
Appeal Decision

Site visit made on 24 September 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2024

Appeal Ref: APP/K5600/W/24/3343118

Basement/Ground Floor Flat, 40 Upper Addison Gardens, London W14 8AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mads Jessen against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref is PP/23/05977.
 - The development proposed is excavation of rear garden and additional outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is in a conservation area wherein I have a statutory duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. In addition, the National Planning Policy Framework (the Framework) requires great weight to be given to the conservation of designated heritage assets.

Main Issues

3. The main issues are:
 - whether the proposal constitutes basement development and, if so, whether sufficient information has been provided to assess the effects of construction activity on pedestrian, cycle, vehicular and road safety, structural stability, the living conditions of the occupiers of neighbouring properties with regard to noise and vibration, and demonstrate that one metre of soil would be provided above any part of the basement beneath a garden; and
 - the effect of the proposed development on the character and appearance of the appeal building, terrace, communal garden, including whether it would preserve or enhance the character or appearance of the Holland Park Conservation Area (the CA).

Reasons

Basement Development

4. The appeal relates to the lower two floors of a four-storey mid terraced property located within a predominantly residential area. It has a rear garden which adjoins a communal garden to the rear. The communal garden sits at

the upper ground level. Planning consent¹ was granted for a scheme at the appeal site which included lowering the rear garden to the lower ground floor level of the property. My site visit confirmed that work in relation to the consented scheme has started but is not yet complete. The garden has been lowered to the lower ground level and sits below the communal garden at upper ground level.

5. The proposal would involve excavating within the rearmost section of the garden to a depth of approximately 1.4 metres below the lower ground level to accommodate an outbuilding with a green roof. The outbuilding would be 2.7 metres in height. Approximately half of the height of the building would be below the lower ground level, and half would be above.
6. The parties dispute whether the proposal constitutes basement development for the purposes of Policy CL7 of the Local Plan (September 2019) (the Local Plan), and consequently the relevance of the policy to the appeal. Paragraph 22.3.46 of the Local Plan defines basement development as “the construction or extension of one or more storeys of accommodation below the prevailing ground level of a site or property.” The parties agree that the prevailing ground level is the lower ground level of the appeal site. However, the appellant argues that the proposal does not constitute basement development because it does not create one or more storeys of accommodation below the prevailing ground level which is the lower ground level. Firstly, I find the proposal would, in itself, provide one storey of accommodation. This meets the first part of the Local Plan definition of a basement. Secondly, I find the proposal would be below the prevailing ground level which is the lower ground level. This meets the second part of the Local Plan definition, which does not stipulate that the entire storey must be below the prevailing ground level. Therefore, I find the proposal would meet the definition of basement development, and as such, Policy CL7 would apply.
7. Despite the proposal would only involve half a storey being below the prevailing ground level, the amount of excavation that would be required would not be inconsequential. Within this context, I note the aims of the Council, through Policy CL7, include ensuring basement development does not give rise to issues regarding noise and disturbance during construction, structural stability, flooding, sustainable drainage and the management of traffic, plant and equipment.
8. The appellant has drawn my attention to examples of what is argued are similar developments in the vicinity, and where the Council did not apply Policy CL7. However, there are clear material differences between those examples and the appeal proposal including that they contained an existing basement, did not substantially increase the footprint of the existing basement and did not create an additional storey. 60 Radnor Walk² largely involved lowering an existing basement. 38 Chelsea Square³ involved increasing the depth of an existing basement swimming pool. 39 Upper Addison Gardens⁴ related to the lowering of a rear garden and front lightwell to the lower ground level, no accommodation was created below the prevailing ground level. Therefore, the

¹ PP/23/00043.

² PP/23/06069.

³ PP/23/08025.

⁴ PP/23/05578.

examples provided are not directly comparable to the appeal proposal. In any event, I have determined the appeal on its own merits.

9. Paragraph 22.3.70 of the Local Plan refers to the Basements Supplementary Planning Document (April 2016) (the SPD) which supports the application of Policy CL7 and provides guidance on the information required to be submitted with applications for basement development. This includes a Construction Method Statement (CMS) which provides the results of the desk study, details of site-specific investigations including groundwater and monitoring results, details of the structure and foundations of the existing building and relevant adjoining structures, an assessment of the impact of the basement on groundwater including cumulative effects, details of surface water and Sustainable Urban Drainage System proposals, a flood risk assessment, a sequence of construction together with a temporary works scheme design, an assessment of predicted ground movements and the damage category for surrounding buildings, extent of root protection areas and tree protection proposals where relevant, and details of any building or site specific issues which may be affected by the basement proposal. The submission of a draft Construction Traffic Management Plan (CTMP) is also required to be submitted with applications for basement development. The CTMP should address issues relating to highway safety, the free flow of traffic, noise, vibration and dust associated with construction, the availability parking, and other detailed matters.
10. The appellant suggests that a planning condition requiring a Site Construction Management Plan (SCMP) could be used to address the impacts of construction activity and that such a condition was used in the consent for No 39. However, it is clear from Policy CL7 and the SPD that both a CMS and a CTMP are required to be submitted with a planning application for basement development. The appellant has not provided a CMS or a CTMP and has therefore failed to comply with Policy CL7. I have explained the material differences between No 39 and the appeal proposal above, so will not repeat them here.
11. In reference to paragraph 115 of the Framework, the appellant asserts that the proposal would not result in unacceptable impacts on highway safety or result in severe impacts on the road network. Due to its small scale, I accept that the proposed outbuilding would unlikely result in unacceptable impacts on highway safety or result in severe impacts on the road network in the context of the Framework. However, this main issue relates to whether sufficient information has been provided to assess the effects of construction activity on pedestrian, cycle, vehicular and road safety. Policy CL7 requires the submission of a draft CTMP with an application for basement development and one has not been provided.
12. Policy CL7 also requires that basement development include a minimum of one metre of soil above any part of the basement beneath a garden. The existing garden of the appeal site has been lowered to the lower ground level. The proposed outbuilding would be below the lowered garden level which would trigger the requirement for one metre of soil above any part of the basement under the garden. The appellant has not demonstrated that one metre of soil would be provided. The appellant points to the Framework being silent on basement development and in particular, locally specific requirements such as the one metre of soil. However, this requirement is part of Council's adopted

Local Plan and planning law requires decisions to be made in accordance with the development plan, unless material considerations indicate otherwise⁵.

13. For the reasons above, I conclude that the proposal constitutes basement development and insufficient information has been provided to assess the effects of construction activity on pedestrian, cycle, vehicular and road safety, structural stability, the living conditions of the occupiers of neighbouring properties with regard to noise and vibration, and demonstrate that one metre of soil would be provided above any part of the basement beneath a garden. As such, it would conflict with Policy CL7 of the Local Plan relating to basement development. It would not comply with the SPD which provides guidance on the information required to be submitted with applications for basement development. The proposal would also be contrary with the aims of the Framework in relation to the above considerations.

Character and Appearance

14. The CA, within which the appeal site is located, derives its significance from its impressive collection of grand Victorian and Edwardian buildings, many of which are listed, its beautiful green spaces and its cultural legacy as an enclave for intellectuals and the elite.
15. The appeal site lies within a well-preserved terrace of similarly detailed buildings of pleasing uniformity which benefit from a large communal garden to the rear. The terrace is identified in the Holland Park Conservation Area Appraisal (June 2017) (the CAA) as buildings which make a positive contribution to the historical and architectural character and appearance of the CA. The CAA also notes the important contribution that rear elevations make to the character and appearance of the CA. The rear elevation of the terrace has been subject to more alterations than the front. However, there remains a relative sense of consistency to the rear, helped by the well-preserved gate piers and wrought iron railings which form a continuous and rhythmic boundary between the private and communal gardens.
16. The proposed outbuilding would be located in the rearmost section of the garden abutting the communal garden. It would span almost the entire width of the garden and have full glazed sliding doors. I accept that the proposed outbuilding would not have a significant visual impact on the rear elevation of the host property and the terrace group due to its separation from the host building. It would also not be easily visible from within the communal garden given its siting below the communal garden level with green roof. However, the outbuilding would be visible from the windows of the upper floor flat (a separate living unit) of the appeal property, as well as from the rear ground and upper floor windows of the neighbouring properties. The view would be of an anomalous and dominant feature which would be incongruous with the character of the existing building, the terrace and communal garden due to its siting in the rear garden abutting the communal garden and its expansive scale.
17. I acknowledge that the rear gardens in the terrace have different levels, including those which are flush with the lower ground level of the property. I also note that the appeal property's garden is lower than the level of the

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

communal garden. Nevertheless, the proposal would be harmfully out of keeping with the character and appearance of the host building and terrace due to its scale and siting. The proposed replacement boundary to match the existing would not mitigate for the harm that would be caused to the CA.

18. Consequently, the proposal would neither preserve nor enhance the character or appearance of the CA, although the harm would be less than substantial in the terms of the Framework. Paragraph 208 of the Framework establishes that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset (in this case the CA), this harm should be weighed against the public benefits of the proposal.
19. The provision of an outbuilding amounts to a private benefit to the occupiers of the appeal property. Paragraph 205 of the Framework establishes that great weight should be given to the conservation of a designated heritage asset, and the limited benefits I have found would not be sufficient to outweigh the harm identified.
20. For the above reasons, I conclude that the proposed development would harm the character and appearance of the appeal building, terrace and communal garden, and would fail to preserve or enhance the character or appearance of the CA. Hence, it would conflict with Policies CL1, CL2, CL3, CL6, CL9 and CL11 of the Local Plan insofar as they require development to respect the existing character and appearance of buildings and their surroundings, respond to its context, preserve or enhance conservation areas, reinforce the character and integrity of the original building or group of buildings and protect and enhance views, vistas and gaps that contribute to the quality of the area. It would also be contrary to the Framework in relation to conserving and enhancing the historic environment.

Conclusion

21. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

U P Han

INSPECTOR