
Appeal Decision

Site visit made on 22 August 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 11 September 2017

Appeal Ref: APP/X5990/D/17/3177048
37 Loudoun Road, London NW8 0NE

- 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 & Mrs M Jain against the decision of City of Westminster Council.
 - The application Ref 17/00695/FULL, dated 30 January 2017, was refused by notice dated 27 March 2017.
 - The development proposed is the partial demolition of existing gate piers, wall and railings to front boundary and regrading of driveway to create an additional vehicle cross over, erection and construction of new gate piers and installation of new gate.
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Decision

1. The appeal is allowed and planning permission is granted for the partial demolition of existing gate piers, wall and railings to front boundary and regrading of driveway to create an additional vehicle cross over, erection and construction of new gate piers and installation of new gate at 37 Loudoun Road, London NW8 0NE, in accordance with the terms of the application Ref: 17/00695/FULL, dated 30 January 2017, subject to the attached schedule of conditions.

Main Issues

2. The main issues are:
 - Whether the proposed development would preserve the character and appearance of the St John's Wood Conservation Area.
 - The effect of the proposed development on protected trees on the site.
 - The effect of the proposed development on highway and pedestrian safety.

Reasons

Character and appearance

3. The appeal property is a large detached dwelling located at the junction of Loudoun Road with Boundary Road and lying within the St John's Wood Conservation Area. The property fronts onto Loudoun Road which is bounded by a low wall with black painted metal railings above. An existing vehicular crossover, providing access to a garage, and a pedestrian gate approximately 1.1m wide, form the accesses to the property. The existing pedestrian gate and a larger gate in the position of the crossover are also formed of black

- painted metal work. Two trees, a cherry tree and a lime tree, which are protected by a Tree Preservation Order are located close to the boundary wall and are sited between the two gates.
4. Loudoun Road is predominantly a residential street that displays a wide variety in property design. Although many properties have low boundary walls there is no overall consistency in the design of boundary treatment or in the number of vehicular crossovers serving properties, with examples of an 'in and out' arrangement for vehicles. The small terraced block on the opposite side of the road has no boundary treatment and has frontage parking with each property having a crossover.
 5. The proposal would involve the widening of the existing pedestrian gate to the north by approximately 2.4m to provide an additional vehicular access, approximately 3.5m wide, in order to facilitate an 'in' and 'out' vehicular arrangement. The gate pier would be reinstated and the access provided with an automated metal gate of a height and design that would match the existing metal railings.
 6. Given the proposed modest widening of the gate, the appearance of a small wall and metal railings would be retained as the predominant boundary feature to the property. Therefore the boundary walls and railings would continue to make a positive contribution to the street scene. The distinction between public and private space would also be retained. Although I recognise the Council's concerns at the loss of a small portion of the wall, given the wide variety in the design of boundary treatment and number of crossovers in the locality, the proposal would not cause harm to the character and appearance of this part of the conservation area of an extent that would justify the dismissal of this appeal on those grounds.
 7. I also note the Council's concerns regarding the alignment of the current pedestrian gate to the front entrance to the property. However, given the lack of any consistency between the location of access gates and property entrance points on the street, the proposed widened gateway, which would still be positioned in proximity of the entrance door, would not cause any significant harm to the character or appearance of the area
 8. For these reasons, the proposed development would preserve the character and appearance of the conservation area as a whole in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would accord with paragraphs 131 and 132 of the National Planning Policy Framework. As a result there would be no conflict with Policies S25 and S28 of the Westminster City Plan (2016) (City Plan) and Saved Policies DES1, DES 7 and DES 9 of the Westminster Unitary Development Plan (2007) (UDP). These policies, amongst other things, require that new development should respect local distinctiveness and preserve or enhance the character or appearance of conservation areas and their settings. In addition, the loss of boundary walls and railings will be resisted where they make a positive contribution to the street scene.

Protected trees

9. The access works would also involve the resurfacing of the current hardstanding to the front of the property and the provision of a stone planter bed that would be located between the two access gates. Although no felling

of the protected trees would occur, the Council's main concern is that insufficient information has been provided to demonstrate that there would be no excavations beneath the existing sub-base and into the subsoil containing tree roots and which could therefore harm the health of the protected trees.

10. An Arboricultural Impact Assessment was submitted with the application which contains a method statement and tree protection plan which set out a range of measures to protect the trees and their roots and proposes an above ground no-dig driveway and pile and beam foundations for construction works. Subject to the measures proposed to protect the trees and their roots, the Arboricultural Impact Assessment concludes the proposed development will pose no undue threat to the trees to be retained.
11. The measures proposed in the method statement and tree protection plan involve general common practices that are frequently used in construction works to protect the trees and their roots. However, given the importance of the contribution that these trees make to the character of the conservation area, I agree with the Council that such measures should also include the undertaking of trial investigations to establish the presence of roots within the constructional elements of the proposals. These investigations would inform subsequent amendments to the protection measures to cater for root positions. I note that one of the Council's suggested planning conditions would provide for such trial investigations.
12. Subject to the imposition of a planning condition that would require the implementation of measures proposed in the method statement and tree protection plan, and informed or modified as a consequence of the results of trial investigations, I consider that the health of the protected trees can be adequately protected. Moreover, I have no other conclusive evidence to suggest that such measures may be inadequate to the extent that the health of the tree would be compromised.
13. For the above reasons I conclude that the proposed development would not cause unacceptable harm to the Cherry Tree and Lime Tree subject to the implementation of a scheme for their protection during the construction works which can be secured through an appropriate planning condition. Consequently, there would be no conflict with Policy S38 of the City Plan or Saved Policy ENV 16 of the UDP. These policies, amongst other things, require that all trees in conservation areas and all those trees subject to Tree Preservation Orders will be safeguarded.

Highway and pedestrian safety.

14. The submitted Transport Assessment suggests that there would be no change in the total traffic flow generated from the appeal property as a consequence of the proposed development. Instead, the existing traffic flow would be distributed over two crossovers rather than one. The proposed 'in' and 'out' arrangements would enable vehicles to enter and leave the appeal property in a forward direction. This is in contrast to the current arrangements which require reversing movements in from, or out onto, Loudoun Road.
15. I observed at the time of my visit that Loudoun Road was moderately trafficked and was subject to a low level of pedestrian use with adequate pedestrian footway widths. The road displays many examples of crossovers positioned in close proximity to each other and I note that the Transport Assessment

suggests that the proposed crossover accords with the Council's guidance relating to separation distances between vehicle crossovers and junctions.

16. The proposed design of the gate serving the crossover would allow for pedestrians using the footway to have visibility through the railings to the frontage of the property. As such, pedestrians would be able to see any vehicular movements at the front of the property. Similarly, the design would also permit views of pedestrians walking in the vicinity of the frontage of the site from vehicles that intended to egress through one of the access points. As such, I consider that there would be adequate inter-visibility between drivers of vehicles and pedestrians as a consequence of the design of the proposed access gate. In addition, vehicles exiting or entering the site would likely be travelling at a low speed.
17. The low speed of vehicles using the crossover; the forward direction of travel; the adequate indivisibility between drivers and pedestrians and the adequate width of the footway, are all factors that in combination lead me to conclude that the position of the crossover would provide adequate opportunity for pedestrians and drivers to take any necessary action to avoid a prejudicial safety conflict. Consequently, the proposed development would not unacceptably compromise pedestrian safety or have any adverse effect on the functioning of the road hierarchy.
18. Taking the above factors into account the proposal would not cause demonstrable harm to highway or pedestrian safety. Consequently there would be no conflict with Policy S41 of the City Plan or Saved Policy TRANS 3 of the UDP. These policies, amongst other things, seek to ensure that development prioritises pedestrian movements and improves pedestrian environments in terms of safety, ease, convenience and directness of movement.

Other matters

19. Both main parties have referred to an appeal decision at the adjacent property at No 35 that, amongst other things, involved new boundary treatment and the widening of an existing crossover (Ref APP/X5990/D/13/2209271). I do not have full details of the proposals in relation to that appeal. However, from the evidence provided in relation to that appeal, it appears to me that the proposed boundary treatment, the widening of an existing crossover and the fact that reversing movements either into or from the road would be necessary are all circumstances that are very different to those proposed in this appeal. Consequently, the considerations relating to highway and pedestrian safety and the effect on the character and appearance of the area in that case are also very different to those that result from the proposals in this appeal. In any case, I have determined this appeal on its own merits.

Conditions

20. The Council has suggested a number of planning conditions which I have considered against the advice given in paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Government's Planning Practice Guidance. As a result, I have amended some of them for clarity and amalgamated some to reduce the number.
21. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved

plans. This is in the interest of certainty. In order to protect the character and appearance of the area conditions are necessary relating to the external finishes of the development and the submission and implementation of a scheme of hard and soft landscaping. However, I have amalgamated the suggested conditions relating to external materials and the colour of the gates and railings into one condition.

22. In the interests of protecting the integrity of the two protected trees I agree that a condition is necessary requiring the undertaking of trial investigations to establish the extent of the root spread and the submission and implementation of a scheme to safeguard the trees and their roots.

Conclusion

23. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

- 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: 001/D8; 002/D8; 003/D8; 004/D8; 005/D8; 006/D8; 2060-03.
- 3) The brickwork to be used in the construction of the piers of the development hereby permitted shall match that used in the existing boundary wall. The new gates and railings shall be formed in black metal and shall be maintained and retained in that colour thereafter.
- 4) The gates shall be hung so as to ensure that they open into the site and do not open over or across the road or pavement.
- 5) Notwithstanding the provisions of the Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan produced by Martin Dobson Associates dated 19 December 2016, no site clearance, preparatory work or development shall take place until trial hole investigations to demonstrate the presence or absence of roots of the lime and cherry trees have been undertaken and the results of the trial investigations, together with any required modifications to the Arboricultural Impact Assessment and Tree Protection Plan necessary to safeguard the trees and their roots, shall have been submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved Arboricultural Impact Assessment and Tree Protection Plan.
- 6) Excavations for trial holes beneath the canopy of the lime and cherry trees shown to be retained on the submitted plan shall be carried out by hand or by tools held in the hand. Any roots encountered of 25mm or more in diameter and bundles of smaller diameter roots shall be carefully retained and protected from exposure and desiccation. Any damaged or severed roots shall be cut so that the final wound is as small as possible.
- 7) No development shall commence until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include indications of the number, sizes, species and position of all proposed trees and shrubs.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.