

---

## Appeal Decisions

Hearing held on 30 September 2014

Site visit made on 1 October 2014

**by Joanna Reid BA(Hons) BArch(Hons) RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 30 October 2014**

---

### **Two Appeals at Highgate Garden Centre, Townsend Yard, London N6 5JF**

- The appeals are made by Omved International Ltd against the decisions of the Council of the London Borough of Haringey.
  - The demolition and development proposed is "Demolition of existing buildings on former garden centre site and redevelopment to provide 3 single family dwelling houses".
- 

#### **Appeal A Ref: APP/Y5420/A/14/2219768**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The application Ref HGY/2013/1748, dated 8 August 2013, was refused by notice dated 3 December 2013.
- 

#### **Appeal B Ref: APP/Y5420/E/14/2219770**

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
  - The application Ref HGY/2013/1781, dated 8 August 2013, was refused by notice dated 3 December 2013.
- 

#### **Appeal A: Decision**

1. The appeal is dismissed.

#### **Appeal B: Decision**

2. The appeal is dismissed.

#### **Appeals A and B:**

##### **Procedural matters**

3. For Appeal A the appellant had submitted a draft planning obligation for a financial contribution towards the provision of affordable housing. The Council had raised concerns about the terms of the obligation at a late stage, and these concerns were unresolved by the hearing. In these exceptional circumstances, the appellant was given until 14 October 2014 for a completed obligation to be submitted to the Council, and for a certified copy of the obligation to be submitted to The Planning Inspectorate at the same time.
4. Following the appellant's submission of further information, the Statement of Common Ground says that the proposed dwellings could achieve Level 4 of the Code for Sustainable Homes, and that they could include green or brown roofs. As the Council has withdrawn its concerns in reason for refusal 4, and these matters are capable of being dealt with by condition if the appeal were to succeed, I shall deal with Appeal A accordingly.

5. In Appeal B I shall deal with the description as being only for the proposed "Demolition of existing buildings on former garden centre site", as there is no provision in the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended to grant conservation area consent for proposed development.

### **Main issues**

6. From my inspection of the site and its surroundings, and from the representations made at the hearing and in writing, I consider that the main issue in Appeals A and B is whether the proposal would preserve or enhance the character or appearance of the Highgate Conservation Area.
7. In addition, in Appeal A only, the second issue is whether the proposed financial contribution towards off-site affordable housing would be fairly and reasonably related to the development.

### **Appeal A: Reasons**

#### *Conservation Area*

8. The appeal site includes a garden centre which has closed, and it is reached from the High Street by the narrow private Townsend Yard. It includes a dwelling which is now used as offices, a commercial glasshouse, a variety of low-key structures, and hard-surfaced areas. The site slopes fairly steeply down to roughly north, and, when in leaf, the many deciduous trees within and outside the site contribute to its verdant character. Its surroundings include spaces and development at the back of buildings in the High Street or reached from the various yards off it, school grounds, the ends of fairly long back gardens of C20 dwellings in Cholmeley Crescent, and self-seeded woodland.
9. The historic development pattern, high percentage of buildings of architectural merit, topography, green open spaces, and distant views, are important to the character and the appearance of the Conservation Area. The historic core of the hilltop Highgate village includes the nearby buildings in the High Street. They are mainly characterised by C17 to C19 small scale terraced houses with traditional shop fronts, tight frontage development and long narrow plots. The mix of earlier buildings and fine C20 buildings contribute to the architectural diversity in the Conservation Area.
10. The *Highgate Conservation Area Character Appraisal and Management Plan* (CAA) divides the Conservation Area into several character areas. The site is within Sub area 2 - Highgate Bowl. The Highgate Bowl (the Bowl) includes an arc of privately owned, open backland lying roughly north of the High Street which falls steeply down from the ridge. It has survived as relatively undeveloped land for reasons including its former use as fairly low value service land, its hilly topography, and its restricted access. It is one of 2 major open spaces which contrast with the fine grained development of the village, and its semi-rural character maintains the connection to its agricultural past.
11. Although the Bowl is mainly characterised by its openness, there are few nearby public views into it. Even so, there are many views over and through it, from the buildings and spaces around and within it. The contrast between the Bowl and the development in the High Street is important to the appreciation of Highgate village as a historic hilltop settlement. Its general openness contrasts with the adjoining townscape, and at night, its relative darkness contrasts with its well-lit surroundings. The Bowl is significant as a remnant of the once rural

village setting of Highgate, and its spatial qualities are cherished by many local people. It is an important part of the Conservation Area, the character or appearance of which it is desirable to preserve or enhance.

12. The site, which is roughly at the centre of and about a quarter of the area of the Bowl, is important to the evolution of the townscape because it separates the historic village core from the later neatly arranged suburban dwellings in Cholmeley Crescent. It includes mostly single-storey structures and much of it is hard-surfaced, but its open character is mainly due to the sloping topography and the screening effect of the canopies of the trees within and around it.
13. The existing Whistler's Cottage is an L-plan bungalow which now has rooms in its loft. It is said to date from the 1930s or the 1950s, but there was little assessment of its heritage significance. It seems that Whistler's Cottage, which is tightly enclosed by vegetation, and the glasshouse, which is further down the slope, were generally acceptable as part of the former horticultural and/or garden centre uses. So, I agree with the assessment in the CAA that they have a neutral effect on the character and the appearance of the Conservation Area. Due to their various ungainly or prefabricated forms, the low-key structures, including the log-cabins and sheds, have a negative effect on its character and appearance. However, despite these neutral and negative effects, the site, as a whole, makes an important positive contribution to the character and appearance of the Conservation Area.
14. The appellant's architect explained that the existing glasshouse was the inspiration for all 3 of the proposed detached family dwellings. Each 2-storey dwelling would be set in good-sized landscaped grounds, and the lower floors of 2 of them would be largely cut into the sloping site. The Green House would replace the glasshouse and the new Whistler's Cottage would replace the present cottage. Both would be about as tall as the structures they would replace. The Lower House would replace the various low-key sheds and structures about the site. However, there was little explanation of the design of each of the dwellings in relation to their individual sites, other than by reference to the existing structures.
15. The red site outline on the 1894 map in the appellant's heritage assessment seems to be misplaced, but most maps from 1816 until 1894 fairly consistently show small strips of land within the southern part of the site. There was insufficient evidence to show that these were parts of burgage plots. However, their shapes are typical of the historic organic growth of the narrow plots which are related to development within and at the back of the High Street and Townsend Yard. The current cottage may not be well related to them, and the proposed boundary between the Green House and the other 2 houses would partly align with a later field boundary of around 1870, but there was little evidence that these earlier features had been taken into account in the layout.
16. Because 2 dwellings would replace existing structures in about the same place, and the third dwelling would be even further from them, they would all be well spread out across the roughly 0.9 hectare site. Although the replacement for the cottage would be in about the same place, the Lower House and the Green House would be within the heart of the Bowl, where there are no dwellings at present. They would be poorly related to, and would fail to respect, the tight knit character of the buildings and spaces by the backs of buildings in the High Street, so their siting would be harmfully intrusive.

17. Although the hard surfaces would be much reduced, the footprints of the 3 dwellings would be similar to the total area of the existing structures. Because their footprints would be substantially larger than, and out of scale with, those of most nearby dwellings, they would be unacceptably out of keeping. As they would not be horticultural or horticulture-related buildings, the houses would also be at odds with the open largely undeveloped character of the Bowl.
18. The existing glasshouse has an ephemeral character due to its single-glazed lightweight construction. Its clear-glazed walls and roof, and general lack of internal partitions allow a sense of what lies beyond it to be appreciated. By contrast, due to its planted roof, solar panels, internal partitions, cedar cladding, triple-glazing and interior lighting, the Green House would have much greater presence and permanence. It would block most views through it. The cedar louvres could reduce the light spill after dark in views from the dwellings and gardens in Cholmeley Crescent, but it would have a much more solid and dominant form. The lower ground floor would add to its bulk and prominence.
19. Because the low-key sheds and structures would be replaced by the bulky Lower House, which would be sited away from the tree canopies by the site boundary, it would also be more dominant. Its lower ground floor would add to its prominence. The 2-storey replacement cottage would also be much more bulky than the existing building. Because all of the dwellings would be more dominant than the existing structures, they would harmfully intrude into the Bowl and unacceptably erode its openness and significance.
20. Landscape proposals submitted during the appeal process show that most existing trees would be retained, and that new trees and planting could provide well screened settings for each dwelling. Some of the trees would be subject to Conservation Area control, but a management plan would be necessary to ensure the long term screening effect of the other planting. However, the views from Highgate contribute to the character of the Conservation Area. So, if the trees were to remain and the planting were to mature, the restricted outlook from the houses would fail to better reveal the significance of the heritage asset to the future occupiers and their visitors.
21. The siting of the glasshouse may have been suited to the more open setting before there were trees next door, or appropriate to the operational needs of the garden centre. However, its siting would put the Green House close to the adjoining woodland, and the Lower House and the replacement cottage would be similarly close to trees. Whilst a sylvan setting can be attractive to future occupiers, not all people are aware of the implications of living close to trees until they have lived there for some while. In time, fears about falling trees or branches, concerns about lack of sunlight, and the inconvenience of dealing with the associated leaves and detritus on and around the dwellings, could lead to pressure from the future occupiers to reduce or fell trees on and by the site. As the Council could find this pressure hard to resist, the character and appearance of the Bowl would not be safeguarded.
22. Having regard to the positive contribution of some fine C20 development to the Conservation Area, the appellant's heritage consultant considered that these C21 buildings should be welcomed. However, their repeated modular forms, exposed Cor-ten steel frames and triple-glazing would have a harsh engineered character which would contrast starkly with the informal semi-rural character and appearance which contributes positively to the significance of the backland

- site. The cedar cladding and partly planted roofs would do little to moderate their discordant appearance.
23. Due to their orientation, the tree cover, and the sloping topography, some of the main rooms in the dwellings would receive little sunlight. Roof lights could make up for this, mainly for the upper floor rooms, but there was little to show how effective they would be. Some rooms would have a poor outlook due to the high level windows and the closeness of vegetation to the full height glazing. So, the dwellings would provide somewhat oppressive living conditions for the future occupiers. This could lead to future requests for extensions, summer houses and conservatories, which along with other effects of domestication at the site, would further erode its relatively undeveloped character. By contrast, the endurance of many nearby historic and more recent dwellings in the Conservation Area shows that they have provided adaptable homes for generations.
24. Other aspects of the design show scant regard for the site specific circumstances. These include the need for regular maintenance to keep the multiple valley gutters free of fallen leaves and debris. The 'smartglass' in the gable ends, and perhaps in the roof lights, could limit light spill after dark, but its effectiveness would depend on the actions and preferences of the future occupiers so it could not reasonably be controlled by condition. For all of these reasons, the scheme would not achieve high quality design.
25. In consequence, the proposal would seriously erode the significance of this part of the Bowl as a historic area once used for pasture and historically important backland, and thus its important heritage value as a setting for the village. The locality has changed over time, and it will continue to do so. However, as heritage assets are an irreplaceable resource, great weight should be given to their conservation. Because the proposal would unacceptably erode the largely undeveloped character and appearance of the site, which contributes positively to the essence of the place, it would not be conserved. As the scheme would damage the significance of the Bowl and its important contribution to the setting of the village, it would, in turn, harmfully erode the character, appearance and significance of the Conservation Area as a whole.
26. Whilst the proposal would cause great harm to the heritage asset, in the terms of the *National Planning Policy Framework* (Framework) that harm would be less than substantial. However, the public benefits, including the potential for the better management of the existing trees, would be insufficient to outweigh that less than substantial harm. Furthermore, insufficient clear and convincing justification, including almost no assessment of the optimum viable use of this part of the heritage asset, has been put to me to show that the proposal would be necessary to preserve or enhance the character or the appearance of the Conservation Area, or to conserve the heritage asset in a manner appropriate to its significance.
27. Although a number of the buildings in the High Street which are fairly near the site are listed, their settings were not a concern of the Council in its reasons for refusal. From the evidence put to me and from what I saw I see no reason to disagree. Even so, whether or not the dwellings would be readily visible from beyond the site, they would be seen by the future occupiers and their visitors, so this would not be a sufficient reason to allow this injurious scheme. In reaching my conclusion on this issue I have had regard to my colleague's

appeal decisions ref APP/Y5420/A/11/2159120 and APP/Y5420/E/11/2159121, which included the demolition of the existing buildings and the erection of 3 self-contained dwelling houses, with an access road and landscaping. I appreciate that the proposal has been informed by my colleague's decisions. However, I have also dealt with the proposal on its merits, and in accordance with the exercise of my statutory duty, to which I have attached considerable importance and weight, the site specific circumstances, and relevant Development Plan and national policy.

28. I consider that the proposal would fail to preserve or enhance the character or the appearance of the Conservation Area. It would be contrary to Policy SP11 of *Haringey's Local Plan (LP)* which seeks a high standard of design that respects its context, character and historical significance, LP Policy SP12 which aims to conserve the historic significance of heritage assets, and Policy UD3 of the *Haringey Unitary Development Plan Saved Policies (UDP)* which seeks respect for local character and context. It would be contrary to Policy 7.4 of *The London Plan (TLP)* which also aims for proposals to have regard to local character, TLP Policy 7.6 which seeks high quality architecture, and TLP Policy 7.8 which seeks to take into account the desirability of sustaining and enhancing the significance of heritage assets. It would also be contrary to the Framework which aims to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

#### *Affordable housing*

29. The Council referred to TLP Policy 3.12 in its reason for refusal 3, but the more recent Policy 3.12 of *The London Plan Revised Early Minor Alterations (TLPR)* is relevant. TLPR Policy 3.12 aims for affordable housing to be negotiated on individual private residential schemes. It says that a cash in lieu contribution should only be accepted where this would have demonstrable benefits in furthering the affordable housing and other policies in this Plan. The heritage considerations in the first main issue provide the exceptional circumstances needed to allow a financial contribution towards off-site affordable housing.
30. LP Policy SP2 at item 7 says that schemes below the 10 unit threshold should provide 20% affordable housing on site, based on habitable rooms, or provide financial contributions towards affordable housing provision. It was common ground between the main parties that the Council's *Planning Note: Implementation of off-site affordable housing contributions for sites below 10 units in Local Plan Policy SP2 Housing* has been withdrawn. Even so, paragraph 5.35 of the adopted *Housing Supplementary Planning Document* says that the Council will seek to negotiate an element of affordable housing on all housing sites capable of providing 10 or more units, and in August 2014 the Council issued its *Draft Planning Obligations Supplementary Planning Document (SPD)* for public consultation. The SPD sets out the Council's current interpretation of item 7 in LP Policy SP2 but, because it has not been adopted by the Council, it attracts little weight.
31. In line with Regulation 122 of *The Community Infrastructure Levy Regulations 2010 (CIL)*, paragraph 204 of the Framework says that planning obligations should only be sought where they meet all of 3 tests, including that the obligation is fairly and reasonably related in scale and kind to the development. The obligation put in after the hearing closed would provide a financial

contribution towards off-site affordable housing, which has been calculated in accordance with the floor area of the 3 proposed dwellings and space standards in TLP, on the basis in the draft SPD. As the draft SPD attracts little weight, and almost no other supporting evidence was put to me, I am unable to conclude that the financial contribution towards off-site affordable housing would be fairly and reasonably related to the development. Because the obligation would not satisfy that test in paragraph 204 of the Framework and CIL Regulation 122, I shall not take it into account.

