
Appeal Decision

Site visit made on 23 January 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 10 February 2017

Appeal Ref: APP/H5390/W/16/3161600

Abercorn House, 28 Bute Gardens, London W6 7DS

- 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 Abercorn Investments Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2015/05633/FUL, dated 19 November 2015, was refused by notice dated 11 August 2016.
 - The development proposed is a basement extension to existing accommodation to create 26 hotel rooms, associated lightwells and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for a basement extension to existing accommodation to create 26 hotel rooms, associated lightwells and landscaping at Abercorn House, 28 Bute Gardens, London W6 7DS in accordance with the terms of the application, Ref 2015/05633/FUL, dated 19 November 2015, subject to the conditions in the schedule to this decision below.

Procedural matter

2. In the interests of clarity, I have omitted the words 'at Abercorn House' which appeared in the application form's description of development from the banner heading above.

Main Issues

3. I consider the main issues in this appeal to be firstly, whether the proposed development would preserve or enhance the character or appearance of the Brook Green Conservation Area; and secondly, the proposed development's effects on the living conditions of the occupants of adjacent dwellings in terms of noise and disturbance.

Reasons

The Conservation Area

4. Bute Gardens is a street with a mixed pattern of uses and scales and types of buildings, located in the Brook Green Conservation Area close to the town centre of Hammersmith. The Conservation Area within which the appeal building sits is varied in character, and this is particularly marked along the north-south axis of Bute Gardens where two-storey houses predominantly in
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pairs are intermingled with buildings of more substantial scale and mass such as the appeal property. The significance of the Conservation Area derives to a substantial degree from its street pattern, and arrangement of plots, which evidence the historic suburban development of the area.

5. The appeal property is of five storeys arranged around a courtyard to the rear. Predominantly faced in brick, with contrasting banding below the first floor, the appeal building's scale, mass and austere architectural character combine to create an imposing presence on its corner site. Of the elevations that directly address Bute Gardens, its northern one is set back more deeply from the roadside, with mature trees and other vegetation contributing to the leafy character of the streetscene. In contrast its western elevation is in a tighter relationship with the roadside, and a low hedgerow of limited depth is the predominant soft landscaping treatment along this aspect. Both of these elevations are bordered by a low brick wall. Elsewhere along Bute Gardens the depth of front gardens, their boundary treatments, and landscaping details are mixed in character.
6. The proposed development would introduce accommodation in a basement level of Abercorn House. To facilitate this, lightwells would be developed along both of the building's street elevations, and on the side elevation to the rear of the appeal building's existing fire escape. More substantial lightwells would be implemented to the rear of the appeal building. The lightwells along the appeal building's front elevation would be covered by a metal grille, but elsewhere they would be open and bounded by railings. Along the front elevation two trees and the hedgerow would be removed.
7. I am aware that the hedge along the building's western elevation could be removed without need for planning consent. Moreover, due to the modest depth of the area available for landscaping along this front elevation it does not form part of a general pattern of front gardens in its surroundings, which are on the whole deeper. As a result it currently contributes little to the verdant character of the streetscene more generally, or to the appearance of its host building. Consequently, its removal would not be of harm to either the character of the appeal building or the conservation area more generally. Along this front aspect the retention of the existing boundary wall, combined with the proposal to cover the lightwells with grilles would not result in any additional visual clutter that would be to the detriment of the streetscene.
8. Whilst the trees that would be removed contribute to the leafy character of the area to some degree, I am mindful of the comments of the Council's arboricultural officer in respect of these, namely that their position close to the existing building could lead to pressure for removal notwithstanding the development proposal. Moreover, the appellant's Arboricultural Impact Assessment Report identifies the trees as low quality¹ and unsuitable for retention², with relatively short useful lives. Due to these considerations, and combined with proposals to plant additional trees at the site, which can be secured by condition, I consider that the proposed development would not cause harm to the character and appearance of its surroundings in this regard.

¹ Category C for the purposes of BSI Standards Publication *Trees in relation to design, demolition and construction- Recommendations* (BS 5837:2012)

² Category U for the purposes of BS 5837:2012

9. In terms of the side elevation that addresses the street on the north, its depth of setback, the density of its retained vegetation, limited scale of the proposed railings and retention of the brick boundary wall would all combine to limit the visual effects of the proposed development, and ensure that it would not erode the appeal property's relationship with this open space. The northern elevation of the appeal property is of considerable height and length, and due to this the proposed lightwells would not dominate the scale, character or appearance of their host building. Consequently, whilst I note that the Council's Planning Guidance Supplementary Planning Document (adopted July 2013) (the SPD) advises that railings should not be used around lightwells on street facing elevations, and should generally avoid a depth in excess of 800mm, the lightwells on this elevation would neither read as excessive nor cluttered, and would thus cause no detrimental effects to the host building or streetscene more generally.
10. I saw that the rear and side of the building away from the street frontage both had a more functional character, and were only of limited visibility from the street. At the side a tall brick boundary wall would screen the lightwells from the street to a substantial degree, and any views that could be glimpsed would be in the context of the existing fire escape. The proposed lightwells and their railings would thus look neither visually intrusive nor discordant along this elevation.
11. To the rear the proposed changes would be part of a wider landscaped area and the boundary treatments, railings and courtyards would not read as cluttered or discordant features in this context. I note that the SPD advises that extension of basements beyond the footprint of the existing building should be avoided, to minimize the removal of soft landscaping and tree planting. However, in this case the functional nature of the rear aspect of the building, combined with the proposals for additional landscaping mean that harmful effects to character and appearance would be avoided.
12. The proposed development would thus not interfere with the historic street pattern or plotting of the area, and would not harm the significance of the Conservation Area. Furthermore, it would not deplete the verdant character of the streetscene to a material degree, or introduce excessive amounts of clutter that would be discordant in terms of the host building or the area more generally. Thus, mindful of my duty arising from S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the proposed development would preserve the character and appearance of the Brook Green Conservation Area. Consequently, the proposed development would not conflict with Policy BE1 of the Hammersmith and Fulham Core Strategy (adopted October 2011) (the Core Strategy); or Policies E4, G3 or G7 of the Hammersmith and Fulham Development Management Local Plan (adopted July 2013) (the DM Plan); or Policies 12, 14, 15, 16, 17, 18 and 31 of the SPD. Taken together, and amongst other matters, the policies and guidance seek to ensure that extensions and alterations are appropriate to the architectural character of their host buildings and preserve or enhance character of conservation areas and maximise planting and the provision of garden space.
13. The proposed development would be at variance with SPD Policy 13, in terms of the basement extending outside of the existing footprint of the building, and aspects of the supporting text of Policy 18 in terms of its depth and boundary treatment. However, for the reasons given above, I consider that no harm

would occur to the Conservation Area's character and appearance as a result of this, and consequently, this justifies a departure from Policy 13, and the supporting text of Policy 18 of the SPD in this instance.

Living Conditions

14. The appeal property currently comprises 124 rooms, and the proposed development would create an additional 26. In the immediate surroundings of the appeal property, whilst predominantly residential in character, other uses such as the school, and the surgery are mixed in. Moreover, the appeal property is reasonably close to the town centre of Hammersmith, its main entrance is located at the corner of the building closest to the Town Centre and separated from its nearest residential property by a considerable distance. School buildings and land comprise a considerable proportion of the street frontage across the road from the entrance.
15. The nature of the appeal property's use means that the pattern of comings and goings would be different to the other non-residential uses in its immediate surroundings which generate most of their activity during Mondays to Fridays and during the daytime. The use of the appeal property could lead to additional comings and goings during weekends and at nights. However, I have no substantive evidence before me to suggest that there would be a material increase in comings and goings at anti-social hours occurring as a result of the proposed development. Moreover, I am conscious that a condition requiring that the proposed use operates in accordance with an approved management plan could ensure that any additional noise and disturbance arising from comings and goings could be minimized as much as practicably possible. Similarly, any increases in deliveries to and collections from the site could be subject to conditions that controlled the arrangements for these to minimize any adverse effects arising from them.
16. Thus for the reasons given above, the proposed development would not constitute over-development of the site to the extent that excessive comings and goings would create levels of noise and disturbance and cause harm to the living conditions of the occupants of adjacent dwellings. As a result, the proposed development would not conflict with Policies DMB2, DMG3 DMH9 or DMH11 of the DM Plan. Taken together, and amongst other things, these Policies seek to ensure that visitor accommodation and facilities do not have a detrimental impact on the local area, secure good neighbourliness, avoid material increases in noise experienced by occupants of sensitive uses and undue detriment to the general amenities enjoyed by surrounding occupiers.

