



Appeal Decision

Site visit made on 14 December 2021

by C J Ford BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2022

Appeal Ref: APP/K5600/W/21/3276941

7 Kramer Mews, London SW5 9JG

- 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 Nick Matthews (EcoProperties (UK) Ltd) against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/02383, dated 13 April 2021, was refused by notice dated 9 June 2021.
 - The development proposed is demolition and rebuild of house and creation of a lower ground floor below the original footprint of premises to provide additional residential floorspace.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the living conditions of neighbouring residential occupiers, and pedestrian and highway safety, would be adequately safeguarded during the construction of the proposed development.

Reasons

3. An application to create a basement at the appeal site has already been approved, subject to conditions¹. The Council confirms the basement development in the appeal proposal is identical, and the variation from the earlier approval is the proposal to demolish the existing two-storey dwelling and to rebuild it to identical proportions above ground. The Council does not object to the principle of the development and from the evidence before me, I have no reason to disagree with that view.
4. Ultimately the Council refused the application because the appellant would not agree to the same pre-commencement conditions that were attached to the earlier basement permission. The first condition in dispute would require the approval of a Construction Traffic Management Plan (CTMP), while the second would require the development to be bound by the Council's Code of Construction Practice (CoCP) through the approval of a Code of Construction Checklist and a Site Construction Management Plan (SCMP).
5. The appellant considers the two conditions are onerous in financial and organisation terms, and are unsuitable for a scheme of the size proposed. As a substitute, the appellant proposes a condition that was attached to another

¹ Council Ref: PP/20/01428

approved development at the site, which was allowed on appeal². The appellant emphasises it was a much larger scheme and would require the demolition of the existing building, ground works and the erection of a five storey building. Furthermore, while the two conditions in question were put forward by the Council in that appeal, the Inspector imposed a single condition instead which required the approval of a Construction Method Statement (CMS). The appellant seeks the same condition in this case.

6. In assessing the need for conditions, the site's location must be carefully taken into consideration. It has a backland situation adjacent to residential and commercial properties. Moreover, it is only accessible via a pedestrian walkway within the grounds of Sybil Thorndike House, a sheltered housing development which itself is accessed via Kramer Mews, a short and fairly narrow no through road which also serves a small number of other residential properties. Given the site's highly sensitive location and the constrained access, it is imperative that the construction process, which is likely to extend over a lengthy period, is carefully managed to reduce the arising adverse impacts on the living conditions of neighbouring residential occupiers, and to ensure pedestrian and highway safety is maintained.
7. While the scheme approved on appeal would clearly be larger in respect of the number of storeys accommodated on the site, basement development was not proposed. Although the approved scheme would require ground works, the excavation works in creating a basement level would be more intensive and involve the removal of a greater degree of spoil. Furthermore, as they have become so prevalent in the borough, the Council's 2019 adopted Local Plan (LP) contains a specific policy on basement development. Policy CL7 seeks to ensure the adverse impacts of basement development, in all its guises, would not be unacceptably harmful. Consequently, the two schemes are clearly distinguishable in respect of the works entailed and the application of Policy CL7.
8. From the supporting text to Policy CL7 and the Council's 2016 Basements Supplementary Planning Document (SPD), it is apparent the submission of a CMS and a CTMP is necessary to demonstrate compliance with Policy CL7. Furthermore, unlike the more general coverage of the CMS in the approved appeal scheme, the required CMS is specifically tailored to basement development. Adherence to the CoCP would secure the submission of the required CMS. It is also apparent the CoCP contains a charging mechanism by which the Council may undertake effective monitoring of compliance with the Code, which is desirable given the site's location, the nature of the development and its likely duration.
9. The appellant is misguided in deducing from the Inspector's comments in the earlier appeal decision that the two conditions in question do not comply with Planning Policy Guidance and the National Planning Policy Framework (the Framework). In deciding not to impose the conditions, the Inspector had a fundamentally different scheme before them, and it is unclear whether they were provided with the same evidence in support of the suggested conditions.
10. From the assessment above, it is clear in this case that the justification for the two conditions is firmly derived from the provisions of the LP and the SPD. Furthermore, having regard to the site's highly sensitive location and the

² Appeal Ref: APP/K5600/W/20/3249893

constrained access, and notwithstanding the scale of the scheme, the conditions are necessary to make the development acceptable, while they need to be pre-commencement conditions to ensure the relevant interests are protected throughout the construction process. The Council has also drawn attention to two allowed appeals³ for a basement development at a single dwelling site where the conditions were imposed, thereby demonstrating a consistency of approach in such schemes.

11. Accordingly, in the absence of the appellant's agreement to the conditions, the living conditions of neighbouring residential occupiers, and pedestrian and highway safety, would not be adequately safeguarded during the construction of the proposed development. As such, it would conflict with Policies CL5, CL7 and CE6 of the LP. Amongst other things, these policies seek to ensure development provides good living conditions for occupants of neighbouring buildings in respect of construction impacts such as noise, vibration and dust, and that construction activity does not cause unacceptable harm to pedestrian and road safety. It would also conflict with the SPD and the CoCP in these regards.

Conclusion

12. The proposal would conflict with the development plan as a whole and there are no material considerations, including relevant parts of the Framework, which indicate that the decision should be made otherwise than in accordance with it. The appeal is therefore dismissed.

C J Ford

INSPECTOR

³ Appeal Refs: APP/K5600/D/21/3266874 and APP/K5600/D/21/3266880