



Appeal Decision

Site visit made on 8 December 2021

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 21st February 2022

Appeal Ref: APP/K5600/D/21/3284402
49 Wallingford Avenue, London W10 6PZ

- 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 Keith Macrae, Heli Ltd against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/03105, dated 13 May 2021, was refused by notice dated 10 August 2021.
 - The development proposed is basement development.
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Decision

1. The appeal is allowed and planning permission is granted for basement development at 49 Wallingford Avenue, London W10 6PZ in accordance with the terms of the application, Ref PP/21/03105, dated 13 May 2021, subject to the conditions set out in the Schedule to this decision.

Preliminary Matters

2. I undertook the site visit at the same time as that for two other appeals relating to this property (APP/K5600/W/21/3280046 and APP/K5600/W/21/3280050) for rear extensions. These two appeals have been the subject of separate decisions.
3. The drawings showing this proposal also incorporate the development the subject of APP/K5600/W/21/3280046. As that appeal has been allowed this would not be inconsistent, but in any event this proposal could be constructed independently of either of the aforementioned appeal proposals.
4. Originally the appeal was to be determined via the 'Householder Appeals Service'. However, included within the appeal submission were various documents which appeared not to have been submitted to the Council at the application stage or had been revised subsequently. I therefore concluded in the interests of fairness, openness and transparency to change the procedure to a conventional 'written representations' procedure. This would give the Council and interested parties the opportunity to comment upon the revised information. The Council responded that the appeal should be determined on the basis of the original documentation alone.
5. While appellants should not use the appeal procedure to develop or evolve a proposal and should rather consider submitting a revised application, it seems to me that in this case the substance of the proposal has not changed. As the Council and other interested parties have had the opportunity to respond to the additional and revised information, it would not be unfair if I were to utilise it in making my decision. I therefore have done so.

6. As the site lies within the Oxford Gardens Conservation Area (the Conservation Area) I am required by virtue of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Main Issues

7. The main issues are:
- whether the submitted Construction Method Statement (CMS) provides sufficient detail to demonstrate structural stability;
 - the effect on the living conditions of the occupiers of neighbouring properties and on highway safety during construction; and
 - whether the site could be appropriately drained.

Reasons

8. The appeal property is an end of terrace dwelling. It has two substantive storeys although it is clear that the roof space has been converted in that there is a large dormer in the rear roofplane. It has a rear closet extension. The proposal is to install a basement under the whole of the ground floor of the property with it also extending to front and rear. At the front this would be to provide a grill covered lightwell, and to the rear a second lightwell beyond the extension proposed under APP/K5600/W/21/3280046, but then extending beyond that under the garden. As well as an internal access there would be an external staircase to the rear garden.
9. Policy CL7 of the Royal Borough of Kensington and Chelsea Local Plan (the Local Plan) deals with basements and sets various criteria. There is no dispute that the proposal complies with a number of the criteria in that policy, the issues in this appeal relate to four: (i) dealing with sustainable drainage systems; (k) concerning highway safety and inconvenience during construction; (m) concerning structural stability; and (n) dealing with sewer flooding.
10. Policy CE2 of the Local Plan dealing with flooding is also referred to in Policy CL7. For the purposes of this appeal, Policy CE2 requires a reduction in 50% of existing rates of surface water run-off for minor development. The explanatory text makes clear minor development includes householder development. Policy CT1 of the Local Plan sets various criteria relating to highway matters under the title "improving alternatives to car use". Policy CT1 also requires development not to compromise road safety.
11. The Council has also referred to two Supplementary Planning Documents (SPDs) relating to 'Basements' and 'Transport and Streets'. As both of these SPDs provide information in support of adopted development policies I am able to give them significant weight.

Structural Stability

12. The originally submitted CMS did not provide details of a site-specific investigation and relied on information from a borehole carried out in 1963 some 250 metres from the appeal site.

13. However, as part of the appeal the appellant submitted a site investigation report following the sinking of a borehole in September 2021 in the front garden of the appeal property to a depth of 6.0 metres. This showed made ground for the first metre and London Clay below; no groundwater was identified, although roots were identified to 2.5 metres below existing ground level. The appellant also submitted an updated Subterranean CMS dated 24 September 2021 to take account of the findings of that report.
14. In light of this additional information, I am satisfied that the proposal, subject to supervision of the works secured by a condition, would ensure the structural stability of the existing building and those adjoining it and thus there would be compliance with criterion (m) of Policy CL7 of the Local Plan.

Construction matters

15. The Council report indicated that the draft Construction Traffic Management Plan (CTMP) submitted with the application related to a different property and was unacceptable because it had not involved consultation with the occupiers of neighbouring properties. Consultation with neighbours being one of the central reasons for the introduction of Policy CL7 of the Local Plan and is emphasized in the Basements SPD.
16. I have been provided with two versions of the CTMP, "17 04 2020 REV A – DRAFT" and "30 05 2020 REV C – DRAFT VERSION TO ACCOMPANY A PLANNING APPLICATION". Given the date of the application, 31 May 2021, I consider it likely that the Rev C version was submitted with the application, notwithstanding the typographic error in the date.
17. The CTMP follows the latest 'blank' version of the form linked to from the Basements SPD. Rev C of the CTMP clearly relates to the appeal property as the construction traffic routing is to/from the appeal site, and I have nothing to show that, apart from non-consultation with the neighbours, that the CTMP otherwise shows that the development would have unacceptable effects either on highway safety or living conditions.
18. While the Basements SPD, paragraph 40 of the National Planning Policy Framework and the national Planning Practice Guidance all encourage pre-application consultation with neighbours none of these require it, and the proposal does not fall into those categories of development where consultation is required under the provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). It is also not a policy requirement within the terms of Policy CL7 of the Local Plan. It seems to me that in these circumstances while the lack of pre-application neighbour consultation weighs against the development, this, of itself, would not be sufficient to mean that the proposal should be prevented particularly as consultation with neighbours could be mandated as part of the consultation required before construction started. Neighbours were also notified of the application and the appeal and have had opportunities to make representations.
19. Policy CT1 of the Local Plan requires development not to compromise road safety. The Transport and Streets SPD requires the completion of a CTMP, but it is clear that these can be drafted and finalised post permission. In light of this, I am satisfied that subject to an appropriate condition, there would be compliance in this regard.

20. Consequently, while the lack of consultation would be contrary to the Basements SPD, subject to an appropriate condition, the proposal would be in accordance with criterion (k) of Policy CL7 and Policy CT1 of the Local Plan.

Drainage

21. The Council's objection on this matter deals with surface water drainage and the installation of a "suitable pump device" to prevent sewer flooding. However, while the Council report highlights deficiencies in the information submitted with the application, the relevant section of the report concludes a "condition could secure that a flood risk and surface water drainage information along with a suitable pump device is submitted to and approved in writing by the Local Planning Authority before works commence". I can see no reason to disagree with this conclusion.
22. Consequently, again subject to a condition, the proposal would comply with Policies CE2 and CL7 of the Local Plan and the Basements SPD.

Other matters

23. The Oxford Gardens Conservation Area covers an extensive area of streets to the north of the A40. For the purposes of this appeal, it seems to me that its significance lies in the uniform nature of the individual streets set out in a grid-like pattern and the underlying appearance of the dwellings. I am satisfied that the proposal would preserve this character and appearance and thus significance of the overall Conservation Area and thus comply with Local Plan policies in this regard.

Conditions

24. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the National Planning Policy Framework. The numbers given in brackets (X) refer to the condition being imposed.
25. In addition to the standard timescale condition (1), I have imposed a condition specifying the relevant drawings as this provides certainty (2).
26. In order to protect the living conditions of adjoining occupiers and highway safety I have imposed a condition relating to a Construction Management Plan which would incorporate a Construction Method Statement, Construction Traffic Management Plan and compliance with the Considerate Contractors Scheme as required in the Basements SPD (3).
27. I have also imposed a condition requiring supervision of the engineering works (4) in order to minimise the risk to the living conditions of adjoining occupiers from structural failure. I have amended this condition to remove the requirement for a Chartered Engineer to be appointed, because notwithstanding this being a stipulation in the Basements SPD, it seems to me that this could be considered to be a restraint of trade. Clearly, the local planning authority will need to ensure that any supervision proposed meets appropriate standards before agreeing to it.
28. In order to minimise the risk of flooding both on and off site, I have imposed conditions relating to the specification of the pump device to prevent sewer flooding (5) and surface water disposal (6).

29. I note that at the application stage the Council's Environmental Health Department wrote requesting conditions relation to ground gas and vapour (7) and ensuring that the soils to be located above the rear element of the basement be checked for composition (8). Both of these conditions are required to protect the amenities and health of future residents.
30. All but the last of the above conditions are necessary to be pre-commencement conditions as they require matters to be in place either prior to development commencing or from the outset of construction works in order to meet their objectives. I am satisfied that Revision B of the Flood Risk Assessment is of a suitable standard and a further submission is not necessary.
31. Where necessary and in the interests of simplicity, clarity and precision I have altered the conditions to better reflect the relevant guidance. In particular, all conditions need to be submitted to and approved by the local planning authority; if that body wishes to seek advice from a third party that is a matter for the local planning authority.

Conclusion

32. The development complies with the development plan as a whole and there are no material considerations sufficient to outweigh the presumption in favour of determining the proposal in accordance with the plan.
33. For the reasons given above I conclude that the appeal should be allowed.

RJ Jackson

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

LP 100	Location Plan
SP 100	Site Plan
EX PSE 100 Rev B	Existing Ground Floor Plan, Longitudinal Section and Rear Elevation
B GA 100 Rev C	Basement, Ground Floor Plan and Basement Floor Plan - Proposed
B GA 200 Rev C	Basement, Longitudinal Section - Proposed
B GA 300 Rev C	Rear Extension, Side and Rear Elevations - Proposed
3. No development shall take place on site until a Construction Management Plan, incorporating a Construction Method Statement, Construction Traffic Management Plan, and detail compliance with the Considerate Contractors Scheme, has been submitted to and approved in writing by the local planning authority. The approved details shall be complied with throughout the construction period.

The Construction Method Statement shall detail how the proposed excavation is to be undertaken, spoil removed, adjacent property and land supported and stabilised, and the basement constructed.

The Construction Traffic Management Plan shall include:

 - (i) routing of demolition, excavation and construction vehicles, including a response to existing or known projected major building works at other sites in the vicinity and local works in the highway;
 - (ii) access arrangements to the site;
 - (iii) the estimated number and type of vehicles per day/week;
 - (iv) details of any vehicle holding area;
 - (v) details of the vehicle call up procedure;
 - (vi) estimates for the number and type of parking suspensions that will be required;
 - (vii) details of any diversion or other disruption to the public highway during preparation, demolition, excavation and construction work associated with the development;
 - (viii) work programme and/or timescale for each phase of preparation, excavation and construction work associated with the development;
 - (ix) details of measures to protect pedestrians and other highway users from construction activities on the highway; and
 - (x) for those works that cannot be contained wholly within the site, a plan should be submitted showing the construction elements on the highway including extent of hoarding, position of nearby trees in the highway or adjacent gardens, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.
4. No development shall take place on site until details of the supervision of the construction works have been submitted to and approved in writing by the

local planning authority. The approved details shall be complied with throughout the construction period.

5. No development shall commence until details of a pump device to prevent sewer flooding of the development hereby permitted has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully installed before the development is first occupied and shall thereafter be maintained.
6. No development shall take place until a Sustainable Drainage System (SuDS) scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - (i) a detailed analysis of surface water run-off and attenuation volume to demonstrate how the proposed measures will aim to achieve a reduction of 50% of existing rates including climate change in the calculations and factoring in all flows into the sewer system including groundwater or other flows;
 - (ii) information about the proposed SuDS types, their location, attenuation capacity, specification, structural integrity, construction, operation, access, and maintenance;
 - (iii) section/profile drawings of the SuDS, if relevant; and
 - (iv) drainage plans to show clearly how surface water run-off will be conveyed to the SuDS and any connections to the sewer system if necessary

The approved scheme shall be fully implemented before the development hereby permitted is first occupied and shall thereafter be maintained in accordance with the approved scheme.

7. No development shall commence until a ground gas and vapour investigation has been undertaken and a gas and vapour investigation report, where necessary incorporating a remediation strategy, has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved remediation strategy has been fully implemented and a verification report has been submitted to and approved in writing by the local planning authority. Where physical remedial measures are implemented, they shall be thereafter be maintained.
8. No soil to be used above the rear element of the basement shall be installed until a description and the results of chemical analysis demonstrating their suitability for use is submitted to and approved in writing by the local planning authority. The soil used shall be that approved.

End of Schedule