
Appeal Decisions

Site visit made on 2 July 2019

by J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 15th July 2019

Appeal A - Ref: APP/K5600/W/19/3224332 **60 Hornton Street, London, W8 4NU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Shahriar Tadjbakhsh against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/18/07558, dated 20 November 2018, was refused by notice dated 14 January 2019.
 - The application sought planning permission for the Variation of condition 2 (approved plans) of planning permission 16/03553 allowed under appeal ref: APP/K5600/W/17/3173181 to allow minor extension to basement; reduction in footprint of side and rear extensions at ground floor level; repositioning of light wells, front entrance and single parking bay at ground floor level and skylights to main roof; removal of brick shed to the corner of Pitt Street and Hornton Street; demolition and rebuilding of north-south wall between entrance and side garden; and enhanced landscape proposals without complying with condition 2 attached to planning permission Ref PP/18/02198, dated 15 June 2018.
 - The condition in dispute is No 2 which states that: The development shall not be carried out except in complete accordance with the details shown on submitted plans Site map. Location plan. HS_P:/01, /02, /03, /04, /05, /06, /07, /08, /09, /10, /11, /12, /40, /41, /42, /43, /44, /45, /46, /47, /47A, /48, /49, /50 and /51.
 - The reasons given for the condition is: The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.
-

Appeal B - Ref: APP/K5600/W/19/3226320 **60 Hornton Street, London, W8 4NU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Shahriar Tadjbakhsh against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref PP/18/07569, dated 21 November 2018, was refused by notice dated 20 March 2019.
- The application sought planning permission for the Variation of condition 2 (approved plans) of planning permission 16/03553 allowed under appeal ref: APP/K5600/W/17/3173181 to allow minor extension to basement; reduction in footprint of side and rear extensions at ground floor level; repositioning of light wells, front entrance and single parking bay at ground floor level and skylights to main roof; removal of brick shed to the corner of Pitt Street and Hornton Street; demolition and rebuilding of north-south wall between entrance and side garden; and enhanced landscape proposals without complying with condition 2 attached to planning

permission Ref PP/18/02198, dated 15 June 2018.

- The condition in dispute is No 2 which states that: The development shall not be carried out except in complete accordance with the details shown on submitted plans Site map. Location plan. HS_P:/01, /02, /03, /04, /05, /06, /07, /08, /09, /10, /11, /12, /40, /41, /42, /43, /44, /45, /46, /47, /47A, /48, /49, /50 and /51.
- The reasons given for the condition is: The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.

Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for the erection of a replacement dwelling house, raise height of existing brick boundary wall, and new landscaping and tree planting scheme with a Variation of condition 2 (approved plans) of planning permission 16/03553 allowed under appeal ref: APP/K5600/W/17/3173181 to allow minor extension to basement; reduction in footprint of side and rear extensions at ground floor level; repositioning of light wells, front entrance and single parking bay at ground floor level and skylights to main roof; removal of brick shed to the corner of Pitt Street and Hornton Street; demolition and rebuilding of north-south wall between entrance and side garden; and enhanced landscape proposals at 60 Hornton Street in accordance with the application Ref PP/18/07569 dated 21 November 2018, without compliance with condition number 2 previously imposed on planning permission Ref PP/18/02198 dated 15 June 2018 and subject to the conditions set out in the attached schedule.

Application for costs

3. An application for costs in respect of Appeal B was made by Mr Shahriar Tadjbakhsh against the Council of The Royal Borough of Kensington & Chelsea. This application is the subject of a separate Decision.

Preliminary Matters and Background

4. Planning permission was granted on appeal¹ for the replacement house in a modern style. The Inspector at that time concluded that, as a replacement building, designed in similar style, scale and with fenestration akin to the building which it would replace would be acceptable. Moreover, the Inspector concluded that as a replacement it would make a positive contribution to the Kensington Conservation Area.
5. The variation permission PP/18/02198 which both these appeals seek to amend was approved in 2018 and three further applications have been made and granted to discharge conditions relating to it.
6. Nonetheless in the interests of clarity I set out the detail of each scheme :-

Appeal A relates to the alteration of the size and positioning of the fenestration to the Pitt Street Façade of the building coupled with the addition of a structure which would form a balcony spanning the first and second floors incorporating a vertically detailed privacy screen across windows on this same façade. It is described in the application as:- a variation of the condition involving the substitution of proposed drawings: HS_P4_40, HS_P4_41, HS_P4_42,

¹ APP/K5600/W/17/3173181

HS_P4_43, HS_P4_44, HS_P4_45, HS_P4_46, HS_P4_47, HS_P4_47a, HS_P4_48, HS_P4_49, HS_P4_50, HS_P4_51, HS_P4_52 to replace permitted drawings, HS_P40, HS_P41, HS_P42, HS_P43, HS_P44, HS_P45, HS_P46, HS_P47, HS_47A, HS_P48, HS_P49, HS_P50, HS_P51, HS_P52.

Appeal B involves variation of the plans to incorporate an enlargement to the projecting side element previously agreed at ground floor but extending this at first and second floor, the inclusion of a cut out to the second-floor corner, adjustments to the window arrangement and skylights and an enclosed terrace together with internally concealed air conditioning units at second floor to the back of the proposed building. It is described on the application as:- Variation of Condition 2 of PP/18/02198 amended to include alteration to fenestration, handrails and roof lights and addition of side extension to first and second floor levels above existing ground floor extension, second floor terrace and air conditioning.

7. In respect of Appeal B, the Council issued two different decision notices. Both are dated 20 March 2019 and each detailed two reasons for refusal. In the first decision reason one related to design and reason two related to the absence of an acoustic report to demonstrate compliance with noise criteria. In the second decision notice reason one was replicated as in the first decision. However, the acoustic reason was omitted and replaced with a further detailed design reason. I have no evidence to suggest that any further explanation was given by the Council to the appellant at the time that second decision was issued.
8. Subsequently in the rebuttal statement to the costs application, reference is made by the Council to an unfortunate administrative error which was corrected as soon as the fault became evident, However given that acoustic matters had been resolved the appellant should have been well aware of that fact and could have checked at any point. Nonetheless the Council apologised for the confusion caused by their error. Accordingly, despite the existence of two decision notices in respect of Appeal B, I will consider only the second notice which was issued and need not give further attention to the matter of air conditioning given that the Council have effectively superseded the first decision notice. I will however make further comment on this matter in my costs' decision.
9. At the time of my visit works were underway on site though were not yet above ground, nonetheless work on the development has clearly commenced.

Main Issue

10. The main issue in both appeals is the effect of the development on the character and appearance of the area and whether the changes proposed to the approved development would preserve or enhance the character or appearance of the Kensington Conservation Area (KCA).

Reasons

11. The site is located in the KCA occupying a prominent corner plot. The area is densely populated with many traditional terraces including those facing the appeal site on Hornton Street and Pitt Street. There is a rich architectural history in the KCA where rows of traditional terraced buildings exhibit a definite architectural rhythm and intricate detailing, and which contribute positively to the significance of the KCA. Properties on the same side of Pitt Street as the

appeal site are nonetheless simpler in appearance and design; they provide a distinctly modern though not unattractive contrast.

12. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states I must pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Furthermore, paragraph 132 of the National Planning Policy Framework (the 'Framework') states that great weight should be given to the heritage asset's conservation. In this case that is the conservation of the KCA, not this specific building. I have had regard to this requirement in reaching my decision on each appeal.

Appeal A – Privacy Screen and fenestration changes

13. The main form of the approved building will be angular with three storeys and a flat roof. Windows on the Pitt street elevation were designed with distinctly simple style with vertical proportions; an element I consider integral to the success of such a modern style of building. The changes involve different sized openings, smaller in height and covered with a balcony and privacy screen projecting almost a metre from the front elevation of the building and which would span across a number of the window apertures and standing proud from the face of the building. The privacy screen would be adjustable and incorporated into the metal structure. The balcony/screen would be particularly prominent due to its forward projection from the front of the building.
14. Whilst the appellant emphasises that the Council have not objected to the alteration to the size of the openings, I consider the combined effect would result in a confused elevation involving heavy bulky detailing which would be inherently fussy in appearance and which would detract from the simple lines of the building under construction. This detailing would be incompatible and inappropriate on what will be a simple modern building, the success of which in such a sensitive location will be the execution of fine detail. I do not subscribe to the view that the balcony/privacy screen would significantly enhance the architectural merit of the scheme nor that without it there would be no relief on the elevation causing it to appear as a monolithic flat façade, quite the opposite. So, for the reasons given the privacy screen/balcony would detract from rather than enhance the character of the KCA causing harm and failing to preserve or enhance the character of the KCA. That harm, in the words of the Framework would be less than substantial.
15. It has been highlighted by the appellant that there is a large privacy screen on No.4 Pitt Street which is close to the appeal site. However, I found that the screen on No.4 appeared to be a fundamental architectural part of the design flush with the elevation which appears to be integral to the building. In contrast the appeal proposal would appear as a bolt on and rather clumsy addition.
16. Consequently, the proposal would conflict with Policies CL1, CL2, and CL3 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (2015) (the Local Plan). Together these policies seek to ensure that new development respects the existing context and takes opportunities to improve the quality and character of buildings and the way they function and contribute positively to the townscape with high quality architecture.
17. In reaching this decision I have taken into account that Policy CL6 of the local plan relates to the adaptation of existing buildings rather than to the design of new build.

Appeal B – alterations to side projection, cut outs, alterations to fenestration and air conditioning arrangements

18. The appellant indicates that the proposals alter the detail of the original approval seeking to ensure that the light reaching the internal space is maximised whilst at the same time protecting the privacy of the internal space. This includes the enlargement of a side section of the design by the addition of a relatively small amount of floorspace. Whilst the original proposal sought to respect the building which is its predecessor that building no longer exists.
19. The Council have not identified what they consider to be the significance of the KCA nor what harm would be caused as they are required to do by the Framework². Instead the Council take issue with the design amendments which they say would be unsympathetic, obscuring and unbalancing the building and diminishing the approved buildings positive contribution. However, the statutory test is not whether the Council prefer the original scheme but whether the appeal proposal would preserve or enhance the KCA.
20. I have explained above the context of the site in relation to the historic Victorian buildings as well as the juxtaposition with the modern buildings on the same side of Pitt Street as the appeal site. Whilst the alterations would introduce variation to the design they would not be as simple in architectural form as the approved design. Nonetheless, they would reflect the design themes already found on Pitt Street in the existing modern buildings.
21. I do not find that the totality of the alterations proposed in appeal B would result in a cluttered or unsympathetic appearance. The cut outs and glazed sections may be uncharacteristic when compared to the Victorian terrace however the building would be part of a modern group on Pitt Street and to that extent would reflect that character.
22. The amended design would be highly visible when viewed from higher ground on Hornton Street, but this would be set against the principal part of the building and against the existing trees which are to be retained. I find that this would result in a coherent design which would not be out of place in this location even though it provides a marked contrast with the older buildings. The view up Hornton Street would be partially obscured by existing trees.
23. Taking these factors in to account I consider the proposal to be an acceptable design alteration, the elements do not form such significant change to the approved development, indeed the Council in their officer report state that the scale and nature of the proposals are not substantially different to those originally approved.
24. Consequently, I find there to be no conflict with Policies CL1, CL2, CL3 or CL11 of the Local Plan and that the proposal would preserve or enhance the character or appearance of the KCA.
25. In reaching this conclusion I have borne in mind that Policies CL6 and CL9 quoted by the Council relate to the alteration of existing buildings which I do not consider to be relevant to Appeal B.

² Paragraph 190

Other matters - Appeal A

26. In regard to appeal A the appellant argues that the Council attributed excessive weight to the comparisons to the original building which has already been removed however I did not find that to be the case from my analysis of the officer report or their statement of case.
27. The appellant also emphasises the desire to achieve a balance between the detailing of the building, the need to let in more daylight to the building coupled with securing privacy of its occupants and those of the buildings on the opposite side of Pitt Street. Even so the building would be set back from the edge of the street and the distances involved across the street would be such that there would not be an unacceptable level of overlooking such as would justify the addition of an inappropriate balcony/privacy screen.

Other matters - Appeal B

28. The Council have approached their assessment as a two-storey extension of a building however as this is not yet in existence it is more appropriately dealt with as a revision to the approved scheme. Essentially would an application incorporating all of the changes be appropriate to the site and would it preserve or enhance the KCA, I have found that it would.
29. Concern has been raised in regards to the alteration to the fenestration however the total glazing area would be less on the street facing elevations than the original design. The position of the building set back from street and the distance between it and existing buildings on Pitt Street mean that the it will not alter the distance between facing windows and thus there would be no increased impact on the relationship between the existing properties and the dwelling under construction. Where it does alter the facing distance across Hornton Street the face of the building would be set back several metres from the edge of the site and the distance between the proposed building and the existing terrace across Hornton Street would not represent any adverse impact on the privacy of occupants
30. The appellants take issue with the Councils approach to the comparison with the design of the building which has been demolished and which provided the initial justification for the replacement building. That approval was an interpretation of that structure and not from my reading to be a replica therefore continued comparisons with the 1960's original is neither helpful nor appropriate. They deflect attention from the statutory test of whether the appeal proposal would preserve or enhance the KCA; a matter on which I have already concluded.

Conditions

31. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990 (as amended) (the Act) should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
32. The Framework sets out that conditions should be kept to a minimum and only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Council have put forward conditions however in some cases they

contain additional information and in a number of instances involve tailpiece conditions which I have removed.

33. In relation to the matter of plans I have used the plans list which is contained in the application form as this reflects the appeal plans rather than the list contained in the Councils suggested condition which lists drawings unconnected to either the first appeal decision, the revisions approved under application PP/18/02198 or those of this appeal proposal.
34. As a number of the conditions have been discharged I have imposed all those that I consider remain relevant amending the wording where details have been discharged to ensure long term compliance.
35. As the pre-commencement conditions have been discharged and the development has commenced there is no need for condition 1 as it would have no purpose however for the avoidance of doubt, I will use the suggested wording recommended by the Council as this gives the implementation date of the development. The appellants have not raised any concern with this aspect. They have however taken issue with the suggested additional conditions which the Council have recommended which relate to matters which are not part of the variation details and for this reason I have not attached their recommended condition 16 and 17 relating to gates and materials. In doing so I have taken particular note that the approval of materials for this building have already been dealt with via an application to discharge the materials condition. It is unreasonable of the Council to seek to change their position on the agreement which has been reached or to require it to be revisited.
36. The Council have recommended additional conditions which arise from the need to deal with the air conditioning units which form part of this variation and the appellants have not demurred from the detail of those drafted by the Council. Therefore in order to ensure that the air conditioning units operate effectively at a noise level below an agreed threshold I have imposed them as new conditions 16, 17 and 18.

Conclusion

37. For the reasons set out above and having had regard to all other matters raised I conclude that Appeal A is dismissed. Appeal B succeeds in accordance with my formal decision set out above and subject to the schedule of conditions.

Janet Wilson

INSPECTOR

Schedule of Conditions

1. The development permitted (PP/18/02198) was implemented on 08/10/2018
2. The development shall be carried out in strict accordance with the details shown on HS_P4_40; HS_P4_41; HS_P4_42; HS_P4_43; HS_P4_44; HS_P4_45; HS_P4_46; HS_P4_47; HS_P4_47a, HS_P4_48, HS_P4_49, HS_P4_50, HS_P4_51, HS_P4_52
3. The details of the method of protection of trees during construction approved under the discharge of conditions application CON/18/03676 shall be strictly adhered to in the implementation of this development.
4. The details of the landscaping scheme approved under the discharge of conditions application CON/18/03676 shall be strictly adhered to in the implementation and subsequent ongoing maintenance of landscaping on this development.
5. 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.
6. For the duration of works the tree(s) existing on the site at the date of this permission (with the exception of those already benefiting from consent for felling, lopping, or pruning) shall be protected so as to prevent damage above and below ground, and no tree shall be lopped, topped, or felled, or root pruned, other than in accordance with the agreed details.
7. The roof of the single storey projection facing Hornton Street forming part of this planning permission shall not be used at any time as an external terrace.
8. No water tank lift motor room, or other structure or appliance, shall be erected upon the roof of the single storey projection facing Hornton Street hereby approved or on the main roof.
9. The development shall not be carried out except in strict accordance with the approved Construction Traffic Management Plan by David Lewis - Motion, dated 27/06/2018 as approved under reference CON/18/03702.
10. Chartered Structural Engineer (MI Struct.E) Simon Robinson for Engineers HRW shall supervise the construction works throughout their duration. 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.

11. The lead contractor, or the site, shall be 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). The Certificate of Compliance, shall be 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.
12. During construction of the development hereby permitted the previously approved Sustainable Urban Drainage System (SuDS) shall be fully implemented and maintained thereafter.
13. The development shall not be completed otherwise than in accordance with the approved details that relate to materials to be used on the external faces of the building, as submitted to discharge Condition 13a of PP/18/02198 and approved under CON/18/03689. A sample panel of all facing brickwork showing the proposed bricks, face-bond and pointing mortar is to be provided on site and retained on site until the completion of the works.
14. No cables, wires, aerials, meter boxes, flues, ducts, grilles or pipework other than black rainwater pipes, shall be fixed to any elevation facing a highway.
15. DELETED – NB original condition related to demolition which has now taken place

New conditions relating to new details of the appeal submission.

16. Noise emitted by all building services plant and vents 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.
17. The plant 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. Prior to operation of the plant, the noise mitigation measures as set out in the Plant Noise Assessment, Rev 2 – dated 8 Jan 2019, shall be adopted and implemented in full accordance with the approved details, and shall be so maintained.

<<<< End of Schedule >>>>