



Appeal Decision

Site visit made on 9 April 2024

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

Appeal Ref: APP/K5600/D/23/3333904

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 of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/23/04146, dated 22 June 2023, was refused by notice dated 5 September 2023.
 - The development proposed is excavation of single storey basement, formation of rear lightwell with walk on rooflight and associated alterations.
-

Decision

1. The appeal is allowed and planning permission is granted for excavation of single storey basement, formation of rear lightwell with walk on rooflight and associated alterations at 4 Child's Street, London, SW5 9RY in accordance with the terms of the application, Ref PP/23/04146, dated 22 June 2023, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Dr Helmi Ismail against Council of the Royal Borough of Kensington and Chelsea. This application is the subject of a separate Decision.

Preliminary matters

3. I am aware that since their decision, the Councils New Local Plan Review has progressed to Regulation 18 as of March 2022. There is not substantive reference to policies in the new plan, the officer's report stating that it has limited weight at the present stage. I have decided the appeal on the basis of the policies put before me.
4. There have been 2 previous appeals for developments that were near identical to the current proposal. I have been supplied with copies of the Inspector's decision on both cases¹. The main issues were similar in both the previous appeals as in the case here (with an additional sewer flooding issue in the first of them). However, I have determined this appeal on the basis of the evidence put before me.

¹ Appeal reference 3252281 of December 2020, and appeal reference 3302060 of November 2022.

Main Issues

5. The main issues in this case are i) the effect of the proposal on the residents, businesses and users of Child's Street and Earls Court Road, and ii) the effect of the proposal on the integrity on the appeal building and nearby buildings and infrastructure, in particular No.5 Child's Street.

Reasons

6. The appeal property is a three-storey terraced dwelling dating from the 1950's situated on the northern side of the street and has a single parking space to the front. The property is part of a group of three terraced houses, which were built during the 1950s, to replace Victorian terraced properties which were damaged during WWII. Number 4 is directly attached to No.5 which, with its neighbours to the west, is part of the original Victorian terrace.
7. No.4 Child's Street is situated 35 metres from the junction with Earl's Court Road. Child's Street is a single width residential road with no turning available at the end. Earl's Court Road is a one-way street, with commercial frontages, mainly shops, pubs and cafes. About 10 metres to the north of the junction of Child's Street and Earl's Court Road is a loading bay limited to 20 minutes waiting time.

Disruption to users of the highways

8. Of the policies mentioned in the refusal reasons, it is Policy CL7k that is most relevant in respect of this issue. This reads (The council will require all basement development to): *k. ensure that traffic and construction activity do not cause unacceptable harm to pedestrian, cycle, vehicular and road safety; adversely affect bus or other transport operations (e.g., cycle hire), significantly increase traffic congestion, nor place unreasonable inconvenience on the day to day life of those living, working and visiting nearby.*
9. In addition, the council's Basements Supplementary Planning Document of April 2016 provides detailed guidance relating to the implementation of policy CL7. This requires a draft Construction Traffic Management Plan (CTMP), to be submitted, demonstrating how the traffic associated with the construction phase will be managed.
10. The following is a brief and partial summary of the draft CTMP, since the parties are fully familiar with it. It states that no construction vehicles would enter Child's Street. All lorries would use the public loading bay located a short distance to the north of the junction of Earle's Court Road and Child's Street. The loading time for the loading bay is restricted to 20 minutes. Transport for London has confirmed that the loading bay may be used for the purpose of removing the spoil.
11. The CTMP estimates a build time of 32 weeks with the excavation phase (the most intensive phase) limited to 12 weeks, and that the timings of the movements would be restricted to between 0930 to 1630 hours (outside morning and evening peak hours) Monday to Friday, with no more than 3 vehicles using the loading bay per day during the excavation phase to remove excavated spoil (an average of 2 vehicles per day is expected). Each loading session during the excavation phase would involve up to 6 pallet truck movements along Child's Street in any one loading session (3 each way) to load a 7.5t tipper.

12. The electric pallet truck would take about 30 seconds in each direction: no more than 3 minutes for each loading session (six 30 second intervals) when the pallet truck was operational on Child's Steet where potential obstruction might occur. Materials would be delivered to site using the loading bay with no more than 2 deliveries a day. Qualified traffic marshals would be used to hold vehicles or pedestrians whilst the pallet truck was on the road or footpath, if a conflict in movement was likely to occur. The pallet truck could move on the pavement or the road, making it possible for cars and pedestrians to pass whilst the movements were taking place.
13. The officer's report makes clear that the view of the Inspector in the most recent of the appeals is not accepted and sets out the reasons that the council considers that the draft CTMP should not be accepted. Again, both parties will be familiar with this section of the report, which deals with the nature of Child's Street as a very narrow cul-de-sac and the nature of Earl's Court Road as one of the busiest highways in the Royal borough, and its status as a red route. Doubt is cast on the assessment of the operation of removing spoil and delivery of materials, a lack of contingency plans, a lack of clarity over some matters, and that violation of the 20-minute waiting time would be unenforceable.
14. I conclude that the submitted draft CTMP does indicate that a satisfactory scheme could be submitted as a consequence of a condition requiring it, to ensure that the construction of the appeal development could be undertaken without harmful disruption to the users of the highway and footpaths, including residents and nearby businesses on Earl's Court Road.
15. In my experience there is frequently a temptation for delivery vehicles to overstay 20-minute loading restrictions, but threat of parking enforcement is generally effective, or otherwise it would be evident that congestion and inconvenience would be commonplace. Furthermore, I cannot see that the vehicles involved in the appeal development would be in any different position to those delivering to local business premises and houses, when confronted with full occupation of the loading bay. I have not been presented with any evidence of such situations occurring with harmful consequences.
16. On balance I am satisfied that the first main issue can be overcome with the imposition of a suitable condition. 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.

The structural integrity on the appeal building and nearby buildings.

17. Local plan policy CL7 requires, among other matters, that basement development be designed to safeguard the structural stability of the existing building and nearby buildings. Item m. of this policy requires development to *"be designed to safeguard the structural stability of the existing building, nearby buildings and other infrastructure including London Underground tunnels and the highway."* The council's Basements Supplementary Planning Document (SPD) adopted April 2016, also 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.
18. 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 precautions.

19. The appeal documentation includes a CMS that has been written by a firm of structural engineers, that has been signed off by the engineer from whom the practice gets its name. He is a chartered engineer, being a member of the Institution of Structural Engineers. Thus, I have no concerns about the adequacy of the professional input, or doubts that it can be relied on for the purpose of satisfying me that the CMS is a sound basis for making a decision about the structural soundness of the proposal. I would add that the development of new basement accommodation to existing buildings appears to have been a frequent undertaking in London for some years; hence no doubt the reason for the council's adoption of the SPD.
20. In coming to a conclusion of this issue, I have taken into account that the adjoining dwelling is Victorian, as noted in paragraph 6 above. Therefore, the foundations of No.5 will be of that time. That fact is clearly well known to the authors of the CMS, and the method of carrying out the proposed development will have taken that into account.
21. In light of the above considerations, I am satisfied that the CMS satisfies the policy requirement of policy CL7 and the SPD, and that the proposal can be undertaken safely and should not endanger the integrity on the appeal building or nearby buildings and infrastructure, in particular, No.5 Child's Street. I also note that other regimes, such as the Building Regulations and the Party Wall etc Act 1996 would be further safeguards preventing harmful works from progressing. I am satisfied that a comprehensive Construction Method Statement and professional supervision could be secured by condition and there would be no conflict with LP Policy CL7(m).

Conclusions

22. For the reasons that I have set out above I am satisfied that the reasons for refusal have been overcome. Therefore, I will allow the appeal.

Conditions

23. The statutory condition that provides a time limit on the start of development must be imposed. In addition, the council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the text. I consider that the conditions should be imposed for the following reasons: condition 2 is to ensure that the appearance of the development permitted integrates with the existing in a visually satisfactory manner; condition 3 is required for certainty and avoidance of doubt as to the development permitted; condition 4 is to minimise the impact of construction works upon users of the highway and nearby residents living conditions; condition 5 is to ensure that the engineering and construction of the development is properly supervised in the interests of highway safety and nearby residents' living conditions; conditions 6 and 7 are to mitigate the impact of construction work upon the living conditions of neighbouring occupiers; condition 8 is to reduce flood risk and to contribute to sustainability.

24. Conditions 4 to 8 are pre-commencement conditions, because clearly the matters they deal with must be agreed before any construction can start, as compliance with the requirements of the condition at a later time would result in unacceptable harm during the development contrary to the policies of the Development Plan, which the conditions are designed to avoid. Section 100ZA(5) of the Town and Country Planning Act 1990 requires that, if the Inspector is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). In this case the appellant's agent has clearly stated on the appellant's behalf that the conditions are acceptable.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 3) The development hereby permitted shall be carried out in accordance with the approved plans.
- 4) No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The statement should include:
 - a) routeing 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.
- 5) No development shall commence until a) Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been appointed for the duration of building works and their appointment confirmed in writing to the Local Planning Authority, and b) the name, and contact details of the person supervising engineering and construction on site for the duration of building works have been confirmed in writing to the Local Planning Authority. 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.

- 6) No development shall commence until such time as the lead contractor, for the site, is signed up to the Considerate Constructors Scheme 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.
- 7) 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.
- 8) No development shall commence until a Sustainable Drainage Systems Strategy (SDSS) with the following information is submitted to and approved in writing by the Local Planning Authority:
 - a) A detailed analysis of surface water run-off and attenuation volume (to demonstrate how the proposed measures will aim to comply with Local Plan Policy CE2 (g), which is to achieve a reduction of 50% of existing rates including climate change in the calculations and factoring in all flows into the sewer system including groundwater or other flows).
 - b) Information about the proposed SDSS types, their location, attenuation capacity, specification, structural integrity, construction, operation, access, and maintenance. (More sustainable green SDSS should be favoured over attenuation tanks).
 - c) Section/profile drawings of the SDSS, if relevant (green roofs, blue roofs, sub-base attenuation, permeable paving, planters, species, etc.).
 - d) Drainage plans to show clearly how surface water run-off will be conveyed to the SDSS and any connections to the sewer system if necessary. During construction of the development hereby permitted the approved Sustainable Drainage System (SDSS) and Flood Risk measures shall be fully implemented and maintained thereafter.

End of Schedule