



Planning Inspectorate
Department of the Environment

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Appeal ALLOWED
Notices varied and
QUASHED

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Your reference
BRC/9018
Council reference
PL9000540 N12/25/G ?
Our reference
T/APP/C/91/X5210/613806/P6
T/APP/C/91/X5210/613807/P6

Date

08 APR 1992

Received in Planning
15/4/92

Sir

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR JOHN SKOK ON BEHALF OF MR & MRS FITZPATRICK
LAND AND BUILDINGS AT 1 DALEHAM MEWS NW3**

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above appeals against enforcement notices issued by the Council of the London Borough of Camden concerning the above mentioned land and buildings. I have considered the written representations made by you and by the Council. I inspected the site on 3 February 1992.

NOTICE 1 (Reference : T/APP/C/91/X5210/613806)

2. a. The notice was issued on 16 July 1991.

b. The breach of planning control alleged in the notice is the making of a material change of use involving the erection of a mansard roof and installation of a third dormer window on the front elevation, contrary to planning permission PL/9005449/R1 granted on 11 March 1991.

c. The requirements of the notice are either; (1) the demolition of that part of the roof that constitutes the front elevation and (2) reconstruct the demolished part of the roof to have a double pitched form containing two dormer windows to the front elevation as shown on diagram "G", attached to the notice or; (3) the demolition of the entire roof structure and (4) the reconstruction of the demolished part of the roof to its original pitched form as shown on diagram "H", attached to the notice. In any case the materials to be used shall be:- roof in natural slate; windows if installed to be of white painted timber sash construction; the gable to be finished in white render or materials to be submitted for the Council's approval within two months.

d. The period for compliance with the notice is three months.

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RECYCLED PAPER

e. The appeal was made on the grounds set out in S174(2) (a) of the 1990 Act.

NOTICE 2 (Reference : T/APP/C/91/X5210/613807)

3. a. The notice was issued on 16 July 1991.

b. The breach of planning control alleged in the notice is the making of a material change of use involving the excavation and works consisting of the erection of a garage, utility room and inground pool to the side of the premises not in accordance with the planning permission PL/9005449/R1 granted on 11 March 1991.

c. The requirements of the notice are the filling in of the excavation in the following manner :-

1. reinstate wall on the Daleham Mews side of the site to match the original using second hand imperial red stock brick constructed in Flemish bond, to the approval of the District Surveyor/Highway Engineer as shown in diagram "C".

2. the blockwork walls should be demolished and the excavation backfilled except where the walls are providing support to the lime tree as indicated on plan "C".

3. the blockwork wall providing support to the lime tree must remain in position (see plan "C") removing the top two courses or two courses below the reinstated soil level whichever is the greater.

4. when the blockwork is demolished the exposed earthface must be supported against the possibility of slip and/or collapse until the backfilling is completed with the supports being removed as the level of the backfill rises.

5. the backfill material can be anything from the type 1A well graded granular material to type 2D silty cohesive material to BS1377 compacted with a vibro tamper. If a category over 100kg is used then in layers not exceeding 225mm thick and subject to a minimum of 3 passes. The excavation is to be kept dry.

6. the works should be completed so as to restore the area excavated to to the ground level as shown in diagram "D". The topsoil levels should exactly match the soil line of the adjacent garden at 30 Daleham Gardens and the soil marking on the internal wall backing on to Daleham Gardens. The soil level should also be restored to the existing soil line around the four remaining trees. The extent of the infill shall comply with the footprint shown in either diagram "E" or "F".

7. topsoil should be to BS3882. The depth of the topsoil should be 150mm in turfed areas and 300mm deep in shrub areas OR

8. full landscaping details shall be submitted to the Council for approval within 2 months.

9. while restoration works are being carried out the existing trees will be protected on-site according to BS5837.

d. The period for compliance with the notice is three months.

e. The appeal was made on the grounds set out in S174(2) (a) of the 1990 Act.

LEGAL ISSUES

4. Although you do not raise it as an issue it appears to me that both notices have been incorrectly drafted in that the breach of planning control, set out in paragraph (2) of the recital, is alleged to be the making of a material change of use. Having regard to the details of the alleged breaches specified in Schedule 2 of both notices I consider that the correct allegation in paragraph (2) should be the carrying out of building, engineering or other operations.

