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30 January 2024

Dear Laina

45 Cholmeley Crescent, London N6 5EX - Application for Certificate of Lawfulness (ref. HGY/2023/338)

Introduction

Further to my recent objection to the current application for a Certificate of Lawfulness for the proposed installation of an outdoor pool in the rear garden of number 45 Cholmeley Crescent, London N6 5EX (reference HGY/2023/3383), I am writing to provide further comment and clarification regarding my concerns.

The pool will be sited at the top of the garden, in close proximity to my property, number 12 Kingsley Place, and to the mature trees along the boundary there. These trees are covered by a TPO, but they are not shown on any of the submitted application drawings. The proposed pool will replace an existing timber garden structure and I note that it is in a similar location to a recently proposed garden room, for which an application for a lawful development certificate (ref. HGY/2023/2256) was refused on 21 September 2023.

In addition to my concerns regarding the proximity of the proposed pool to the mature trees along the boundary of my garden, I also consider that the proposals will impact on the character of the conservation area; may result in potential noise nuisance; and may also potentially impact on the surface drainage in the garden and surrounding area.

Context

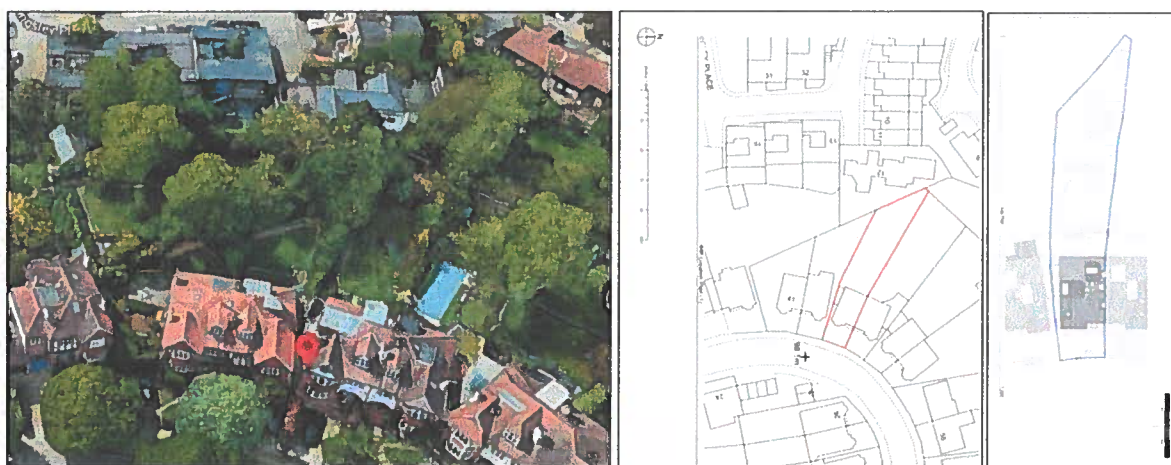


Figure 1: Location of number 45 Cholmeley Crescent and the relationship to number 12 Kingsley Place, at the top of the image

Figure 1 above shows the proximity of the proposed swimming pool to my property.

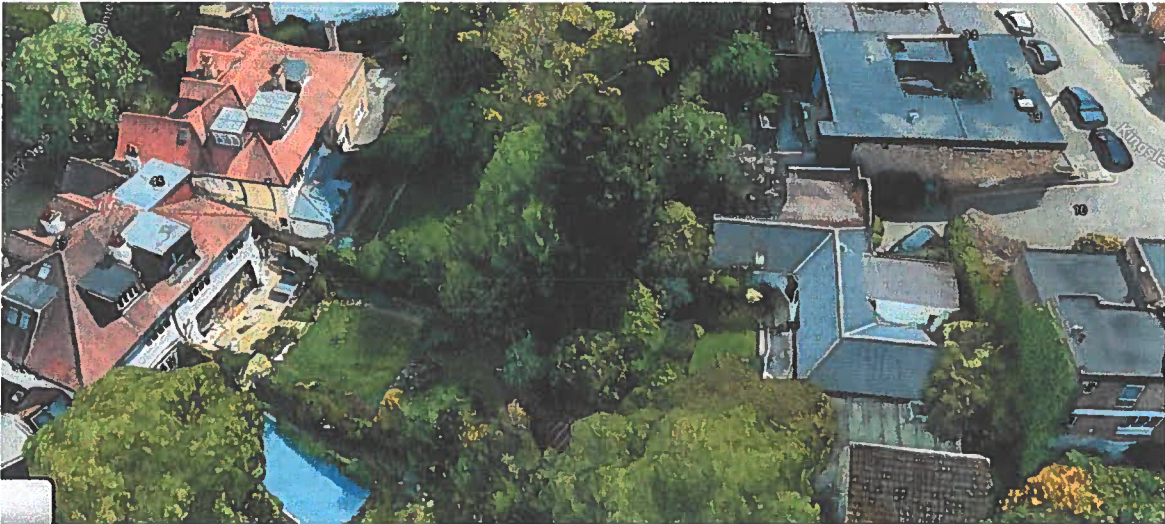


Figure 2: Image showing level changes across the application site and the location of mature trees

As shown in the image above, there are a number of mature trees within the site and along the boundary of the site. There is an existing TPO for 34 trees along the rear boundaries of the properties on Cholmeley Crescent /Kingsley Place (TPO 4-12 Kingsley Place, reference TPO/2014/0555) and these are not shown on any of the submitted drawings. Of particular note are four mature trees along the boundary with properties on Kingsley Place, comprising an ash tree of 14m, with a stem radius of 600mm; a sycamore tree of 19m and a stem radius of 555mm; and two Leyland Cypress of 12 metres height and 550mm and 250mm stem radius.



Figure 3: Extent of TPO/2014/0555.

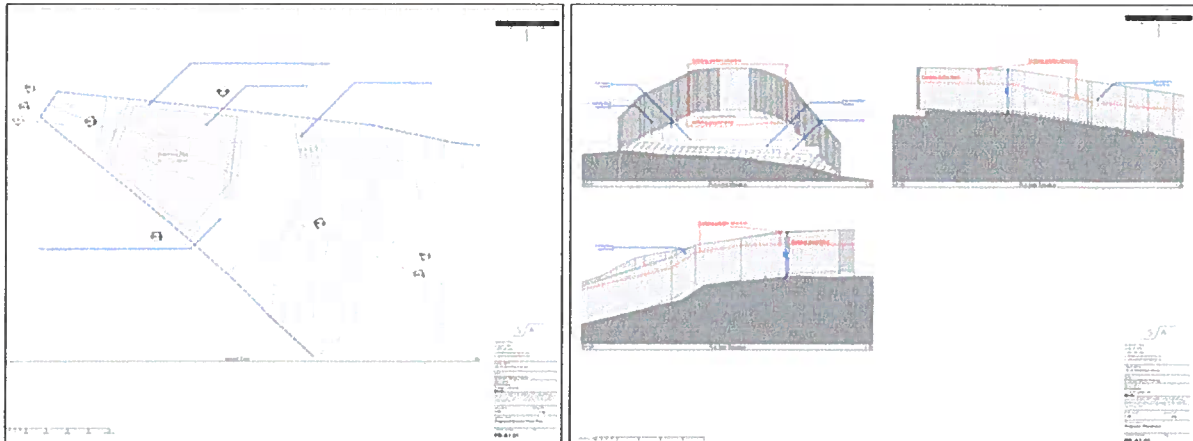


Figure 4: Mature Ash tree in the garden of 12 Kingsley Place

There are in addition a number of mature trees along the boundary with number 43 Cholmeley Crescent, including a Cherry Laurel, Holly and Snowy Mespil, which are all around four metres in height. As these are all within the Highgate Conservation Area any works such as pruning or lopping require consent from the local planning authority.

I note that unauthorised works to protected trees (including their roots), including those protected by a Tree Preservation Order or having statutory protection within a Conservation Area may result in a criminal conviction and substantial fine. It is therefore important that all trees within the vicinity of the proposed swimming pool are accurately surveyed and shown on the submitted drawings to ensure that no damage is made to the trees during construction works or as a result of the digging out of the swimming pool area.

The Proposal

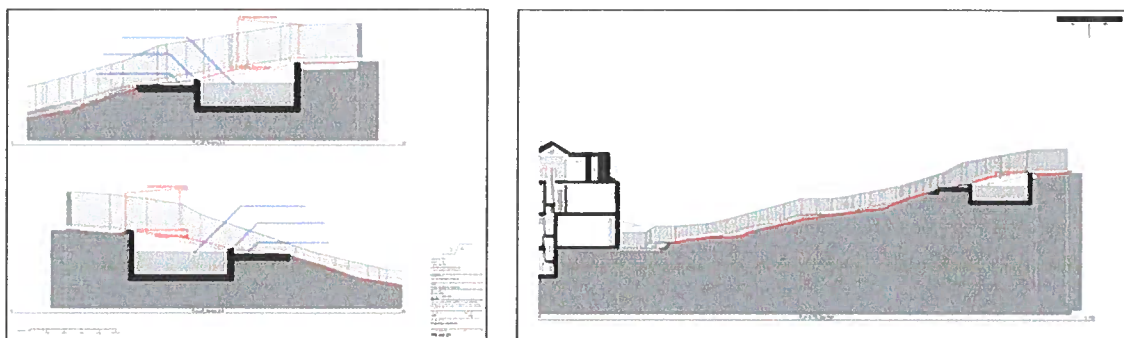


Figures 5 and 6: Siting and appearance of the proposed swimming pool

The description of development on the submitted application form is for the “installation of an outdoor swimming pool... to be sited across the end of the back garden, about 3.5 metres off the rear boundary. It would have a width of 6.5m tapering to 3.5m at the rear and a depth of 2m. It would cover an area of approximately 25 sqm. The associated patio is less than 300mm above ground level.”

Drawing number PR-A1.01 (above) shows the siting and dimensions of the proposed swimming pool. The pool will be located at the highest point of the garden, in close proximity to the boundaries with 43 and 47 Cholmeley Crescent, to the south and north; and 12 Kingsley Place to the west. A concrete pool edge will be located on all sides of the pool right up to the boundary line with the adjoining properties to the north and south, and a polished concrete patio will be created to the east of the pool, across the whole width of the garden at this point.

The proposed swimming pool is located in the western part of the site, close to the boundary with 12 Kingsley Place. The proposals do not show the location of any pool house/ plant, which could be noisy. As shown on drawing number PR-A2.01, it is proposed to increase the height of the timber fencing separating the garden from adjoining properties to two metres.



Figures 7 and 8: Sections through the site showing the depth of the swimming pool

Drawing PR-A3.01 shows the extent to which the ground level will be lowered, the depth of the pool and the location of the proposed concrete patio; whilst drawing PR-A3.02 shows the relationship of the proposed swimming pool to the existing house and to the property boundary with 12 Kingsley Place.

Comments on the Application

Permitted Development Use Class E

The application is made under Class E of the Permitted Development Rights for Householders which relates to permitted development rights within the curtilage of the house for the purpose incidental to the enjoyment of the house, for example, buildings, enclosures, swimming pools etc for a purpose incidental to the enjoyment of the dwellinghouse. Part E.1 sets out details of development which is not permitted by Class E.

In the previous application for a garden room in this location, it is noted that the officer's report states that *"while the LPA accept that the legislation [set out in The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2015 – Part 1, Class E 'buildings etc incidental to the enjoyment of a dwellinghouse'] makes for the provision within the curtilage of the dwellinghouse for "a building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure" ... given the specific nature of the site it is considered necessary to assess as to whether any engineering works required to enable such a structure to be built would be permitted under Class E."*

The officer's report goes on to state that in the light of recent guidance provided by the Eatherley v Camden LBC & Ireland [2016] EWHC 3108 (Admin) case, it is reasonable to consider engineering works required to enable a development to be constructed and whether they are 'permitted development'. In this instance given the significant incline/ differences in levels in the area of the rear garden in question, the officer considered that the associated site levelling/ building up, building of retaining walls and necessary party wall agreements with neighbouring properties etc would constitute significant works needed to support and enable the building of such a structure. Such works are viewed to be different in character from the typical building of a garden structure incidental to the enjoyment of a dwellinghouse as intended/ permitted by the legislation.

In my view, a similar situation would exist with the current proposals for the swimming pool, which due to its location would require significant engineering works, including below ground works to create the swimming pool and party wall agreements in relation to the concrete pool surround. I therefore consider that wider consideration should be given to the proposals, in accordance with the consideration given to a planning application.

Other Considerations - Impact on the existing TPOs, Drainage Considerations, Noise and Character of the Conservation Area

I consider that given the site's location within a conservation area and the presence of TPOs within and adjoining the site, further consideration should be given to context of the scheme and its relationship to adjoining properties.

I have serious concerns that the proximity of the proposal to the site boundary and to the existing mature trees along the boundary will impact on the existing protected TPO trees and their RPA and that the proposed works could not be carried out without damage to these protected trees. Moreover, many of these trees are outside of the application boundary and are not owned by the applicant. I would therefore request that an Arboricultural Assessment should be undertaken to assess any potential impact of the proposed works on the existing trees before the scheme is

considered. The application also fails to show details of how the structure would be constructed and how any existing trees would be protected.

A further consideration will be the extent to which the ground works could impact on the existing drainage of the garden, particularly as there is an undergrown river which runs below the garden. Consideration should also be given to whether the large extent of concrete non-porous surface around the pool could result in surface water flooding. A Drainage report should therefore be provided with the application and before a decision can be made.

Number 12 Kingsley Place has previously suffered from subsidence and I have concerns that this could be further affected by works to dig the pool. A technical assessment should be carried out to confirm that there will be no impact as a result of the pool works.

I also have concerns relating to potential noise associated with the outdoor use of the pool so close to my property and the impact on the enjoyment of my house and garden.

In addition, I would also refer to the fact that significant changes are already proposed within the curtilage of the property, following the recent grant of planning permission (application ref. HGY/2023/2257) for the erection of a single storey rear extension, consolidation and extension of the basement, addition of lightwells to the side and rear and associated external works. I consider that the proposed swimming pool combined with the consented works will change the character of the site and conservation area.

Summary and Conclusion

I strongly object to the proposed swimming pool in its current form and location so close to my property, and the potential impact it will have on existing TPO trees, as well as the potential issues of noise, subsidence and drainage and the impact of the proposals on the general character and appearance of the conservation area. It is essential that the necessary assessments (arboricultural, drainage and structural) are carried out before any assessment of the scheme is undertaken by officers.

Yours sincerely

Lisa Freedman

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