
Appeal Decision

Site visit made on 10 March 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th April 2020

Appeal Ref: APP/L5810/W/19/3242189
44 King Street, Twickenham TW1 3SH

- 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 R Elms against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 19/2510/FUL, dated 13 August 2019, was refused by notice dated 9 October 2019.
 - The development proposed is redevelopment of the existing building to provide 2 x 2-bed residential units at the first and second floors incorporating a rear two-storey extension, with associated cycle storage, refuse storage and private amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. It has been clarified that the appeal site is situated within the Queens Road (Twickenham) Conservation Area and not the Kew Gardens Conservation Area; and the appeal building is not locally listed as a 'Building of Townscape Merit', as identified in the Council's first reason for refusal. I have therefore determined the appeal on this basis.

Main Issues

3. The main issues are: -
 - the effect of the proposed development on the character and appearance of the existing building, its contribution to the Queens Road (Twickenham) Conservation Area and the setting of adjacent Buildings of Townscape Merit;
 - the effect of the proposed development on the living conditions of the occupants of 46 King Street, in terms of outlook and daylight;
 - the effect of the proposed development on the free flow of traffic and highway and pedestrian safety; and
 - whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Character and appearance

4. The appeal concerns a two-and-a-half storey Edwardian building situated within a continuous frontage in King Street to the south of the Queens Road (Twickenham) Conservation Area (QRCA). It is a busy area occupied by a mixture of commercial and retail uses at ground floor, but there are residential properties to the upper storeys of buildings.
5. The significance of the QRCA lies, at least in part, in the long narrow plots of properties on King Street, which remain as a record of the original layout of Twickenham, and views of the buildings and roofscape therein. This includes the largely unaltered rear roof slopes and eaves of the buildings and the same variations in the building heights and widths experienced in King Street. Many of the buildings also incorporate sizeable footprints that extend well back from the frontage of King Street towards Holly Road at the rear.
6. The appeal building is adjacent to several properties¹ identified locally as Buildings of Townscape Merit. In the language of the National Planning Policy Framework (the Framework), they are non-designated heritage assets (NDHAs), the significance of which appears to primarily lie in the contribution made by their King Street frontages. However, they also contribute to the wider townscape and roofscape of the QRCA.
7. The appeal building is smaller than the NDHAs at Nos 46 and 48, which are of three storeys, but all buildings appear to retain their original roof forms. In particular Nos 44 and 45 both incorporate roofs with parapets to either side that drop down to meet corbelling at eaves height. The eaves provide a clear termination of the rear façades. The original roof form of all three buildings make a positive contribution to the character and appearance of the existing buildings and the wider QRCA, as well as the setting to the other NDHAs adjacent.
8. The appeal building also incorporates an existing rear projection at first floor that is modest in scale. This makes a neutral contribution to the character and appearance of the QRCA.
9. Views of the proposed extension would be limited from neighbouring properties at the rear and to a small section of Holly Road. It also does not appear that the NDHAs beyond No 48 would be visible in the view from Holly Road.
10. I appreciate that the width, length and height of the proposed extension would not be harmful to the plot structure of King Street, as the footprint would be similar to other rear projections found elsewhere in the street, particularly to lower floors. The proposal would also be lower than No 46 and could be finished to a high standard internally and externally, using a sympathetic palette of materials.
11. Nevertheless, the proposal would extend notably beyond the rear of the property and above the eaves line with a flat roof returning to the existing roof slope. The subsequent loss of the eaves and the proposed roof form would appear unduly dominant and imposing in relation to the rear façade of the building and markedly disrupt and distort the existing roof form. This would be

¹ Nos 46, 48, 50, 52 and 56-58 King Street.

- harmful to the character and appearance of the appeal building and the appreciation of the roofscape in this part of the QRCA, including the setting of the adjacent NDHAs situated at Nos 46 and 48.
12. Furthermore, although there are railings to the rear façade of properties in King Street, these relate to the enclosure of external accesses to flats on higher floors. The form of the proposed balconies and their railings would not therefore be characteristic of the appeal building or the other buildings nearby in King Street. Accordingly, the balconies would add to my concerns regarding the proposal.
 13. The proposal also includes a new modern door to the King Street frontage of the building. Given that there is much variety to the design of other doors in the locality, it would not be harmful to the character and appearance of the existing building or the QRCA. I note that the Council also raised no objection in this regard.
 14. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The proposed extension would have a negative and consequently unacceptable effect on the significance of the QRCA, as a designated heritage asset. Given that this harm would be localised, the effect on the QRCA as a whole would be less than substantial. It would nonetheless represent an erosion of the distinctive character of the QRCA. In circumstances where there is less than substantial harm to the significance of a designated heritage asset, in this case the QRCA, Paragraph 196 of the Framework and Policy LP3 of the London Borough of Richmond Upon Thames Local Plan (Adopted 3 July 2018) (the LP) identify that this harm should be weighed against the public benefits of proposals.
 15. In the context of Paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. I am also mindful of the support in Policy H2 of the Draft New London Plan² (NLP) in relation to the development of small sites but I note that the NLP cannot be published until Directions identified by the Secretary of State³ have been incorporated, which includes changes to the policy. I have therefore afforded the policy limited weight in my determination of this appeal. Nonetheless, as the proposal would provide one additional unit of accommodation this would only make a modest contribution to the supply and mix of housing in the Borough.
 16. I also recognise that the proposal could be said to make more efficient use of the site, which is previously developed. However, there is no substantive evidence before me that the proposal would be the optimum viable use of the site, including the consideration of development within the original fabric of the building. Furthermore, the Framework is clear that making efficient use of land should include taking into account the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive and healthy places. Development should also be sympathetic to local character and history, including the surrounding built environment.

² Consolidated Suggested Changes Version (July 2019).

³ Set out by the Secretary of State in his letter to the Mayor of London on 13 March 2020.

17. The appellant has signed a unilateral undertaking to make a financial contribution to the provision of affordable housing in the Borough. Similarly, some economic benefits would arise from, for example, employment and procurement of materials during the construction period. Future occupiers would also contribute to the local economy through expenditure, including further afield by use of bus and rail linkages. However, given the scale of the development proposed, these contributions would be limited in their extent.
18. The provision of external space on the proposed balconies would be private benefits restricted to the occupiers of the proposed flats.
19. In accordance with paragraphs 195 and 196 of the Framework, considered together, I conclude that the public benefits I have outlined above do not outweigh the great weight to be given to the less than substantial harm that I have identified.
20. I have been referred to several developments granted permission and others that were pending consideration by the Council at the time of the application⁴. Whilst some details have been provided for a number of these schemes, I am not aware of the full circumstances of each case or the policies that applied at the time of their consideration. Nonetheless, the existence of similar extensions in the locality would not provide justification for a further development that I consider would be harmful to the character and appearance of the host building, the wider QRCA and the setting of adjacent NDHAs. I have considered the appeal scheme on its own individual merits and concluded that it would cause harm for the reasons set out above.
21. Similarly, I have also been referred to several schemes that appear to be for the conversion of floor space⁵ within existing properties. For this reason, they would not be comparable with the appeal scheme before me.
22. Despite my findings in relation to the plot structure of King Street and the proposed door to the front of the building, I conclude that the appeal scheme would have an unacceptably harmful effect on the character and appearance of the existing building, its contribution to the QRCA and the setting of the Buildings of Townscape Merit at 46 and 48 King Street. Hence, the proposal would not accord with Policies LP1, LP3 and LP4 of the LP and the Council's Supplementary Planning Document: Design Quality (Adopted February 2006).
23. Together these policies and guidance require that development conserves and enhances the Borough's designated heritage assets, including Conservation Areas; and preserve, and where possible enhance, the significance, character and setting of non-designated heritage assets, including Buildings of Townscape Merit. In particular, Policy LP1 requires the development is compatible with local character including the relationship to existing townscape, development patterns, views, form and detailing.
24. Furthermore, the proposal would also conflict with Policy LP3 of the LP and paragraph 193 of the Framework both of which require, when considering the impact of a proposed development on the significance of a designated heritage asset, that great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. There would also be

⁴ Planning References: 18/3829/FUL, 18/2683/FUL, 15/2975/FUL, 13/1903/FUL and 12/3318/FUL.

⁵ Planning References: 14/3201/P3JPA and 12/1114/FUL.

conflict with paragraph 197 of the Framework, which requires consideration of indirect or direct effects on a non-designated heritage asset.

Living conditions

25. The outlook from the windows to the rear of No 46 is across the roofscape of surrounding buildings that stretch as far as Holly Road. This includes the rear of No 44, which is below the first-floor level of No 46. Furthermore, the outlook from the small offshoot to the rear of No 46 is currently toward a large blank flank wall of No 42.
26. I note that prior approval has been granted by the Council to convert the first and second floors of No 46 to provide two flats⁶. The second floor flat would include access taken from the rear across the roof, with an external staircase up to the rear elevation. It is unclear whether that permission has been fully implemented, but at the time of my visit the external staircase was not in situ. Were that permission to be implemented, the outlook from the first floor of No 46 would be through and around the external staircase, which would not be enclosed. This would have some effect on the outlook from the first floor of No 46.
27. Part of the proposed extension would be closer to the side boundary with No 46 but the remainder would step away further from the boundary. However, the proposal would present a substantial blank solid wall in close proximity of the boundary, the scale and bulk of which would appear oppressive and imposing when viewed from the windows at first floor within No 46.
28. I appreciate that the existing rear outlook of No 46 is not of a high quality and could deteriorate as a result of the aforementioned external staircase, but the proposal would add to the sense of enclosure that would be experienced in the views available from the first-floor windows of No 46. The outlook from the property would therefore be far worse with the proposed development, to the extent that the living conditions of occupiers would be unacceptably affected.
29. As with the appeal building, there are windows in No 46 that face King Street. Given that these rooms are to the front of the building this would not outweigh my concerns in relation to outlook from rooms at the rear, which would still be affected. Moreover, in the case of No 46, were the rooms arranged as shown for the prior approval, the rear windows would provide the only means of outlook for each room. In particular, although the kitchen and living room at first floor would appear to be open plan, the rooms could feasibly function separately.
30. Even if the prior approval were not to be implemented, Policy LP8 of the LP does not distinguish between the nature of the use of neighbouring properties. Therefore, the occupants of an office use could be equally affected by the proposal.
31. Given the orientation and scale of the existing buildings in King Street, it is likely that the rear elevation of No 46 will already be in shade for a large part of the day. The proposal would be likely to result in some reduction in the daylight entering No 46. However, due to the existing and proposed arrangements, it is unlikely that the scale of the proposed extension would

⁶ Planning Reference: 16/2975/GPD15.

cause unacceptable harm to the living conditions of the occupiers of that property in relation to the availability of daylight.

32. I appreciate that the Council has not raised concerns with regard to the relationship of the proposed development to the second floor of No 46, as the majority of the proposal would be below its floor level. However, this would not outweigh the harm that I have identified above in relation to the first floor. Similarly, although I appreciate that there are projections to the rear of other properties in King Street, I am not aware of the circumstances that led to their development. In any event, I have considered the appeal scheme on its own individual merits and found that harm would result to neighbouring occupiers.
33. Despite my findings in relation to the effects of the proposal on daylight and the outlook from the second floor of No 46, I conclude that the proposed development would appear oppressive and overbearing when viewed from the first floor of No 46, and so would unacceptably harm the living conditions of the occupiers of this floor in terms of outlook. Hence, the proposal would not accord with Policy LP8 of the LP, which requires that proposals are not visually intrusive or have an overbearing impact as a result of their height, massing or siting, including through creating a sense of enclosure.

Traffic and highway and pedestrian safety

34. The appeal site is situated within the Central Twickenham Controlled Parking Zone D and the Council has suggested that there is limited availability for on-street parking permits. At the time of my visit, I noted that on-street parking spaces were predominantly full.
35. The appellant has therefore provided a completed planning obligation in the form of a Unilateral Undertaking (UU), which sets out a restriction on future occupiers of the additional unit, created by the proposal, applying for a permit to park on the street, except for occupants eligible for a disabled person's badge. The future occupants of one of the proposed flats would therefore retain this right.
36. Under normal circumstances, this would not represent an enforceable position under section 106 of the Act⁷ since it would be a measure restricting the actions of an individual and thus not requiring the land to be used in a specified way. However, the UU also refers to section 16 of the Greater London Council (General Powers) Act 1974, a legislative measure which allows undertaking and agreements binding successive owners in connection with the land. It has been established by case law⁸ that this has a wider meaning than that which is set out by section 106.
37. It is therefore appropriate for the UU to refer to section 16 insofar as it is sufficient to achieve a restriction on residents and successive residents of a given development applying for parking permits. The UU refers to both acts, so for enforcement purposes, I would be able to take into account what it seeks to achieve.
38. The Council has not commented on the UU in respect of this matter but I consider that this would be a proportionate approach given that the appeal site is situated within an area with good public transport accessibility levels (PTAL

⁷ The Town and Country Planning Act 1990.

⁸ R (Khodari) v Kensington and Chelsea RBC [2017] EWCA.

5). Moreover, the site is close to Twickenham Railway Station, which offers services into London and to the west, there are numerous bus services that pass along King Street and the proposal would provide cycle storage.

39. In light of the above, I conclude that the proposed development would not have a harmful effect on the free flow of traffic and highway and pedestrian safety. Hence, the proposal would accord with Policies LP44 and LP45 of the LP, which require that new development does not have a severe impact on the operation, safety or accessibility to the local or strategic highway networks; and demonstrates that proper controls can be put in place to ensure that the proposal will not contribute to on-street parking stress in the locality.

Affordable Housing

40. Policy LP36 of the LP requires that a contribution be made towards affordable housing from all housing sites. On sites below the threshold of ten units gross, a financial contribution to the Council's Affordable Housing Fund is required, commensurate with the size of development in line with a sliding scale set out in the policy and within the Council's Affordable Housing Supplementary Planning Document (2014). A contribution of 8% of the open market valuation applies to the creation of two units.
41. Based on the evidence before me, a contribution towards affordable housing is a reasonable requirement. However, it is clear that the contribution that could be realised from the proposal has not been properly resolved between the main parties. The evidence before me is therefore inconclusive and I am not able to reach a formal conclusion either way on this main issue.
42. Given that I have found harm, in the first and second main issues, in relation to character and appearance and living conditions, it is not necessary for me to consider this matter in any further detail.

Other Matters

43. The appellant submitted the proposal following pre-application advice. The Framework stresses the benefits of early engagement and of good quality pre-application discussion. Whilst I am mindful that this is not binding, in any event, I have considered the individual merits of the proposal afresh and any positive feedback given in respect of any matters does not warrant allowing this appeal.
44. I appreciate that the Council has not raised concerns with regard to the relationship of the proposed development on the living conditions of the occupiers of No 42. Moreover, this has a large first and second floor rear projection with no windows so would not be affected by the proposal. However, the absence of such harm would not outweigh the concerns that I have identified above in relation to the living conditions of the occupiers of No 46.

Planning Balance

45. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
46. The appellant has acknowledged that the Council has a five-year supply of deliverable housing sites but has suggested that the Council is unlikely to

maintain this in future as the housing targets set out in the NLP far exceed those set out in the Council's Local Plan, particularly in terms of small sites. Even if I was to determine that the Council could not demonstrate a five-year supply of deliverable housing sites, which would engage footnote 7 to paragraph 11 of the Framework, I am mindful that in light of my finding in relation to heritage matters, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, the proposal is not sustainable development, for the purposes of the Framework and therefore, the presumption in favour of sustainable development does not apply.

47. I have already identified the benefits of the scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage asset, in this case the character and appearance of the QRCA. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the character and appearance of the existing building, its contribution to the wider QRCA and the setting of the NDHAs at Nos 46 and 48. Furthermore, the proposal would also have a harmful effect on the living conditions of the occupiers of the first floor of No 46. The proposal would not amount to sustainable development under the terms of the Framework. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.
48. In the final balance, I consider that the harm to the character and appearance of the existing building, the QRCA, the setting of the NDHAs at Nos 46 and 48 and the living conditions of the occupiers of the first floor of No 46, would outweigh the benefits of the proposed development outlined above. Therefore, the other material considerations in this case do not indicate that the appeal scheme should be determined other than in accordance with the development plan.

Conclusion

49. While I have not found harm in relation to the free flow of traffic and highway and pedestrian safety, I have identified that the proposed development would have a harmful effect on the character and appearance of the existing building, the QRCA, the setting of the NDHAs at Nos 46 and 48 and the living conditions of the occupiers of the first floor of No 46. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR