



Appeal Decision

Site visit made on 29 September 2025

by F P Tinsley MA (Hons) MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2025

Appeal Ref: APP/K5600/W/25/3370287

38 Smith Terrace, London, SW3 4DH

- 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 P Dykes against the decision of the Council of the Royal Borough of Kensington and Chelsea.
- The application reference is Ref: PP/25/01787
- The development proposed is 'Demolition and rebuild of dwellinghouse behind retained façade to include the cosmetic removal and replacement of existing stucco to front elevation to correct the visual distortion; extension of lower ground floor and creation of a partial basement level; erection of single storey infill addition and a redesigned mansard roof to better align to the prevailing pattern along the street'

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - The accompanying text to Policy CD11 of The Royal Borough of Kensington and Chelsea – New Local Plan Review – July 2024 (the Local Plan) states that restricting the size of basements will help safeguard residential living conditions within the borough. This is achieved by limiting both the extent and duration of construction, as well as reducing the volume of soil to be excavated. The construction of large basements in residential areas has been identified as having a detrimental impact on residents' health and wellbeing, due to prolonged exposure to noise, vibration, and heavy vehicle traffic. The policy's size limitation is therefore intended to mitigate these adverse effects. Accordingly, I identify the main issue in this appeal to be the potential impact on neighbours' living conditions, specifically through disturbances arising during the construction phase.
 - The impact of demolition of the fabric of the existing dwelling on the character, appearance and significance of the conservation area.

Reasons

3. Local Plan Policy CD11(A) states that all basement development must not exceed 50% of each garden or open part of the site. The unaffected garden must be a single, continuous area and, where relevant, should adjoin neighbouring gardens. Exceptions may be made for large sites, which the appeal site is not.

4. The Council identifies that the proposed basement would occupy 61% of the existing garden area of the current dwelling, exceeding the policy threshold. The appellant contends that the basement would occupy 50% of the garden area of the redeveloped dwelling, which would result from the proposed development. This redevelopment includes an enlarged building footprint and a correspondingly smaller garden area. The appellant argues that the proposal therefore complies with the policy.
5. The proposal involves the complete redevelopment of the site. There is ambiguity in the policy regarding whether the 50% threshold should be measured against: the original garden footprint at the time of the dwelling's initial construction; the garden footprint following previously constructed additions to the building; or the garden footprint resulting from the current redevelopment proposal.
6. The appellant argue that the garden area calculation should be based on the footprint resulting from the proposed redevelopment, as part of the existing garden would be absorbed into the new building envelope. They have provided examples where the Council previously calculated garden areas based on the footprint following earlier additions to buildings, rather than the original garden area. However, I have not been provided with any examples where the garden footprint was calculated based on redevelopment occurring concurrently with basement construction, as is the case in this appeal.
7. I am satisfied that it is not a correct interpretation of Policy CD11(A) to base the garden area calculation on the footprint resulting from simultaneous redevelopment. Such an approach could incentivise altering the building coverage to manipulate garden size and, consequently, the permissible basement area.
8. As stated in the supporting text to Policy CD11, the 50% threshold was introduced to protect residential living conditions by limiting construction duration and the volume of soil excavation. Effectively allowing a mechanism to alter the scale of permissible development would undermine the policy's intent and effectiveness in mitigating the adverse impacts of basement construction.
9. I have reviewed the Heritage Assessment submitted with the original application and included in the appellant's Appeal Statement, which indicates that the lower ground floor is likely original. There are no planning records suggesting otherwise, and no contrary evidence has been presented by the Council or other parties. Therefore, I am satisfied that the proposed basement height complies with Policy CD11(B). The additional basement height is limited to less than 4 metres, making it impossible to accommodate more than one storey. This is notwithstanding the existing approximately 1.5-metre basement, which is effectively relocated beneath the basement bedroom to serve as a storage area. Policy CD11(C) restricts additional basement floors where there is an extant or implemented permission or one built under permitted development rights. It does not apply to cases like this, where the existing basement is, on the balance of probability, original.
10. I have been informed that the additional excavation required for the basement area exceeding the 50% threshold amounts to 5.56 sq.m or 25 cubic metres—equating to approximately one additional week of construction. While this may seem negligible within the context of the overall development, it nonetheless represents an additional impact on neighbouring residents' living conditions.

11. A number of material considerations have been presented in support of basement development exceeding the 50% threshold. As the proposed basement lightwells are not existing they cannot be considered open space for the purpose of calculating basement scale. While the depth and additional scale of the basement are unlikely to affect neighbouring properties during the operational phase, the policy's restrictions primarily relate to the construction phase, which would be impacted by the additional excavation associated with the basement.
12. Measures intended to mitigate construction impacts have been identified. These include the submission of a draft Construction Traffic Management Plan (CTMP), a Construction Method Statement (SMS) addressing noise, dust, and vibration mitigation, the appointment of an experienced contractor, adherence to the Borough's Code of Construction Practice (2019), participation in the Considerate Contractors Scheme (CCS), and oversight by a structural engineer. Reference has also been made to appeal decisions where Inspectors were satisfied that construction phase impacts could be addressed through planning conditions. However, regardless of whether the proposed basement remains within the relevant size threshold, such measures would be necessary given the overall scale of construction works associated with the appeal development. I therefore attach limited weight to these considerations
13. I accept that the character of the rear garden will remain unchanged irrespective of the basement's scale beneath it, and that an appropriate Sustainable Drainage System (SuDS) strategy can be implemented in the context of an enlarged basement. These considerations carry neutral weight in my considerations as they do not constitute tangible benefit over and above what would otherwise be delivered in the context of a smaller basement scheme.
14. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. I find that the proposed basement exceeds 50% of the existing garden area of the dwelling, which is contrary to Local Plan Policy CD11(A). While I acknowledge that the operational phase of the development is unlikely to negatively affect the living conditions of neighbouring occupiers as a result of this additional scale, I have not been presented with a compelling justification for departing from the recently adopted development plan policy. Although the exceedance may be considered a 'minor transgression', this alone does not justify a departure. I have not been provided with a persuasive reason to allow the potential additional harm to living conditions during the construction phase, which is the primary concern addressed by the 50% threshold in Policy CD11(A).
15. For these reasons, I conclude that the proposed development is contrary to Local Plan Policy CD11(A) in this regard.

Conservation Area

16. The appeal site forms part of a wider terrace of properties that share a similar character and appearance. It is identified in the Royal Hospital Conservation Area (CA) Appraisal as a 'positive' building, contributing positively to the character and appearance of the conservation area.
17. The existing rear element of the building makes only a modest contribution to the conservation area and includes additions from the 1980s. I consider that the

proposed replacement rear elevation has been carefully designed to preserve the building's positive characteristics and will enhance the character, appearance and significance of the conservation area. The proposed mansard roof extension is appropriate, given that the property already has a mansard extension, as do all other properties on the street except Nos. 24 and 25. An additional dormer window is proposed, and the design of both dormers is more sympathetic to the building and the conservation area than the existing single window.

18. The proposal will also address significant internal structural defects within the building, without causing harm to the conservation area. This is a positive outcome in terms of the building's sustainability and continued occupation. I have been presented with evidence that this approach is more sustainable than a retrofit scheme, despite the level of demolition proposed. This evidence has not been directly challenged.
19. The proposed restoration of the front façade, including correction of its visual distortion, will result in a façade that is consistent with the rest of the terrace and in keeping with the conservation area's character and appearance. The correction will introduce a step in the stucco bands at the boundary between the appeal site and No. 37. Similar steps are visible elsewhere on the street. This feature is therefore consistent with the established pattern in the streetscape and will have a neutral impact on the conservation area's character and appearance.
20. The proposal includes a new front lightwell to the basement, which is a common feature on the street. Two timber sash windows are proposed facing the lightwell, and the stucco banding will be extended to this level. New front boundary metal railings on a stone plinth are proposed to match the original design, and this element will also have a neutral impact on the conservation area. The replacement sash windows are consistent with the existing design and are considered acceptable.
21. For these reasons, I find that the proposed development complies with Local Plan Policy CD4(D). The proposal will result in less than substantial harm to the CA, and the elements of the building that contribute positively to its character, appearance and significant will be enhanced. This constitutes a public benefit that outweighs any harm.

Other Matters

22. The appellant has referred to a number of policies from the Local Plan. These include relating to conservation and design, policies CD1, CD2, CD3, CD9, CD11, and CD15, as well as policies GB1 and GB7 relating to green and blue infrastructure. I have found no conflict with these policies.

Conclusion

23. The appeal scheme would conflict with the development plan taken as a whole and there are no material considerations worthy of sufficient weight that would indicate otherwise. I therefore determine the appeal be dismissed.

F P Tinsley

INSPECTOR