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Via Email: david.peresdacosta@camden.gov.uk

Dear David,

38 FROGNAL LANE, HAMPSTEAD - APP REF: 2020/4667/P

I am writing with respect to the above application for the demolition of the existing building and its replacement with a new dwelling incorporating a basement; an application which, broadly speaking, is consistent with the recently granted planning consent here and the earlier basement proposal approved by the Council.

You have informed us that, in your opinion, the application is contrary to Policy A5 'Basements', specifically criteria (k). This states that a basement should "*not extend into or underneath the garden further than 50% of the depth of the garden*". This is the only criteria which you are alleging to have been breached. When clarifying your position, you refer to the explanatory text to Policy A5, specifically the part which states that "*When this policy refers to 'gardens' and 'garden space' this includes all outdoor (unbuilt) space on the property, including paved areas, driveways, as well as grassed or landscaped areas*" (ie, Paragraph 6.111 of the Local Plan). You assert that criteria (k) is not met because the parking forecourt to the property should be treated as a 'garden' and because the proposed basement would extend beyond 50% of this.

In responding to this matter we firstly undertake a review of Policy A5 and its interpretation, which is not considered in this instance to relate to front gardens or parking forecourts. Should officers not be persuaded by this, we then explore the objectives of the policy and again, how these are not, in the specific circumstances at 38 Frognal Lane, infringed by the proposed basement. Thirdly, various other considerations are then set out which should, properly, be taken into account when assessing the application as a whole and which, in our view, strongly outweighs the effect alleged breach.

Policy Interpretation

Our reading is that criteria (k) relates only to the rear garden of a property and not the front. This is on the basis that the preceding criteria (j), specifically refers to the 'rear garden' and thus it is logical that criteria (k) also relates to the rear garden, bearing in mind they are related points. Together, these two criteria ensure that the basement proposed at the rear of a property is not more than 50% of the depth of the host building and no more than 50% of the depth of the rear garden.

Indeed, there is a very important joint purpose attached to criteria (j) and (k), primarily to mitigate against a very elongate basement where a particular dwelling has a long front-to-back measurement but only a very short rear garden (ie, which otherwise could have significant impacts on local character and amenity).

It is also important to read Policy A5 in completeness. Doing so reveals that where criteria relate to both front and rear gardens, the criteria are explicit in this regard. For example, criteria (h) refers to “*each garden*” whilst the explanatory text relating to it (Paragraph 6.132) is again clear that this criteria applies to both front and rear gardens. By contrast, there is no explanatory text for criteria (k), which supports the notion that it should apply to the rear garden only. Indeed, criteria (k) states that the basement should not “*extend into or underneath the garden further than 50% of the depth of the garden*” (our emphasis). If criteria (k) had meant to apply equally to front and rear gardens, then the drafting would have been set out in the plural. Furthermore, Figure 7 of the Council’s Basement SPG (March 2018) provides a diagrammatic explanation of how Policy A5 criteria should be applied. For criteria (k) this depicts only the effect of a basement on a rear garden.

Having explored the detailed operation of Policy A5 and, specifically, criteria (k), there is nothing to support the contention that it should apply to front gardens/forecourts. We are clear that Policy A5 is not breached by the proposed development.

Intent of Policy A5

Policy A5 is divided into three parts. Criteria (k) falls within the second part which requires the decision maker to determine whether a basement has a “*minimal impact on, and [is] subordinate to, the host building and property*”. It forms part of eight other criteria which the Council have determined are elements which help the decision-maker establish whether a proposed basement would have a ‘minimal impact’ and be ‘subordinate’. The policy does not state that all criteria must be met or if some or all criteria are not met then permission should be refused. The policy simply states that basement development “*should*” meet the requirements of criteria; but not ‘must’.

The eight criteria (f) to (m) therefore form a series of tools or considerations to enable the decision maker to determine whether a proposed basement would have a ‘minimal impact’ on a host property and remain ‘subordinate’ to it. Indeed, one must consider the proposal’s response to the criteria as a whole and in the context of the scale of the property to which it relates. These matters are considered in more detail below.

Other Considerations

First, and without prejudice to our position, if a breach has occurred, then it arises merely on the basis of the interpretation of a single criteria. Second, the basement extends around 64% of the distance between the front façade of the property and the property boundary to Frogna Lane, instead of the 50% requirement sought by criteria (k). This is, under any assessment, only a very modest exceedance and an extremely narrow point on which to sustain an objection.

The supporting text to Policy A5 confirms that the Council will seek to control the overall size of basements to protect the character and amenity of the area, the quality of gardens and vegetation and to minimise the impacts of construction on neighbouring properties. It goes on to note that basement development should be designed to retain and protect gardens and trees.

Thus, as above, it is our understanding that criteria (j) and (k) seek to ensure that rear gardens are protected from any significant excavation involved in the construction of basements to ensure the protection of gardens and trees. Guidance within the Council's Basements SPG confirms that applicants should be mindful of the need to preserve or enhance the garden area for trees, other vegetation, and to support biodiversity. Paragraph 2.2 of the SPG states that:

“Basement development that extends below garden space can also reduce the ability of that garden to support trees and other vegetation leading to poorer quality gardens, a loss in amenity and the character of the area, and potentially a reduction in biodiversity”.

The development has been specifically designed so that only a minimal part of the basement projects into the rear garden (and less so than the basement previously considered acceptable by the Council here). This is beneficial in terms of reducing the impact of the development on retained trees within the rear garden. This is despite the opportunity available to our client to propose a substantially greater incursion into the rear garden wholly within the tolerances of the policy criteria. However, it is of course desirable that the principal extension beyond the footprint takes place at the front of the property, below the area to be retained primarily for off-road parking. This is sensible and efficient use of land.

Notwithstanding this, our client has instructed a landscape architect to prepare a scheme to demonstrate that the forecourt area can be suitably landscaped to limit off-road parking to two vehicles in accordance with Policy T2 of the adopted Local Plan¹. The relevant drawing is enclosed. The landscape scheme is wholly indicative and is not a formal part of the application (our client anticipates a condition requiring the submission of a wider landscape scheme) but is intended to demonstrate how the number of cars able to park on the forecourt can be controlled through well-designed landscaping irrespective of the basement extending beneath this area.

We also reiterate that this is not a basement proposed for an existing property but a wholly new property with a basement integrated from the outset. Policy A5 is not constructed in such a way as to readily assess such proposals (the emphasis evidently leaning towards the protection of local character and amenity in respect of basement proposals beneath existing non-basemented dwellings) and thus other considerations resulting from the design of the scheme as a whole must be taken into account when assessing the current application proposal.

The basement here shall provide wholly domestic facilities, including a pool, gym, cinema room and plant areas, the incorporation of which are not uncommon within family dwellings of this scale and will provide facilities which are incidental to, and facilitate the enjoyment of, the proposed property, rather than intensifying the activity at the property. The basement must be considered in the context of a dwelling of three storeys (ie, in addition to the basement level) and some 672sqm. The basement comprises approximately one third of this space and is thus entirely subordinate to the dwelling above. That is the ultimate test and purpose of Policy A5.

¹ As per the requirement of condition 11 of planning permission 2019/4220/P

In light of all of these factors, even if the Council assert that criteria (k) is breached, there are material considerations of significant weight that demonstrate why the proposed basement is acceptable and that planning permission should be granted.

Yours sincerely,



Miles Young

Director

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Enc.