



Appeal Decision

Site visit made on 17 December 2024

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 January 2025

Appeal Ref: APP/X5990/C/23/3326641

55 Avenue Road, London NW8 6HR

- 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 1990 Act).
- The appeal is made by Yarborough Management Ltd against an enforcement notice issued by City of Westminster Council.
- The enforcement notice was issued on 15 June 2023.
- The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref 14/10731/FULL granted on 27 January 2015.
- The development to which the permission relates is "demolition behind retained front façade of existing dwellinghouse and development of single dwellinghouse with basement and associated hard and soft landscaping". The condition in question is No 1 which states that: the development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.
- The notice alleges that the condition has not been complied with in that the construction of the basement to include a lightwell in the rear garden is not in accordance with approved drawing nos. P911-GAB1-P7b and P911-GA00-P2.
- The requirements of the notice are:
 1. Infill the lightwell to comply with drawing nos. P911-GAB1-P7b and P911-GA00-P2, approved as part of the planning permission issued on 27 January 2015 (ref 14/10731/FULL) by undertaking the following works:
 - a) Remove all the retaining walls to the lightwell at ground floor level, shown shaded red on Plan A and Photograph A.
 - b) Infill the doorways to create solid retaining walls to the four sides of the lightwell at basement level, shown shaded blue on Plan B and Photograph A.
 - c) On completion of Steps a) and b) infill the entire lightwell, ensuring that there is a minimum depth of 1.2m below ground floor level of topsoil.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the 1990 Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The planning permission (ref 14/10731/FULL dated 27 January 2015) was for a redevelopment that involved a large basement. The basement was designed around a mature Cedar tree that the Council was seeking to protect due to its positive impact within the St John's Wood Conservation Area. At some point during the building works, the tree was removed, and the basement was constructed across the whole plot with a lightwell in place of the tree.

2. There followed negotiations and planning permission was subsequently approved on 25 August 2021 for a revised scheme described as "Excavation of additional basement area measuring 2.6m x 2.9m with rooflight above" (ref 21/01711/FULL). This would allow a replacement tree to be planted, pursuant to a Tree Replacement Notice (TRN) issued on 20 May 2021, while retaining the basement and infilling part of the lightwell. The Council maintains that the permission was not implemented, and it subsequently served the enforcement notice that is the subject of this appeal.
3. I have considered whether there should be an alternative requirement that would allow the appellant to implement the 2021 planning permission. There was no standard condition on the decision, stating the time period within which the permission would have to be commenced. However, the Planning Practice Guidance makes it clear that where planning permission is granted and the decision notice does not include a condition stating the time limit within which development must begin, it is deemed to be granted subject to the conditions set out in s91 of the 1990 Act. This would require the development to be begun within three years. Given the date of the decision, 25 August 2021, the permission is no longer extant and an additional requirement to enable the appellant to implement that scheme would not be appropriate.
4. The appellant suggests that the Council was unhelpful during negotiations and did not reply to queries in a timely manner. This type of complaint is not a matter for me in the context of an appeal against an enforcement notice.

The ground (b) appeal

5. To succeed on ground (b), the appellant must show on the balance of probabilities that the matters alleged have not occurred as a matter of fact. There is no evidence that the 2015 permission was completed and then altered, as argued. The Council's photographs show the development was underway in March and June 2018. The works in progress included a basement excavation across the full width of the rear garden, which was not in accordance with the approved plans, in breach of condition 1.
6. I find that the appellant has not shown, on the balance of probabilities, that the matters alleged have not occurred as a matter of fact and the ground (b) appeal must fail.

The ground (c) appeal

7. To succeed on an appeal on ground (c), the appellant must show on the balance of probabilities that the matters alleged do not constitute a breach of planning control.
8. I saw that the basement area as constructed was not in accordance with either the approved plans for the 2015 permission or the 2021 permission. The extent of the additional area of excavation, the design of the lightwell and its decorative features are significant departures that cannot be described as 'de minimis'. Consequently, the appellant has not shown on the balance of probabilities that the matters alleged do not constitute a breach of planning control. The ground (c) appeal fails, therefore.

The ground (a) appeal and the deemed planning application

Main Issues

9. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the construction of a basement to include a lightwell in the rear garden, not in accordance with approved drawing nos. P911-GAB1-P7b and P911-GA00-P2.
10. The main issues are the effect of the development on the character and appearance of the host dwelling and the wider area, in particular, the St John's Wood Conservation Area.

Reasons

11. The appeal property is a redeveloped, substantial detached house that is situated within the St John's Wood Conservation Area. The surrounding area is characterised by similar dwellings of a comparable scale.
12. The Conservation Area is an attractive suburb, which retains a leafy, residential character. The houses tend to be set within generous gardens positioned along tree lined streets with open gaps providing glimpses between buildings to trees and greenery beyond. I find the significance of the Conservation Area, insofar as is relevant to the matters before me, to be attributable to the unique and quality architecture of the houses, combined with its low density, suburban landscape. The mature trees and shrubbery make a positive contribution to the area's character and appearance.
13. As explained, the property has been redeveloped extensively. In addition to the house, the plot is occupied by a stone gazebo, an outdoor swimming pool, and a garden pavilion. The lightwell that is the subject of the notice is relatively large. It measures approximately 3.8m by 4.0m and is prominently located close to the rear elevation of the house. A decorative metal balustrade with paved coping stones and a timber handrail has been installed around its perimeter. Within the lightwell, a large metal lantern has been hung on four chains attached at the corners.
14. The design features enhance the appearance of the lightwell, but the result is that it stands out as a structure in its own right rather than being sensitively designed and discreet. The lightwell is likely to be visible from the surrounding properties. There are some relatively small areas of planting within the rear garden, but this is minimal and does not soften the appearance of the development. Despite the quality of the materials used in the garden structures, the extent of the built development is in contrast with the leafy and well-landscaped surroundings.
15. The Council has issued a TRN, and it is important that the tree is provided given the identified significance of mature trees within the Conservation Area. The gradual removal of mature specimens would, over time, erode the quality of the historic environment and the Council is correct to resist the loss of trees of amenity value. The required planting would also soften the appearance of the development and reduce the dominant effect resulting from the lightwell and the proliferation of garden structures. When a replacement tree is provided, it is necessary to ensure it has the best chance of thriving and so it should be planted where there is room for root development and long-term growth.

16. I saw that there is little remaining space within the rear garden to successfully accommodate the replacement tree. The notice requires the development to be altered in accordance with the 2015 permission, which would involve infilling the lightwell. This would allow the replacement tree to be planted on the side boundary, near to where the original tree was growing, which is reasonable.
17. The 2021 permission would also have enabled a tree to be planted in a part of the site where it would have room for growth without being too close to the main house, or the adjoining houses, and it would not interrupt access to the garden structures or swimming pool. This seemed to be a reasonable compromise and would have allowed the retention of the basement albeit with a glazed skylight rather than the large lightwell that has been constructed. In any event, this permission is no longer extant, and it cannot form a valid fallback position.
18. Overall, I consider that the construction of the extended area of basement with the rear lightwell and its decorative features is a harmful departure from the approved plans that erodes the quality of the area and impacts adversely on the host dwelling. The removal of the Cedar tree has compounded the adverse effect as it is likely that the tree was visible in views from the wider area. The development is thus harmful to the character and appearance of the Conservation Area.
19. I understand that the appellant submitted an alternative scheme in May 2023. This would involve the retention of the lightwell, but it would be altered with the addition of an angled lead roof and a central glazed light. However, this would not address my concerns about the size and design of the lightwell, nor is it clear how the long-term growth of the replacement tree could be accommodated. Moving the tree to be closer to the stone gazebo may lead to further problems as it is not apparent that it would have sufficient room to mature without its crown spread impacting on the structure.
20. Given the above, I find that the development fails to preserve the significance of the Conservation Area. Consequently, I give this harm considerable importance and weight in the planning balance of these appeals. Paragraph 212 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 213 goes on to advise that significance can be harmed or lost through the alteration of those assets and that this should have a clear and convincing justification. Given the relatively localised impact, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
21. Given the above and in the absence of any defined substantiated public benefit, I conclude that the proposal would fail to preserve the character or appearance of the St John's Wood Conservation Area and the host building. This would fail to satisfy the requirements of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 210 of the Framework and conflict with Policies G7 and HC1 of the London Plan (2021), and Policies 34, 38, 39, 40 and 45 of the Westminster City Plan (2021) which, among other things, seek to ensure development conserves and enhances the significance of heritage assets and contributes positively to the streetscape.

22. As a result, the proposal would not be in accordance with the development plan. The ground (a) appeal must fail, therefore.

The ground (f) appeal

23. Section 173(4) of the 1990 Act sets out the two purposes of an enforcement notice (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury to amenity caused by the breach. The notice requires the removal of the unauthorised development. Its purpose is to remedy the breach of planning control. What must be considered is whether the steps required exceed what is necessary to achieve that purpose.
24. I have considered the alternative scheme as part of ground (a) above. The appellant has not offered any lesser steps that would remedy the breach of planning control and achieve the statutory purpose behind the notice. The ground (f) appeal fails, therefore.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

26. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D Moore

Inspector