



Appeal Decision

Site visit made on 9 May 2023

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023.

Appeal Ref: APP/K5600/D/23/3318430

14 Douro Place, Kensington and Chelsea, London, W8 5PH

- 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 Serge Mouracade against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/22/07547 dated 8 December 2022, was refused by notice dated 14 February 2023.
 - The development proposed is basement with swimming pool under the footprint of the house and less than 50% of the front and rear gardens with associated lightwells.
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Decision

1. The appeal is allowed and planning permission is granted for basement with swimming pool under the footprint of the house and less than 50% of the front and rear gardens with associated lightwells at 14 Douro Place, Kensington and Chelsea, London, W8 5PH in accordance with the terms of the application ref: PP/22/07547 dated 8 December 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission;
 - 2) The development shall not be carried out except in complete accordance with the details shown on submitted plans Location Plan (No. 361-900 Rev D); Proposed BF & GF Plans (No. 361-920 Rev D); Proposed Front and Rear Elevations (No. 361-921 Rev B); Proposed Section A-A (No. 361-923 Rev C);
 - 3) All work and work of making good shall be finished to match the existing exterior of the building(s) in respect of materials, colour, texture, profile and, in the case of brickwork, face bond and pointing, and shall be so maintained;
 - 4) No development shall commence until: A) An Appendix A Checklist and Site Construction Management Plan (SCMP) for the development have both been submitted to, and approved in writing, by the Council's Construction Management Team, and then B) Copies of the approved Checklist and Plan, and their written approval, have been submitted to the local planning authority to be placed on the property record.

The development shall be carried out in accordance with the Appendix A Checklist and SCMP so approved, or in accordance with a subsequent Checklist or SCMP as may be approved under this condition;

- 5) No development shall commence until a final Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The statement should include:
- a) 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;
 - b) access arrangements to the site;
 - c) the estimated number and type of vehicles per day/week;
 - d) details of any vehicle holding area;
 - e) details of the vehicle call up procedure;
 - f) estimates for the number and type of parking suspensions that will be required;
 - g) details of any diversion or other disruption to the public highway during preparation, demolition, excavation and construction work associated with the development;
 - h) work programme and/or timescale for each phase of preparation, demolition, excavation and construction work associated with the development;
 - i) details of measures to protect pedestrians and other highway users from construction activities on the highway; and
 - j) where works cannot be contained wholly within the site a plan should be submitted 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. 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.

- 6) The development hereby approved, shall be carried out in accordance with the details contained in the letter prepared by A. Harrison MEng, CEng, FICE of Constructure Ltd dated (21.09.20).

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 Chartered Engineer of the afore-described qualification or replacement supervisor 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;

- 7) No development shall commence until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works forming the subject of this permission;
- 8) A. No development shall commence (other than demolition above ground level) until an appropriate ground gas and vapour investigation (GVI) [incorporating the results of environmental and historical searches] is undertaken and a GVI report [where necessary incorporating a Remediation Strategy (RS)], is submitted to, and approved in writing by, the local planning authority.

B. No occupation or use of the development shall commence until the approved RS is implemented and a Verification Report (VR) is submitted to, and approved in writing by, the local planning authority. Where physical remedial measures are implemented to protect end-users of the development they shall be maintained. The GVI, GVI Report, RS, VR and any unexpected contamination identified during the GVI and development shall be addressed in line with the Council's contaminated land guidance for small-scale ground gas and vapour protection.
- 9) The development hereby permitted shall not be occupied until a suitable pump device is installed;
- 10) No development shall commence until a scheme of landscaping, to include all existing trees and shrubs and proposed trees shrubs and paths and their surfacing materials, has been submitted to and approved in writing by the local planning authority, and the development shall only be carried out and maintained in accordance with the details so approved;
- 11) The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment (FRA) prepared by LBHGEO (ref. LBH4675FRA) dated December 2022 and the Sustainable Urban Drainage Systems Strategy (SuDS) prepared by LBHGEO (ref. LBH4675suds) dated December 2022.

During construction of the development hereby permitted the approved Sustainable Drainage System (SuDS) and Flood Risk measures shall be fully implemented and maintained thereafter;
- 12) The existing trees on the site and adjacent land are to be protected during site preparation, demolition, construction, landscaping, and other operations on the site including erection of hoardings, site cabins, or other temporary structures, as outlined within the submitted SJA Arboricultural Method Statement and Tree Protection Plan dated December 2022 and the development shall be carried out only in accordance with measures and precautions detailed within.

Main Issues

2. The main issues are the impact of the proposal upon i) the appearance and amenity of the area with regard to loss of trees and ii) flood risk.

Reasons

Appearance and amenity of the area with regard to loss of trees

3. The appeal site is a four storey, mid terraced, dwelling which is located on Douro Place. The appeal site is identified within the De Vere Conservation Area Appraisal as a positive building which makes a positive contribution to the Conservation Area in terms of character and appearance. The site is within the Kensington Critical Drainage Area, within Flood Zone 1 and forms a pairing with number 13 Douro Place. The proposal is for the excavation of a basement with a swimming pool under the footprint of the house. The basement would be less than 50% of the front and rear gardens with associated roof lights.
4. As part of the proposal, there is a requirement to remove a Birch Tree and a Bay Tree within the rear garden (category C trees). The appellant has submitted an Arboricultural Impact Assessment (AIA) as well as a Tree Protection Plan (TPP). The Council's Arboricultural Officer, in their response dated 20 December 2022, confirms that the removal of the Bay Tree, at the rear and a small group of shrubs at the front (latter now noted to not require removal), would have little or no impact. I note that this consultation response does not specifically reference the other tree to be removed but from my site visit, I would consider the Birch tree in question to be of very low merit and that its removal would have little or no impact upon amenity or appearance.
5. The Council's Arboricultural Officer confirms that provided the measures and precautions detailed in the AIA and TPP are implemented, none of the retained trees should be harmed and raises no objection. Compliance with these documents can be secured by condition and based upon the evidence before me, and my site visit, I find no reason to conclude differently on these matters. The proposal does not result in any mature, veteran, or ancient trees, Category A or B trees and no trees of high landscape or biodiversity value being removed. The trees are, therefore, of limited amenity value and the retained trees will be adequately protected throughout the course of the development. There will be no damage to the amenity value of the site or the surrounding area. It therefore follows that I do not find that the trees are of amenity value or that their loss would be harmful to the appearance and the amenity of area.
6. I note objections to the proposal which specifically raise the removal of the trees in question. As previously stated, the appellant has submitted an AIA as well as a TPP. Compliance with these documents can be secured by condition and none of the retained trees would be harmed. I also note, from my site visit (where I also viewed the garden and surroundings from a top floor, rear window), as well as within evidence from the appellant, that there are a number of other trees which are being retained which will adequately protect general views from Atlantic House to the rear. In addition, a condition requiring details of landscaping to be submitted for approval to the Council could be applied to any permission granted.
7. The proposal would be consistent with the Royal Borough of Kensington and Kensington and Chelsea Local Plan 2019 (LP) Policy CR6, which seeks to resist the loss of trees unless the tree has little or no amenity value, seeks to resist development which results in the damage or loss of trees of townscape or amenity value and requires that trees are adequately protected throughout the course of development. The proposal would also be consistent with LP Policy

CL7 which requires all basement development to not cause loss, damage, or long-term threat to trees of townscape or amenity value.

Flood risk

8. The site, as previously stated, lies within Flood Zone 1, and is not considered to be at risk of flooding from the river Thames. The site is, however, within the Kensington Critical Drainage area, which means it is potentially prone to flooding from the sewer network and from surface water overland flow. The site is also shown to be susceptible to ground water flooding from the Taplow Gravel deposits of the upper aquifer.
9. As a result of these site constraints, the appellant, at application stage, has submitted several reports including a flood risk assessment, surface water drainage assessment, hydro-geological assessment, geo-technical assessment, and a geo-technical ground investigation report. The combination of these reports both recommend mitigation measures to address the risk of surface water and sewer flooding as well as demonstrating that there would be no harmful rise in ground water levels as a result of the development (including when taking into account the cumulative impact of other basements in the area).
10. The Principal Flood and Water Management Officer, in a response dated 12 January 2023, has reviewed the documents outlined above and has confirmed no objections to the proposals based upon this information. It was concluded that no further information regarding surface water management was required to be submitted, but it was noted that the proposed surface water drainage scheme should be implemented and maintained over the lifetime of the development and that the basement should be protected from sewer flooding through the installation of a suitable pump device. Compliance with such reports and requirement for a pump could be secured by condition.
11. Based upon evidence before me, the proposal demonstrates that flood risk would be adequately reduced in a sustainable manner consistent with LP Policy CL7, which requires that all basement development be protected from sewer flooding through the installation of a suitable pump device and include a sustainable drainage system to be retained thereafter. The proposal would also be consistent with LP Policy CE2, which requires developments to address and reduce flood risk and its impacts.
12. I note that there are a number of objections relating to flood risk. As outlined above, the Principal Flood and Water Management Officer reviewed the detailed material submitted, prepared by qualified consultants, and confirmed that sufficient mitigation measures have been proposed with no objection to the proposal. Whilst concerns are noted, I am of the opinion that the appellant has submitted a number of detailed assessments to appropriately consider flood risk and drainage as a result of the development which is the subject of this appeal. The information provided is both appropriate and proportionate to the proposals that are before me.

Other Matters

13. Comments from third parties have been made that a swimming pool is not a priority nor an appropriate form of development, however, the Council confirm that the proposed basement is compliant with the relevant policies in principle

within the LP. I have no evidence to conclude differently. The proposal would not result in over-development of the site, fear of a precedent is not a sufficient reason for refusal. Each case should be considered on its own merits.

14. In relation to the character of the building the basement would be fully subterranean only external features, such as the two roof lights being to the rear of the site. The rooflights would be flush with the ground and would be in close proximity to the host building within a residential, domesticated, garden which means visibility would be restricted to within the appeal site itself. I do not have any reason to refuse the proposal based upon the size of the rooflights being too large.
15. The basement would be excavated under the footprint of the property and would not encroach onto the adjoining properties, so I have no evidence before me to suggest that incorrect certificates have been served. Any matters relating to neighbouring property would fall under the Party Wall Act and are outside the scope of this appeal. Matters relating to insurance, structural stability or similar are private property matters which are outside the scope of this appeal.
16. The application is supported by a Construction Method Statement which demonstrates that the structural safety of the building and neighbouring properties will be protected. It also includes provision for a suitably qualified individual to be appointed to supervise the works. No acoustic report is required as the sump pump would be internal, and the Council only require acoustic reports where external plant is proposed. Noise, dust, and vibration mitigation measures are contained with the Construction Method Statement and can be secured by condition.
17. Overall, I have taken into account the objections which were received during the application period, but I find that the proposal is acceptable in principle and the appellant has evidenced, through several reports, that matters relating to flood risk and trees of amenity value have been adequately addressed.

Conditions

18. The Council have recommended a number of conditions within their report to committee which I have considered and applied. Where conditions are applied with timings as pre-commencement this is necessary to ensure sufficient detail is secured prior to development due to matters requiring early engagement and final details pre- construction. A time condition is attached to comply with section 51 of the Planning and Compulsory Purchase Act 2004. A condition requiring the development to be in accordance with the approved plans is required to control and define the development which is granted consent. A condition requiring all work and work of making good to be finished to match the existing exterior of the building is required to preserve the appearance of the building and the character of the area as a result of the development.
19. A condition regarding code of construction practice is required to mitigate the impact of construction work upon the levels of amenity for neighbouring occupiers as is a condition regarding a construction traffic management plan. The latter also seeks to ensure acceptable impact upon highway safety. A condition requiring professional management of engineering works is required to safeguard the amenity of neighbouring residential properties as is compliance with the considerate constructor's scheme.

20. A condition relating to small scale ground gas and vapour is required to ensure any risks from ground gas and vapours and other contamination are minimised. A condition requiring a suitable pump device is required to prevent sewer flooding whilst a condition relating to flood risk assessment and sustainable drainage systems strategy is required to reduce flood risk. Conditions relating to trees, landscaping and protection of trees during construction are required to protect the appearance and amenity of the area and ensure that trees are adequately protected to safeguard their contribution to the appearance and amenity of the area.

Conclusion

21. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Randle

INSPECTOR