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## Appeal Decisions

Site visit made on 15 November 2016

**by S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 24 November 2016**

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### **Appeal A: APP/X5990/Y/16/3152994**

#### **53 Lower Belgrave Street, London, City of Westminster SW1W 0LP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr M Harold against the decision of City of Westminster Council.
  - The application Ref 15/09963/LBC, dated 26 October 2015, was refused by notice dated 22 December 2015.
  - The works proposed are excavation works to create a basement under footprint of the house, the rear garden, the front lightwell and vaults, with rooflight and associated internal alterations. (This is referred to as Scheme A by the appellant.)
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### **Appeal B: APP/X5990/Y/16/3153008**

#### **53 Lower Belgrave Street, London, City of Westminster SW1W 0LP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr M Harold against the decision of City of Westminster Council.
  - The application Ref 15/09996/LBC, dated 27 October 2015, was refused by notice dated 22 December 2015.
  - The works proposed are excavation works to create a basement with rooflight under the footprint of the house, front lightwell and vaults, and the rear garden. Associated internal alterations. (This is referred to as Scheme E by the appellant.)
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### **Decision Appeal A**

1. I allow the appeal and grant listed building consent for excavation works to create a basement under footprint of the house, the rear garden, the front lightwell and vaults, with rooflight and associated internal alterations at 53 Lower Belgrave Street, London, City of Westminster SW1W 0LP in accordance with the terms of the application Ref 15/09963/LBC, dated 26 October 2015 subject to conditions 1) to 4) on the attached schedule.

### **Decision Appeal B**

2. I allow the appeal and grant listed building consent for excavation works to create a basement with rooflight under the footprint of the house, front lightwell and vaults, and the rear garden. Associated internal alterations at 53 Lower Belgrave Street, London, City of Westminster SW1W 0LP in accordance with the terms of the application Ref 15/09996/LBC, dated 27 October 2015 subject to conditions 1) to 4) on the attached schedule.
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## **Main Issue**

3. In both appeals this is;

- The effect of the proposal on the architectural or historic significance of the Grade II listed building.

## **Reasons**

### *Policy and Background*

4. The building is listed Grade II and the appeal concerns two slightly differing schemes for a basement addition where planning permission has already been granted, but listed building consent refused in each case.
5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 on the primacy of the Development Plan does not apply to applications and appeals made under the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 16(2) of the latter Act requires special regard to be had to the desirability of preserving the listed building or its setting or any special architectural or historic features it possesses.
6. These duties are reflected in Policies S25 and S28 of Westminster's City Plan: Strategic Policies on heritage and design; and Policy DES 1 of the Unitary Development Plan urban design and conservation. Policy CM28.1 'Basement development' was adopted in July 2016, formalising advice previously part of the Supplementary Planning Document 'Basement Development in Westminster' of October 2014. Whilst the Policy was not operative at the time the applications were determined, it is adopted now, but in these listed building consent appeals has the status of a material consideration along with the other Development Plan policies, as previously explained.
7. Looking in more detail at Policy CM28.1;
  - Part A contains general requirements on stability, the impact of construction and similar.
  - Part B states that basements to existing residential building such as here will, among other things, protect the character and appearance of the existing building, garden setting or the surrounding area, ensuring light-wells, plant, vents, skylights and means of escape are sensitively designed and discreetly located; and protect heritage assets, and in the case of listed buildings, not unbalance the building's original hierarchy of spaces, where this contributes to significance.
  - Part C contains the requirement not to involve the excavation of more than one storey below the lowest original floor level unless exceptional circumstances have been demonstrated of being a large site and not adversely affect heritage assets. As written, both must apply.
  - Part D concerns the percentage of garden dug-under and works under highway.
8. 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.

9. There is a substantial planning history amounting to nine schemes of various permutations of how deep the basement would be, where the stairs would be, whether the pavement vaults are dug-under, among other things. The appellant says that these were to test acceptability in the absence of guidance and prior to the implementation of Policy CM28.1. The annotated version of drawing 3676\_SK\_16 is useful in understanding the issues, with the schemes lettered A to J. The appeal proposals appear as Schemes A and E, the accompanying planning references 15/09962/FULL and 15/09995/Full having been granted permission on 22 December 2015. Both listed building consent and planning permission have been granted for schemes C, D, G, H and J.
10. It appears that the objection centres on the proposed height of 4.1m under the main part of the listed building, whereas the same depth, but less headroom due to the support and cover for the garden, has been consented to the rear of that area. Permissions and consents exist for a basement to the disputed part for heights of 2.335m and 2.7m with the stairs in either of the positions now proposed.

#### *Listed Building Considerations*

11. Policy CM28.1 is clear that the works should not unbalance the building's original hierarchy of spaces, *where this contributes to significance*. The Examining Inspector's Report stated that 'where basements are proposed under London terrace houses *which have a characteristic hierarchy of spaces*, these *can* be imbalanced by the addition of a basement storey and that a more acceptable solution may be to consider a basement under the garden.'
12. It is therefore essential in that regard to determine the extent to which the original hierarchy of spaces exists, and the extent to which what does exist contributes to the significance of the listed building. The Framework makes clear also that it is the impact on the significance of a designated heritage asset that is to be considered.
13. The other particularly relevant part of the policy is that to not involve the excavation of more than one storey below the lowest original floor level in Part C. The policy application section states that the most appropriate form of basement extension will be no more than one storey (approximately 2.7m floor to ceiling height) below the lowest part of the original floor level. An additional allowance may be permitted where exceptional circumstances have been demonstrated, as set out in the policy. The reasoned justification states that limiting the extent and depth of basement development can help reduce both the risks associated with basement development and mitigate any negative environmental and amenity impacts. The policy also provides for better accommodation with natural ventilation, and for reduction in the amount of excavation and waste material generated and in the impact on drainage, biodiversity and local amenity.
14. With regard to the depth question first, many of the considerations in the reasoned justification would have informed the grant of planning permission under other policies at the time even if Policy CM28.1 was not operative. The Council's reason for refusal is to the effect of the 4.1m scale on the special interest and hierarchy of the listed building. 2.7m is described as an approximate floor to ceiling height in the policy application section rather than the policy wording.

15. Whilst the proposed 4.1m is a generous floor to ceiling height, it could well be reasonable in relation to some uses that would be eminently suited to a subterranean location, such as a home cinema or fitness suite, where servicing requirements would take space out of the headroom, or where a conventional domestic scale would not appear right. That structural height would not permit subdivision for a second floor, which would contradict the policy wording, or a mezzanine. The 'fall-back' scheme J, no matter the policy background under which it was approved is a material consideration here, as there does not appear to be reason why it could not proceed.
16. The location of the stair differs between the two schemes, but both positions have been accepted in the various approved schemes C, D, G, H and J down to the same lowest level to the rear as is now proposed to the front, but serving an intermediate level to the front at either 2.335m or 2.7m. There does not appear to be good reason to differ from those previous decisions as such, and with regard to the issue at appeal. The single issue remains therefore the effect of the scale of the proposed basement on the original hierarchy of spaces.
17. One further part of the planning history is pertinent. In 2009 planning permission and listed building consent were granted (09/00816/FULL and 09/00817/LBC) for the erection of a full width extension at rear lower ground floor level and the installation of new French doors at rear ground floor level. This work has had a profound effect on the perception of the historic significance of the lower ground floor, although no doubt considered acceptable on its actual effect as that decision would have been taken with the pre-existing situation in mind. The overall hierarchy of the house is well displayed from the highest floor to the entrance level, in terms of the nature of the stair, the ceiling heights and the decoration. It has been altered to considerable extents higher in the house, but the basic room layout is discernable at ground and first floors, the main family rooms.
18. Below entrance level, the lower ground floor does not display the traditional cellular arrangement of rooms, reflecting the need to support the same layout of rooms and masonry walls above, but has been opened-out to the rear under the 2009 approvals. Whilst the disputed part of the basement is under the less affected front part, and even there change has taken place, the entry to the basement would be through the opened-up rear room. Scheme A has the head of the stairs within the edge of the room, but it would be clearly in mind when descending, whereas Scheme E has the head of the stairs well within body of the room where the perception of being in a modern building would be slightly stronger.
19. In either case, having descended the same number of steps as in the approved schemes, the user would experience the 4.1m headroom whilst having in mind the modern decorations and layout they had just left. Whilst not relied on, the possibility of some of the headroom being used for servicing would reduce the effect. Due to the substantial changes brought about to the rear of the listed building at lower ground floor level, it is not possible to conclude that the original, or characteristic, hierarchy of spaces (and not just ceiling heights) extends to the lower ground floor, and hence such hierarchy of spaces does not contribute to the significance of the listed building as it presently stands. The 'fall-back' and other schemes add weight to this finding.

20. Consequently it is concluded that the proposal accords with Policy CM28.1 as well as Policies S25, S28 and DM1. The requirements of section 12 of the Framework on conserving and enhancing the historic environment are met, and the proposal accords with section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990. For those reasons both proposals are acceptable and should be granted listed building consent.

### **Conditions**

21. The Council suggest three conditions and the appellant accepts them as being similar to those previously attached to other scheme consents. To them should be added the standard time condition. The condition naming the drawings '*for the avoidance of doubt and in the interest of proper planning*' only applies to planning permissions under the provisions for greater flexibility in such permissions. However, in view of the scope for confusion with there now being seven acceptable schemes, (previously C, D, G, H and J, with A and E in addition) it is prudent to name the drawings in this condition.
22. Since neither of the remaining conditions seek further details or the like, it is not necessary to include the phrases '*and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter*' and '*or are required in conditions to this permission*' as suggested.

### **Conclusions**

23. Due to alterations that have taken place elsewhere in the house but most particularly in the lower ground floor from where the new stairs would descend, the effect of the proposed basement under the front of the house having a 4.1m floor to ceiling height would be acceptable in listed building terms. The proposal accords with the Development Plan policies, statutory test and national guidance. For the reasons given above it is concluded that both of the appeals should be allowed.

*S J Papworth*

INSPECTOR

### **Schedule of Conditions Appeal A**

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) The works hereby permitted shall be carried out in accordance with the following drawings; 3676\_A\_12, 3676\_A\_13, 3676\_A\_14 and 3676\_A\_15.
- 3) All new work and improvements inside and outside the building must match existing original adjacent work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the approved drawings.

- 4) Existing ornamental features including chimney pieces, plasterwork, architraves, panelling, doors and staircase balustrades must not be disturbed. They must be left in their present position unless changes are shown on the approved drawings. They must be properly protected during work on site.

#### Schedule of Conditions Appeal B

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) The works hereby permitted shall be carried out in accordance with the following drawings; 3676\_E\_12, 3676\_E\_13, 3676\_E\_14 and 3676\_E\_15.
- 3) All new work and improvements inside and outside the building must match existing original adjacent work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the approved drawings.
- 4) Existing ornamental features including chimney pieces, plasterwork, architraves, panelling, doors and staircase balustrades must not be disturbed. They must be left in their present position unless changes are shown on the approved drawings. They must be properly protected during work on site.