



# Appeal Decision

Site visit made on 8 September 2010

by **Mike Fox** BA (Hons) Dip TP MRTPI

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

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**Decision date:**  
**23 September 2010**

## Appeal Ref: APP/X5210/A/10/2124074

### 94 South Hill Park, London, NW3 2SN

- 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 Neil Phillips against the decision of the Council of the London Borough of Camden.
- The application Ref 2009/5265/P, dated 3 November 2009, was refused by notice dated 10 February 2010.
- The development proposed is additions and alterations, including excavation works, to create a new basement, incorporating a new swimming pool and rear garden light well, to the existing family dwelling.

### Application for costs

1. An application for costs was made by Mr Neil Phillips against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### Decision

2. I allow the appeal and grant planning permission for additions and alterations, including excavation works, to create a new basement, incorporating a new swimming pool and rear garden light well, to the existing family dwelling at 94 South Hill Park, London, NW3 2SN, in accordance with the terms of the application Ref 2009/5265/P, dated 3 November 2009, and the plans submitted with it, subject to the following conditions:
  - 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: SHP/B 101 entitled *Site Location Plan*, dated 3 Nov 2009; SHP/A 102-B, entitled *Proposed Basement Floor Plan*, dated 3 Nov 2009; SHP/B 103 entitled *Existing Lower Ground Floor Plan*, dated 2 Nov 2009; SHP/A 103-B entitled *Proposed Lower Ground Floor Plan*, dated 3 Nov 2009; SHPA 201-B entitled *Proposed Front Elevation*, dated 18 Nov 2009; SHP/B 201-B, entitled *Existing Front Elevation*, dated 18 Nov 2009; SHP/B 202, entitled *Existing Side Elevation*, dated 2 Nov 2009; SHP/B 203 entitled *Existing Rear Elevation*, dated 2 Nov 2009; SHP/A 203-B, entitled *Proposed Section BB*, dated 3 November 2009; SHP/B 301 entitled *Existing Section AA*, dated 2 Nov 2009; SHP/A 301-B, entitled *Proposed Section AA*, dated 3 November 2009; SHP/B 302 entitled *Existing Section BB*, dated 2 Nov 2009; and SK.05 Rev D, entitled *Section through Pool Zone*, dated Aug 2009.

- 3) No development shall take place until full details of both hard and soft landscape works 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 proposed earthworks; levels or contours; and means of enclosure.
- 4) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out not later than the end of the planting season following completion of the development. Any trees or areas of planting which after a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives its written approval to any variation.
- 5) All trees, or parts of trees growing from adjacent sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with a scheme to be submitted to and approved in writing by the local planning authority before the development is started; such a scheme will demonstrate how these trees which are to be retained shall be protected during construction work, and such details shall follow the guidelines and standards set out in BS5837:2005 *Trees in Relation to Construction*.
- 6) Before the occupation of the basement extension, details of the proposed scheme for the ventilation of and extraction of fumes from the basement, swimming pool and plant room, including details of sound attenuation, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out, and thereafter maintained in effective order in accordance with these details.
- 7) Noise levels at a point 1m external to sensitive façades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all or part of the plant/equipment are in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete, continuous note (eg a whine, hiss, screech or hum) and/or if there are distinct impulses (eg bangs, clicks, clatters or thumps), in which case the noise levels from that piece of plant/ equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).
- 8) No development shall take place until details have been submitted to and approved in writing by the local planning authority in relation to the final design and construction of the basement including additional drainage measures to mitigate any potential negative impact to groundwater flow. The development shall be carried out in connection with the approved details, to include the incorporation of a collector/distribution drain.
- 9) No development shall take place until details of the arrangements for emptying the swimming pool and avoiding causing overflow from the sewerage network have been submitted to and approved in writing by the local planning authority and these arrangements shall thereafter be maintained.

### **Procedural matters**

3. The appellant submitted a signed unilateral undertaking (UU) dated 26 March 2010 containing planning obligations pursuant to Section 106 of the Act, which I deal with below.
4. A planning application for alterations to the ground floor and lower ground floor of the appeal property (Ref 2009/5169/P), dated 2 November 2009, has been granted planning permission and this scheme is currently under construction. The proposal before me would link in closely with the approved plans, although they are completely separate schemes in planning terms.

### **Main issues**

5. I consider that there are two hydrogeological issues at the heart of this appeal, namely flood risk and structural stability, in relation to the appeal property, neighbouring properties and the dam between the nearby ponds. Both of these issues relate primarily to the volume and flow of groundwater, which in turn is based on the geology of the appeal site and surrounding area. The flood risk also relates to surface water from the ponds.

### **Reasons**

6. The appeal property is a semi-detached five-storey dwelling with a lower ground floor and converted roof space, and a walled rear garden. It is located within a residential area. The rear garden slopes down towards the Hampstead Ponds; Pond No.2 is about 3m to the north-west, separated by a footpath which follows the northern and western boundary of the property. Hampstead Heath lies beyond to the west and north. The property is also within the South Hill Park Conservation Area.

#### *Background geology*

7. The Council is concerned that the appellant's structural engineer's report is insufficiently detailed to remove the uncertainty relating to whether the proposed development would be located on London Clay or other strata, such as the Claygate Beds, below a relatively shallow depth of superficial deposits that both the consultants refer to as 'made ground'. London Clay has low permeability, which would make the proposed development relatively 'watertight'. In this rock, the low flows of ground water have a minimal effect on flood risk and structural stability. On the other hand, the Claygate Beds are more porous with greater flows of groundwater, and a correspondingly increased threat to flood risk and structural stability.
8. The Council contends that the appellant's study is largely 'desk top' based, and reliant on maps produced by the British Geological Survey (BGS), which it considers are unreliable in relation to the appeal site. It has based its response to the appeal proposal on a report by Haycock Associates, commissioned by the City of London which, as statutory manager for Hampstead Heath, has responsibility for the Hampstead Ponds. This report is entitled *Planning Application: 94 South Hill Park. Queries on Groundwater Impact of Proposed Development* (1 February 2010), and I shall refer to it as the Haycock Report.

9. The Haycock Report suggests, on the basis of what it considers to be a reasonable margin of error which has to be applied to the accuracy of the BGS geological maps that "it is possible that the house (ie the appeal property) actually may be situated on the Claygate Beds", ie porous, groundwater bearing strata. The Haycock Report states, on this basis, that the existing basement is likely to be restricting groundwater flow and that additional underground development may further block or redirect groundwater flows to the detriment of surrounding properties and potentially reduce flows to the pond, which may also reduce pond water levels.
10. The appellant's evidence is based on a report by Geotechnical Consulting Group entitled *94 South Hill Park, London NW3: Hydrogeological Review* (November 2009), which I shall refer to as the GCG Report. This report combines survey information and ground investigation, including detailed findings from a 20m deep bore hole approximately in the centre of the garden of the appeal property and from 14 trial pits, spread widely over the site curtilage. It is therefore not just a desk top study. The report points to a layer of superficial made ground about 3.5m deep above material that is consistent with London Clay, not the Claygate Beds, under the appeal property. The report shows that the depth of the proposed basement, and the swimming pool at an even greater depth, would mean that the proposal would be embedded within the London Clay.
11. The GCG Report is supported by other work based on nearby boreholes, undertaken by Dr C King, whom I note is the UK's leading authority on London Clay. I therefore conclude that the underlying geology is London Clay, in which ground water flows are minimal, and not the Claygate Beds.

#### *Issue 1: Flood risk*

12. The appellant has stated that the ground level at the rear of the appeal property immediately above the proposed basement is about 2m above the surface level of the upper, Hampstead No.2 Pond and about 5m above the surface level of the Hampstead No.1 Pond. These differences in levels have not been contested by the Council. The two ponds are also effectively separated by sheet piles in addition to earth contouring, forming a dam.
13. Although the proposed basement would extend to a depth below the surface level of the water in No.2 Pond, the appellant's investigations carried out and summarised in the GCG Report demonstrate that natural water seepage from this pond only entered the borehole slowly, whilst the trial pits were dry. Further GCG research indicates that the velocity of water flow in the London Clay in the horizontal direction is likely to be less than 1 millimetre per day<sup>1</sup>. The evidence indicates that the low volumes of groundwater encountered during construction could be satisfactorily dealt with through pumping and that the danger of flood risk to the appeal property or the lowering of the water level of No.2 Pond would consequently be minimal.
14. I note the Council's concern that the GCG Report has failed to provide adequate evidence that the proposed development would not detrimentally

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<sup>1</sup> Trigram Partnership Geotechnical Consulting Group's letter dated 3 February 2010, and their *Response to Technical Issues raised during the Planning Process* cover their investigations into permeability and groundwater flow in detail.

affect levels of flood risk in the immediate area. It therefore considers that an independent study should be undertaken. It is my view, however, that an independent view has been provided by the Environment Agency (EA). Whilst the EA has been critical of some aspects of the GCG Report, the GCG's overall findings are consistent with the view of the EA, which has not identified any flooding risk at this site. The EA has stated that, subject to an appropriate condition, which would provide for a properly designed and constructed drainage system to mitigate any potential negative impact on ground water flow, the proposed development would not on its own cause an increase in the present level of flood risk. The independent view of the EA is, in my view, an important material consideration.

15. My attention has also been drawn to a strategic flood risk assessment carried out by the engineering consultants Mouchel in 2007 for the North London Boroughs<sup>2</sup>, which stated that Camden has a relatively low risk from groundwater flooding, and that the two small reservoirs on Hampstead Heath, including the No.1 Pond, are considered to be a low flood risk to Camden. I also note that, as a precautionary measure, the proposal would include the installation of drainage around the outside of the basement at a high level in order to collect any subsurface water flowing in at the upper level. The proposed development would also be a watertight box, open at the top, above ground level only, and designed to resist the pressure from both soil and water.
16. Thames Water has raised no objection to the proposal, subject to suitable arrangements being made to empty the swimming pool and avoid the risk of sewer discharge. These are matters that can be dealt with by an appropriate condition, which would require liaison between the local planning authority and Thames Water.
17. The Haycock Report provides no new evidence to counter the view of the GCG Report, the EA's views or the Mouchel Assessment, and includes no investigatory evidence of its own. Its statement that "it is not possible for us to conclude that the new basement will not be influenced by ground water" was not, in my judgment, persuasive in relation to the results of the GCG Report investigations. The GCG Report found that very low flows of groundwater were seeping through the London Clay, rather than through the porous Claygate Beds which would have caused a significantly greater volume of flow, and consequent flood risk.
18. The Haycock Report also states that the crest of No.1 Pond is above the level of the rear garden of the appeal property, and that there is a real concern with regard to surface water flood risk if the pond level rose to this height. If this were to occur, the existing basements of several properties on South Hill Park backing onto No.1 Pond would also experience flooding. I note that the Mouchel Assessment states that the responsibility for managing flood risk lies with the owners of the reservoir (the City of London), whilst the EA would require this responsibility to be enforced. In practical terms, the level of the pond would be controlled through the established outlet into the River Fleet.

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<sup>2</sup> The *North London Strategic Flood Risk Assessment*, Mouchel, 2007, carried out to advise on local planning policy to developers on the management of residual flood risk and surface water drainage through the use of Sustainable Urban Drainage Systems.

19. The Haycock Report is silent on the danger of flooding from No.2 Pond; the danger referred to in the report is more of the water level of the pond being reduced as a result of the proposed development, a matter which I have addressed above. In the event of a potential increase in the water level of No.2 Pond, this would be controlled through the existing outlet into No.1 Pond below.
20. I therefore conclude, in relation to the first main issue, that, subject to appropriate conditions, the flood risk to the appeal property arising from the proposed development would not be significant, and the likelihood of change of groundwater flow adversely affecting neighbouring properties would also be low. Furthermore, the likelihood of flooding from the ponds would be minimal.

*Issue 2: Pond and property stability*

21. The Haycock Report argues that any dewatering from the construction of the basement could affect the stability of the dam which separates the two ponds, but this claim is not supported by the evidence before me. On the contrary, the GCG Report argues that because the rate of groundwater seepage at the appeal site is slow, it should not therefore be difficult to ensure that the basement excavation is kept dry without the need to pump significant, if any, water from the excavation. In my view, the GCG scenario is realistic and I therefore consider that the potential for the proposed development to adversely affect the stability of the dam is minimal.
22. Turning to property stability, there is no mention in the Haycock Report of the effects of the construction of other nearby basements in recent years, apart from a general observation that redirection of groundwater flow may create problems for neighbouring properties. Whilst third parties have expressed a structural concern in relation to World War Two bomb damage to the appeal property, this concern has not been expressed by the Council. I can see no reason to take a different view to the Council, especially as I have no evidence of any destabilisation having occurred throughout the intervening decades.
23. My attention has been drawn by some third party representations to examples of structural damage and localised flooding following basement works within the neighbourhood. I have no information, however, of the detailed causes of these problems, or of their relevance to the proposal before me. The Council has not expressed concern and in any event these matters would be controlled through the building regulations, which would be sufficient to safeguard any nearby properties from the risk of structural damage as a result of the proposed development.
24. I therefore conclude, in relation to the second main issue, that insufficient evidence has been established to link the destabilisation of the dam with the proposed development, whilst the impact on the stability of the appeal property and neighbouring buildings would be controlled through the building regulations.

**Other considerations**

25. The submitted unilateral undertaking (UU) would provide financial contributions towards a Construction Management Plan (CMP) and repaving the pavement walkway adjoining the site, following the impact of the construction works. The

Council has referred to Section 11.16 of its *Planning Guidance*, which was adopted in 2006 following public consultation. I consider that a CMP is necessary in view of the need to avoid dangerous situations, and minimise traffic disruption and the impact on the living conditions of neighbouring occupiers during construction. The UU would, in my judgment, be in accordance with Camden's *Planning Guidance* and also *London Borough of Camden Replacement Unitary Development Plan* (UDP) Policy SD8B. It would also comply with the tests of Circular 05/2005 *Planning Obligations*.

26. A large number of representations against the proposal were submitted by local residents, together with submissions from the Heath and Hampstead Society, the South End Green Association and a South Hill Park residents' submission. There is also a letter of support from a resident. In addition to hydrogeology, a number of other concerns are voiced. Disruption due to construction activity is an inevitable consequence of many forms of development including the proposal before me; however, this would be controlled through the CMP, whilst the Council would have legislative powers to curb undue disturbance. I agree that noise from plant and equipment associated with a swimming pool could be unacceptable to the living conditions of neighbouring occupiers, despite its low level and location at the front of the appeal property, and I have included a condition to mitigate this to acceptable levels.
27. The Council has not raised any objections in relation to traffic, access or parking problems, and I see no reason to disagree. As South Hill Park is effectively a loop road, there would be no need for construction vehicles to turn round in the road, although this would be one of the matters which would be addressed by the CMP. I note that the Hoarding Licence which the appellant has already been granted requires that a minimum gap of 1.2m is maintained where it abuts the footpath, and also that the hoarding is required to be illuminated. I have included a condition to ensure that the trees that are to be retained will be protected from construction activity. The proposed development would be contained, either within a walled garden or beneath the ground. I therefore consider that neither the character and appearance of the neighbouring open space nor of the South Hill Park Conservation Area would be harmed by the proposed development.
28. The presence of other gyms and swimming pools in the neighbourhood is not a material consideration. Party walls and other ownership agreements are private matters, and have not affected my decision on the planning merits of the appeal. In response to concerns that this application would set a precedent for similar applications, I have determined the proposal before me on its own merits, bearing in mind the specific context of the appeal property and its surroundings.

### **Conditions**

29. The conditions in my formal decision are based on those suggested by the Council, the EA and Thames Water, and have been slightly amended in the light of Circular 11/95 *The Use of Planning Conditions*. Condition (2) is necessary for the avoidance of doubt and in the interests of proper planning. Conditions (3), (4) and (5) are to safeguard the character and appearance of the development and the surrounding area. Conditions (6) and (7) are to safeguard the living conditions of the existing neighbouring occupiers and

future occupiers of the proposed development. Conditions (8) and (9) are to ensure that the construction of the development and its future use would not have an unreasonable impact on groundwater conditions, hydrogeology or level of flood risk in the immediate area.

## **Conclusion**

30. I have found that the proposal would not pose a significant flood risk through ground water or surface water; neither would it be likely to adversely affect the structural stability of the dam, the appeal property or other nearby properties. As such it would not be contrary to national policy as expressed in Planning Policy Statement (PPS) 1 *Delivering Sustainable Development*, Planning Policy Guidance Note 14 *Development on Unstable Land*, or PPS25 *Development and Flood Risk*.
31. I also consider that the proposal would not be contrary to UDP Policy SD9B, which requires that development should not cause harm to the water environment or drainage systems and prevents or mitigates flooding or UDP Policy B1, which requires development to respect its setting and not harm amenity (living conditions). It would also not harm the character or appearance of the open space on the edge of Hampstead Heath and would therefore not be contrary to UDP Policy N2. Furthermore, I consider that the proposal would take account of the physical constraints of the development of the land, as required by the *London Plan* Policy 2A.1.
32. I understand that the Camden *Local Development Framework* (LDF) is close to adoption and I have therefore given substantial weight to LDF Policies DP23, which requires development to reduce the risk of surface water flooding, and DP27, which requires, in relation to development proposals for basement and other underground development, an assessment of the scheme's impact on drainage, flooding, groundwater conditions and structural stability. I also consider that the proposed development would not be contrary to these policies and that the LDF policy base has not changed my decision.
33. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Mike Fox*

INSPECTOR