5. I have considered whether the notices can be corrected without injustice. In this respect it is clear from the representations that your client was in no doubt as to what was alleged to have been done and what was necessary to put matters right. Accordingly, on the authority of R -v- Secretary of State for the Environment, ex parte Ahern (London) Ltd (2 PLR 1989 P96-110), I am satisfied that it would be within my powers to correct the allegation in both notices without injustice to either party. I shall therefore correct the allegations in paragraph (2) of the recital to both notices.

THE APPEAL SITE AND SURROUNDINGS

6. No.1 Daleham Mews comprises a brick built mews property having a ground floor with two storeys over. At the rear are a number of single storey additions which extend to the site boundary with No.30 Daleham Gardens. On the west side of the dwelling is an extensive garden which borders both Daleham Mews and Daleham Gardens. The roadside boundary comprises a substantial brick wall. Two openings have been formed in the wall on the Daleham Mews frontage to provide both a pedestrian and vehicular access. The front elevation of the property, facing south, has been altered by the construction of a mansard roof to a level equivalent with that of the adjacent property, No.3 Daleham Mews, and the insertion of 3 full-length dormer windows. The gable wall elevation to the west contains two new circular windows and on the rear elevation are 3 new dormer windows.

7. At the time of my inspection part of the garden area had been excavated and a double garage partly constructed. The area to the north and west of the blockwork retaining walls to the garage has been backfilled to what was pointed out to me as being the former ground level, by reference to marks on the inside of the boundary wall to Daleham Gardens. At the corner of Daleham Mews and Daleham Gardens the highway boundary wall has been reconstructed. Inside the wall stands a mature Lime tree, the subject of a Tree Preservation Order, on which arboricultural works including thinning and crown lifting have recently been undertaken. In the remainder of the garden are a number of other semi-mature trees (Cherry and Crab Apple).

8. The appeal site is included within the Belsize Conservation Area, designated in 1973. The character and appearance of this part of the Conservation Area comprise the intermixture of house types and styles; the pattern of mews properties, of varying size, between rows of substantial town

houses in Daleham Gardens and Belsize Crescent; strongly expressed means of enclosure along the highway boundaries and mature/semi-mature trees. These elements combine to contribute towards the fine quality of the townscape.

PLANNING HISTORY

9. In August 1990 applications for both planning permission and Conservation Area consent were submitted in respect of proposals for the refurbishment of the appeal dwelling; formation of a room in the existing roof space; construction of a garage in the garden; partial demolition of wall; excavation of part of rear garden area and the formation of a vehicle crossover (Local Planning Authority references: PL/9005449 & HB/9070891). Following discussions with the Council the applications were amended to reduce the bulk of the proposed roof; increase the size of the garage and remove the existing summer house. Subsequently planning permission and Conservation Area consent were granted on 11 March 1991.

10. The excavation of the garden area and formation of a swimming pool were the subject of a separate application which was refused on 16 July 1991 (LPA reference: PL/905662). Other applications for the erection of a conservatory extension (Reference: PL/9100899) and the excavation and installation of a swimming pool (Reference: PL/9100787) were refused on 11 February 1992.

11. Two further applications were submitted to the Council following extensive discussions and several site meetings. These relate to (1) the retention of the excavation and construction of a garage, the excavation and construction of a swimming pool together with soft and hard landscaping, as shown on Drawing 9018/21 (Reference: PL/9100900) and (2) the retention of a single pitch mansard roof with three dormer windows to the front and rear elevations respectively and two circular windows to the side elevation (Reference: PL/91/00901). Both applications were considered by the Council on 11 September 1991 and a notice of refusal was issued in respect of application PL/9100901 on 11 February 1992. No decision has been issued in respect of application PL/9100900.

THE APPEALS ON GROUND A AND THE DEEMED APPLICATIONS

12. From my inspection of the appeal site and its surroundings and having considered the written representations I take the view that the main issues are :-

i. the effect of the retention of both the mansard/dormer and the garage/garden excavations upon the appearance and character of the Belsize Conservation Area and

ii. in relation to the retention of the garage and the garden excavations undertaken whether these works would prejudice the long term health and viability of the mature Lime tree, the subject of a Tree Preservation Order.

13. On the first issue the Council express concern with regard to the adverse effect of the bulk and appearance of the mansard/dormer construction as well as the erosion of the garden area by the garage/excavations which they consider unacceptably alter the balance between built and un-built on space in this part of the Conservation Area.

14. In relation to the mansard/dormer construction it appears that Notice 1, despite various references in the Reports submitted by the Council, is not

directed towards either the insertion of the dormer windows on the rear or circular windows on the side elevations of the dwelling. As approved in March 1991 the scheme of development (PL/9005449/R1) envisaged the construction of a double pitch mansard roof with two roof dormers on the front elevation. As constructed the mansard is of a single, steep pitch with three full length dormers on the front elevation facing down Daleham Mews. These details are illustrated on Drawing No.9018/22, as submitted with your later representations.

15. The Council consider that the number and size of the dormer windows add to the over-bulky appearance of the end terrace dwelling. Having regard to the existing roof pitch of the adjacent dwelling at No.3 Daleham Mews I do not consider that the adoption of a single pitch mansard design has, in this case, detracted from the appearance and character of the roofscape in this part of the Conservation Area. The bulk of the roof is broadly equivalent to that of No.3, although the height is marginally greater, and when related to the somewhat varied pattern of roofs and scale of buildings in this part of Daleham Mews and Belsize Crescent, I consider the overall impact to be well within the parameters already established within and forming part of the character of the area.

16. I accept that the full length dormers on the front elevation are much deeper than those on the adjacent dwelling at No.3 but it appears that neither are of the characteristic vernacular for this area. The main view of the dormer windows is from the lower part of Daleham Mews as the appeal site is approached. From this viewpoint I consider that the dormers are broadly in scale with the depth of the new mansard roof and the relationship of solids to voids does not appear to me to be so disproportionate as to result in an unacceptable visual discontinuity. When viewed from the approach to the appeal site along Nutley Terrace and the upper part of Daleham Mews only a small portion of the side of the first dormer is visible and this view is against the backcloth of the much taller buildings in Belsize Crescent.

17. I therefore conclude that the retention of the mansard/dormer as constructed would not result in any detrimental impact upon the appearance and character of the Belsize Conservation Area. To the extent that the new roof profile matches, to a considerable degree, that of No.3 Daleham Mews a measure of enhancement accrues to this part of the Conservation Area.

18. As originally envisaged the excavation of the garden area to the appeal dwelling was to have enabled the construction of a double garage with an attached shower/utility/changing room, on the west side closest to Daleham Gardens, and a swimming pool to the rear of the garage close to the boundary with No.30 Daleham Gardens. Your client's intentions have changed since the original excavation work was undertaken during the summer of 1991. The west and north walls of the partly completed double garage now retain the backfilled garden, which covers the works undertaken in relation to the utility/changing room and pool, and it is proposed to construct the swimming pool to the east of the garage in the position shown on Drawing No.9018/21. Drawing No.9018/30 shows the proposed reconstruction of the boundary wall to Daleham Mews, punctuated by the double garage doors and two pedestrian gates.

19. I consider that the original proposal would have resulted in an unacceptable erosion of the garden area to the appeal dwelling and that there was substance in the concern of the Council over the reduction in the un-built upon area of the garden, quite apart from the impact upon the protected Lime which I deal with under the second issue. It appears, however, that such an

erosion of the garden area would be avoided by the change in your client's intentions. The garage will be below ground level and screened by both the reinstated boundary walls and the formation of the lawned area shown on Drawing No.9018/21. The pool would be relocated to a position south east of the garage and reduced in size from the original intention. In this position it would have little impact being screened from public view by the boundary wall to Daleham Mews and the proposed landscaping of the garden area. The reduction in size and repositioning of the pool also allows for the retention of a private garden area commensurate with the established character and appearance of the surrounding area.

20. I therefore conclude that the remedial works already undertaken and the adoption of the amended proposals, as shown on Drawings Nos.9018/21 & 30 would preserve the essential elements of the character and appearance of this part of the Conservation Area by the reinstatement of the boundary walls and restoration of the garden area to the appeal dwelling. To the extent that additional landscaping would be undertaken in relation to the modified scheme I conclude that the appearance of the Conservation Area would be enhanced.

21. In relation to the second issue it is clear that the original proposal for the garage, swimming pool, utility and changing room would have resulted in considerable excavation works encroaching upon the root spread of the mature and semi-mature trees situated around the site boundary. The resulting changes in ground level, coupled with any direct damage to the root system of the trees during construction, would in all probability have resulted in the loss of the trees in the longer term. Having regard to the importance of these trees as amenity features within the townscape of the surrounding area I consider that such loss would have been unacceptable. The Council were therefore fully justified in taking enforcement action to remedy the alleged breach and require works of reinstatement.

22. Since the issue of the notice your client's intentions have altered, as previously indicated, and backfilling has taken place to pre-existing ground levels. With the additional remedial works and landscaping shown on Drawing 9018/21 I consider that not only would the revised proposals secure the prospect of retention of existing landscape features, particularly the mature Lime, but also achieve a degree of enhancement for both the appeal site itself and the locality. I have accordingly reached the conclusion that there is a balance of advantage in the acceptance of the amended proposals as shown on Drawing 9018/21 (incorporated within application PL/9100900). The report to the Council of September 1991 on this subsequent application recommended that planning permission be given subject to prior completion of an agreement under Section 106 of the 1990 Act covering the implementation and supervision of an agreed scheme of remedial works and landscaping. In this respect, therefore, there appears to be broad agreement between the parties with regard to the merits of the amended proposals a view with which I concur.

23. The appeals accordingly succeed on ground (a), the enforcement notices will be quashed and I propose to grant planning permission on the deemed applications for planning permission.

24. I do not consider it necessary to impose any conditions on the permission for the retention of the mansard roof and dormer windows (the subject of Notice 1). In respect of the garage and swimming pool I consider that a number of conditions are necessary to regulate the works yet to be completed and these include reference to the amended drawings submitted as part of your

representations; the implementation of the landscaping scheme, or any approved variation thereto; the reinstatement of the walls along Daleham Mews and the completion of the access and other boundary features. I do not consider that an agreement under Section 106 of the 1990 Act is necessary to secure the completion of these works of reinstatement or enhancement given the extent of remedial work already undertaken and the proportionate control achieved by negatively worded conditions on the grant of planning permission.

25. In reaching my conclusion on the grounds of appeal I have taken into account all the matters raised in the representations but none outweighs the considerations which have led to my decision.

FORMAL DECISION

NOTICE 1 (Reference : T/APP/C/91/X5210/613806)

26. For the above reasons, and in exercise of the powers transferred to me, I hereby correct the notice by the deletion of paragraph (2) of the recital as worded and the substitution therefor of the following words :

"(2) The breach of planning control which appears to have taken place consists in the carrying out of building operations described in Schedule 2 below, without the grant of planning permission required for that development."

Subject thereto I allow the appeal, direct that the notice be quashed and grant planning permission on the application deemed to have been made under Section 177(5) to retain the mansard roof and third dormer window on the front elevation of the dwelling at 1 Daleham Mews, NW3.

NOTICE 2 (Reference : T/APP/C/91/X5210/613807)

27. For the above reasons, and in exercise of the powers transferred to me, I hereby correct the notice by the deletion of paragraph (2) of the recital as worded and the substitution therefor of the following words :

"(2) The breach of planning control which appears to have taken place consists in the carrying out of building, engineering, mining or other operations described in Schedule 2 below, without the grant of planning permission required for that development."

Subject thereto I allow the appeal, direct that the notice be quashed and grant planning permission on the application deemed to have been made under Section 177(5) to retain and complete the works undertaken on land at 1 Daleham Mews, NW3 for the purpose of constructing a double garage and swimming pool, together with reinstatement of ground, paving and landscaping, as shown on Drawing 9018/21, subject to the following conditions:

1. before the garage is brought into use the boundary wall to Daleham Mews shall be reinstated to match the original, using second-hand imperial red stock brick constructed in Flemish Bond, in accord with samples to be submitted to, for approval in writing by, the Local Planning Authority within one month of the date of this letter. The reinstatement of the wall; construction of the access and installation of any doors or gates shall be in accord with Drawing 9018/30 unless the Authority give their prior written consent to any variation.

2. all planting, seeding, turfing or paving comprised in the details of landscaping shown on Drawing 9018/21 shall be carried out in the first planting and seeding seasons following the completion of the garage or excavation and construction of the swimming pool whichever is the sooner; and 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, unless the Local Planning Authority gives prior written consent to any variation.

28. This decision does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990. Your attention is drawn to the provision of Section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires consent to be obtained prior to the demolition of buildings in a conservation area.

29. An applicant for any consent, agreement, or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement, or approval is refused, or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

RIGHT OF APPEAL AGAINST DECISION

30. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant

A handwritten signature in black ink, appearing to read 'Keith Smith', written in a cursive style.

KEITH SMITH BA (Econ) Dip TP DPA FRTPI ACIS
Inspector