
Appeal Decision

Site visit made on 28 March 2017

by R J Jackson BA MPhil DMS MRTPI MCMi

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

Decision date: 13 April 2017

Appeal Ref: APP/H5390/D/17/3170762
63 Brackenbury Road, London W6 0BG

- 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 Mr & Mrs Peter Ross Leckie against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/05276/FUL, dated 29 November 2016, was refused by notice dated 31 January 2017.
 - The development proposed is demolition and reconstruction of a single storey rear extension to the side of the back addition; erection of a rear extension to increase the width of the back addition by 1 metre at first and second floor levels; and excavation in connection with a basement to provide additional habitable accommodation, including the formation of front and rear lightwells.
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Decision

1. The appeal is allowed and planning permission is granted for demolition and reconstruction of a single storey rear extension to the side of the back addition; erection of a rear extension to increase the width of the back addition by 1 metre at first floor level; and excavation in connection with a basement to provide additional habitable accommodation, including the formation of front and rear lightwells at 63 Brackenbury Road, London W6 0BG in accordance with the terms of the application, Ref 2016/05276/FUL, dated 29 November 2016, subject to the conditions in the Schedule to this decision.

Procedural matter

2. Amended plans were submitted to the Council during its consideration of the application amending the rear extension so that it no longer proposed to increase the width of the back addition at second floor level. This amended proposal formed the basis of the Council's decision and I made my decision based upon the amended plans. This had the effect of altering the description of the proposal and I have set out the amended version in the formal decision.

Main Issue

3. The main issue is the effect on flooding in the area.

Reasons

4. The appeal property is a three storey mid-terrace dwelling located in the Bradmore Conservation Area (the BCA). I noted that in the area, both further to the north and to the south, that a significant number of properties had
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storeys located below street ground level, mostly in the form of lower ground floors with the main 'ground floor' being set up from the street level. The appeal property is set a short way back from the street behind a low wall with a hedge above. The rear garden is mostly laid to hardstanding although there are planters around the sides and rear perimeters. The site lies within Flood Risk Zone 3 as shown on the Environment Agency's flood risk maps. It is thus at a high risk of flooding, although there are flood defences in place so that the actual risk of flood is said to be low.

5. Although the proposal is for works in addition to the creation of a basement, the reason for refusal relates solely to this element. The basement would extend across the whole floor area of the existing property with lightwells created to front and rear. The front lightwell would extend some 800 mm in front of the existing bay, approximately half the depth of the area between the dwelling and the road. The rear lightwell would extend some 1000 mm to the rear across the whole width of the property with external steps down beyond this in one corner.
6. The development plan for the area includes the London Borough of Hammersmith and Fulham Development Management Local Plan (the DMLP) which includes a specific policy, Policy DM A8, dealing with basement accommodation and lightwells. This policy permits new basement accommodation in existing dwellings subject to three criteria; that it does not extend beyond the footprint of the dwelling, that there is no impact on the amenities of adjoining properties, and that it does not increase flood risk from any source.
7. The explanatory text to the policy explains that the reason for the first criterion is to prevent any cumulative adverse impact on drainage arising from such developments and their cumulative impact on groundwater flows, with that leading to a potential increased risk of flooding of existing basements in the area. Therefore the reason for the first criterion is essentially a sub-set of the third criterion. The explanatory text also explains that vegetation and permeable surfaces can help control surface run off.
8. The Council has also published the London Borough of Hammersmith and Fulham Planning Guidance Supplementary Planning Document (the SPD) where SPD Design Policy 13 reiterates that the creation of basement accommodation in existing dwellings beyond the footprint of the property will generally be resisted. Here it is explained that excavation is likely to involve the removal of soft landscaping and importantly tree planting, or the loss of potential for tree planting and soft landscaping where none currently exists. I give the SPD significant weight as it accords with the National Planning Policy Framework (the Framework) which indicates in paragraph 103 that when determining planning applications this should not result in flood risk being increased elsewhere.
9. While beyond the footprint of the existing building the design of the front lightwell would be in accordance with the Council's SPD, and would be covered with a metal grille. The existing front garden is already covered in hardstanding and the drawings indicate that the existing hedge is to be retained. There would therefore be no loss of vegetation.
10. The proposal, particularly in relation to the rear lightwell, does not comply with either Policy DM A8 or the SPD as it extends outside the footprint of the

existing dwelling. However, planning policy should not be followed blindly without considering anything said to persuade the case in hand is an exception.

11. The application was accompanied by an Engineering Design and Construction Statement (the EDCS) which incorporated a Flood Risk Assessment (the FRA). In light of the flood defences the appeal site is at low risk of flooding from rivers and the sea. As set out above the main reason for the policy relates to groundwater flows, and the FRA concludes "there is a negligible risk of groundwater flooding in this area and any groundwater flooding incidence will be less frequent than 1 in 100 years return period". While the FRA goes on to indicate that local flooding cannot be ruled out from the datasets used I have no evidence to show that there is any higher local risk or that the evidence behind the FRA is incorrect. In light of this evidence I can only conclude that the proposal would not increase the risk of groundwater flooding or risk to groundwater flows in the area.
12. The proposal would involve the loss of a small amount of vegetation, which will extract groundwater through the growing process, from the planters in the rear yard to one side and the rear, but the drawings show planting along the other side wall. However, these are all very small areas and would not, of themselves, be material when looking at the amount of vegetation in the area. It has not been shown that this loss would be harmful or increase the risk of flooding.
13. I am satisfied that the proposal would not have an adverse effect on the living conditions of the occupiers of any adjoining property and the proposal would therefore comply with the second criterion of Policy DM A8.
14. I am therefore satisfied that the proposal would not result in an increased risk of flooding. Although the proposal would be contrary to the first criterion of Policy DM A8 of the DMLP and the SPD as set out above, the evidence shows that the decision should be made otherwise than this part of the development plan. It would accord with paragraph 103 of the Framework as set out above. It would therefore represent good design as required by Policy BE1 of the Core Strategy and would comply with the second and third criteria of Policy DM A8 of the DMLP and the other provisions of the SPD.

Other matters

15. As noted above the site lies within the BCA and I am satisfied that the proposal, both above and below ground, is in keeping with the character and appearance of the BCA which would therefore be preserved. Special attention should be paid to this in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

Conditions

16. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance (the PPG) and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty, but clarified so that the front lightwell is flush with existing ground level and that a grille is in place so that the character and appearance of the BCA is preserved.

17. Although the PPG indicates¹ that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances, the installation of railings or other vertical element around the front lightwell would be harmful to the character and appearance of the BCA. I therefore conclude that, exceptionally, permitted development rights allowing such elements should be removed.
18. I have also imposed a condition requiring the materials to be used in the external surfaces to match those on the existing building, being second-hand London stock brick, in order to ensure the preservation of the character and appearance of the BCA.
19. In order to ensure that the development is not at flood risk the development should take place in accordance with the details contained in the EDCS and a non-return valve included so that the sewage in the sewage system does not back-surge in times of heavy rain.
20. The Council's Environmental Health Officer has indicated that the site lies adjacent to a potentially contaminated site. As the proposal involves excavation conditions dealing with land contamination are therefore necessary in order to protect human health, controlled waters and the wider environment.
21. The Council has requested a condition that the basement be only used as ancillary accommodation and not occupied as a self-contained flat. As such a use would require an application for planning permission this condition is not necessary.
22. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed.

RJ Jackson

INSPECTOR

¹ Reference ID: 21a-017-20140306

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: Location Plan, BBR-A10, BBR-A11, BBR-A12, BBR-A15, BBR-A16, BBR-A20, BBR-A21, BBR-A109 Rev A, BBR-A110 Rev B, BBR-A111 Rev B, BBR-A112 Rev B, BBR-A115 Rev A, BBR-A116 Rev A, BBR-A120 Rev A, BBR-A121 Rev B.
- 3) Notwithstanding condition 2, the front lightwell at basement and ground floor levels shall not exceed the dimensions shown on drawing no. BBR-A109 Rev A and BBR-A110 Rev B and shall be flush with ground level, and no part of the basement shall be occupied until the proposed metal grille is installed over the approved front lightwell, and thereafter shall be permanently retained.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no railings, fences, gates, walls or other means of enclosure shall be erected around the front lightwell.
- 5) The development hereby permitted shall be constructed of second-hand London stock brick to match the colour, texture, pointing and bond of the existing facing brickwork.
- 6) The development shall be carried out in accordance with the details contained within the Engineering and Construction Method Statement and Flood Risk Assessment submitted with this application. All flood prevention and mitigation measures should be installed in accordance with the approved details prior to the occupation of the basement accommodation.
- 7) Prior to the occupation of the basement hereby approved, a non-return valve and pump device should be installed to prevent sewage 'back-surfing' into the basement in times of heavy rain and to allow the property's sewage to continue to flow properly into the sewer network.
- 8) No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the local planning authority. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.
- 9) No development shall commence until a site investigation scheme is submitted to and approved in writing by the local planning authority. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All

works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.

- 10) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, following a site investigation undertaken in compliance with the approved site investigation scheme, a quantitative risk assessment report is submitted to and approved in writing by the local planning authority. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.
- 11) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until a remediation method statement is submitted to and approved in writing by the local planning authority. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.
- 12) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full and a verification report confirming these works has been submitted to, and approved in writing, by the local planning authority. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the local planning authority is to be informed immediately and no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the local planning authority. Any required remediation shall be detailed in an amendment to the remediation statement and verification of these works included in the verification report. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing

END OF SCHEDULE