The Planning Inspectorate

Appeal Decisions

Site visit made on 18 November 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Appeal A: APP/X5990/W/20/3257557
Flat 1 Basement and Ground Floor, 98 Ebury Street, London SW1W 9QD

- 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 Ebury Street Limited against the decision of City of Westminster Council.
- The application Ref 19/08646/FULL, dated 7 November 2019, was refused by notice dated 17 February 2020.
- The development proposed is described as refurbishment of and extension to the ground and basement flat.

Appeal B: APP/X5990/Y/20/3257558
Flat 1 Basement and Ground Floor, 98 Ebury Street, London SW1W 9QD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
- The appeal is made by Ebury Street Limited against the decision of City of Westminster Council.
- The application Ref 19/08647/LBC, dated 7 November 2019, was refused by notice dated 17 February 2020.
- The works proposed are described as refurbishment of and extension to the ground and basement flat.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 10 December 2020.

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for refurbishment of and extension to the ground and basement flat, at Flat 1 Basement and Ground Floor, 98 Ebury Street, London SW1W 9QD, in accordance with the terms of the application, Ref: 19/08646/FULL, dated 7 November 2019, subject to the conditions set out in the schedule at the end of this document.

Appeal B

2. The appeal is allowed and listed building consent is granted for refurbishment of and extension to the ground and basement flat, at Flat 1 Basement and Ground Floor, 98 Ebury Street, London SW1W 9QD, in accordance with the terms of the application, Ref: 19/08647/LBC, dated 7 November 2019, subject to the conditions set out in the schedule at the end of this document.

Procedural Matters

3. As set out above, there are 2 appeals on this site. Each relates to the same scheme but address separate applications relating to planning permission in the case of Appeal A, and listed building consent in the case of Appeal B. I have considered each on its individual merits, however, to avoid duplication I have dealt with the Appeals together, except where otherwise indicated.

4. I have omitted unnecessary reference to the address from the descriptions of development and works in the banner headings above.

5. The Council's fifth reason for refusal of Appeal A relates to the lack of evidence covering the potential noise impact of an air conditioning unit. The appellant has however confirmed that the proposal does not include the installation of an air conditioning unit. Indeed, notwithstanding the annotation 'mechanical plant room' on the proposed floor plans in relation to a vault at the front of the building, no air conditioning unit is shown, or otherwise described within the submissions. Consequently, the installation of an air conditioning unit would not be permitted were the Appeals to be allowed. I have not therefore considered this matter any further.

Main Issues

6. The main issues are:

   - the effect of the scheme on designated heritage assets, including whether it would preserve a Grade II listed building, its setting, or any of the features of special architectural or historic interest that it possesses; and whether it would preserve or enhance the character or appearance of Belgravia Conservation Area (the Conservation Area), including a protected tree; and

   - whether, in relation to Appeal A, whether the scheme includes sufficient measures for natural drainage and planting.

Reasons

Heritage assets

7. The appeal property is located at 98 Ebury Street. It forms part of a brick terrace of 4 main storeys with basements numbered 96-114 Ebury Street, which, with 34A Elizabeth Street, is the listed building in this case. Insofar as it is relevant to the Appeals, the special interest and significance of the listed building resides in its early-nineteenth century date, and the uniformity of its original design and detailing.

8. The listed building is also located within the Conservation Area. Again, insofar as it if relevant to this appeal, the significance of the Conservation Area resides in the planned layout of streets and spaces, and related collection of predominantly terraced residential development, of which the listed building is one such example.

9. For sake of clarity, I have dealt with this matter in 3 parts (a) – (c) below, which are jointly concluded in part (d) at the end.

(a) *Extension*

10. Extensions at ground floor level, and closet wings which rise as far as the second floor, have been added to the rear elevations of most properties within the terrace. There is little overall consistency in the width, depth, scale or detailed design of such extensions. In this regard, No 98 is unusual in having a closet wing only, albeit the rear elevation has not escaped alteration, and evidence suggests that a further small ground floor extension was once attached at the rear.

11. The proposed extension would be attached via the closet wing at basement and ground floor levels. At ground floor level, this would be in the position of the small ground floor extension shown on historic plans. At basement level, this would be at the point of the junction between the closet wing and the retaining wall at the back of the lightwell. The closet wing would therefore remain no less exposed externally than it was in the past.

12. In view of this arrangement, and the fact that the generously sized light well space would be retained, the historic rear elevation of the property would also remain exposed. The modest massing of the ground floor element of the extension, and its substantially glazed walls, would further limit the extent of any additional visual obstruction.

