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# Appeal Decision

Hearing held on 20 June 2012

Site visit made on 20 June 2012

**by L Rodgers BEng (Hons) CEng MICE MBA**

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

**Decision date: 7 August 2012**

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**Appeal Ref: APP/A5840/A/12/2168042**

**123 Grove Park, Camberwell, London SE5 8LD**

- 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 Citrus Healthcare Limited against the decision of the Council of the London Borough of Southwark.
  - The application Ref 10-AP-3751, dated 18 December 2010, was refused by notice dated 15 August 2011.
  - The development proposed is described as "Proposed change of use of frontage structure from D Use Class to residential together with proposed extension for residential purposes. Proposed development of rear land for residential purposes. Development includes private and affordable housing. Proposed pedestrian/vehicular access, car/cycle parking and landscaping".
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## Decision

1. The appeal is dismissed.

## Procedural matter

2. Subsequent to the hearing the Appellant submitted a Unilateral Undertaking made pursuant to s106 of the Town and Country Planning Act 1990. This is a material consideration that I have taken into account in my determination.

## Main Issues

3. The appeal site lies within the Camberwell Grove Conservation Area. Having regard to the statutory duty to pay special attention to the preservation or enhancement of the character or appearance of a Conservation Area (CA) I consider the main issues to be the impact of the proposed development on the character and appearance of the area (with particular reference to its impact on trees) and whether or not the proposal makes appropriate provisions for affordable housing and the mitigation of its impact on local infrastructure and facilities.

## Reasons

### *Background*

4. 123 Grove Park contains a substantial building set in large grounds that extend to over 0.5 hectares. The majority of the land is to the rear of the building and is currently heavily treed and somewhat overgrown - although remnants of a more formal garden remain visible. The property, although currently vacant,

was formerly used as a nursing home and training centre. It is identified in the Conservation Area Appraisal (CAA) as a key unlisted building.

5. The CA is predominantly residential in character and contains a number of listed buildings, some of which abut the site. The CAA identifies Grove Park as a sub area of the CA being characterised by late 19<sup>th</sup>/early 20<sup>th</sup> century speculative development with building styles and garden planting that evoke the native countryside rather than the city. The CAA identifies that mature planting behind the buildings provides a green backdrop to complement the greenery on the street side of the development.
6. The appeal site benefits from its own supplementary planning document (SPD) which seeks ".....to establish a planning framework and provide detailed guidance for potential developers of 123 Grove Park". The SPD was subject to a sustainability appraisal and public consultation before being adopted by the Council in 2007. As such it must attract substantial weight as a material consideration.
7. The SPD notes that, other than community uses, the most acceptable alternative use of the site would be residential. It also notes that the existing building must be retained but that there may be scope for a single or two storey extension to the east of the building - although the SPD makes it clear that the area of any extension is limited by the location of a high quality yew tree.
8. With respect to the backland area the SPD identifies that most of the trees on the site have grown in recent years through neglect and that very few survive from the Victorian era - those of most value being near the site boundaries. The SPD accepts that there is some scope for development of the backland area but states that this would need to be unobtrusive - further noting that development should comprise a single building of a maximum of two stories (plus attic) and should not be greater in scale (floorplan) than 123 Grove Park itself.
9. The appeal proposal includes an eastern extension to the main house that would allow for the creation of 7 residential units of varying sizes and, to the rear of the house, the construction of 5 detached, two storey four bedroom dwellings including private amenity areas, parking and cycle storage. Formal landscaping is proposed to complement the retained trees. It is intended that the development would be gated with access to the rear properties from a driveway running to the east of the main building. Further parking, refuse and cycle storage areas would be created on the frontage.

## **Reasons**

### *Character and appearance*

10. Taking account of the background above I see no reason to question the principle of residential development on the backland portion of the site or the extension of the main dwelling. I also note that the Council has not objected to the appearance of the extension or the backland detached residential properties (referred to as 'pavilions') and I too find no reason to object. In assessing the effect of the proposal on the character and appearance of the area I shall therefore concentrate on the quantum of development and its impact on the existing vegetation.

11. The CAA recognises the importance of the mature planting behind the frontage buildings in evoking the native countryside and I am in no doubt that in this regard the appeal site makes a significant contribution to the CA. However, it seems to me that the current heavily wooded state of the site is in part due to neglect rather than design. Although large trees occur in various parts of the site, the SPD identifies that those trees which are of most value are near to the site boundaries. The Appellant's Arboricultural Impact Assessment (AIA) paints a similar picture.
12. Notwithstanding that the majority of the trees proposed for removal are located away from the boundaries the AIA identifies that the appeal development would result in the removal of some 83 trees from the site out of a total of just over 170. Whilst the majority of the trees to be removed are regarded by the AIA as being of poor quality, and their removal of low impact, the AIA also acknowledges that 7 of the proposed removals would, as larger or more visible trees, rate a low-medium impact (T30, T37, T58, T59 and T156-8). I note that, individually, most of these trees are rated as Category 'C' (Low Quality) with only T37 rated as Category 'B/C' (Intermediate). The Council nevertheless considers that the loss of certain large trees in what it believes to be good condition (T30, T58 and T59) would be unacceptable. The Council is further concerned at the loss of T156 and T157 which the SPD indicates should be retained – albeit that the AIA identifies these trees as being Category 'C'.
13. A further 40 trees would be subject to construction impacts from buildings, parking areas and landscaping. According to the AIA most of the impacts would be rated low-medium with only 8 trees incurring medium-high impacts (and of these trees only 4 are rated Category 'A' or 'B' (Good/Moderate Quality)). The Appellant's view is that these impacts could in any event be made acceptable through design or by the adoption of particular construction methods. This is questioned by the Council who raise particular concerns as to the effect of the development on T135, the yew tree to the east of the main building which is rated as Category 'B'.
14. In terms of its location and its likely impact on the existing trees the proposed development bears some similarities to the 'Indicative backland development' shown in Appendix 5 of the SPD. However, the SPD notes that development in the backland area should comprise a single building not greater in scale (floorplan) than 123 Grove Park itself - as existing. The proposal is for 5 dwellings and in that respect alone the development does not conform to the SPD. It is less clear as to what is meant by 'floorplan'. Inspection of the drawings would suggest that the footprint of the 5 dwellings would significantly exceed the footprint of No 123. However, reference to the accommodation schedule suggests that in terms of overall floorspace the comparison would be considerably closer. I shall in any case look to the physical impact of the dwellings as proposed.
15. Although local residents are concerned as to the justification for the view expressed in the Council Officer's Committee Report that smaller pavilions may be less detrimental to the character and appearance of the site than a single building, it does not seem to me to be an unreasonable stance. Indeed, in breaking down the overall mass of development it is likely that smaller buildings would appear better integrated into the woodland setting in that they would allow the trees to be seen between and around the buildings. Even so, in spreading development across the site as in the arrangement of Houses 1, 2,

and 3, the pavilions would end up fairly close to the boundaries. To my mind this is likely to detract from the contribution of the appeal site to evoking the feel of the native countryside within the CA and the development's visual impact on the surrounding area is likely to be somewhat greater than would be the case with the more centrally located single building envisaged in Appendix 5 of the SPD.

16. The proposed layout would, as noted above, result in the removal of a very large number of the existing trees. Whilst the vast majority are individually rated as being of low quality, in combination they nevertheless make a positive contribution to the woodland feel of the appeal site and to the overall countryside ambience of the CA. The proposed removal of a very significant number of these trees is therefore likely to be detrimental to the character and appearance of the area. I note that the Appellant comments that a number of the trees scheduled for removal could be retained with only minor amendments to the scheme. That may be so. However, it is not a matter that in my view could be dealt with by condition and I must in any event consider the proposal put before me. I note that the Appellant has also referred in the appeal submissions to the potential for a more conservative approach to tree removal although, as was confirmed at the hearing that again is not before me.
17. With respect to T135, the yew to the east of the main building, the Council notes that taking account of the ancillary foundation and scaffolding required to construct the new elevation a significant amount of the tree's crown would need to be removed - thus disfiguring its appearance and creating a potential nuisance due to the consequent need for regular and repeated pruning.
18. The Appellant suggested at the hearing that yew trees have a relatively good tolerance to the impact of development as well as pointing out that the yew tree is internal to the site with limited external visibility. I nevertheless tend towards the Council's view that the proposed development would result in a significant reduction in the amenity value of the tree - a tree that, despite its current limited presence in the public realm, I consider to be of appreciable value in its own right. Given the tree's proximity to the proposed extension I also accept that there is a reasonable likelihood that it would create an ongoing nuisance for future occupiers and would need regular pruning.
19. The Council's second reason for refusal relates to the protection of the retained vegetation from construction impacts (with particular regard to the establishment of the access road and the installation of services) and from the overall post development pressure likely to arise in respect of future overshadowing and maintenance issues. With respect to the impact of the access road and services the Appellant has now submitted a consultants' report demonstrating how the impact of the access road and services could be controlled. In light of this report, and subject to the proposed construction and mitigation methods being secured by an appropriate condition, I accept that the access road and the services could be provided without causing material harm to the retained trees.
20. With respect to other post development pressures on the retained trees the Appellant has suggested that a woodland management plan could be put in place - noting that these have formed part of planning obligations made on other sites in the borough. Although the submitted obligation in this case does not address the issue of such a plan it was suggested at the hearing that this matter could be dealt with by amending the suggested conditions. I agree.

21. In summary, the proposed development would result in the loss of a very significant number of the trees currently on site. Although many of the affected trees are rated as Category 'C' and are individually of low quality, collectively they make a positive contribution to the overall ambience of the area. I am also concerned that T135, a specimen that I not only regard as being of appreciable amenity value but one which is explicitly identified as a development constraint in the SPD, would be materially harmed by the development. Notwithstanding their categorisation in the AIA I am also aware that other trees identified in the SPD for retention (T156 and T157) would be removed.
22. I accept that there would be very considerable difficulties in developing the site without removing or affecting an appreciable number of trees, possibly even some of individual merit. I also accept the Appellant's point that to preserve the site in its currently neglected state would not constitute good planning. Nevertheless it is my view that, whilst the various individual impacts may not themselves prove fatal to the scheme, the overall effect of the development on the site's trees would be so significant as to diminish its contribution to the countryside ambience of the CA - to the extent that the character and appearance of the CA would be harmed. Although, like the Appellant, I find the statement in the SPD that "Replacement planting must ensure there is no net loss of vegetation on the site....." to be somewhat imprecise and ambiguous it is nevertheless my view that the harm to character and appearance could not be satisfactorily overcome by the imposition of conditions requiring replacement planting.
23. In consequence I find that the proposed development would be contrary to Policy 3.16 of the Southwark Plan (2007), which requires development in a conservation area to preserve or enhance its character or appearance, as well as to Policy 7.21 of the London Plan which in broad terms seeks for trees and woodlands to be protected, maintained and enhanced. The development would also be contrary in several respects to the SPD which, as noted above, is a weighty material consideration.

*Affordable housing and the effect on local infrastructure and facilities*

24. The Appellant has submitted a planning obligation pursuant to s106 of the Town and Country Planning Act 1990 that is intended to secure the provision of affordable housing on the site and to provide contributions towards such matters as education, health and open space. However, I am not convinced that the deed as presented would properly secure the affordable housing or the intended contributions. Although there is a date on the cover of the obligation it has not been dated at the head of the first page and to my mind it is unclear as to whether it would properly come into effect. In any event, as I have found that the proposed development would fail to preserve or enhance the character or appearance of the conservation area I see no need to further consider the submitted Undertaking and whether or not it meets the requirements laid out in the National Planning Policy Framework and the Community Infrastructure Levy Regulations 2010.

**Other matters**

25. The Council's third reason for refusal considered that the impact of the development on ecological habitats and species had not been fully assessed and that in consequence it could not be demonstrated that existing species and

their habitats could be properly protected. However, following the submission of further information by the Appellant as part of the appeal process the Council now considers that, subject to the imposition of appropriate conditions, the development would not harm the ecology of the site. In consequence the Council no longer contests the third reason for refusal. Notwithstanding the continuing concerns of local residents in this regard I see no substantive reason to take a different stance to that of the Council.

26. Local residents have also raised concerns as to the communal area at the rear of the site which has been proposed as part of the initial landscaping scheme put forward by the Appellant. Residents are particularly concerned as to the potential for intrusive overlooking of the properties on Grovelands Close. However, I note that the Council has proposed a condition requiring the submission and approval of a landscaping scheme before any above grade work begins and it seems to me that this would provide an appropriate control mechanism to ensure that any communal area would not result in material harm to the living conditions of neighbouring residents.

### **Conclusion**

27. Having had regard to all other matters before me including the remaining objections from local residents into such matters as ground stability, the creation of gated communities, drainage and parking, the recent publication of the National Planning Policy Framework, the dissatisfaction expressed by the Appellant with regards to the pre-application discussions undertaken with the Council and the further planning policies that have been brought to my attention, I find nothing to add to or alter my findings above.
28. I am conscious that the proposed development would bring with it certain benefits, particularly in the provision of housing. However, I find nothing of sufficient weight to overcome the development plan conflict. I therefore conclude that the appeal must fail.

*Lloyd Rodgers*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mr B Kitcherside	Director, Chartplan
Mr A Hollis	Registered Consultant, Landmark Trees
Dr D Painter	Director, Applied Ecology Ltd
Mr K Lang	Director, Lanmor Consulting Ltd
Mr L Koski	Partner, KSR Architects

### FOR THE LOCAL PLANNING AUTHORITY:

Mr F Mason	Planning Officer, London Borough of Southwark
Mr O Stutter	Urban Forester, Design and Conservation Team, London Borough of Southwark
Mr J Best	Ecology Officer, London Borough of Southwark

### INTERESTED PERSONS:

Ms J Welch	Local resident
Mr R Sheard	Local resident
Mr M Rook	Local resident
Mrs P Thornton	Local resident and speaking for the Grovelands Close Residents' Association
Mr R Hickson	Local resident

## **DOCUMENTS HANDED IN AT THE HEARING**

- 1 Arboricultural Impact Assessment Drg. Rev A Nov 2010. Submitted by Mr Mason.
- 2 Aerial photograph. Submitted by Mr Mason.
- 3 Extracts from reports on 'Gated Communities'. Submitted by Mr Sheard.
- 4 Supplementary Planning Document (SPD) - s106 Planning Obligations. Submitted by Mr Mason.
- 5 SPD 123 Grove Park. Submitted by Mr Mason.
- 6 Camberwell Grove Conservation Area Appraisal. Submitted by Mr Mason.
- 7 Planning Cttee Report iro 12/AP/0682 dated 6 June 2012. Submitted by Mr Mason.
- 8 SPD 'Sustainable Design and Construction'. Submitted by Mr Mason.
- 9 Arboricultural Impact Assessment 2/12/10. Submitted by Mr Kitcherside.
- 10 Tree Constraints Plan Drg. Rev A Jun 2010. Submitted by Mr Kitcherside.
- 11 Arboricultural Impact Assessment (Retained Trees) Drg. Rev A Nov 2010. Submitted by Mr Kitcherside.
- 12 Unilateral Undertaking (undated). Submitted by Mr Kitcherside.
- 13 Appendices 1-7 to evidence of Mr Hollis. Submitted by Mr Kitcherside.
- 14 Large scale topographical survey drawings (Sheets 1 of 2 & 2 of 2). Submitted by Mr Kitcherside.