
Appeal Decision

Site visit made on 10 August 2015

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 17 August 2015

Appeal Ref: APP/X5210/W/15/3007531
Ornan Court, Ornan Road, London NW3 4PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for [outline] planning permission.
 - The appeal is made by Ornan Court Ltd against the Council of the London Borough of Camden.
 - The application Ref 2014/4206/P, is dated 25 June 2014.
 - The development proposed is the excavation of a lower ground floor with associated front and rear lightwells to create 2 X 3 bedroom self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to the Council's failure to issue a decision within the prescribed time limit. The Council has indicated that they would have refused the application and set out their putative reasons; these relate to, the standard of accommodation, the effects of the basement excavation and the absence of a legal agreement to secure a car-free development, a Construction Management Plan and a Basement Construction Plan. A Unilateral Undertaking (UU) has been provided by the appellants relating to the issues of car-free development, a Construction Management Plan and a Basement Construction Plan. The Council has confirmed that it is satisfied with the UU.

Main Issues

3. Taking the above matters into account, the main issues in this appeal are;
 - The standard of natural lighting and amenity space proposed
 - The effects of the proposed basement on the local environment.

Reasons

The standard of natural lighting and amenity space proposed

4. The existing substantial building is set higher than the road level at Ornan Road, such that the main entrance level is between 1.5m and 2m above the road. Between the front elevation and the front site boundary is a grassed area and an area containing refuse storage. The proposal is to create a basement (or referred to as a lower ground floor) level under the building. Natural lighting would be provided by excavating areas at the margins of the

- building to create lightwells, which would also provide some private amenity space.
5. Reference is made by the Council and by the appellant to the Building Research Establishment's guidelines in its publication '*Site Layout Planning for Daylight and Sunlight*' and also to the Council's '*Camden Planning Guidance 6 – Amenity*' (CPG). The Council acknowledge in the CPG that there should be some flexibility in the employment of such standards due to the individual characteristics of each proposal.
 6. The appellants' report on day-lighting refers to the sections of the CPG which draw from the BRE guide and states that if a predominantly daylight appearance is required, then the average daylight factor should be 5% or more if no electric lighting is provided, 2% or more if electric lighting is provided; at a minimum for dwellings the figures should be 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. In relation to the daylight factor, the appellants' figures indicate the following for each of the 2 flats: kitchens, 1.34% and 1.45%; living rooms, 1.44% and 1.86%; bedroom 1, 0.2% and 0.35%; bedroom 2, 0.14% and 0.64%; bedroom 3, 0.32% and 0.27%. This means that the only room exceeding the minimum requirement is the living room of one of the flats, although it is acknowledged that the other living room is very close to that minimum level.
 7. A further assessment of day-lighting is undertaken by taking a 25 degree line from the centre of a window of a proposed dwelling and finding if any structures interrupt that line (the Council's CPG indicates that the level can be taken at 2m above ground level). The documents submitted with the appeal indicate that the windows at the front of the proposal would meet this test, with an angle of 20 degrees possible from the middle of the window. However, as a result of the proximity of taller nearby structures at the rear only a 40 degree angle would be possible, and 50 degrees elsewhere. From what is available to me, it would appear that even if the Council's guide of taking the position at 2m above ground level were employed, the guideline would not be met here.
 8. Whilst I acknowledge that the front elevation of the building faces south and this may mean that the front elevation of the flats would be in the best position to receive sun-light, there are considerable deficiencies in relation to daylight, wherein only one room in the proposal would meet the minimum guideline and a number of other rooms would be significantly below the guidelines. Even acknowledging that some flexibility may be applied, I consider that the proposed flats would not provide a suitable living environment as they would be significantly deficient of natural lighting. This is linked to the outlook that would be available to residents of the proposal, which I consider would be unduly restricted, particularly at the rear.
 9. In relation to the amenity space, the occupiers would have access to the communal space around the building and to private space within the lightwells. Flat 1 would have 25sqm of private space at the front and flat 2 would have 7sqm at the side of the building. The Council do not consider that the area to the front of flat 2 is private as it is immediately adjacent to a proposed access ramp. The Council refer to the Mayor London's Housing Supplementary Planning Guidance (SPG) wherein standards for private amenity space are set out. It is expected that each unit should have a minimum of 5sqm for a 1-2

person dwelling plus an extra 1sqm for each additional occupant. The Council states that a minimum of 9sqm should be provided, which implies that they consider that there would be 6 occupants. In circumstances where some private space and some communal space is provided, as is the case here, and where the number of future occupiers cannot be stated with certainty, I consider that some flexibility can be exercised and a deficiency of 2sqm in relation to the guideline in the SPG is not fatal to the scheme.

10. However, this last point does not outweigh my concerns in relation to day-lighting and outlook. As a result, I find that the proposal is contrary to the aims of Policies CS6 and CS14 of the Core Strategy and Policy DP26 of the Development Policies.

The effects of the proposed basement on the local environment

11. The Council is concerned that the proposal would give rise to unacceptable effects on the stability of the existing building and on the local water environment. The appellant has supplied detailed information, some of which has been independently verified, which addresses these and other matters. From a careful assessment of the submissions, it seems to me that there is very little risk that the proposal would give rise to an increased risk of flooding in the area and would not be at a risk itself. The London Clay soils here are said to be impermeable and so the introduction of the basement would not alter this.
12. In relation to structural stability, these are matters covered by the Building Regulations, but in the UU the addition of a Detailed Basement Construction Plan provides me with the assurance that this scheme could be satisfactorily undertaken in this respect.

Conclusions

13. I have taken account of the written representations submitted by local residents and their representatives in relation to this appeal. I also take note of the UU and the provision that it contains in relation to some of these matters. I do not find that there is anything of sufficient weight to add to my conclusions in relation to the effects of the scheme. I have taken account of the location of the appeal site within the Fitzjohns/Netherhall Conservation Area and I am satisfied that the proposal would preserve the character and appearance of the area.
14. Nevertheless, my concerns in relation to day-lighting and outlook remain and these are not outweighed by any other matters. Therefore, the appeal is dismissed.

S T Wood

INSPECTOR