The Planning Inspectorate

Appeal Decisions

Inquiry held on 7, 8 and 9 January 2014
Site visit made on 9 January 2014

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 3 March 2014

Appeal A: APP/X5210/A/12/2188543
45 Lancaster Grove, London NW3 4HB

- 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 L Silver against the decision of the Council of the London Borough of Camden.
- The application Ref 2012/1510/P, dated 6 March 2012, was refused by notice dated 30 May 2012.
- The development proposed is the retention of a 2 storey rear extension at rear basement and ground floor including lightwell and excavation to form rear basement.

Summary of Decision: The appeal is dismissed

Appeal B: APP/X5210/C/12/2183692
45 Lancaster Grove, London NW3 4HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Louis Silver against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 6 August 2012.
- The breach of planning control as alleged in the notice is the excavation of basement extension to rear and erection of rear ground floor level extension above all in connection with existing flat.
- The requirements of the notice are the complete removal of the rear ground and basement floor level extension and return the building to the condition and shown on existing plans (drawing no LG.10.01A; LG.10.02A; LG.10.03A; LG.10.04A; LG.10.13; LG.10.14) accompanying application 2012/1510/P.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural matters

1. Before the Inquiry written applications for costs were made by Mr Silver against the Council in connection with both appeals. These applications are the subject of separate Decisions.

2. I was told the application subject of Appeal A (the Appeal A scheme) was submitted to seek retrospective planning permission for what had been built (the 'as built' scheme). However, during the appeal process various

discrepancies between the 'as built' scheme and the Appeal A scheme were highlighted relating most significantly to their relative heights and window treatments. As there is no ground (a) appeal under Appeal B, I have addressed the impact on the conservation area, the effect on neighbouring residents and the consequences of the basement in relation to the Appeal A scheme only. Furthermore, to my mind because of the scale of these discrepancies if I accepted the Appeal A scheme it does not necessarily mean that the 'as built' scheme would be satisfactory too. It therefore follows that what has been built is materially different to the Appeal A scheme, and so I have assumed the Appeal A scheme has not been built.

The notice

Is the notice a nullity or otherwise invalid

3. In 2005 planning permission was granted for a ground floor extension on the rear of this property (the 2005 permission[1]). This extension was 'L' shaped, and was to project from the eastern half of the rear elevation of the building, which is nearest to 47 Lancaster Grove, before turning at right angles to extend across the plot to near to the boundary with 43a Lancaster Grove on the west. This arrangement was put forward to protect a bay window on the western side of the rear elevation, and it would have left the bay untouched and formed a courtyard around it.

4. The title blocks on the plans accompanying this application stated they were drawn at a scale of 1:50. However, despite that notation some of them were in fact drawn at a scale of 1:100, and the crown radii of trees in the garden had written dimensions that scaled at 1:100. On those plans the scale in the title block was therefore a mistake, and I shall refer to this as the scaling error. This scaling error was unnoticed in the Officer's report for that application, where the dimensions given were generally based on the assumption that the plans were at a 1:50 scale. As a result the report said an extension projecting 5.1m from the rear elevation was being approved, when in fact the projection of the extension measured at the correct scale of 1:100 was about 10m.

5. The drawings accompanying the 2005 permission were used as the basis for an application in 2007[2] for the erection of the 'L'-shaped rear extension but with the addition of a basement below, and that was duly granted planning permission (the 2007 permission). They were also used as part of the application that was granted planning permission in 2008[3] (the 2008 scheme) for what was described on the application form as

> *'New basement below existing building with new light well in front garden including cast iron railings around perimeter'*

and on the decision notice as

> *'Excavation of basement level with front light well enclosed by railings and with bridge over to front entrance door all in connection with additional accommodation at ground floor level flat; as revision to planning permission granted 21/08/07 which allowed for demolition of existing*

[1] Council reference 2005/3563/P
[2] Council reference 2007/2133/P
[3] Council reference 2007/4905/P

single storey rear extension and erection of a new 2-storey rear extension at basement and ground floor level for the existing flat'.

That scheme once more proposed an 'L'-shaped extension with a basement beneath, similar to that previously approved, but included a further basement under the original building. The scaling error was not corrected on any plans used in these subsequent permissions. Indeed the drawings' 1:50 scales were erroneously confirmed on the application forms. However, as it was understood the rear element in each case accorded with an extant permission the scaling error was not apparent in the Officer report accompanying the 2007 permission or the 2008 scheme.

6. By November 2010 none of the developments subject of these 3 permissions had been begun and indeed the 2005 and 2007 permissions had both expired.

7. By May 2012 the extension identified in the notice had been largely completed and the application subject of Appeal A was before the Council. In the Officer report the development shown on the Appeal A plans, which were correctly referenced as being at the scale of 1:50, was compared to the permission granted in 2008. However, in that comparison the 2008 scheme was erroneously interpreted as being drawn at the scale of 1:50 in accordance with the title block and the various Officer reports, and so each dimension of its footprint was said to be roughly half that of the development comprising Appeals A and B. The Council accepted it used this comparison to form elements of the reason for refusal and the reasons that led to the enforcement notice being issued[4]. It was only after the serving the decision notice and enforcement notice subject of Appeals A and B that the Council appreciated and accepted its mistake.

8. In the light of the above the Appellant was of the view that the reasons for issue in the notice were fundamentally flawed for 2 reasons. The first of these was because the Council has accepted the original basis for service is no longer valid due to an acknowledgement of the scaling error. Moreover, secondly the Council must have then 'retro-fitted' new arguments to its case to substantiate the enforcement action, and so the case it is now offering to this appeal must be different to the concerns behind the reasons for issue. It was therefore contended that the notice is defective and does not comply with Regulation 4(a)[5] and so is a nullity.

9. Alternatively, reliance by the Council on a different case to that in the reasons for issue means the notice contains a fundamental defect that makes it invalid.

10. I appreciate that having acknowledged the scaling error the Council's case must now be different in some way. However, that in itself does not mean it cannot still have outstanding concerns that could be related to the stated reasons for issue.

11. In the reasons for issue in the notice there is no reference to the 2008 scheme or to a comparison between the works the Council was considering and any previous permission. Rather, they refer to why, in the Council's opinion, the 'as built' development caused harm to the conservation area and to

[4] It is noted this is despite the Officer report also stating the planning permission associated with the 2008 scheme had 'lapsed' by that date

[5] Regulation 4(a) of the *Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002*

neighbouring residents. Therefore, having regard to the judgement of *Miller Mead v. Ministry of Housing and Local Government* [1964] 1 A11 ER 459 in particular, when looking at the 4 corners of the notice to my mind it is not defective on its face or hopelessly ambiguous and uncertain. Accordingly I conclude the notice is not a nullity or otherwise invalid.

12. Now that the scaling error has been acknowledged the Appellant may consider it was not expedient to issue the notice for the reasons stated. However, as there is no ground (a) appeal the substance of those reasons and their merits in relation to the 'as built' scheme are not for me to assess. In any event, the issue of expediency does not affect whether a notice is a nullity.

Other matters

13. The Council requested its reasons for issue in the notice be varied slightly to reflect its current position. However, to my mind such variations are not necessary to make the notice valid.

Appeal A

Main Issues

14. The main issues in relation to this appeal are

i) whether the scheme would preserve or enhance the character or appearance of the Belsize Conservation Area[6];

ii) the effect on the living conditions of residents at 43a and 47 Lancaster Grove;

iii) whether harm results from the lack of a Basement Impact Assessment (BIA) and

iv) if any harm would be caused to the conservation area whether there are public benefits or other material considerations that outweigh the harm.

Policy

15. The relevant elements of the development plan are *Camden Core Strategy 2010* (CCS) and *Camden Development Policies* (CDP). Having regard to the submissions before me I have no basis to consider the policies that have been cited from these are inconsistent with the *National Planning Policy Framework* (the Framework).

16. A supplementary planning document called *Camden Planning Guidance 4 Basements and lightwells* (CPG4) has also been submitted. As this has been through public consultation and appears to be compliant with the development plan I afford it significant weight.

17. Finally, I have had regard to the *Belsize Conservation Area Statement* (BCAS). This was adopted in 2003 and so is now over 10 years old. Despite that I have no reason to question the factual information or the assessments of the area that it contains.

[6] I have taken this name from the conservation area statement and the conservation area map. However, it is called the Belsize Park Conservation Area in the decision notice for Appeal A and in the enforcement notice

Reasons

The effect on the conservation area

18. The area subject of the Belsize Conservation Area was developed in the late 19th Century. Despite various alterations to the built environment that have been made since, it is still characterised by attractive Victorian buildings that reflect that period through their materials, scale and detailing, and these contribute to its significance as a heritage asset.

19. According to a date stone on its front elevation, 45 Lancaster Grove was built in the 1880s, and, although now sub-divided to flats, it was no doubt originally a large, grand single dwelling. Before the works subject of Appeal B were undertaken, any external alterations that had been made to the property had generally been sympathetic to its original character and appearance. It is mainly of a red brick finish with strong detailing around the windows, doors, corners and eaves. It also displays notable horizontal brick detail across the principal elevations and its windows, doors and dormer windows are of designs that reflect its age. For these reasons the building makes a positive contribution to the significance of the conservation area. On the rear it had a bay window. That was to be retained as an external feature by the 'L' shaped arrangement of the schemes subject of the 2005 and 2007 permissions and was also to be unaffected by the 2008 scheme, but it has now been substantially incorporated into the 'as built' extension. To my mind the detailing and scale of this bay means it would have further enhanced the property's contribution to the significance of the historic surroundings.

20. The conservation area is most strongly appreciated from the streets, as they comprise the public domain and allow views of the ornately detailed and relatively unaltered front elevations of the original properties. The rear of the block containing the appeal site has not been highlighted as valuable by the Council in the BCAS and it is not generally open to public view. However, although subject to greater alteration over the years the buildings' rear elevations still contain much detailing that reflects their status and origins. Moreover, the verdant and secluded nature of the garden areas provides a tranquil domestic setting for the buildings that complements their residential character. Therefore, the rear of the appeal property and its adjoining neighbours also makes a positive contribution to the conservation area.

21. The Appeal A scheme would project some 10m from the main rear elevation and extend across much of the width of the building. It would be of a contemporary design with a modern angular form and its elevations would be finished in a white render.

22. I raise no objections in principle to contemporary additions to strident Victorian properties. However, clearly this does not mean all such additions would be acceptable. Rather they would still need to respect the existing development around. Such an approach accords with the Council's guidance in the BCAS.

23. The western elevation of the scheme would run off the bay leaving just one canted side face and some of the parapet visible externally. In my opinion this would be a cumbersome join and would mean the proposal related poorly to the architectural detailing of the main building. The extension would be of a significant scale and mass, and would sever the original house from its garden. Furthermore, its gable, which would be some 7m from the main rear elevation,

would be a striking and relatively tall feature that rose up to a similar height to the top of the bay window. Moreover, given the height of this gable and the limited openings there would be extensive areas of render apparent, especially when seen from the side. Therefore, taking these factors together with its form, it would not be a subservient addition to No 45. Rather, it would be disproportionate and visually dominant, jarring sharply with the Victorian nature of the original property and significantly challenging the scale and architectural integrity of the building.

24. The development could, at most, be merely glimpsed from the surrounding roads. However, its scale and appearance mean it would be noticeable from many of the flats in the surrounding properties and when seen from those it would be an appreciable incursion into this leafy block of back gardens.

25. For these reasons the extension subject of Appeal A would adversely affect the contribution the building and its garden made to the Belsize Conservation Area.

26. The Appellant said that the bay could be demolished in any event and, if the property reverted to a dwelling, a domestic extension of a greater impact could be erected as 'permitted development'. However, I have no reason to consider either scenario would occur and so have afforded them little weight.

The 2008 scheme – the merits

27. Mr Lane gave evidence on behalf of the Appellant in relation to this issue. He understood that the 2008 scheme had been implemented and so was a fall back option that could be built if the Appeal A scheme were to be dismissed. Although he expressed support for the Appeal A scheme, this was solely on the basis that it was preferable to the 2008 scheme. As a result it would cause less harm to the conservation area and so would satisfy the tests in the legislation and policy. He acknowledged though that if the 2008 scheme had not been permitted then the Appeal A scheme would not be acceptable.

28. When comparing the 2 schemes the height of the main solid structure of the 2008 scheme (as opposed to the height of any glazed elements that may be on the roof) would be appreciably lower than the Appeal A scheme. Moreover, when this is coupled with its 'L' shape it would result in less render and would mean it did not dominate the rear elevation of the original building to the same degree. It would also leave the bay unaffected as a feature. While its 'L' shape would be unorthodox, on balance from what I can understand of the 2008 scheme if it were to be a fall back option I consider it would not be as harmful as the Appeal A scheme.

29. Mr Lane also considered the roof arrangement of the 2008 scheme was more complex. For the reasons I discuss below I have no certainty as to the precise roof form proposed for that earlier scheme. However, even if I inferred the most complex scenario from the various plans, that would not be sufficient to lead me to a different finding in relation to the relative merits of the 2008 scheme and the Appeal A scheme.

