

Special Item

**Case
No.**

13/2075

Planning Committee: 13 November 2013

LOCATION: 70A Dartmouth Road, London, NW2 4HA

PROPOSAL: Erection of single storey side and rear extension and basement to ground floor flat

RECOMMENDATION

This application is being reported to Members with a recommendation to endorse the decision to grant planning permission for this development.

In accordance with legal advice, this application is being reported to the Planning Committee following approval of the application under delegated powers prior to the expiry of the 21 day consultation period. The application was determined on 17 September 2013 and the statutory 21 day consultation expired on 20 September 2013. During this intervening period, four further representations were received that were not reviewed prior to the decision being made.

The purpose of reporting this application to the Planning Committee is therefore to allow for an impartial review of the decision by officers following the submission of additional representations to determine whether the Planning Committee would have in the circumstances granted planning permission, taking into consideration all representations received.

If the Planning Committee are minded to support the recommendation, no further action would be taken by the Council. However, it should be noted that there is a six week period in which third parties are able to challenge the decision by way of judicial review whereby a High Court Judge will consider the lawfulness of a decision and test whether it was legally right or wrong applying public law principles. The Courts have the power to intervene as a matter of discretion to: (a) either quash, prevent, or require a decision, (b) clarify the law or, (c) to compensate the applicant where it is necessary and reasonable to do so. In the present case the Court cannot rule on the policy merits of a decision, only in order to put right a recognisable public wrong. This would not prevent the applicant from applying again for the same development.

In the event that the Planning Committee do not agree with the recommendation, the decision will need to be taken as to whether to seek a revocation of the planning permission. The Council as Local Planning Authority has no power simply to withdraw a permission unilaterally. Once planning permission has been granted, any revocation of the permission leaves the applicant able to claim compensation in permitted circumstances. The normal measure of compensation is the damage suffered in consequence of the order by depreciation of the value of an interest in the land on the proviso that the applicant can demonstrate firstly he has implemented the planning permission and secondly acted to his detriment by suffering loss flowing

directly from the revocation. An example of this would be the applicant incurring professional costs by employing consultants and builders or losing out on the sale of the property because a third party had sought reliance on the permission.

EXISTING

The existing site comprises a ground floor flat within the Mapesbury Conservation Area, on Dartmouth Road. The building would have originally been one two storey semi detached single family dwellinghouse, but appears to have been converted to three flats some time ago. The property is not listed.

PROPOSAL

Erection of single storey side and rear extension and basement to ground floor flat.

HISTORY

12/3226: Erection of single storey side and rear extension and lower ground floor extension to rear of ground floor flat with associated rear terrace alterations in accordance with revised plans received 02/05/2013 - *Refused, 08/05/2013.*

Related site history (70A-C Dartmouth Road inclusive)

02/2331: Conservation Area Consent for demolition of chimney stack to first-floor maisonette (Article 4 direction) – *Refused, 30/10/2002*

E/00/0064: Side extension to provide secondary entrance – *Validated 10/07/2000, No further action taken*

87/1651: Conversion to three self contained flats, reconstruction of single storey rear extension, installation of two rear dormer windows and 3 flank roof lights, alterations to front windows and front entrance door, reconstruction of front wall and provision of hardstanding, landscaping and dustbin enclosure – *Granted, 05/01/1988*

D373: Use of ground floor room for dress making – *Refused, 11/06/1949*

POLICY CONSIDERATIONS

See appended Delegated Report

CONSULTATION

Seven neighbours and the Mapesbury Residents' Association were consulted on 23/07/2013, a Press Notice was placed in the local paper on 29/08/2013 and a Site Notice was placed outside the property on 30/08/2013.

Prior to the decision being made on 17th September 2013, three neighbours had objected to the proposal. The matters raised are set out below:

Objection	Officer response
Impact of basement/lower ground floor extension & Construction	

