



Appeal Decision

Site visit made on 12 October 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/P5870/C/21/3288782

11 Glenthorne Gardens, Sutton SM3 9NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by GSVL Properties against an enforcement notice issued by the Council of the London Borough of Sutton.
- The enforcement notice was issued on 15 November 2021.
- The breach of planning control as alleged in the notice is the carrying out of engineering operations on the land comprising of the excavation of soil/earth, resulting in a material change in land level and the creation of a subterranean structure.
- The requirements of the notice are:
 - i. Demolish the Subterranean Basement Structure.
 - ii. Remove from the Land all building materials, rubble and equipment arising from compliance with step 5(i) above.
 - iii. Restore the land to the state it was prior to the breach of planning control, by infilling the excavated void, reinstating the previous land levels and re-seeding the land to grass.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (a)

1. The ground of appeal is that planning permission should be granted. The main issues are the effect of the development on the character and appearance of the appeal site and surrounding area and whether the development would be likely to increase flood risk to neighbouring properties.

Character and appearance

2. The appeal site comprises a semi-detached house which has a relatively narrow, long garden to the rear. The eastern boundary of the garden is shared by residential properties along Glenthorne Gardens and to the rear is the boundary with 12 Forest Road. The subterranean structure is located at the far end of the garden from the house and is largely screened from neighbouring properties boundary fencing and mature, overgrown hedges and shrubs.
3. It is my understanding that the structure is approximately 2.3 metres deep. It has an unfinished appearance with blockwork walls. A ground floor building with basement was constructed on the site but the above ground structure has subsequently been removed, leaving the subterranean element in place, which the appellants intend to convert into a swimming pool. Permission has

previously been refused for an outbuilding with basement and the retention of a subterranean outbuilding on the same site. Appeals against both refusals were dismissed at appeal.

4. At present the structure serves no purpose on the land and can neither be described as being ancillary development or incidental to the enjoyment of the dwellinghouse. It was originally constructed as a basement for the outbuilding that has subsequently been demolished and has the appearance of a partly built development. It is a concrete blockwork void space which is partially filled with stagnant water. It does not resemble a garden pond or a swimming pool and although I could not see the base material, it clearly retains water.
5. It is clear to me that the subterranean structure is the remnant of a previously unauthorised development and as such, it demonstrates a clear lack of thoughtful design, failing to take account of the site and its residential surroundings. Consequently, the development is harmful to the character and appearance of the site and its surrounding area. As such it conflicts with Policy 28 of the Sutton Local Plan 2016-2031 (February 2018) (the LP) and the National Planning Policy Framework (the Framework) which, among other objectives, seeks to ensure that new development is attractive, designed to the highest standards and respects local context.

Flood risk

6. There is a failure to provide any ground water or surface water mitigation measures as part of the development which may have resulted in there being an exacerbation in flood risk in the local area. It is my understanding that the Lead Local Flood Authority has assessed the drainage evidence submitted in connection with the previous swimming pool proposal and objected on the basis of there being a lack of information. That remains the case to date and the Framework is quite clear that local planning authorities, when determining any planning application, should ensure that flood risk is not increased elsewhere.
7. Representations from local residents close to the appeal site have provided some evidence that since construction works commenced on the site there has been an increased and material risk in localised flooding to properties to the east of the site fronting onto Glenthorne Gardens. Given the lack of clear evidence which demonstrates that the development will not result in increased surface or groundwater flooding I am concerned that the development does not comply with policy and guidance requirements.
8. Indeed, my own observations on site are that the structure contained a significant amount of water and I am also aware of comments from local residents that there is sometimes standing water in their gardens, that did not exist before the outbuilding was constructed. Whilst comments from local residents are anecdotal, combined with my own observations and the limited evidence presented regarding groundwater depths or infiltration, I am not satisfied that the subterranean structure would not increase the risk of local flooding. I accept that otherwise unacceptable development could be made acceptable through use of conditions, but in this case, I am not satisfied that the risk could be mitigated through planning conditions.

9. Therefore, the development conflicts with Policy 32 of the LP, London Plan Policies SI 12 and SI 13 and the Framework which require developments to not increase flood risk.

The appeal on ground (g)

10. The ground of appeal is that the time given to comply with the requirements is too short. The two months given would be sufficient to demolish the subterranean structure, remove all materials, rubble and equipment and restore the land to its previous state. I understand that the works may require a high number of lorry movements but that does not justify any increase in the time period given. The appeal on ground (g) fails.

Formal Decision

11. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR