
Appeal Decision

Site visit made on 5 August 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/H5390/W/20/3249087

Kona Kai, 515 Fulham Road, London SW6 1HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Tonin Kacaj against the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2019/01552/FUL, is dated 20 May 2019.
 - The development proposed is demolition of existing first-floor roof extension (7sqm), erection of pergola to create a partially covered first-floor roof terrace and blocking up existing fenestration in ground-floor side elevation, together with internal alterations.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The Council and the appellant have agreed a change in the description of development to 'demolition of existing rear extension at first floor level; erection of a timber pergola, together with timber panelled and glazed screens around the flat roof of the single storey back addition at first floor level, in connection with its use as a roof terrace; blocking-up of existing windows to the side elevation at ground floor level'. I have determined the appeal on this basis.
3. A number of iterations of the scheme and revised plans were submitted throughout the course of the application process. The Council have confirmed that the original plans dated May 2019 were consulted upon.
4. Alongside a number of other changes, the revised plans show a number of changes to the east elevation of the building which were not present on the originally submitted scheme. These include the replacement of existing fixed windows with sliding sash windows and the introduction of a sliding sash window at ground, first and second floor levels.
5. The Anderson Acoustics Noise Impact Assessment, July 2019 (Noise Assessment) submitted in support of the appeal was prepared on the basis of the plans dated May 2019 and would not, therefore, have considered any potential impact of the new fenestration in this respect.
6. I understand that the revised plans were submitted with the intention of addressing concerns and comments raised by Council Officers. However, in my view the changes to the scheme are significant and should I consider them it

would deprive those who should have been consulted on the changed development of the opportunity of such consultation. I have therefore determined the appeal on the basis of the plans submitted with the original application in May 2019.

7. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application for planning permission. The Council's concerns are that the proposal would cause significant harm to the living conditions of neighbouring occupiers and would also have significantly detrimental effects on the character and appearance of the area. Concerns regarding bicycle storage and refuse storage and collection have also been raised. I have had regard to the Council's statement in framing the main issues.

Main Issues

8. The main issues are:

- the effect of the proposal on the character and appearance of the area; including whether or not the proposal would preserve or enhance the character or appearance of the Moore Park Conservation Area (CA); and
- the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to outlook, noise and disturbance, and light; and
- whether or not the proposal would provide satisfactory provision for cycle storage and refuse storage and collection.

Reasons

Character and appearance

9. The appeal property is the Kona Kai public house which occupies a corner plot at the junction of Fulham Road and Britannia Road. Kona Kai is situated within the Moore Park Conservation Area (CA).
10. The building has a yellow bricked façade with attractive detailing. There is an existing single storey structure with a flat roof, an elevated parapet and a protective barrier fence. A brick-built extension projects into the space at first floor level. The building retains many attractive features and makes a positive contribution to the character and appearance of the CA.
11. I am required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
12. The proposal is for the erection of a timber pergola, together with timber panelled and glazed screens around the flat roof of the single storey back addition at first floor level, in connection with its use as a roof terrace. The proposal also includes the demolition of the brick-built extension and blocking up a number of windows which currently detract from the visual appearance of the host building at ground floor level.
13. The proposed structure would be large, extending almost the full size of the single storey element of the building. The bulk of the scheme would be emphasised by the expanse of largely featureless timber panelling along the

- southern elevation of the building causing the development to appear as a hard, solid feature. Moreover, the proposed materials, particularly the timber, would fail to complement the palette of materials found on the host building and would lead to the structure appearing as a visually jarring feature.
14. Furthermore, the proposed pergola would extend beyond the main Britannia Road elevation of the building in line with the single storey element and, though I note this is already the case with the single storey element, would breach the established main building line to the detriment of the character and appearance of the building.
 15. The structure would also have an awkward relationship with the host dwelling; with the ridge line of the proposed pergola sitting uncomfortably slightly below the stringcourse detailing, but above the top of the window glazing, of Kona Kai and disrupting the overall visual composition of the building. The proportions and detailed design of the glazed elements of the east elevation of the scheme would be out of keeping with the glazing which is present elsewhere on the building and would fail to integrate successfully with the host building.
 16. I acknowledge that the wider CA comprises a diverse variety of building typologies and designs. However, in this instance, the proposed scheme would be incompatible with the host building itself. The prominent position of the site within the street scene exacerbates the harm I have identified. Therefore, in my view, the proposal would represent an unsympathetic and incongruous addition which would be out of keeping with the host building and the character and appearance of the area.
 17. I appreciate that careful consideration has been given to the design of the scheme and recognise the improvements which would stem from blocking up the four existing differently sized and disproportionately small windows in the side elevation at ground floor level and rendering the wall with a smooth finish. I also note the appellant's intention for the pergola to accommodate creepers and planting which would soften, and contribute towards the greening of, the urban realm. These considerations, however, would not be sufficient to mitigate the harm I have identified.
 18. In addition to the requirement under section 72 of The Act, the CA is also a designated heritage asset as defined by the National Planning Policy Framework (the Framework), which seeks to ensure that heritage assets are conserved in a manner appropriate to their significance.
 19. In this case, due to the small scale of the proposal, the proposed development would cause less than substantial harm to the significance of the designated heritage asset. Paragraph 196 of the Framework indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
 20. I acknowledge that some, limited, elements of the scheme as set out above would represent visual improvements and enhance the character and appearance of the CA in this respect. This would, indeed, represent a public benefit of the scheme. However, this benefit is limited by the minor nature of the improvements and the scale of the proposal and I afford this public benefit limited weight in my assessment of the scheme.

21. Consequently, the public benefits of the scheme I have identified would not outweigh the harm to the designated heritage asset and the proposed development would not pass the paragraph 196 balancing exercise.
22. Therefore, the proposal would cause harm to the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA and would fail to accord with Policies DC1 and DC4 of the Hammersmith and Fulham Local Plan, February 2018 (LP). These Policies seek, amongst other things, a high quality urban environment that respects and enhances its townscape context and heritage assets. The proposal would also conflict with LP Policy DC8 which states that applications affecting designated heritage assets, including alterations and extensions to buildings, will only be permitted if the significance of the heritage asset is conserved or enhanced.
23. The proposal would also fail to meet the aims of Key Principles AH2 and CAG3 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document, February 2018 (SPD). These Principles state that there will be a presumption in favour of the conservation of heritage assets and that new buildings, extensions and alterations should be sympathetic to the architectural character of the built context and should not have a harmful impact on the character and appearance of the conservation area.

Living Conditions

24. The proposed pergola would be in close proximity to the neighbouring apartment block on Britannia Road. Five windows serving apartments within the block are sited on the elevation of the apartment block which directly faces the appeal site.
25. Due to its size, solid construction and proximity the proposed timber panelling would be a dominant feature in the outlook from the apartment windows. This would lead to the proposal appearing as an oppressive feature which would create a harmful sense of enclosure for the occupants of the apartments.
26. The apartments currently look out onto the roof scape of the single storey element of Kona Kai which facilitates a sense of spaciousness and creates a more pleasant environment than would be the case should the proposal go ahead. I therefore consider that the proposed development would cause harm to the living conditions of neighbouring residents with regard to outlook.
27. The proposed development would create a large roof terrace for use by customers of Kona Kai. The terrace would be partially open, in a raised position in close proximity to the aforementioned windows which largely serve habitable rooms. The nature of the use is such that those frequenting the terrace are likely to raise their voices and be of generally high spirits thus leading to an increase in noise.
28. A Noise Assessment was submitted by the appellant in support of the appeal. The Noise Assessment took readings from approximately 16.40 hrs on Thursday 11th July and 12.15 hrs on Tuesday 15th July 2019. The assessment focuses on the hours of 18.00 hrs – 21.00 hrs when the most intensive use of the proposed terrace would be likely to occur. The assessment suggests that changes between the ambient and predicted noise levels due to the proposal are likely to range between 0.9 dB and 2.3 dB. Often the most notable difference appears to occur in the 21.00 hrs slot.

29. Whilst the increase represents only a relatively small difference, the largest increase occurs at a time when residents of nearby residential properties are likely to be winding down or trying to sleep. Any increase in noise levels at this time in such close proximity to residential properties therefore has the potential to harm the living conditions of nearby residents.
30. The Noise Assessment goes on to state that it should be borne in mind that the apartments are in use as temporary accommodation and are provided with air conditioning units as an alternative source of ventilation. However, the Council advise that the lawful use of the properties is as permanent dwellings and I have considered the effect of the proposal on this basis. Furthermore, whilst the properties may have air conditioning, in my view, it is not unreasonable for residents to expect to open their windows to allow ventilation.
31. Notwithstanding the conclusions set out in the Noise Assessment, I am not persuaded on the evidence before me that the proposal would not cause harm to the living conditions of neighbouring occupiers with particular regard to noise and disturbance.
32. The Council have expressed concerns that the proposal would have a detrimental impact on the light levels of the habitable room windows located on the side elevation of the apartment block. Due to the orientation of the buildings I do not consider that there would be any adverse effects on direct sunlight levels reaching the apartments on Britannia Road. Whilst, in the absence of a full daylight assessment I cannot conclude with certainty that there would be no degradation in overall daylight levels at these properties, in my view, due to the location of these windows, any impact is likely to be minimal. As such, I do not consider that the proposal would have an unduly harmful effect on living conditions of neighbouring residents in respect of light.
33. For the reasons set out above, I consider that the proposal would cause harm to the living conditions of neighbouring occupiers with particular regard to outlook and noise and disturbance. Consequently, the development would conflict with Policies HO11 and CC13 of the LP which, amongst other things, seek to ensure that developments respect the principles of good neighbourliness and set out that all proposed development will be required to show that there will be no undue detriment to the general amenities enjoyed by existing surrounding occupiers of their properties, particularly where commercial and service activities will be close to residential properties.
34. The proposal would also be at odds with Policy CC11 which states that noise generating development will not be permitted, if it would be liable to materially increase the noise experienced by the occupants of existing noise sensitive uses in the vicinity.
35. Furthermore, the proposal would not accord with Key Principle HS8 of the SPD which sets out that planning permission will not be granted for roof terraces if the use of the terrace is likely to cause harm to the existing amenities of neighbouring occupiers by reason of noise and disturbance.

Cycle and refuse storage

36. Policy T3 of the LP sets out the Council's intention to increase and promote opportunities for cycling and states that new developments will be required to include the provision of convenient, accessible and safe secure cycle parking

within the boundary of the site. This Policy is supported by Policy 6.9 of the London Plan, March 2016 (London Plan) which states that developments should provide cycle parking facilities in line with a Table which sets out minimum standards based on use and floor area.

37. Though I note that the proposal is for an extension to an existing use, it is nevertheless 'development'. In my view, the increased floorspace would potentially allow for an increase in the number of customers on site and, for this reason, the proposal should provide additional cycle parking to meet the needs of those users.
38. The proposal does not include details of any cycle parking and, as such, I am not satisfied that sufficient cycle parking could be accommodated on site. Consequently, I consider that the proposal would fail to provide an adequate provision of bicycle storage.
39. LP Policy CC7 states that all new developments must include suitable facilities for the management of waste generated by the development. Policy 5.17 E of the London Plan also requires suitable waste and recycling storage facilities in all new developments.
40. The potential increase in the number of customers visiting the venue is likely to lead to additional waste. Details of the provision of refuse storage facilities and the management and collection of the commercial waste have not been provided. On the basis of the evidence before me I am unable to conclude that satisfactory refuse storage and management would be achieved.
41. Accordingly, the proposal would fail to comply with LP Policy T3 which seeks the provision of cycle storage and Policy CC7 which seeks to secure suitable facilities for the management of waste. The proposal would also fail to meet the aims of London Plan Policy 6.9.

Other Matters

42. A number of concerns around the handling of the planning application by the Council have been raised by the appellant. However, issues such as this are outside of the remit of this appeal and must be pursued through the Council's own complaints process.

Conclusion

43. The proposed development would fail to accord with the development plan when taken as whole. Therefore, for the reasons given above I conclude that the appeal should fail.

L J O'Brien

INSPECTOR