13. Some minor loss of fabric would arise through attachment of the extension, provision of access through the closet wing, and replacement of the back wall of the lightwell. Whilst the character of the closet wing would thus undergo change, it would remain discernible. Insofar as the back wall chiefly holds value for the role it plays in defining the lightwell, this space would continue to be defined by the extension. As such, in these regards, there would be no adverse effect on the special interest or significance of the listed building.

14. The scheme would see the floorspace at both basement and ground floor levels considerably increased. However, internal access via the closet wing, and retention of the lightwell space, would mean that the historic plan form of the main building would remain both clearly apparent and appreciable. This would be further reinforced by the distinct design of the extension itself.

15. The proposed extension would otherwise contrast favourably with some of the bulkier, more solid and substantial additions attached elsewhere along the rear of the terrace. It would also bear some similarity to that previously approved at 102 Ebury Street. For this and the above reasons, the scale and design of the extension would appear appropriate viewed within the context of both No 98, and the listed building as a whole. This finding is not altered by the fact that different considerations may have applied in consideration of extensions added at other properties.

16. The Council has drawn attention to an extension scheme relating to No 98 previously dismissed at appeal. However, that scheme was not the same as that now proposed. In that case a larger extension was involved, which would have been directly attached across the rear elevation. Both internally and externally therefore, it would have been far less distinct from the main building including the closet wing than that currently proposed, and thus its visual effects, and effects on the historic plan form, would have differed. The scheme would also have required greater demolition, and loss of the lightwell space. Dismissal of this previous appeal does not therefore provide a reason to

dismiss the current appeal, which I have accordingly assessed on its own merits.

17. In view of my reasons above, I find that the proposed extension would preserve the special interest and significance of the listed building, and the contribution that it makes to the character and appearance of the Conservation Area.

(b) *Other works*

18. Objection was raised to the proposed installation of French doors with a Juliet balcony, within a full-length window on the ground floor rear elevation. This is not a historically typical location for a feature of this type. However, the size, shape and treatment of the existing window opening is clearly not original, and is inconsistent with other openings in the rear elevation. In this context, the proposed resized and reformed opening would be far more sympathetic to the dimensions of original openings within the rear elevation, than the existing. Taken on overall balance therefore, the benefits to the listed building of modifying the opening, would outweigh any minor adverse effect that installation of French doors and Juliet balcony within it would have.

19. Removal of part of the original wall separating the front and back rooms on the ground floor is proposed. The adverse effect that this would have on the plan form would however again be outweighed by the benefit to the listed building of removing partitions from the back room, which themselves greatly obscure the historic plan form. Indeed, notwithstanding the loss of historic fabric, the original plan form would be more appreciable overall. However, in view of the fact that neither this opening nor others are shown in elevation on the submitted plans, this would need to be the subject of a condition.

20. A range of additional works are proposed, including reinstatement of fireplaces, coving, skirting, windows, and the ground floor window opening in the front elevation. These other works are not contentious, and subject to further control of details by condition, could result in the overall enhancement of the property, the terrace as a whole, as too its appearance within the streetscene of the Conservation Area.

21. For the reasons above, I find that the additional works to the listed building would preserve its special interest and significance, and, insofar as they relate to the front elevation, moderately enhance the contribution that it makes to the character and appearance of the Conservation Area.

(c) *Tree*

22. A bay tree, which is covered by a Tree Preservation Order, but otherwise subject to control given its presence within the Conservation Area, is located within the far corner of the garden. Relative to the tight confines of the space it occupies, and the dense layout of the block as a whole, it appears uncomfortably oversized. It seems likely that this is a product of a lack of past management, rather than any conscious design.

23. The tree cannot be seen outside the block, and so it makes no broader contribution to the character and appearance of the Conservation Area. Though it is nonetheless a significant source of greenery within the block itself, due to the current size of the tree, it is not a wholly positive feature. In this regard,

the pruning proposed would benefit both the appeal property, its occupants, and most likely those also of neighbouring properties.

24. Both parties agree that bay trees are tolerant of such pruning, and I see no reason why the tree could not be subject to regular maintenance thereafter. This would fall within the Council's control. Ongoing management would minimise the likelihood of any conflict in relation to future use of the extension. The presence of the tree could thus be beneficially sustained in a more appropriate manner than at present.

25. A theoretical root protection area (RPA) has been defined within the submitted tree report. This shows very minor encroachment by the proposed extension, and working methods have been proposed to minimise impact accordingly. The presence of a large retaining wall towards the west, and a less substantial boundary wall towards the south may however mean that tree roots more heavily within the site. If so, the degree of encroachment into the RPA may in fact be greater. In this regard there is some uncertainty.

