

Hearing Statement - 9/representor number

Savills Client Consortium

Matter 9: Energy, waste and water conservation

Issue 9.1: Whether CL7 (k) is justified by the evidence, consistent with national policy, and effective

Response from Savills Planning

Question 47: What are the key reasons for criterion CL7 k. requiring a high level of performance in dealing with energy, waste and water?

No comment

Question 48: Is each of the reasons for the criterion justified by the evidence?

No comment

Question 49: Is the restriction too limiting?

We consider that the restriction is too limiting due to the fact that the policy wording applied to the whole building rather than just the basement. A recent appeal decision was allowed at 1 Burnhall Street (attachment 1) where the Inspector considered that the requirement for the whole of the extended dwelling to meet level 4 of the Code for Sustainable Homes fails the test of being relevant to the development to be permitted, as set out in Circular 11/95, as any deficiency in relation to the dwelling as a whole already exists and would not be a consequence of the current proposal. Refer to page 13 of Savills representation submitted March 2014.

Question 50: Is the Plan consistent with the Government's zero carbon buildings policy as required by paragraph 95 of the Framework? In particular, should paragraph 34.6.68 refer to BREEAM targets given that most basement development will be to homes? Does the paragraph take account of the May 2014 BREEAM UK New Construction advice?

No comment

Question 51: Could the aims/reasons be achieved or satisfied in another way? If so, please suggest alternative wording.

We consider that criterion CL7 (k) should be amended as follows:

"ensure any new basement, is adapted to a high level of performance in respect of energy, waste and water to be verified at pre-assessment stage and after construction has been completed"

The revised wording ensures that the sustainability requirement only relates to the additional floorspace, as opposed to retrospectively applying sustainability requirements on existing floorspace.

Question 52: Should the criterion contain an exception clause to cater for differing circumstances?

No comment.

Attachment 1



Appeal Decision

Site visit made on 11 June 2012

by Michael Evans BA MA MPhil DipTP MRTPI

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

Decision date: 19 June 2012

Appeal Ref: APP/K5600/D/12/2174477
1 Burnsell Street, London SW3 3SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robin Lister against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/12/00333 was refused by notice dated 30 March 2012.
 - The development proposed is the construction of a basement with front and rear lightwells.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a basement with front and rear light wells, at 1 Burnsell Street, London SW3 3SR, in accordance with the terms of the application Ref PP/12/00333, subject to the following conditions:
 - 1) The development hereby permitted shall be completed in accordance with the following approved plans: P110 rev A, P111 rev A and P119 rev A.
 - 2) Upon completion of the works hereby approved, any damage caused to the building by the works, including in relation to the front boundary wall, shall be made good within 6 months in accordance with a scheme submitted to, and approved in writing by, the local planning authority.
 - 3) Prior to the completion of the works hereby approved, full details of both hard and soft landscape works, including a timetable for their implementation, shall be submitted to and approved in writing by the local planning authority, and these works shall be carried out as approved. Details of hard landscape works shall include pathways and all other hard surfacing materials. Details of soft landscape works shall include species of shrubs and their sizes and positions. If, within a period of 5 years from the date of planting, any plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

Preliminary Matters

2. The proposal can most appropriately be described as given in the header above, rather than as stated on the planning application form. It is on the basis of this amended description that the appeal will be considered. Development has already commenced in relation to a previously approved scheme. The current proposal only differs in relation to the treatment of the ground surface at the front where there would be a glazed area.
3. The application was amended during the course of the Council's consideration to include the provision of a metre of topsoil. The Appellant suggests that both this and the proposal as originally submitted should be considered. However, in the context of an application for full planning permission it is not acceptable to submit alternatives and the appeal must be considered on the basis of the scheme that was refused permission by the Council.

Main Issue

4. The main issue in the consideration of this appeal is whether the proposal would preserve or enhance the character or appearance of the Chelsea Conservation Area, within which the site is located.

Reasons

5. The appeal concerns a property which it is indicated in the Design and Access Statement dates from 1925. It is located at the end of a terrace specifically identified in the *Chelsea Conservation Area Proposals Statement* as forming a 'remarkable composition' with particular reference to the mansard roof and dutch gables.
6. However, the glazed area to the front light well would not directly affect the appearance of the front elevations of the host property and terrace that give rise to the positive contribution to the Conservation Area. Furthermore, the height of the front boundary wall would be such that views from the street would be particularly difficult to obtain, especially with the proposed planting. Consequently, no significant attention would be drawn to the presence of the basement.
7. For these reasons, the glazed area would have no detrimental effect and the additional vegetation would take the opportunity to enhance the site and streetscene. In consequence, the character and appearance of the Conservation Area would be preserved.
8. The latter effect would be in accordance with Local Development Framework Core Strategy for the Royal Borough of Kensington and Chelsea with a Focus on North Kensington Development Plan Document (LDFCS) Policy CL 3. By respecting the context the proposal would also comply with Policy CL 1, while the design would be of a suitable quality and not involve the loss of any trees so there would be no conflict with policy CL 2. Moreover, it would also satisfy the broad thrust of the Council's Supplementary Planning Document *Subterranean Development*, Adopted May 2009 that such development is discreetly located.

9. A local resident has raised concerns about disruption during the construction process but given the existing permission and temporary duration of the works this would not be a sound basis for rejecting the proposal.
10. Taking account of all other matters raised, the appeal is allowed due to the acceptable effect on the Conservation Area.
11. Development has already been started but not completed so that no commencement condition is needed. It is however necessary that the development shall be completed in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. To preserve the character and appearance of the Conservation Area works of making good should be required, including in relation to the front boundary wall. The new planting should be controlled for the same reason and a landscaping condition should also cover ground surface materials.
12. It is made clear in Circular 11/95 that *in considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification.*
13. In this context, with respect to this single storey domestic extension there is inadequate justification for conditions in relation to the Traffic Management Plan, the Considerate Constructors Scheme and the need to require the development to be supervised by an engineer. This is especially so as these concern a number of matters that are subject to other legislation.
14. For subterranean extensions the Council's SPD requires the whole of the extended dwelling to meet level 4 of the Code for Sustainable Homes. However, such a condition fails the test of being relevant to the development to be permitted, as set out in Circular 11/95, as any deficiency in relation to the dwelling as a whole already exists and would not be a consequence of the current proposal. LDFCS Policy CE 1 seeks the same standard for domestic extensions but only those in excess of 800 sq m and so does not apply in this instance.

M Evans

INSPECTOR