



Appeal Decision

Site visit made on 4 December 2020

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State.

Decision date: 22 December 2020

Appeal Ref: APP/N5660/W/20/3253971

22 Josephine Avenue, London SW2 2LA

- 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 Oke against the decision of the London Borough of Lambeth.
 - The application Ref 20/00489/FUL, dated 3 February 2020, was refused by notice dated 2 April 2020.
 - The development proposed is the retention of existing rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for the retention of existing rear extension; at 22 Josephine Avenue, London in accordance with the terms of the application Ref: 20/00489/FUL, dated 3 February 2020 subject to the conditions attached as a schedule to this letter.

Background and Main Issue

2. The appeal involves the retention of an extension constructed without planning permission which was in situ on my site visit. The Council in the Planning Officer's Report have no objections to the principle of the extension or the retention of the extension, and I have no reason to disagree with this judgement. The only matter therefore in dispute between the parties is with regards to the uPVC window materials in situ, and I have therefore made my decision on this matter.
3. Therefore, the main issue is effect of the window material upon the character and appearance of the locality, including the appeal building and the Rush Common Brixton Hill Conservation Area (CA).

Reasons

4. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA), in respect of development affecting conservation areas, states that special attention shall be paid to the desirability of preserving or enhancing the character and/or appearance of the area.
5. The CA's significance is related to the three phases of development which saw the development of Brixton Hill over 200 years which reflects the social and economic history of the locality with the expansion of London as a result of the railways. The area consists of formally laid out speculative housing development centred around communal gardens and large avenues with an emphasis on trees and gardens generating a 'leafy' and green character.
6. The dwellings along Josephine Avenue have many of the same design elements, with most being three storeys tall, two bays wide, with a forward

protruding canted bay window rising two floors with stone dressings around fenestration and decorative entablature around main entrance doors. The use of traditional materials such as timber, brick and slate along with the similar designs reinforce a uniformity and authenticity which creates a formal picturesque townscape along with vegetated front gardens and street trees give a spacious, leafy and distinctive character. To the rear the leafy character continues with the majority of gardens being well vegetated and dwellings originally being constructed with three storey rear wings with lean-to roofs where the wings are the 'bookend' with the neighbouring property sharing half of a pitched and gabled rear projection.

7. I note comments from the applicant that they believe the building to be of no historic merit, however I would disagree with this statement. The appeal site displays a number of positive qualities of significance to the CA, being a high quality three storey terraced building which contributes to the character and appearance of the area with its historic construction and design. The collection of historic buildings and how they are experienced which includes the appeal site provides a positive contribution to the area. These elements reinforce the local character, appearance and distinctiveness of the area.
8. In undertaking extensions to buildings within CAs, Policy Q22 of the Lambeth Local Plan 2015 (LP) seeks that design respects and reinforces the established positive characteristics of the area, including window detailing. Other policies such as Q11 of the LP also seek that extensions positively respond to existing architecture and its detailing, as well as Policy Q5 of the LP which seeks that proposals reinforce local distinctiveness and the local context.
9. The windows which have been installed are uPVC white top hung casements. The windows have a larger pane to the bottom with a smaller window to the top with thick frames and wide double panes with silver strip in between. Full height uPVC French doors have also been constructed to give access to the garden.
10. The frames which have been installed are significantly thicker in frame width and in section to support the widely positioned double panes, and contain a large gap with silver spacer strip between the glazing which accentuates the reflectiveness of these uPVC units against the more matt and thin, uneven finish and appearance of a traditionally glazed windows which are characteristic of this particular locality. Typically, uPVC windows maintain a perfect uniformed and manufactured finish that lacks the finesse and craftsmanship of a traditionally constructed timber window which ages over time. As such, it would be readily apparent that proposed windows would be inauthentic and be modern uPVC replacements. This is also applicable to the doors where the current finish would lack the authenticity and craftsmanship of a timber framed door which ages over time.
11. Despite this, the appropriateness of a window or a door is not solely related to their visual appearance, but the authenticity of building materials and local vernacular and how this relates to the heritage values of this particular building, the buildings surrounding, as well as the character and appearance of the broader CA. In this particular location the appeal site is experienced amongst a group of historic buildings and part of the wider terrace along Josephine Avenue where the built form and historic materials, layout and design reinforce the local identity and are positive contributions to the

character and appearance of the CA. The use of non-traditional products would distract and be a discordant addition in an area which provides a positive contribution within the CA.

12. The Applicant's Statement of Case (SoC) notes that the windows 'are small' and would be situated to the rear and be well screened, which would imply that the rear is less important when considering the harm caused to the CA. I disagree with these statements, as the duty under the PLBCA and the consideration of harm is not confined to what can be seen or whether it can be experienced from public vantage points.
13. The Applicant's SoC refers to 5 properties¹ in the local area where uPVC windows have been used. Whilst I have not been presented with the circumstances of how each of these buildings gained approval for uPVC windows (or whether they have approval), it is clear that in relation to this particular CA that in these circumstances the use of timber is a key component of the CA's significance and how the building is experienced within the conservation area.
14. The SoC provided by the Applicant also contains 3 planning decisions² from the Council in order to demonstrate a precedent for installing uPVC windows. It is noted that the condition No. 3 of both 13/04617/FUL and 13/0227/FUL seeks that timber is utilised for the windows; and that the decision notice 10/03911/FUL sought that materials matched the existing materials which consisted of timber. I also acknowledge that these applications have some age to them, but the most recent 2013 decisions do illustrate the Council's long term desire to seek appropriate traditional timber construction for windows.
15. Overall, the placement of windows and doors in the style proposed would be inauthentic to the existing dwelling and fail to preserve or enhance the character and appearance of the CA, as required by Section 72 of the PLBCA. Consequently the scheme would also be contrary to LP Policies 5, 11 and 22 as described previously. Paragraph 193 of the National Planning Policy Framework (the Framework) also requires that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance.
16. Although serious, the harm to the CA in this case would be 'less than substantial,' within the meaning of the term in paragraph 196 of the Framework. Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
17. The public benefits of the scheme were not specifically outlined in the appeal documents for the retention of the uPVC windows. The applicant has also drawn to my attention Paragraph 54 of the Framework which states that '*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.*' Given that the materials of the windows and doors are the only matter in dispute, in

¹ 20a, 24a, 34, 36 and 38 Josephine Avenue

² Lambeth Planning Ref: 13/04617 6 Josephine Avenue; 10/03911/FUL 24 Josephine Avenue; and 13/02207/FUL 17 Josephine Avenue.

this particular circumstance, a condition seeking the reinstatement of the windows with a more appropriate and sympathetic timber product would be able to make the scheme acceptable³. On this basis there would be neutral harm caused to the existing building and the character and appearance of the CA.

Conclusion and conditions

18. I conclude that with regard to the retention of the rear extension, is generally appropriate and would be compliant with the development plan on the basis of the reasons discussed. For these reasons, the appeal should be allowed and planning permission granted, subject to the conditions as detailed below.
19. I have had regard to the context of the Framework and the National Planning Practice Guidance (NPPG) which advises that conditions should 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.
20. Condition 1 seeks the scheme to be constructed in accordance with approved plans and is a standard condition which is necessary and is required for the avoidance of doubt. The standard time limit condition of 3 years would not be required in this instance as the development is retrospective. However, Condition No. 2 seeks that materials for windows and doors are to be approved with a time limit for the submission of the details and a time limit for the installation of appropriate fenestration. This is considered to meet the tests for conditions as specified in the NPPG, and that the scheme would not be acceptable without this condition.

J Somers

INSPECTOR

³ The Applicant was written to on 15 December 2020 seek authority for a condition seeking the approval of materials which was approved by the applicant via email on 21 December 2020.

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Existing/ As built Plans Sheet 1 of 2, Drawing No. 112 Revision A, Dated 27/01/2020 and Drawn by TV of AVA Design and Planning; and
 - Existing/ As built Elevations, Drawing No. 114 Revision A, Dated 27/01/2020 and Drawn by TV of AVA Design and Planning.
2. Notwithstanding the approved plans, within two months of the date of this decision letter, details/samples of the materials to be used in the construction of the external timber windows and doors of the development hereby permitted shall be submitted to the local planning authority for their approval. The development shall be carried out in accordance with the approved details / samples within 3 months of the approval date and the windows and doors retained as timber in perpetuity.

Reason for condition: The approval of window details is required in order to ensure authenticity to the historic environment and be congruous to the character and appearance of the Conservation Area.