



Appeal Decision

Site visit made on 15 November 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Appeal Ref: APP/V5570/C/22/3303646

Land at Ground and Basement, 75 St John's Way, London N19 3QU

- 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 Mr Cory Cruser against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice, numbered ENF/2021/217, was issued on 10 June 2022.
 - The breach of planning control as alleged in the notice is Unauthorised excavation of front lightwell.
 - The requirements of the notice are Cover up the front lightwell with paving slabs.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended ('the Act').
-

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the excavation of front lightwell at Land at Ground and Basement, 75 St John's Way, London N19 3QU as shown on the plan attached to the notice.

Procedural Matter

2. Given the alleged breach of planning control and the evidence before me, I undertook my site visit on an Access Required basis. In this, the occupant of the flat allowed me to view the lightwell from the front garden. I did not enter the building, nor did I discuss the case with anyone at my site visit.
3. The 'Islington Local Plan Strategic Development Management Policies', September 2023, ('DMP') was published between the date of the appeal being lodged and my site visit. I asked the Council to provide copies of the relevant policies from the DMP and any comments it wished to make in their regard. The Council responded, though it did not, as requested, copy the Appellant in. It informed me that Policies DM2.1 and DM2.3 of Islington's Local Plan: June 2013 Development Management Policies were no longer relevant. They were superseded by DMP Policies PLAN 1, DH1 and DH2. I used these and the comments received from the Council in my decision. Given my decision, it was unnecessary to seek the Appellant's views on the policies.

Reasons

4. An appeal made under Ground (a) is that planning permission should be granted for the development referred to in the Notice.
5. The main issue is the effect of the lightwell on the character and appearance of the host building and the Whitehall Park Conservation Area (WPCA) in which it lies.
6. 75 St John's Way is a three-storey, mid-terraced property of a classical Victorian design. The front elevations of properties in the terrace have a pleasing symmetry. Their front elevations have a door set to one side, a ground floor bay window and pairs of windows on the floors above. They are of a buff coloured brick with decorative red brick trim around their windows and doors and have decorative parapet walls that screen their roofs. No 75 has been divided into two flats. One of these ('the flat') is set over two floors, the ground floor and a later basement addition.
7. Properties in the terrace are set back from the road behind modest front gardens. Low brick walls front onto the footway, and that at No 75 has a metal fence on top. Immediately behind this is an evergreen hedge. As a result of the hedging, public views into the garden, and to the ground floor of the property, are only gained from the front gate.
8. A tiled path runs up one side of the garden, leading from the gate to the property's front door. Beyond the evergreen hedge just behind the property's low front wall the garden has largely been paved. Here, I saw that refuse and recycling bins and a bicycle stand are kept. Between this paved area and the building is the lightwell. This follows the outline of the ground floor bay window which it abuts, and is covered in a metal grill. There is a further evergreen hedge around the lightwell.
9. The WPCA is a designated heritage asset. The terrace lies at the south-eastern extremity of the WPCA, which is overwhelmingly residential with terraces and larger villas of varying styles and qualities.
10. Decision-makers have a statutory duty, set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving and enhancing the character and appearance of conservation areas.
11. Policy HC1 of The London Plan 2021, ('LP') sets out that, both individually and cumulatively, development proposals affecting heritage assets and their settings should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. The aims of Policies CS 8 and 9 of Islington's Core Strategy, February 2011, ('CS') are to ensure that developments are of a quality of design that the areas in which they are located are protected and enhanced. These policies are reflected in policies in the DMP. Its Policy PLAN 1 requires all developments to be of a high quality and make a positive contribution to local character; whilst amongst the terms of its Policy DH1 is the aim to conserve the Borough's heritage assets and Policy DH2 requires developments to be of a high quality and conserve and enhance conservation areas in which they are sited.
12. Local planning guidance on the provision of lightwells at properties in the Borough are set out in 'Basement Development' Supplementary Planning

Document, January 2016 ('SPD') and 'Urban Design Guide' Supplementary Planning Document, January 2017 ('UDG').

13. The essence of their advice, set out in Paragraph 7.3.3 of the SPD and paragraph 5.164 of the UDG, is that lightwells should: integrate sympathetically with the host building; retain the majority of a garden where that garden is characteristic of a terrace; and be designed to complement the street scene.
14. I was also provided with a copy of 'Islington's Conservation Area Guidelines: A supplement to the UDP' Revised Version January 2002. This gives a description of the character and appearance of the WPCA. It mentions many of its streets, but not St John's Way, and makes no reference to basement extensions nor lightwells.
15. Whilst they appeared to be of a uniform shape and size, the manner in which the front gardens of properties in the terrace were 'finished' varied considerably. Some were well-kept, others not so; some had small trees and there were varying amounts of vegetation and hard surfacing throughout. Although the UDG points out that lightwells are likely to be most discreet to the rear of a property, it does not rule out their siting in a front garden.
16. As it stands, the lightwell is barely seen from the footway on St John's Way. Indeed, it is very difficult to see it from within the front garden even from very close-by. It would be seen if the evergreen hedges were removed, but it would be viewed as a feature of little consequence. Notwithstanding this, the guidance does not rule out a lightwell that might be seen from the public highway.
17. I did not see another lightwell in the terrace, and my attention has not been drawn to any. However, even were the evergreen planting to be removed, the rooflight would not dominate the front garden. I note that the Inspector in an earlier appeal¹ for the change of use from single dwelling to two self-contained flats comprising one 3 bedroom, 5 person unit and one 2 bedroom, 3 person unit and provision of front elevation light well, approximated that the lightwell took up 50% of the front garden. I cannot be sure if there have been changes to the lightwell since their visit in 2020, but the lightwell which I saw took up far less than 50% of the front garden. The Appellant provided a copy of Drawing No. SJW.02.02D entitled 'Proposed floor plans and elevations' for the property. This appears to give an accurate representation of the area taken up by the lightwell.
18. The form and location of the lightwell flush to the wall and bay window accords with the recommended approach in Figure 7 of the SPD. Though the lightwell would allow very limited views to the basement storey, I do not consider this to be "extending the existing façade". Though it is difficult to see in Figure 7, due to the grill above the lightwell, it appears that the line of the basement in that photograph follows the line of the bay window above, as is the case with the proposal before me. To my mind, what is proposed accords with what is shown in Figure 7.
19. The lightwell respects the character and appearance of the host property. It is a sympathetic addition that retains the majority of the front garden and does

¹ APP/V5570/W/20/3259527

not dominate it. Whilst this is a new feature in the streetscape of the terrace, its size and siting are such that it does not disrupt the visual uniformity or cohesiveness of the terrace. It represents high quality design that makes a positive contribution to the host building. It is a small feature that has an effect limited to its immediate environs, which it respects and, consequently, it preserves the character and appearance of the WPCA as a whole.

20. For the above reasons, it accords with the statutory test, guidance in the National Planning Framework, LP Policy HC1, CS Policies CS 8 and CS9, DMP Policies PLAN 1, DH1 and DH2, and the terms of the SDP and UDG.

Other Matters

21. A third party has commented that the construction of the lightwell and basement was undertaken without prior planning permission and continued after planning permission was refused. Further, he says, the basement construction was only allowed on the basis that no lightwell would be put in place. He says that its construction caused damage.
22. The Act allows for applications to be made for developments after they have been carried out. Where, taking into account planning policies and material considerations, a development is acceptable, planning permission can be granted after the event. If the development has caused structural damage to neighbouring properties, this is not a planning matter and thus is not for me to comment on.

Conditions

23. The Council did not provide a list of conditions with its Questionnaire submissions. However, as the development that has taken place is appropriate and in line with planning policy, I need not attach any conditions to the grant of planning permission.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on Ground (a). I shall grant planning permission for the excavation of lightwell as described in the notice.

Roy Curnow

Inspector