Other Matters

17. I have been supplied with no substantive evidence to suggest that the proposed development would materially increase the risk of the impacts of flooding events to surrounding properties. The appellant submitted a Flood Risk Assessment (FRA) which confirms that the proposed development could be progressed without harmful effects in this regard. Thus I consider that a suitably worded condition could be attached to ensure that flood risk mitigation in respect of the proposed development, in line with the recommendations of the FRA is implemented.
18. I am mindful of comments regarding noise and disturbance during the construction phase, and that construction has been on-going in various sites in

the neighbourhood for a number of months. However, such levels of construction activity are by no means unusual in a central location, and moreover, a condition in respect of construction management would ensure that disturbance and disruption as a result of construction activity would be minimized as much as practicably possible.

19. I have considered comments related to anti-social behaviour in the wider environs of the appeal building including allegations of drug dealing on the street, and drinking adjacent to the school. However, I have been supplied with no substantive evidence to link these activities to the current use of the appeal building, or that they would be exacerbated as a result of the proposed development. Moreover, specific legislation outside of the Planning Acts exists to address such issues.
20. Given the accessibility of the appeal building to the public transport network, and nature of its use, I consider that the proposed extensions would not lead to a material increase in car parking or congestion that would cause significant harm to the living conditions of the occupants of adjacent property or highway safety more generally. Moreover, a condition requesting the management of deliveries and collections is attached to mitigate any effects arising from these movements. I also note an absence of local highways authority objections to the scheme in these regards.
21. I have been supplied with no substantive evidence to suggest that the proposed development would have a negative impact on the structural integrity of the host building or its adjacent properties. Moreover, the appellant submitted a Subterranean Construction Method Statement produced by structural engineers which demonstrated the limited risks involved in this respect by the proposed development. Furthermore, where relevant, statutory controls over structural aspects of the proposed development are provided by the Building Act and Party Wall Act.
22. I note comments expressing concerns about the current use of the existing fire escape and about storage of building materials in the wider site. However, these are matters of limited weight in my assessment of the planning merits of the current proposal.
23. Whilst the proposed use may increase the amount of refuse generated by the site, I consider that this would not be to a level that weighs heavily against the proposed development in the overall planning balance. Moreover, the attachment of a suitably-worded condition could ensure that the proposed development makes adequate arrangements in this regard.

Conditions

24. I have considered the list of suggested conditions supplied by the Council against the tests given in paragraph 206 of the National Planning Policy Framework (the Framework). This states that conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. I note in a number of instances that the appellant has sought alternative wording for the suggested pre-commencement conditions, inserting the phrase "prior to works on the superstructure". However, this is insufficiently precise, and consequently I have attached conditions requiring compliance prior to

demolition or construction, or prior to first occupation for the reasons given below.

25. In the interests of certainty I have attached a condition specifying the approved plans. In order that the development is sensitive to the living conditions of adjacent occupiers during its construction phase, and avoids adverse impacts to highway safety, I have attached a condition requiring the submission of a construction management plan and a construction logistics plan to the Council for its approval. This is of necessity a pre-commencement condition to ensure that the development progresses in line with the approved logistics and management plans. As the details of any temporary fencing or enclosures can be included in the construction management plan, there is no need to attach a separate condition requiring details of this aspect of the scheme.
26. In order that the proposed development is sensitive to the living conditions of adjacent occupiers and highway safety more generally I have attached a condition requiring the submission of a travel plan to ensure that the effects of servicing and delivery vehicles would be managed appropriately.
27. As the proposed development is in a conservation area, a condition is attached requiring submission to, and approval by, the Council of particulars and samples of fenestration and facing materials. These details are required pre-commencement to ensure that development is finished in approved materials. However, as this condition covers the external appearance of the extension adequately, it is not necessary to attach a condition requiring detailed drawings of typical bays.
28. I have attached a condition requiring a refuse management plan to be submitted to and approved by the Council in order that the proposed development makes adequate arrangements in this regard.
29. In order that the proposed development provides a reasonable standard of amenity for its occupiers, I have attached a condition requiring submission of the sound insulation measures between bedrooms to be submitted to and approved by the Council prior to first occupation. However, given that this relates to the internal detailing of the work, there is no necessity for the details to be submitted and approved prior to commencement of the development.
30. A condition is attached requiring pre-occupation submission of a hotel management plan to the Council, for its approval, and the subsequent operation of the hotel in line with the approved plan. This will ensure that the development is as sensitive as possible to the living conditions of the occupiers of adjacent properties.
31. I have attached a condition requiring the details of secure cycle storage to be submitted to, and approved by, the Council prior to first occupation of the basement development. The condition also secures installation of this parking prior to first occupation to ensure that the development makes adequate arrangements in this regard.
32. The Council indicates that prior land uses at the site may have been contaminative; however, the evidential basis of this statement is not before me. Thus, whilst I have not attached the extensive suite of conditions in respect of contamination risks as suggested by the Council, I have attached a

- simplified and scaled back condition to address this issue. This is of necessity a pre-commencement condition to ensure that any contamination is dealt with appropriately during the development.
33. I have attached a condition requiring development to progress in line with the recommendations of the submitted FRA and Subterranean Construction Method Statement. This is necessary to ensure that flood risk is mitigated to an acceptable degree. A condition is also attached requiring details of drainage to be submitted to and approved by the Council. This latter condition is of necessity a pre-commencement one to ensure that the development makes adequate arrangements in this regard. Taken together, these conditions render the attachment of separate conditions regarding details of sustainable drainage systems and non-return valves unnecessary in this case.
34. I have attached a condition requiring submission of details of hard and soft landscaping to the Council for their approval prior to occupation of the proposed development. I have amalgamated the suggested conditions regarding tree works with this landscaping condition. This condition is necessary to ensure that compensatory planting is provided for the removed trees and that the landscaping contributes positively to the character and appearance of its surroundings. I have added a condition requiring the landscaping to be implemented in line with the approved details. As works to trees are included in the appellant's Arboricultural Impact Assessment Report, and the condition includes tree protection measures in line with the relevant British Standard, I see no necessity for a separate condition requiring further approval for lopping, topping or felling trees as part of the development.
35. In order that the proposed development meets Policy B2 of the DM Plan I have attached a condition requiring details of the accessibility of the rooms to be provided to the Council for its approval. This is a pre-commencement condition to ensure that development progresses in line with the approved details.
36. I have been supplied with no compelling justification to suggest that a Secure by Design statement is necessary in this case. Thus I have not attached a pre-commencement condition requiring such a statement.
37. A condition requiring the noise level of plant, machinery and equipment is unnecessary in this case as the proposed development does not involve the installation of any new items of this nature.
38. Given the scale and discreet location of the development, I consider that the attachment of a condition requiring details of the external lighting to be submitted to and approved in writing by the Council to be unnecessary in this case.
39. It is unnecessary to attach a condition restricting external alterations to the building, plumbing, extract flues or pipes as the material development only affects the basement level of the appeal building, and thus any other changes would not be directly related to the development proposed. There is no necessity to attach a condition requiring the further planning permissions for operations that would require planning permission in any event. Furthermore, I have found no compelling reasons that support a blanket restriction of any permitted development rights in relation to the external faces of the building.

40. The Government's Planning Practice Guidance makes it clear that conditions restricting the future use of permitted development rights of changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. The hotel use is explicit in the description of development. Furthermore, no exceptional circumstances, or evidence of the materiality of any changes, have been demonstrated in this case that would justify the restriction of the proposed development to hotel use and no other purpose within Use Class C1.

Conclusion

41. The proposed development would comply with the development plan insofar as the policies that have been drawn to my attention are concerned. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 13-013-02D/01; 13-013-02D/02; 13-013-02D/03; 13-013-02D/04; 13-013-02D/05.
- 3) No development shall take place, including any works of demolition, until a Construction Logistics Plan and a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Plans shall provide for:
 - i) Details of advanced notification to neighbours and other interested parties of proposed works and the public display of contact details including accessible phone contact to persons responsible for site works for the duration of the works
 - ii) Details of the numbers, size and routes of demolition and construction vehicles, and other matters related to traffic management.
 - iii) The erection and maintenance of security hoarding;
 - iv) Wheel washing facilities;
 - v) Measures to control the emission of dust and dirt during construction;
 - vi) Measures to control vibration;
 - vii) Measures to control lighting;
 - viii) Delivery, demolition and construction working hours.

The approved Construction Method Plan and Construction Logistics Plan shall be adhered to throughout the construction period for the development.
- 4) The development hereby approved shall not be occupied until a Refuse Management Plan has been submitted to and approved in writing by the local planning authority. The approved Refuse Management Plan shall be adhered to throughout the lifetime of the development hereby approved.
- 5) Notwithstanding condition (2) the development hereby approved shall not be occupied until details of an enhanced sound insulation value for the floor/ceiling/wall structures separating bedrooms at the basement level have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to occupation of the development.
- 6) No development shall take place until details and samples of all external facing materials and details and samples of the proposed fenestration have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved samples and details.
- 7) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping, including the planting of two additional silver birch trees, fences, gates and other means of enclosure. The scheme shall include indications of all existing trees and hedgerows on the land,

identify those to be retained and set out measures for their protection throughout the course of development in accordance with the submitted Arboricultural Impact Assessment Report produced by Landmark Trees dated 8 September 2015, and BS 5837:2012-*Trees in relation to design, demolition and construction. Recommendations.*

- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Notwithstanding condition (2) the development hereby approved shall not be occupied until details of secure covered cycle storage for the development hereby permitted has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to first occupation of the development and retained for the lifetime of the development.
- 10) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.
- 11) The development hereby permitted shall not be occupied until the mitigation measures shall have been constructed in accordance with the submitted Flood Risk Assessment and Subterranean Construction Method Statement.
- 12) The development hereby permitted shall not be occupied until drainage works shall have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority prior to commencement of the development.
- 13) Prior to commencement of the development a detailed accessibility statement relating to the development hereby approved shall be

submitted to and approved in writing by the Local Planning Authority. The statement shall include the following information:

- i) Confirmation that a minimum of 3 wheelchair accessible rooms shall be maintained for the lifetime of the development;
 - ii) Details of the layout and fixtures and fittings within the rooms and wheelchair accessible rooms, confirming that they meet required standards;
 - iii) Details of how disabled customers would use circulation spaces, including corridor widths and levels, status of internal doors to corridors, and lift dimensions;
 - iv) Procedures for evacuating disabled customers in an emergency or in case of lift breakdown
 - v) Dimensions of accessible parking bays and confirmation that the accessible bays will be available for the lifetime of the development
 - vi) Details of step free access to the building.
- 14) The development hereby permitted shall not be occupied until a Travel Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall provide details of how servicing and delivery vehicles will be appropriately managed. The approved plan shall be implemented prior to first occupation of the development and adhered to throughout the lifetime of the development. The plan shall be monitored and reviewed annually, and the details of the outcome of this process shall be submitted in writing to the Council.
- 15) The development hereby permitted shall not be occupied until a Hotel Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall provide details of how the effects of the increased occupation of the hotel on the residential amenity of neighbouring residents will be mitigated. The approved plan shall be implemented prior to first occupation of the development and adhered to throughout the lifetime of the development.