
Appeal Decisions

Hearing held on 4 July 2017

Site visits made on 3 and 4 July 2017

by Neil Pope BA (Hons) MRTPI

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

Decision date: 24 August 2017

Appeal A Ref: APP/K5600/W/16/3159804

10, Kensington Palace Gardens, London, W8 4QP.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs J Hunt against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref. PP/16/00428, dated 21/1/16, was refused by notice dated 11/7/16.
 - The application sought planning permission for the renovation, alteration and extension to the existing dwelling, including basement excavation and garden landscaping without complying with a condition attached to planning permission Ref. DPS/DCPP/08/01322/Q21, dated 14/8/08.
 - The condition in dispute is No. 2 which states that: "*The development hereby permitted shall be carried out exactly and only in accordance with the drawings and other particulars forming part of the permission and there shall be no variation therefrom without the written approval of the Executive Director, Planning and Borough Development. (C068)*"
 - The reason given for the condition is: "*The details are considered to be material to the acceptability of the proposals, and for safeguarding the amenity of the area. (R068)*"
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Appeal B Ref: APP/K5600/Y/16/3159814

10, Kensington Palace Gardens, London, W8 4QP.

- 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 and Mrs J Hunt against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref. LB/16/00429, dated 21/1/16, was refused by notice dated 11/7/16.
 - The works proposed are the renovation, alteration and extension for the existing dwelling, including basement excavation and garden landscaping.
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Decisions

1. Appeal A is dismissed and appeal B is allowed. Listed building consent is granted for the renovation, alteration and extension to the existing dwelling, including basement excavation and garden landscaping at 10, Kensington Palace Gardens, London, W8 4QP. Consent is granted in accordance with the terms of the application Ref. LB/16/00429, dated 21/1/16, subject to the conditions in the Schedule below.
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Background / Preliminary Matters

2. All parties to the proceedings are familiar with the long and complex planning history to the appeal site. In the interests of brevity/concision, I refer below to some of the most relevant aspects of this planning history.
3. In November 2010, the Council approved a non-material amendment to the 2008 planning permission (ref. DPS/DC/AMD/08/01322/MIN1). This included alterations to the approved basement development¹. Listed building consent was also granted in November 2010 (ref. DPS/DCLB/10/02900/Q23). In July 2011, the Council confirmed the discharge of various pre-commencement conditions attached to the planning permission.
4. In January 2017, the Council granted planning permission and listed building consent for the temporary dismantlement of a gate pillar etc., at the entrance to Dial Walk² to facilitate a widened access and associated highway works on the A402 Bayswater Road (refs. PP/16/07190 and LB/16/07191).
5. In June 2017, the Court of Appeal handed down its judgement³ in the challenge brought in respect of Certificates issued by the Council under section 26H of the Planning (Listed buildings and Conservation Areas) Act 1990 and section 192 of the Town and Country Planning Act 1990 (as amended).
6. The Council and the appellants agree that the 2008 planning permission (with the 2010 non-material amendment) and the 2010 listed building consent comprise a realistic fall-back position. The Council has informed me that compared to this fall-back, the appeal scheme⁴ would reduce the impact on neighbouring occupiers and the appellants' listed building.
7. On behalf of the appellants, a planning obligation (under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended)) has been submitted. If the 2008 permission and 2010 consent comprise a fall-back, this obligation⁵ would provide a necessary mechanism to prevent these works from being built-out. I shall therefore take it into account.
8. At the Hearing the parties agreed that in considering appeal A the only building to which the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies is 10 Kensington Palace Gardens.
9. The Hearing was adjourned on 4 July 2017 for the following reasons: a) to afford Historic England and The Gardens Trust (as statutory consultees) sufficient time to comment on the proposals insofar as they would affect Kensington Gardens and; b) to allow the appellants and the interested party

¹ Paragraph 3.5 of the Statement of Common Ground that has been agreed by the appellants and the Council lists these as: the removal of basement development at sub-fourth and sub-fifth floors so as to reduce the depth of the basement from 22.65m to 11m; the basement being 1m from the boundary rather than 1.5m and; the removal of a part three storey basement to the front of the property.

² Whilst there is some dispute as to the name of this access track, for the purposes of my decision, this relates to the hardsurfaced track that runs through Kensington Gardens and immediately to the rear of the appeal site.

³ The Government of the Republic of France v The Royal Borough of Kensington and Chelsea and The Crown Estate Commissioners and Mr and Mrs Jonathan Hunt [2017] EWCA Civ 429.

⁴ The proposed basement works would include: an 11m deep basement running from the rear of the listed house to 1.5m in front of the rear boundary with the lateral extents about 6m from the boundaries; a 7m deep basement under the 'footprint' of the listed house (this would be about 5m below the existing lower ground floor); an 11m deep basement under the north portion of the listed house (9m below existing lower ground floor) which would be about 1.5m from the boundary with 9 Kensington Palace Gardens and; a 4m deep basement from the front of the listed house to 8m from the front boundary with the lateral extents set 6m from the boundaries.

⁵ The parties agree this complies with paragraph 204 of the National Planning Policy Framework (the Framework).

that attended the Hearing time to discuss and agree suggested conditions regarding various aspects of the proposed construction phase, including security measures. I closed the Hearing in writing on 21 July 2017.

Main Issues

10. The main issues are: whether the proposal would preserve the grade II listed building at 10, Kensington Palace Gardens or its setting or any features of special architectural or historic interest which it possesses (appeals A and B); whether the proposal would preserve or enhance the character or appearance of the Kensington Palace Conservation Area (KPCA) and the effect upon the grade I Registered Kensington Gardens (appeal A only) and; the likely effect of construction activity upon the occupiers of neighbouring buildings, having particular regard to noise, disturbance and Article 22(2) of the 1961 Vienna Convention on Diplomatic Relations⁶ (appeal A only).

Reasons

11. Kensington Palace Gardens is a private road⁷ with public access and manned security barriers. This attractive tree-lined street includes private dwellings and embassies/ambassadors' residences of foreign governments. No.9 is the residence of the Indian High Commissioner and No.11 is the Ambassador's residence of the Government of the Republic of France. The street lies within the KPCA. Kensington Gardens⁸ is to the rear (east) of the appeal site.

Planning Policy

12. The development plan includes the Spatial Development Strategy for London (the London Plan), which was consolidated with alterations in 2016 and the Royal Borough of Kensington and Chelsea Local Plan (the Local Plan), which was adopted in 2015. The most relevant policies to the determination of these appeals are policy 7.8 (heritage assets) of the London Plan and Local Plan policies CL3 (conservation areas), CL4 (listed buildings⁹), CL7 (basements) and CR5 (parks and gardens).
13. My attention has also been drawn to the Council's Supplementary Planning Document (SPD) on Basements, which was adopted in 2016 and the Council's Kensington Palace Conservation Area Proposals Statement (CAPS), which was adopted in 1996. The CAPS can be given some limited weight in these appeals.

The Fall-Back

14. I note the arguments of some interested parties that there is no fall-back position available to the appellants. However, as noted above, the Council accepts that the 2008 permission (and its non-material amendment) could be built-out and the Court of Appeal has upheld the section 192 Certificate.
15. Despite approaches from an interested party opposed to the basement development, there is no indication from the Crown Estate (as landlord) that it would not be prepared to grant a licence for the permitted works. I note that a licence has been granted in respect of the appeal scheme and for the use of

⁶ Embodied within the Diplomatic Privileges Act 1964.

⁷ The freehold is part of the Crown Estate.

⁸ Part of the Registered gardens lies within the KPCA.

⁹ This policy does not include the 'public benefits' balance set out in paragraphs 133 and 134 of the Framework.

part of Kensington Gardens as a haul route for construction traffic, including vehicle turning and welfare facilities.

16. In addition, I have been informed by the appellants' agent that their client is a "*high net worth individual*" who is seeking to enlarge this property (by way of a basement development) to provide a museum for his collection of motor cars. In this regard, over the years the appellants have committed considerable resources, including engaging a team of consultants to act on their behalf, in the formulation and pursuit of schemes for a basement development (that includes space for exhibiting a collection of cars) through the planning and legal systems. Finance does not appear to be an obstacle to the appellants' desire to construct a very sizeable basement development.
17. At the Hearing I was informed by those acting on behalf of the appellants that their clients would build-out the permitted scheme if these appeals were to fail. I concur with the Council and the appellants' agent that there is more than a theoretical possibility of the 2008 scheme (as amended in 2010) being pursued. This fall-back is therefore a material consideration that I must take into account in determining these appeals.
18. If the fall-back was to take place I recognise that it would entail more extensive excavation works¹⁰ in closer proximity to the boundaries of 9 and 11 Kensington Palace Gardens. However, the appellants' preferences for renovating, altering and extending this property (including a basement development) have clearly changed since 2008 and 2010. Furthermore, whilst I do not doubt the sincerity of those who represented the appellants at the Hearing, the appellants did not attend and no substantive evidence was put to me to support the argument that the approved scheme would be built-out. I therefore attach limited weight to the fall-back.
19. Irrespective of the above, I agree with those who appeared at the Hearing that the planning merits of these appeals should be looked at on their own merits.

Listed Building [Both Appeals]

20. Nos. 9, 10 and 11 Kensington Palace Gardens are substantial, detached, grade II listed mid-19th century townhouses on the eastern side of the street. The significance of these designated heritage assets is derived primarily from their architectural qualities¹¹ (typified by their Italianate villa style with bay windows, columns and chimneys) and their historic interest (including simple plan form, hierarchy of rooms/spaces and original building fabric).
21. The generous gardens, the wide tree-lined street and the open qualities of Kensington Gardens provide a spacious and rather tranquil setting to these listed buildings. This emphasises the rather grand and 'respectable' nature of the buildings, which are part of an exclusive, mid-19th century planned development and make a positive contribution to their heritage interest.
22. 10 Kensington Palace Gardens has been much altered over time, including several phases of remodelling. Nevertheless, it retains many important architectural features, such as brickwork walls, slate mansard roof, 19th century

¹⁰ On behalf of the appellants, it has been calculated that this would result in about 69% of the garden being built under (57% for the appeal scheme), 23,111m³ of excavation (15,757m³ appeal scheme) and 2,784 vehicles during the excavation stage (1,854 appeal scheme). I was also informed that the excavation phase would last for about 22-23 months (20 months appeal scheme).

¹¹ Architects involved with No.10 include Philip Hardwick, Charles Barry Junior and Leonard Aloysius Scott Stokes.

sash windows, shutters and flooring, panelled doors, architraves, marble flooring, staircases and jack arched and vaulted ceilings. Its historic plan form, with a wide gallery running the full width of the house, survives and the basement, which reflects the service arrangements of wealthy/influential former residents, adds to its historic interest. Whilst unoccupied for some years, I concur with the appellants that the building is generally in a good state of repair.

23. The proposed works would include some excavation underneath the listed building to provide a swimming pool. This would involve the demolition of some retaining walls and the suspended basement floor. Excavation underneath a listed building is resisted under Local Plan policy CL7(f). The associated works of demolition would involve the loss of some important historic building fabric and would diminish the architectural interest of the building. To a limited extent, such works would also erode an understanding of the historic service arrangements related to the previous residential use of the building. In addition, the main staircase would be removed, some double doors would be introduced, some partitions and doorways would also be removed along with some floor coverings and wall finishes. These works would adversely affect the heritage interest of the listed building.
24. Elsewhere within the listed building the historic plan form would be retained with a wide gallery and new staircase affording access to the refurbished rooms within the house. The new basement staff accommodation and plant rooms/facilities would provide modern serviced arrangements to this family home. The new subterranean car museum would amount to a separate and overtly modern enlargement of the building. It would not have pretensions to any historic use associated with the house and would not disrupt or confuse an historical interpretation of the hierarchy of spaces within the building.
25. In addition to the above, the proposals would sympathetically restore the external fabric of the building and the new side extensions, bay window, doors and other fenestration would be in keeping with style and design of the building. The proposals would also secure the re-use of the building for residential purposes. These elements of the proposals would have a positive effect upon the heritage interest of the building.
26. When all of the proposed works are considered, the overall impact upon the significance of the listed building is finely balanced. In assessing the impact of a proposed development on the significance of a designated heritage asset the Framework states that great weight should be given to the asset's conservation and any harm or loss should require clear and convincing justification.
27. In this instance, I concur with the heritage consultant appointed by an interested party that the proposals would result in less than substantial harm to the significance of 10 Kensington Palace Gardens. If there was a sliding scale within this category of harm the proposals would be towards the lower end. Nevertheless, there would be conflict with Local Plan policy CL4. This tends to support the argument of those who have argued that permission and consent should be withheld.
28. However, as also set out within the Framework, where development would lead to less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal. In

this regard, those attending the Hearing agreed in principle that a public benefit could arise from preventing a more harmful fall-back being built-out.

29. When compared to the above noted fall-back position, which also includes the loss of some important historic fabric and excavation beneath the listed building, the appeal scheme would entail: more appropriate treatment of the proposed side extensions; the removal of a car ramp adjacent to the southern boundary; the removal of a large ventilation grille adjacent to the northern boundary and the repositioning and lowering in height of garden gazebos. This would reduce the impact of the permitted works upon the architectural interest and setting of the listed building.
30. In heritage terms, there would be a public benefit in not building-out the fall-back. As I have found above, this carries some limited weight. When it is included within the balance I find that the less than substantial harm from the appeal scheme would be outweighed by the benefit of not completing the fall-back. Other public benefits, such as the very modest improvement to surface water attenuation, do not add any significant weight to the argument for allowing the appeal. Public benefits to be derived from restoring other elements of the listed building, increasing the stock of family housing and support for the construction industry, would also apply to the fall-back and do not add any additional weight to the appellants' argument.
31. I conclude on the first main issue that, with a mechanism in place to prevent the fall-back being built-out, the appeal scheme would, on balance, preserve the grade II listed building at 10, Kensington Palace Gardens and its setting and features of special architectural and historic interest. Listed building consent should therefore be granted.

KPCA / Kensington Gardens (Appeal A only)

32. The KPCA includes Kensington Palace, Kensington Palace Gardens, some neighbouring streets to the west and a small part of Kensington Gardens, including Dial Walk. The special architectural interest of KPCA includes the attributes of the numerous listed buildings/structures. The special historic interest of the area includes the layout of the plots and streets (including trees) and the associations with previous notable residents. The open and largely tranquil qualities of Kensington Gardens add to an appreciation of the heritage interest of the KPCA.
33. The appeal site and the land occupied by neighbouring buildings was formerly part of the kitchen gardens to Kensington Palace. The above noted architectural qualities of the appeal building, its attractive garden setting (as well as those at Nos. 9 and 11) and the tree-lined Kensington Palace Gardens make a positive contribution to the KPCA. As identified within the CAPS, the area of land to be used as the proposed welfare compound makes a neutral contribution to the character and appearance of the area.
34. The significance of the 112 ha Kensington Gardens is derived primarily from its historic use as pleasure grounds and a park, including the many attractive mature trees, pieces of water and monuments. The open and largely tranquil qualities of this designated heritage asset, which dates from the late 17th century, are of great amenity value and add to its historic significance.

35. I have been informed by those acting on behalf of the appellants that the construction phase of the proposed development would be likely to last for about 30 months¹². During this period there would be much traffic and activity along Dial Walk and considerable excavation/building works within the appeal site. This would be for a considerably longer period than the few events, like the Night Market, which are allowed within this part of Kensington Gardens. The proposal also involves the erection of construction hoardings (and acoustic fences) around part of the appeal site and the proposed welfare compound.
36. During the construction phase, the noise, activity and presence of construction hoardings (even with printed images) would detract from the largely open and tranquil qualities of this part of the KPCA and Kensington Gardens. Whilst there is no public access to this part of Kensington Gardens, as I saw during my site visits, the appeal site and this section of Dial Walk are clearly visible to the public from other parts of the registered gardens to the east.
37. I note that the Council, Historic England and The Gardens Trust have not identified any harm in respect of this issue. However, I consider that even with the proposed mitigation the construction phase would adversely affect the enjoyment of those visiting this part of Kensington Gardens and detract from an experience of the heritage interest of these designated heritage assets.
38. Sitting in these registered gardens on the grass or benches that face Dial Walk and the appeal site and seeing/hearing construction activity would not be a neutral or positive experience. In the context of the KPCA as a whole and Kensington Gardens, the impact would be small and for a temporary period. It would amount to less than substantial harm to an appreciation of the historic significance of these assets. If there was a sliding scale within this category, it would be at the lower end. Nevertheless, the proposal would conflict with policy 7.8 of the London Plan and Local Plan policies CL3 and CR5.
39. As already noted above, the fall-back would involve excavation works taking place over a slightly longer period although the expected duration of all construction activity for the approved scheme would be broadly the same as the proposals before me. A mechanism that prevented the build-out of the fall-back would not, in the context of this issue, amount to a public benefit that would be sufficient to outweigh the harm I have identified.
40. I conclude on the second main issue that the construction phase of the development would fail to preserve or enhance the character or appearance of the KPCA and would detract from an experience of Kensington Gardens.

Impact upon the Occupiers of Neighbouring Buildings [Appeal A only]

41. As I noted during my visits, although a wide street, Kensington Palace Gardens is, in comparison to very many central London roads, lightly trafficked and quiet. This is reinforced by its proximity to Kensington Gardens. Whilst there may be occasions, such as a public demonstration, when activity in the street increases I appreciate why many foreign Governments have taken advantage of the generally peaceful qualities to locate their embassies and/or ambassador's diplomatic residences in this part of the capital.

¹² 20 months is anticipated for below ground basement works and structural alterations and 10 months for fitting out the house and basements.

42. In this regard, I note the representations made on behalf of a number of foreign Governments, including those detailing the function and use of 11 Kensington Palace Gardens in advancing the UK mission of the Government of the Republic of France. This includes the use of the attractive rear garden¹³.
43. It is clear to me that the qualities of the local environment are very important in enabling the representatives of foreign Governments to effectively undertake their diplomatic duties in the UK. Whilst, on behalf of the appellants¹⁴, the receptor sensitivity has been described as high to the type of works that are proposed, I consider it to be very high. In determining this appeal there is also a special duty to protect the premises¹⁵ of the French and Indian missions against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
44. I have already noted above that the proposed development would entail considerable works of construction and excavation (or superstructure and substructure works) over a lengthy period of time¹⁶. This would take place in close proximity to Nos. 9 and 11 Kensington Palace Gardens and would include the removal of large quantities of material¹⁷ from the site and the delivery of substantial amounts of construction/building materials¹⁸.
45. In addition to the many hundreds of heavy duty vehicle (HDV) movements that would occur in undertaking the development, other vehicles, such as contractors vans associated with a likely sizeable workforce, could also reasonably be expected. Construction traffic would access the site from Dial Walk and on behalf of the appellants, it has been calculated that this would be at least 38m from the nearest property. Nevertheless, the volume of HDV and other construction traffic would be likely to generate considerable noise and disturbance for neighbouring occupiers during a sizeable part of the day.
46. The proposal would also involve 'high impact activities', such as demolition (including breaking/crushing/cutting work using powered techniques), piling operations and bulk excavation using mechanical excavators or pneumatic equipment for soil break-up. This would take place throughout the site over many months. These works have the potential to cause serious noise disturbance to those living and working alongside. In addition, there would be other noise and activity associated with the extensive building operations.
47. On behalf of the appellants, much consideration has been given to mitigating the impact of the proposed works. Numerous specialist consultants have been engaged to examine various aspects of the construction phase. Amongst other things, regard has been given to employing the 'Best Practical Means', as well as various national and local standards/guidance relating to noise impact, vibration, air quality, construction traffic management and tree protection. The proposed mitigation would avoid any unacceptable levels of vibration or dust and, on balance, would be unlikely to significantly harm important trees.
48. The proposed noise mitigation would include a 'top down' approach to the basement excavation. The ground floor slab would be formed ahead of the

¹³ During my accompanied visit the garden was in use as part of Légion d'Honneur award ceremony.

¹⁴ AECOM Dust Mitigation Assessment.

¹⁵ This includes buildings or parts of buildings and the land ancillary thereto, used for purposes of the mission.

¹⁶ The prediction for the construction of the rear garden basement (structural works) alone is about 83 weeks.

¹⁷ Such as that arising from the alterations and refurbishment of No.10 and gravel and clay from the excavations.

¹⁸ A 7 hour delivery window is proposed with a peak of about 21 vehicles/day expected during the busiest period.

main basement excavation to enable the bulk of the excavation work to take place below the completed slab. This is intended to act as a form of acoustic barrier for some construction noise. It is also proposed to restrict the 'high impact activities' between the hours of 9am to 1pm and 3pm to 5.30pm (Mondays to Fridays) and erect acoustic screens¹⁹ along the boundaries with 9 and 11 Kensington Palace Gardens and the proposed welfare compound and vehicle holding point in Dial Walk.

49. Other proposed noise mitigation includes the submission of a Construction Traffic Management Plan and signing up to the Council's Considerate Constructors Scheme. A planning condition has also been suggested that would require construction to cease for 10 days per year.
50. In withholding permission the Council did not identify any unacceptable noise or disturbance. It also agrees with the appellants that the appeal scheme would not significantly harm the living conditions of neighbouring residents. However, even with the proposed mitigation, I concur with third parties that the proposal would be likely to result in neighbouring occupiers experiencing significant noise and disturbance during the lengthy construction phase.
51. Those living or working in Nos. 9 and 11 Kensington Palace Gardens (including visitors attending important events/functions/meetings) would have to endure prolonged periods of 'high impact activities' and other construction activities taking place immediately alongside. Whilst the proposed mitigation would reduce some of the worst excesses of noise, the construction works (including associated traffic movements) would be likely to dramatically change the quality of the noise environment in this part of Kensington Palace Gardens.
52. During week days, noise and activity associated with the construction works, especially 'high impact activities', would be likely to seriously intrude into the properties on either side and disrupt the important work of foreign diplomats and their guests/visitors. For many months and during the daytime, it would also seriously detract from the peaceful enjoyment and function/dignity of neighbouring garden spaces. The proposed construction works would be likely to disturb the peace of the French and Indian missions.
53. The comings and goings of construction traffic (including those working on the appeal site) and the presence of machinery and hoardings in and around the site for many months would be a constant reminder to neighbouring occupiers of the major and disruptive works taking place alongside. In this regard, however well designed, the proposed acoustic fence along the boundaries with Nos. 9 and 11 would be very prominent when seen from neighbouring gardens and facing ground floor windows. It would be particularly intrusive and somewhat oppressive when seen from the facing dining room windows in No.11. This would considerably detract from the amenity of this room.
54. Given the extent and duration of the proposed works, I find it hard to imagine the French Ambassador or the Indian High Commissioner and their colleagues and guests being able to concentrate on important international affairs through a cacophony of noise and disturbance. The proposed construction phase would result in unacceptable levels of noise and disturbance and would fall a long way short of securing a good standard of amenity for existing occupants of

¹⁹ At the Hearing the appellants' representatives informed me that this would be 4m high along the northern and southern boundaries of the site and 2.4m high around the welfare compound and vehicle holding area.

neighbouring buildings. The proposal would conflict with Local Plan policy CL7(l) and one of the core principles of the Framework.

55. I conclude on the third main issue that construction activity would have a serious unacceptable effect upon the occupiers of neighbouring buildings.

Other Matters

56. I note the arguments regarding 'large sites' as provided for under Local Plan policy CL7(a) and (b). It is evident from the SPD and permissions granted elsewhere within the Borough that large houses set in extensive grounds are capable of falling within the remit of these criteria. However, it would be surprising if 'large sites' were ever intended to relate to predominantly residential locations like Kensington Palace Gardens and where the receptor sensitivity is very high. Moreover, unlike the appeal site, the examples of 'large sites' in the SPD involve accommodating all plant and equipment on site.
57. There is greater force in the arguments made by the Council and a third party that the appeal site should not be treated as a 'large site' for the purposes of this policy. However, even if I am wrong on this matter, given my findings above, if the appeal site does fall with the remit of a 'large site' the proposal would still be in conflict with other aspects of Local Plan policy CL7.
58. I appreciate the concerns of some interested parties regarding security during the construction phase. However, I note that when considering the 2010 basement scheme the Metropolitan Police's Crime Prevention Design Advisor did not object. The intention is to provide 24 hour manned security at the entrance to Dial Walk and other security measures, to be secured by way of planning conditions. I also understand that if security issues were to arise neighbouring occupiers would be able to activate the Embassy Warning System to trigger a Police response. The proposal would be unlikely to compromise security interests.
59. I have considered the other matters raised by interested parties, including those relating to ecology and Metropolitan Open Land. However, there is no cogent evidence to justify withholding permission on the basis of such matters.

Conditions (Appeal B only)

60. In addition to the 'standard' condition for the commencement of works, in the interests of certainty, a condition would be necessary specifying the approved drawings. To safeguard the special architectural and historic interest of the listed building conditions would be necessary requiring details of the following to be submitted to the Council: the contract for the approved works prior to the commencement of any works of demolition; a minimum 14 days written notification of the intended start date of works and; samples or detailed drawing of various aspects of the proposed works.
61. To also safeguard the special architectural and historic interest of the building other conditions would be necessary: requiring the new works and works of making good the retained fabric to match adjacent work; the retention of fabric not shown to be removed on the approved drawings; requiring retained interior features to be protected and the stability of the building to be retained during demolition and construction works; requiring the use of painted cast metal rainwater goods and; requiring prior approval for any other ancillary works not shown on the approved drawings.

Overall Conclusions / Planning Balance

62. I have found that listed building consent should be granted. I therefore conclude that Appeal B should succeed.
63. Considerable weight must be given to development that would harm the significance of designated heritage assets. However, there is substance to the appellants' argument that most development/construction activity in this part of the Borough would be likely to result in some short-term adverse impact upon the significance of one or more designated heritage asset. Where, as in this instance, the less than substantial harm would be temporary, withholding permission could frustrate the development industry and the wider economic / public interest. My decision in respect of appeal A does not therefore turn on my findings in respect of the second main issue.
64. The fall-back cannot be dismissed and I have recognised that it would involve more excavation, additional vehicle movements and a slightly longer excavation phase. This would also be likely to have a significant adverse impact upon the occupiers of neighbouring buildings by way of noise and disturbance. I place this in the same category of (serious) harm as the scheme advanced under appeal A. However, as I have also found above, the fall-back carries limited weight. It would not be significantly worse so as to justify giving it more weight in the overall balance.
65. This is not a situation where there is a lesser of two evils. Even if it was, common sense and professional judgement indicate to me that it would be inappropriate to permit a development that would result in a similar injurious effect and conflict with national planning policies and the development plan as a whole. The proposal would fail to satisfy the environmental dimension to sustainable development as set out within the Framework.
66. Given all of the above, I conclude that appeal A should not succeed.

Neil Pope

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr G Oliver BA (Hons), MA, MRTPI	Partner, Gerald Eve
Mr P Brown QC	Landmark Chambers
Mr J Richards BA (Hons), DipArch, PgDip ARB, RIBA	Nissen Richards
Mr S Levrant RIBA, AADip, DipCons (AA), FRSA, ACARCH, IHBC	Stephen Levrant Heritage Architecture Ltd
Mr P Allen Dip Arb(RFS), MICFor,	Landscape Planning Group Ltd
Mr A Amusa BSc	AIA Consulting Ltd
Dr Y Liu PhD, MEng, BSc, CEng, FIOA	Aecom
Mr D Hart BSc (Hons), MCIHT	Momentum-transport
Mr S Treger	Senior Associate, Berwin Leighton Paisner LLP

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Taylor	Development Manager Team Leader
Mrs S Malik	Senior Planning Officer

INTERESTED PERSONS – THE GOVERNMENT OF THE REPUBLIC OF FRANCE:

Mr G Stephens MRTPI	Stride Treglown Town Planning
Mr S Rahman	Edwin Coe LLP
<i>In attendance at accompanied site visit</i>	
Her Excellency Mme Sylvie Bermann	Ambassador to the United Kingdom and Northern Ireland
M J Lacôte	

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1	Revised list of suggested conditions (drawings)
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Document 2	Errata sheet appellants' Statement of Case
Document 3	Construction Traffic Management Plan submitted to the Council for the discharge of condition 14 on permission ref.08/01322

DOCUMENTS SUBMITTED DURING THE ADJOURNMENT OF THE HEARING:

Document 4	Note to Inspector (Conditions)
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SCHEDULE OF CONDITIONS – APPEAL B (Listed Building Consent)

1. The works hereby permitted shall begin before the expiration of three years from the date of this decision.
2. The works hereby permitted shall be undertaken in accordance with the details on the following approved drawings: A1463-PL-001 (site location); A1463-PL-200/D (proposed basement floor plan level -03); A1463-PL-201/D (proposed basement floor plan level -02); A1463-PL-202/E (proposed basement floor plan level -01); A1463-PL-203/E (proposed ground floor plan level 00); A1463-PL-204/C (proposed first floor plan level 01); A1463-PL-205/C (proposed second floor plan level 02); A1463-PL-206/C (proposed third floor plan level 03); A1463-PL-207/B (proposed roof plan); A1463-PL-250/A (proposed landscape masterplan); A1463-PL-410/B (proposed south west elevation); A1463-PL-411/B (proposed north west elevation); A1463-PL-412/B (proposed south east elevation); A1463-PL-413/B (proposed north east elevation); A1463-PL-510/D (proposed cross section 2-2); A1463-PL-511/D (proposed long section 1-1); A1463-PL-512/B (proposed cross section 3-3).
3. No demolition pursuant to this decision shall be undertaken before a contract for the remainder of the works permitted by this decision has been let. Details of this contract shall be submitted to the Local Planning Authority prior to the commencement of any demolition.
4. No works shall commence before written notification of the intended start date of the works has been provided to the Local Planning Authority (LPA). The notification shall give not less than 14 days notice of the commencement of works. During this period and on request, access shall be afforded to the building and garden by officers (or agents) of the LPA to allow photographs and/or drawings to be undertaken.
5. Detailed drawings or samples of materials as appropriate, in respect of the following shall be submitted to and approved in writing by the Local Planning Authority before the relevant part of the work is begun: a) proposed rooflights and glazed roof areas; b) bay windows; c) all other new windows; d) pagodas; e) staircases and balustrades; f) chimney pieces; g) parquet or stone floors; h) decorative plasterwork (including cornices); i) internal doors; j) all new joinery; k) external masonry; l) new light fittings and; m) other architectural fixtures or surfaces. The works shall be carried out in accordance with the approved details and shall be retained thereafter.

6. All new works and works of making good to the retained fabric, whether internal or external, shall be finished to match the adjacent work with regards to the methods used and to colour, material, texture and profile.
7. All existing fabric including existing wall and ceiling plasterwork shall be retained unless notated otherwise on the approved drawings.
8. The interior features of the building shall be protected against accidental damage or loss during building work and no features shall be disturbed or removed temporarily or permanently unless identified on the approved drawings.
9. All rainwater goods / guttering shall be black painted cast metal and shall be retained thereafter.
10. The safety and stability of all parts of the building or architectural features to be retained shall be carefully ensured at all stages of work. Such steps shall, where necessary, include measures to: strengthen any wall, vertical surface or foundation; support any floor, roof or horizontal surface and; protect the building against the weather during the progress of works.
11. Excluding only that which is specifically indicated on the approved drawings, no recessed lighting, speakers, smoke detectors, ventilation mechanical, electrical, water, waste water, heating or other services (including related service runs and radiators), heating or air conditioning grilles, plant and security systems and associated builders' works, shall be installed unless details have been submitted to and approved in writing by the Local Planning Authority. Works shall be undertaken in accordance with the approved details.