
Appeal Decision

Site visit made on 21 March 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 12th April 2017

Appeal Ref: APP/K5600/W/16/3159407

Garage at 2a Milner Street, London SW3 2PU

- 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 Yorkshire Prosperity Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/04116, dated 29 June 2016, was refused by notice dated 26 August 2016.
 - The development proposed is the demolition of the existing double garage and development of a 3-bed family dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the development would preserve or enhance the character or appearance of the Chelsea Conservation Area and the effect on highway safety with regard to parking.

Reasons

Chelsea Conservation Area

3. The appeal site is located within the Chelsea Conservation Area (the CA). The CA is predominantly residential in character and its architecture varies in age and style, ranging from two storey houses to larger five storey houses. Properties are generally laid out in formal terraces.
4. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Paragraph 131 of the National Planning Policy Framework (the Framework) sets out matters which should be taken into account including sustaining and enhancing the significance of the heritage asset and the desirability of new development making a positive contribution to local character and distinctiveness. It further advises at paragraph 132 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 conservation.
5. The terraced properties on the north side of this stretch of Milner Street are uniform in their scale and design. In marked contrast, the appeal site side of the street comprises an eclectic mix of building designs and sizes, ranging from

the single storey appeal building to a five storey property. Whilst it does not follow the general uniformity of other streets in the locality, the variety of buildings within this terrace nevertheless makes a positive contribution to the significance of the CA.

6. The appeal property comprises a double garage. The lack of architectural detailing and the general utilitarian appearance of the building does not make any significant positive contribution to the character or appearance of the area. The absence of upper floors creates a gap between the properties in the terrace and those on Rawlings Street allowing views of the rear elevations of the Rawlings Street terrace. Whilst the gap provides a welcome break in what is otherwise a dense urban form, the view of the informal rear elevations of the Rawlings Street terrace jars with the more attractive formal street frontages.
7. The Council's main concern with the design of the dwelling is the roof. From the street the dwelling would appear to have a parapet roof, similar to other properties within the street and which is a common design feature throughout the CA. However, behind this parapet, the roof, in part, would slope down sharply to single storey level and there would be a flat roof element. I note this design has been informed by the need to limit any adverse effects on the living conditions of neighbouring residents.
8. There are a variety of roof designs in the locality, which themselves add to the character and appearance of the area. Whilst the proposed roof would not be readily visible from street level, its overly complex and contrived design would appear incongruous when viewed from private vantage points in neighbouring properties. Furthermore, such a large and steep roof slope would create a wall to roof ratio that would be at great odds with neighbouring buildings. Whilst the roof lights would breakup this expanse to some extent, it would not be sufficient to negate the harm the roof would have on the character and appearance of the area. Whilst the existing building does not make a positive contribution to the CA, the proposed dwelling, as a result of its inappropriate roof, would have a significant adverse effect on its significance.
9. The appellant confirms that planning permission¹ was recently granted for a similar proposal on the site. However, the details of the approved scheme are not before me. Therefore I cannot make a direct comparison with the design of the appeal proposal and can only attribute limited weight to this matter.
10. Paragraph 134 of the National Planning Policy Framework (the 'Framework') confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use. The harm I have identified to the significance of the CA would be less than substantial. Whilst the provision of a dwelling would make a positive contribution to the housing supply in the Borough, I find that there is no public benefit identified that would outweigh this harm.
11. I find therefore that the proposal would fail to preserve or enhance the character or appearance of the CA. As such, it would fail to accord with Policies CL1, CL2, CL3 and CL11 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (the CLP) 2015, which, amongst other matters, seek to ensure that development contributes positively to the townscape through the

¹ PP/16/06759

architecture and urban form, addressing matters such as roofscape; is of the highest architectural design quality; and, preserve or enhance the character or appearance of the Conservation Area and preserve views within them. Furthermore, it would fail to accord with the guidance set out in the Chelsea Conservation Area Appraisal 2016.

Highway Safety

12. In their second reason for refusal, the Council confirm that in the absence of a s106 agreement to secure ineligibility from obtaining a parking permit, the proposal would put undue pressure on on-street parking.
13. To address this concern, the appeal submission is accompanied by a planning obligation to restrict the issue of parking permits. The appellant has provided a Unilateral Undertaking under Section 16 of the Greater London Council (General Powers) Act 1974 (the 1974 Act) through which the landowner of the appeal site undertakes not to apply to the Council for a parking permit nor knowingly permit any Occupier of the Land to apply to the Council for a parking permit. The Unilateral Undertaking also provides that, in the event that a parking permit is issued in respect of the Land, that permit will be surrendered to the Council within 7 days of written demand.
14. The appellant considers that the Unilateral Undertaking under Section 16 of the 1974 Act secures the development as permit free as it would prevent the owners or occupiers from having access to on-street parking spaces, whilst overcoming the problems in achieving a similar objective with a planning obligation under the provisions of Section 106 of the Town and Country Planning Act 1990, as found in *Westminster City Council v Secretary of State for Communities and Local Government and another* [2013] EWHC 690 (Admin). In particular, it was found that the Unilateral Undertaking offered in that case did not meet the requirements of sub-paragraphs (1)(a)-(d) of Section 106 and therefore did not have the characteristics of a planning obligation, in that it was purely a personal undertaking by the land owners which did not run with the land and which was not capable of being registered as a land charge.
15. Having considered the proposed Unilateral Undertaking under Section 16 of the 1974 Act, I find that it suffers from the same defects found in *Westminster City Council*. The Unilateral Undertaking provides that the landowner shall not apply to the Council for a parking permit. That is a personal undertaking which does not run with land; in terms of Section 16, it is not an undertaking "in connection with the land". Similarly, the undertaking not to knowingly permit any Occupier of the Land to apply to the Council for a parking permit is a personal undertaking that does not run with land. Furthermore, this element of the undertaking raises uncertainty should the landowner claim that he did not knowingly permit an application for a parking permit. Moreover, because these are both personal undertakings, the Unilateral Undertaking is not capable of being registered as a local land charge.
16. I find that the Unilateral Undertaking provided by the appellant would be necessary, directly, fairly and reasonably related to the development. Therefore, it would meet the tests set out in paragraph 204 of the Framework. However, it cannot be a planning obligation, because it was not expressly made pursuant to Section 106 of the 1990 Act. I am therefore unable to give it significant weight.

17. From the evidence before me and the observations I made during my site visit, which was undertaken mid-morning on a week day, I find that there are existing on-street parking problems which the proposal would exacerbate. Therefore, as I have not been presented with a suitable mechanism to secure the proposal as a car free development it would be contrary to Policy CT1, which seeks to ensure that all new additional residential development be permit-free. Furthermore, it would fail to accord with the advice contained in the Council's Transport and Streets Supplementary Planning Document.

Conclusion

18. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR