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## Appeal Decisions

Site visit made on 9 November 2016

**by Neil Pope BA (Hons) MRTPI**

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

**Decision date: 17 November 2016**

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### **Appeal A Ref: APP/X5990/D/16/3158870**

**11, Gerald Road, Westminster, London, SW1W 9EH.**

- 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 Mrs Alison Davies against the decision of Westminster City Council.
  - The application Ref. 15/10141/FULL, dated 30 October 2015, was refused by notice dated 5 July 2016.
  - The development proposed is an extension to existing basement under terrace house at 11 Gerald Road to 85% of front garden, 60% of rear garden and basement under existing mews building.
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### **Appeal B Ref: APP/X5990/D/16/3159549**

**11, Gerald Road, Westminster, London, SW1W 9EH.**

- 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 Mrs Alison Davies against the decision of Westminster City Council.
  - The application Ref. 15/09279/FULL, dated 2 October 2015, was refused by notice dated 5 July 2016.
  - The development proposed is an extension to existing basement under terrace house at 11 Gerald Road and under existing mews building and 85% of front and rear gardens.
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### **Decisions**

1. The appeals are dismissed.

### **Preliminary Matters**

2. In essence, the main differences between the two proposals is that the appeal B scheme would entail additional excavation below the mews building and a London Plane tree growing within the garden is shown to be removed. This tree is the subject of a Tree Preservation Order.
3. In April 2016 planning permission was granted to create a new basement level extension beneath 2 Burton Mews. In May 2016 permission was granted for a new basement at the front of the property. The appeal schemes seek to enlarge the permitted basement extensions into the lower section of garden.

### **Main Issue (both appeals)**

4. The main issue is whether the proposal would preserve or enhance the character or appearance of the Belgravia Conservation Area (BCA), having particular regard to the likely impact upon trees growing within the site.
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## Reasons

5. The appeal site includes the main dwelling at 11 Gerald Road and the smaller mews building in the rear garden (2 Burton Mews). The proposal would link these two buildings at basement level. There is a difference in levels across the site. In addition to the mature London Plane tree, there is a semi-mature hornbeam, a southern beech and a magnolia tree growing within the rear garden. The site lies within a compact urban area and forms part of the BCA.
6. The significance of the BCA lies primarily in the architectural qualities of the 19<sup>th</sup> century terraced houses and grand stucco mansions and squares. Trees and green spaces also contribute to the significance and amenity of the area. Amongst other things, they soften the urban landscape and provide a pleasing contrast with the white stucco and formal layout of the streets. Garden trees add interest to the townscape by hinting at the existence of the private realm.
7. The London Plane growing within the site is of an attractive form and appearance. Whilst this substantial tree makes a limited contribution to views from Burton Mews<sup>1</sup> it can also be seen from the upper floors of neighbouring properties. It assists in softening the built environment, is an attractive element within the street scene of Burton Mews and is likely to be a pleasing feature of the outlook in views from some neighbouring properties. I note that this tree is valued by some residents<sup>2</sup> and is identified as a 'Category A'<sup>3</sup> (high quality) tree in the appellant's 'Tree Survey Schedule'. This important tree makes a positive contribution to the character and appearance of the BCA.
8. I agree with the Inspector who recently dismissed an appeal for the felling of this London Plane tree and found that its removal would harm the character of the BCA (Ref. APP/TPO/X5990/4973). Whilst in the context of the National Planning Policy Framework this would amount to less than substantial harm to the significance of the BCA, this does not equate to a less than substantial planning objection. In addition, the removal of the hornbeam tree<sup>4</sup> would result in some limited harm to the character of the area. In failing to preserve the character of the BCA appeal scheme B would conflict with policy S25 of Westminster's City Plan [WCP] (2016) and policy ENV16 of the City of Westminster Unitary Development Plan [UDP] (2007).
9. It would take many years before any replacement trees made any meaningful contribution to the character or appearance of the BCA. Moreover, the very limited public benefit arising as a result of support to the construction industry would not outweigh the harm I have identified. I concur with the Council that permission should be withheld for the scheme advanced under appeal B.
10. In an attempt to retain the London Plan tree (appeal A), detailed site investigations, including a series of trial pits, have been undertaken on behalf of the appellant and a report submitted by an arboriculturist. As a result, it is proposed to excavate beneath the Root Protection Area (RPA) and retain a 2m depth of soil for the majority of the excavations. Those acting on behalf of the appellant have gone to considerable lengths to try and incorporate this important tree within the scheme and cannot be faulted for their endeavours.

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<sup>1</sup> A private street where public access is permitted.

<sup>2</sup> It is also likely to make a useful contribution to biodiversity.

<sup>3</sup> As set out in Table 1 of BS 5937:2012 'Tree in relation to design, demolition and construction – Recommendations'

<sup>4</sup> Identified as a 'Category B' (moderate value) tree in the appellant's Tree Survey Schedule.

11. The proposed works would include tunnelling and vertical sheet piling. Nevertheless, there would be a temporary loss in RPA at a distance of 7 metres from the stem of the London Plane. This would result in the removal of some fibrous roots and two small lateral roots approximately 25mm in diameter. 'Root promoting' techniques would be undertaken following excavation / construction works. On behalf of the appellant, it is argued that subject to the use of appropriate planning conditions there would be no long term adverse impact on this tree and the proposal would accord with BS 5837:2012.
12. However, the RPA is the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain a tree's viability and where the protection of roots and soil structure should be treated as a priority. The existing garden also provides a somewhat constrained rooting area to support this mature tree. Whilst the appellant's arboricultural report quotes paragraph 5.3.1 (proximity of structures to trees) of BS 5837:2012, it omits the first sentence which states: "*The default position should be that structures (see 3.10) are located outside the RPAs of trees to be retained.*" In this instance, there is no overriding justification for construction within the RPA.
13. The proposed loss of roots would harm the well-being of the London Plane tree. Notwithstanding the results of the trial pit investigations, it is not known where all other roots of this important tree are growing. Whilst these may not be growing below a depth of 2m, there is a risk of the proposed construction / excavation works disturbing and / or threatening other fibrous and lateral roots. If the development was permitted, pressure would almost certainly be applied on the Council to agree to the cutting of any such roots that maybe discovered during the construction phase and which it would have difficulty resisting. Although some trees can tolerate a temporary loss of some fibrous roots, it is by no means certain that this tree would recover from the proposed root cutting works, or would withstand the rigours of the construction phase which involve extensive excavation works in close proximity. I concur with the Council's arboricultural officer that the proposal would compromise the health / well-being of this tree and, in all likelihood, result in its untimely removal.
14. As I have already found above in respect of appeal B, the loss of this London Plane tree and the hornbeam tree would harm the character and appearance of the BCA and conflict with the provisions of the development plan. Damage to this important tree or foreshortening its life span would also be harmful. This would not be outweighed by the very limited public benefit. Permission should therefore also be withheld for the scheme advanced under appeal A.
15. Although a Construction Management Plan could be secured by a planning condition I have sympathy for neighbours over the disruption / inconvenience they would experience over the lengthy construction phase. However, neither this nor the other concerns raised by interested parties would be sufficient reason for dismissing the appeals. As set out in the Council's officer's report, the justification for withholding permission is the harm to BCA.
16. As the proposals would fail to preserve or enhance the character or appearance of the BCA these appeals should not succeed.

*Neil Pope*

Inspector