<ul style="list-style-type: none"> - structural engineering report and geological/hydrological report should be provided - validation requirements agreed at 18 September Committee not provided; - structural damage to the upper floors of the property; - basement may have an impact on the adjoining properties and their foundations alongside the fences to the neighbouring properties; - impact on surface water run-off on surrounding properties; - No detail has been given with regard to a plan for building works, which could cause disruption to adjoining neighbours. 	<p>The subject application was submitted prior to the endorsement by the Planning Committee on 17 September 2013 for future changes to validation requirements relating to basement extensions.</p> <p>Building Control approval will be required which will take into consideration the impact on load bearing walls.</p> <p>A condition is proposed to ensure that rear soft landscaping details, including boundary treatments, are provided prior to the commencement of works.</p> <p>As set out in the report to Members on 17 September 2013, Brent does not generally have a high water table and areas with a history of flooding are usually related to local surface drainage issues. In terms of geology, the majority of the Borough sits on London clay which does not necessarily raise specific construction problems that should not be able to be covered by conventional design and build techniques.</p> <p>The applicant will be reminded of the relevant British Standard Code of practice for demolition and Construction.</p>
<p>Character and Amenity</p> <ul style="list-style-type: none"> - lower ground floor level extends beyond the footprint of the proposed extensions, contrary to the Council's advice; - reduction in the size of the garden is not in keeping and proposed balcony eats up far too much garden space; - lower ground floor staircase would fail to respect the existing character of the garden; - size of the proposed extension/basement would be out of character with the other buildings in the Mapesbury Conservation Area; 	<p>Officer advice following the previous refusal did set out that the extension should not extend beyond the footprint of the proposed extensions. An assessment of the further extension is set out in paragraph 14 of the <i>Remarks</i> Section.</p> <p>There will be no reduction in areas of soft landscaping in the garden although part of the existing terrace will be built on (total of just under</p>

<ul style="list-style-type: none"> - the depth of the extension to the outrigger will result in loss of amenity viewed from the upper flats; - proposed windows on both levels, together with the juliet balcony would look more in place on a modern block of flats, rather than a traditional Edwardian house; - would set a precedent for unattractive extensions within the Conservation Area; - overlooking to the properties opposite. 	<p>16sqm).</p> <p>Consideration of the acceptability of the design and amenity considerations are set out in the <i>Remarks</i> section of the report. Given the size and design of the proposed extension, whilst it will be visible from upper floor flats, it is not considered that there are any significant amenity concerns.</p>
<p>Process</p> <ul style="list-style-type: none"> - notice has not been served under the Party Wall Act; - The applicant has failed to gain permission from the Management Company of the property for the extension, which is part of the requirement of the leasehold; - proposed drawings are not to scale and no floor area measurements are provided. 	<p>The applicant will be reminded of their duties under the Party Wall Act.</p> <p>It is noted that the relevant Certificates have been served as stated within the application form to flats B and C within the property. The grant of planning permission does not override covenants or requirements within a lease.</p> <p>The plans have been provided at an appropriate scale. It is not a validation requirement to request plans to be annotated with measurements.</p>

Four further consultation responses were provided following the application being granted. These included three residents' objections, alongside an objection from the Mapesbury Residents' Association.

These objections, including an Officer response, are set out below:

Objection	Officer response
<p>Impact of basement/lower ground floor extension & Construction</p> <ul style="list-style-type: none"> - development will result in subsidence - no detail has been provided as part of the application that suggests will not suffer structural damage as a result of the construction; - loss of wildlife and help to form the character of the Conservation Area as well as counter balancing the high water table level of the Conservation Area; - impact on surface water run-off; 	<p>See response to 'Impact of basement/lower ground floor extension & Construction' to initial objections received.</p>

<ul style="list-style-type: none"> - disruption during construction; 	
<p style="text-align: center;">Character and Amenity</p> <ul style="list-style-type: none"> - basement is too extensive and should not extend beyond the original building line; - the proposal results in an overdevelopment that is out of keeping with the integrity of the building; - terraced area is aggressive in design; - the infill extension will extend more than 4m in depth exceeding the limit set out within the Mapesbury Conservation Area Design Guide; - extensive use of glass in the doors on two storeys, the glass balcony and surrounding hard surfaces are not appropriate to the character of the house and surrounding buildings; - the application proposes to raise the height of the existing patio which will mean the neighbours will overlook the garden of No. 68 resulting in loss of privacy; - adjoining room within No. 68 is the living room and the increase in height of the wall on this boundary will reduce light coming into the living room at No. 68; - large rear juliet balcony will be viewable from the neighbouring grounds of No. 68 and possibly the balcony to be installed on the new terrace, adding to the intrusive nature of the work being carried out and further invading privacy; - reduction in size of the garden and wider impact on the Mapesbury Conservation Area; - visual intrusion, reduction in privacy and significant adverse impact on the property and the enjoyment of the garden; - fails to meet the requirements of UDP policy BE26; - extension will impact from the view from the kitchen and terrace of no.72; - aspect from other properties will be distorted and will have a different visual appearance from the other dwellings that is not in keeping with the Conservation Area; - such a development is unacceptable as it would create a precedent for such extensions across the Conservation Area 	<p>See response to 'Character and Amenity' to initial objections received.</p>
<p style="text-align: center;">Process</p> <ul style="list-style-type: none"> - recommendation to grant permission should not appear on the website prior to the 	<p>This report has been prepared to take account of this matter with legal</p>

consultation closing date	advice provided.
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REMARKS

1. The Officer's Delegated Report for this application is appended to this report. The following details are intended to clarify the main key issues and assessment.

