



Appeal Decision

Site visit made on 5 May 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2021

Appeal Ref: APP/K5600/W/20/3256440

2 Pembroke Walk, London W8 6PQ

- 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 2 Pembroke Walk Ltd against The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/20/01449, is dated 24 March 2020.
 - The development proposed is the demolition of the existing single dwelling house and the erection of a new four storey dwelling including basement.
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Decision

1. The appeal is dismissed and planning permission for the demolition of the existing single dwelling house and the erection of a new four storey dwelling including basement is refused.

Procedural Matters

2. The appellants have submitted revised plans with the appeal referenced 504.P301 Revision A, 504.P302 Revision A, 504.P303 Revision A, 504.P304 Revision A, 504.P305 Revision A and proposed ground floor plan 504.P102 Revision A. These plans differ from the originals in that they show a 1 metre layer of soil underneath the proposed terrace, which would necessitate a lower internal ceiling height over the basement pool. As this represents a relatively minor alteration and would not affect the outer dimensions of the proposal, I do not consider that it significantly changes the nature of the development. On that basis, I am satisfied that no parties would be prejudiced by my determining the appeal in relation to the revised plans.

Background and Main Issues

3. Planning permission¹ exists for the demolition of the existing property and erection of one new four storey single dwellinghouse including basement. Construction has commenced to implement the proposal such that the 'existing dwelling' on the submitted plans has now been demolished. The appeal proposal would be an alternative replacement dwelling to that previously approved.

¹ Reference PP/19/03466 dated 6.11.19

4. The Council submitted a statement of case which sets out what would have constituted the eight reasons for refusal had they been in a position to determine the application. However, these can be summarised into two broad areas of concern as reflected in section 6.1 of the Council's statement. On this basis the main issues are:
- Whether the proposal would preserve or enhance the character or appearance of the Edwardes Square/Scarsdale and Abingdon Conservation Area (CA), and;
 - The effect of the proposal having particular regard to local planning policy on basement development.

Reasons

Character and appearance

5. The CA covers a central part of the borough and comprises mostly residential development dating from the late Georgian and Victorian periods. Its significance is derived in part from the quality of the townscape that evolved during this period. Interest originates in the architectural and decorative quality of terraces, villas and squares, but also how their ordered, hierarchical layout relative to the street and green spaces reflected the social and economic conditions of the time. I have a statutory duty² to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA
6. The appeal site is situated at the end of mews buildings on the corner of Pembroke Walk and Pembroke Villas. The northern side of Pembroke Walk would historically have provided rear access and accommodated service buildings to the grander terraced houses on Pembroke Square. Over time some of the mews buildings have been developed, displaying a greater variety of building type than the more formal terraces and villas. Nevertheless, their generally smaller scale and inobtrusive siting respects the established hierarchy evident in the prevailing settlement pattern. Until recently the appeal site accommodated a 3 storey dwelling, probably constructed in the 1950's which departed from the predominant traditional form of buildings in the vicinity. Although of little architectural interest, its tiered and recessed upper storeys deferred to the houses in Pembroke Villas and Pembroke Square. Accordingly, overall, it had a neutral impact on the character and appearance of the CA.
7. The permitted replacement dwelling incorporates recessed upper storeys which together with the restrained and rationalised elevations respects the greater status of houses in higher order streets. Given that the development is under construction it is highly material to my determination.
8. In contrast, the proposed replacement dwelling incorporates offset sections, an overt horizontal emphasis and feature windows that respond to the adjoining building at 3 Pembroke Walk, somewhat redolent of an industrial or modern character. These factors would result in a more distinctive individual design than the approved unassuming scheme, but in this context, it would not preserve or enhance the character or appearance of the CA for the following reasons.

² Section 72, Planning (Listed Buildings and Conservation Areas) Act 1990

9. Firstly, there would be markedly greater bulk at the second floor level in comparison to the approved scheme. Notwithstanding that the second floor would align with the front façade of 6 and 7 Pembroke Villas, the awkward massing, hefty cornice and largely blank sections of the southern elevation would be apparent in views from Pembroke Villas. The additional volume and height would combine to give the building much greater prominence in the street scene. This would be disproportionate to the historical status of buildings in Pembroke Walk and consequently, it would appear incongruous. As it would dilute the strong impression of order in the street scene, it would be harmful to the significance of the CA.
10. Secondly, in addition to the increased bulk, there would be an absence of windows and doors along the southern elevation facing Pembroke Walk and the flank wall of 7 Pembroke Villas. The removal of active frontage and increased enclosure would make the entrance into the walk appear less inviting, undermining the intimate character of the narrow walk.
11. Thirdly, the proposal would introduce three sizeable rooflights for the basement into the former garden area. These would be further northwards than the integrated lightwells in the northern elevation of the approved scheme. As such, they would appear removed from the dwelling. When illuminated during darker hours, the additional light would appear as an artificial feature separate from the rear building line and harmful to the appearance of the CA. Given that the rooflights are above the proposed pool, it is foreseeable that it could be used for exercise purposes in the evenings or early morning which would necessitate lighting. Although not obvious from the street, this would be seen by occupants from the upper floors of surrounding properties. My concerns are reinforced by the advice in the Council's Basements Supplementary Planning Document, April 2016 (SPD)³.
12. Finally, the information provided states that there is a Tree Preservation Order⁴ covering a birch tree at the site. Notwithstanding the construction activity underway, I observed that there was such a tree situated near to the site compound that was visible from the street. Such orders are made when a tree makes a positive contribution to the character and appearance of the area. Based on the limited information provided regarding the position or condition of the protected tree, and in the absence of a tree survey indicating the likely impact arising from the proposed basement works, I am not assured that the proposal would not have an adverse effect on a tree found worthy of protection.
13. Taking these factors together the proposal would neither preserve or enhance the character or appearance of the CA. However, given the modest scale of the proposal this would be less than substantial harm to the significance of the CA as a whole. Paragraph 196 of the National Planning Policy Framework (the Framework) indicates that in such circumstances the harm should be weighed against the public benefits of the proposal.
14. The main benefit would be the provision of a dwelling providing comfortable accommodation built to modern standards. In addition, there would be some economic benefits associated with the construction of the development. Nevertheless, the extent of public benefits arising from the development would

³ Paragraph 3.8

⁴ Reference 8/86, T52 dated 28.5.86 and question 16, appeal questionnaire

- be modest. Furthermore, the existing permission would deliver similar benefits without resulting in harm to the CA. Hence, overall, they attract little weight.
15. It is asserted that, in comparison to the approved scheme there would be improvements to the living conditions of nearby residents due to the removal of the terrace at second floor level and reduced light and noise spillage from the lower ground floor design. However, the evidence does not show that the recently approved scheme would have an unacceptable impact on nearby residents due to overlooking or disturbance. As the consented proposal is not objectionable on that basis, any improvements wrought by the scheme before me would be marginal and therefore, they attract little weight.
 16. Paragraph 193 of the Framework stipulates that great weight should be given to conserving the significance of designated heritage assets. Therefore, the public benefits in this case would not outweigh the harm identified to the CA.
 17. Accordingly, I find that the proposal would unacceptably fail to preserve or enhance the character or appearance of the CA contrary to policies CL1, CL2, CL3, CL7, CL11 and CR6 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019 (LP). In combination these policies, amongst other matters, seek high quality design that is appropriate to its context and safeguard the historic environment and trees.
 18. The Council have also referred to policy CL9 of the LP. However, this policy refers to the extension or modification of existing buildings, whereas the proposal seeks to replace the former building in its entirety. On that basis, it is of limited relevance and I find no conflict with it.

Basement

19. Policy CL7 of the LP sets out requirements relating specifically to basement development. The supporting text outlines how the insertion of basements in densely built established residential areas within the borough has led to problems with noise and disturbance during construction, the management of associated traffic, the structural stability of nearby buildings, drainage and flood risk. The SPD expands on the wide ranging and complex issues that can arise from basement development. Given that the proposal would involve a basement, policy CL7 and the SPD are directly relevant.
20. Although also referenced in policy CL7, as I have already considered the impact upon trees of amenity value, designated heritage assets and the impact of roof lights in relation to the first main issue, I shall not duplicate my concerns here.
21. The first requirement of policy CL7 is that basements must not exceed a maximum of 50 per cent of each garden or open part of the site. In this way the Council can carefully control and mitigate the cumulative impacts of basement development within concentrated residential areas. In this case the Council state that the maximum allowance under policy CL7 was permitted in relation to the extant scheme. On that basis, when the structural walls shown for the proposed basement in this case are considered, it would exceed the extent of the approved scheme. Based on the information provided, and in the absence of substantive evidence to show otherwise, the proposal would exceed the size limit criterion (a) of policy CL7.
22. Furthermore, contrary to the guidance in the SPD, a Construction Method Statement signed by an appropriately qualified professional has not been

- submitted with the planning application. Neither has a draft Construction Traffic Management Plan, nor a Noise, Dust and Vibration Statement. In addition, details of a sustainable drainage system and measures to protect the basement from sewer flooding are not included.
23. Therefore, notwithstanding that the revised plans include a minimum of one metre of soil above the basement in response to criterion (j) of policy CL7, the proposal would nevertheless still fail to comply with the majority of the remaining criteria in policy CL7.
24. The appellants consider that these raise matters that can be dealt with by planning conditions, including one to amend the extent of the basement to reflect that previously approved. They indicate that conditions were imposed on the approved scheme, although I have not been provided with a copy of the decision notice. In any event, unlike the proposal before me, the basement in the approved scheme does not include a pool. As such, construction of the proposal would involve different considerations. Given the range and complexity of issues generated by basement development, altering the extent of the structure would amount to a fundamental change that would not necessarily be straightforward. Planning Practice Guidance⁵ advises that if a detail of development is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application but where this involves significant changes this may result in the need for a fresh planning application. On that basis, it would not be appropriate to attempt to revise this element of the proposal using a condition.
25. Moreover, irrespective of the approach taken with the approved scheme, the SPD⁶ states the construction impacts cannot be adequately dealt with by a planning condition and that the full proposal regarding mitigating these issues needs to be submitted with the planning application to be considered properly and comply with the policy. This attracts considerable weight. Therefore, I am not persuaded that the nature and range of information required by policy CL7 can be suitably addressed by planning conditions as that would be after the principle of the development would have been permitted.
26. Accordingly, it is not demonstrated that the proposal would avoid unacceptable effects arising from the proposed basement having regards to its overall extent, stability, impacts of the construction on highway users and living conditions of nearby residents, drainage and flood risk. It follows that the proposal would be contrary to policy CL7 of the LP in relation to basement development, as well as policies CT1, CL5, CE6 and CE2 of the LP. These policies, amongst other matters, respectively seek to encourage and improve alternative transport methods to car use, protect the living conditions of nearby residents including during construction and require development to address and reduce flood risk.

⁵ Paragraph: 0.12 Reference ID: 21a-012-20140306

⁶ Paragraph 1.4

Conclusion

27. The proposal would harm the character and appearance of the area and additional harm would result from the construction of the basement such that it would conflict with the development plan taken as a whole. There are no material considerations that would justify making the decision other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed, and planning permission refused.

Helen O'Connor

Inspector