The 2008 scheme – its implementation

30. While the Council accepted the 2008 scheme had been commenced before that permission expired in mid-January 2011, this was not accepted by the Rule 6 Party, Mr Tankel. He therefore contended the 2008 scheme was not, in fact, the fall-back option that Mr Lane understood it to be.

31. On the evidence before me the facts of the matter relating to the alleged commencement of the 2008 scheme appear to be clear. In December 2010 Mr Ansalem, an experienced builder, agreed to build an extension onto the Appellant's property. At that time though the Appellant wanted to erect something different to what was permitted by the 2008 scheme, but its precise nature or form had not yet been established. This was confirmed to the Inquiry by Mr Ansalem. It was also apparent from the plans dated December 2010 that, whilst not intended to be the definitive works, were nonetheless drawn to support the Building Regulations submissions and accord with Party Wall legislation, and those plans broadly reflect the scheme subject of Appeal A. However, Mr Ansalem immediately advised the Appellant that the planning permission for the 2008 scheme must be begun no later than 15 January 2011 (which was then little more than a month away), and so he needed to undertake work to ensure that permission did not expire. To this end the services to a rear extension were disconnected and that extension was duly demolished. By mid-January 2011 the only other work undertaken were basement excavations.

32. There were a number of reasons discussed throughout the appeal as to why the 2008 scheme had not been implemented, each of which I will examine in turn.

33. Firstly, under the authority of *Green v Secretary of State for Communities and Local Government* (SSCLG) [2013] EWHC 3980 (Admin) Mr Tankel contended that demolition was merely ambivalent and preparatory, and could not be said to be referable to what was permitted. Moreover, coupled to this it was never the Appellant's intention for these works, however ambivalent, to be for the implementation of the 2008 scheme. Rather, they were to be for some alternative extension that, at that time, had not been defined but which we now know to be the 'as built' scheme.

34. In response the Appellant drew on *Riordan Communications Limited v South Buckinghamshire District Council* [1999] WL 1142727 stating that subjective intentions were not necessary to address the specific objective tests concerning the commencement of development. In relation to *Green* he noted that the act of demolition, which constitutes development under section 55 of the Act (as amended), was not mentioned in the description of the planning permission subject of that judgement. Consequently it was open for the judge to assess those works as separate and distinct operations. In contrast, demolition did form part of the description of the works subject of the planning permission for the 2008 scheme and therefore the act of demolition can be viewed as the commencement of that development.

35. I have no doubts as to the Appellant's intentions in this matter as he openly and fairly acknowledged that he did not demolish the extension with a view to building the 2008 scheme. I also note that 'demolition' is not in the description on the planning application form associated with the 2008 scheme, and is only mentioned on the decision notice when referring to the 2007 permission that the scheme is revising. Notwithstanding that, having regard to *Riordan* I accept that development under the relevant legislation is defined by objective points rather than subjective matters such as the developer's intention. Moreover, although the description on the decision could be written more clearly it is apparent that demolition was permitted in the development

comprising the 2008 scheme and so the removal of the extension could, on its face, be the first step in the construction of that proposal.

36. However, having regard to *Commercial Land Limited v Secretary of State for Transport, Local Government and the Regions and the Royal Borough of Kensington and Chelsea* [2002] EWHC 1264 (Admin) it is necessary to look at what has been done as a whole rather than seeing if a modicum of works complied with another permission. To my mind there are material differences between the 'as built' scheme and the 2008 scheme. These are numerous, but relate to such matters as the roof form, the ground floor footprint, the proximity to the boundary with No 43a, the window arrangement and the relationship to the existing building. I note too that the Appellant did not challenge the view that there was a material difference between these 2 extensions as no ground (c) appeal has been lodged, and indeed an application for planning permission had been submitted that purported to be to retain the 'as built' scheme. Consequently, what is now on site is unlawful in its entirety and so I cannot accept that the 2008 scheme has been implemented or that it could be built without the need for further planning permission.

37. Finally, Conditions 3 and 4 on the permission for the 2008 scheme read

    3) All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed shall be retained and protected from damage to the satisfaction of the Council. Details shall be submitted to and approved by the Council before works commence on site to demonstrate how trees to be retained shall be protected during construction work: such details shall follow guidelines and standards set out in BS5837:2005 "Trees in Relation to Construction". The protection measures shall not be carried out otherwise than in accordance with the details thus approved;

    and

    4) No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built open areas have been submitted to and approved by the Council. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

    The reasons for these conditions were broadly to maintain the character and amenities of the area (Condition 3) and to ensure a reasonable standard of visual amenity in the scheme (Condition 4).

38. The Appellant accepted that the details required by those conditions had not been submitted to the Council.

39. Mr Tankel said that a failure to comply with either of these conditions meant the permission authorising the 2008 scheme had not been commenced. I consider that Condition 4 is not fundamental to the proposal, as it concerns a domestic garden. Moreover, if it was that important there would be timeframe given for the implementation of the landscaping. However, to my mind Condition 3 goes to the heart of that permission. This is because some of the trees are close to the basement works and, given the character of the rear gardens, the Council could well have resisted the development had it been expressly stated that they would be felled. I accept that condition relates to

'works' rather than 'development', but given the scale of the extension to my mind there is no ambiguity as to what it concerns or that the works were the same as the development in question. It is plain that condition prohibits the development commencing or taking place before certain details are submitted and approved. Therefore, having regard to *Greyfort Properties Limited v SSCLG & Torbay Council* [2011] EWCA Civ 908 I see no reason why it should not be treated as a condition precedent, and so I am of the view that a failure to comply with its terms means the planning permission for the 2008 scheme has not been lawfully implemented.

40. Accordingly, given the non-compliance with Condition 3 and the presence of the unauthorised structure on site, I conclude that the planning permission for the 2008 scheme has not been implemented and has now expired. Consequently, it cannot now be built without the need for further planning permissions, and so it cannot be treated as a 'fall back' position in my consideration of the Appeal A scheme. As such, the weight given to that aspect of the Appellant's case is limited.

Conclusions on this issue

41. Accordingly, I conclude the Appeal A scheme would detract from the character and appearance of the Belsize Conservation Area. Having regard to paragraph 134 of the Framework, it would cause less than substantial harm to its significance as a heritage asset, and for the reasons stated the 2008 scheme does not allay this harm.

Living conditions

42. No 47 is on the east side of the appeal property and that too is a large former dwelling that has been converted to flats. One of these flats is on the ground floor and has a principal room at the rear with a bay window. The back garden of this property has been subdivided to create dedicated areas for the individual flats. The garden to the ground floor flat is immediately outside the bay, and along the eastern side of this garden is a single storey extension.

43. The Appeal A scheme would project some 6m beyond the rear wall of No 47. Given the height of its gable and taking into account the existing extension, this proposal would unduly dominate the rear room and the garden of that neighbouring flat, creating an unacceptable sense of enclosure.

44. However, as the extension would be to the west, and as trees already shade the garden of No 47, the effect of the scheme on sunlight and day light would be limited and would not be unacceptable.

45. It is unclear from the drawings as to the height of the eastern elevation of the 2008 scheme. However, even if it rose to 4m the topmost section would be glazing and so, when seen from No 47 it would not have been as dominant as the solid walling now proposed. Consequently, even if I had found the 2008 scheme had been implemented its effect on that property would not have been as great as the development now before me.

46. No 43a to the west is a relatively modern dwelling. Its rear elevation is roughly level with the original rear elevation of No 45, while its back garden is notably lower than the garden of the appeal property.

47. The entire 10m long side elevation would be apparent from the rear of No 43a, and its height plus the difference in land levels means it would have an unduly dominant effect on the rear garden of that neighbouring property. While I appreciate it would be set some 3m back from the boundary, in my opinion this would not be sufficient to overcome this concern sufficiently. However, given the window arrangement at No 43a, when inside that property I am not satisfied that its impact in this regard would be unacceptable.

48. The proposed extension would also have 2 windows at ground floor level facing No 43a. One is a small triangular one immediately next to the rear bay. I consider the position of this would mean views into the rear rooms of No 43a would not be possible, and any overlooking of the garden would not be materially worse than when looking from the windows in the original rear elevation of No 45.

49. The other window would be large and would be at the opposite end of the extension, on the corner next to the garden. This would allow views back towards No 43a. However obscured glazing could overcome this concern, and that could be reasonably secured by condition.

50. The extension would be to the east of No 43a so it could only affect sunlight in the early morning. However, the buildings beyond No 45 are stepped further and further back and there are many trees in their rear gardens. Therefore any reduction in sunlight resulting from the scheme would be limited and not unreasonable. Moreover, the rear garden of No 43a is otherwise not enclosed to any appreciable degree and so the works would not have an unreasonable effect on day light.

51. In assessing this matter much reference was made to the effect of the 2008 scheme. Putting aside my findings above about that the planning permission for that scheme having expired, it would have been much lower on its west side than the extension before me and it would have been substantially concealed by the boundary fence, while its 'L' shape meant the west-facing elevation would not have been as long. Moreover, although there would have been a window in the elevation of the extension that faced the bay at No 45, the views from there towards No 43a and views from the bridge that would run between the bay and the extension would have been restricted by the angle involved and by the intervening fencing. Therefore, while the 2008 scheme would have extended closer to the boundary, its impact on No 43a would not have been as great. Mr Tankel also contended that the dense planting shown in the courtyard outside the bay could have concealed his property. However as that courtyard would be providing light to the basement rooms it would be unreasonable to expect any planting it contained to be so substantial as to conceal views at ground floor level as well.

52. Accordingly I conclude the scheme would have an unduly dominant and overbearing effect on the rear garden of No 43a and the rear garden and main rear room of the ground floor flat at No 47 thereby detracting unreasonably from the living conditions enjoyed by those residents in conflict with CCS Policy CS5 and CDP Policy DP26.

The lack of a BIA

53. CDP Policy DP27 says, among other things, that basements will only be permitted if they do not result in flooding or affect the structural stability of

adjacent buildings, and this is reflected in CPG4. This policy was adopted after the grant of the 2008 scheme, and so this matter was not addressed in that decision.

54. A hydro-geological review was submitted in connection with the Appeal A scheme, but this appeared to have its limitations and at the Inquiry Mr Bolt accepted that the impact on substrata hydrology still needs to be assessed. Therefore, to my mind it has not been demonstrated that the proposal would not result in flooding. Furthermore, although the Appellant said the impact of the 'as built' scheme on the structure of adjacent buildings has satisfied Building Regulations no substantive details have been submitted to show that the scheme subject of Appeal A would be satisfactory in that regard.

55. The Council accepted that a basement under the original building or less than approximately 3m in depth can be formed without a need for a BIA. However, as the scheme before me does not satisfy those criteria that is not a matter to which I attach appreciable weight. It is also noted that the lack of a BIA or any adverse impact on the structure of adjacent buildings or the hydrology was not a reason for issuing the notice. No specific reason was given for that but to my mind that does not invalidate the concern raised in connection with the Appeal A scheme. Finally, while Mr Tankel and others said there had been an increase in flooding since the 'as built' scheme was erected, those views were only anecdotal in nature and were not supported by robust evidence. The weight attached to them has therefore been limited.

56. Accordingly I conclude that it has not been shown the scheme would not adversely affect underground drainage or the structure of adjacent buildings, and so is in conflict with CDP Policy DP27 and CPG4.

Other matters

57. Much reference was made to comments of alleged support from Council officers for the 'as built' scheme while it was under construction. Even if the Appellant's recollections of those comments are accurate, they do not affect the planning merits of the scheme before me.

Public benefits to outweigh the harm

58. Section 72 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* says special attention should be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 134 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset that harm should be weighed against the public benefits of the proposal.

59. In this instance I am aware of no public benefits that could outweigh the harm to the conservation area that I have identified above.

60. Accordingly, I conclude that the scheme would fail to preserve the character or appearance of the Belsize Conservation Area and so would cause less than substantial harm to its significance as a heritage asset, and in the absence of any public benefits to outweigh this harm I conclude the scheme would conflict with CCS Policy CS14, CDP Policy DP25 and the Framework.

Conclusions on Appeal A

61. For the reasons stated I conclude that Appeal A should be dismissed.

Appeal B

Main issue

62. The main issue with this appeal is whether the steps required to comply with the notice are excessive.

Reasons

63. Section 173(4) of the Act as amended says the steps required by an enforcement notice are to achieve one of 2 purposes. These are either to remedy the breach of planning control that has occurred, or to remedy any injury to amenity that has been caused by the breach. An appeal under ground (f) is contending that the required steps exceed what is necessary to remedy the breach of planning control or the injury to amenity, whichever the case may be.

64. In this case the steps required by the notice seek to remove the unauthorised extension and basement, and the Council said its purpose was to remedy the breach of planning control and also to remedy the injury to amenity. Any lesser steps than those stated would not address the unauthorised operational development, and so would not remedy the breach of planning control. Therefore the steps required do not exceed what is necessary.

65. The Appellant's case was that the notice should require the works to be modified to accord with the 2008 scheme, and this was based on the understanding that the 2008 scheme had been implemented and could now be built. However, as stated above that is not a view I share.

66. However, mindful of *Mahfooz Ahmed v SSCLG and the London Borough of Hackney* [2013] EWHC 2084 (Admin) there is an argument that the steps may be modified to accord with the 2008 scheme even though I have come to the view that that permission has expired. There are 2 reasons though why I consider such a course of action would not be appropriate.

67. Firstly, I have found that the 2008 scheme is less harmful than Appeal A scheme, and as the 'as built' scheme is taller again, I also acknowledge that the 2008 scheme would be less harmful than what is now on site. However, putting aside any relative assessment, I consider the 2008 scheme in its own right would have a poor relationship to the original building because of its scale, its materials and its 'L' shape. I note too that the Appellant accepted that if the Council had properly appreciated its size when that application was determined it would not have been permitted. I therefore align with the views of Mr Lane on this matter and consider it would be out of character with the buildings and its surroundings. It would be a dominant and discordant element that would harm the character and appearance of the conservation area. As such, I conclude that reverting to the 2008 scheme would not achieve the Council's stated purpose of remedying injury to amenity.

68. Secondly, a number of inconsistencies were highlighted in relation to the plans accompanying the 2008 scheme. Some of these were relatively minor and

would not have a material effect on its implementation, but 3 give rise to particular concern:

i) *the scaling error* - this has been discussed above;

ii) *the roof form on the east side of the extension nearest to No 47* – the 2008 scheme was not accompanied by any side elevations, and so the roof treatment has to be inferred from the rear elevation, the sections, the floor plan and the roof plan. The roof plan (drawing 93/11c) shows a butterfly roof draining from the garden and from the main building to a central gutter that would be parallel to the original building. However, cutting across this is a glass feature that would run from the back wall of the main house to the extension's rear elevation. This feature is not shown as extending up to the east side of the extension, but rather is to be set in some 2.5m. It is also shown on the ground floor plan as being above the ground floor (drawing 93/11b), and on a front-to-back section from the west (drawing 93/12) a corresponding glazed feature extends from the original building to the end of the proposal. However, the rear elevation (drawing 93/13a) shows a flat lead roof across the full width of the scheme, and above that running from the eastern elevation to near the middle of the extension is a glass roof, which is detailed as a rectangular box subdivided into 3 sections. A similar arrangement is also on a side-to-side section that is taken through the extension (drawing 93/13). This could either mean the glazed element was to extend over the complete eastern half of the extension (as shown on the model the Appellant had made), or the roof treatment would be similar to that on the 2005 permission comprising a sloping glazed element extending some distance from the original rear wall of No 45 with the remainder being leaded. Therefore from the plans it is unclear as to the extent of the glass feature on the roof. Moreover, if it accords with the roof plan (thereby meaning the rear elevation has to be discounted), there is no indication of its profile when seen from the garden.

iii) *the roof form on the west side nearest to No 43a* – the section on drawing 93/12 shows the roof of the part of the extension closest to No 43a having a fall from the courtyard in front of the bay to the rear garden. However, a notation on the roof plan (drawing 93/11c) shows a fall the other way from the garden to the courtyard, and this reflects the 'butterfly' roof that is on the other side of the glazed roof feature. No side elevations have been submitted to clarify this matter, though it is notable that the eaves height on the rear elevation (drawing 93/13a) accords with the height of the eaves adjacent to the garden on the section on drawing 93/12. If the roof were to slope from the garden to the courtyard it is reasonable to expect the eaves level on the garden elevation to be higher. It is therefore unclear as to which way the roof on this section would slope.

69. In my opinion, the discrepancies outlined above, when taken together, mean the precise scale and form of the 2008 scheme is uncertain. As such, if I varied the notice to require the 'as built' scheme to be modified to accord with that approved in 2008 the recipient of the notice would not know what he or she was required to do to comply with its terms. Therefore, I conclude that varying the notice to require compliance with the 2008 scheme would not be appropriate in this instance.

70. Mr Tankel raised a further concern that while the decision notice said one of the plans forming the basis of the permission was numbered 93/12 there were in fact 2 very different plans with that number associated with the application, namely a section drawing and a roof plan. To my mind though it is reasonable to assume the decision was made in the light of the one stamped 'Plans Approved', namely the section drawing.

71. As a final matter, if ground (f) is to be varied to allow other works to be undertaken such actions must also constitute a lesser step than that required by the notice. In this regard the Appellant's position was confused. On his behalf Mr Evans in a letter dated 6 November 2012 said the costs of demolition would greatly outweigh the costs of remedial works (though I am unclear as to whether these remedial works involve reverting to the 2008 scheme or to some compromise). In contrast Mr Bolt said to revert to the 2008 scheme would be a significant undertaking being only slightly less work than demolition. Mr Ansalem gave conflicting evidence, putting his support of Mr Bolt's position down to a misunderstanding of the question. In any event, even if I were to find the reversion to the 2008 scheme was a lesser step than the total demolition of the extension, given my conclusions above it would not be an appropriate requirement for the notice.

72. The notice also requires the reinstatement of the property to accord with the existing plans that accompanied the 2008 scheme. Those plans indicate the rear extension on the east side of the site now demolished. The parties have accepted that there is no need for it to be rebuilt and various alternative wordings have been submitted, none of which to my mind would address the matter satisfactorily. However, I am aware that under section 173A(1)(b) of the Act as amended the Local Planning Authority has the power to waive or relax any requirement of a notice.

Conclusions on Appeal B

73. Accordingly I conclude the appeal under ground (f) fails.

Formal Decisions

Appeal A: APP/X5210/A/12/2188543

74. The appeal is dismissed

Appeal B: APP/X5210/C/12/2183692

75. The appeal is dismissed and the enforcement notice upheld.

J P Sargent

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Atkinson of Counsel	Instructed by the Head of Law at the London Borough of Camden
He called	
Mr M MacSweeney	Senior Conservation Officer with the Council
Mr G Bakall BA(Hons)	Principal Planning Enforcement Officer with the Council

FOR THE APPELLANT:

Mr M Harry	Planning Consultant instructed by Mr L Silver
He called	
Mr G Lane DipArch, DipTP, RIBA, MRTPI	Historic Buildings, Conservation Consultant and Town Planning Consultant
Mr I Bolt	Architectural Consultant
Mr Y Ansalem	Director of MRE Builders Limited

FOR THE RULE 6 PARTY:

Mr J Wills of Counsel	Instructed by Mr B Tankel
He called	
Mr B Tankel FRICS	Neighbouring resident

INTERESTED PERSONS:

Ms T Huberman	Local resident
Mr K Robbie	Local resident
Councillor T Simon	Borough Councillor for Belsize Ward
Ms J Vogler	Local resident

DOCUMENTS

A) *Submitted by the Local Planning Authority*
A1 Decision notice, officer report and drawings concerning application 2007/4905/P
A2 Drawing no 93/15 identified as being part of 2007/4905/P but not cited on decision notice
A3 Decision notice and drawings (at reduced scale) concerning application 2012/1510/P
A4 Amended proof of evidence of Gary Bakall
A5 Amended proof of evidence of Mortimer MacSweeney
A6 *Barnett v Secretary of State for Communities and Local Government* [2008] EWHC 1601 (Admin)
A7 *The Queen on the Application of Keith Hammerton v London Underground Limited, English Heritage, The Prince's Foundation, London Borough of Tower Hamlets, London Borough of Hackney, Railtrack Plc (in Railway Administration)* [2002] EWHC 2307 (Admin)
A8 *Response to Inspector's Request For Further Comments* dated 15 January 2014

B) *Submitted by Appellant*
B1 *Appellant's Response To Queries Raised By The Inspector Prior To The Opening Of The Inquiry*
B2 *R v Ashford Borough Council ex parte Shepway District Council* [1999] P.L.C.R. 12
B3 Appellant's Drawing Schedule in folder referenced LG-2B
B4 *Green v Secretary of State for Communities and Local Government* [2013] EWHC 3980 (Admin)
B5 *Appellant's Post Inquiry Submission As Requested By Inspector*

C) *Submitted by Rule 6 Party*
C1 *Comparison of 2012 Planning Application and 'As Built Scheme'*
C2 Elevations with hand-written measurements added
C3 *Green v Secretary of State for Communities and Local Government* [2013] EWHC 3980 (Admin)
C4 *Staffordshire County Council v Riley* [2001] EWCA Civ 257
C5 *Greyfort Properties Limited v Secretary of State for Communities and Local Government & Torbay Council* [2011] EWCA Civ 908
C6 Photograph of gap between 'as built' extension and boundary with No 43a
C7 *Additional Submissions on Behalf of Mr Barrie Tankel In Response To PINS' Email of 10 January 2014* dated 10 January 2014