

11 REDINGTON ROAD
PERMITTED DEVELOPMENT

ADVICE

Introduction

1. I am asked to advise Mr Raphael and Ms Fritzi Kain on their proposal to redevelop 11 Redington Road, NW3 7QX in Hampstead.
2. In particular, I am asked whether the proposal to re-develop their front garden area can be carried out using permitted development rights, i.e. without the need to apply for planning permission.
3. For reasons set out below, my view is that:
 - (i) The proposed development can be carried out under rights conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015, and
 - (ii) There is no need to apply for planning permission.

Issues for advice

4. I have been showed plans for the proposed redevelopment prepared by Marek Wojciechowski Architects. In particular, I rely on the revision A version of drawings P02, P10 and P11.
5. On the basis of those drawings, asked to advise on the following issues:
 - (i) Does the demolition illustrated constitute lawful development, in particular:

- (a) The demolition of the front gate,
 - (b) The demolition of the side fences,
 - (c) The removal of the hedges (all with a trunk diameter of less than 75mm, measured at 1.5m above natural ground level).
- (ii) Does the erection of the front wall and gates (1m tall) and side fence (1m tall) constitute Permitted Development?
- (iii) Does the installation of hard standing as shown constitute Permitted Development?
- (iv) Does the new vehicular crossover constitute Permitted Development?
- (v) Does the removal of the existing leadlight obscured glazing and replacement with leadlight clear glazing on the front elevation constitute Permitted Development?
6. I deal with each issue in turn, and particularly whether the elements of the proposal would be covered by the Town and Country Planning (General Permitted Development) (England) Order 2015 (“GPDO”).

(1) Demolition

7. Class C in Part 11 of Schedule 2 to the GPDO sets out permitted rights to demolish gates, fences and walls:

“Schedule 2 Permitted development rights
Part 11 Heritage and demolition
(Class C) demolition of gates, fences, walls etc

C. Permitted development

Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

C.1. Development not permitted

Development is not permitted by Class C if the demolition is “relevant demolition” for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area).”

8. A “relevant demolition” means the demolition of a building within a conservation area: section 196D(3) of the Town and Country Planning Act 1990. But although this property sits within a Conservation Area, in my view no building is being demolished. A building includes any structure or erection, and any part of a building: section 336(1). But in this case, the building (i.e. the house itself) is unaffected.
9. Even applying the extended definition of a building (see the criteria in *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No.2)* [2000] 2 P.L.R. 102), removing a gate and fences which do not themselves form part of any building is covered by Class C above.
10. On removing the hedge, the Hedgerows Regulations 1997 do not apply: see Regulation 3(3). No separate permission is required to demolish the hedge, but applying the approach to “means of enclosure” in *Wycombe DC v Secretary of State for the Environment* [1994] E.G.C.S. 61, in my view the hedge in this case would meet the threshold of a “means of enclosure” so – even if permission *were* required – it would be granted by Class C of Part 11. No application for planning permission is required.

(2) Front wall, gates & side fence

11. Class A of Part 2 in Schedule 2 to the GPDO sets out a series of rights in relation to the erection of gates, fences and walls:

“Part 2 Minor operations

(Class A) gates, fences, walls etc

A. Permitted development

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

A.1. Development not permitted

Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—

[...]

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.”

12. The proposed elements include:

- (i) A 1m tall side-sliding metal gate;
- (ii) 1m tall brickwork and two 1m brick piers; and
- (iii) A 1m tall slatted timber boundary fence.

13. All of those items would fall within the rights conferred by Class A.

(3) Hard-standing & vehicular cross-over

14. On the hard surfacing, the relevant rights are in Class F of Part 1 in Schedule 2 to the GPDO:

**“Part 1 Development within the curtilage of a dwellinghouse
(Class F) hard surfaces incidental to the enjoyment of a dwellinghouse**

F. Permitted development

Development consisting of—

- (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or
- (b) the replacement in whole or in part of such a surface.

[...]

F.2. Conditions

Development is permitted by Class F subject to the condition that where—

- (a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and
- (b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres,

either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.”

- 15. The hard-standing proposed in this case is 30sqm in area, and would be made of a porous material. In my view, it plainly falls within the terms of Class F.
- 16. As to the vehicular cross-over, the relevant provision:

“Part 2 Minor operations

Class B – means of access to a highway

The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).”

- 17. In this case, the proposed cross-over fronts Redington Road, which is neither a trunk road nor a classified road: see Camden’s Network Management Plan at <http://www.eustonareaplan.info/wp-content/uploads/2014/04/CED12-Camden-Network-Management-Plan.pdf>.

18. Access is required in order to use the hard-standing dealt with above for parking, so in my view the cross-over meets the condition of being required in connection with other development outside Class A.
19. Note however, that albeit a planning application will not be required, a vehicular crossover application may be needed in due course: see Camden's guidance note at http://www.camden.gov.uk/ccm/cms-service/download/asset?asset_id=2787409.

(4) Windows

20. The final element to consider is the proposed new leadlight clear glazing for the street-facing windows. On that, the relevant provision is Class A in Part 1 of Schedule 2 to the GPDO:

**"Part 1 Development within the curtilage of a dwellinghouse
(Class A) enlargement, improvement or other alteration of a dwellinghouse**

A.

The enlargement, improvement or other alteration of a dwellinghouse.

[...]

A.3.

Development is permitted by Class A subject to the following conditions—

- (a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;
- (b) any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be—
 - (i) obscure-glazed, and
 - (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed"

21. The DCLG Householder Technical Guidance¹ adds at guidance adds at p.32 that:

“it may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames.”

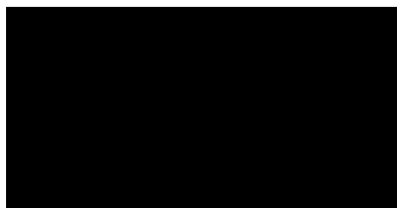
22. So the only question is whether new glazing is of “similar appearance”. And my instructions confirm that it will be.

23. On that basis, my view is that the new glazing is permitted by the Class A right set out above.

Conclusions

24. For those reasons, my view is that the proposed development can be carried out under rights conferred by the GPDO, and no application for planning permission is required.

25. Those instructing me should not hesitate to contact me in Chambers with any questions arising out of this advice.



ZACK SIMONS

Landmark Chambers
180 Fleet Street
London EC4A 2HG

zsimons@landmarkchambers.co.uk

22nd MAY 2016

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606669/170405_Householder_Technical_Guidance_-_April_2017_FINAL.pdf