
Appeal Decision

Site visit made on 7 August 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2019

Appeal Ref: APP/X5210/W/19/3229788
168 West End Lane, London NW6 1SD

- 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 Lolas Cupcakes Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/4156/P, dated 28 August 2018, was refused by notice dated 3 April 2019.
 - The development proposed is ground floor extension to existing retail bakery/coffee shop unit.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The policy number for the Design & Character policy quoted in the decision notice from the Fortune Green and West Hampstead Neighbourhood Plan 2015 (Neighbourhood Plan) was missing. However, this was clarified in the Council's submission and the appellant has had the opportunity to comment.

Main Issues

3. The main issues of the appeal are;
 - Whether the proposal would preserve or enhance the character or appearance of the West End Green Conservation Area (CA); and
 - the effect of the proposed development on the living conditions of nearby residents, and working conditions of commercial premises, with particular regard to outlook, daylight, sunlight, noise and disturbance.

Reasons

Character and Appearance

4. The appeal site is located within the CA. As such I have had regard to the duty to pay special attention to the desirability of preserving or enhancing its character or appearance. From my observations and the CAAMS¹ its significance lies, in part, in its retention of a village character around the

¹ West End Green Conservation Area Appraisal and Management Strategy

commercial street of West End Lane while having grown into a metropolitan suburb.

5. The appeal site forms part of one of several mansion blocks in the area. Its character reflects the general pattern of the more traditional properties in the CA with a coherence of architectural detailing including the scale and materials. The pattern of openings also forms an important part of the character and appearance of the area.
6. Although the rear elevation of the appeal site and adjacent buildings are not directly referenced in the CAAMS, the documents states that it does not highlight every facet that contributes to the area's special interest. It does comment that the mansion blocks have a uniformity that is a positive contrast to the individualistic character of the houses. It also identifies the importance of the repetitiveness of the details of such buildings. I find the appeal site makes a positive contribution to the significance of the CA.
7. The host building has already been altered and there is not a unified character to its rear elevation. I note the absence of openings on the existing lower ground floor of the appeal site and on the hallway wing of Canterbury Mansions to the rear. Notwithstanding this, while the rear elevation does not have the same elegance or decorative interest as the front, there is a general consistency to the pattern, size and alignment of the openings on much of the rear elevation. The proposed rear windows would fail to respond to this. Even though the rear may have a more functional use, the window arrangement would jar with and disrupt the pattern of openings. This discordant arrangement would be obvious given the size and position of the windows.
8. There would be a loss of the bay window as read as one complete element running vertically from the ground to third floors. Moreover, while it would be retained and could be revealed in the future, the bay would be concealed from external views. The disruption of this positive architectural feature, of which there are fewer on the rear elevation than the front, would be discordant with the more simplistic and regular form of the building.
9. The proposed scheme would not be readily visible from public vantage points, being screened by the existing built form. Nevertheless, the extension would be highly visible from the nearby properties and gardens along Lymington Road. Moreover, that a development is not overly visible in public views is not a reason to allow development that is unacceptable.
10. The extension would be considerably lower than the existing building. Furthermore, it would be of a comparable height and depth to the hallway element of Canterbury Mansions and use complimentary materials. Therefore, while the extension would add additional bulk to the rear part of the building, it would not appear disproportionate to the existing built form at the site or at odds with the mass of development near the site.
11. For the purposes of the National Planning Policy Framework (Framework), the CA is a designated heritage asset. Whether or not the site is a non-designated heritage asset, or affects the setting of one, I have found harm to the significance of the higher level designated asset. Within the overall context, it is considered that the proposal would lead to less than substantial harm to the significance of the CA. The Framework indicates that such harm is to be weighed against the public benefits of a proposal, including securing the

optimum viable use of the building. However, great weight should be given to an asset's conservation and any harm should require clear and convincing justification.

12. I note support in national and local policy for economic growth, expanding businesses and vitality of town centres and that the scheme would contribute to these. The proposal would result in larger premises with greater facilities to meet increased demand. It would also lead to increased employment during and after the proposed works. However, as with economic benefits associated with the construction process, future spending and taxes, given the scale of the proposal the contribution would be moderate. The increased income for the appellant would represent a private rather than public benefit.
13. As such the public benefits do not outweigh the identified material harm to the designated heritage asset. The proposal is therefore contrary to the historic environmental policies contained within the Framework.
14. Consequently, the proposal fails to preserve or enhance the character or appearance of the CA. It would therefore be contrary to Policies A1, D1 and D2 of the Camden Local Plan (Local Plan) and Policies 2 and 3 of the Neighbourhood Plan. These, in part, seek to ensure development has regard to local context and character, and preserves or enhances the historic environment.

Living and Working Conditions

15. The proposed extension would not exceed the height of the hallway for Canterbury Mansions. However, the hallway is primarily alongside the dwelling of 2 Lymington Road (No 2). The scheme would introduce built development of this height along the entire length of No 2's garden. This would significantly worsen the situation. The extension would align with the rear wall of the existing basement storey. Nonetheless, the additional height would create an increased sense of enclosure. Even with matching materials, the extension would dominate views from the garden resulting in an uninviting outlook from it.
16. The main part of the appeal building and those adjacent to it are of a much greater height. However, currently the higher part of the appeal building is set in from the boundary with No 2 behind the existing lower ground floor level. This alleviates the impact of the building to some degree. Although such arrangements may already occur in inner-city environments, this should not be used as a precedent to permit further development that is not acceptable.
17. While I note comments regarding the use of No 2, living conditions of occupiers still need to be protected. In any event, even if not at present, the property may revert to a dwelling in the future.
18. There are already a number of windows on the rear elevations of the appeal site and adjacent buildings orientated towards the gardens of properties along Lymington Road. While the proposal would introduce further windows, and on the boundary of with No 2, I have not been convinced that any additional impacts from light spillage would warrant withholding planning permission.
19. By enclosing the bay window and reducing the light that would enter 166 West End Lane (No 166), the proposal would breach the 45 degree and 25 degree tests set out in the Camden Planning Guidance – Amenity (CPGA). While I note

the CPGA refers to impacts on residents, workers and visitors, it indicates schemes will be assessed on a case-by-case basis.

20. At the time of my site visit the window was largely closed off from the main part of the shop at No 166 being used for storage and access to the lower floor. Moreover, the small window adjacent to the bay was also boarded over and again only served a storage area. Therefore, these areas would not be visited regularly or for long periods. Furthermore, the adjacent office building already featured prominently in what views there were from the rear of the shop and already restricts light to it to some extent. There has also been no compelling evidence to indicate impacts from any additional commercial activity would be significant. As such, the scheme would not lead to unacceptable impacts on the working conditions at No 166.
21. The scheme would also breach the above tests in regard to windows at Canterbury Mansions. Nevertheless, while these windows are south facing, they serve a hallway rather than habitable rooms and are obscure glazed. Mirror glazing is proposed and there are further windows along the same corridor that would allow some light into this area. Any impacts from increased commercial activities would be limited given the use of the area these windows serve. As such, the scheme would not lead to unacceptable impacts on the living conditions of occupiers of Canterbury Mansions.
22. The proposal would be set below the windows of the residential units above the appeal site. Were the appeal to be allowed, conditions could be imposed relating to the roof lantern being non-opening and obscured glazed. I also note that the Council's Environmental Health team has not objected to the proposal and suggested conditions in relation to the roof fan. Impacts from noise during commercial operation, construction and in regard to delivery and servicing arrangements could be mitigated for by the imposition of conditions, were the appeal to be allowed. There has been no substantive evidence to suggest otherwise. The above factors would prevent unacceptable harm to the occupiers of the nearby buildings in regard to noise and disturbance.
23. Nonetheless, the proposal would result in unacceptable harm to the living conditions of 2 Lymington Road with regard to outlook. It would be contrary to Policy A1 of the Local Plan where it, amongst other things, seeks to ensure the amenity of neighbours is protected.

Other Matters

24. My attention has been drawn to alterations to properties along Lymington Road. While I note the area has been subject to change, these proposals are not directly comparable to the scheme before me given the nature of the development and the buildings they relate to. Although there may be large scale development in the future nearby from the redevelopment of the 158-164 West End Lane, this does not alter my findings on the effects of the proposal. In addition, I do not have full details of these schemes or the considerations that led them to be considered acceptable. In any event, each case is assessed on its own individual merits.
25. I acknowledge that the appellant amended the scheme during the course of the application in an attempt to overcome concerns from the Council and that the Council have indicated a capacity for additions at the building. Nonetheless, I

have assessed the scheme on the basis of the details before me and found it would result in harm in regard to the main issues.

26. The Council have not included refusal reasons in relation to other matters such as the accessibility of the site or highway safety. Nonetheless, the absence of harm is a neutral factor.
27. There was third party support for the scheme. Nonetheless, a lack of opposition or support for a proposal in itself is not a ground for refusing or granting planning permission unless founded upon valid planning reasons.
28. The Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Designated heritage assets are an example of such assets and the proposal is contrary to the relevant policies of the Framework in regard to these.

Conclusion

29. Therefore, for the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR