
Appeal Decisions

Site visit made on 21 February 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 27 February 2017

Appeal A: APP/K5600/W/16/3163661

38a Linden Gardens, London W2 4ER

- 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 Ivar Milligan against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/05251, dated 6 April 2016, was refused by the Council by notice dated 19 October 2016.
 - The development proposed is erection of a freestanding, treated and painted softwood timber shed for storage of household/garden tools and bicycles. To be located on the southern boundary of the property.
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Appeal B: APP/K5600/Y/16/3164328

38a Linden Gardens, London W2 4ER

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Ivar Milligan against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref LB/16/05252, dated 6 April 2016, was refused by the Council by notice dated 19 October 2016.
 - The works proposed are erection of a freestanding, treated and painted softwood timber shed for storage of household/garden tools and bicycles. To be located on the southern boundary of the property.
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Decisions

1. I dismiss both appeals.

Reasons

2. The building is listed Grade II and sits within the Pembridge Conservation Area. The main issue in these appeals is the effect of the proposal on the architectural and historic significance of the building and its setting.
 3. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
 4. Paragraph 132 of the National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's
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conservation. The more important the asset, the greater the weight should be. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings.

5. The various requirements in statute and central Government guidance are reflected in the stated Policies of the Consolidated Local Plan 2015; CL1 on context and character, CL2 on design quality, CL3 on conservation areas, and CL4 on listed buildings. The design policies are also in line with paragraph 56 of the Framework which states that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Policy CL11 on the protection of views appears less relevant in this case, but states that within conservation areas, development is to preserve or enhance views.
6. It is accepted that the proposed outbuilding is limited in size and is of a type of garden building that might be expected in a domestic environment. It is the fact that it would not be seen generally from directly in front of the dwelling on Linden Gardens due to the high gate and other boundary treatment. It was for that reason that the appellant's offer to provide access was accepted. The degree of visibility from the public highway further to the south is a matter for disagreement between the appellant and the Council, although that will be addressed later.
7. However, considerations over the effect on listed buildings are not limited to only those places where a public view may be available, as the significance of listed buildings may reside in areas hidden from any view. The significance of this listed building does reside, among other likely places not relevant to these considerations, at the front and side elevations. The building with its neighbours to the north was designed not just as street elevations, but 'in the round' with the return elevation containing features of considerable architectural and historic significance, such as the overhanging eaves and fenestration continuing on the southern face. The projecting semi-circular bay described in the listing is a distinctive feature, visually extending the setting towards and beyond the boundary.
8. To cause harm to a building's setting it is not necessary for any elevation to be obscured. The Glossary of the Framework defines setting as '*the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*' In this case the outbuilding would be prominent in the same view as the front and side elevations and would detract from the appreciation of the building. The indicated walling materials and felt roof would be out of keeping with the solid architectural presence of the listed building, appearing utilitarian and out of place in the space between the side elevation and the boundary, causing harm to the setting of the listed building.
9. Beyond the boundary there is the architecturally unprepossessing bulk of the modern flats, 'The Limes' albeit reduced in scale near the site. There would be a view of the location of the outbuilding from the road through the gap occupied by the vehicle entrance, but as shown on the plans, limited by the wall to the rear, and also in fact, mostly screened by vegetation. The Council

express concern that this natural feature may be removed or die, whilst the appellant is clear as to the intention to retain it. Be that as it may, other than trees, there is limited control over the retention of small-scale vegetation and with the outbuilding being shown tight to the boundary wall it is unclear whether the appellant has control over this feature in any event.

10. The result is that the outbuilding would not be so readily seen in general public views, other than when the gate is open, and the effect on the character and appearance of the conservation area would be limited all the time the vegetation is in place. Nevertheless, the risk would remain of the inappropriate felt roof being seen at some stage.
11. In conclusion, whilst the effect on the wider conservation area would appear to be limited, at least at present, such that the duty to preserve the character and appearance would be met, there would be harm to the setting of the listed building and hence its architectural and historic significance.
12. The level of harm is 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. It is generally accepted, and as stated in the web-based Planning Practice Guidance, that where there is harm the paragraph 133 alternative of 'substantial harm' is a high test that may not arise in many cases (Paragraph: 017 Reference ID: 18a-017-20140306).
13. The Council do not identify any public benefits, but it would likely be the case that the use of an outbuilding would assist in the upkeep or beneficial use of the listed building, such buildings being looked after by private owners for the public benefit. However, it has not been demonstrated conclusively that there are no alternative locations or designs for the proposal.
14. As a result the proposal fails to accord with the requirements of the Development Plan policies previously set out, or the statutory tests in the 1990 Act, and would be contrary to guidance in the Framework on design and designated heritage assets, with there being no acceptable justification for the harm. For the reasons given above it is concluded that both appeals should be dismissed.

S J Papworth

INSPECTOR