
Appeal Decisions

Site visit made on 15 January 2018

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2018

Appeal A Ref: APP/K5600/D/17/3181639 **60 Hornton Street, London W8 4NU**

- 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 S Tadjbakhsh against the decision of The Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref PP/17/03850, dated 12 June 2017, was refused by notice dated 3 August 2017.
 - The development proposed is basement under the existing building footprint, extending partially under the front driveway and garden areas to the side and rear of the property.
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Appeal B Ref: APP/K5600/D/17/3181645 **60 Hornton Street, London W8 4NU**

- 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 S Tadjbakhsh against the decision of The Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref PP/17/03804, dated 12 June 2017, was refused by notice dated 4 August 2017.
 - The development proposed is basement under the existing building footprint, extending partially under the front driveway and garden areas to the side and rear of the property.
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Decisions

1. Appeals A and B are dismissed.

Applications for costs

2. Applications for costs have been made by Mr S Tadjbakhsh against the Royal Borough of Kensington and Chelsea Council. Those applications are the subject of separate Decisions.

Procedural Matters

3. The developments subject to appeals A and B would be very similar in that they would involve the construction of basements of different extents. As the issues raised by both appeals are very similar I have considered the appeals concurrently.
4. As the appeal developments would involve the enlargement of a house the appeals have been made in accordance with the householder appeal service (HAS) procedure. Appeals made under the HAS follow an expedited procedure, with appellants being required to submit their full cases within 12 weeks of the local planning authority's decision being made. Under the

HAS procedure it is usual for appellants to submit their full grounds of appeal when their appeals are initially lodged. The procedure for making HAS appeals is explained in the appeals guidance published by the Planning Inspectorate¹.

5. When appeals A and B were submitted they were each accompanied by a very short document entitled 'Preliminary Appeal Statement'. Subsequent to the appeals' submission the appellant sought to submit a more extensive appeal case on 7 November 2017, which was outside the 12 week period for making the appeals. In line with the procedure for HAS appeals I have therefore not been provided with the appellant's cases that were submitted out of time. However, it is evident from the Council's officer reports for both of the appealed applications that there is a concern about the effect of constructing either of the basements on the implementation of a landscaping scheme approved in connection with a single storey side extension granted planning permission under application reference PP/13/05161. The appellant, at my request, has therefore submitted a copy of the approved landscaping scheme and I have taken account of that information in determining the appeals.

Main Issue

6. The main issue for both appeals A and B is the effect of the development on the existing trees at 60 Hornton Street (No 60) and the implementation of the landscaping scheme approved in association with the side extension or an alternative landscaping scheme.

Reasons

7. No 60 occupies an irregularly shaped corner plot and the house's side elevation is set back from the back edge of the footway in Hornton Street by around 4.0 to 5.5 metres. This property's side boundary comprises a quite high brick wall. No 60 and No 62, a property on the opposite side of Pitt Street, are unusual for this part of Hornton Street in that they have a mixture of trees and shrubs within their side gardens. Previously there were three trees spaced along No 60's side boundary that were subject to a tree preservation order (TPO). Those trees were removed for safety reasons in 2011 and 2012.
8. The basement scheme subject to appeal A as well as occupying No 60's original footprint would extend under the property's front drive and 2.4 metres beyond the rear elevation. The scheme subject to appeal A would also include a side basement element that would be beneath part of the side extension. The rear and side elements of the basement subject to appeal A are shown on the application drawings encroaching into the root protection zone (RPZ) for the Horse Chestnut tree (identified as T9 in the tree schedule included on Barrell Tree Consultancy drawing 15382-BT3). However, the foundation excavations that have been undertaken in association with the commencement of the side extension suggest that tree T9's roots do not extend as far as the area that would be occupied by the rear and side elements of the basement subject to appeal A. I therefore consider it unlikely that the development subject to appeal A would be harmful to tree T9.

¹ Annexe C of Procedural Guide Planning appeals – England published by the Planning Inspectorate on 5 August 2016

9. However, the outer face of the side element of the basement subject appeal A would come within around 2.5 to 3.5 metres of No 60's boundary with Hornton Street. That would leave a restricted amount of space for some of the seven pleached Hornbeam trees to be planted in as part of the approved landscaping scheme.
10. The application subject to appeal A is accompanied by an arboricultural report prepared by Barrell Tree Consultancy², however, that report describes the development as being for a replacement house at No 60³ rather than a basement extension. The submitted arboricultural report would therefore appear to be of very limited relevance to the consideration of appeal A, not least because in making a comparison between the side extension and the new house the report refers to the latter development offering more space for the new tree planting (page 7).
11. From the references to the tree planting arrangements made in the appellant's application for costs I gather that it is intended that the Hornbeam trees would be planted in either a cellular earth system or in 'structural tree soil', planting regimes that are explained in the previously mentioned arboricultural report. I also understand that the proposal to plant seven Hornbeams was an alternative to an earlier proposal to plant three replacement trees. As the submitted arboricultural report addresses a different tree planning scheme within the context of a totally different development and I consider it cannot be taken as demonstrating that the seven Hornbeam trees could be adequately accommodated were the basement subject to appeal A to be built.
12. With respect to the basement enlargement subject to appeal B, it would involve less encroachment into the RPZ for tree T9 than would be the case for the development subject to appeal A. As I have found that development subject to appeal A would be unlikely to adversely affect tree T9, it follows that the scheme subject to appeal B would have a lesser effect. However, because the arboricultural reports submitted with the applications subject to appeals A and B are identical to one another, I consider that the submitted arboricultural evidence for appeal B has not demonstrated that the approved tree planting could be adequately accommodated, with there being potential for some of the pleached Hornbeams and a Taxodium distichum (notated as tree T3 on the approved planting plan) to be affected by the basement extending towards the north western corner of No 60's plot.
13. On the evidence available to me I consider that for either appeal A or B it has not been demonstrated that the trees subject to the approved landscaping scheme would be adequately accommodated. I consider that any impairment of the trees forming part of the approved landscaping scheme would be detrimental to the streetscene. On that basis I cannot conclude that the developments subject to appeals A or B, in combination with the side extension, would either preserve or enhance the Kensington Conservation Area (the CA) or mitigate the effect of the loss of the three trees that were subject to the TPO. I am also of the opinion that insufficient evidence has been provided for me to be able to conclude that an alternative tree planting scheme could be implemented that would either preserve or enhance the CA or mitigate the effects of the loss of the trees subject to the TPO.

² Dated 8 February 2017

³ A development for which a separate application was submitted to the Council

14. On the basis of the evidence available to me and for the reasons given above I conclude that the developments subject to appeals A and B would have an adverse effect on the implementation of the landscaping scheme approved in association with the side extension. I further conclude that it has not been demonstrated that an alternative tree planting scheme could be successfully implemented. I consider that appeal developments A and B would therefore be in conflict with Policy CR6 (trees and landscape) of the Royal Borough of Kensington and Chelsea Consolidated Local Plan of 2015 (the Local Plan). That is because it has not been demonstrated that either of the appeal developments could be implemented in combination with the side extension, while allowing for a high quality landscaping scheme to be provided to mitigate the effects of the new development at No 60 and the loss of the TPO'd trees that have previously been removed.
15. For the reasons I have given above I, however, consider that there would be no conflict with Policy CL7 (basements) of the Local Plan because it is unlikely that either appeal development A or B would adversely affect retained tree T9.

Conclusion

16. For the reasons given above I conclude that appeals A and B should be dismissed.

Grahame Gould

INSPECTOR