



Appeal Decisions

Site visit made on 18 September 2017

by **Tim Wood BA(Hons) BTP MRTPI**

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

Decision date: 9 October 2017

Appeal Ref: APP/X5210/W/17/3177213
22 Church Row, Hampstead, London NW3 6UP

- 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 planning permission.
 - The appeal is made by Mr David Milne against the Council of the London Borough of Camden.
 - The application Ref 2016/4461/P, is dated 10 August 2016.
 - The development proposed is refurbishment, repair and waterproofing to rear garden vaulted cellars including excavation, underpinning and new floor structures to provide necessary headroom.
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Appeal Ref: APP/X5210/Y/17/3177221
22 Church Row, Hampstead, London NW3 6UP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Mr David Milne against the Council of the London Borough of Camden.
 - The application Ref 2017/0011/L is dated 10 August 2016.
 - The works proposed are refurbishment, repair and waterproofing to rear garden vaulted cellars including excavation, underpinning and new floor structures to provide necessary headroom.
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Decisions

1. The appeals are dismissed.

Preliminary Matters

2. The appeals are made against the Council's non-determination of the applications. The Council has issued decision notices but these post-date the appeals being made. In these circumstances I shall deal with the appeals as being against non-determination, as set out above. I shall treat the Council's stated reasons as putative.

Main Issues

3. The main issues in these appeals are as follows;
 - The effects of the proposal on the significance of the listed building
 - Whether the submitted Basement Impact Assessment is acceptable

- Whether an Obligation to secure a Construction Management Plan is necessary
- Whether an Obligation to secure a highways contribution is necessary.

Reasons

The effects on the listed building

4. The appeals relate to this important and handsome property said to date from the 1720s. It forms part of a terrace of similar houses, it is grade II* listed and sits within the Hampstead Conservation Area. Apart from its attractive design, it evidently contains a number of historic features.
5. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in deciding whether to grant listed building consent or planning permission for works or development to a listed building or which affects its setting, special regard should be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. In addition, the National Planning Policy Framework (the Framework) states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation; the more important the asset, the greater the weight should be.
6. The proposal relates to 2 large underground vaults which are beneath the rear garden of the house, referred to as Vaults 4 and 5 (others being present to the front of the property). Both are constructed from vaulted brick-work and Vault 4 has been lined in the 1970s and has access to the garden at one end and the other to an area adjacent to the rear of the house. Vault 5 is of bare brick-work and both vaults follow the slight fall in natural ground level away from the house. Vault 5 has no made floor and is of packed earth/clay whilst Vault 4 has a concrete floor. Both vaults suffer from water ingress and flooding, more seriously, apparently, in Vault 5. An electric pump is used to remove the water. The submitted Structural Engineer's Report indicates that there is no appreciable foundation to the vaults and the presence of water at Vault 5 is likely to be responsible for the slight settlement and crack at one end.
7. The proposals would provide underpinned foundations to the vaults, and a lining system would be constructed which would remove the water by means of a built-in pumping system. The lining would then be faced with tongue-and-groove wooden boards and painted white. The internal floor level would be considerably lower than its existing level, which the appellant considers necessary to allow for storage use.
8. The appellant suggests that the vaults were used as an annex to the original kitchen and there is some evidence of a cover at garden level implying that deliveries may have been made from the rear. There are crude candle holders (actually appears to be 2 nails and a strip of soft metal) in the walls of Vault 5. It also contains a flour wheel which has no fixings or stand. It seems that these spaces would have been used as ancillary space/storage by servants to the house and would not have provided habitable space. They are presently unlit and the robust and rough brick-work with its vaulted form and low ceiling gives an atmosphere and character that contributes positively to the listed building. They are reflective of the humble and functional aspect of this part of

the accommodation within a much grander house. In this way, I consider that their current form, appearance and character add to the overall significance of the building.

9. The proposals are designed, at least in part, to provide some form of solution to the water ingress and flooding experienced in the vaults and to make them usable as a result. In the general sense I accept this as a positive aspect of the proposal and it would introduce measures to stabilise the vaults. However, I consider that the considerable increase in height combined with the other internal alterations would considerably erode the existing humble, low, functional appearance and character that the vaults currently possess. This aspect of the proposal would harm the significance of the listed building in my judgement. I give considerable importance and weight to this harm in the determination of these appeals.
10. The appellant considers that the lining works and those that reduce the floor level are reversible. Whilst the proposed 'delta membrane' system and timber boarding could be removed, I consider that it would be unlikely to be done once it is in place. As for the lowering of the floor level, the appellant states that this could simply be back-filled; but I consider such a prospect highly unlikely once the works are completed. Therefore, in my assessment I have considered that the proposal is for permanent works.
11. I have balanced the harm that I have identified against the positive aspects of the scheme. Whilst some remedy to the flooding/water ingress issue must be seen as positive, along with some solution to the apparent instability of the building, in my judgement these do not necessitate the harmful effects that I have identified. In this context I find that the harm is not outweighed by the benefits that would arise. Therefore, in relation to this issue, the proposal would fail to preserve the significance of the historic asset, contrary to Policies D1, D2 and A5 of the Council's Local Plan (LP).

Basement Impact Assessment (BIA)

12. The Council's Planning Guidance 4 (CPG4) deals with development of basements and lightwells, as well as other underground development. Amongst other things, it requires a BIA where an initial screening process indicates it necessary. CPG4 also requires that a BIA should be independently verified so that the Council (and others) may have confidence in its conclusions. In this instance it appears from what the Council say that the appellant has refused to have the BIA verified. When determining proposals for listed buildings, and important ones in the case of this appeal, a degree of precaution is necessary as harm to such an asset can often be lasting or permanent. In this case, I find that the absence of an independently verified BIA means that there is an absence of the required level of confidence that the works will not have any unacceptable effects, as may be addressed in a BIA.

Construction Management Plan

13. The Council considers that an Obligation is necessary to control matters during the construction process, which may otherwise have an unacceptable effect on the local environment. The Council's Planning Guidance 8 Planning Obligations (CPG 8) states at paragraph 3.6 that many environmental effects of construction are covered by other legislation; it adds that because of this, small construction projects cause relatively minor disturbance and in most cases will

not require a S106 agreement to deal with construction management. I consider this to be the case with this scheme.

Highways Contribution

14. The Council require a contribution so that any damage to the public highway can be paid for by the appellant, should it occur. In my view the project is a modest one and unlikely to give rise to large or significant numbers of vehicles and I consider that such a contribution is not necessary.

Conclusion

15. I have taken account of all other matters put forward in the representations. For the reasons set out above, I consider that the proposal would give rise to harm the listed building, unacceptably affecting its historic significance. Although there may be positive aspects to the overall scheme, these and any other matters are insufficient to outweigh the harm that I have identified. Therefore, the appeals are dismissed.

S T Wood

INSPECTOR