

Crescent, with formal terraces creating an enclosed urban street scene, contrasted with the spacious scale of the gardens to the rear. The rear of the terraces is thus of equivalent value to their fronts, as reinforced by the quality of their façade treatment. The design of the terraces thus contributes to the special interest of the gardens, which are identified as a designated heritage asset in their own right.

15. The consistency of terrace design is a key element of the character of the area. The appeal building plays an important part as a special endpiece to the terrace of which it forms part, reflecting the houses at the opposite end of the terrace and at the other adjoining terraces on this side of the street. Its contribution is emphasised by its added visibility from Rosmead Road, from where the rear of the terrace can be clearly appreciated.
16. For these reasons, it is important that extensions to the rear of the terrace respect its character, and particularly important that any extension to the appeal building should do so. The appeal building is distinguished by its articulation of form, with the separate definition of the staircase wing leaving the main body of the house as a strongly vertical element, set back slightly from the main rear elevation of the terrace. The vertical emphasis is strongly reinforced by the axis of the fenestration, with the bay window giving prominence and weight to the ground floor.
17. The other end houses have retained their bay windows at basement level. It can be seen that at the lower level, the bays are simple in treatment and generally somewhat smaller in scale than the more decorated ground floor features that they support. In this they are consistent with the modest scale and treatment of the basement level of the mid-terrace houses. Some of those houses have been extended to the rear at basement level, but in virtually all cases this has consisted of an understated infilling below the ground floor balcony.
18. The appeal building has lost its original rear wall and bay at basement level. However, there is no imperative to replace them in order to restore the balance of the overall design, as both ends of the terrace cannot readily be seen together at this level.
19. The existing conservatory-type extension is of poor quality design and materials. Its principal virtues are that by following the shape of the bay, it allows the lines of the façade to carry down to ground level and that its scale is clearly subsidiary to that of the bay above. But by extending across the full width of the plot and infilling the recess behind the staircase wing it has eroded the articulation of the building's form as a termination to the terrace, and has incidentally resulted in an unattractive area of flat roof at footway level. Replacement of the existing extension offers an opportunity to enhance the character of the house and thus of the wider conservation area.
20. The appeal proposal would project to the same maximum depth as the existing, but across a greater width. Its roof would also be equal to the highest point of the existing, tucked immediately below the projecting sill ledge of the bay window, while its base would be sunk lower into the ground. As a result it would be much more bulky than the existing, whose roof slopes away from the building to an eaves level at the height of a conventional door. The scale of the proposal, with its very tall doors, would be considerably greater so that it would

compete with the significance of the ground floor bay rather than be subservient to it.

21. Moreover, because of the position of the flat roof directly below sill level, the bay would appear to be sitting almost directly on the box-like projection from the house. The introduction of this horizontal platform would involve a fundamental change from the vertical proportions of the existing house. By extending across the full width of the plot, and wrapping around the side of the house, it would perpetuate the adverse effect of this aspect of the existing extension.
22. The measures proposed to address this and to achieve some articulation in the form of the extension would not be adequate. The recess in plan to the area behind the staircase wing would be very limited. The slight step down in the roof profile to the side area would not provide a marked variation. When seen from above, the position of the step would not relate well to the symmetry of the bay window, being cut under the sill shelf to the side only. It also emerged at the appeal site visit that without another deeper step, the side roof would encroach above the top of the side boundary wall, which had not been taken into account on the submitted plans.
23. The appeal proposal could undoubtedly be built of higher quality materials than the existing. Its steel and glass aesthetic could, subject to detail and choice of colour, and to some further consideration of the variety of glazing proportions, provide an elegant façade treatment. However, these aspects would not overcome the fundamental issues of the form and scale of the proposal.
24. I acknowledge that because of its sunken location, the proposed extension would not be prominent in the street scene or in views from the communal gardens, where it is generally well screened by planting. However, it would be visible from Rosmead Road, from where a broad view of the rear of the terrace and the relationship with the gardens can be appreciated. In any event, lack of prominence does not necessarily mitigate harm to heritage interest.
25. Other aspects of the proposal, such as the small side extension at ground floor level and the alterations to the valley roof could, subject to conditions on the details of materials and of proposed roof lights, preserve the character of the building. Planning permission for these works has already been granted by the Council.
26. For the reasons set out above, I consider that the design of the proposed basement extension would not adequately respond to the character of the existing building, which occupies an important position in the conservation area. The adverse effect on the building would thus fail to preserve or enhance the character or appearance of the conservation area and, to a slightly lesser degree, those of the registered gardens. The harm to the significance of these heritage assets would be less than substantial, but would not be outweighed by any public benefits.
27. The proposal would therefore be contrary to the guidance of the NPPF and to Policies CL1 and CL2 of the Core Strategy for the Royal Borough of Kensington & Chelsea with a Focus on North Kensington ('CS'), which together seek extensions of the highest design quality, and to Policy CL3, which requires development to preserve or enhance the character or appearance of conservation areas. The detailed design of the extension would conflict with

part (i) of saved Policy CD 47 of the Kensington and Chelsea Unitary Development Plan.

*Living conditions*

28. The Council's first reason for refusal of the Appeal C application states that the proposed development under the footway would result in an unacceptable level of disruption to neighbouring residents, particularly during the construction period. That the concern relates solely to the development under the footway is confirmed by the Council's approval on the same occasion of the accompanying application, which did not extend under the footway. I agree with those opposed to the development that this concern should also logically apply to the Appeal A proposal, as it would be virtually identical to the Appeal C scheme in the extent of its impact on the public highway.
29. While the Council's concern is said to relate to disruption 'particularly' during the construction period, it has not provided evidence of any anticipated harm beyond this period. The proposal would involve full reinstatement of the footway construction and surface by the Council as highway authority, funded by the appellant's UU obligation. It was confirmed at the Hearing that the concern relates solely to the construction period.
30. The reason for refusal refers to particular conflict with CS Policy CT1. This policy is about alternatives to car use, and its many detailed criteria are directed at the achievement of improved conditions for non-car modes of transport. As with virtually all development plan policies, the policy is in my view clearly aimed at the substantive outcomes of completed development rather than the relatively short-term effects of the construction period. The sections of the policy that could be relevant to the appeal proposal, including the requirements for development not to result in any material increase in traffic congestion or on-street parking pressure, not to compromise road safety, and not to reduce access to footways used by the public, are not actually directed to harmful effects during the construction period only.
31. Both the Council's Supplementary Planning Document ('SPD') on Subterranean Development and the SPD on Transport, to which it cross-refers, anticipate that transport impacts of basement development are likely to be satisfactorily addressed by the imposition of conditions on the planning permission, particularly to require the approval of a Construction Traffic Management Plan ('CTMP'). There is nothing in the scale or complexity of the appeal proposals to suggest that such an approach, which is consistent with national guidance on the use of conditions to mitigate impacts, would not also be appropriate in these cases.
32. By comparing the appellant's Preliminary Construction Traffic Management Plan ('PCTMP') for development with and without the basement extension under the footway, the estimated additional transport impacts of the larger proposal can be identified.
33. It is suggested that both schemes would require suspension of residents' parking bays to the front and side of the house to allow for placement of a skip and delivery of materials, whether the option were to place the skip to the front or the side. The suspension would last for the entire construction period, which for the larger scheme would extend to 78 weeks rather than 66 weeks. It appears that some 6-7 spaces would be affected, but demand for at least one

of these could be expected to derive from the appeal property itself. Non-availability of these spaces would increase demand for other controlled parking nearby, which could cause inconvenience to local residents. However, in permitting the lesser scheme, the Council has implicitly acknowledged that the anticipated reduction in parking would be acceptable for the 66 week period. The Council offers no clear evidence of why the inconvenience associated with the additional 12 weeks for the larger scheme would have unacceptable effects on local residents.

34. A more significant impact of the larger scheme would result from the need to close the footway on Rosmead Road to allow for its excavation, together with at least part of the carriageway. The precise extent of the encroachment into the carriageway was subject to some debate at the Hearing. But greater weight must be given to the professionally drafted PCTMP, which is clear that closure of the southbound carriageway on Rosmead Road would be required, at least until the pavement area works were completed, and that pedestrians would be directed to use the opposite footway.
35. No objection has been raised to the proposal by the highway authority on the grounds of effect on the safe or efficient operation of the highway. The need to cross and perhaps re-cross the road would be an inconvenience to pedestrians using this route. However, the road is not a main artery and forms one of a network of routes within the residential area, so that the total amount of pedestrian traffic should not be very high. Adequate visibility could be designed in at crossing points to prevent any significant safety risk to pedestrians. Slightly modified arrangements might be needed for the school mini-bus that currently drops off close by, but the children should in any event be supervised by responsible adults to avoid any safety problems.
36. Similarly, the proposed closure would form an inconvenience to car drivers rather than a safety hazard for the relevant period of the works. The grid layout of streets would ensure that alternative routes to almost all destinations, other than the two houses that front onto Rosmead Road, were not unduly difficult. But even residents and visitors of those houses would not be very severely inconvenienced.
37. Both schemes would have significant servicing requirements, involving movements of heavy commercial vehicles to deliver and collect skips for excavated spoil and to deliver materials. Use of such vehicles in densely occupied and parked residential streets obviously requires great care. The Hearing was informed of a nearby fatal accident involving a construction vehicle. But in the absence of objection to the proposal by the highway authority, I find insufficient reason to reject the proposal on safety grounds. The concerns raised by some residents about the safety of proposed lorry routes, in particular about turning onto Ladbroke Grove, could be addressed in the approval by planning condition of the final CTMP, as would the details of loading arrangements.
38. The forecast total number of movements shows that the larger project would involve over 40% more trips than the already approved scheme. However, the average number of movements would still be in the order of less than one per day, but with probably greater concentration during the excavation phase of the project. While recognising that each of these visits would involve a degree of disturbance, as well as a potential traffic disruption and safety hazard, it

appears that their frequency and duration would be unlikely to cause unacceptable impacts on residents' living conditions or safe use of the highway. The precise details of the timing and regulation of deliveries would be subject to approval in the final CTMP.

39. Although it had not been specifically cited in the first reason for refusal, at the Hearing the Council also raised concern about the effect of noise and vibration during the construction phase. The concern appears to be that noise arising from the additional duration of work over the scheme already granted planning permission would pass a threshold of acceptability. The Council's standard approach as outlined in the adopted Subterranean Development SPD is to rely on environmental legislation to control noise, supplemented by conditions and 'informatives' attached to a planning permission. No specific technical or other evidence has been provided to show why that approach should not apply here. There is nothing to suggest that the noise from the additional construction would be more intense than from the approved scheme. It would last for a longer time but some of the additional construction period would relate to fitting out, when the noisier activities of excavation and erection of new walls would have finished.
40. In summary, there is no doubt that the construction activity of the larger scheme would be potentially disruptive and would affect nearby residents. However, the controls considered adequate by the Council in approving the lesser scheme to ensure the protection of residents' living conditions should also be effective in the larger scheme, despite its somewhat longer duration. The unique factor associated with the larger scheme, comprising the partial road closure, would add an extra element of disruption, but not one sufficiently harmful to residents in its own right to justify refusal of planning permission. Any adverse impacts of the proposed development could be adequately mitigated by the imposition of planning conditions, such as those drafted by the Council and discussed at the Hearing.
41. Residents opposed to the development were particularly concerned that the additional impacts of the larger scheme would arise from the formation of the proposed basement under the public highway. The case was presented that the proposal would represent an unfair exploitation of a public asset for private gain. However, ownership of land is not a prerequisite to an application for planning permission, and there is no suggestion in this case of any ownership interest that has not been made aware of the application.
42. The Subterranean Development SPD seeks to discourage the use of space below public footways, but the only reason given is to protect the location and rooting area of existing street trees and to protect existing services. In this case, the street tree affected is a relatively young specimen, and the replacement to be provided by the appellant's UU should be of equivalent amenity value. Evidence has been submitted to show that services would not be unacceptably disrupted.
43. Furthermore, the ability of adjoining property to extend under the street, whether as part of a building or as an independent cellar, appears to be well established in law. Section 179 of the Highways Act 1980, which was referred to in evidence, requires the consent of the relevant local or highway authority to be obtained. This is confirmed by the Council's Transport SPD, which raises

no objection in principle of formation of new cellars under the highway, but requires compliance with certain structural standards.

44. As there is already this established procedure in place for the formation of new basements, residents' concern that approval of the appeal proposal would represent a precedent does not appear to be well founded. The Council confirmed at the Hearing that permission had been granted in the past for basements under streets. Subsequent planning applications would have to be assessed on their own merits.
45. Similarly, there appears to be little basis for the concern that any such precedent could potentially lead to chaotic conditions as nearby owners each asserted a perceived 'right to develop' under the highway. The timing and phasing of any highway impacts would be subject to control by the Council through approval in each case of the CTMP and the granting of the necessary licences for hoardings and parking suspensions. The Transport SPD confirms that the extent and timing of works should not be assumed.
46. The proposal would involve the use of air handling plant located in an underground room opening off the rear lightwell. The submitted Noise Assessment shows that subject to suitable mitigation measures, which can be secured by a planning condition, noise from this source should not be harmful to nearby residents.
47. I conclude on this issue that, subject to mitigation by conditions, the Appeal C proposal would not have an unacceptable impact on residents' living conditions by reason of its impact during the construction period. Subject to appropriate planning conditions, the proposal would comply with the guidance of the Subterranean Development SPD and would not conflict with CS Policies CT1 and CL2. This issue does not add further grounds to reject Appeal A.

*Other matters*

48. Some local residents maintain objections to all three appeal proposals, which are not supported by the Council, with regard to effect on ground water and increased flood risk and to potential structural damage to property.
49. In accordance with the SPD, the proposal is supported by a Construction Method Statement ('CMS'), prepared by a chartered engineer, who also spoke at the Hearing. The CMS is unequivocal that the proposal involves no unusual geological, hydrological or structural concerns which need to be addressed. The Ground Investigation Report had revealed no significant ground water, and it was confirmed at the Hearing that further additional monitoring, recommended by the Report as a prudent measure to check seasonal fluctuations, had been carried out without raising issues of concern. There appear to be no records of underground watercourses directly affecting the appeal site. Residents' anecdotal evidence of ground water encountered in the local area does not provide a firm link with the site and is countered by the project engineer's experience of other sites nearby. The SPD notes that changes to ground water levels as a result of basement development are likely to be significantly less than natural seasonal variations.

50. Those objecting place some reliance on a report<sup>2</sup> commissioned by the Council to inform a review of policy on subterranean development. As a background document to an emerging policy review, little weight can be afforded to the report in the current appeal. Moreover the limited submissions that have referred to the report, including a brief opinion by another consultant<sup>3</sup>, do not offer compelling evidence to show how the appeal proposal would be contrary to the report's recommendations for basement design and construction.
51. The report's plan of 'Local Surface Water Flood Risk Zones'<sup>4</sup> appears to show the terrace that includes the appeal property lying just outside an area of historically increased risk. The SPD records that flooding in parts of the borough in 2007 was caused by the sewer infrastructure. It was confirmed at the Hearing that the proposal would include attenuation measures to restrict discharge to public sewers. While acknowledging the understandable concern of nearby residents who have suffered some instances of flooding in the past, I find insufficient grounds to conclude that the appeal proposal would contribute to an increased risk in the future.
52. With regard to structural damage, I note that other legislation offers immediately adjoining owners an opportunity for involvement in the project and for any necessary compensation that might not be open to owners further away. However, I find insufficient reason to set aside the appellant's professional evidence that significant risk should not be posed to the stability of nearby properties, such that planning permission should be refused. The proposal would comply with the stability requirement of CS Policy CL2.
53. Furthermore, the evidence suggests that any risks posed on these matters would be identical (in the case of Appeal B) or very similar (in the case of Appeals A and C) to those that would arise from the scheme already granted planning permission by the Council and which has a realistic prospect of implementation. There is no evidence that the appeal proposals would significantly increase the degree of potential harm above that already possible.
54. Similarly, I find no reason to take issue with the Council's decision to permit the formation of the steps to the front lightwell, which would partly encroach within the notional root protection area of the protected tree, or to conclude that the Council's normal measures to control construction noise, to be applied in the permitted scheme in accordance with the SPD, would not also be effective in each of these three appeals.

### **Conditions and unilateral undertaking**

55. The Council has proposed a list of conditions to be applied, very similar to those already imposed on the permitted scheme. Subject to some amendment in the interests of consistency and precision, I find these to be reasonable and necessary and to comply with the guidance of the NPPF and of Circular 11/95<sup>5</sup>.
56. Standard conditions are advised on the commencement period and the identification of the approved plans. As outlined above, conditions are required in accordance with the SPD on approval of the CTMP, enrolment in the

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<sup>2</sup> Alan Baxter & Associates: Royal Borough of Kensington and Chelsea Residential Basement Study Report March 2013

<sup>3</sup> Letter dated 3 September 2013: Arup to Sir N Stadlen

<sup>4</sup> Figure 25

<sup>5</sup> DoE Circular 11/95: The use of conditions in planning permissions

Considerate Constructors Scheme and supervision by a chartered engineer. These are in the interests of safety during construction and to protect neighbours' living conditions. For the latter reason, conditions are also needed on the fitting and operation of the proposed air conditioning plant. The requirement for a Very Good EcoHomes rating is justified in accordance with the SPD to ensure adequate mitigation for the environmental impact of the subterranean development. Approval of details of landscaping, of tree protection, of new rooflights and of the proposed bins store, are all needed in order to preserve the character of the conservation area, as are the control of matching materials and of the colour of new grilles.

57. The Council confirmed at the Hearing that the submitted UU satisfactorily addresses the second reason for refusal of Appeal C. The obligation offered by the UU to secure the reinstatement of the public highway and the provision of a replacement street tree is necessary to mitigate the effects of the proposed development. The obligation complies with the guidance of the NPPF and meets the tests of Regulation 122 of the Community Infrastructure Regulations 2010, so that it can be taken into account in my decision on Appeal C.

### **Conclusions**

58. For the reasons set out above, and having taken careful account of the many representations made, both in writing and at the Hearing and site visit, I conclude that Appeal A and Appeal B should be dismissed, but that Appeal C should be allowed and planning permission granted subject to conditions.

*Brendan Lyons*

INSPECTOR



## **Annex**

### **Appeal C: APP/K5600/A/13/2206606**

#### **Schedule of 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: Nos. 115EC- 000, 001, 002, 003, 004, 005, 006, 020, 021, 030, 031, 032, 100, 101, 102, 103, 104, 105, 106, 120, 121, 122, 130, 131, 132.
- 3) No development shall be carried out until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The statement shall include:
  - routeing of demolition, excavation and construction vehicles;
  - access arrangements to the site;
  - the estimated number of vehicles per day/week;
  - details of any vehicle holding area;
  - details of the vehicle call up procedure;
  - estimates for the number and type of parking suspensions that will be required;
  - details of any diversion, disruption or other abnormal use of the public highway during demolition, excavation and construction works;
  - a strategy for coordinating the connection of services on site with any programmed work to utilities upon adjacent land;
  - work programme and/or timescale for each phase of the demolition, excavation and construction works;
  - where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

The development shall not be carried out except in accordance with the approved Construction Traffic Management Plan.

- 4) No development shall be carried out until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and these details shall thereafter be maintained on display throughout the duration of the development hereby permitted.
- 5) No development shall be carried out until a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been

appointed to supervise the construction works throughout their duration and his/her appointment has been confirmed in writing to the Local Planning Authority. In the event that the appointed engineer ceases to perform that role for whatever reason before the construction works are completed those works will cease until a replacement chartered engineer of the afore-described qualification has been appointed to supervise their completion and his/her appointment has been confirmed in writing to the Local Planning Authority. At no time shall any construction work take place unless an engineer is at that time currently appointed and his/her appointment has been notified to the Local Planning Authority in accordance with this Condition.

- 6) No development shall take place until full particulars of a soft and hard landscaping scheme for both the front and rear gardens have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details so approved.
- 7) All planting, seeding and turfing, forming part of the approved details of landscaping, shall be carried out in the first planting and seeding season following the first occupation of the development or the completion of the development whichever is the sooner and any trees or plants which, within a period of 5 years from the first planting and seeding season referred to above, 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 its written consent to any variation.
- 8) No development shall take place until full particulars of the methods by which all the existing trees on the site are to be protected during building and other operations on the site, including details of the entry points and method of installation for any new service runs, have been submitted to and approved in writing by the Local Planning Authority. The protection so approved shall be provided before the commencement of the development and maintained for the duration of building and other operations on site. For the duration of all works associated with carrying out the development hereby permitted, no tree within the curtilage of the site shall be lopped, topped, or felled, or root pruned without the prior written approval of the Local Planning Authority.
- 9) No development shall take place until full particulars of the bin store to the front garden, including drawings to a scale of 1:20, details of materials and details of the extent of foundations and how these relate to the adjacent trees on the front boundary, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details so approved.
- 10) No development shall take place until details of new rooflights have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details so approved.
- 11) All new exterior work and work of making good to the exterior of the house shall be finished to match the existing original work to the