*Other matter*

32. Although attention was drawn to the sustainable location of the site, the Framework explains that there are 3 mutually interdependent dimensions to sustainable development which should be sought jointly and simultaneously. Whilst the proposal would produce a small economic gain by providing jobs during construction, and it would make modest social gain by providing 3 new homes, these gains would be substantially outweighed by the environmental harm that the proposal would cause to the Conservation Area. Therefore, the proposal would not be a sustainable development.

*Appeal A: Balance*

33. Whilst I have found that the obligation for affordable housing should not be taken into account, the failure to preserve or enhance the character or the appearance of the Conservation Area is a compelling objection to the scheme.

**Appeal B: Reasons**

34. The existing Whistler's Cottage is said to be in use as offices for a landscape contractor's business and other buildings may be in use for storage of related plant and equipment. This and the associated activity at the site should keep it reasonably secure. Despite the limitations of the access, it is also possible that the existing structures could enable some form of horticultural business or garden centre to operate from the site. Furthermore, the loss of the existing buildings would damage the present tangible link with the former horticultural use, which is important to the significance of this part of the heritage asset. So, it would not necessarily be in the interests of the Conservation Area or sustainability for the existing buildings to be demolished.
35. As the existing character and appearance of the site contributes positively to the Bowl and to the setting of the historic core of the village, in the absence of an acceptable scheme for the redevelopment of the site, I consider that the proposed demolition would fail to preserve or enhance the character or the appearance of the Conservation Area. It would be contrary to LP Policy SP12, UDP Policy CSV7 which broadly reflects the thrust of the statutory duty with regard to Conservation Areas, and the Framework which aims to not permit loss of part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

**Appeals A and B: Conclusions**

36. For the reasons given above and having regard to all other matters raised, Appeals A and B fail.

*Joanna Reid*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Miss Mary Cook	of Counsel, instructed by Michael Burroughs Associates
Mike Burroughs	Appellant's planning consultant, Michael Burroughs Associates
Chris Pask	Appellant's architect, Charlton Brown Architects
Stephen Levrant	Appellant's heritage consultant, Heritage Architecture Ltd
Joanna Ede CMLI	Appellant's landscape consultant, The Landscape Partnership

### FOR THE LOCAL PLANNING AUTHORITY:

Robbie McNaugher	Planning officer, Council of the London Borough of Haringey
Emma Williamson	Head of development management, Council of the London Borough of Haringey
Nairita Chakraborty	Principal conservation officer, Council of the London Borough of Haringey

### INTERESTED PERSONS:

Nathalie Lieven QC	instructed by Richard Stein, Leigh Day Solicitors representing the Highgate Bowl Action Group, which includes members of The Highgate Society, the Highgate Neighbourhood Forum, the Highgate Conservation Area Advisory Committee, the Highgate Village Business Association and the Harington Scheme
Michael Hammerson	Vice president, The Highgate Society
Elspeth Clements	Chair, The Highgate Society planning group
Gail Waldman	Member, The Highgate Society planning group
Susan Rose	Chair, Highgate Conservation Area Advisory Committee
Terry Meinrath	Local resident

## **DOCUMENTS PUT IN AT THE HEARING**

- 1 Statement of Common Ground.
- 2 TLPR extracts, put in by the Council.
- 3 TLP Policy 7.9, put in by the Council.
- 4 UDP Policy UD3, put in by the Council.
- 5 Plan of the Highgate Bowl, put in by the Highgate Bowl Action Group.
- 6 Appeal decisions ref APP/Y5420/A/11/2161118 and APP/Y5420/A/13/2199690,  
put in by the Council.
- 7 UDP Policy EMP4, put in by the Council.
- 8 Five mounted sheets of visualisations of the proposal, put in by the appellant.
- 9 CAA, put in by the Council.
- 10 UDP Policy CSV7, put in by the Council.
- 11 LP Policy SP13, put in by the Council.

## **DOCUMENT PUT IN AFTER THE HEARING**

- 12 Completed planning obligation dated 3 October 2014, put in by the appellant.