

# Appeal Decision

Site visit undertaken on 4 December 2020

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

**an Inspector appointed by the Secretary of State**

**Decision Date: 06 January 2021**

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**Appeal Ref: APP/K5600/D/20/3258262**

**1 Mallord Street, London SW3 6DT**

- 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 Vivien Beckwith against the decision of the Royal London Borough of Kensington and Chelsea.
  - The application, ref. PP/20/02165, dated 9 April 2020, was refused by notice dated 10 July 2020.
  - The development proposed is the demolition and rebuilding of garage with terrace on top.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The Council note that there is an existing planning permission<sup>1</sup> which approves the demolition and erection of a garage which is also part of this application. The main difference with the proposed scheme is the installation of a roof terrace and associated railing and trellis above the proposed garage. As the roof terrace and associated infrastructure is the only matter in dispute I shall therefore make my decision on these elements only.
3. During the course of the appeal, the applicant submitted a Daylight, Sunlight and Overshadowing Assessment<sup>2</sup> in order to provide further clarification with regards to Reason for Refusal No.2 which concerns access to light. In accordance with the 'Wheatcroft Principles',<sup>3</sup> this further information submitted by the appellant provides additional clarification to a main issue and does not result in changes to the scheme. Whilst the Council have not provided further comment on this new information in their statement, I find that the acceptance of this further information would be appropriate and not deprive those who should have been consulted or the opportunity of such consultation. As such, I will accept this further information and will base my decision upon it.

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<sup>1</sup> Kensington and Chelsea Council Planning Ref: PP/19/06946

<sup>2</sup> By Eco Studio Ltd, Dated 21 August 2020

<sup>3</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

## **Main issues**

4. With the above in mind, the main issue is the effect of the proposed roof terrace, railings and trellis upon:
  - The character and appearance of the building and the locality, with particular regard to the Chelsea Park Carlyle Conservation Area (CA); and
  - The living conditions of the neighbouring occupants at No.3 Mallord Street with regard to privacy and overlooking; and No.105 Old Church Street, with regard to access to light, and sense of enclosure.

## **Reasons**

### *Character and appearance, including the CA*

5. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, 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.
6. The CA's significance is highlighted in the Chelsea Park Carlyle CA Appraisal, where relevant components of the significance in relation to the appeal site relate to the development of formally laid out speculative housing development during the early twentieth century which have been redeveloped from earlier Georgian and Victorian housing stock surrounding. The built environment of the locality is generally of high quality and composition, with a variety of architectural styles dating from the late Georgian period onwards into the 20<sup>th</sup> Century, and which are formally laid out as a mixture of terraces and detached/semi-detached houses.
7. The use of traditional materials such as timber, limited palette of brick colours, stucco and stone along with the high quality variety in designs reinforce an architectural authenticity and integrity that creates a formal picturesque townscape along with vegetated front gardens and street trees which give a spacious, leafy and distinctive character. Gaps in and around buildings within the CA are particularly important and in some cases offer glimpses to vegetated rear gardens and are important for informing the spaciousness in between the built form which serve to add to a tranquil aspect of uses in and around dwellings.
8. The appeal site displays a number of positive qualities of significance to the CA, being a high quality three storey townhouse which has its main frontage along Old Church Street and its side boundary with later garage fronting Mallord Street. The building is constructed of brown brick with red brick dressings around fenestration with multi-paned windows to both street facades. The building is noted in the CA Appraisal as being a positive element which contributes to the character and appearance of the area.
9. The CA Appraisal also notes negative elements which are harmful to the character and appearance of the CA such as roof terraces where additional clutter which attract elements such as tables, chairs, railings, trellis,

umbrellas and patio heaters are elements of which are considered to have a harmful impact upon the character of this particular CA<sup>4</sup>.

10. My attention has been drawn to previously erected roof terraces which are currently in situ within the CA.<sup>5</sup> According to the applicant's Statement of Case (SoC) there are eight comparable sites to the appeal site, where a total of three out of eight such garages have terraces, albeit one of the terraces opposite at 2-4 Mallord Street does not appear to have the benefit of planning consent. It is not apparent that there have been any approvals of such roof terraces since the adoption of the Kensington and Chelsea Local Plan 2019 (LP), as well as the adoption of the CA Appraisal which specifically notes that roof terraces as being harmful to the character and appearance of the CA. The example granted in 1962 has little relevance to today's policy position, and whilst a decision in 2014 would have also been required to consider the duty under the PLBCA with regards to the CA, and has made a different decision than for the appeal site; the policy position along with guidance for the historic environment; as well as case law on how to judge harm is now materially different, particularly with the CA Appraisal specifying that such installations are harmful. As such, I afford little weight to the decision of a roof terrace which was granted some 6 years ago.
11. Having viewed the CA I disagree that roof terraces or associated trellis and large sections of roof top railings are characteristic of the area; or would be considered authentic to the architectural integrity of the buildings in this particular location. The harmful nature of such roof terraces is shown on those already erected which do present as visual clutter and an anomaly to the locality and the CA, particularly in areas where visual gaps are present such as the appeal site. The use of the terrace for congregations of people, associated barbeques, umbrellas and residential paraphernalia also changes the nature of the visual gaps in between dwellings, from a tranquil space to one that has activity which changes the experience of the visual gaps in and around the buildings. For this reason the proposed use of a terrace has a different impact upon the CA as opposed to a previously granted hipped roof extension which was granted<sup>6</sup> for the site and had a roof that would be taller than the proposed terrace.
12. I acknowledge suggestions of conditions that have been previously used at 15 Palace Gardens to control the height of elements on a roof terrace, however in my opinion this type of condition would not satisfy the tests of conditions as noted in the National Planning Practice Guidance.
13. With regards to other elements such as a two metre tall timber trellis to the rear of the terrace, I acknowledge comments from the applicant that in their opinion the proposed trellis would not be able to be seen from a public vantage point, however my duty under the PLBCA is not limited to what can be viewed, and should take into account the experience of the area which derives from intangible and tangible elements from both a private and public perspective. The two metre tall trellis would be uncharacteristic of the area

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<sup>4</sup> Chelsea Park Carlyle CA Appraisal Paragraph 5.10

<sup>5</sup> 2-4 Mallord Street (no apparent planning consent); 2 The Vale, Approved 2014; 7 Elm Park Road, approved 1962;

<sup>6</sup> Kensington and Chelsea Council Planning Ref: PP/06/01189

and would be harmful to the architectural integrity and authenticity of the building and the locality.

14. Consequently, the proposed scheme would not reinforce the qualities of local character and distinctiveness and would be harmful to the character and appearance of the CA. This would be contrary to LP Policy CL1 (which seeks that development respond to the local context and contribute positively to the townscape through architecture and urban form); Policy CL2 of the LP (which seeks that development is of the highest architectural design to improve the quality and character of buildings); Policy CL3 of the LP (which seeks that development preserve and enhance the character and appearance of CAs); Policy CL6 (which seeks that alterations takes into account the existing building, the townscape and appearance of the area); and Policy CL11 of the LP (which seeks that development protect and enhance views, gaps, and the skyline which contribute to the character and quality of the area).
15. I therefore disagree with the applicant's SoC and Heritage Statement that no harm would be caused. 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 National Planning Policy Framework (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.
16. The applicant's statement notes benefits such as providing for more outdoor space; and the enhancement of existing housing stock. I also note that there may be some short term employment opportunities through the construction of the garage and terrace that are also public benefits. However, these public benefits would not outweigh the harm to the CA. The scheme therefore conflicts with the Framework, which directs, at paragraph 193, '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.'
17. In conclusion on this matter, I consider the proposed development would cause unacceptable harm to the significance of the CA. It has not been shown that public benefits would outweigh this harm and so the proposal would conflict with the development plan.

#### *Living conditions*

18. With regards to the neighbouring property at No.3 Mallord Street, the main concern raised from the Council is regarding overlooking to the bay windows of the ground and first floors which are located on the front of the neighbouring property. I note comments in the applicant's Statement of Case (SoC) that they do not believe the Study at first floor level to be a habitable space, however have not provided any evidence to support this view. Whilst I have not been presented plans of the study to the neighbouring property, given the arrangement of windows, logically it may be similar to the ground floor plan which has been supplied in the applicant's SoC. In any event, in my opinion, generally a study does function as part of

the living spaces of the dwelling and which could be utilised for sleeping or living and should be included in the assessment of habitable accommodation.

19. The proposed terrace would change the nature of overlooking, given that it would be situated closer to the side boundary than as currently experienced from the roof terrace to the rear of the dwelling. Despite this, views would only be gained from oblique angles, and predominantly into the bay windows themselves from the side, rather than direct views into the remainder of the rooms. Whilst I agree that there would be an increase to perception of overlooking as a result of the terrace, it would not appear to be at an extent where it would cause material detriment to either ground or first floor levels.
20. With regards to No.105 Old Church Road, this is a ground floor flat with rear amenity space. There is a window at ground floor and first floor levels which looks onto the rear amenity space which is aligned by a single storey wall to the side boundaries and the gable wall of 3 Mallord Street which reaches three storeys to the rear boundary. The proposed trellis of the terrace would together with the increased height of the proposed garage would give the appearance of a two storey wall to the side boundary of the rear amenity space of this building.
21. The Council's LP Policy CL5 seeks to ensure that good standards of daylight and sunlight are achieved in new development and where sunlight levels are already substandard, that there should be no material worsening of the conditions. The accompanying text to this policy also states that the Council will have regard to the recommendations set out for daylight in the Building Research Establishment (BRE) publication '*Site layout planning for daylight and sunlight.*' The applicant's numerical assessment of daylight/sunlight impact is based on the BRE guide. The BRE guidance is not itself policy, and acknowledges that the criterion and guidance are to be applied flexibly and to help rather than constrain design. The numerical guidelines and technical advice in the BRE publication are purely advisory and should be considered in the context of other site layout constraints.
22. The BRE guidance details The Vertical Sky Component (VSC) which is a measure of the amount of light at the window wall. Target values of 27% VSC and a reduction of no more than 20% of the existing VSC are given: if these are not met, occupants of the existing building will typically notice the reduction in the amount of skylight. The impact on daylight distribution can be measured by plotting the 'No Sky Line' for an individual room. The area beyond the No Sky Line will usually look dark and gloomy, and an increase in this by 20% or more will be typically noticeable to occupants.
23. The submitted daylight/sunlight report and daylight distribution test shows that for the existing ground floor and first floor windows of 105 Old Church Road, that they already have VSC levels which are less than the suggested 27% from the BRE guidance. The resultant test shows that there would be a marginal decrease from the current poor levels being experienced with the ground floor window having the most impact, being a reduction of 9.8% from the already existing poor condition. To me, the further reduction in daylight to windows which already have a poor VSC would in this situation be a material loss that would exacerbate the already poor living conditions experienced, causing significant detriment to the existing occupant's living

conditions in No.105 Old Church Road as a result of loss of daylight, conflicting with Policy CL5 of the LP as described above.

24. With regards to sense of enclosure, the existing situation with regards to the rear garden space of No.105 Old Church Road is already problematic given that it is a rather small outdoor space that is bounded by single storey walls to each side boundary and a 3 storey wall to the rear boundary. Whilst the proposed trellis would be a lightweight structure, it would have a solid appearance which together with the existing situation and the increased height of the proposed garage would give the appearance of a two storey blank facade to the side boundary of the private garden space. The increased height of the extension and trellis would give an uncomfortable and overbearing impact towards the experience and enjoyment of the private garden space and loss of outlook of No.105 Old Church Road, which would be adversely detrimental to the living conditions of this neighbouring resident. Whilst I note the Applicant's comments that this neighbouring resident has not objected as a result of outlook and sense of enclosure, this does not mean that the proposal would be suitable when assessed against the development plan.
25. Consequently, taken as a whole, I therefore conclude on this issue that the proposed development would materially harm the living conditions of the occupiers of No.105 Old Church Road as a result of an unacceptable loss of light, outlook and sense of enclosure. As such, the proposed scheme would conflict with LP Policy CL5 as described previously.

### **Other Matters**

26. I note comments from interested parties with regards to matters such as overshadowing of 3 Mallord Street via the increased height of the trellis to the rooflights on the flat roof side extension of this property. I note that neither party has assessed this matter and given that the proposed scheme fails on the matters above, I have not felt it necessary to assess this matter.
27. The appeal has received submissions from interested parties where matters of party walls and property boundary issues are discussed. Party wall and property boundary disputes are not planning issues and have not been taken into account in this letter.

### **Conclusions**

28. For the reasons given above the appeal is dismissed.

*J Somers*

INSPECTOR