26. A larger amount of garden land would however be retained within the site, than is shown occupied by the theoretical RPA, and the parties appear agreed that the tree may respond well to root pruning. That being so, it appears unlikely that any significant adverse impact on the tree would arise through encroachment into the RPA, even if such encroachment would be greater than that which has been modelled. Sufficient space would otherwise continue to exist within the garden for the roots of the tree.

27. In view of my reasons above, I find that construction of the extension and related works to the tree would not have an unacceptable effect upon its health, wellbeing or appearance, or the contribution it makes to local amenity, either in terms of the Conservation Area, the setting of the listed building, or more generally.

(d) *Conclusion*

28. For the reasons outlined above I conclude that the scheme would have an acceptable effect on designated heritage assets, as it would preserve the listed building, its setting, and the character and appearance of the Conservation Area. In the latter respects this would include in relation to the bay tree, whose more general contribution to amenity would also be positively sustained. With regard to Appeal A, and insofar as it is relevant to Appeal B, the scheme would thus comply with Policies S25 and S28 of the Westminster City Plan 2016 (the CP) which set out the objectives of conserving Westminster's heritage assets and achieving exemplary standards of design; saved Policy DES1 of the Unitary Development Plan (UDP), which seeks to secure both objectives; saved Policies DES5 and DES10 part (A) of the UDP which together seek to secure sympathetically designed extensions; saved Policy ENV16 of the UDP which seeks to protect significant trees from loss or damage; and supporting guidance within the Council's Supplementary Planning Guidance, Repairs and Alterations to Listed Buildings. With regard to both appeals, the scheme would otherwise satisfy the requirements of the Act, and heritage policy set out within the National Planning Policy Framework.

29. Though the Council also cited Policy S28 of the CP and saved Policy ENV17 of the UDP, these do not appear to be relevant, given their particular focus on biodiversity. Likewise, whilst saved Policies DES9 of the UDP addresses

conservation areas, the scenarios it covers do not appear to be applicable to the scheme in question.

Drainage and planting

30. No 98's small rear courtyard garden space currently contains little significant vegetation aside from the bay tree, and it is predominantly hard surfaced.

31. Part C of Policy CM28.1 of the CP, which relates to basement development, requires that a margin of undeveloped garden land proportionate to the scale of development, and the size of the affected garden, will be left around the entire site boundary. The policy further requires the provision of a minimum of 1m soil depth, plus minimum 200mm drainage layer, and 'adequate' overall soil volume above the top cover of a basement. The purpose, as set out in the supporting text, is to support sustainable planting.

32. Insofar as these requirements relate to existing residential buildings, they appear to be tailored to situations that involve basement development beneath garden spaces. This appears confirmed by supporting guidance in the Council's Supplementary Planning Document relating to basement development (the SPD), which in this context highlights the importance of maintaining green infrastructure, and drainage of run-off from hard surfaces. However, though garden space would be utilised in the current case, the basement would be almost entirely located beneath the proposed ground floor extension. The scenarios set out in Part C of Policy CM28.1 of the CP, do not therefore appear to wholly envisage or to fit the scheme in question.

33. In this regard, an undeveloped margin would not be left around the whole of the site. However, this is because the ground floor extension would run along the site boundary on one side. It would therefore be no more possible to leave a margin here, than it would be beneath the existing building. The latter is a logical limitation otherwise recognised within the policy. Insofar as a margin would serve the purposes of drainage and planting, each function would be served by the green roof of the ground floor element of the extension.

34. The only point at which the basement would not be overlapped is on its northern side. Here a gap would exist. Given that the supporting text of Policy CM28.1 defines 'undeveloped garden land' as land without impermeable surfacing, land both here and across the rest of the garden would be undeveloped. Indeed, in both places permeable surfacing alongside border planting is proposed, representing an improvement over the existing situation.

35. Whether the requirement in relation to soil depth would be met, is unclear. However, as the supporting text of Policy CM28.1 of the CP indicates that exceptions can be considered in the case of small courtyard gardens where SUDs or other mitigation measures are provided, then, in view of the above, sufficient flexibility exists for the scheme to be considered acceptable.

36. The volume of soil lost from the garden as a result of the scheme would be greater than had it involved either a ground floor or basement extension only. However, in view of my findings above, this loss of soil would not have any unacceptably adverse effects in relation to planting, drainage, or the bay tree.

37. For the reasons outlined above I conclude that the scheme would be acceptable in relation to drainage and planting, and in these regards, and to the extent that it can be directly applied to the scenario in question, it would comply with

Policy CM28.1 of the CP, which sets out requirements in relation to basement development, as covered above, and as supported by the SPD.

