
Appeal Decision

Site visit made on 15 December 2020

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

an Inspector appointed by the Secretary of State

Decision date: 6 April 2021

Appeal Ref: APP/K5600/W/19/3243179

Land rear of 61 Cambridge Gardens W10 6JD

- 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 Sitwell Investments Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/19/04974, dated 12 July 2019, was refused by notice dated 24 October 2019.
 - The development proposed is demolition of boundary walls and erection of a two storey commercial building, together with a first floor apartment with ground floor garaging.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Sitwell Investments Ltd against the Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - whether or not the proposal would provide satisfactory living conditions for future occupiers; and
 - the effect of the proposal on the living conditions of the occupiers of 61 Cambridge Gardens with particular regard to outlook.

Reasons

4. The appeal site comprises a vacant parcel of land to the rear of 61 Cambridge Gardens. The site is situated at the corner of Malton Mews and Malton Road and is enclosed by boundary walls and fencing. The proposal is for the construction of a two storey, plus basement, building with two floors in commercial use, ground floor garaging and a first floor flat.

Living conditions for future occupiers

5. There appears to be some dispute between the parties in respect of the Council's first reason for refusal which states "The proposed Class C3 floorspace would fail to provide an acceptable standard of residential accommodation, contrary to development plan policy, in particular policy CH3 of the Local Plan 2019.". The appellant's interpretation of this is that the

Council's concerns are related to the internal floorspace of the proposed flat. However, the Council's evidence suggests that their concerns relate, instead, to the provision of outdoor amenity space.

6. The proposed first floor flat would comprise a kitchen/living/dining area, a bedroom and a shower room. The proposed flat would provide approximately 66.4m² of internal floorspace with around 76% of that space having a ceiling height of at least 2.5m. The Nationally Described Space Standards (NDSS) state that for a 1 bedroom, 2 person dwelling the minimum gross internal floor area (GIA) should be 50m² for single storey dwellings (typically flats) and 58m² for two storey dwellings. An additional 1.5m² of storage space is expected and the floor to ceiling height should be 2.3m for at least 75% of the GIA. As such, the proposed flat would exceed the requirements of the NDSS.
7. However, no external amenity space would be provided. I acknowledge the appellant's statement that the Mayor of London's Housing Supplementary Planning Guidance (HSPG) states that in exceptional circumstances, where site constraints make it impossible to provide private open space for all dwellings, a proportion of dwellings may instead be provided with additional internal living space. The proposed flat would incorporate an additional 5m² of internal floor space to compensate and provide more internal living space than is required.
8. Though I recognise that the site is constrained, I do not consider, on the basis of the evidence before me and given that the internal GIA exceeds that which is required by the NDSS, that it would be impossible to provide a small area of private garden space; a small balcony, for example. Thus, in my view, the exceptional circumstances which would warrant the off-set of external space with additional internal space referred to are not present in this instance.
9. The proposed living area would have a Juliette balcony which would create a sense of openness and allow light into the room. Such a balcony would not, however, afford the occupants of the flat the same access to the outdoors as would be provided by an area of usable private amenity space. As such the proposed Juliette balcony would not, to my mind, provide a suitable alternative to external garden space.
10. I note that the proposed flat would be in close proximity to a number of areas of public open space. However, these spaces are by their very nature public rather than private spaces and would not compensate for the lack of external private amenity space in this instance.
11. For the reasons set out above, the proposal would fail to provide satisfactory living conditions for future occupiers with particular regard to amenity space. As such, the proposal would conflict with Policy CH3 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019 (LP) which states that housing schemes are required to include outdoor amenity space.

Living conditions at 61 Cambridge Gardens

12. The proposed dwelling would be sited to the rear of 61 Cambridge Gardens. A number of windows are sited on the rear elevation of No 61 which directly faces the appeal site. Though I note that the proposed building has been designed in such a way so as to be subordinate to neighbouring properties it would, nevertheless, be a structure of a considerable size and height occupying the full width and depth of the site.

13. Due to the limited size of the garden belonging to No 61 the proposed dwelling would be in close proximity to the neighbouring building. The elevation of the proposed building which would directly face No 61 would be constructed largely of a vast expanse of blank brickwork.
14. Due to its size, solid construction and proximity the proposed building would be a dominant feature in the outlook from the rear windows of the lower floors and garden of No 61. This would lead to the proposal appearing as an oppressive feature which would create a harmful sense of enclosure for the occupants.
15. The windows in No 61 currently look out onto the existing boundary treatments and Westway beyond. However, Westway is further away from No 61 and is a structure of a markedly different nature to that proposed. The existing outlook benefits from a greater sense of spaciousness, and a more pleasant environment, than would be the case should the scheme go ahead.
16. I also note the appellant's view that the planting surrounding the rear garden of No 61 already causes a sense of enclosure as it is approximately 6m high. However, planting and greenery are not a solid mass and glimpse views through foliage and between trees are facilitated thus reducing any sense of oppression. I acknowledge that the foliage would also partially screen the proposed building. However, the longevity of the planting cannot be secured and, in any event, this would not be sufficient to overcome my concerns in this respect.
17. I acknowledge the appellant's statement that a number of neighbouring residents are in support of the development and also note the improvements which would be made in respect of the sense of security, privacy and the potential reduction in noise and disturbance for those using the garden area at No 61. None of these considerations would, however, dissuade me from the conclusion I have reached regarding the effect of the proposal on the living conditions at No 61.
18. Consequently, the proposal would harm the living conditions of the occupiers of 61 Cambridge Gardens with particular regard to outlook. Consequently, the proposal would fail to accord with Policy CL5 of the LP which requires that all development ensures good living conditions for occupants of new, existing and neighbouring dwellings by, amongst other things, requiring that there is no harmful increase in the sense of enclosure to existing buildings and neighbouring gardens.

Other Matters and Planning Balance

19. Whilst the appellant makes reference to the existence of a number of other developments which could be considered similar, each case must be determined on its individual merits and the circumstances in each case are likely to be different. The nature of the proposals and the specific contexts of these other examples would appear to be different and the material considerations to be included in any planning balance would also appear to differ. Furthermore, some of these cases also appear to have been determined within a different policy context.
20. I accept that the redevelopment of the site would represent a marked improvement in public safety and crime prevention and note that the under

utilised nature of the site has previously resulted in fly tipping and anti-social behaviour.

21. I acknowledge that the appeal site is in a sustainable location and has excellent accessibility to public transport, services and facilities. I also note that in many respects the proposal would provide a suitable standard of accommodation for future occupiers. Furthermore, the proposal would make a positive contribution towards boosting the supply of housing in the area and providing much needed employment space.
22. I also recognise that the proposal would provide some other benefits; for example the economic benefits of engaging local professionals, trades and suppliers and the ongoing benefit of the occupiers of the proposed flat and commercial space utilising local facilities. These benefits are, however, limited by the small scale of the proposal and must be considered in that context.
23. I note that the current scheme has been decreased in size and altered from previously refused proposals with the aim of overcoming concerns which were raised. However, as set out above, in my view the alterations are not sufficient to mitigate the harm I have identified.
24. I have given careful regard to all of the above considerations. However, in my view, none of the identified benefits, alone or cumulatively, are sufficient to outweigh the harm I have set out above. The proposal would conflict with the development plan and there are no other considerations that outweigh this conflict.
25. I have noted a number of other issues raised; including the effect of construction traffic on highway safety and the effect on nearby trees and wildlife. Moreover, the Council's third reason for refusal stated that in the absence of a completed legal agreement to secure the new dwelling as car parking permit free, which the Council considered necessary to make the development acceptable, the proposal would have an unacceptable impact on the highway. Following the submission of the appeal a Unilateral Undertaking has been submitted by the appellant with the aim of overcoming this issue. However, as this proposal is going to be dismissed for other reasons and the other concerns expressed do not have a direct bearing on the main issues I have identified, it is not necessary for these matters to be explored further as part of this appeal.

Conclusion

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

L J O'Brien

INSPECTOR