



Appeal Decision

Site visit made on 4 October 2022

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Appeal Ref: APP/K5600/D/22/3302060

4 Child's Street, London SW5 9RY

- 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 Dr Helmi Ismail against the decision of the Council for the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/06913, dated 21 October 2021, was refused by notice dated 7 April 2022.
 - The development proposed is described as "Construction of a single storey basement below house and part of rear garden; formation of rear lightwell with walk on rooflight and associated alterations".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am aware that since their decision, the Councils New Local Plan Review (NLPR) has progressed to Regulation 18 as of March 2022. I have little information to suggest when the plan is likely to be adopted, if any policies have been modified, or if there are any unresolved objections. Accordingly, I attribute limited weight to the NLPR.

Main Issues

3. The main issues are the effect of the construction works on structural integrity and highway safety.

Reasons

4. The appeal site is located in Child's Street, a small residential cul-de-sac accessed via the eastern side of Earls Court Road, which has been designated as a red route. The property is a three-storey terrace located in a mixed-use area, with commercial premises fronting Earls Court Road and predominantly residential properties occupying the side streets. The proposal consists of the construction of a single storey basement with a lightwell in the garden to the rear of the property.

Structural integrity

5. The Planning Practice Guidance (PPG) states that the planning system has an important role in considering land stability by minimising the risk and effects of land stability on property, infrastructure and the public and helping ensure that

development does not occur in unstable locations or without appropriate precautions¹.

6. Policy CL7 of the Royal Borough of Kensington and Chelsea Local Plan (KCLP), adopted September 2019, amongst other things, requires basement development to be designed to safeguard the structural stability of the existing building and nearby buildings. The Royal Borough of Kensington and Chelsea: Basements Supplementary Planning Document (SPD) adopted April 2016, amongst other things, seeks further assurance in respect to structural stability through the provision of a construction method statement (CMS) to ensure the construction of basements can be undertaken safely.
7. The appellants have submitted a CMS² detailing the methods and strategy to be employed in the construction of the appeal proposal, although as the Council highlighted this is currently unsigned. The appellant contests that whether the report is signed by a named engineer or not does not dilute the strategy within the CMS. However, the SPD is specific in its requirement that a CMS must be signed by a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct. E.), as the Council relies on the professional integrity of the person signing the CMS to be assured that the conclusion, that the construction of the basement can be undertaken safely and will safeguard the structural stability of the existing building and other nearby buildings, is soundly based.
8. The SPD also highlights that an assessment of predicted ground movements and the damage category for surrounding buildings should be undertaken. The Council contend there is limited information regarding the impact on adjoining properties. The CMS refers to construction methods reducing the amount of ground movement to minimise the effect on adjacent structures, and whilst confirming that regular reviews will be undertaken by an experienced contractor, there is no explicit conclusion or assurance that there would be no movement outside the "green" 0mm – 5mm levels. As such, I have adopted a precautionary approach. Given that the CMS remains unsigned, the evidence supplied to me does not provide adequate assurance that the construction of the basement can be undertaken safely, and I am not satisfied that it will safeguard the structural stability of the existing building and other nearby buildings in accordance with the adopted SPD.
9. The appellant further considers that a condition could be applied to any permission requiring either compliance with the submitted CMS or the submission of an alternative CMS prior to work commencing. The appellant also draws my attention to a previous Inspectors decision at the site³, who was satisfied that a comprehensive CMS and the professional supervision at the site could be secured by condition. Whilst I appreciate that an engineering solution may be possible, in the absence of a signed CMS by a qualified engineer, and the lack of any further independent investigation, I am not satisfied that the structural stability has been safeguarded. The lack of certainty in this context leads me to conclude that it would be inappropriate for this issue to be dealt with by condition.

¹ Land Stability - Paragraph: 001 Reference ID: 45-001-20190722

² Knapp, Hicks and Partners Ltd Constructing Structural, Civil & Geotechnical Engineers dated May 2019 (Ref: 34706/X/002/SH/LW)

³ Appeal Decision APP/K5600/D/20/3252281

10. As such, I conclude that the development would not accord with KCLP Policy CL7(m) and the aims and objectives of the SPD, which amongst other things, seeks to ensure that development would result in the structural integrity of the host building, nearby buildings and infrastructure being maintained. The appeal proposal would also fail to comply with Paragraph 183 of the National Planning Policy Framework 2021 (the Framework) which requires adequate site investigation to inform decision making.

Highway Safety

11. KCLP Policy CL7(k) states basement development must ensure that traffic and construction activity do not cause unacceptable harm to pedestrians, cycle vehicular and road safety, or adversely affect bus or other transport operations. It should also not place unreasonable inconvenience on those living, working or visiting the area.
12. The appellants have submitted a Construction Transport Management Plan (CTMP) indicating that no construction vehicles would enter Child's Street, and would instead utilise an existing loading bay nearby on Earls Court Road. This arrangement would be similar to a previous construction scheme⁴ that has taken place successfully at the appeal site, although it is acknowledged that these works did not incorporate the volumes of spoil material associated with subterranean developments.
13. The CTMP highlights that all the transport arrangements for the construction of the appeal scheme, including spoil removal and material deliveries could be undertaken without the need to suspend the loading bays, nor breach the 20-minute loading restriction applied to the existing service and delivery bays on Earls Court Road. This would ensure minimal disruption and inconvenience to those living, working and visiting nearby.
14. From the evidence before me, it is likely that a condition could be applied, had the scheme otherwise been found acceptable, that would meet the tests set out at paragraph 56 of the Framework, to ensure that the construction of the appeal scheme could be undertaken without harmful disruption to the users of the highway and footpaths, including residents and nearby businesses on Earls Court Road. Furthermore, any violations to the 20-minute loading restrictions in the existing parking bays, would be controlled through parking enforcement.
15. Therefore, I conclude the construction activity associated with the appeal scheme would not cause unacceptable harm to pedestrian, cycle, vehicular and road safety nor place unreasonable inconvenience on those living, working and visiting nearby. In these regards, it would comply with KCLP Policy CL7(k). I do not find conflict with KCLP Policy CL1 which focuses principally upon context and character ensuring the delivery of design quality. The content of this policy is largely irrelevant to the issues of highway safety associated with the construction works at the appeal site I have identified.

Other Matters

16. I have had regard to the previous appeal decision⁵ at the appeal site. Whilst the main issue is similar, nevertheless I have determined this appeal on its own merits and based on all the evidence before me.

⁴ Kensington & Chelsea Planning Ref: PP/17/07019

⁵ Appeal Decision APP/K5600/D/20/3252281

Conclusion

17. For the above reasons, having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR