

Appeal Decision

Site visit made on 8 November 2016

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 24 November 2016

Appeal Ref: APP/T5150/D/16/3158040

14 Kingswood Avenue, Brent, London NW6 6LG

- 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 Mr Robert Soning against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/2601, dated 16 June 2016, was refused by notice dated 25 August 2016.
 - The development is a garden wall with external fireplace.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application sought retrospective planning permission for the development as described above. As a result, I was able to assess the completed development in situ at the time of the site visit. Accordingly, I have determined this appeal on that basis and in that context.

Main Issues

3. The main issues are:
 - whether the development preserves or enhances the character or appearance of the Queens Park Conservation Area (CA); and
 - the effect of the development on the living conditions of neighbouring occupiers at 43 Montrose Avenue, with regard to outlook.

Reasons

Character and appearance

4. The appeal site comprises the rear garden of 14 Kingswood Avenue. The area is characterised by large properties in rows of terraces with proportionately sized rear gardens. These gardens are bounded by a mix of timber fence panels, brick walls and trees and shrubs. The appeal development consists of a large garden wall to the rear boundary of the property and incorporates an outdoor fireplace and chimney. The appeal site is located within the Queen's Park Conservation Area (CA).
 5. From the site visit, I saw that the fireplace and chimney structure is higher than the garden wall. Furthermore, the garden wall and chimney are higher
-

than other boundary fences and walls between neighbouring properties immediately surrounding the appeal property. This is due to the increase in ground level of the garden area of the host property as a result of the paving of the garden area. Therefore, the position, height and mass of the development results in it appearing out of step with the surrounding area and other boundary treatments which are predominantly a combination of timber fences, brick walls of a lower height and trees and shrubs. Furthermore, the development appears as a dominating feature within the surrounding setting.

6. I note that the appellant has sought to soften the effect of the development with planting along the garden wall within the garden area of the appeal property. However, this does not effectively mitigate the visual impact of the development. As a result, it appears as an incongruous addition to the local area and has a detrimental effect on the CA. I consider the harm to the CA to be less than significant. However, the development neither preserves nor enhances the character or appearance of the CA.
7. Consequently, I conclude that the development has a materially harmful effect on the CA and the surrounding area. Therefore, it is contrary to saved Policies BE2, BE7, BE9, BE25 and BE26 of the Brent Unitary Development Plan 2004 (UDP), Policy CP17 of the Brent Core Strategy 2010 (CS), the guidance found within the Queen's Park Conservation Area Design Guide (CADG) and the National Planning Policy Framework (the Framework). Amongst other matters, these policies and guidance seek to ensure that development has no significant detrimental effect on buildings or the surrounding area and preserves or enhances the character or appearance of heritage assets, including conservation areas.

Living conditions

8. According to the Council, the development is approximately 2.6 metres above ground level when viewed from the side of the garden wall closest to the neighbouring property at 43 Montrose Avenue (No 43) as a result of the appeal property's garden being raised by the paving. The development fireplace and garden wall is built up to the boundary closest to No 43. There are two access alleyways serving other neighbouring properties between the appeal development and the flank wall of No 43. The Council indicates that the distance between the garden wall and the ground floor window in the flank wall of No 43 is about 2.7 metres.
9. The development has created a solid, blank structure as viewed from the ground floor side window of No 43. The proximity of the wall to the affected window, together with the excessive height of the development, results in a substantial and overbearing structure which has a significant adverse effect on the outlook of the occupiers of No 43 from that window. Evidence from the occupiers of No 43 indicates that the outlook from other windows in the side elevation of No 43 facing the appeal site would also be affected. However, whilst I note that the development has some impact on outlook from those other windows, it is the impact on outlook from the ground floor window of No 43 facing the site which I find to be significantly adversely affected.
10. I note that a shed within the rear garden area of the adjacent property at 12 Kingswood Avenue (No 12) is of a similar height to the garden wall and chimney of the fireplace. However, the shed has a pitched roof which slopes

away from the boundary between No 12 and No 43. As a result, I find that its impact on neighbouring properties and occupiers is not significantly harmful.

11. Consequently, I conclude that the development has a harmful effect on the outlook of the neighbouring occupiers at No. 43. Therefore, it is contrary to saved Policies BE2, BE7, BE9, BE25 and BE26 of the UDP, Policy CP17 of the CS, the CADG and the Framework. Amongst other matters, these policies and guidance seek to ensure that development does not have an adverse effect on the outlook of neighbouring occupiers.

Other considerations

12. Concerns have been raised with regard to insufficient information being provided relating to the 'clean fuel burner' to be installed and the fuel to be used. These concerns also relate to the potential to generate smoke, odour and heat nuisance to neighbouring occupiers, particularly at No 43 which is the closest neighbouring property. In light of this, and the inability to fully assess the impact of the development in this regard, the Council has included such grounds in its reasons for refusal.
13. The appellant states that smokeless coal or gel will only ever be used in connection with the fireplace. However, without any relevant information and only limited evidence before me, I am not satisfied that nuisance impacts would not arise from the future use of the fireplace. Therefore, in my view, the Council's inability to fully assess the proposal in that regard warrants a reasonable reason for refusal. Furthermore, I find that the use of specific fuels would be difficult to control by planning conditions. In any event, as I am dismissing the appeal on the substantive issues, I do not consider these matters any further as doing so would not alter my decision.
14. Having taken all the evidence before me into account, I find that the outdoor fireplace and garden wall provide some small benefits to the appellant in terms of providing their desired changes to the private outdoor space of the appeal property. However, the wider public benefits of the development are very limited. As a result, I find that the benefits of the development are not sufficient to outweigh the harm I have identified.

Conclusion

15. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR