

Appeal Decision

Site visit undertaken on 6 October 2022

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision Date: 29th November 2022

Appeal Ref: APP/X5990/D/22/3300719

66 Marlborough Place, London NW8 0PL

- 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 Ilya Belyaev against the decision of the City of Westminster.
 - The application, ref. 21/04546/FULL, dated 6 July 2021, was refused by notice dated 6 May 2022.
 - The development proposed is described as the creation of single storey basement extension, new mansard roof to create second floor accommodation, single storey side extension, rear bay extension at ground floor, changes to fenestration, installation of rooflights, alterations to front boundary treatment, associated landscaping, plant and cycle storage.
-

Decision

1. The appeal is dismissed insofar as it relates to the proposed mansard roof to create second floor accommodation.
2. The appeal is allowed insofar as it relates to the proposed single storey basement extension; single storey side extension; rear bay extension at ground floor; changes to fenestration; installation of rooflights; alterations to front boundary treatment; associated landscaping and plant and cycle storage at 66 Marlborough Place, London NW8 0PL in accordance with the terms of the application, Ref 21/04546/FULL, dated 6 July 2021, in so far as relevant to that part of the development hereby permitted and subject to the conditions as stated in the annex to this letter.

Preliminary Matters

3. The appellant in their Statement of Case (SoC) has submitted an updated Technical Note: Flood Risk Assessment¹ which did not form part of the original planning application and has sought that I consider it as part of this appeal. Given that this amended report does not change the scheme and gives further explanation to the matters of the appeal, in accordance with the 'Wheatcroft Principles',² the acceptance of this updated document would not deprive those who should have been consulted on the changed

¹ By Herrington Consulting Limited, Project 3501, Dated 01 June 2022

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

development of the opportunity of such consultation. As such, I will base my decision upon this new information.

4. The application form contains a number of elements that require planning consent. The reasons for refusal are only concerned with two elements, namely the excavation of a basement, and the installation of a mansard roof extension. I have no reason to revisit the remaining elements that the Council has considered are appropriate with the development plan and the duty under S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA), and therefore this letter will only address the elements in dispute.

Main issue

5. Taking the above into account, the main issues are:
 - The effect of the proposed mansard roof extension upon the character and appearance of the host building and the greater locality, with special regard given to the character and appearance of the St. John's Wood Conservation Area (CA); and
 - Whether sufficient information has been submitted to demonstrate that the basement extension is made in accordance with the development plan policies.

Reasons

Character and Appearance

6. Section 72(1) of the PLBCA, in respect of development affecting CAs, states that special attention shall be paid to the desirability of preserving or enhancing the character and/or appearance of the area.
7. In undertaking development, the Westminster City Plan 2019-2040 (CP) Policies 38 and 40 sets a number of design principles for achieving good design, such as responding to the context, people-centred design, sustainable design and achieving excellence in contemporary design, amongst others. CP Policy 39 relates to the considerations around heritage assets, such as seeking that development preserves and enhances CA's, amongst others.
8. The appeal site is located along Marlborough Place which is located within the St. John's Wood CA. The CA's significance is highlighted in the St John's Wood CA Audit 2008, where relevant components of the significance in relation to the appeal site relate to the development of formally laid out speculative housing development of higher status 'gentlemen's villas' and mansion blocks constructed in the eighteenth and nineteenth centuries. The majority of dwellings within the CA including the appeal site are buildings of townscape merit and consist of semi-detached and detached buildings, where there is a hierarchy in built form and plot sizes with streets such as Avenue Road and Marlborough Place having very large villas, whilst roads such as Springfield Road and Clifton Road East, have high status buildings, but on a smaller scale. Along this section of Marlborough Place and The Lane appear to have been infill developments constructed in the early twentieth

century but taking on a mock Georgian style with parapet and shallow roof behind.

9. Whilst there is a variance in design, dwellings fronting Marlborough Place have an architectural authenticity and integrity that responds to their original designs. Elements such as the use of traditional materials such as timber, brick and slate along with large chimney stacks, stone surrounds, quoins and rustication of ground floor levels creates a status in the form of the dwellings and creates local positive characteristics and distinctiveness to the locality. The collections of buildings creates a picturesque townscape along with vegetated front gardens with boundary walls that have large trees which give a spacious, leafy and distinctive character. To the rear the leafy character continues with well vegetated rear gardens, the tops of vegetation which can be experienced through gaps and spaces in and around dwellings. Along the street are street lighting which provides low levels of illumination to the street, however not to a high level with a low traffic flow and a tranquil experience.
10. The appeal site displays a number of positive qualities of significance to the CA, being a high quality detached building which is noted in the CA as a building of Townscape Merit and a positive element which contributes to the significance of the CA. The dwelling appears to date from the early to mid-twentieth century, is of brick construction, two storeys with a shallow pitched hipped roof behind a parapet. The building also has chimney stacks to either side and a later two storey side extension that is set back from the front façade.
11. The CA Audit describes a number of problematic components of the CA that have caused harm to its significance. Notable elements have included loss of architectural details, such as the loss of chimneys, as well as past extensions which have been 'badly handled' and where there is an emphasis on appropriate scale, detail, character, and proportion which are essential to producing a harmonious result for the CA.
12. Given the need to have an internal height for persons in the proposed mansard level, this results in a relatively tall roof form with large flat section which is very evident in the elevations. The elongated roof form does add an unnecessary level of visual bulk that instead of appearing subservient would have a domineering presence to the existing building which has an elevated status within the street scene. The mansard roof form itself is architecturally inauthentic to this particular dwelling which is attempting to emulate a Georgian style dwelling, with the extension lacking the integrity of this particular form of design, and demonstrating a poor scale, proportion, and detailing which would not present as an appropriate installation on this particular building. Additionally, the loss of the proposed chimney stack, a development which is specifically noted as a negative element of the CA Audit along with poor extensions further accentuates the inappropriateness of this proposed scheme.
13. I note comments with regards to similar mansard type extensions that have been approved, particularly those along The Lane which appear to be dwellings of a similar date and style to the appeal site and where a mansard roof extension was approved in 2015. Whilst I have not been presented with

any details of the decision, and only a small paragraph extracted from the Officer's Report, the assessment would appear to have only been made from a visual perspective, without consideration to the architectural authenticity or integrity and significance of the existing building and the greater relationship to the significance of the CA. Guidance and policy relating to the historic environment has changed considerably since 2015, with more emphasis being provided to both tangible and intangible aspects, as it appears that the assessment of No.4 The Lane the visual aspects were a key part of the assessment. Having viewed No.4 The Lane, the mansard extension is very poorly related to the existing building and has removed a great deal of the building's authenticity and integrity and could not be seen as a positive element to the CA. Whilst the Council admittedly state that there are 'badly handled' extensions within the CA, this would not provide sufficient justification to enable further poor examples of roof extensions, which detrimentally affect the character and appearance of the CA, to be approved.

14. I also note commentary with regards to the Government's intentions and newly enacted permitted development rights that enable homeowners to extend their properties an additional level. Whilst this may be the case, these permitted development rights do not apply to buildings within CA's and is therefore not relevant or a material consideration to the consideration of this proposal.
15. Taking the above into account, the proposal would therefore lack architectural authenticity or integrity, and be a disproportionate addition that would cause detriment to the significance of the existing building and cause detriment to the significance of the CA. As such this proposal would be contrary to CP Policies 38, 39, and 40 as described previously, and cause less than substantial harm to the significance of the CA within the meaning of the term in paragraph 202 of the Framework. Paragraph 200 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset requires clear and convincing justification. Paragraph 202 of the Framework requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal. Additionally, Paragraph 203 of the Framework seeks that for locally designated heritage assets, that applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
16. The applicant has not outlined any public benefits of the scheme. However, the benefits of the scheme would deliver larger residential accommodation for the existing dwelling, as well as result in short term employment opportunities in the construction of the extension both of which are important planning policy objectives. However, these benefits may also be present in a more appropriately designed scheme. That said, these benefits would not justify the harm I have identified.
17. I therefore find that the public benefits would not outweigh the harm caused to the significance of the CA. The scheme therefore conflicts with the Framework, which directs, at paragraph 199, 'that great weight should be given to the asset's conservation ... irrespective of whether any potential

harm amounts to substantial harm, total loss or less than substantial harm to their significance'. Additionally, a balanced judgement has been applied in accordance with Paragraph 203 of the Framework in which the harm to the local designated heritage asset has not been outweighed by the benefits provided by the proposed scheme.

18. In conclusion on this matter, I consider the proposed development would cause less than substantial harm to the significance of the CA and to the undesignated heritage asset. It has not been shown that public benefits would outweigh this harm and so the proposal would conflict with the development plan.

Basement Excavation

19. The outstanding concern with regards to the basement is that during the application there was insufficient site-specific information to assess the impact caused by surface water flooding and any resultant mitigation measures that may be required. The amended Technical Note illustrates that surface water flooding is low risk from all sources. In the case of an extreme rainfall event, the basement is at risk of accumulation of water around the lightwells to the basement. The report recommends that any doors leading to lightwells include a minimum threshold of 150mm to prevent surface water from entering the basement and a sump and pump device installed to assist with the draining and discharge of water. The appellant in their SoC seeks to implement the measures suggested by the Technical Note, and have suggested that a pre-commencement condition could be applied in order to overcome the reason for refusal.
20. I agree that this is a suitable approach, with the Technical Note providing additional detail, which will need to be approved via detailed plans illustrating the suggestions and methodology to be approved by the Council. Taking this into account, I am satisfied that the additional information and a pre-commencement condition would be necessary in order to ensure that the proposal would be compliant with CP Policy 45 which seeks that basements are constructed so that they incorporate floor risk assessments and address surface and sewerage flooding; and CP Policy 35 which seeks that developments are safe over their lifetime from the risk of flooding.

