



Appeal Decisions

Site visit made on 10 November 2011

by S J Emerson BSc DipTP MRTPI

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

Decision date: 21 November 2011

Appeal A: APP/X5210/A/11/2152730

4 Templewood Avenue, London, NW3 7XA.

- 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 and Mrs Natsis against the decision of the Council of the London Borough of Camden.
 - The application Ref 2010/5119/P, dated 20 September 2010, was refused by notice dated 23 March 2011.
 - The development proposed is: excavation of existing basement to provide a new swimming pool, gym, utility spaces and associated lightwells; erection of a ground floor rear extension, new terraces at ground level and first floor levels, new replacement roof, works to chimneys, new dormer windows, new entrance gates and associated external alterations and landscaping to single dwelling house.
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Appeal B: APP/X5210/E/11/2152732

4 Templewood Avenue, London, NW3 7XA.

- The appeal 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 appeal is made by Mr and Mrs Natsis against the decision of the Council of the London Borough of Camden.
 - The application Ref 2010/6289/C, dated 20 September 2010, was refused by notice dated 23 March 2011.
 - The demolition proposed is refurbishment works involving substantial demolition of existing dwelling house.
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Procedural Matters

1. The descriptions of development on the application forms are very long and include explanation for the works as well as description of what is to be done. I have therefore used in the headings above the Council's descriptions of the proposals, to which the appellants do not object.
2. Whilst the applications were before the Council, amended plans were submitted. These mainly concerned detailed matters such as notation on drawings, but also involved a reduction in the size of some of the proposed dormers and of the lightwells serving the basement. The plans on which the applications were refused are set out in the officer's report to the Council's committee. I have determined the application as amended.

Decisions

3. The appeals are dismissed.

Main Issues

4. The main issues for the planning appeal are:
 - Whether the development would increase the risk, or the harmful consequences, of flooding;
 - Whether the activities during the construction of the development would harm the amenity or appearance of the area, such as to need mitigation by means of legal agreements.
5. The appeal site is within the Redington/Frognaal Conservation Area. No 4 is a large detached house. It was designed by the architect who also designed many of the other houses in the area. It thus forms an attractive and integral element of this part of the conservation area. The proposal includes the demolition of the interior of the house, the removal of the roof and the windows, creating a shell consisting of most of the existing external walls. Conservation area consent was refused because in the absence of an approved scheme for the rebuilding of the house, the proposed demolition would result in an empty shell harmful to the character and appearance of the conservation area. This refusal is thus a consequence of the refusal by the Council of the planning application for rebuilding and enlargement.
6. The appellants consider that the planning application is acceptable and that therefore conservation area consent should also be granted, but they do not argue that such consent should be granted in the absence of a planning permission. The creation of a roofless shell on the site with no prospect for the reinstatement of a dwelling would clearly be harmful to the conservation area. Thus the decision on the conservation area consent is consequential to my decision on the planning appeal and does not need to be considered further.

Reasons

Flooding

7. The appeal property is located at the junction of Templewood Avenue and Templewood Gardens. The house fronts Templewood Gardens with its garden running alongside this road. The proposals include the construction of a basement which extends beyond the footprint of the main house. This basement would be below existing ground levels at the north-western and north-eastern sides of the house. The basement would, however, be level with the existing main garden on the south-eastern side where it would form a lower ground floor, projecting beyond the existing dwelling, with a terrace above. In the north western corner of the basement, living accommodation is proposed consisting of a living room/kitchen, a double bedroom and a bathroom.
8. Templewood Avenue and Templewood Gardens suffered surface water flooding in 2002. The hydrological report submitted by the appellants refers to the house being located in an area prone to occasional storm drain overflows exacerbated by the local hillside topography. The report recommends various measures including the basement being engineered to be both water proof and flood resilient, but no specific measures are included in the application drawings.

9. Policy DP27 of the Camden Development Policies (adopted 2010) states (among other matters) that the Council will not permit basement schemes which include habitable rooms and other sensitive uses in areas prone to flooding. Given the evidence concerning flood risk, I consider that the appeal site should be regarded as an area *prone to flooding*. The living accommodation proposed in the basement conflicts with the wording of the policy.
10. Paragraph 27.6 of the Development Policies document gives some further explanation about living accommodation and refers to the Council not allowing *self contained* basement flats, which is more specific than the reference to living accommodation in the policy. The appellant argues that the living accommodation proposed should not be regarded as self contained and thus does not conflict with the proper application of policy DP27.
11. The proposed living accommodation provides all that is necessary for self contained accommodation. It has its own independent access via an external staircase. There is also access via a short corridor and door to the main part of the basement where there is a staircase to the main house and doors to the garden. The appellants may intend that anyone living in the basement (such as a member of staff) would always have access to the rest of the basement and thus have an alternative means of escape in the event of flooding. But circumstances may change and the door from the living accommodation to the rest of the basement may at times be locked (such as when the rest of the house is unoccupied) with the occupier of the basement denied access to the rest of the house. In my view, the accommodation should be regarded as self contained. There is thus a clear conflict with policy DP27.
12. Surface water flows could enter the basement via the openings for the external staircase and the 2 lightwells serving the windows to the basement accommodation. In the absence of any clear measures to substantially reduce the risk of surface water flooding of the basement, I consider that the proposal would be likely to increase the harmful consequences of any flood event. This increased harm and the conflict with policy is sufficient on its own to justify dismissal of the appeal.
13. The occupiers of the adjoining house (2 Templewood Avenue) object to the proposals on various grounds. They commissioned an engineer's report concerning flooding and land stability arising from the proposed basement. This report questions whether the basement would so impede ground water flows across the site as to have consequences for the water table on adjoining land and for the basement of the adjoining house. The appellants' hydrologist report does not address the likelihood of any such consequences. Such concerns should be addressed further. In responding to these concerns, the appellants rely primarily on the Council not raising these issues. If I were otherwise minded to allow the appeal I would have invited further comments from the parties so as to be able to fairly conclude on this aspect of the flooding issue.

Construction impacts

14. Implementation of the proposals would involve a lengthy and complex construction process. There would be numerous movements of heavy lorries to and from the site to take away demolition material and the excavations for the basement as well as to deliver the substantial new building materials required.

The site is in a quiet residential area and the adjoining house (No 2) is very close to the boundary. The proposed basement would be excavated up to the boundary with No 2.

15. In the above circumstances, it is likely that construction activities would harm the living conditions of adjoining residents unless the times and days for work, the organisation of the site (such as for the delivery and storage of materials) and the working methods for the major construction tasks were controlled and carefully planned. In addition the movement of heavy lorries to and from the site would be likely to damage the footways which are paved in brick. The existing crossovers would be inadequate for lorry movements on and off site. These brick footways are characteristic of this part of the conservation area and would need to be reinstated by the highway authority after the works were complete to ensure continuity with the adjoining footways.
16. To control the above matters, the Council considers that legal agreements are required to secure the submission of, and adherence to, a construction management plan and for a financial contribution for reinstatement of the highway. The appellants accept that these legal obligations are required. A draft legal agreement between the appellants and the Council to achieve the Council's aims was submitted with the appeal documentation. As a result of the appellants' agreement to these matters, the Council has provided little justification for the need for these legal obligations.
17. In my view, a construction method statement could be secured by condition. This would be effective only in relation to works on site rather than off site activities such as traffic routes. But I am not convinced that such off site controls are needed. Whilst damage to the highway might be capable of being remedied via other legislation, I am satisfied that it is reasonable in this location to ensure effective reinstatement via a financial contribution. A legal obligation for this purpose would thus meet the requirements of the Community Infrastructure Levy Regulations.
18. No signed copy of the legal agreement has been provided and thus there is no effective agreement. I therefore give the submitted draft little weight. In the absence of effective mitigation, the proposals would be likely to result in construction impacts damaging to the appearance of this part of the conservation area. This is another reason to dismiss the appeal.

Other matters

19. Other matters are raised by adjoining owners, but given that my conclusions on the main matters are sufficient to dismiss the appeal it is not necessary to explore these further. There are no matters which outweigh the harm that I have identified. For the reasons given above, the planning appeal is dismissed. The appeal for conservation area consent is also dismissed in the absence of an acceptable scheme to rebuild the house.

Simon Emerson

INSPECTOR