
Appeal Decisions

Site visit made on 27 June 2017

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

Decision date: 30 August 2017

Appeal A: APP/K5600/W/17/3169904 **81 Onslow Gardens, London SW7 3BU**

- 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 Mrs Nazafarine Heinen against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref: PP/16/06497, dated 14 September 2016, was refused by notice dated 4 January 2017.
 - The development proposed is to reinstate a single flight of stairs between ground and lower ground floors in an original position and internal alterations including reinstating two fireplaces in original positions, replacing inappropriate modern mouldings with traditional detail and installing two en-suite bathrooms.
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Appeal B: APP/K5600/Y/17/3169905 **81 Onslow Gardens, London SW7 3BU**

- 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 Mrs Nazafarine Heinen against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref: LB/16/06498, dated 14 September 2016, was refused by notice dated 4 January 2017.
 - The works proposed are to reinstate a single flight of stairs between ground and lower ground floors in an original position and internal alterations including reinstating two fireplaces in original positions, replacing inappropriate modern mouldings with traditional detail and installing two en-suite bathrooms.
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Decision

Appeal A

1. The appeal is allowed and planning permission is granted to reinstate a single flight of stairs between ground and lower ground floors in an original position and internal alterations including reinstating two fireplaces in original positions, replacing inappropriate modern mouldings with traditional detail and installing two en-suite bathrooms at 81 Onslow Gardens, London SW7 3BU in accordance with the terms of the application, Ref: PP/16/06497, dated 14 September 2016, subject to the conditions set out in the schedule at the end of this decision.

Appeal B

2. The appeal is allowed and listed building consent is granted to reinstate a single flight of stairs between ground and lower ground floors in an original position and internal alterations including reinstating two fireplaces in original

positions, replacing inappropriate modern mouldings with traditional detail and installing two en-suite bathrooms at 81 Onslow Gardens, London SW7 3BU in accordance with the terms of the application Ref: LB/16/06498 dated 14 September 2016 subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

3. The reasons for refusal do not identify any harm to the character or appearance of the Thurloe/Smith's Charity Conservation Area. Nonetheless, I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing its character or appearance. In this respect, as the external alterations are not prominent and could be controlled through suitable conditions, I am satisfied that the proposal would preserve those interests.
4. As the proposal is in a conservation area and relates to a listed building I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
5. The Council has an emerging plan that is yet to be adopted. Consequently, these appeals will be determined in accordance with the extant development plan, having regard to the emerging policies, insofar as they may be relevant, as well as the National Planning Policy Framework 2012 (the Framework).
6. The proposal was amended prior to the determination of the application, as reflected in the following plans: 16503-(PR)-002-Rev.A, 16503-(PR)-007-Rev.A, 16503-(PR)-008-Rev.A and 16503-(PR)-009-Rev.A. The appeal process should not normally be used to evolve a proposal. However, as the amendments have reduced its scope and given the absence of any objections I am satisfied that no interested party would be prejudiced. Consequently, these appeals have been determined on the basis of the indicated plans.

Main Issues

7. The main issues are the effect of the proposal on housing provision and whether it would preserve or enhance a Grade II listed building, 80-92 Onslow Gardens, and any of the features of special architectural or historic interest that it possesses

Reasons

8. The appeal site comprises two flats on the ground and lower ground floor of a four storey, mid-terrace, London townhouse. The remaining flats on the second and third floors are accessed via No 79 whilst the two flats that are the subject of this appeal have separate entrances at ground and lower ground levels. The proposal involves amalgamating these two flats through the reinstatement of a staircase between the ground and lower ground floor. This would be located in its original position and would have a less ornate appearance in comparison to the existing staircase.
9. In addition to the latter, the revised scheme includes a number of other changes to the lower ground floor comprising new external stone tiles, steps and risers, the removal of a boiler enclosure in the rear living room, the re-configuration of existing kitchen and bathroom areas and the reinstatement of fire chambers in what would become a living room and fourth bedroom. The

reconfiguration of the bathroom and kitchen would lead to the removal of a modern, stud wall partition.

10. In order to accommodate the staircase a number of changes would also be made to the ground floor. These comprise the reconfiguration of a bathroom and fitted cupboard and the installation of a boiler. The extraction flue of the latter would penetrate original fabric to the rear of the building. The proposed changes would lead to the removal of modern stud wall partitions and the creation of new ones to accommodate the relocated bathroom and fitted cupboards. An existing, modern doorway and associated partition to the third bedroom would also be relocated.

Housing provision

11. Planning law¹ requires that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise. In this instance the development plan comprises the Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015 (CLP), the London Plan 2016 (LP) and the Unitary Development Plan 2002 Extant Policies 2007. After having carefully considered the issues and bearing in mind the evidence before me, I consider the most relevant policies to be CH1, CH2 and CH3 of the CLP and 3.3 and 3.14 of the LP. In addition to the Framework, I consider the London Plan Housing Supplementary Planning Guidance 2016 (the SPG), the Planning and Borough Development Monitoring Report 2016 (the Monitoring Report) and the Strategic Housing Market Assessment for the Royal Borough of Kensington and Chelsea 2015 (the SHMA) to be significant material considerations.
12. Policy CH1 of the CLP sets out the annual housing supply targets in conjunction with policy 3.3 of the LP. The most recent revision of the LP has set a housing target for the Borough at 733 dwellings per annum. The Council recognises that it has a record of persistent under delivery and accepts a 20% buffer which has given rise to a need to deliver 880 dwellings per annum or 4,398 dwellings in the first five years of the plan. The Monitoring Report reflects these figures and whilst a deliverable five year housing supply has been demonstrated, the Council highlights the fact that this is marginal with a buffer of less than 20 units. Although there was a significant increase in the number of residential completions in 2014/15, I note that these fell far short of the LP target in 2015/16, as was the case in previous years. Since I have no economic evidence before me to suggest that the housing market cycle is likely to improve, I accept that a finely-balanced, five year housing land supply is present in the Borough at the current time.
13. The appellant is of the opinion that the targets set in policy CH1 of the CLP and 3.3 of the LP allow for losses resulting from the amalgamation of existing housing units and that the Council's position would not be materially affected as a result. However, I note the undisputed evidence that the impact of amalgamations is yet to be factored in to the small sites element of the five year housing supply estimate. The Council has indicated that amalgamations over a three year period (2011/12 to 2013/14) led to a loss of 192 units in comparison with 431 net completions over the same period. Subsequent monitoring, based on council tax and housing completion data, indicates that

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)

the loss of units from amalgamation was 162 over a two year period up until 2015/16. These losses consequently show no signs of diminishing on the basis of the evidence before me and I am satisfied that the estimated depletion rate of 65 units per annum poses a threat to maintaining a deliverable five year housing supply in the Borough in the longer term.

14. Given the above, the appellant's suggestion that there would be a 'de minimis' impact is not supported by the facts that are before me at the current time which are not the same as those before a previous Inspector² who arrived at a different conclusion. Furthermore, I am also mindful that paragraph 47 of the Framework requires local planning authorities to significantly boost the supply of housing above any targets that may have been set. As a result, I find that whilst the impact would be small, it would nevertheless diminish the ability of the Council to meet its targets and significantly boost the supply of housing. Therefore, I find that this would be contrary to policy CH1 of the CLP and 3.3 of the LP and fail to satisfy of the requirements of the Framework.
15. Although policy CH2 of the CLP did not form the part of the reason for refusal, it is nevertheless relevant and has been addressed by both parties in their evidence. It emphasises the need for new housing development to deliver an appropriate mix of types, tenures and sizes of home. This policy seeks, among other things, to ensure that this is achieved through resisting development that leads to a net loss of five or more units. The supporting text accepts that a balance needs to be struck between the loss of smaller residential units and the need for larger, family dwellings. In this respect I note that the SHMA indicates that there is an almost equal need for larger dwellings and that 72% of the existing dwellings in the Borough are smaller dwellings, comprising one or two bedrooms. However, it is for the courts to determine, as a matter of law, what words are capable of meaning within the context of a development plan. It is clear to me that the wording of this policy is silent on amalgamations that would lead to a net loss of four units or less. I therefore find that the proposal would not be contrary to policy CH2 of the CLP.
16. Policy CH3 of the CLP seeks to ensure that market residential use and floor space is protected other than when a number of specified exceptions apply. The supporting text states that residential units should be protected in most circumstances and that there are only a limited number of situations where loss, through amalgamation or another use, would be permitted. However, this policy only seeks to protect residential floor space and changes of use. This chimes with policy 3.14 of the LP that requires decision makers to resist the loss of housing unless it is replaced at existing or higher densities with at least the equivalent floor space.
17. As is the case with policy CH2 of the CLP, both CH3 of the CLP and 3.14 of the LP should be interpreted objectively in accordance with the language used. Consequently, neither policy prohibits the amalgamation of smaller dwellings provided the extent of residential floor space remains the same. I recognise that this is not in accordance with elements of previous Inspectors' decisions³ but note that it does accord with the most recent appeal decision⁴ that is before me. Furthermore, it is the proper interpretation of the relevant provisions of a plan, rather than any broad policy objectives, that form the lawful basis of any

² APP/K5600/W/16/3142934

³ APP/K5600/W/15/3010078, APP/K5600/W/16/3149276, APP/K5600/W/15/3006728

⁴ APP/K5600/W/16/3142934

planning decision. Given the above, I find that the proposal would not be contrary to either policy CH3 of the CLP or policy 3.14 of the LP.

18. The guidance in the SPG seeks to clarify policy 3.14 of the LP by stating that the 'de-conversion' of smaller units into larger dwellings reduces the capacity to meet the requirements of smaller households in some areas. It goes on to stress that local planning authorities should resist this whenever there is evidence that the amalgamation of separate flats into larger units is leading to a sustained loss of homes capable of meeting the local housing needs of smaller households. Whilst the Council has highlighted an ongoing depletion of smaller dwellings through amalgamation, the SHMA indicates that the Borough has a higher than average density of smaller units of one to two bedrooms. As I have no indication of the housing needs associated with the immediate area, the impact of amalgamation on the local housing mix is equivocal in this particular instance and I can therefore find no conflict with this guidance.
19. For the above reasons and having regard to all other matters raised regarding this issue I conclude that, on balance, the appeal would not be in accordance with the development plan.

Listed building

20. 80-92 Onslow Gardens (Ref: 1357112) was listed in 1969 and dates from the mid-19th century. It comprises a short terrace constructed from gault brick with stucco on the ground and lower ground floor levels. The ground floor façade is rusticated with open lower ground floor areas enclosed by cast iron railings. It has four storeys with shallow, projecting bays at either end which are three windows wide. Pedimented, stucco architraves characterise the first and second floor windows with stucco banding and a dentilled cornice above the fourth floor. The appeal property is situated at the eastern end of the terrace. Internally, the appeal property has been subject to alteration but still retains a compartmentalised layout and a number of original features. The most relevant being the stone, cantilevered staircase and balustrade as well as a lower ground floor chimney breast. Given the above, I find that the special interest of the listed building, insofar as it relates to this appeal, to be primarily associated with the legibility of its original layout and its historic architectural features.
21. The Council have acknowledged that the revised drawings address the heritage issues that led to the refusal of listed building consent and I agree. I acknowledge the concern expressed over the detail of the proposed fire chambers but I am satisfied that any potential harm could be controlled through the use of a suitable condition. Although a hole in the original fabric for a ground floor boiler flue would be created I am satisfied that this would be outweighed by the benefits of the proposal. More specifically, the reinstatement of the original stairway and fireplaces in the lower ground floor as well as improvements to the layout in terms of restoring the proportions of its hallway and the reinstatement of a curved section of wall. The revised proposal would also reduce the enclosed appearance of the far end of the ground floor hallway thus giving an initial impression more akin the original layout when entering the property. Given the above, I conclude that the proposal would significantly enhance the special architectural interest of the Grade II listed building, thus satisfying the requirements of the Act, paragraph 134 of the Framework and policy CL4 of the CLP that seeks, among other

things, to ensure that development protects the heritage significance of listed buildings.

Overall balance

22. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise. I have identified some conflict with development plan policies under the first main issue but conclude that the adverse impact of the proposal would not significantly and demonstrably outweigh the substantial benefits which would arise from the enhancement of the listed building as considered in the second main issue. This would also outweigh the guidance contained within the SPG and the small diameter hole that would be made for a boiler flue in the rear of the building.

Conclusion and Conditions

23. For the above reasons and having regard to all other matters raised I conclude that, subject to conditions, the appeals should be allowed.

Appeal A

24. I have considered both the wording and grounds for the conditions suggested by the Council in accordance with the tests set out in paragraph 206 of the Framework.
25. In addition to the standard time limit condition [1], a condition requiring the proposal to be carried out in accordance with the plans is necessary to ensure that the permission is implemented as approved [2]. A condition requiring a sample of stone to be used externally is necessary in the interests of preserving the character and appearance of the conservation area [3].

Appeal B

26. In addition to a standard time limit condition [1], a condition requiring the works to be carried out in accordance with the plans is necessary to ensure that the consent is implemented as approved [2]. Conditions requiring the submission of further details, the retention of fabric and making good are necessary in the interests of safeguarding the special architectural and historic interest of the building [3-5].

Roger Catchpole

INSPECTOR

APPEAL A CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 16503-(PR)-002-Rev.A; 16503-(PR)-003-Rev.E; 16503-(PR)-004-Rev.D; 16503-(PR)-005-Rev.D; 16503-(PR)-006-Rev.D; 16503-(PR)-007-Rev.A; 16503-(PR)-008-Rev.A; and 16503-(PR)-009-Rev.A.
- 3) No development shall commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed other than in accordance with the approved details: (a) sample of stone for external steps in front lightwell and lightwell flooring.

APPEAL B CONDITIONS

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 16503-(PR)-002-Rev.A; 16503-(PR)-003-Rev.E; 16503-(PR)-004-Rev.D; 16503-(PR)-005-Rev.D; 16503-(PR)-006-Rev.D; 16503-(PR)-007-Rev.A; 16503-(PR)-008-Rev.A; and 16503-(PR)-009-Rev.A.
- 3) Detailed drawings or samples of materials, with regard to the following, shall be submitted to and approved in writing by the local planning authority before the associated work begins and no works shall be carried out other than in accordance with the approved details and shall thereafter be so maintained: (a) sample of stone for external steps in front lightwell and lightwell flooring; (b) details of proposed fire place reinstatement including proposed surrounds; (c) detailed drawings at scale 1:20 of the proposed staircase; and (d) detailed drawings at scale 1:10 or 1:20 as appropriate for replacement doors, architraves, cornices and joinery.
- 4) All existing fabric including existing wall and ceiling plasterwork shall be retained, unless notated otherwise on the drawings approved under this consent.
- 5) The materials to be used for making good any disturbed internal or external surfaces shall be of matching composition, form and finish to those of the adjoining original fabric.