



Appeal Decision

Site visit made on 16 April 2012

by David Prentis BA BPI MRTPI

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

Decision date: 30 April 2012

Appeal Ref: APP/X5210/A/11/2166638
3 Kidderpore Avenue, London NW3 7SX

- 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 Cathcart Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2010/3432/P, dated 28 June 2010, was refused by notice dated 16 September 2011.
 - The development proposed is the excavation of a basement to provide additional residential accommodation including a swimming pool and underground parking facilities to existing dwelling house (Class C3).
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Preliminary matters

1. An application for costs was made by Cathcart Limited against the Council of the London Borough of Camden. This application is the subject of a separate decision.
2. The appellant did not agree with the changes made by the Council to the original description of development. I shall determine the appeal on the basis of the revised description suggested in the appellant's statement, as set out above, which accurately describes the appeal proposal.
3. The National Planning Policy Framework (*the Framework*) was published after the appeal statements were written, replacing various previous statements of national policy guidance. The Council and the appellant have been given an opportunity to comment on these policy changes and I have taken account of the responses received.
4. The appellant has made an agreement with the Council under Section 106 of the Town and Country Planning Act 1990 (*the Agreement*). The main obligations are that the appellant would: (1) conform to the Construction Traffic Management Plan (CTMP) submitted with the application; (2) submit a Detailed Basement Construction Plan (DBCP) for approval by the Council; (3) pay a contribution to highway works in the vicinity of the site access; and (4) submit a sustainability plan for approval by the Council. The Council has confirmed that the Agreement resolves the concerns reflected in the 2nd, 3rd, 4th and 5th reasons for refusal.
5. I consider that the obligations meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and I shall therefore take them into account in reaching my decision. I shall comment further on the individual obligations below.

Decision

6. The appeal is allowed and planning permission is granted for the excavation of a basement to provide additional residential accommodation including a swimming pool and underground parking facilities to existing dwelling house (Class C3) at 3 Kidderpore Avenue, London NW3 7SX in accordance with the terms of the application, Ref 2010/3432/P, dated 28 June 2010, subject to the conditions set out in the attached Schedule 1.

Main issues

7. The main issues are the effects of the proposal on:
- the structural stability of neighbouring properties;
 - the water environment;
 - the character and appearance of the Redington/Frognaal Conservation Area; and
 - the living conditions of nearby residents.

Reasons

Background

8. There has been a previous appeal for a similar scheme at the same site¹. That appeal was dismissed because the Inspector could not be sure that the proposed basement development would not have had an unacceptable effect on the structural integrity of neighbouring properties and/or on local hydrology. A linked appeal relating to the demolition of a pool house in the back garden of the property was allowed and conservation area consent was granted. These decisions are important material considerations. My attention has also been drawn to an appeal decision relating to a scheme which included the construction of a basement at 9 Downshire Hill, London NW3 1NR² which I have also taken into account.
9. The development plan includes the Council's Local Development Framework Core Strategy (CS) and Development Policies (DP) which were adopted in 2010. Policy DP27 deals specifically with proposals for basements and lightwells. It states that the Council will seek an assessment of the effects of such proposals on drainage, flooding, groundwater and structural stability and that underground development will only be permitted where it does not cause harm to the built and natural environment and local amenity and does not result in flooding or ground instability. The policy then sets out a list of detailed criteria against which proposals may be assessed. Further guidance is given in a Supplementary Planning Document *Basements and lightwells* (CPG4).

Effect on structural stability

10. At the time of the previous appeal the Environment Agency (EA) had advised that further ground investigations were necessary. Further investigations have now been carried out and the appellant has submitted a number of technical reports. These include an updated report on ground investigations, a construction method statement, and a preliminary damage assessment. Taken

¹ Ref APP/X5210/A/10/2131296

² Ref APP/X5210/E/10/2129689

together, the technical reports comprise the assessment required by Policy DP27 and CPG4.

11. The investigations indicate that the ground conditions are uniform, with the site being underlain by London Clay, thereby providing suitable conditions for basement construction. The preliminary damage assessment notes that the two properties likely to be affected are those on either side - Nos 1A and 5 Kidderpore Avenue. The report states that there would be some movement of the adjoining ground due to the construction of the proposed basement although this would be minimised by the use of a stiff retaining system. Using the Burland Categories³, it states that the level of damage to the adjoining properties would be "very slight". Distortions would be concentrated at points where two elements of an adjoining structure join, such as between an extension and an original building. In such locations the level of damage is predicted to be "slight". The report concludes that there is no question of movements of this magnitude affecting the structural stability of the buildings. CPG4 states that a predicted level of damage which is greater than "slight" is not acceptable and that, in those circumstances, mitigation would be required.
12. The technical information has been reviewed by Arup, independent engineers acting on behalf of the Council. Arup advises that the submitted information is appropriate to the stage that the project has reached and that it addresses the main issues associated with the proposed development. On this basis, Arup concludes that the proposed development could be carried out without risk of instability to adjacent structures, assuming that the conditions of Nos 1A and 5 are shown to be sound. Arup goes on to say that the assessed degree of ground movement is considered to be the most probable and that a more conservative assessment should be made at detailed design stage, together with structural assessments of Nos 1A and 5.
13. The Council emphasises the large scale of the project and suggests that this calls for a commensurate level of detail in the impact assessment. It is argued that the Arup report contains a degree of uncertainty which is sufficient to justify withholding planning permission. In addition, the Council emphasises that no structural appraisal of the adjoining properties has been carried out, only an external visual assessment. An engineer acting for the owner of No 5 has expressed similar concerns and also argues that the property is not as robust as the appellant's engineers assume.
14. The Inspector in the Downshire Hill appeal commented that there is a need to determine the extent to which any effects on adjoining buildings are harmful and, if there is harm, the extent to which that harm is such as to be properly a matter for the planning system. I agree with that approach. The policy test set out in Policy DP27(a) is that development should maintain the structural stability of neighbouring properties. It follows that the basement impact assessment must be sufficient to inform a judgement on that policy test. I appreciate that, as yet, no detailed structural assessment of the adjoining properties has been carried out. However, the appellant's engineers have carried out detailed investigations on the appeal site itself and have made a general assessment of the condition of the neighbouring properties, informed by an understanding of the nature of those buildings, by external inspection and by their judgement and experience. That seems to me to be a reasonable approach, consistent with the objectives of Policy DP27.

³ A way to measure the extent of structural damage which is referred to in CPG4

15. I acknowledge that there are differences of professional opinion between those advising the appellant and those advising the adjoining owner at No 5. There are a number of factors which lead me to attach greater weight to the appellant's evidence. First, it is not disputed that, in general terms, the ground conditions are suitable for this form of construction. It follows that the effects are likely to be reasonably predictable. Second, the appellant has produced estimates of ground movement based on empirical comparison with similar schemes which have been corroborated by the use of engineering software for retaining wall design. Third, the results have been independently evaluated by engineers acting for the Council.
16. The Agreement makes provision for a DBCP to be approved by the Council. As part of this process there would be a design review by an independent engineer. The detailed design would be informed by structural assessments of the adjoining properties and by more conservative modelling of ground conditions and the water environment to establish the possible, (as opposed to the most probable), degree of ground movement and structural damage. This approach is consistent with the advice given by Arup.
17. On the first issue, I conclude that the proposal would be likely to maintain the structural stability of adjoining properties to the extent that this is material for planning purposes. It would accord with Policy DP27(a) and CPG4. It would also accord with Policy CS5 insofar as that policy requires the impacts of developments to be fully considered.

Effect on the water environment

18. The site is on sloping ground and the potential effect of the proposed basement on the natural flow of groundwater is a matter of concern to many local residents. The ground investigation report takes account of the location of an underground watercourse and concludes that it is unlikely to be affected. The borehole data shows that there is negligible water flow within the clay and that any movement of groundwater is likely to be confined to the surface layer of topsoil and made ground. The drainage appraisal shows how perimeter land drains could be laid to collect water and discharge it at the rear of the site, minimising any increase or reduction in the existing rate of flow.
19. There would be an increase in the total area of hard surface within the site. The drainage appraisal includes proposals for sustainable urban drainage which would incorporate storage chambers to maintain the existing level of run-off. Further drainage details could be controlled by a condition. I note that the EA raises no objection to the appeal scheme.
20. On the second issue, I conclude that the proposal would not adversely affect drainage or the water environment and would not conflict with Policy DP27(b).

Effect on the character and appearance of the conservation area

21. The Council's Conservation Area Statement for the Redington/Frogna Conservation Area describes it as a well-preserved example of a prosperous late 19th century and Edwardian residential suburb, characterised by large detached and semi-detached houses. It also notes that the rear gardens, many of which are sizeable, contribute to the area's verdant quality. I agree with this general description.

22. The appeal scheme would retain the existing house which makes a positive contribution to the conservation area. The effect on the paved forecourt would be limited to a grille above the basement and a car lift. A condition could be imposed requiring the car lift to be kept in the lowered position except when being used to move vehicles. Subject to such a condition, these features would have a limited effect on the street scene. There is an Ash tree, subject to a Tree Preservation Order, located at the front corner of the site. The basement has been designed to avoid the root protection area of this tree. Protection of the tree during the construction phase could be controlled by a condition.
23. The basement would take up the greater part of the rear garden. This is a matter of concern to local residents. The Heath and Hampstead Society (*the Society*) comments that the Council's DP document states that basements that do not extend beyond the footprint of the original building and are no deeper than one full storey below ground will often be the most appropriate way to extend a building below ground. The Society considers that the proposal would be an overdevelopment of the site. However, Policy DP27 does not preclude larger, or deeper, basements such as the appeal scheme as a matter of principle. Rather, it contains a set of criteria by which proposals are to be judged.
24. The Society also points out that the DP document states that basements that take up the whole of the rear and/or front garden are unlikely to be acceptable and that sufficient margins should be left around a basement to sustain trees and vegetation. I understand that concern because the scheme would leave only limited margins for planting. On the other hand, this particular garden contributes little, if anything, to the verdant character of the conservation area because it is dominated by a large pool building. The removal of the pool building and its replacement with a green roof above the basement would increase the openness of the site. The layout would allow some scope for new planting which could be secured by a condition. Moreover, no significant trees would be removed within the rear garden. Subject to appropriate protection during construction, nearby trees in adjoining gardens are unlikely to be harmed. As noted above, this is a matter which could be controlled by a condition.
25. My overall assessment is that the proposal would have a neutral effect on the character and appearance of the conservation area. There would be no harm to the significance of the conservation area and its character and appearance would be preserved. The proposal would accord with Policy DP27(e), (f) and (g).

Effect on living conditions of nearby residents

26. Once complete, the proposed basement would have very little impact due to the fact that it would be underground. In land use terms the site would remain as a single house, albeit with a much increased floor area. Any potential noise from the car lift or pool plant could be controlled by a condition.
27. Excavation works and the construction of the proposed basement would generate a significant volume of lorry movements during the construction phase. Whilst this would inevitably cause disruption and disturbance, it would be for a temporary period. The appellant has submitted a CTMP which sets out matters such as hours of working, the maximum number of lorries allowed at the site, the employment of a traffic marshal and the creation of an on-site

loading area. The implementation of these measures would be secured by the Agreement. Having regard to the Agreement and the suggested conditions, the impacts on the living conditions of nearby residents would not be so significant as to warrant refusal of planning permission. The proposal would not therefore conflict with Policy DP27(d).

Other matters

28. I have considered the LP and CS policies referred to above in the light of the Framework. On the basis of the evidence before me I have not identified any material conflicts. Accordingly, the Framework has not led me to alter my conclusions.
29. Construction of the scheme would require the provision of a temporary crossover to Kidderpore Avenue. The Agreement includes provision for a highways contribution which would secure the reinstatement of the highway and the footway at the end of the construction period. It also includes provision for a sustainability plan to be submitted for the approval of the Council. This would ensure that the scheme contributes to the objectives of sustainable development, in accordance with the policies of the CS.

Conditions

30. The Council has suggested conditions which I have considered in the light of Circular 11/95 *The use of conditions in planning permissions*. I agree with these suggestions although I have adjusted some of the detailed wording to reflect Circular advice. I have referred above to the need for conditions relating to drainage, the car lift, landscaping, tree protection, and plant noise. The Council suggested two conditions relating to plant noise, the first dealing with noise levels at nearby sensitive facades. Having imposed that condition, the second suggested condition, requiring further details of individual items of plant, would be unnecessary duplication. A condition requiring development to be in accordance with the approved plans should be imposed to reflect the advice in *Greater Flexibility for Planning Permissions*.

Conclusions

31. I have considered all other matters raised but find nothing to alter my conclusions on the main issues. For the reasons given above, the appeal should be allowed.

David Prentis

Inspector

Schedule 1

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include any proposed earthworks including grading, mounding and other changes in levels; means of enclosure; hard surfacing materials and planting details including size and species of tree and shrub planting.
- 3) All hard and soft landscape works approved pursuant to condition 2 shall be carried out in accordance with the approved details. The hard landscape works shall be carried out prior to the occupation of any part of the development. The soft landscape works shall be carried out not later than the end of the planting season following the completion of the development. Any trees or other plantings 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 by the end of the following planting season with others of a similar size and species unless the Council gives written consent to any variation.
- 4) No development shall take place until details of measures for the protection of trees within and adjoining the site during the construction of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Such details shall be generally in accordance with BS5837:2005 *Trees in Relation to Construction*. The approved measures shall be implemented prior to the commencement of the development and shall thereafter be retained for the duration of the construction works.
- 5) The car lift hereby approved shall be kept in the lowered position except when being used for the movement of vehicles.
- 6) No development shall take place until details of a sustainable urban drainage system have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details which shall be permanently retained thereafter.
- 7) No plant or equipment used in connection with the development hereby approved shall generate a noise level at any point 1 metre external to any sensitive facade which is greater than 5 dB(A) below the existing background measurement (LA90) expressed in dB(A). If any such plant or equipment creates a distinguishable discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps) then the noise level from that plant or equipment shall not be greater than 10 dB(A) below the existing background measurement (LA90) expressed in dB(A).
- 8) The development hereby permitted shall be carried out in accordance with the following approved plans: A-KA29-EX00; -EX01; -EX02; -EX03; -EL02; -Li; -SU; -SC01 rev B; -SC02 rev B; -SC03 rev A; -SC04 rev B; -PL00 rev B; -PL01 rev B and -PL02 rev B.