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# Appeal Decisions

Site visit made on 22 October 2012

**by K D Barton BA(Hons) DipArch DipArb RIBA FCI Arb**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 November 2012**

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**Appeal A: APP/X5210/A/12/2176817**

**Appeal B: APP/X5210/E/12/2176818**

**22 Thurlow Road, Camden, Hampstead, London NW3 5PP**

- Appeal A is made under section 78 of the *Town and Country Planning Act 1990* against a refusal to grant planning permission.
  - Appeal B is made under sections 20 and 74 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* against a refusal to grant conservation area consent.
  - The appeals are made by Mr Simon Rusk against the decisions of the Council of the London Borough of Camden.
  - The applications Refs 2011/2126/P and 2012/0504/C, dated 20 April 2011, were refused by notices dated 18 May 2012.
  - The proposal is for the demolition and replacement of the existing garage and construction of a basement extension to the rear.
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## Decisions

1. The appeals are allowed and planning permission and conservation area consent are granted for the demolition and replacement of the existing garage and construction of a basement extension to the rear at 22 Thurlow Road, Camden, Hampstead, London NW3 5PP in accordance with the terms of the applications, Refs 2011/2126/P and 2012/0504/C, dated 20 April 2011, subject to the conditions in the attached schedule.

## Application for costs

2. An application for costs was made by Mr Simon Rusk against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

## Effect on the Character and Appearance of the Conservation Area

3. The appeal property, which is within a predominantly residential area, is a three storey detached family house with attic accommodation and a two storey side extension with integral garage. The property is set back from the road with off road parking to the front and a relatively large rear garden. The building is not listed but is identified as making a positive contribution to the wider Fitzjohns Netherhall Conservation Area within which it stands. The existing side extension was constructed in the 1990s and, provided its replacement is of an acceptable quality, there is no objection in principle to its demolition.
4. The rear basement extension would have rooflights flush with the level of the garden but these would not be visible from public vantage points. The replacement side extension would be slightly higher, and a little further

forward, than the existing but would still be subordinate to the original building. The materials would match the existing house and a timber gable detail would replicate a detail on the original building making the proposal more in keeping with the host structure than the existing extension. A sample of the brickwork could be required by condition to safeguard the appearance of the area and overall the proposed side extension would slightly enhance the character and appearance of the Conservation Area.

5. Views through the gap between Nos 22 and 21 are restricted by a retaining wall with a fence on top. The elevation at lower ground floor level would have a similar effect of restricting views towards the rear garden and would be surmounted by an air conditioning unit which would have a timber enclosure that would have the appearance of a fence. It would be some 0.9 metre higher than the existing retaining wall and 2.5 metres above garden level but given the existing trees and vegetation in the front garden the effect on the character and appearance of the Conservation Area would be neutral.
6. The Council's *Conservation Area Statement* notes that trees are an inherent and characteristic part of the Conservation Area. This includes formal street planting, trees in front gardens and trees in rear gardens that can be seen through gaps between buildings. Policy DP27 of the *London Borough of Camden Local Development Framework Development Policies* (DP) seeks to preserve trees of landscape or amenity value. The appeal site includes 14 trees in its front and rear gardens. Although the Hampstead Society's Voluntary Tree Officer considers that the trees are worthy of a Tree Preservation Order (TPO) none are protected by a TPO. It was initially intended to remove three trees but T4, a purple crab apple in the front garden, is now to be retained.
7. A magnolia, T6, and a purple leaf plum, T11, in the rear garden would be removed. However, the rear garden is significantly higher than the street level at the front of the house and the purple leaf plum would not be readily visible from any public vantage point due to its position in relation to the narrow gap between the houses, and the existing trees in the front garden. In any event it is identified as being in fair/poor condition and its loss would have no material impact on the character and appearance of the Conservation Area.
8. The magnolia proposed to be removed, and another very close to it within the rear garden of No 21, are only glimpsed through front garden trees and the narrow gap between the houses. Whilst they might attract attention during the relatively short flowering period in the spring when other trees are not in full leaf, they are unremarkable in the street scene at other times. Indeed, an arboricultural report notes that T6 has no particular landscape value. A condition requiring protection measures for the trees on site to be retained, as well as the magnolia in the garden of No 21 that would already have had its root spread affected by the boundary between the properties, would safeguard the sylvan character of the Conservation Area and ensure that there would continue to be a magnolia display in the spring. Any protection should be provided prior to the construction works and retained for their duration. The loss of T6 and T11 would have no significant impact on the sylvan character and appearance of the Conservation Area nor would it compromise the aims of DP Policy DP27.
9. Given that the replacement side extension would slightly enhance the character and appearance of the Conservation Area and that the proposed basement, air

conditioning unit and the loss of two trees would have a neutral effect, the proposal would comply with the aims of the *London Borough of Camden Local Development Framework Core Strategy* (CS) Policies CS5 and CS14, and DP Policies DP24, DP25 and DP27(e, f and g) and enhance the character and appearance of the Conservation Area overall.

### **Effect on Groundwater Conditions and Structural Stability**

10. The proposal would extend and lower the existing lower ground floor level under the host building and out into the garden below the footprint of the side extension involving excavation to a depth of 5.8 metres below ground level. A number of supporting documents have been submitted including a *Basement Impact Assessment* (BIA) and a *Supplementary Ground Investigation Report*.
11. Although the original engineering information was criticised by the Council the BIA, submitted seven months before the decision, was not. The appellant's engineering information is prepared by qualified Engineers who have produced numerous BIA's for proposals in Camden and is based on factual and detailed analysis. The Council did not commission a review of the BIA and other technical information until 10 weeks after its decision. This review criticises the level of information but does not suggest that the points could not be overcome.
12. In terms of groundwater, groundworks carried out included 3 boreholes, 5 sampler boreholes, standard penetration tests at regular intervals in the boreholes and the installation of groundwater monitoring standpipes. Repeat measurements were taken throughout September 2011 and taking seasonal fluctuation into account the proposed basement would, even in a worst case, be above the water table. Whilst doubt was cast on this due to the unusually dry weather at the time, further monitoring was carried out in the exceptionally wet period 25 May to 9 July 2012 but still shows groundwater levels around 4.5 metres below the lowest level of basement excavation and below adjoining properties that only have lower ground floors. The basement would not therefore act as a barrier to groundwater flow and a groundwater model is unnecessary. In order to mitigate any shallow groundwater, additional measures such as French drains are proposed which would allow surface water run-off to drain freely.
13. Turning to slope stability, information was collected from the ground investigation showing the composition of the land. The site is underlain by Claygate Beds which are classified as having 'moderate shrinkability'. Variation in the strata is detailed in the Camden Geological, Hydrogeological and Hydrological Study (CGHHS) but variations recorded in the boreholes are not significant. A grading analysis demonstrates that any sand is of low permeability.
14. The slope at the site would be less than 7° as defined in Figure 16 of the CGHHS, within the 10° 'safe' slope angle outlined in the BIA. It is unreasonable at planning stage to require trial excavations at neighbouring properties but the foundations of boundary walls were exposed and details included in Appendix B of the BIA. Appendix B also includes structural drawings and a structural strategy. Assumptions based on experience and engineering judgement have been made and would be verified at detailed design stage and in consultation with adjoining owner's engineers in the Party Wall process.

15. As the construction would be within Claygate Member subsoils there is a potential for uplift forces acting on the basement due to heave recovery of the soil and the underlying London Clay. There is also a theoretical possibility of hydrostatic pressures if there are local occurrences of ground water such as perched water or a future leaking water main. Contiguous piles should perform well in the ground conditions indicated but if groundwater flows were found the use of secant piles might be considered. Uplift forces would be resisted by a combination of self weight of the structure, a perimeter bored piled wall and internal lines of tension piles under the raft slab which would not have any voids below it.
16. Underpinning would not be deeper than 1.5 metres at a time and as the process is included in the CGHHS was not included in the BIA. Three underpins would be close to No 21 but would be shallow due to the topography and are shown in BIA Appendix B. The *Ground Investigation Report* indicates that trial excavations would be carried out to check the stability of the made ground and sand. The parameters in the Supplementary Ground Report are not directly applicable but detailed design would be by specialist piling contractors.
17. Movement would be limited by the use of steel props spanning across the excavation or across its corners and capping beams would be installed to the top of the piled retaining walls. These would be installed prior to significant excavation to limit pre-propping deflections whilst allowing practical working room. Due to the depth, it would be possible to limit pile deflections by design and using a single level of props. It is normal practice to have trigger levels and these would be refined at detail design stage.
18. Adjoining properties close to the basement construction would be continually monitored during substructure works. A summary, rather than details, of ground movement was included in the BIA as such analysis is usually carried out at detailed design stage. However, analysis has been carried out using the Finite Element programme 'Wallap'. The potential for ground movement has been evaluated using the approach in CIRIA Report C580 based on empirical case history from London basement projects. The data comes from walls in soil profiles that comprise granular strata overlying London Clay and the C580 charts are appropriate for this site. The design would have 'high stiffness' as the basement walls would be permanently propped by ground and basement floor slabs with a high level temporary prop just below ground level. The construction sequence is set out in the BIA. Full method statements would be produced at detailed design stage and the Council did not request further information during its consideration of the application.
19. It is normal practice to carry out a schedule of conditions on adjoining properties as part of the Party Wall process as a baseline. It is predicted that damage would generally be Category 0 'Negligible' except for the walls to the rear of the neighbouring house where the damage would be Category 2 'Slight' which is defined as "Cracks easily filled. Redecoration probably required. Several slight fractures showing inside building. Cracks are visible externally and some re-pointing may be required externally to ensure weathertightness. Doors and windows may stick slightly". Although it is suggested that damage predictions should be reduced to 'Very Slight' this would not accord with the guidance in *Supplementary Planning Document CPG4 Basements and Lightwells* CPG4.

20. There is a Network Rail tunnel approximately 35 metres below the existing ground level but there would be in the region of 20 metres of earth between the base of any pile and the crown of the tunnel and Network Rail Asset Management anticipates that any impact would be negligible.
21. Criticisms are also made by engineers representing the occupiers of The Garden Flat at No 21. Many of the points made relate to differences between proposals for the appellant by Hurst Pierce and Malcolm LLP and Michael Alexander Consulting Engineers. However, the former have not been commissioned to undertake the engineering aspects of the proposed development and their information has been superseded by that of the latter. Many of the points are not, therefore, relevant whilst others such as the detailed design of piles would normally be undertaken at detailed design stage as noted above. Whilst damage predictions greater than those anticipated by the appellant's engineers have been indicated, it is not clear on what basis and in any event it takes as a starting point the design of Hurst Peirce and Malcolm that is superseded. Generally the level of detail suggested as necessary would be inappropriate at the planning stage.
22. Reference has been made to a BIA prepared in connection with a proposal at 17 Templewood Avenue but each case should be considered on its merits with an appropriate level of information as indicated in CPG4. An application relating to 9 Downshire Hill has also been mentioned but this predates CPG4 and the BIA process. CPG4 does not differentiate between double basements or other basement development but sets out a systematic process that has been followed in this case and conclusions have been reached based on investigations and reports. If the project proceeds, detailed design would be undertaken and provided to adjoining owners through the Party Wall process.
23. The possibility of underground rivers and springs has been raised and reference made to names in the vicinity that have the words 'spring' or 'well' in them. Springlines occur at stratigraphic boundaries, the nearest of which is 250 metres to the north-west. There is no evidence from onsite investigations of any subsurface water features to influence the hydrology in the vicinity of the proposal.
24. It has been demonstrated that the structural stability of the adjoining properties would not be put at significant risk and so would accord with the aims of DP Policy DP27 and CPG4. However, to ensure that the construction methods would be undertaken in accordance with the design, and to safeguard the amenity of neighbours, a condition could require details of a Chartered Engineer appointed to supervise the works to be submitted for approval prior to any development taking place.

### **Other Matters**

25. The nearest window to the proposed air conditioning unit is on the rear elevation of 21 Thurlow Road. An *Acoustic Report* concludes that, subject to details, the air conditioning unit would meet Camden's Noise Criteria one metre outside the nearest noise sensitive window, albeit close to the limit. Conditions attached to any planning permission could ensure that the unit is not brought into use until acoustic isolation and sound attenuation measures have been provided and that it operates thereafter in accordance with the Noise Criteria. The proposal would not, therefore, have a detrimental effect on the living conditions of neighbours in terms of noise and disturbance.

26. Although a magnolia and a purple leafed plum would be lost there would still be at least one of each species remaining in the garden and there would not be any significant impact on biodiversity. The proposal would comply with the objectives of CS Policy CS15. Whilst some local residents are concerned about vehicles damaging the road and causing congestion there is no objection from the Highway Authority and little evidence to suggest that its view is incorrect. The possibility of flooding has been raised by local residents but the Council accepts that the development would be unlikely to result in an increased risk of flooding. Whilst there is little in the way of dimensions on the drawings they contain sufficient detail and the application was accepted by the Council.

### **Section 106 Agreement and Conditions**

27. The Council's third and fourth reasons for refusal relate to the lack of a legal agreement to provide for the submission and implementation of a Construction Management Plan and to secure a financial contribution towards the repaving of the footway adjacent to the site. A signed Section 106 Agreement has now been submitted to cover those provisions. However, there is adequate room on site for storage of materials and any use of the highway would need a licence so a Construction Management Plan would be of little benefit and was not requested prior to the Committee meeting. Little justification has been provided for requiring a financial contribution which again was not mentioned prior to the meeting. Both provisions fail to meet the tests set out in *Community Infrastructure Levy Regulation 122* and consequently no weight has been given to the Section 106 Agreement.

28. In addition to the normal time condition, and the other conditions already mentioned, development should be required to be carried out in accordance with a list of approved drawings in the interests of clarity and good planning. Samples of the glass for the glazed rooflights should be required to ensure light spillage would not affect the amenity of neighbours. Conditions requiring details of hard and soft landscaping and means of enclosure, including of the air conditioning plant, implemented within a defined timetable, and maintained for a period thereafter is necessary to safeguard the character and appearance of the Conservation Area. Details of a sustainable urban drainage system should be required to reduce the rate of surface water run off and limit impact on the surface water drainage system.

29. Turning to the Conservation Area Consent, in addition to the normal time condition, a contract should be required to be entered into for the carrying out of redevelopment for which planning permission has been granted prior to any demolition to safeguard the character and appearance of the Conservation Area.

*K D Barton*

INSPECTOR

**Schedule of Conditions Attached to APP/X5210/A/12/2176817 and  
APP/X5210/E/12/2176818  
Planning Permission APP/X5210/A/12/2176817**

- 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: 1154/R/AP/01 Rev1, 02 Rev1, 03 Rev1, 04 Rev1, 05 Rev1, 06 Rev1, 07 Rev1, 08 Rev1, 09 Rev1, 10 Rev1, 11 Rev1, and 12 Rev1.
- 3) No development shall take place until a suitably qualified Chartered Engineer with membership of the appropriate professional body has been appointed to inspect, approve, and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design that has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to, and approved in writing by, the local planning authority prior to commencement of the development. Any proposed change or reappointment during the construction works shall be submitted to, and approved in writing by, the local planning authority prior to it being implemented.
- 4) No development shall take place until a sample panel of the facing brickwork demonstrating the proposed colour, texture, face-bond and pointing has been provided on site, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved sample which shall be retained on site until all brickwork has been completed.
- 5) No development shall take place until details of the glass to be used in the glazed rooflights has been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of a sustainable drainage scheme for the site, including a management and maintenance plan, has been submitted to, and approved in writing by, the local planning authority. The approved details shall be implemented in accordance with the submitted details as part of the development. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.
- 7) No development shall take place until details of both hard and soft landscape works and means of enclosure of all unbuilt open areas, but including the air conditioning enclosure, have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved. These details shall include details of any proposed earthworks including grading, mounding, and other changes in ground levels.
- 8) All hard and soft landscaping works and means of enclosure shall be carried out by no later than the end of the first planting season following the completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 9) All trees on the site, or overhanging trees growing on adjoining sites, with the exception of trees T6 (Magnolia) and T11 (Purple Leaf Plum) as shown on Arboricultural Solutions drawing TCP\_TR\_A Issue A, shall be retained and protected, including a Purple Crab Apple in the front garden of 22 Thurlow Road and a Magnolia in the rear garden of 21 Thurlow

Road. No development shall take place until details of tree protection measures in accordance with the guidelines and standards set out in BS5837: 2005 'Trees in Relation to Construction', have been submitted to, and approved in writing by, the local planning authority.

- 10) No development shall take place until a report and photographs demonstrating that the approved tree protection measures have been implemented has been submitted to, and approved in writing by, the local planning authority. The approved tree protection measures shall be retained for the duration of the construction works.
- 11) The air conditioning plant between 21 and 22 Thurlow Road shall not be brought into use until acoustic isolation and sound attenuation has been provided in accordance with a scheme submitted to, and approved in writing by, the local planning authority. The scheme shall thereafter be maintained in effective order.
- 12) Noise levels at a point one metre externally from sensitive facades shall be at least 5dB(A) less than the existing background measurement LA90 expressed in dB(A) when the air conditioning unit between 21 and 22 Thurlow Road is in operation unless the air conditioning unit will have a noise that is a distinguishable, discrete, continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps) then the noise levels from the air conditioning unit at any sensitive façade shall be at least 10dB(A) below the LA90 expressed in dB(A).

**Conservation Area Consent APP/X5210/E/12/2176818**

- 1) The works hereby authorised shall begin not later than three years from the date of this consent.
- 2) The works of demolition hereby authorised shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.