
Appeal Decision

Site visit made on 17 October 2017

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

Decision date: 07 November 2017

Appeal Ref: APP/K5600/W/17/3180163

15 St Mary's Place, London W8 5UE

- 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 BLDA Architects Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/08731, dated 23 December 2016, was refused by notice dated 10 March 2017.
 - The development proposed is the demolition of existing dwelling and construction of a single dwelling with basement to similar appearance and massing of the existing dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and construction of replacement dwelling with single storey basement beneath property and part of rear garden with light wells to the front and rear gardens and rooflights adjacent to rear garden wall; addition of new storey over existing garage extension; addition of ground floor extension with new windows at ground floor side elevation to replace blank windows. Air conditioning units within acoustic enclosure to rear garden and rebuilt garden wall at 15 St Mary's Place, London W8 5UE in accordance with the terms of the application, Ref PP/16/08731, dated 23 December 2016, subject to the conditions set out in the attached Schedule.

Preliminary and Procedural Matter

2. The Council changed the description of the development. It appears on the Decision Notice as "demolition of existing dwelling and construction of replacement dwelling with single storey basement beneath property and part of rear garden with light wells to the front and rear gardens and rooflights adjacent to rear garden wall; addition of new storey over existing garage extension; addition of ground floor extension with new windows at ground floor side elevation to replace blank windows. Air conditioning units within acoustic enclosure to rear garden and rebuilt garden wall." The appellants have used the Council's amended description throughout their appeal submission. I have no evidence before me to indicate that this change was unacceptable to the appellants. As the revised description provides greater clarity of the details of the proposal I have used it within my formal decision.

Main Issue

3. The main issue in this appeal is the effect of the proposal on the character and appearance of the surrounding properties within Kensington Green.

Reasons

4. The appeal property, No 15 St Mary's Place, lies within the Kensington Green development which is a gated and private residential complex constructed approximately 20 years ago. Despite the relatively high density layout the complex has a pleasant residential character, created in part by the formal layout of urban squares and structured landscaping. There are a range of dwelling types, including town houses and multi-unit apartment blocks. The existing appeal property is of a style and design not replicated elsewhere in Kensington Green. There is a variation in the height of buildings across the Kensington Green complex ranging from 3 and 4 storeys to 7 storeys. The complex predominantly presents a modern interpretation of a Georgian architectural style.
5. No 15 is a double fronted yellow brick 3-storey property with a 2-storey side wing set back and incorporating a garage. It is sited in the north-eastern corner of the complex, at the end of St. Mary's Place which is a prominent terraced row of 4-storey red brick townhouses. I understand that No 15 was constructed after the main complex and as such it presents a more individual design. In comparison with its immediate neighbouring townhouses on St Mary's Place and the apartment block Chestnut Court, I find that No 15 is somewhat understated within its corner position.
6. The proposed replacement dwelling would be larger than the present through the addition of a single storey basement, single storey rear extension and the side wing would become 3-storey. However, the replacement dwelling would sit comfortably within the substantial plot and would be appropriate for its corner position. I do not agree that the proposal would represent an overdevelopment of the site.
7. The proposed 3-storey side wing would be marginally below the cornice to the main house. I find that this proposed height, together with the roof choice and maintaining a setback would enable this wing to still be seen as subordinate, and therefore not competing with the front elevation of the main building. The existing side wing has a low pitched roof, however due to its low height and the eaves detailing this is not visually prominent in the street scene. The proposed 3-storey side wing would not have a pitched roof, however, this is not out of character with roof designs found in the wider surrounding area. Consequently I do not find this to be a design feature which is harmful.
8. The modest scale of the single storey rear extension would appear subordinate to the main house. The siting together with the replacement brick wall would further reduce the existing limited public views into the rear garden. Other aspects include light wells, roof lights, and ground floor windows on the northern elevation are modest and as such would not harm the character and appearance of the overall proposed dwelling or the Kensington Green complex.
9. The proposed installation of slightly smaller windows on the top storey is not harmful. I find that it provides interest to the façade and is more characteristic of the Georgian style. It is often a feature of the Georgian style that larger windows were at the ground and first floor levels with upper floor windows being smaller and therefore more subordinate.
10. The bay window design would become curved, as opposed to rectangular as at present. I saw on my site visit other examples of curved features within the

area, including the example at the entrance to the complex. Consequently, whilst it is not a common feature within the area, it is not a feature which is completely new. As a design feature it sits comfortably within the general Georgian architectural design. I note the concerns regarding the lack of separation between the top of the ground floor bay windows and the first floor windows/balcony. However, I do not find this design feature to be harmful to the overall appearance of the proposed dwelling. I find that the design features overall allow the main building to remain the dominant part of the development and maintain the subordinate nature of the side wing.

11. I acknowledge that design is an inherently subjective matter. The National Planning Policy Framework (the Framework) in paragraph 60 advises that planning decisions should not attempt to stifle innovation or impose particular architectural styles. I have had regard to the range of views expressed by interested parties. However, I find that overall the proposed development remains within the modern interpretation of the Georgian architectural style. As such, I do not find that the proposed design is sufficiently out of step with the character and appearance of the surrounding area in Kensington Green to justify dismissing this appeal.
12. Accordingly I conclude that the proposal does not conflict with Policies CL1 and CL2 of the Consolidated Local Plan (CLP) of the Royal Borough of Kensington and Chelsea. These policies seek, amongst other things, that development will respect the existing context, character and appearance.

Other matters

13. A number of other matters have been raised by interested parties. Some matters, such as those relating to property values, security, the management policies and procedures connected with the operation of the residential complex, are not planning matters.
14. The need to demolish and replace the modern dwelling has been questioned. I acknowledge that No 15 is not an old property. However, as the appeal site is not within a Conservation Area nor is a Listed Building, there are no policies within the CLP that require some form of justification for demolition and replacement. Accordingly, this limits the weight that I can give this matter.
15. Many representations have raised concerns about the potential impact on the substantial London Plane tree within the rear garden. The London Plane tree is subject to a Tree Preservation Order. The London Plane tree is a species which is known for its resilience and longevity. I note that the Council's tree officers have been on site and there has been liaison between the Council and appellants regarding the arboricultural assessment and protection measures. The Council has not raised any concerns about the tree subject to appropriate planning conditions. I am satisfied that the proposed measures, secured by conditions, as set out later in this decision, should provide sufficient protection to maintain the health and long term well-being of the tree.
16. Concerns have been raised regarding the loss of views of the London Plane tree and the impact this has on the character and appearance, and living conditions. Despite the location within the private garden of No 15, due to its size glimpses from public viewpoints are possible; however, the majority of views are from within the private complex and from individual properties within the general vicinity. I have seen the tree, including from a nearby property, and I have no

- doubt that the tree is valued by the local residents. However, I do not agree with the concerns raised.
17. It is acknowledged that the 3-storey side wing of the proposed dwelling would reduce the views of the tree from within the complex. However, it would not completely eliminate views. Given its present size today, and with proper management commensurate with its protected status, I have no reason to doubt that future growth would continue and therefore enable the tree to act as a backdrop to the built development. Therefore, I do not find that this matter in itself is sufficient to justify the refusal of planning permission.
 18. A specific concern regarding the loss of light was raised by the occupiers of No 26 Kelso Place. No 26 lies outside of the Kensington Green complex to the east. I do not find this concern to be well founded. I observed from my visit to this property that there was a sufficient separation distance between this property and the proposed 3-storey side wing of the appeal property. As such I do not find that a material loss of light would be likely to occur.
 19. Reference has been made to the potential for land, air and noise pollution. A range of specialist reports were submitted to the Council as part of the planning application. I have been provided with these reports and I have had regard to them. However, there are no matters within this category of issues which could not be sufficiently controlled through appropriate conditions.
 20. A number of representations have raised concerns regarding the consultation processes. The timing of the submission of a planning application is entirely a matter for an applicant; as such this is not a matter relevant to this appeal. The comments regarding the pre-application consultation are noted, however, it is good practice and indeed the Council's Supplementary Planning Document on Basements, does recommend it is undertaken. However, it is not a mandatory requirement. I note the details of the statutory consultation undertaken by the Council, indeed many comments from interested parties were made to the Council. Further comments regarding the appeal consultation process have similarly been brought to my attention. The Inspectorate agreed to extend the deadline for comments at the appeal stage. A number of representations have been made to the appeal and are before me.
 21. The arrangements for communication of information between the management company of the complex and the residents are a private contractual matter. As such it not a matter which is material to this appeal.
 22. Many representations have raised concerns about the overall disturbance that the demolition and construction process will have on their living conditions. In particular, the routing of construction traffic, including over the weight restricted estate roads and through the narrow roads, and the implications on road safety.
 23. I accept that during the demolition and construction phase there would be an effect on the living conditions of the surrounding residents, with particular regard to noise, dust, and potential vehicular movement conflict. I have been provided with a copy of the draft Construction Traffic Management Plan which sets out how the scheme's traffic movements would be managed. Any form of construction can result in disruption and other impacts during the timescale of the proposed works. The use of planning conditions to control the impacts

arising from construction is the normal mechanism to address concerns of this nature.

24. I note that the draft Construction Traffic Management Plan has been subject to consultation and revisions, such that the Council has raised no objection to the scheme on this matter, as they believe that suitable planning conditions could mitigate any effects from building works and associated activities. I have had regard to the concerns raised relating to this document. Whilst I appreciate the concerns of residents, I am satisfied that suitably-worded conditions governing the overall demolition and construction works, including in relation to traffic, arising from this scheme could minimise the effects on the living conditions. Inevitably, once the works were complete there would be no impact on the residents.
25. A number of comments have suggested that as the proposed property would be larger; incorporating more entertaining space for the occupiers, there would be insufficient parking for visitors. I have no cogent evidence before to indicate that this would be the case. Several comments have been made regarding the loss of the existing garage. I note that the application form indicated that the 2 existing parking spaces would be retained. As such there would be no net change to the parking provision. Neither of these matters would be sufficient to withhold permission.
26. Reference has been made to a previous appeal decision¹ on this site. I have had regard to this appeal decision, however the circumstances are materially different and in any case, I have determined this appeal on its own merits.
27. The appeal site lies adjacent to, but not within, the De Vere Conservation Area. As such development has the potential to affect the setting of the Conservation Area. Consequently, I have had regard to the statutory duties set out in s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Council has no concerns regarding the impact of the appeal proposal on the setting of the Conservation Area and its character or appearance. I see no reason to disagree.

Conditions

28. The Council has suggested 21 conditions. Where necessary, and in the interests of precision, I have amended these in accordance with the Planning Practice Guidance.
29. The Council has suggested the standard time limit condition (condition 1) and the requirement for the development to be carried out in accordance with the approved plans (condition 2). I consider such conditions necessary to provide certainty.
30. A series of conditions detailing the materials to be used and landscaping are necessary in the interests of protecting the character and appearance of the area (conditions 3-7 and 11-12).
31. The Council has suggested a suite of 3 conditions to control the impacts arising from demolition and construction works. I agree that such conditions are necessary and reasonable (conditions 8-10). I have not imposed the Council's suggested condition relating to the submission of an Arboricultural Scheme of

¹ APP/K5600/A/11/2154403, dated 6 June 2012.

Supervision. These details are already included in the Arboricultural Assessment and Method Statement. In addition requiring the development to adhere to the details submitted and hereby approved will ensure the protection of the London Plane Tree.

32. A condition to address unexpected contamination should it arise is reasonable given the nature of basement excavation required (condition 14). Conditions relating to noise, vibration and odours from the proposed on site plant and vents are necessary to protect the living conditions of adjoining occupiers (conditions 15-18). The Council has also suggested a condition to prevent the use of the single storey section of the building being used as a roof terrace, which I agree is necessary to protect the living conditions of surrounding occupiers.
33. The Council is also seeking conditions relating to energy performance and water efficiency. I am mindful of the Written Ministerial Statement of 25 March 2015 which allows Councils to continue to apply existing energy performance policies that set requirements up to the equivalent of the energy requirements of Level 4 of the Code for Sustainable Homes. As the CLP contains a specific policy on climate change, (Policy CE1) it is reasonable to attach a condition relating to energy performance (condition 20). I have not, however, attached the condition regarding water efficiency. All new homes have to meet the mandatory national standards set out in Building Regulations of 125 litres/person/day. I have no evidence of local need before me which would justify the tighter, optional Building Regulations requirement of 110 litres/person/day.

Conclusion

34. Having regard to all matters raised, including those of interested parties, it is concluded that the appeal should succeed and planning permission should be granted subject to conditions.

Rachael A Bust

INSPECTOR

Schedule of Conditions (20 in total)

- 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 approved plans:
 - Drawing number 2923 001 – site & location plan
 - Drawing number 2923 D 401 – demolition plan
 - Drawing number 2923 010 – existing ground floor
 - Drawing number 2923 011 – existing first floor
 - Drawing number 2923 012 – existing second floor
 - Drawing number 2923 013 – existing roof plan
 - Drawing number 2923 020 – existing front elevation
 - Drawing number 2923 021 – existing side elevation
 - Drawing number 2923 022 – existing rear elevation
 - Drawing number 2923 040 – existing section
 - Drawing number 2923 201 – proposed site
 - Drawing number 2923 209 – proposed basement
 - Drawing number 2923 210 – proposed ground floor
 - Drawing number 2923 211 – proposed first floor
 - Drawing number 2923 212 – proposed second floor
 - Drawing number 2923 213 Rev A – proposed roof plan
 - Drawing number 2923 220 – proposed front elevation
 - Drawing number 2923 221 – proposed side elevation
 - Drawing number 2923 222 – proposed side elevation 2
 - Drawing number 2923 223 – proposed rear elevation
 - Drawing number 2923 224 – proposed elevation to lightwell
 - Drawing number 2923 230 Rev A – proposed section A
 - Drawing number 2923 231 Rev A – proposed section B
 - Drawing number 2923 232 – proposed section C
 - Drawing number 2923 233 Rev A – proposed section D
 - Drawing number 2923 SK210 – proposed ground floor & garden diagram
 - Drawing number 15413-BT3 – Tree protection plan
- 3) The building shall be constructed in yellow London Stock brick with a flemish bond, with white painted render to the ground floor and shall be so maintained.
- 4) External windows and doors hereby permitted shall be timber framed and painted, and so maintained.
- 5) The roof slopes of the pitched roof of the main section of the building hereby permitted shall be clad in natural slates, and so maintained.
- 6) The cheeks of the dormer window shall be clad in lead and be so maintained.
- 7) The railings to the front and side boundary wall and the first floor Juliet balconies shall be painted black, and so maintained.
- 8) No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The statement should include:
 - a) routeing of demolition, excavation and construction vehicles, including a response to existing or known projected major building works at other sites in the vicinity and local works in the highway;

- b) access arrangements to the site;
- c) the estimated number and type of vehicles per day/week;
- d) details of any vehicle holding area;
- e) details of the vehicle call up procedure;
- f) estimates for the number and type of parking suspensions that will be required;
- g) details of any diversion or other disruption to the public highway during preparation, demolition, excavation and construction work associated with the development;
- h) work programme and/or timescale for each phase of preparation, demolition, excavation and construction work associated with the development;
- i) details of measures to protect pedestrians and other highway users from construction activities on the highway;
- j) a strategy for coordinating the connection of services on site with any programme work to utilities upon adjacent land; and
- k) where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, position of nearby trees in the highway or adjacent gardens, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

The development shall be carried out in accordance with the approved Construction Traffic Management Plan.

- 9) No development shall commence until a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been appointed to supervise the construction works throughout their duration and their appointment confirmed in writing to the Local Planning Authority. In the event that the appointed engineer ceases to perform that role for whatever reason before the construction works are completed those works will cease until a replacement chartered engineer of the afore-described qualification has been appointed to supervise their completion and their appointment confirmed in writing to the Local Planning Authority. At no time shall any construction work take place unless an engineer is at that time currently appointed and their appointment has been notified to this Authority in accordance with this condition.
- 10) No development shall commence until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works forming the subject of this permission.
- 11) No development shall commence until a scheme of landscaping, to include all existing trees and shrubs and proposed trees shrubs and paths and their surfacing materials, has been submitted to and approved in

- writing by the local planning authority, and the development shall only be carried out and maintained in accordance with the details so approved.
- 12) All tree and shrub planting forming part of the plans and details approved through this planning permission shall be carried out in the first planting and seeding season following the first occupation of the development or the completion of the development whichever is the sooner. Any trees or shrubs which, within a period of five years from the first planting and seeding season referred to above, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
 - 13) All development including demolition together with any works relating to trees shall be carried out in accordance with the details contained in the Arboricultural Assessment and Method Statement, dated 23 December 2016.
 - 14) If during development, contamination not previously identified is found to be present at the site, development work shall cease and not be recommenced until a report indicating the nature of the contamination and how it is to be dealt with has been submitted to, and approved in writing by, the local planning authority. The approved measures shall be implemented in full.
 - 15) Noise emitted by all three air conditioning condensing units and the air handling unit located in the basement plant room, together with the associated garden exhaust and intakes, when taken individually or in combination, shall not exceed a level 10dBA below the existing lowest LA90(10min) background noise level at any time when the plant is operating, and where the source is tonal it shall not exceed a level 15dBA below. The noise emitted shall be measured or predicted at 1.0m from the facade of the nearest residential premises or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The plant shall be serviced regularly in accordance with the manufacturer's instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is determined by the local planning authority to be failing to comply with this condition, it shall be switched off upon written instruction from the local planning authority and not used again until it is able to comply.
 - 16) Prior to commencement of the use of the three air conditioning condensing units and the air handling unit located in the basement plant room, together with the associated garden exhaust and intakes, the noise mitigation measures, of the performance and specification as described in section 7.09, page 5, of the Plant Impact Assessment Report (prepared by Environmental Equipment Corporation Limited, dated 10 May 2016, ref. MO/EC14551-004), shall be adopted and implemented in full and maintained thereafter in accordance with these details.
 - 17) The plant and lift shall not operate unless it is supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
 - 18) Fumes or odours expelled from any flue serving the hygiene plant or providing ventilation to the swimming pool area shall not be detectable at the property boundary. If at any time the extraction plant is determined

by the local planning authority to be failing to comply with this condition, it (or the source equipment) shall be switched off and not used again until it is able to comply.

- 19) The roof area of the single storey section of the building hereby approved shall not be used as a balcony, roof garden or similar amenity area.
- 20) The dwelling shall not be occupied until the relevant requirements of level of energy performance equivalent to ENE1 level 4 of the Code for Sustainable Homes have been met and the details of compliance provided to the local planning authority.

End of Schedule