



Appeal Decision

Site visit made on 22 June 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2021

Appeal Ref: APP/X5990/W/20/3249560

87 Hamilton Terrace, London NW8 9QX

- 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 Alan Kutchukian against the decision of City of Westminster Council.
 - The application Ref 19/06846/FULL, dated 2 September 2019, was refused by notice dated 11 December 2019.
 - The development proposed is described as follows "The Application proposes a new extension on the northern (side) elevation of 87 Hamilton Terrace (the 'Site') which will replace the existing two-storey store room and study with a new two-storey extension which incorporates a studio space, play room and bedroom with en-suite facilities."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The London Plan 2021 (the 'LP 2021') was published by the Mayor of London on 2 March 2021. The LP 2021 comprises the spatial development strategy for London and forms part of the development plan. The LP 2021 supersedes the London Plan of 2016.
3. In addition, the Westminster City Plan 2019-2040 (the 'WCP 2019') was adopted by the Council on 21 April 2021. Schedule 3 of the WCP 2021 provides a schedule of policies from the Westminster City Plan (2016) (the 'WCP 2016') and the Unitary Development Plan (2007) (the 'UDP'), which are superseded by the WCP 2021.
4. The reason for refusal on the Council's decision notice refers to Policies S25 and S38 of the WCP 2016 and Policies ENV16 and DES9 of the UDP. The Council explain that these policies have been superseded by Policies 34, 39 and 40 of the WCP 2019.
5. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis. The main parties have had an opportunity to address this matter as part of the appeal process.

Main Issue

6. The main issue is whether the development would preserve or enhance the character or appearance of the St John's Wood Conservation Area.

Reasons

7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
8. The National Planning Policy Framework (the 'Framework') advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and, the more important the asset, the greater the weight should be.
9. Paragraph 194 of the Framework states any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
10. The appeal property dates from the mid 1800's and is a large three storey villa with a lower ground floor located on the western side of Hamilton Terrace. The site is located within the St John's Wood Conservation Area (the 'CA'), which is a designated heritage asset.
11. It is proposed to demolish an existing two storey side extension and erect a replacement two-storey extension, which would provide additional floor space to the lower ground floor and ground floor of the host building. As part of the development, an external staircase would be constructed to the rear of the extension.
12. The Council have concluded that the design and appearance of the proposed extension would be acceptable. However, they have expressed concerns about the effect of the development upon existing trees and the subsequent impact the loss or damage of the trees would have upon the character and appearance of the CA. As such, this will be the focus of my considerations.
13. The City of Westminster Council's St John's Wood Conservation Area Audit Supplementary Planning Document (the 'SPD') explains that St John's Wood was originally envisaged as an arcadian suburb and as its name accurately reflects it remains a wooded suburb where trees are very important in the townscape. It explains that these trees are not only located along the roadside, but also within front gardens and extensive groups of trees within rear gardens.
14. The SPD states that due to the size of the gardens attached to the villas within the CA, there are very important groups of trees within the private spaces of the conservation area, which create a continuous overlapping of the green network and the built fabric and are an essential part of the character of this leafy suburb. The SPD includes an aerial image which shows the large number of mature trees and bushes located within the rear gardens of the properties along Maida Vale and Hamilton Terrace.
15. In respect of the appeal site, there is a mature lime tree located within the front garden of the property, which is protected by a Tree Protection Order¹

¹ The City of Westminster Tree Preservation Order No: 550 (2005)

- (‘TPO’). The tree is approximately 15m high and is highly prominent within the townscape. The main parties agree that the tree has a good life expectancy.
16. In addition, there are several trees located within the rear garden of the appeal property, which are protected by virtue of their location within the CA. Of relevance to this appeal, is a mature hornbeam tree which is located to the rear of the appeal property within close proximity of the existing two-storey side extension. The tree is approximately 12m high and has a pronounced lean to the south west. Due to its height, the canopy of the tree is visible from the public realm on Hamilton Terrace. The main parties agree that the tree is high quality category A specimen with a good life expectancy.
 17. Based on the evidence before me, which includes my site observations, I consider that the existing lime tree and hornbeam tree at the appeal site contribute positively to the sylvan character and appearance of the CA. The trees have individual value and also form an important part of the wider network of high-quality trees within the immediate area.
 18. The appellant asserts that the proposed development would not have an adverse impact upon the health and longevity of the existing lime tree and hornbeam tree. He also explains that suitable protection measures could be put in place to protect the respective trees during the demolition and construction phases.
 19. The appeal is supported by a detailed arboricultural impact assessment² (the ‘AIA’), which includes a root excavation report and details of a specialist pile and beam foundation design with a suspended floor. The appellant contends that the foundation design would avoid disturbing all of the significant roots of the hornbeam tree³. However, it is acknowledged that fine roots would be affected by the excavation for the extension.
 20. In respect of the lime tree, the AIA states we “can confirm that the proposals will have no effect on this tree⁴.” The appellant’s statement of case, goes on to clarify that this would be the case because “no new subterranean structures are proposed within its root protection area⁵.”
 21. The root protection areas of the lime tree and hornbeam tree, as detailed on the submitted tree constraints plan, fail to take account of the site constraints, including the proximity to the highway, boundary walls, level changes at the appeal site and nearby built structures, including the rear extension at No 89 Hamilton Terrace.
 22. Accordingly, I am unable to come to an informed view as to whether or not the hornbeam tree is highly dependent upon the area of rear garden which is to be developed by the proposed extension. Indeed, the pronounced lean of the tree to the south west suggests that important structural roots, which would provide support and stability to the tree, may project to the north east of the tree, which would place them directly below the area of the proposed extension.
 23. I am cognisant that the trial investigations undertaken by the appellant did not find evidence of structural roots at depths up to 0.7m. However, given the

² Arboricultural Impact Assessment by Landmark Trees – Ref: TFA/87HMT/AIA/01B – Dated: 12 August 2019

³ Section 6.1.1 of the AIA

⁴ Section 6.1.6 of the AIA

⁵ Section 4.7 of the Appeal Statement by Adam Hollis

- constrained rooting environment of the tree and its pronounced lean, I consider there to be a realistic possibility that important structural roots could be located below this depth. If these roots were damaged or severed by the proposed foundations, this may result in significant damage to the tree.
24. Further to the above, no substantive evidence has been provided to demonstrate that any trial investigations have taken place at the site in relation to the piling foundations necessary to support the proposed external staircase. Given the proximity of this structure to the hornbeam tree, it is likely that such works could result in root damage.
 25. In respect of the lime tree, despite my observations above, given the position of the proposed extension and the footprint of the existing extension, I share the appellant's position that no new subterranean structures would be constructed within the root protection area of the tree.
 26. However, very little technical information has been provided to demonstrate how the respective lime tree and hornbeam tree would be protected during the demolition and construction phases of the proposed development.
 27. The appellant's construction report⁶ states that a 'superstructure' would be erected for the storage of construction materials and that all construction traffic would be excluded from root exclusion zones. In addition, the appellant explains that contractors could make use of the second driveway at the appeal site and scaffolding could be used to provide a level platform to mitigate the unevenness of the terrain.
 28. However, no substantive information has been provided to demonstrate where the proposed superstructure and scaffolding would be located. In addition, the recommendations set out at section 8.2 of the AIA are generalised, as opposed to site specific recommendations which take account of the constrained nature of the proposal and its close proximity to the hornbeam tree. For instance, it is unclear how any plant machinery would operate around the trees.
 29. If materials were improperly stored and construction vehicles were to operate in close proximity to the trees, soil compaction may occur at the appeal site, which could detrimentally impact upon the health and longevity of the trees.
 30. Similarly, only a limited amount of information has been provided to explain how the demolition of the existing extension would be undertaken without causing damage to the existing trees. The construction report explains that demolition works would be completed by hand, with all demolished materials to be removed from the area of the root protected zone. However, it is unclear how the significant volume of demolished building material would be taken away from the site and where it would be stored before it was collected.
 31. The appellant argues that given the minor nature of the proposed development, any further supporting arboricultural documentation, such as a tree protection plan and arboricultural method statement, could be secured by a planning condition.
 32. The degree of activity associated with the demolition and construction phases of the development would be significant and the development would likely take several months to complete. Given that the proposed development would be

⁶ Proposed construction sequence by Rodrigues Associates – Dated: 8 August 2019

sited in close proximity to the existing trees at the appeal site, which I have identified make a positive contribution to the character and appearance of the CA, there is a realistic prospect that damage to the trees may occur during this time. Therefore, I consider that such risks should be fully understood, and mitigation agreed before planning permission is granted. Accordingly, it would be unreasonable to impose a planning condition requiring the Council's approval of further matters after permission has been granted.

33. For the reasons outlined above, I am unable to conclude that the proposal would have an acceptable effect on the existing lime tree and hornbeam tree. As such, I cannot conclude that the proposal would accord with Policy 34 of the WCP 2019 which seeks to protect trees which contribute to the character and appearance of the townscape.
34. Given that the existing trees contribute positively to the local distinctiveness of the area, it follows that I cannot conclude that the proposal would preserve or enhance the character or appearance of the CA, and, thus, I cannot be certain that the development would not cause harm to the significance of the designated heritage asset. Nevertheless, if harm were to arise, I consider that the harm would be less than substantial and in accordance with paragraph 196 of the Framework, that harm should be weighed against any public benefits of the proposal.
35. I recognise that the proposed development would provide additional accommodation for the occupiers of the appeal property, which would improve their living conditions. However, such benefits would be principally private for the appellant.
36. In terms of public benefits, the appellant argues that the removal of the existing garage frontage and its replacement with a high-quality extension would improve the character and appearance of the CA. Even if I were to accept that this would be the case, such public benefits would be modest due to the limited scale of development proposed. Consequently, I find that the public benefits would not be sufficient to outweigh the harm to the significance of the CA, which would arise from the loss and/or damage of the existing trees at the appeal site.
37. In conclusion, I am unable to conclude that the proposal would preserve or enhance the character or appearance of the St John's Wood Conservation Area. As such, I cannot conclude that the proposal would accord with Policy 39 of the WCP 2019 which requires development to preserve or enhance the character and appearance of Westminster's conservation areas. Moreover, I cannot conclude that the proposal would accord with Policy 40 of the WCP 2019 which states that features that form an important element in Westminster's local townscapes or contribute to the significance of a heritage asset will be conserved, enhanced and sensitively integrated within new development.

Conclusion

38. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell
INSPECTOR