



Appeal Decision

Site visit made on 24 May 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2021

Appeal Ref: APP/X5210/W/20/3261177

Flat 1, 23 Dartmouth Park Hill, London NW5 1HP

- 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 Ms Philippa Huckle against the Council of the London Borough of Camden.
 - The application, Ref 2020/0785/P, is dated 17 February 2020.
 - The development proposed is the demolition of existing side and rear extensions, enlargement of existing basement, construction of replacement side and rear extensions, including lightwells to extended area of basement.
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Decision

1. The appeal is dismissed and planning permission for the demolition of existing side and rear extensions, enlargement of existing basement, construction of replacement side and rear extensions, including lightwells to extended area of basement is refused.

Application for costs

2. An application for costs was made by Ms Philippa Huckle against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

Procedural Matter

3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. The amendments to the Framework have not had a significant bearing on the most relevant issues in this appeal. I am therefore satisfied that there is no requirement for me to seek further submissions on the revised Framework, and that no party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Background and Main Issues

4. The Council had not determined the planning application prior to the appeal being lodged. However, a draft officer report and decision notice were submitted alongside its appeal statement. Together these indicated that, had the Council determined the application, it would have been refused on three grounds relating to the potential impact of the basement development on

neighbouring buildings, ground conditions, and the local water environment; traffic and other disruption arising from construction work; and potential damage to the highway caused by the development. I note also the Council's advice that the second and third reasons could be addressed by an appropriate planning obligation under section 106 of the Town and Country Planning Act 1990.

5. The three reasons advanced by the Council form the basis of the main issues in this appeal, which I consider to be:
 - Whether sufficient information has been provided to demonstrate that the proposed basement development would not compromise the structural integrity of neighbouring properties or the water environment in the local area; and
 - Whether a Construction Management Plan ("CMP") and a contribution towards its monitoring, a "construction impact bond", and a contribution towards highway works are necessary, and if so whether an appropriate mechanism for securing these has been provided.

Reasons

6. 23 Dartmouth Park Hill is a three storey (plus loft and basement) semi-detached house, now divided into three flats. The appeal relates to Flat 1 which occupies the ground floor and, although it does not contain any habitable rooms, the small cellar area. The proposed development is the demolition and replacement of the existing single storey extensions to the side of the building and the rear. A new basement, excavated to a depth of around 3.1m beneath the proposed new rear extension, would provide two additional guest bedrooms and a shower room. The headroom in the existing cellar area would also be increased. A large light well would be created between the rear of the existing main house and the proposed extension, with two further smaller light wells at the rear of the proposed extension.

Structural integrity and water environment

7. Policy A5 of the 2017 Camden Local Plan ("the CLP"), supported by the 2018 *Camden Planning Guidance – Basements* Supplementary Planning Document ("the Basements SPD") address basement development in the borough. Among other things, together they are supportive of basement development only where it is demonstrated that it would not cause harm to the neighbouring structures, or to the ground or water conditions of the area. They require a site- and development-specific Basement Impact Assessment ("BIA") to be submitted at planning application stage. The CLP and Basements SPD set out a five-stage approach to BIAs, the first being screening, and provide a flowchart guide indicating the circumstances in which it is necessary for a BIA to proceed to the second (scoping) stage and beyond. These include where the development site is within 5m of a highway, as in this case. The Basements SPD and the supporting text of Policy A5, both of which are relevant material considerations carrying considerable weight, also indicate that where BIAs proceed beyond the screening stage they will need to be independently verified, and this should be funded by the applicant.
8. The appellant submitted a BIA with the planning application, which indicates that anticipated damage to nearby properties arising from ground movement

would be in the range of Burland Category 0 (negligible) to 1 (very slight), and that there would be negligible impacts in respect of surface water flow and flooding. However, the BIA has not been independently verified. I note the appellant's comments that the Council does not require other expert reports or assessments to be independently verified, and that although the appeal site as a whole is within 5m of the nearest highway the proposed basement itself would be further away from the highway towards the rear of the site. However, without independent verification the evidence does not provide the certainty required by Policy A5 in respect of the potential impacts of the proposed basement development. This is a matter which is fundamental to the acceptability of the scheme.

9. The appellant also made comments in respect of the cost of independent verification of the BIA, and whether or not this would in fact amount to an unauthorised planning fee. I have no information as to how the cost of the service provided by the "single framework provider" which carries out verification of BIAs on the Council's behalf has been calculated, and so cannot determine whether or not it would be "excessive" or "unreasonable" as suggested by the appellant. However, it appears to me that the certainty in respect of the impacts of basement developments sought by Policy A5 and expanded upon in the CLP supporting text and the Basements SPD, is only likely to be provided by independent verification. As such, in my view the cost of independent verification should realistically be seen as an integral part of preparing a basement development scheme rather than an additional fee for processing a planning application.
10. I conclude that sufficient information to demonstrate that the basement development would not compromise the structural integrity of neighbouring properties or the water environment in the local area has not been provided. Consequently, the proposed development does not comply with Policy A5 of the CLP, the principal relevant requirements of which I have set out above.

CMP and highway works

11. Policies A1, T4, DM1, A4, and CC4 of the CLP aim to protect the quality of life for people in Camden by, among other things, managing the impact of development proposals and seeking to ensure that noise, vibration, and traffic generated do not cause unacceptable harm to living conditions, air quality, or physical infrastructure.
12. The rear garden and side of the appeal site are enclosed and constrained spaces, and the development of the basement in particular would be a potentially disruptive exercise requiring the movement and operation of machinery, deliveries of material and the removal of excavated spoil in a location which could harm neighbours' living conditions and highway safety, albeit for a limited period. I therefore consider that it is necessary and reasonable to require the provision of a CMP. I accept that, as the appellant has argued, there will be many cases where a CMP can be secured by a suitable condition, as in an appeal decision elsewhere to which my attention was drawn¹. However, in this case the provisions of a CMP would be likely to need to address matters beyond the development site boundary, such as the routing of heavy goods vehicles. In these circumstances I consider that a planning obligation would be the most appropriate way of securing an effective

¹ Land at 10 Dover Road, Dover District Council, PINS ref APP/X2220/W/16/3166825

CMP. No such obligation is before me, and in the absence of one I cannot be satisfied that the impacts of the development can be adequately managed and mitigated.

13. There will be cases where the monitoring of a planning obligation may make particular demands on a Council, and where there may be a justification for seeking a payment from a developer to cover such costs to ensure that they do not form an unreasonable or unfair burden on the public purse. Monitoring fees are provided for by the Community Infrastructure Levy Regulations, and should be fairly and reasonably related in scale and kind to the development, and should not exceed the authority's estimate of the cost of monitoring the development over the lifetime of the planning obligations which relate to that development². The 2019 Camden Planning Guidance – Developer Contributions Supplementary Planning Document ("the DC SPD") also makes a brief reference to the Council requiring the payment of an upfront financial bond in cases "raising particularly complex construction or management issues where the Council will have to allocate resources to monitor and support delivery".
14. There is nothing before me to explain how the CMP implementation support contribution of £3,136 has been calculated or what it would cover, nor is there evidence that the proposed development raises particularly complex construction or management issues beyond those which would need to be addressed by a BIA and CMP. Furthermore, given the reference to monitoring and supporting delivery in the DC SPD, it is not at all clear to what purposes a separate "construction impact bond" payment which the Council seeks would be directed. It has also not therefore been demonstrated that these elements of a planning obligation would be necessary, and accordingly I cannot find that either the implementation support contribution or the construction impact bond sought by the Council are justified
15. Finally, the Council has stated that carrying out the proposed development would be likely to cause damage to the footway in front of the appeal property such that the footway would need to be repaved, and further unspecified "damage to the public highway within the general vicinity of the site" would need to be repaired. No explanation of the nature of any such damage or how it would be caused has been provided, nor is there any explanation as to how the anticipated £2,478.93 cost of repairing such damage has been calculated. The payment of sought by the Council in this respect therefore seems to me to be speculative rather than demonstrably necessary, directly related to the development, or fairly and reasonably related in scale and kind to the development.
16. I conclude that a CMP is necessary, and in order to be effective beyond the boundary of the appeal site would need to be secured by a planning obligation. In the absence of such an obligation, the proposal conflicts with Policies A1, T4, DM1, A4, and CC4 of the CLP, which seek to ensure that development does not have unacceptable impacts as described above.
17. The CMP implementation support contribution, construction impact bond, and highways contribution sought by the Council have not been justified. However, this finding does not alter my conclusion in respect of the need for a planning obligation securing a CMP, or the overall acceptability of the proposal.

² Regulation 10 of the CIL (Amendment) England) (No.2) Regulations 2019

Other matters

18. The appeal site lies within the Dartmouth Park Conservation Area ("the Conservation Area"). I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, paragraph 189 of the Framework states that they should be conserved in a manner appropriate to their significance.
19. The proposed extensions would be at the rear of the appeal property and, although a little larger than the existing extensions, would be subservient in size and scale to the host building. The light well between the main rear elevation and the rear projection, as well as the large fully-glazed openings, would break up the bulk of the extensions, while the light grey brick to be used would provide a gentle contrast with the original building. None of the evidence before me suggests that the proposal would represent anything other than a well-designed, neat and attractive addition to the property, and I agree with the Council's observation that the overall design of the development would be acceptable. I am therefore satisfied that the development would preserve the character and appearance of the Conservation Area. However, that the proposal is acceptable in this respect does not outweigh the other harm I have found.

Conclusion

20. The proposal would conflict with the development plan taken as a whole. There are no material considerations, including those of the Framework, which indicate that the decision should be made other than in accordance with the development plan.
21. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector