter is not necessary.
3. A completed legal agreement under Section 106 of the Town and Country Planning Act 1990 was submitted during the course of this appeal. The agreement addresses the third and fourth reasons for refusal of the appeal application. I return to this matter later on.

Main issues

4. In light of the submitted legal agreement, the main issues for this appeal are:
 - i) Whether the proposal would preserve or enhance the character or appearance of the Hampstead Conservation Area; and
 - ii) The transport sustainability of the proposal in terms of on-site parking provision and potential traffic generation.

Reasons

Character and appearance

5. Hampstead Hill Gardens is a short residential street within the conservation area, lined on both sides by substantial detached and semi-detached Victorian buildings. The Council's Hampstead Conservation Area Statement 2 *Hampstead* (CAS) advises that development here started in the 1870s and includes both stucco and red brick Victorian villas, some with basements.
6. The CAS also refers to more modern development, which would include the red brick block of flats at No 8 and an attached red brick 4 to 5 storey house at No 8A. The curtilage of No 8A wraps around tightly to the rear of No 8. The rear garden is almost entirely taken up by an extensive concrete garage at lower ground floor level, which has a flat roof and roof terrace on top. Nos 8 and 8A are not identified in the CAS as positive contributors to the conservation area. Their limited significance stems mainly from their position within the central part of the conservation area and their contrasting architectural approach. The existing garage building is a poor quality structure that, to the limited extent that it is visible, detracts from the quality, character and appearance of the conservation area.
7. The proposal includes a 3rd floor front extension and a high level roof terrace which I understand have both been approved by the Council in a separate application. A proposed new planter at the front also appears to be non-contentious and should enhance the street scene. The Council's concern is about the proposed development at the back, which would replace the existing detached garage with a new building to provide a basement level garaging and accommodation, lower ground floor accommodation and a roof terrace, with a new single storey link to the house at lower ground floor level.
8. Policy A5 of the Camden Local Plan 2017 (CLP) deals specifically with basement development. It sets out a list of criteria, including limitations on the basement's extent and proximity to the site boundaries. These are explained in the policy text and in the Camden Planning Guidance *Basements* (CPG-B). Although the proposed basement would take up almost all of the rear area, this area is almost all built up already. In this situation, its redevelopment is not excluded by Policy A5's limitation of basements to 50% of the garden area (with reference to paragraph 6.111 of the explanatory text to Policy A5). For much the same reason the proposal would accord with Policy A5's restriction of basements to 1.5 times the existing built area and would not extend past the existing built boundaries towards neighbouring properties.
9. The proposed back garden development would not, in visual terms, be significantly larger in scale than the existing building because the underground section would be almost entirely hidden in public views, signalled only by the

existence of a car lift, set well back from the street. The proposal for a replacement roof terrace over the above ground part of the structure would ensure adequate amenity space and retain the spaciousness of the site. The redevelopment would not bring opportunities for new tree planting, but those do not exist at present in any case. The submitted arboricultural report confirms that the development should not disadvantage the trees in neighbouring gardens, subject to appropriate tree protection measures during development. By replacing the somewhat barren existing roof terrace with a new terrace designed to accommodate planting, the proposal should help to improve the green aspect of this space.

10. CLP Policy A5 also says that basement developments should not comprise of more than 1 storey. It is arguable whether the proposal includes 1 or 2 stories of basement. By the definition set out in paragraph 6.110 of the text to CLP policy A5, it would be a 2 storey basement since the lower ground floor level would be counted. On the other hand, the lower ground floor level would not be below the prevailing ground level on the site, so would not appear to count in the terms set out in paragraph 1.7 of the CPG-B. Either way, the additional layer of development would have only a minimal impact on local character and appearance. In terms of this issue therefore, I see no substantive conflict with this criterion of CLP policy A5.
11. I conclude that the proposal would improve the quality of development at this site, enhancing the character and appearance of the conservation area. It accords in this respect with CLP policies D1, D2, A2 and A5 and Hampstead Neighbourhood Plan 2018-2033 (HNP) policies DH1, DH2 and NE2, which seek high quality design that preserves or enhances Camden's rich and diverse heritage assets and preserve open spaces and trees. The Council also refers to biodiversity policies here. That issue is dealt with in the *Other matters* section below.

Transport sustainability

12. The Council's concern is that the basement and its associated car lift would increase the capacity for on-site parking provision, promoting car ownership and thereby failing to promote or encourage trips by sustainable modes of transport. The existing drive and garaging, however, already have capacity for a substantial number of cars. The area available for car parking and manoeuvring would actually decrease with the redevelopment so that the number of viable parking spaces would also decrease. I note also that the Council appears to over-estimate the number of parking spaces that would be provided, as its rough calculation does not allow for manoeuvring space.
13. The site is, furthermore, in an accessible position very close to a wide range of shops, services and public transport connections so that future occupiers should not have to rely on the car for day to day journeys.
14. I conclude that the proposal would have good transport sustainability, in terms of on-site parking provision and potential traffic generation. It accords in this respect with CLP policies T1 and T2, which aim to promote sustainable transport in part by limiting the availability of parking particularly in new developments.

Section 106 legal agreement

15. The Section 106 legal agreement would require approval and implementation of a construction management plan (CMP), plus financial contributions towards the monitoring of the CMP and the agreement and towards any necessary remedies and repairs including post-development highways repair works.
16. Under Regulation 122(2) of the Community Infrastructure Regulations 2010 and paragraph 57 of the Framework, planning obligations in Section 106 agreements must be: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. The agreement contains a 'blue pencil' clause negating any obligations found not to be compatible with these 3 tests, in this decision.
17. In line with the aims of CLP policies A1, T4 and DM1 to protect amenity and encourage sustainability, the Camden Planning Guidance *Developer Contributions* says that obligations may be applied to small scale developments to achieve measures such as CMPs. It also states that fee contributions payable through Section 106 agreements may be negotiated where further costs of technical verification, inspection and ongoing supervision are likely to be incurred. Although this is a householder development, it is a substantial redevelopment of a backland area of land including excavations and construction works directly adjoining neighbouring properties. It therefore has the potential to significantly affect neighbouring residential occupiers and the use of the public highway.
18. In these particular circumstances I find that a legal agreement is reasonably necessary to ensure approval of and adherence to a CMP with a bond and monitoring contributions as set out in the agreement. The relatively low levels of the bond and contributions appear to be reasonable and proportionate for this scale of development. This matter could not be dealt with by a planning condition. These aspects of the CMP meet the Regulation 122(2) tests.
19. The agreement also includes a bond to provide for any necessary post-development highways repair works, as indicated by CLP policy T1. The particular concern here is the potential for damage to the public footway during construction, which aligns with policy T1's prioritisation of sustainable transport modes, including walking. Again, the low level of the bond appears to be reasonable and proportionate. This matter could not be dealt with by a planning condition. I am therefore satisfied this requirement also meets the Regulation 122(2) tests.

Other matters

20. I have taken the comments of the Hampstead Neighbourhood Forum, the Heath & Hampstead Society, the Hampstead Hill Gardens Residents' Association and others - both positive and negative - into account. In particular I note that there is extensive overlooking at very close range from the existing roof terrace into the rear windows of the flats at No 8 and into neighbouring gardens. This poor level of privacy should be substantially improved by the perimeter enclosure of the replacement terrace, without unduly affecting outlook or light to neighbours. Some disturbance from construction works is

inevitable in such a tight, urban situation, but this can be limited by adherence to a CMP and is also to a large extent dealt with under other legislation.

21. HNP policies BA1 and BA2 also refer to basement development, particularly in connection with the potential impact on neighbouring properties. A (revised) Basement Impact Assessment (BIA) has been submitted to and agreed by the Council, following a professional audit, in line with the requirements of CLP policy A5 and HNP policy BA1. The BIA concludes that, with appropriate controls, potential damage to neighbouring properties can be limited at the most to minor issues that can be categorised as 'very slight' (Burland Category 1). The BIA states that neighbouring properties will be monitored with appropriate trigger levels and control measures agreed prior to commencement of works. The Audit document advises that action trigger values will be agreed as part of a party wall agreement (under the Party Wall etc. Act 1996). The construction of the basement is dealt with further in the conditions section below. I note also that the handling and removal of any asbestos that may be present is dealt with in other legislation.
22. Concerns have also been raised about flood risk and drainage. The BIA, again as agreed by the Council, reports that the development would not increase the likelihood of surface water or sewer flooding and would have a negligible effect on the wider hydrological environment. It confirms that any groundwater flows encountered during construction would be collected via a sump and suitably discharged.
23. The improved planting within the roof terrace should, in a small way, help to improve local biodiversity, in line with CLP policy A3 and HNP policies NE3 and NE4, which aim to protect features of nature conservation value including gardens and to enhance biodiversity.
24. Finally, my attention has been drawn to 2 other appeals for developments at Hampstead Hill Gardens, including a proposed basement to a replacement dwelling at No 4B¹. The circumstances in both of those appeals were substantially different to the singular situation at No 8B. I have assessed this appeal on its own merits, in light of existing policies and circumstances.

Conditions

25. I impose a condition specifying the relevant plans to provide certainty. I have included reference to the submitted Structural Method Statement and Drainage Strategy here as this is not referenced elsewhere in the Council's list of suggested conditions and adherence is necessary to minimise structural, flooding and groundwater impacts.
26. A condition requiring tree protection measures to be approved before development commences is needed to protect local character and biodiversity. In addition to the Structural Method Statement and Drainage Strategy referenced above, conditions requiring implementation of the BIA recommendations and the audit, with appropriate professional supervision, are also needed to protect neighbouring properties and minimise flooding and groundwater impacts. The supervision condition needs to be dealt with before development commences to ensure that the development is carefully managed.

¹ APP/X5210/W/21/3272103 and APP/X5210/W/19/3232754

27. Conditions requiring the use of matching materials, approval of non-matching materials where specified in the application and landscaping details are necessary to protect the character and appearance of the conservation area and, in the case of the new planting, to encourage biodiversity. I find, however, that the level of detailed control suggested by the Council in regard to materials is not necessary for this householder development of an unlisted building so have simplified the draft condition's requirements.
28. Conditions requiring screening and planters for the roof terraces are needed to protect neighbours' privacy. A final condition is needed to ensure that any land contamination found during the works is dealt with appropriately, in the interest of public health. I have amended the draft conditions in places, for clarity. The Council has also suggested a condition controlling external lighting, but this seems unnecessary within a normal residential situation in an urban area.

Conclusion

29. I find that the proposal accords with the development plan, taken as a whole. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR

SCHEDULE OF CONDITIONS [11]

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 288-A001; 288-A010; 288-A011; 288-A012; 288-A013; 288-A014; 288-A015; 288-A020; 288-A021; 288-A022; 288-A023; 288-A024; 288-A025; 288-A026; 288-A030; 288-A031; 288-A032; 288-A033; 288-A034; 288-A100A; 288-A101A; 288-A102A; 288-A103A; 288-A104A; 288-A105A; 288-A106A; 288-A110A; 288-A200A; 288-A201A; 288-A202A; 288-A203A; 288-A204A; 288-A205A; 288-A206A; 288-A207A; 288-A208A; 288-A301A; 288-A302A; 288-A800 (Fire Statement) and the Structural Method Statement and Drainage Strategy Rev 04 dated March 2022 by Price & Myers.
- 3) The development hereby permitted shall not commence until details demonstrating how trees within neighbouring gardens shall be protected during construction work have been submitted to and approved in writing by the Local Planning Authority. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". Trees growing on adjoining sites shall be retained and protected from damage in accordance with the approved protection details which shall be maintained for the duration of the development.
- 4) The development hereby permitted shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction

works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved chartered engineer shall be engaged for the duration of the development and any change or reappointment shall be confirmed to the Local Planning Authority forthwith.

- 5) The basement development shall be constructed in accordance with the method and recommendations set out in the following documents: Basement Impact Assessment Report (Soiltechnics Ref STT5321-R01 Rev G, dated July 2022) and Basement Impact Assessment Audit (Campbell Reith Ref 13693-33 Rev F1 dated September 2022).
- 6) All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing house, unless otherwise specified on the approved drawings and the application form.
- 7) All new external work involving materials which do not closely resemble those of the existing house shall be carried out in accordance with detailed specifications that have first been submitted to and approved in writing by Local Planning Authority and the approved materials shall be permanently retained thereafter.
- 8) No development other than demolition works shall take place until full details of hard and soft landscaping and means of enclosure have been submitted to and approved in writing by the Local Planning Authority. All hard and soft landscaping works shall be carried out in accordance with the approved details prior to the occupation of the rear extension and roof terrace hereby permitted. Any approved planting which, within a period of 5 years from the completion of the development, dies, is removed or becomes seriously damaged or diseased, shall be replaced as soon as is reasonably possible, and in any case by not later than the end of the following planting season, with other plants of similar size and species.
- 9) Prior to the construction of the roof terrace on the single storey rear extension hereby permitted, details of screening to the part of the terrace close to the southern boundary with No 10 Hampstead Hill Gardens shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be provided prior to the first use of the roof terrace and permanently retained thereafter.
- 10) The planters on the uppermost roof terrace hereby permitted shall be installed prior to the first use of the roof terrace and permanently retained thereafter.
- 11) In the event that, during groundworks, any visual and/or olfactory evidence of contamination is found, works shall cease and the Local Planning Authority's Environmental Protection Team shall be contacted for guidance. Works shall not recommence until a remediation methodology has been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out wholly in accordance with the approved methodology.