



Appeal Decision

Site visit made on 6 September 2022

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2022

Appeal Ref: APP/K5600/W/22/3290423

2 Cheyne Mews, London, SW3 5RH

- 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 Hugues Lepic against the decision of the Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/01431, dated 5 March 2021, was refused by notice dated 26 October 2021.
 - The development proposed is the excavation of a single storey basement under the footprint of the property
-

Decision

1. The appeal is allowed and planning permission is granted for the excavation of a single storey basement under the footprint of the property at 2 Cheyne Mews, London, SW3 5RH in accordance with the terms of the application, Ref., PP/21/01431, dated 5 March 2021, subject to the conditions in the attached Schedule.

Main Issues

2. The main issues are (i) the effect of the proposed basement on heritage assets and (ii) the effect of the construction of the proposed basement upon the living conditions of occupiers of nearby dwellings.

Reasons

Heritage Assets

3. There is dispute between the parties as to whether the appeal building should be treated as part of a listed building by virtue of s.1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The dispute centres around whether the appeal building forms part of the curtilage of 20 Cheyne Walk, which is part of the Grade II Listed terrace, Numbers 19-26 and 20a Cheyne Walk. It is also suggested that the appeal building may be listed by virtue of a connection to two historic walls. One is a boundary wall to the east of the appeal site which the Council say is part of the curtilage of No 21 Cheyne Walk and within the Grade II Listed terrace. The other is a wall to the west of the appeal site which is the Grade II listed wall running to the south-west of 25 Oakley Gardens.
4. This is a complex matter upon which I make no formal determination but for the purposes of dealing with this appeal, I intend to proceed on the basis that No 2 should be treated as part of a listed building.

5. The appeal building is constructed of brick and of a traditional character. It has three windows on the first-floor front elevation, which were boarded up at my visit and at the ground floor there is a garage door to either side of a central front door. It is located at the far side of a courtyard, behind the listed terrace which it is separated from by rear gardens and other mews properties. The two historic walls are joined to the appeal building. The appeal building has some historic significance as one of a group of traditional mews properties.
6. Policy CL7(f) of the Local Plan requires that basements are not constructed under listed buildings. The pre-ambles to the policy explain that the significance of heritage assets needs to be identified so that significance is not harmed. It also says that the special architectural or historic interest of listed buildings goes beyond appearance and includes the location and hierarchy of rooms and historic floor levels, foundations, the original purpose of the building, its historic integrity, scale, plan form and fabric. It explains that the addition of a new floor level underneath the original lowest floor may affect the hierarchy of the historic floor levels, and hence the original building's historic integrity.
7. However, the Council does not allege that the works would harm the significance of the building or the historic walls. The basement would not affect the external appearance of the building and I have no evidence before me to suggest that it would harm any internal features of historic significance. The basement to be created would be only one level deep, it would be set inside of the parameters of the existing external walls, and its floor to ceiling height would be similar to that of the existing ground floor. It would not, therefore, affect the hierarchy of the historic floor levels.
8. Moreover, the Council's committee report indicates that the excavation of the basement would not result in harm to the special interest or historic significance to 20 Cheyne Mews, which it claims, is the principal listed building. Given the lack of external alterations and the distance from Number 20, I agree.
9. No work is proposed to either of the historic walls and the basement would not be attached to them. Even if I were to treat these walls as listed in their own right, the formation of the basement itself would not have any harmful effect on their special interest. I acknowledge, however, that it is important to ensure that they are not damaged during construction. This can be secured by a condition which would ensure the monitoring of the walls and a requirement to repair them should damage arise.
10. I conclude that the proposed basement would preserve the historic significance of the appeal property and the adjoining historic walls. On the premise that the building is listed, the proposal would conflict with Policy CL7(f). Nevertheless, it would not conflict with the aims and objectives of that policy which is to preserve listed buildings. The lack of harm to the appeal building is a material consideration which outweighs the policy conflict. As there would be no harm caused to a listed building as a result of the development proposed, there is no variance from the requirements of s.66(1) of the Act.
11. Cheyne Conservation Area is characterised by Georgian and Victorian development and its riverside setting. As there would be no external alterations and because there would be no heritage harm to the appeal building, the

proposed basement would also preserve the character and appearance of the conservation area.

Living Conditions

12. The construction of the basement would inevitably create noise and disturbance. Policy CL7(k) indicates that the Council will require basement development to ensure that traffic and construction activity do not cause unacceptable harm to pedestrian, cycle, vehicular and road safety, nor place unreasonable inconvenience on the day-to-day life of those living, working and visiting nearby. Policy CL7(L) indicates that construction impacts such as noise, vibration and dust should be kept to acceptable levels.
13. The Appellant has submitted a Construction Traffic Management Plan (CTMP) which demonstrates that construction traffic can enter and leave the site in a forward gear so long as residents' cars do not obstruct the track leading to the property. If residents' cars are parked in the Mews, construction vehicles may need to reverse into the site and then leave the Mews in a forward gear to re-join the highway. Reversing can be managed by a banksman.
14. Vehicles have also been identified, within the CTMP, that are small enough to navigate the carriageway entrance, including delivery trucks, a forklift truck and a dumper. There would be a temporary loading point and a skip on Cheyne Walk which would avoid the need for skip waggons to enter Cheyne Mews.
15. Comments have been made by interested parties that residents would have to remove their cars from the Mews to allow the construction vehicles to pass. The CTMP does not support this but, in any event, a grant of planning permission neither overrides nor confers any private parking or access rights. Whilst there may be dispute over these matters between the parties, they are matters to which I give little weight.
16. The access to the Mews is off Cheyne Walk which is a single lane onto Chelsea Embankment and it is a quiet street. There is no objection from the Local Highway Authority in respect of highway safety and given the quiet nature and short length of Cheyne Walk, I consider that there would be no harm to highway or pedestrian safety from construction vehicles accessing and egressing the Mews.
17. I appreciate that the works would cause some inconvenience and disturbance to neighbours. However, whilst I appreciate that construction could last for many months, it would be of a temporary nature. Management of noise, vibration and dust has already been outlined in a report submitted by the appellant and firm details of these matters along with those relating to traffic management, can be secured by conditions.
18. I therefore conclude that the proposal would not have an unacceptably harmful effect upon the living conditions of nearby residential occupiers. Therefore, I find no conflict with LP Policy CL7 in this regard.

Conditions

19. The conditions set out in the accompanying schedule are based on those suggested by the Council. However, I have not imposed two of the suggested conditions. These are the ones requiring the developer to sign up to the

Considerate Constructors Scheme and its published Code of Considerate Practice; and the completion and approval of the Appendix A Checklist and Site Construction Management Plan. This is because I consider that entering into such an agreement and signing a checklist is unlikely to pass the test of enforceability¹. Instead, I have imposed a condition requiring approval of a construction management plan which should achieve similar objectives.

20. Where necessary I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance. The appellant was invited to respond to the imposition of the pre-commencement conditions. I am satisfied that there is clear justification for the pre-commencement conditions. All of the conditions meet the tests as outlined in paragraph 56 of the Framework. For the avoidance of doubt, I have provided reasons for the conditions after each condition in the Schedule.

Conclusion

21. I allow the appeal subject to the conditions in the Schedule below.

Ms S Watson

INSPECTOR

¹ National Planning Practice Guidance, Paragraph: 010 Reference ID: 21a-010-20190723

Schedule of Conditions

COMMENCEMENT OF DEVELOPMENT

1) The development hereby permitted shall begin no later than 3 years from the date of this decision.

Reason: In accordance with Section 91(1) of the Town and Country Planning Act 1990

PLANS

2) The development hereby permitted shall be carried out in accordance with the following approved plans: CM-PA-01 (Site Location Plan), -02 (Proposed Site Block Plan – Roof Plan), -03 (Proposed Mews Plan – Ground Floor) -05 (Existing Showing Demolition), -07 (Proposed Plans Basement and Ground), -08 (Proposed Basement Sections)

Reason: For the avoidance of doubt and in the interests of certainty.

CONSTRUCTION METHOD STATEMENT

3) No development shall take place, including any works of excavation or demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall include provisions for the following:

- i) storage of plant and materials used in constructing the development;
- ii) measures to control the emission of dust and dirt during construction;
- iii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- (vii) delivery and construction working hours;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason: In the interests of the living conditions of neighbouring occupiers and the preservation of heritage assets.

CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- 4) No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP should include details of:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) 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;
 - iii) access arrangements to the site;

- iv) the estimated number and type of vehicles per day and week;
- v) any vehicle holding area;
- vi) the vehicle call up procedure;
- vii) estimates for the number and type of parking suspensions that will be required;
- viii) details of any diversion or other disruption to the public highway during preparation, demolition, excavation and construction work associated with the development;
- ix) work programme and/or timescale for each phase of preparation, excavation and construction work associated with the development;
- x) details of measures to protect pedestrians and other highway users from construction activities on the highway; and
- xi) where works cannot be contained wholly within the site a plan showing the site layout 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.

The development shall be carried out in accordance with the approved Construction Traffic Management Plan at all times. A one-page summary of the requirements of the approved CTMP shall be affixed to the frontage of the site for the duration of the works at a location where it can be read by members of the public.

Reason: In the interests of highway safety and the living conditions of neighbours.

STRUCTURAL MONITORING

- 5) No development shall commence until a scheme for the monitoring and repair of the building and boundary walls, in respect of structural movement, has been submitted to and approved in writing by the local planning authority. This scheme shall include (i) the findings of a pre-commencement condition survey of the building and boundary walls, (ii) details of how the monitoring will be undertaken; (iii) an action plan for contingency measures to be put in place if excessive movements of the house or boundary walls are found to occur (iv) details of monitoring, including method and frequency (v) a timetable of when any repairs due to structural movement will be completed. The development shall be carried out in accordance with the approved scheme.

CONTROL OF STRUCTURAL STABILITY

- 6) No development shall commence until
- (i) a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been appointed to supervise the engineering and construction of the basement, including monitoring the structural stability of the appeal building and adjacent historic walls for the duration of the works, and their appointment has been confirmed in writing to the Local Planning Authority, **and**
 - (ii) the name, and contact details of that person have been confirmed in writing to the Local Planning Authority.

In the event that either the Appointed Engineer or Appointed Supervisor cease to perform that role for whatever reason before the construction works are completed, those works shall cease until a replacement has been appointed to supervise their completion and their appointment confirmed in writing to the Local Planning Authority. At no time shall any construction work take place unless an engineer and supervisor are at that time currently appointed and their appointment has been notified to this Authority in accordance with this condition.

Reason: In the interests of ensuring the stability of the heritage asset.

TREE PROTECTION

7) No development shall commence until the tree protection works for the magnolia tree as described in paragraph 3.2.3 of the submitted "Report on Trees" has been undertaken and installed. The protective fencing shall remain in place for the duration of the development.

Reason: In the interests of the character and appearance of the area and biodiversity.

ARCHAEOLOGY

8) No development shall take place until an archaeological Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include and assessment of significance and research questions and the programme and methodology of site investigation and recording; the programme for post investigation assessment; the provision to be made for analysis of the site investigation and recording; the provision to be made for publication and dissemination of the analysis and records of the site investigation; the provision to be made for archive deposition of the analysis and records of the site investigation; the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation. No development shall take place other than in accordance with the Written Scheme of Investigation.

Reason: In the interests of archaeology as the site is within a local Archaeological Priority Area.

BASEMENT PUMP

9) No development shall commence until full details of the location of a positive pumped device in the proposed basement is submitted to and approved in writing by the local planning authority. The pump shall be installed in accordance with the approved details and retained thereafter.

Reason: In the interests of the living conditions of nearby occupiers.

END