

Review of Trust policy and procedure for applications to construct basements

Introduction

As we are all aware, property values on the Suburb (and elsewhere in London) have risen to such an extent that it is economically viable for owners to go to the inconvenience and expense of excavating basements to provide additional space. This situation was not foreseen when the Scheme of Management for the Suburb, intended to preserve the character and amenities of the Suburb, was drafted.

For the owner, a basement creates extra space and value, and avoids the upheaval of moving house permanently. For neighbours there is attendant noise, disruption, the fear of possible structural damage and worry about possible effects on ground water or trees or suchlike.

For the Suburb at large there are additional considerations. The grouping of similar house types and sizes in streets and closes, combined with a very wide variety of dwelling sizes across the Suburb as a whole, was critical to the aspirations of the Suburb founders for a mixed and varied community open to all. The creation of basements affects the balance of that mix and the character of the Suburb.

Trust Policy

The Trust's policy on basements is set out in the Design Guidance of 2010 which was produced in conjunction with Barnet Council:

The Suburb was specifically designed without basements and they are not part of the established character of the area. That character is not confined to external appearance but also to the scale of the accommodation created and its balance with neighbouring properties. Basements can change the character of houses and gardens, extending the accommodation in a way that was not anticipated and is potentially damaging to trees and hedges. Skylights, lightwells and other visible manifestations of basements can harm the setting of a house and its relationship with its garden. Each case will be considered on its individual merits.

The Guidance continues:

Both Barnet Council and the Trust will carefully control all external changes associated with basement development to protect the character and appearance of the Suburb and the setting of individual houses and groups.

Owners considering adding a basement to an existing house are asked to refer to a checklist which includes items to protect the visual character and amenity of the Suburb :

- *the above ground evidence of a basement should be as discreet as possible so as to have little impact on the setting of the house or garden*
- *basements should generally be limited to the footprint of the house. In larger houses with extensive gardens it may be possible to extend under part of the rear garden. It will be necessary to ensure that a mature garden can be established and maintained above the basement*
- *external alterations to bring daylight to basements will generally only be acceptable in the form of grilles or structural glass, rather than open lightwells with railings. Open lightwells*

may be acceptable in very large gardens and where they are modestly sized and can be screened by planting

- *lightwells or skylights must not be visible from the street or from neighbouring properties. They should be close to the house at the sides and rear, be located in discreet locations and be modest in size*
- *lightwells or skylights must be located away from the property boundary to enable a planted boundary to be maintained.*
- *illumination and light-spill from a lightwell can harm the appearance of a garden setting and cause nuisance to neighbouring properties. This will be taken into account when planning applications are considered*
- *the basement should not restrict future planting and mature development of trees typical of the area*
- *boundary hedges must not be damaged by excavation and it should be possible to establish and maintain hedges following construction of a basement*

There are also items to protect the structure of the building and neighbouring buildings:

- *the Trust and Barnet Council may require a hydro-geological report to be submitted for some basements where there is a danger that groundwater would be diverted by the proposed development*
- *applicants should provide a full engineers report to provide evidence that the structural stability of the application property and neighbouring properties will not be put at risk*
- *a Method Statement for disposing of excavated material safely without undue nuisance to neighbours may be required.*

There has always been an element of doubt whether the last three items were strictly in accordance with the Trust's powers under the Scheme of Management and whether the Trust could require the hydro-geological report, engineers' report and method statement to be provided as a condition of consent. Furthermore, such steps may well be best left to Barnet Council to deal with as part of the planning process in the normal way, taking into account the Design Guidance. The Council have, of course, greater resources. Nonetheless, where appropriate, reports were requested by the Trust and owners complied. The position has now been clarified following the Judgment in the 2 Green Close case.

High Court Judgment in the 2 Green Close case

The owner of a neighbouring leasehold house, where the Trust is the freeholder, sought an injunction preventing the Trust from reaching a decision on an application under the Scheme of Management to build a basement at 2 Green Close. The case involved an examination of the Trust's powers under the Scheme in relation to its duty to its lessee.

It is not possible to discuss this case fully as there is an appeal by an adjoining owner that is awaiting a Court of Appeal hearing in February 2014. However the written judgement of Mr Justice Henderson in the High Court is published. This includes his view that:

a requirement for the Trust's consent will be triggered only if one or more of the regulations in the Schedule to the Scheme are engaged [in most cases this is when the external appearance of the

property is altered in any way, no matter how small]. *Once that happens, however, I consider that it is then the duty of the Trust to consider the application in the light of the wider purposes stated in clause 1 of the Scheme, and not to confine its attention to issues which relate solely to the use, appearance and maintenance of the relevant enfranchised property. This wider focus does in my view enable the Trust, in an appropriate case, to consider the effect of the proposed works on the character and amenities of other parts of the Suburb, including neighbouring properties whose character and amenities might be adversely affected.*

Questions for the Trust Council and residents arising from the High Court judgment

The judgment specifically supports the Trust's policy on applications for basements as set out in the Design Guidance and quoted above. However, it also raises questions about what exactly clause 1 of the Scheme of Management means when it says that the Scheme:

Is made for the purpose of ensuring the maintenance and preservation of the character and amenities of the Hampstead Garden Suburb and shall extend to all enfranchised property [in practice enfranchised property means practically all the freehold houses and flats on the Suburb and their plots]

The High Court judgment

The judgment notes that

The main focus of the Scheme Schedule is indeed on the use, appearance and maintenance of enfranchised properties.

But, as quoted above, the Scheme does

enable the Trust, in an appropriate case, to consider the effect of the proposed works on the character and amenities of other parts of the Suburb, including neighbouring properties whose character and amenities might be adversely affected.

The legitimate scope of what the Trust should consider to be the effect of basements on the character and amenities of other parts of the Suburb is clarified and widened, but not defined by the judgement.

What does this mean for the Suburb?

If the Trust's consent is required, the Trust can now consider concerns about any adverse impact of basements on those aspects of the character or amenities of the Suburb that are not visible. For example: the Suburb was designed as a mixed community for a variety of social classes; the variety of its dwelling types manifests that aim and is a fundamental part of the character of the place. If basements are permitted in the smaller cottages, that broad character will be shifted, prices will rise for affected types of property (whether on account of the completed construction of a basement or just the potential to create one) and some buyers, including some single people, younger people and less well-to-do people, will no longer be able to buy on the Suburb; its social mix and hence its character will change in consequence. The Suburb was also designed with streets and closes of similar sizes of property, which, it might be argued, engenders local cohesiveness within the varied whole of the Suburb. If some properties become much larger than others in a previously

homogenous street or close through the creation of basements, that cohesiveness would be affected. Furthermore, particularly in closes of cottages and smaller houses, where frontages are small, parking is already a challenge. The significant enlargement of such properties will change the character of the close or street and the problem of vehicles may become even more difficult as enlarged properties encourage larger households with more and larger cars.

These are significant matters and each case will be needed to be decided on its own facts and in the light of Barnet Council's stance in relation to the planning application.

The present policy, as set out in the Trust's Design Guidance for the Suburb and quoted above, is however helpfully supported by the High Court judgment. The Trust will continue to obtain technical reports where appropriate and to operate the policy set out in the Design Guidance. The Trust was awarded its costs in the case.

Footnote The Scheme of Management and the Design Guidance can be found on this website. The High Court judgement by Mr Justice Henderson is available at

<http://www.bailii.org/ew/cases/EWHC/Ch/2013/948.html>

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