

Appeal Decision

Site visit made on 28 May 2024

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/K5600/D/24/3338165

5 Seymour Walk, Kensington and Chelsea, London SW10 9NE

- 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 Alastair Crawford against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/23/03532, dated 12 June 2023, was refused by notice dated 12 January 2024.
 - The development proposed is the creation of a basement beneath buildings and 50% of the garden area, alterations to lightwells and creation of 2 rooflights with associated internal plant and landscaping.
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Application for Costs

1. An application for costs was made by Mr Alastair Crawford against the Royal Borough of Kensington and Chelsea. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for the creation of a basement beneath buildings and 50% of the garden area, alterations to lightwells and creation of 2 rooflights with associated internal plant and landscaping in accordance with the terms of the application Ref PP/23/03532, dated 12 June 2023, subject to the conditions set out in the attached Schedule.

Preliminary matters

3. The proposal was amended during the application process, reducing the depth of the proposed basement. The Council considered the amended drawings when refusing the application and I also consider them as part of this appeal.
4. This appeal has been considered concurrently with another appeal for the same site, Ref APP/K5600/D/24/3344775. That appeal, for various above ground works, is the subject of a separate decision.

Main issues

5. The Council's refusal of the application cites conflict with a restriction on the depth of basements set out in policy CL7 of the Local Plan 2019 (LP) and the associated Supplementary Planning Document *Basements* (SPD). There is nothing, however, in the Council's submissions to specify the planning harm

that would allegedly be caused. The accompanying text to policy CL7 states that restricting the size of basements will help protect residential living conditions by limiting the extent and duration of construction and by reducing the volume of soil to be excavated, thereby reducing impacts from issues such as noise, vibration and heavy vehicles. I take this to be the key purpose of this part of the policy. I therefore identify the main issue in this appeal to be the effect on neighbours' living conditions, through potential disturbances during development.

Reasons

Living conditions

6. 5 Seymour Walk is unusual in this area in that the property includes 3 buildings which form a single residential dwelling, set within a relatively large plot for this densely built up urban area. The proposal is to form an extensive basement, partly underneath the buildings and partly underneath the central area of garden, to provide a swimming pool, gym, playroom, changing room and plant rooms.
7. As indicated above, LP policy CL7 restricts the depth of basements to a single storey, which is defined as being a depth that cannot be subdivided in the future to create additional floors – generally about 3 to 4 metres floor to ceiling height, but with a small extra allowance for proposals with a swimming pool. The SPD does not add any significant detail to this. Policy CL7 makes a possible extra allowance for larger sites of the scale of an urban block, or substantial part thereof, but that does not apply to this more restricted site.
8. The proposed new basement is shown as 3.95m from floor to ceiling, nominally within the terms of LP policy CL7, but with an extra metre for plant and an extra 1.6m for the swimming pool section of the basement including its associated balance tank. Whether or not these extras are within the terms of the policy is a matter of judgement, but they are in any case significant. Considering also the extensive spread of the basement, the project would entail considerable excavation works and require large numbers of heavy good vehicle trips to carry away spoil. As the wording in LP policy CL7 (as supplemented by the SPD) is not clear enough on its own to for me to assess compliance with the policy, I look to the policy's underlying aims.
9. This is a substantial proposal which would inevitably have some effects on neighbours' living conditions. There are in this case a few factors which should help to limit the impact on neighbours. Firstly, the site is well contained by brick walls that should help to reduce noise disturbance. Secondly, the site is big enough that the works should largely be containable within its bounds. Thirdly, although Seymour Walk is a narrow residential street, No 5 is close to the junction with the A308 Fulham Road, so that lorries carrying away spoil would have easy access to the main road network without having to pass by many neighbouring residences. Fourthly, the appellant has submitted a detailed Construction Method Statement indicating that that the project can be implemented without any detrimental effect on adjoining properties. I note that the Council's Director of Environmental Health and Director of Transportation & Highways raise no objection, subject to conditions.

10. I also note the comments of local objectors including the Seymour Walk Residents' Association. I recognise that this would be a long-term project which would inconvenience neighbours and cause some degree of disturbance for the duration. Although I did not see any other works on Seymour Walk at my site visit, I understand that there have been several other projects lately including basements developments that have caused issues. There is therefore a cumulative effect at work. Bearing in mind the various factors set out in the previous paragraph, however, I find no clear reason why this proposal should have an unacceptable impact. I conclude that, subject to appropriate conditions to control the operations, the proposal would not unduly effect living conditions at neighbouring properties through potential disturbances during development. It reasonably accords with the terms and relevant aims of both LP policy CL7 and the SPD.

Other matters

11. The Council does not raise any other issues in regard to the extent or appearance of the proposal. The site is within The Boltons Conservation Area (BCA), where there is a duty on decision makers to give special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, as required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Council's BCA Appraisal refers to the existence of basements and half-basements at many other houses within the area. These are evidently a part of local character. The proposed basement would be underground so largely unseen. The above-ground elements would be minor in scale and discreetly positioned. I note that 3 trees would be lost, but these are of small stature and the Council's Trees officer confirms that this would have little or no wider impact. I find that the character and appearance of the conservation area would be preserved.
12. I have considered all other matters raised by objectors. I see no clear reason why the development should prejudice local security. The works would also be governed by the Party Wall etc. Act 1996, which amongst other things regulates excavations near to property boundaries. Any damage that may be caused to pavements or sewers is a matter for resolution under other legislation.

Conditions

13. I have considered the Council's suggested conditions in line with paragraph 56 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. The main parties have both had an opportunity to comment on draft conditions and the appellant raises no issues about the conditions requiring submissions and approvals before development commences. I have edited the Council's suggested wording in places to help meet the tests set out in Framework paragraph 56.
14. I impose a condition specifying the relevant plans to provide certainty, and to ensure compliance with the submitted Construction Method Statement in order to protect neighbours' living conditions. A set of 4 conditions regarding land contamination is necessary to ensure that any contamination is dealt with properly, in the interest of public health and safety. These include reports which are needed before work commences.

15. Four more conditions requiring competent works supervision and compliance with the Considerate Constructors Scheme, a Site Construction Management Plan and a Construction Traffic Management Plan are needed to protect neighbours' living conditions and highway safety. I have left out specific reference to an 'Appendix A Checklist' from one of these conditions as no detail of 'Appendix A' has been provided by the Council. Conditions regarding tree protection and new landscaping are necessary to protect local character. With the exception of the condition regarding new landscaping, these various details are all needed before development can start, to ensure that appropriate precautions and management are in place. I am conscious that there may be a degree of overlap between the various construction plans and statements and trust that the Council will seek to minimise these so that the requirements are not unnecessarily complex.
16. A further method statement is needed for the temporary removal of a section of the front boundary wall, to protect local character and public safety. Finally, 2 conditions regarding drainage are also necessary in the interest of public health and safety, including the sustainable disposal of surface water.

Conclusion

17. I find that the proposal accords with the development plan for the area. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 543.AND.V1.00.DR.A.0001, 543.AND.V1.00.DR.A.0008A, 543.AND.V1.B1.DR.A.1002L, 543.AND.V1.00.DR.A.1004N, 543.AND.V1.ZZ.DR.A.1010, 543.AND.V1.ZZ.DR.A.1020G, 543.AND.V1.ZZ.DR.A.1021G, 543.AND.V1.ZZ.DR.A.1022F and the submitted Construction Method Statement (CMS) No 11-1081 dated May 2023 except where the details of the approved CMS are superseded by details approved in accordance with other conditions of this permission.
- 3) No development shall commence until a Preliminary Risk Assessment (PRA) and a Proposed Intrusive Site Investigation Design (PSID) for the site and surrounding area are submitted to and approved in writing by the local planning authority. The PRA and PSID shall be prepared in accordance with the Environment Agency's current Land Contamination Risk Management Guidance and the Council's guidance or any subsequent updates.
- 4) No development shall commence until the approved Proposed Intrusive Site Investigation Design (PSID) has been fully implemented and a report including full details of the intrusive site investigation, Risk Assessment (RA), an Options Appraisal (OA) and a Remediation Strategy (RS) have been submitted to and

approved in writing by the local planning authority. The intrusive site investigation, RA, OA, RS and any associated reporting shall be undertaken in accordance with the Environment Agency's current Land Contamination Risk Management Guidance and the Council's guidance or any subsequent updates.

- 5) No occupation or use of the development hereby permitted shall occur until the approved Remediation Strategy is implemented and a Verification Report (VR) has been submitted to and approved in writing by the local planning authority. The VR shall include full details of any requirements for ongoing monitoring and maintenance and be prepared in line with the Environment Agency's current Land Contamination Risk Management Guidance and the Council's guidance or any subsequent updates. Any required ongoing monitoring and maintenance shall be implemented in line with the approved Verification Report.
- 6) If during development work unexpected contamination or ground conditions are encountered or suspected, on each occasion development work shall cease in the affected area, other than for actions to make the area safe and prevent further contamination or pollution occurring. Unexpected contamination shall be reported to the Council within 2 working days or as soon as possible if there are significant risks to people or the environment.

Further Intrusive Site Investigation (FSI) shall be undertaken and a Remediation Statement (RS), addressing the unexpected contamination, shall be submitted to and approved in writing by the local planning authority. The FSI and RS shall include full details of requirements for ongoing monitoring and maintenance and be prepared in line with the Environment Agency's current Land Contamination Risk Management Guidance and Council's guidance or any subsequent updates and any required monitoring shall be carried out as approved.

- 7) No development shall commence until:
- a) 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.

- 8) 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.

9) No development shall commence until:

- a) a Site Construction Management Plan (SCMP) including any required checklist for the development has been submitted to and approved in writing by the Council's Construction Management Team, and
- b) copies of the approved SCMP and its 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 approved SCMP or in accordance with a subsequent SCMP as may be approved under this condition.

10) No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall 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 shall 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 CTMP. 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.

11) No development shall commence until full particulars of the method(s) by which all existing trees to be retained 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, shall be submitted to and approved in writing by the local planning authority and the development shall be carried out only in accordance with the details so approved.

- 12) No construction works shall take place until a scheme of landscaping, to include all existing trees and shrubs and proposed trees, shrubs and paths and hard surfacing and including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The development shall only be carried out and maintained in accordance with the details and timetable so approved.
- 13) No demolition work shall take place in regard to the front boundary wall until a detailed Method Statement for the dismantling, storage of brick work, and re-building of the front boundary wall has been submitted to and approved in writing by the local planning authority. The development shall be undertaken and the wall restored in accordance with the approved Method Statement.
- 14) Prior to first occupation of the basement hereby approved, the basement shall be fitted with a positively pumped device designed to remove sewer floodwater from the building, which shall be maintained and functional at all times.
- 15) The development hereby permitted shall not be occupied unless the Sustainable Urban Drainage System detailed within the submitted SUDS Strategy reference 230411/M Quant dated 5 May 2023 has been fully implemented. The approved details shall be maintained thereafter.