Other Matters

21. I note comments from interested parties that have concerns with regards to a construction management plan; cumulative assessment of hydrology and construction management with 4 The Lane; living conditions by reasons of overlooking and outlook; lack of sunlight/daylight report; and noise pollution from plant room. The Council have already assessed these elements as part of the Officer Report, such as flooding, impacts towards living conditions and have found them to be acceptable. Additionally, I note comments from the appellant who has addressed issues such as the plant rooms being suitably located subject to conditions involving noise attenuation and that the appellant's agree with conditions regarding complying with the Construction code of Practice. Taking this into account, I am satisfied that these matters have been resolved.

Conclusion and Conditions

22. For the reasons given above, I conclude that the appeal should succeed in relation to the single storey basement extension; single storey side extension; rear bay extension at ground floor; changes to fenestration; installation of rooflights; alterations to front boundary treatment; associated landscaping and plant and cycle storage. However, in relation to the mansard roof extension, the appeal should be dismissed.
23. The Council in their questionnaire suggest that standard conditions of the 3 year time limit, approved plans and matching materials conditions should be placed which is appropriate and necessary in the interests of proper planning and the avoidance of doubt. The Appellant in their SoC has agreed to the placement of a pre-commencement condition detailing approval of details for flood measures to be implemented which is considered necessary as a pre-commencement condition to address the risks of flooding. The Appellant has also agreed to conditions regarding noise attenuation and approval of details ensuring they commit to the code of construction practice in order to avoid any potential impacts towards living conditions.

J Somers

INSPECTOR

ANNEX: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three [3] years from the date of this decision.
- 2) The proposed single storey basement extension; single storey side extension; rear bay extension at ground floor; changes to fenestration; installation of rooflights; alterations to front boundary treatment; associated landscaping and plant and cycle storage shall be constructed in accordance with the following approved plans/documents:
 - 'Proposed Ground Floor,' Drawing No. 66MP(20)A02, Rev A, Dated 07.21
 - 'Proposed Landscape Plan,' Drawing No. 66MP(20)A06, Dated 07.21;
 - 'Proposed Basement Areas,' Drawing No. 66MP(20)A06.1, Dated 07.21;
 - 'Proposed Front Elevation,' Drawing No. 66MP(20)A07, Rev B, Dated 07.21;
 - 'Proposed Rear Elevation,' Drawing No. 66MP(20)A08, Rev A , Dated 07.21;
 - 'Proposed Side Elevation,' Drawing No. 66MP(20)A09, Rev A, Dated 07.21;
 - 'Proposed Side Elevation,' Drawing No. 66MP(20)A10, Rev A, Dated 07.21;
 - 'Proposed Street Elevation,' Drawing No. 66MP(20)A11, Rev C, Dated 07.21;
 - 'Proposed Section AA,' Drawing No. 66MP(20)A12, Rev A, Dated 07.21;
 - 'Proposed Section CC,' Drawing No. 66MP(20)A13, Rev B, Dated 07.21;
 - Arboricultural Assessment & Method Statement, by Barrell Tree Consultancy, Ref: 21099-AA-DC, Dated 30th June 2021;
 - Structural Methodology Statement, By Rodrigues Associates, Dated June 2021, Job No. 2095
 - Technical Note: Flood Risk Assessment, By Herrington Consulting Limited, Project 3501, Dated 01 June 2022
- 3) Notwithstanding the approved plans and prior to the commencement of the proposed development, plans showing full details of the recommendations made in the approved Technical Note, Flood Risk Assessment, or any further suggestions by the Council shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and retained in perpetuity, unless further consent from a subsequent application is given by the Local Planning Authority.
- 4) Prior to the commencement of any demolition, earthworks/piling, and/or construction on site you must apply to us for our written approval of

evidence to demonstrate that any implementation of the scheme hereby approved, by the applicant or any other party, will be bound by the council's Code of Construction Practice. Such evidence must take the form of the relevant completed Appendix A checklist from the Code of Construction Practice, signed by the applicant and approved by the Council's Environmental Sciences Team, which constitutes an agreement to comply with the Code of Construction Practice and requirements contained therein. Commencement of the relevant stage of demolition, earthworks/piling or construction cannot take place until the City Council as local planning authority has issued its written approval through submission of details prior to each stage of commencement.

- 5) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.2m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 6) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant including a proposed fixed noise level for written approval by the City Council. Your submission of a noise report must include:
 - (a) A schedule of all plant and equipment that formed part of this application;
 - (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
 - (c) Manufacturer specifications of sound emissions in octave or third octave detail;
 - (d) The location of most affected noise sensitive receptor location and the most affected window of it;
 - (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
 - (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
 - (g) The lowest existing LA90 (15 minutes) measurement recorded under (f) above;
 - (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;

- (i) The proposed maximum noise level to be emitted by the plant and equipment.