

Appeal Decision

Site visits made on 20 April and 11 May 2015

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 14 May 2015

Appeal Ref: APP/K5600/A/14/2228094

27 Melbury Road, London W14 8AB

- 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 and Mrs McGrath against The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/14/02018, is dated 2 April 2014.
 - The development proposed is described as "new basement under footprint of property and partially under front and rear gardens to accommodate foot lights; allowance for acoustic enclosure to accommodate AC units; internal refurbishment works; new footlights to front and rear garden."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to the non-determination of the application by the Council. The Council has indicated that the proposal would have been refused planning permission and the putative reasons given form the basis for my main issues, set out below.
3. I undertook an accompanied inspection of the appeal site on 20 April and an accompanied inspection of the neighbouring property at No 29 Melbury Road on 11 May.

Main Issues

4. Based on the statements received from the Council and other representations, the main issues in this appeal are as follows;
 - The effects of the proposal on the structure and interior of the neighbouring listed building
 - The effects of the construction of the proposal on the local environment.

Reasons

The effects of the proposal on the structure and interior of the neighbouring listed building

5. The appeal relates to this end-of terrace house said to date from between 1967 and 1975, located within the Holland Park Conservation Area. The

neighbouring property at No 29, 'Tower House' is a Grade I Listed Building. It dates from 1875-81 and was designed by William Burges for his own use. It is designed in the Gothic style and contains numerous interesting external design features. Its interior is of particular note, said to be complete and in its original form. Most rooms contain surface decorations often complex and assessed to be fragile, in cases; these include painted tile friezes and painted plaster-work. There are many decorative fireplaces and decorative glass is found throughout the house. The overall design of the building and its striking interior, from a renowned architect, result in a rich heritage asset of the highest importance.

6. The National Planning Policy Framework (the Framework) states that great weight should be given to the conservation of an asset and the more important the asset, the greater the weight should be. The owner of Tower House has submitted his own specialist adviser's comments and assessment of the building at Tower House and the appeal scheme; it is stated therein that there has been some previous structural movement which is shown by several cracks in the decorative internal finishes and I was able to see these at my visit. English Heritage also notes evidence of some movement in the west side of the building (closest to the appeal site) and cracking of some decorative features, which they assess would be highly vulnerable if further movement were to occur.
7. The appellants have submitted a great deal of information in respect of the proposed construction works and their assessment of the likely effects on Tower House. In summary, it is stated that some small movement is likely at the boundary of the appeal site with the grounds of Tower House and that any movement in the immediate vicinity of Tower House itself is likely to be very small. At the boundary of the appeal site with Tower House, there is a garage building with accommodation above serving Tower House; the main building is set further from the boundary at a distance said to be 9.5m. The appellants' assessment predicts "negligible damage (i.e. hairline cracks)" (source; CGL letter 20 January 2015) to the garage at Tower House. They then assess the likely ground movement at Tower House as being "too small to calculate" and then consider that damage is highly unlikely and not warranting further more detailed assessment. An earlier statement from one of the appellants' other advisers (source; *Form* letter dated 28 October 2014) states that the combined short-term and long-term movement at Tower House was calculated to be less than 0.2mm. It is stressed in the documents that the predictions rely on, amongst a number of other things, a consistently good standard of workmanship, good construction control and monitoring. Vibrations caused during demolition, excavation and building works would be controlled by use of specific building techniques and low impact tools, plus a monitoring system in this respect.
8. It is stressed throughout the appellants' submissions that a number of factors are critical in limiting the effects of the proposal on Tower House and these would all need to be as predicted in order to limit movement. In addition, whilst the predicted effects are small, there is no analysis that establishes what those effects might be on the delicate and important internal features of Tower House. English Heritage consider some of them to be fragile and vulnerable to further movement and there is no evidence before me which indicates what effect even the predicted small amount of movement in Tower House would have on these important and significant parts of the listed building. Even slight

cosmetic disruption, which may be acceptable in many other buildings, could have an unacceptable impact on this valuable historic asset. Whilst on site monitoring may give an indication of movement during the construction process, movement will need to have occurred in order for it to be registered. Furthermore, it would take no account of consequential ground movement after constructions works have ceased.

9. In relation to this matter, I have taken very careful account of the wealth of information submitted by the appellants and understand the efforts that have been made to address relevant issues. Notwithstanding this, there must remain an element of doubt over the multiple factors and predictions which would need to positively coincide in order that just the small predicted level of movement would occur. There is no evidence before me which relates even this level of movement to the effects on the important features in Tower House. The appellants have accepted in their representations that further work on the effects of ground movement would be possible (but not necessary in their view). Taking account of the extent of the proposed works and the highly important and sensitive historic features of the neighbouring property, I conclude that a precautionary approach is warranted. There must remain some doubt as to the actual effects that the proposal would have on Tower House and I consider that its high importance justifies protecting it from that element of doubt.
10. In relation to the likely effects from vibration, on the basis of the evidence submitted, I am satisfied that sufficient precautions could be ensured which would prevent the use of machines, tools and techniques which would give rise to any unacceptable risks.

The effects of the construction of the proposal on the local environment

11. The Council has recently adopted (January 2015) a revised version of Policy CL7 of its Core Strategy (CS). This was adopted after the appeals were submitted, although it was emerging at the time when the applications were with the Council. Within their putative reasons for refusal the Council allege: disruption to highway users during construction works; harm to neighbours amenity during construction works, and; vulnerability to sewer flooding. In relation to the last point, I am satisfied that a suitable pump could be required, by condition, which would ensure no unacceptable effects would arise.
12. In relation to highway conditions, I am satisfied that, on the basis of the submitted Construction Traffic Management Plan, if the development were to go ahead, suitable conditions could be attached which would ensure that unacceptable disruption would not occur and would satisfy the Council's concerns.
13. The submitted Construction Management Statement and other submissions address vibration, ground works, removal of spoil and methods of dealing with dust and addresses potential disturbance. The appellants state that this is intended as a draft and would expect that planning conditions would require the approval of a detailed submission by the Council. I note that this is covered in the draft conditions by the Council and see no specific reason why this would not be acceptable.

14. As a consequence of these matters, I consider that, if permission were to be granted, suitable conditions and measures could be put in place so that there would be no unacceptable effects in relation to these matters.

Other Matters

15. The owner of Tower House expresses concern at the possible effects on trees. I have given careful consideration to the evidence presented by the appellant and noted also that the Council has concluded that no unacceptable effects would arise. I see no reason to come to a different conclusion.

Conclusions

16. Paramount in my consideration of this appeal is the very high significance of the neighbouring Tower House as a heritage asset. Its striking, valuable and, in some instances, fragile interior features are of particular worth. Accordingly, I have placed great weight on the conservation of Tower House and its features when determining this appeal. I have exercised a precautionary approach to the possible effects on Tower House; given that I have no specific and expert evidence which indicates that the important features of Tower House could withstand even the predicted level of movement, I have determined that the proposal should not go ahead. The appellant notes that English Heritage, in expressing their view, did not undertake any specific exercise and present evidence as opposed to opinion. I note this also, but I attach weight to their opinion and agree that, in this case, such an approach is justified.
17. In reaching my conclusions I also note that the Council do not object to the effects of the proposal on the character and appearance of the conservation area. I agree that the proposal would preserve these matters.
18. As a consequence I find that the proposal would conflict with the aims of parts of Policies CL4 and CL7 and the advice in the Framework. Therefore, the appeal is dismissed.

S T Wood

INSPECTOR

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