Other Matters

38. The Council's officer report covering both applications makes reference to the potential need for a fire lobby, curtain or double doors between the 2 ground floor rooms where opening up has been proposed. This is presumably an implication of the building regulations. However, as no specific explanation has been provided, no justification has been given for the potential 'amending condition' referenced. As no such curtain, lobby or doors have been proposed, none would be authorised were the Appeals to be allowed. In the event that the scheme could not then be fully implemented due to a conflict with separate regulatory requirements, this would be a matter requiring further action by the appellant. In this context, it would be for the Council, as applicable, to assess the suitability of any solution which might be proposed. As matters stand, I have assessed the Appeal schemes as they were set before me.

Conditions

39. In relation to both Appeal A and Appeal B, I have imposed conditions setting out the time period for commencement and identifying the approved plans, for sake of certainty. Otherwise:

Appeal A

40. I have imposed a condition requiring the extension to be constructed in accordance with the Council's Code of Construction Practice, which, in this context, requires the provision of a construction management plan. Compliance is otherwise identified as a requirement of Policy CM28.1 of the CP. I have used a different wording to that suggested by the Council, and, given that the scheme includes other elements which are not applicable, have tailored the condition accordingly. This condition is necessary in the interests of safeguarding the amenity of neighbouring occupants. I have not imposed a condition relating to hours of work, given that this matter falls to be addressed in the above context. I have also not imposed suggested conditions relating to plant and machinery, given that none has been explicitly proposed.

41. I have imposed a condition relating to surfacing in order to ensure its permeability, and thus adequate drainage. I have not however included a requirement to agree the details of or to subsequently maintain the scheme of soft landscaping shown on the plans for 5 years. This is given that the scheme otherwise wholly relates to a private back garden, where such an onerous requirement would be unreasonable.

42. I have also not imposed conditions requiring an arboricultural method statement and details of supervision, given that the submitted details are adequate. I have instead imposed a condition requiring works in accordance with the submitted details. This is in the interests of safeguarding the tree on site.

Appeal B

43. The Council has requested a number of conditions relating to the approval of details. Here I have sought to distinguish between works which relate to the

extension, and works which will be undertaken solely to the existing building. There is no need for these conditions to be duplicated in relation to Appeal A.

44. I have imposed a condition requiring details of the external materials and finishes, windows and doors to be employed in extension to be approved, and a separate condition relating to the approval of windows, doors, fireplaces, cornices, timber architraves and reveals, within the existing building. In relation to the latter, whilst elevation drawings are referenced within the suggested text, and some of the details relate to new internal openings, the openings themselves are not mentioned. As they are not otherwise shown in elevation on the plans, I have therefore addressed this omission within the condition. These conditions are required in order to secure a high standard of complementary design and construction. There is no need for a condition restricting the type of glazing that can be used in the windows, as this matter falls to be agreed in clearance of the conditions above. This point can however be clarified within the wording of the conditions.

45. I have imposed a further condition requiring other internal and external works to match original work, in order to ensure that the integrity of the building is maintained.

Conclusion

46. For the reasons set out above I conclude that Appeal A and Appeal B should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

Appeal A

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: 493.100, 493.101, 493.200, 493.201, 493.202.

3) No demolition, earthworks, piling or construction in relation to the extension hereby permitted, shall be carried out other than in accordance with the Council's Code of Construction Practice.

4) The development hereby permitted shall be carried out in accordance with the submitted Arboricultural Impact Assessment Report dated 17 December 2019, reference TRUK 0053 Rev A.

5) Details of the permeable surfacing to be laid back garden in relation to the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The surfacing shall then be laid in accordance with the approved details prior to the first occupation of the extension.

Appeal B

1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.

2) The works hereby authorised shall be carried out in accordance with the following approved plans: 493.100, 493.101, 493.200, 493.201, 493.202.

3) Prior to their installation/formation within the existing building, as applicable, details, including elevations at scale 1:10, and sections at scale 1:5 of all new:

   - doors and windows, including glazing;
   - internal openings;
   - fireplaces, including openings, hearths, surrounds, and their relationships to any surrounding/underlying historic fabric;
   - cornices; and
   - timber architraves and reveals,

   hereby authorised, shall be submitted to and agreed in writing by the local planning authority. The works shall then be carried out in accordance with the approved details.

4) Except in relation to the extension hereby authorised, and items otherwise subject of approval in relation to condition 3, all new external and internal work to the fabric of the existing building must match existing original adjacent work in terms of materials, method of construction, and finished appearance.

5) Design details of the windows and doors, including glazing, and the materials and finishes to be employed for the external surfaces of the extension hereby permitted, shall be submitted to and approved in writing by the local planning authority prior to their use.