
Appeal Decisions

Site visit made on 26 July 2016

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 3 October 2016

Appeal A: APP/X5990/w/16/3149719 **34 Old Queen Street, London SW1H 9HP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Prestige Exclusive Lifestyle Limited against City of Westminster Council.
 - The application Ref 15/11140/FULL, is dated 30 November 2015.
 - The development proposed is double storey basement construction.
-

Appeal B: APP/X5990/Y/16/3149720 **34 Old Queen Street, London SW1H 9HP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Prestige Exclusive Lifestyle Limited against City of Westminster Council.
 - The application Ref 15/11141/LBC is dated 30 November 2015.
 - The works proposed are double storey basement construction.
-

Decision Appeal A

1. The appeal is dismissed and planning permission for double storey basement construction is refused.

Decision Appeal B

2. The appeal is dismissed and listed building consent for double storey basement construction is refused.

Preliminary Matters

3. As set out above, this is an appeal into the non-determination of the two applications. The Council states that had the appeals not been submitted, the Council would have refused both applications on the grounds that the excavation is for two storeys below the lowest original floor level, contrary to the then emerging Policy CM28.1, and that harm would be caused to the internal character and hierarchy of the building.
 4. In fact Policy CM28.1 was adopted on 13 July 2016 and now forms part of the '*Westminster's City Plan Consolidated with Basements and Mixed Use Revisions*'. In view of this further representation was invited from both parties prior to writing these Decisions.
-

Main Issues

5. The main issues in both appeals are;
- The effect of the proposals on the architectural or historic significance of the listed building.
 - The effect of the proposal on the aims of Part C3 of Policy CM28.1.

Reasons

Policy Background

6. The premises are listed Grade II. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The site is within the Birdcage Walk Conservation Area and Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 132 of the National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings.
7. Policy S25 seeks the conservation of heritage assets and Policy S28 seeks exemplary standards of sustainable and inclusive urban design and architecture. Unitary Development Plan Policy DES1 states that development should be of the highest standards of sustainable and inclusive urban design and architectural quality, improving the quality of adjacent spaces around or between buildings. Policy DES10 seeks the preservation of listed buildings.
8. The appellant points to the fact that had the Council determined the applications within the prescribed period, Policy CM28.1 would be only emerging with further opportunity for change. The Council's Report states that at the date of the applications, the emerging Policy was being applied as set out in the Cabinet Member's Statement '*Basements Development: Weight of Emerging Policy*' issued on 23 October 2015.
9. Be that as it may, the planning appeal Decision is based on the recently adopted policy, with reference to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Policy is a material consideration in the listed building consent appeal, as section 38(6) does not apply to applications or appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990.
10. The Council had granted permission and listed building consent for a single storey basement on 15 March 2016 (Ref: 15/11094/FUL & 15/11095/LBC) and whilst this was prior to the adoption of Policy CM28.1, that proposal would accord with the wording of the policy by reason of being for only the single storey, and may be taken to accord with the other policy and statutory

requirements. That permission and consent included an air conditioning unit at roof level, with no identified adverse effects.

The Effect on the Listed Building

11. Policy CM28.1 contains the requirement at B.a)6 that in existing residential buildings such as the appeal premises, basement development is to protect heritage assets and in the case of listed buildings, again such as the appeal premises, should not unbalance the building's original hierarchy of spaces, where this contributes to significance.
12. The hierarchical arrangement of the appeal building is somewhat unusual due to its history of non-residential uses and prior to that, the addition of further storeys above the original building. At the time of listing much of this change would already be in place. In addition the ability to develop the single basement permitted in March 2016 would have a further effect on the hierarchy of spaces, and one that the Council clearly find acceptable.
13. Having regard to the nature of the additional spaces and uses that would be placed within the second, the lowest, level of the proposed double basement, and the access to them by way of the first level already permitted, there would not appear to be significant adverse effects on the appreciation of the truly historic hierarchy of spaces and uses within the house. The degree to which the hierarchy of spaces at the lowest existing level contributes to the significance of the listed building is limited by later changes and the visible addition of the required new access at this level has already been accepted.
14. It appears that one visible addition in the double basement scheme would be a lay-light in the front basement area facing onto Old Queen Street, but with other changes that have taken place, or would under the permitted scheme, this would have no effect on the character and appearance of the Birdcage Walk Conservation Area or the listed building. The appeal proposal also includes a further or larger condenser unit at roof level to accommodate the larger air volume, but again, this would have no adverse effect on the appearance of the building or that of the Birdcage Walk Conservation Area.
15. The proposal would not adversely affect designated heritage assets, preserving the significance of the listed building and the character and appearance of the conservation area, in line with the requirements of the three sections of the 1990 Act previously cited. In addition in the terms of Policy CM28.1, the proposal would not unbalance the hierarchy of spaces of this tall town house in as much as they contribute to significance. The proposal would accord with Policies DES10 and S25 on the preservation of heritage assets and with the requirements of the Framework in this respect.

The Effect on the Aims of Part C3 of Policy CM28.1

16. Part C3 is the relevant section of the newly adopted policy and states that basement development to residential buildings will not involve excavation of more than one storey below the lowest original floor level unless it has been demonstrated that no heritage assets will be adversely affected, and this has been demonstrated, and the proposal relates to a large site with high levels of accessibility such that it can be constructed and used without adverse impact on neighbouring uses or the amenity of neighbouring occupiers. It can be stated now that there does not appear to be any risk of the use causing

adverse effects. As a result the issue is about the construction phase, and the proposed double basement would be contrary to Policy CM28.1 'Basement Development', which is an adopted Development Plan policy.

17. The appellant's case, as further elaborated on in response to the invitation to comment on the adoption of the policy, is that no material harm would occur, and that this is a circumstance where judgement should be applied rather than applying a blanket 'no two storey' basement stance. The appellant makes reference to a written response to the examining Inspector's question as to what the rationale was for seeking to prevent two level basements and the quoted passage from that response is *'to limit the disruption to neighbours. This will be achieved by a limit on the amount of soil that must be excavated, (indirectly reducing the length of the overall programme), as well as limiting vehicle movements to the site (i.e. fewer vehicles to remove excavated soil).While smaller basements require from around 65 lorry movements, the largest deeper basements can require up to 700 lorry movements....'*
18. As the appellant says, there could be a wide range of outcomes depending on the site circumstances, location, the manner of working, ability to access and remove excavated material efficiently, the type of soil and the number and proximity of residential properties in the vicinity. It is further stated that the appeal proposal would result in 142 lorry movements as opposed to 88 for the permitted single storey scheme, and a duration of 22 months up from 18. These calculations stem from an analysis of the compacted soil under the house, and its propensity to bulk-up on excavation.
19. It is clear that the Council correlate the effect on neighbours as being a function of the amount of soil that has to be excavated, the length of programme and vehicle movements. The Council could have chosen to specify a length of time that would be considered reasonable, but that would imply a detailed analysis of the submitted programme. They could have chosen a specified cubic content of soil to be removed, which would have a more direct correlation to lorry movements, but this may not have correlated well with other parameters such as site size and shape.
20. The policy situation is, as the appellant states, that a large single basement, due to being under a large floor plan, could result in more soil and lorry movements, than a double basement under a small floor plan. That does not appear unreasonable, and clearly the Examining Inspector thought that too, as there would likely be a correlation between site size and its perimeter, and hence party wall lengths, so that the greater bulk of soil to be removed in such a hypothetical larger single basement could cause less harm.
21. The policy provides what is described as an 'exceptional circumstance' of a large site with high levels of accessibility that can be constructed without adverse impacts. Such a large site might have only limited lengths of boundaries with neighbours in relation to the floor plan, thus reducing the impact along those boundaries, and the accessibility would allow lorry movements to be dispersed. The first of these does not apply to the appeal property, which is a large house but on a relatively small floor plan, having a narrow frontage and a large proportion of party wall. On accessibility, the single basement has been planned with suspension of parking bays and allows for the one-way street and the lack of conflicting movements, but the double basement would add more time over which these effects would be felt.

22. It is the fact that an extensive redevelopment and double basement is being carried out at 1 – 3 Queen Anne’s Gate, but the full circumstances of any balance of considerations there is not known, and in any event that appears a significantly larger site with wide access on more than one frontage and relatively limited party wall lengths.
23. This is a mixed-use area, as shown in the appellant’s submissions, and there have been no objections from immediate occupiers although both are residential properties. Whilst weight can be attached to this apparent lack of concern, there are various reasons why this may be so at the time of consultation for the application and even the appeal, and the situation may change over the extant period of permission and its implementation.
24. Whilst the submission of a construction management scheme would allow scrutiny of the works at the appeal property and the application is accompanied by substantial documents and detail, the additional cubic content to be taken out of the ground and loaded into lorries, the additional lorry loads and the additional time all indicate that the risk of harmful disruption would be increased within this constrained floor plan.
25. The reasoned justification for the policy states that basements can have a significant impact on the amenity of neighbouring occupiers. Further passages make clear that limiting the extent and depth can help reduce both the risks associated with basement development and mitigate any negative environmental and amenity impacts. Whilst the appellant clearly sees the distinction between a single depth and a double one as arbitrary and potentially perverse in its outcome, the justification concerns an effect which might be seen as harm by those affected, but which is considered acceptable in the case of a single basement, and seeks to differentiate that from the greater effect and possibility of greater harm in the case of a double basement. It is not a case of a single basement presenting no harm, but as to what is considered acceptable. The reference to mitigating negative environmental and amenity impacts is one of making them less harmful, and should not be taken to mean that the harm is removed altogether where a single basement is formed.
26. In conclusion on this issue, the proposal is contrary to the requirement of part C3 of Policy CM28.1 and the likely additional works that a double basement on this site would entail over that for a single basement would cause an unacceptable level harm to the amenity of adjacent properties, and the environment of Old Queen Street and the surrounding area, through additional lorry movements and the extended time for excavation.

Conclusions

27. Whilst the introduction of a double basement would not cause harm to the listed building or the conservation area, the proposal would be contrary to the newly adopted Policy CM28.1 and would be unacceptably harmful to the environment and amenities of the area. There are no compelling reasons to set aside the requirements of the policy in this case. For the reasons given above it is concluded that both appeals should be dismissed.

S J Papworth

INSPECTOR