2. Key considerations

3. The main planning issues are considered to be:

- changes since previous refusal of planning permission in 2012 (LPA Ref: 12/3226);
- whether the proposal extensions would have an unacceptable impact on the amenities of neighbouring occupants;
- whether the proposed alterations and extensions would preserve or enhance the character of the property and the wider Mapesbury Conservation Area.

4. Changes since previous refusal of planning permission in 2012 (LPA Ref: 12/3226);

5. A previous planning application for a single storey rear and basement extension were submitted to the Council in 2012 (LPA Ref: 12/3226) and subsequently refused under delegated powers on 8 May 2013. This planning application was for a 3m deep, 3m high extension beyond the outrigger, wrapping around the property to east, adjoining the boundary of No. 68 covering a total width of 6.9m and thus projecting beyond the shallower rear wall to a total depth of 8.5m. The application also proposed an increase in height to the existing terrace by 400mm. A lower ground floor extension was also proposed covering the footprint of the proposed single storey rear extension.

6. The application was refused for the following reasons:

(1) The proposed ground floor side and rear extension and terrace, by virtue of its excessive depth, height and proximity to the site boundary of the extension and relationship of the extended terrace to the shared boundary, would have an unacceptable impact on outlook and privacy from the rear habitable room and patio of No. 68 Dartmouth Road, and would fail to preserve or enhance the character of the Mapesbury Conservation Area. As such, the proposal is contrary to policies BE2, BE9, BE25 and BE26 of the adopted Brent Unitary Development Plan 2004, policy CP17 of Brent's Core Strategy and paragraph 64 of the National Planning Policy Framework.

(2) The proposed lower ground floor extension, in conjunction with the single storey side and rear extension, would fail to reflect the footprint of the main dwelling and result in an out of scale addition to the property which would fail to respect the character of the existing property and wider Conservation Area, contrary to Unitary Development Plan policies BE2, BE9, BE25 and BE26 of

the adopted Brent Unitary Development Plan 2004, policy CP17 of Brent's Core Strategy and paragraph 64 of the National Planning Policy Framework.

7. The main changes to the scheme under consideration since this refusal (as revised during the course of the application) are set out below:

- *Single storey infill extension to eastern outrigger* - The proposed infill extension (1.2m depth) to the outrigger adjoining the eastern boundary of the property has been reduced to be the same depth as the existing outrigger and height to follow that of the flank wall of the extension between Nos. 70 and 68.
- *Single storey rear extension to outrigger.* The proposed extension is 3m deep and 3m high to the existing outrigger; the link to the side extension has been removed and the terrace level is retained as existing. The extension would be set off the boundary with no.68 by 2.8m and no. 72 by approximately 3m.
- *Lower ground floor extension & alterations to rear terrace:* The proposal makes changes to the position and size of the lower ground floor extension. It is proposed to extend below footprint of the proposed single storey side and rear extension alongside an additional 8sqm to the north east of the site adjoining the boundary with no. 68. The amended plans show the terrace to be maintained at its existing depth, height and width to the north east void space between the lower ground floor level and the side of the outrigger.

8. Assessment of the proposal

9. Residential Amenity

10. Single storey infill extension to eastern outrigger

The extension is the same depth as the existing boundary wall with no.68 and is not significantly different in height. Although it is noted there is a habitable room located in the main rear wall of no 68, in consideration of the height of the existing wall and design of the proposed extension, it is not considered that the extension would result in significant loss of light, outlook or appear overbearing. As such, a reason for refusal based on this amenity impact considered unlikely to be supported on appeal.

11. Single storey rear extension to outrigger

In consideration of the distance of the extension from the flank boundaries and given that there are no significant level changes between the application site and the neighbouring properties, it is considered that the proposal will not give rise to any unacceptable amenity impacts. It is further noted that under permitted development, this type of extension could be erected in the conservation area without needing to apply for planning permission.

13. Lower ground floor extension & alterations to rear terrace

The Council generally allows lower ground floor/ basement extensions where they extend below the original footprint of the property and any extensions; this is to ensure that basements are proportionate with the size of the original property and do not result in any unacceptable impact to the garden as this would restrict the area of soft landscaping.

14. Whilst the basement extension would be 8sqm larger than the footprint of the proposed extensions and main dwellinghouse, in consideration that the extension would be underneath the existing terrace and would not erode garden space, nor result in an extension that is considered disproportionate, it is considered that the extension can be supported.

15. The amended plans show the terrace to be maintained at its existing depth, height and width to the north east void space between the lower ground floor level and the side of the outrigger. The steps and terrace level adjoining no. 72 would also be maintained as existing thus not causing any additional impact to the property. The remainder of the terrace would be excavated to allow for the provision of the lower ground floor and steps up to the garden and as such would not cause any significant amenity or overlooking impact.

16. The subject application was submitted prior to the endorsement by the Planning Committee on 17 September 2013 for changes to validation requirements relating to basement extensions .

17. Design & Impact on Conservation Area

18. In terms of the impact on character, whilst it is noted neither of the adjoining properties have basement extensions, there are a number of examples of Mapesbury properties which effectively have a lower ground levels such as those properties on Teignmouth Road. In view of the design and siting of this extension, views of this lower level will be limited. Proposals for other properties would be dependent on the individual site characteristics and each case would be considered on its own merits.

19. The Mapesbury Conservation Area Design Guide sets out that an extension must be designed to harmonise with the original building. In this case, the extension is a simple design and brick built to match the existing house. Further details on the proposed materials for the extension are required by planning condition which would ensure the proposed materials would preserve the character of the Conservation Area and whilst the doors are a more modern design, this is not considered to detract from the character of the existing property. It is considered that simplicity of the design and overall appearance of the extension is acceptable and would preserve the character of the existing property and the wider the conservation area. It is noted that the depth of the extension is greater than set out in Design Guide as being acceptable for this type of property. Work is being undertaken to update the Design Guide to take into account changes to permitted development (N.B. dwellinghouses in the Mapesbury Conservation Area benefit from permitted development rights for single storey rear extensions). Notwithstanding this, overall the extension is considered acceptable in design terms and would not have an unacceptable impact on neighbouring amenity.

20. There is a Rowan (Mountain Ash) tree which may be affected by the proposal. This tree is not considered to be of high value therefore its loss would be acceptable if a replacement tree is provided. There is also a eucalyptus tree within the rear garden, however this would not be affected. Further details on soft landscaping are

required by planning condition including screening to the adjoining boundaries and replacement trees where necessary, which would minimise any impact the development may have on soft landscaping.

21. Conclusion

22. It is considered that the proposal does not give rise to any significant amenity concerns and the proposal would preserve the character and appearance of the Mapesbury Conservation Area. The Planning Committee are thus recommended to endorse the previous decision to grant planning permission.

23. LEGAL IMPLICATIONS

24. The Council has a duty under Part (3) Schedule 5 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 to comply with the statutory time limit of 21 days for consultation in respect of all planning applications. Where the Council has acted in a way which is to give rise to a breach of the aforementioned Order, it should take such steps so as to remedy the matter so far as is reasonably practicable. The Council acknowledges that an error has been made and is therefore reporting the up to date position to Members for urgent attention. Time is of the essence so the Council has to act promptly and diligently to minimise any potential adverse consequences to the applicant. The justification for this course of action is to ensure transparency and procedural propriety.

25. The Council has powers under Section 97 of the Town and Country Planning Act 1990 ("The Act") to revoke or modify any planning permission which has been granted to the extent that such permission has not already been implemented.

26. The Council's powers to revoke or modify planning permission may be exercised (please note that the power is not automatic but discretionary in nature) where it is "expedient" to do so but Section 97 (2) of the Act provides that the planning authority shall have regard to the development plan and to any other material considerations.

27. Accordingly, if a revocation order is made notice must be served on the owner and occupiers of the land and on any persons who will be affected (including the applicant). If these persons indicate that they have no objection to the revocation in principle the Council will then have to advertise the making of the order in the local press before it is confirmed. However, if, objections are received the matter is referred to the Secretary of State for decision and a Public Inquiry will be held.

28. Where planning permission is revoked or modified a right to compensation arises under Section 107 of the Act. Section 107 of the Act provides:-

"Subject to section 116, where planning permission is revoked or modified by an order under section 97, then if, on a claim made to the local planning authority, within the prescribed time and in the prescribed manner, it is shown that a person has an interest in the land or in minerals, in or under it –

(a) Has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or

*(b) Has otherwise sustained loss or damage which is directly attributable to the revocation or modification.
The local authority shall pay that person compensation in respect of that expenditure, or loss or damage.....”*

29. Compensation is due whether or not the person entitled to such compensation has consented to the revocation. It is difficult to quantify the level of compensation payable in this case (if any), however, if as mentioned above, the applicant has engaged the professional services of consultants/builders this could prove costly to the Council and this needs to be balanced against the fiduciary duty owed towards the local tax payer. Members are advised that the applicant would in any event be obliged to submit to the Council a full breakdown of his losses before any financial assessment is made.

RECOMMENDATION: Endorse decision to grant planning permission
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Appended: Officers Delegated Report