

Appeal Decision

Site visit made on 10 October 2016

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 22 December 2016

Appeal Ref: APP/H5390/W/16/3151993
109 & 109b New King's Road, London SW9 4SJ

- 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 Governside Ltd. against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2015/04870/FUL, dated 13 October 2015, was refused by notice dated 10 December 2015.
 - The development proposed is demolition of existing buildings with the exception of front façade to No. 109 New King's Road; erection of a four storey building at No. 109b and a three storey building at No. 109, including the excavation of basements for both properties, in connection with the creation of 1 x single family dwellinghouse at No. 109b New King's Road and 1 x single family dwellinghouse with a flexible (A2/D1 use) commercial unit at ground floor level at No. 109 New King's Road; formation of roof terraces to both properties at roof level and the formation of a balcony to the front elevation of No. 109b New King's Road; associated external alterations.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Governside Ltd. against the London Borough of Hammersmith & Fulham. This application will be the subject of a separate Decision.

Preliminary Matters

3. The description in the decision is taken from the Local Planning Authority's (LPA) decision notice which I consider more accurately describes what was applied for and consulted on. It is also the description used on the appellant's appeal form.
 4. As part of the appeal process the appellant has amended the scheme and the revised plans are before me. The changes involve deleting the proposed basements on both properties and amendments to reduce the area of the proposed roof terrace. The changes are intended to address some of the reasons for refusal and community concerns with the proposal. They do not involve additions or new elements. Having regard to the 'Wheatcroft' principles I am satisfied that the proposed changes do not materially alter the nature of the appeal proposal. Consequently, I have assessed the appeal proposal on this amended basis and in doing so I am satisfied that the concerns of interested parties would not be prejudiced.
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5. In terms of the site visit on 10 October 2016 I was accompanied by the appellant and the LPA to most dwellings directly related to the appeal site including Nos. 107 and 111 New King's Road (Studios 4, 5 & 6) and Nos. 34, 36 and 38 Stokenchurch Street.
6. In those reasons for refusal which relate to the main issues of this appeal the LPA relies on the development plan insofar as it comprises the Hammersmith & Fulham Local Development Framework Core Strategy 2011 (the CS) and the Hammersmith & Fulham Development Management Local Plan 2013 (the DMLP). In addition to the development plan, the LPA has also referred to its Planning Guidance Supplementary Planning Document 2013 (the SPD).

Main Issues

7. The main issues in this appeal are as follows:
 - (a) The effect of the proposed development on the significance of non-designated heritage assets including whether any public benefits or other considerations outweigh the substantive loss of locally registered Buildings of Merit;
 - (b) Whether the proposed development would preserve or enhance the character or appearance of the Studdridge Street Conservation Area;
 - (c) The effect of the proposed development on the living conditions of nearby residents, with particular reference to outlook, privacy, daylight and noise and disturbance; and
 - (d) Whether the proposal would ensure the appropriate provision of community services for the local community.

Reasons

Locally listed Buildings of Merit

8. Nos.93-111 New King's Road, including Nos. 109 and 109b, are identified by the LPA as Locally Listed Buildings of Merit. There is no statutory protection for such non-designated heritage assets but paragraph 135 of the National Planning Policy Framework (NPPF) states that the significance of a non-designated heritage asset should be taken into account and a balanced judgement taken having regard to the scale of any harm or loss and the significance of the heritage asset.
9. CS Policy BE1 requires development, amongst other things, to protect and enhance the borough's historic environment including buildings of local importance and interest. Additionally, DMLP Policy DM G7 specifically addresses heritage and conservation in the borough and requires development which affects heritage assets (including buildings of local importance) to be determined having regard to the scale and impact of any harm or loss and the significance of the heritage asset. This approach is consistent with the NPPF and the PPG¹.
10. The application of DMLP Policy DM G7 is clarified in the reasoned justification. Paragraph 4.154 explains that many locally listed buildings have been selected on the basis of their architectural character and/or contribution to the visual

¹ PPG Paragraph: 006 Reference ID: 18a-006-20140306

quality of the street scene. Paragraph 4.155 states that such buildings should not be demolished. Further guidance is set out in SPD Design Policy 21 which further resists the demolition or loss of Buildings of Merit unless there are mitigating circumstances².

11. The buildings at Nos. 109 and 109b are appreciably more modest in scale than other buildings on this part of New King's Road. However, they are part of a notable range of building types which reflect a more gradual pattern of development. I accept that the set-back layout and modest form of the buildings is unusual given the arrangement of surrounding buildings. Consequently their appearance and the openness of the appeal site are rare in the otherwise tight grain of development in this part of the Borough. However, given the notable variety in the group of Buildings of Merit containing the appeal site I find neither building's scale nor appearance to be dissonant. Whilst larger buildings may have previously occupied the site I have little evidence that the original plan or concept was for a continuous line or homogenous scale of development in the streetscape.
12. The appeal site is situated where historical evidence³ suggests accommodation, studios and showroom were provided for the Martin Brothers pottery. The appellant's Heritage Appeal Statement⁴ and Heritage Report⁵ interpret the map evidence as confining this use to the adjoining No.111 but I am not persuaded the scale and detail of the Nineteenth Century maps submitted by the appellant to be particularly conclusive given the extent of the archaeological priority area for the former pottery. Both buildings on the appeal site are of Nineteenth Century origin of good quality with simple but attractive detailing including quoins, railings, pilasters and sash windows. I note that various alterations have occurred including the appellant's submission that the stuccoed façade of No.109 was formalised as a commercial frontage sometime between 1896 and 1908. However, I consider it notable that Nos.109, 109b and 111 form a particularly varied group of buildings, reflecting an intended artisanal or commercial function fronting onto this part of the New King's Road. This forms part of the heritage significance of the appeal site.
13. Whilst I note that Nos. 109 and 109b, in terms of their footprint and form, have undergone change, I nonetheless find that their individual configuration remains largely intact and positively blends into the streetscape in this part of Studdridge Street Conservation Area (SSCA). As such the appeal site buildings are pre-cursors to the "swathes" of surrounding suburban residential streets constructed in large single-phases. I find the largely retained individualism of the buildings, within a group of other distinct buildings, to also be part of their heritage significance.
14. The appeal proposal would result in the total loss of No.109b and the substantive loss of No.109 save for the retention and incorporation of the single storey façade into the remodelled three storey replacement building. I also note the proposed facsimile of the façade of No.109b albeit set forward and of different proportions. In my view the identified significance would not be appropriately preserved by the design of the scheme despite the retention

² structurally unsound; substantial community benefits that outweigh loss; or the building cannot practicably be adapted to retain any historic interest

³ Including the representations from Historic England on archaeological interest

⁴ Heritage Appeal Statement prepared by Asset Heritage Consulting April 2016

⁵ Cultural Heritage Desk-Based Assessment by Oxford Archaeology October 2015

of the ground floor façade at No.109. The appeal proposal would harmfully obfuscate the important and established contrast between the organic, and in my view, attractively varied, pattern of development on New King's Road and the abundant form and massing of later housing found elsewhere in this part of Fulham. Consequently, the loss of the non-designated heritage assets would be harmful and in accordance with paragraphs 138 and 134 of the NPPF I consider this harm to be less than substantial.

15. In balancing this harm, the appellant submits that there are public benefits in terms of reducing an "unexpected gap in the streetscape", improving the standard of residential accommodation, and the creation of a net new dwelling to add to the housing supply. For the reasons set out above, I do not share the view that the appeal site in its current form harms the streetscape or the character or appearance of the SSCA. The buildings would appear to be in good structural and cosmetic condition. Accordingly, I attach negligible weight to the submissions that the appeal proposal would significantly enhance the appearance of the site or the wider streetscape or SSCA.
16. Having internally inspected No.109b I find that the layout of the property provides a good standard of accommodation such that I find very little merit in the appellant's submissions on this point. I note that the property only has a small rear yard due to its set back position but this established layout still allows for a reasonable private area for sitting out. Additionally, the property faces onto Eel Brook Common which provides a good area of public amenity space and other outdoor facilities. I accept that the appeal proposal would add to supply of housing but only very modestly so, such that I attach very limited weight to this benefit. Taken together, I do not find the benefits asserted by the appellant would outweigh the harmful loss of these locally registered Buildings of Merit.
17. I therefore conclude that the appeal proposal would result in the harmful loss of a locally registered Building of Merit without sufficient basis or justification. The appreciable heritage significance of the site in terms of its contribution to the urban morphology of this part of New King's Road would be largely removed, and consequently lost as a resource for future generations to appreciate. Consequently, the proposal would be contrary to CS Policy BE1 and DMLP Policy DM G7 as well as the SPD at Policy 21. It would also conflict with the NPPF which states that the planning system should conserve heritage assets in a manner appropriate to their significance, recognising that heritage assets are an irreplaceable resource.

Character and Appearance

18. The appeal site is positioned on the northern edge of the Studdridge Street Conservation Area (SSCA). The SSCA has a predominantly residential character defined by relatively uniform rows of generally three storey housing of good quality and attractive appearance, redolent of the growing Capital city of the late Nineteenth Century. The SSCA also encompasses part of New King's Road including the appeal site which has a more varied character including elements of retail and services towards Parsons Green and Wandsworth Bridge Road. Elsewhere New King's Road is largely residential but there is notable variety in the form and scale of buildings ranging from modest two storey dwellings to taller four storey blocks. In many ways New King's Road around the appeal site exemplifies an ad hoc miscellany of building styles,

including some later interventions, that have evolved along this arterial route in contrast to the planned pattern of development found elsewhere in the SCCA. I find this contrast to be a key dimension of the heritage significance of the SCCA.

19. As found in the first main issue, the existing buildings on the appeal site positively contribute to the heritage and palimpsest of architectural styles in this part of the SCCA. However, the mixed use nature of the appeal proposal would not conflict with the character of the SCCA in relation to New King's Road.
20. In terms of scale and massing the appeal proposal would appear from within New King's Road and from the adjoining Eel Brook Common as a significantly bulkier arrangement of buildings despite the retained recessed position of No.109b. Whilst the proposed scale of No.109 would be generally comparable to the adjacent No.107 I find the increased height of the proposed No.109b would be dominant over that part of No.111 that adjoins the appeal site. No. 111 is an interesting Building of Merit with a unique and noteworthy design to provide artist studios with large glazed openings. The tall proportions and angled form, including the two storeys adjacent to No.109b, make for a particularly striking building which warrants its current prominence in the varied streetscape. In my view, the scale of the proposed four storeys of the remodelled No.109b by virtue of its prominence above the adjoining eaves line would result in a harmfully overbearing juxtaposition which would be visually jarring in the wider street scene.
21. Whilst the appeal proposal would infill the openness resulting from the single storey at No.109, I do not find the visual gap harmful and in many ways it allows for the interesting composition of No.111 to be widely seen in the street scene. I therefore find the poor relationship to No.111 would detract from the positive variety provided by the existing composition of Buildings of Merit in this part of the SCCA.
22. I therefore conclude that whilst the appeal proposal would preserve the character of the SCCA it would not enhance the appearance. It would therefore fail to accord with CS Policy BE1 in that the design should respect local context and be consistent with townscape character. The overbearing massing of No.109b would also conflict with the design considerations set out in DMLP Policy DM G1. In this regard I also find that there would be conflict with SPD design policy 46.
23. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. The harm I have identified to the appearance of the SCCA would be less than substantial and therefore paragraph 134 of the NPPF expects such harm to be balanced against the public benefits. The appeal proposal would provide an additional residential property in a highly sustainable location and would allow for a commercial or community use. However no compelling additional arguments have been put forward and accordingly the level of public benefit identified would not be sufficient to outweigh the harm to heritage assets, which the NPPF identifies are an irreplaceable resource.

Living Conditions

24. The appeal site is adjoined by residential properties which either have openings and/or rear gardens which abut or have an outlook onto the appeal site. I have taken into account that the appeal proposal would involve removing most existing buildings on the site including the modest two storey rear block of No.109b which directly adjoins the common boundary with Nos. 36 & 38 Stokenchurch Street. The proposal would also establish a new rear building line across the site such that there would be an undeveloped rear amenity space separating the appeal scheme from the boundary wall by approximately five metres.
25. The three storey element of No.109 would be positioned behind the front elevation and parallel to the rear building line of No.107. The proposed rear projection of No.109 would be set back from the side boundary such that only a single storey element would correspond with the single storey rear ground floor extension to No.107. The proposed three storey rear projection of No.109 would be visible from bedroom windows on the rear elevation of No.107. However, due to its set back position it would not harmfully enclose the outlook which would remain predominantly over the open rear areas of both New King's Road and Stokenchurch Street. Additionally, with the removal of existing buildings at the appeal site and the proposed new open area to the rear of Nos.109 and 109b I am satisfied that the rear garden and outlook from the glazed ground floor extension of No.107 would not be harmfully enclosed or overlooked. I observed there is a first floor opening on the flank elevation of No.107 directly towards the proposed blank side elevation of No.109. However, this window serves a bathroom and I do not consider there would be a harmful loss of outlook or daylight to this room. Overall, I find there would be no significant harm to the outlook or daylight at No.107 arising from the appeal proposal.
26. To the west of the appeal site is No.111 New King's Road which is arranged, as originally designed, into a number of studio apartments for artists served by large glazed openings and skylights. These generally face north but there are some openings on the side elevation towards the appeal site. The remodelled four storey No.109b would replace the existing three storey building with an appreciably higher building on a larger footprint.
27. The enlarged form and mass of the four storey element of the appeal proposal would be prominent in a south-easterly perspective from the large glazed side opening to the main space in Studio 4. I appreciate this room benefits from an alternative large glazed opening to the north but I find that the scale and proximity of the appeal proposal would harmfully enclose the outlook from this side opening and make the space appreciably gloomy. Similarly, the scale and position of the fourth storey and roof terrace would also harmfully constrict what is the current open outlook from a side window to Studio 5 which serves as a space used as a study. Accordingly, I find the appeal proposal would be harmful to the outlook from habitable rooms in both these apartments.
28. With regards to Studio 6 this is positioned on the ground floor at the rear of No.111. The large main room is principally served by a sizeable opening, angled into the roof to primarily face north-east towards No.109b. I appreciate there is a second opening onto a small enclosed courtyard but I consider the roof opening to be the principal source of natural illumination and

outlook for this studio space. The three storey form of No.109b is already evident in the outlook from this opening however, I am satisfied that the scale and position of the enlarged four storey building would significantly and detrimentally erode the remaining outlook resulting in a particularly oppressive and gloomy living environment in this apartment. I find the consequential harm to this habitable space would be significant.

29. At present a number of properties on Stokenchurch Street (Nos. 34-40 inclusive) face towards the appeal site. I appreciate the appeal site is to the north such that the proposals would not adversely affect daylight to these dwellings. However, the proposed development would be in the outlook from the rear amenity spaces and openings on the rear elevations of these properties, particularly Nos. 36 and 38 which directly correspond with the boundary of the appeal site.
30. Currently, the existing buildings on the appeal site and the blank rear elevation of the taller single storey element of No.111 provide a degree of enclosure to the rear gardens on Stokenchurch Street. I have taken account that the appeal proposal would remove those buildings closest to the common boundary but I note that the rear elevation of the proposed three and four storey elements would be positioned closer towards the houses on Stokenchurch Street compared to the adjoining properties on New King's Road. This would occur at a point where the curved building line of Stokenchurch Street pinches closer to the boundary with New King's Road. I have had regard to the appellant's submissions regarding the SPDs general standard of a line of clearance of 45 degrees however I find the in-combination effect of the height and proximity of the appeal proposal would prominently and oppressively enclose the modest rear amenity spaces and ground floor outlook at Nos. 34-40 Stokenchurch Street.
31. I recognise that the generally low and modest form of the existing buildings on the appeal site affords an atypical degree of openness which can be appreciated from first and second floor openings to habitable rooms on the rear elevation of these properties on Stokenchurch Street. Whilst this openness is confined to a handful of properties, it is nonetheless well-established by the longstanding form of development on the appeal site (>100 years). In my assessment, the massing and height of the appeal proposal at proximity would harmfully enclose the outlook from first and second floor openings to habitable rooms on the rear elevation of these properties. These rooms are not served by any other openings and consequently the appeal proposal would be harmfully overbearing in the outlook.
32. For similar reasons I find the proposed number of openings to habitable rooms on the first floors and second floors of the proposed dwellings at Nos. 109 and 109b would result in direct and harmful inter-visibility with corresponding proposed openings to habitable rooms at Nos. 36 and 38 Stokenchurch Street. There would be significant loss of privacy for both respective occupiers across what is only a moderate intervening distance. I have noted the existing openings on No.109b and the presence of some planting within the rear gardens of Stokenchurch Street. However, I find the degree of inter-visibility would be significantly intensified which the modest garden shrubs and trees would not adequately mitigate.

33. The proposed amendments as part of the appeal would reduce the proposed roof terrace on the four storey building so as to create a non-accessible roof area closest to the boundary with properties on Stokenchurch Street. I am satisfied that with this measure in place there would be no harm in terms of privacy to the amenities of residents on Stokenchurch Street from this feature. However, there would be considerable proximity of the proposed roof terrace on No.109b to an almost parallel side window serving a study area in Studio 5 at No.111. Accordingly, I find there would be a harmful degree of inter-visibility and notwithstanding general background traffic noise on the New King's Road I find that the proposed roof terrace by virtue of being at the same level as Studio 5 would be harmful in terms of noise and disturbance to the occupiers of this apartment.
34. I therefore conclude that the appeal proposal would result in significant harm to the living conditions of adjoining residents with particular regard to outlook and privacy. The proposal would therefore be contrary to the amenity considerations in DMLP Policies DM G1 and DM A9 and SPD Housing Policy 8 which collectively require the design of new build to reflect the principles of good neighbourliness. It would also fail to accord with the objective of the NPPF to secure a good standard of amenity for all existing and future occupants of land and buildings.

Community Services

35. No.109 currently provides accommodation for an orthodontist practice which is a Class D1 use⁶. The building is specifically conditioned to an orthodontist and no other use within Class D1⁷. The appeal proposal would provide non-residential floorspace at ground floor level on the remodelled No.109 for either A2 (financial and professional services) or unrestricted D1 use.
36. DMLP Policy DM D1 sets an objective to secure the enhancement of community services in the Borough. Accordingly, the policy, amongst other things, seeks to carefully manage the loss of existing community uses. Whilst the appeal proposal would appreciably reduce the non-residential floorspace it would not result in the loss of the option for a D1 use.
37. I note the definition of 'community facilities' in the DMLP includes "healthcare" but within the context of community health services (Hospitals, GPs etc.). From its external appearance and internal character I do not consider the current restricted use of the building as an orthodontist clinic is a community use within the protective remit of DMLP Policy DM D1. Furthermore, I give credence to the potential of the appeal proposal to enable genuinely community orientated uses to occupy the proposed non-residential floorspace.
38. I therefore conclude on this issue that there would be no harmful loss of a community use contrary to the provisions of DMLP Policy DM D1. In this way the proposal would not conflict with the objective of the NPPF to secure sufficient community facilities and services to meet local needs.

Planning Balance and conclusions

39. I have found that the appeal proposal would not cause harm to the character of the SSQA or the living conditions to occupiers at No.107 New King's Road. Nor

⁶ Class D1 'Non-residential institutions' – Town and Country Planning (Use Classes) Order 1987 (as amended)

⁷ Planning permission reference 2007/01781/FUL dated 17 July 2007

would the appeal proposal result in the loss of a vital community facility or the opportunity for an alternative community use. I also note that the appeal proposal would modestly increase the housing supply in the Borough by one dwelling. However, these factors which weigh in favour of the appeal proposal would be significantly and demonstrably outweighed by the adverse impacts of the proposed development. These include the harm arising from the loss of non-designated heritage assets, the harm to the appearance of the SSCA and significant harmful effect on the outlook and privacy on those surrounding properties identified in the decision. Given this harm the appeal proposal would conflict with the relevant up-to-date policies of the development plan and would not constitute sustainable development in the terms described at paragraphs 6-9 of the NPPF.

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

David Spencer

Inspector.