



Appeal Decisions

Hearing (Virtual) Held on 22 June 2021

Site Visit made on 23 June 2021

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 July 2021

Appeal A Ref: APP/X5990/W/20/3244571

48 Marlborough Place, London NW8 0PL

- 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 and Mrs Richard Laxer against the decision of City of Westminster Council.
 - The application Ref 19/04244/FULL, dated 31 May 2019, was refused by notice dated 18 October 2019.
 - The development proposed is repairs and alterations to the front boundary wall with the introduction of railings to provide an off street car parking space, soft landscaping with associated works.
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Appeal B Ref: APP/X5990/Y/20/3244570

48 Marlborough Place, London NW8 0PL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr and Mrs Richard Laxer against the decision of City of Westminster Council.
 - The application Ref 19/04245/LBC, dated 31 May 2019, was refused by notice dated 18 October 2019.
 - The works proposed are repairs and alterations to the front boundary wall with the introduction of railings to provide an off street car parking space, soft landscaping with associated works.
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Decision A

1. The appeal is dismissed.

Decision B

2. The appeal is dismissed.

Applications for costs

3. Applications for costs in relation to both appeals were made by Mr & Mrs Richard Laxer against City of Westminster Council. These applications are the subject of separate Decisions.

Preliminary Matters

4. The appeals relate to the same scheme under different legislation. I have dealt with both appeals together in my reasoning.

5. The appellants' name was entered incorrectly on the original combined application form. During the course of the appeal the appellants have provided correct details, which I have used in the banner heading above.
6. Following the Council's refusal of the applications its City Plan 2019 – 2040 and the London Plan March 2021 were adopted. Both parties have had opportunity to comment on this matter.
7. A Unilateral Undertaking (UU) was submitted by the appellants shortly before the hearing commenced. The contents of the document were discussed at the event, and it is understood that the document represents an agreed position between the main parties. At the event it was agreed that a further 14 working days would be given to finalise and sign the document. The completed UU was submitted on 2 July 2021.

Main Issues

8. The main issue for both appeals is the effect of the proposal on the special interest of the grade II listed building, known as 46-52 (even) Marlborough Place, and whether the proposal preserves or enhances the character and appearance of the St. John's Wood Conservation Area.
9. Additional main issues for Appeal A are the effect of the proposal on:
 - a) the highway network, and
 - b) the lime tree at the appeal site and the Sycamore tree at No. 46 Marlborough Place.

Reasons Appeals A and B

10. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
11. The appeal building is the central part of a building constructed originally as a terrace of three dwellings, each of three storeys with a basement. The list entry covers the whole terrace, which is a balanced classical composition, dating from the mid-19th century. The building is set back from the road and areas of front garden are separated from the pavement by a prominent boundary of substantial height, comprising a brick wall interspersed by lengths of railings and gates. The formal appearance of the building, enhanced by surviving historic ornamentation and the sense of enclosure and definition provided by the front boundary, are significant contributors to the building's special interest.
12. The appeal building stands within the St John's Wood Conservation Area (CA). It covers an area that was developed in the 1830s and 1840s as a garden suburb. A significant proportion of the original buildings and layout are retained to the present day. Most are classical villas, characterised by front gardens set behind high boundary enclosures fronting wide tree lined streets that provide the occupants of the properties with security and privacy. The arcadian character of the area, the fine detailing and form of many of its buildings

- including their boundary enclosures are significant contributors to the character and appearance of the CA.
13. The front boundary of the appeal site comprises a brick wall topped with a heavy painted coping, with gate piers and a pedestrian gate to one side. The Council is of the view that the wall is original, and the appellants accept that it is likely to be. At my visit I saw that the wall was laid in a traditional creamy lime mortar and has an historic patina. I am satisfied that the wall is likely to be original.
 14. At my visit I was able to investigate the makeup of the heavy painted coping that tops the wall, following disagreement between the parties at the hearing as to its construction. I saw two significant cracks, which appeared to be a result of the stress placed on the wall by the adjacent tree. Neither followed a straight line across the surface of the coping, which one would expect if the coping was formed in blocks of stone. There was no evidence of any further joints in the coping. I am therefore of the view that the coping is most likely to be formed in stucco.
 15. The existing gate piers are slightly narrower than most on the road, and their unrendered finish is unusual. At my visit I saw that the piers had different pointing to the adjacent wall, and the appearance of the face of the bricks including the way they had weathered was also slightly different. On this basis the piers could be later than the adjacent areas of wall. However, I am not of the view that their design is so inappropriate that they are harmful, or that their demolition and replacement could constitute an enhancement. The existing piers sit comfortably within the brick wall and provide an appropriate sense of definition to the gate opening that is appropriate to the setting of the listed building and the wider character and appearance of the CA.
 16. The proposal would see the entire wall at the site and the pair of gate piers demolished. As the coping appears to be formed in stucco it would not be capable of re-use. The proposal would thus result in the loss of significant historic fabric that is most likely part of the original architectural composition. Although the bricks could be re-used, the well developed historic patina would be disrupted in any reconstruction. For these reasons I find that the demolition of the existing front boundary would harm the special interest of the listed building and fail to preserve or enhance the character of the CA.
 17. The existing lime tree stands immediately behind the wall. At my visit I saw a significant belly in the outer face of the wall immediately in line with the base of the tree. Close to this, to the northeast is a crack in the wall that runs up through joints in the brickwork and breaks the coping. The wall has cracked in the same position on the inside face. There is some evidence of previous repairs in the form of cementitious mortar in this area, but the brick has pulled away from this also.
 18. The vertical crack demonstrates that the wall has lost some structural integrity. However, at my visit I saw that the wall quickly returns to an upright position beyond this crack, as it extends towards the closest pier.
 19. At the southwest corner of the plot the outer face of the wall appears to be keyed into the repaired stretch of wall fronting the neighbouring property, and as such appears to retain more integrity than the area of wall immediately to

the northeast of the tree. However, at the corner the wall has lost its attachment to the return wall.

20. Given the historic value of the wall, which is not disputed by the parties, I am not satisfied that there is sufficient evidence before me to justify demolition of the wall in favour of more sensitive in-situ repairs, for which a range of proven techniques exist that would allow the retention of historic fabric and re-establish structural integrity. Furthermore, even if the evidence before me was sufficient to justify a rebuild, the structural issues appear to only relate to a limited section of wall. I am thus not satisfied that the demolition of the entire front wall is justified.
21. At the time of my visit the wall fronting No. 50 Marlborough Place was concealed behind boards. However, based on what I could see and the photographic evidence before me, the substantial length of wall across the front of the listed building is a highly significant component within the streetscene of the CA. The proposal would see a shorter section of wall reinstated to make space for a wider opening, defined by new piers with a stone cap. The opening would be enclosed with a pair of metal gates.
22. At my visit I could see many local examples of similar alterations to front boundaries to provide vehicular access. However, I also saw a small number of plots where dwellings are only accessed from the street through a pedestrian gate, as is the case at the appeal site. These rare survivals present a more traditional arrangement that is entirely appropriate for the setting of the principal building, and more aesthetically pleasing than a front boundary that is dominated by a large car width opening.
23. I am mindful that the proposal relates to a wall that fronts three dwellings, which form a single architectural composition. Although gate arrangements and the design of piers differ, the wall is of the same material and height across the front of the three dwellings. It therefore gives a coherent front boundary arrangement across the front of the listed building. The formation of a wider opening, enclosed with metal gates that would be visually weaker than a solid brick wall, would loosen the definition of the front boundary. It would result in a greater proportion of void to solid boundary. I find that this would have an adverse impact on the role the front wall plays in defining the front boundary of the listed building and the contribution that it makes to the character and appearance of the CA.
24. The appellants are of the view that the proposed gates would provide an appropriate and equally effective means of enclosure to the front boundary. However, at my visit I saw that boundaries in the area are more effectively defined by solid masonry walls, and I note that page 50 of the St John's Wood Conservation Area Audit confirms that front boundaries within the CA are most commonly formed by painted stucco or brick walls.
25. The proposal would see a significant area of the front garden laid to paving. This would prevent the current occupiers or any future occupiers from increasing the level of vegetation in the front garden, which I consider to be a harmful change in the context of the verdant character of the CA. I also consider there to be some harm arising from the introduction of a parked car onto the front garden. The paved area would be slightly elevated, and a parked car would be easily seen through the proposed gates, without opportunity to park to the side or behind a boundary wall owing to the limited width of the

plot. From the pavement a car would be seen to dominate this foreground area, which would have a harmful effect on the setting of the listed building and character and appearance of the CA.

26. I note that the proposal is simple and does not attempt to introduce a further style. I am also mindful of the differences between this current proposal and the scheme previously dismissed at appeal¹, and the subsequent changes in the context of the site in the intervening appearance which I considered carefully at my visit. However, none of these factors are sufficient to cause me to come to a different view on this main issue.
27. In summary, I find that the proposal would fail to meet the requirements of the LBCA as it would fail to preserve the special interest of the listed building and would not preserve the character or appearance of the CA. It would be contrary to Policies 38, 39 and 40 of the City Plan 2019 – 2040 (CP), which together seek to ensure that development proposals positively contribute to existing townscape and streetscape, conserve and enhance heritage assets, and conserve, enhance and sensitively integrate existing features such as boundary walls.

Reasons Appeal A

Highways

28. Policy 27 of the CP states that the removal of boundary treatments and gardens to provide a vehicle crossover and on-site parking will be resisted. Although the proposal would see a boundary reinstated, I have already concluded that it would have a harmful effect on heritage assets. The proposal would also reduce the future potential to increase the levels of vegetation in the front garden. As such I find that it would not accord with part G. of Policy 27.
29. The parties do not agree as to whether the existing parking bay at the front of the site is large enough to accommodate three or four parked cars. Evidence provided by the Council includes a photograph showing four cars parked within the bay. At my visit three large cars were parked in the bay, with a significant gap between two. On this basis, taking into account the evidence provided by the Council and its acceptance of the overhanging of parked vehicles within its parking bays, I am satisfied that the existing bay is large enough that it could be used to park four vehicles.
30. The reduction in the length of the bay resulting from the proposal would be considerable. A plan provided by TTP Consulting² shows three cars parked in the reduced bay, however the cars shown in the drawing are very small, and even then, some overhang would be necessary. The appellants accept that it would realistically accommodate two cars and other plans of the proposal show two cars parked in the shortened bay. I therefore conclude that the reduced bay could only provide realistic parking provision for two cars.
31. The proposal would see a further single on-street parking bay added to the front of No. 46 Marlborough Place, to be secured by the submitted UU. The proposal would therefore result in the loss of one on-street parking space.

¹ Appeal references: APP/X5990/E/03/1118498 and APP/X5990/A/03/1118026

² Ref: 2019-3569-TR01 Rev A

32. There would be some benefit arising from the creation of a single parking space at the appeal site as a car parked here would not occupy an on-street space. However, it would be a private space that would only be useful to the occupiers of the appeal property.
33. The Council is of the view that demand for parking in the area is high and that the area suffers from parking stress. Whilst I accept that the use of resident parking bays in the vicinity of the site are over 80% at most times, the overall percentage, which includes all other spaces that can be parked in, including single yellow lines that are not otherwise restricted in accordance with the CP definition, is below 80% for almost all of the parking data times provided by the Council. On this basis, taking into account the small benefit of providing a private parking space, I am satisfied that the proposal would not exacerbate existing parking stress.
34. The Council suggests that the proposed crossover would be unsafe for pedestrians. The pavement close to the appeal site is wide and has good sight lines. I am not satisfied that the introduction of the proposed cross over would be harmful to pedestrians using the existing pavement.
35. Visibility for vehicles using the proposed crossover would be restricted by parked cars to either side. A 1m wide splay would be provided, which the Council suggests would be insufficient, with reference to City of Westminster Highways Planning Guide 2004. However, the straight alignment of the road and wide pavement as well as the fact that on street parking bays are not continuous, gives road users good sight lines along the road and along lengths of pavement to the inside of parked cars. I am also mindful of the fact that the street already features lots of crossovers, so road users would be well aware of the potential for vehicles to emerge between parked cars. For these reasons I am satisfied that the proposal would not reduce cycling or vehicular safety.
36. Part A of Policy 27 of the CP states that the parking standards in the London Plan apply to all new developments. Policy T6.1 of the London Plan March 2021 (LP) states that new residential development should not exceed the maximum parking standards set out in Table 10.3. The proposal is not for new residential development, and as such I am not satisfied that the proposal would conflict with Policy T6.1 of the LP.
37. In summary, I am satisfied that the proposal would not exacerbate existing parking stress or reduce pedestrian, cyclist or vehicular safety, and would thus accord with Policies 24, 25 and 28 of the CP. However, it would be contrary to Part G of Policy 27 of the CP, which resists the removal of boundary treatments and gardens to provide a vehicle crossover and on-site parking.

Trees

38. The existing lime tree at the appeal site and the sycamore tree in the front garden of No. 46 Marlborough Place are both substantial in size and contribute significantly to the character and appearance of the area. The proposed hardstanding area would be close to the trunks of both trees, well within their root protection areas, and would involve a ground level reduction to marry the level of the garden with the lower level of the road.
39. The appellants have undertaken extensive investigative works to gain a better understanding of the effect the proposal may have on the root structure and

rooting environment of the existing trees. The Council is of the view that there are several discrepancies with the investigations carried out, and areas that have not been investigated that would benefit from such.

40. Whilst the appellants accept that there are some discrepancies, they are satisfied that imposing conditions set out in the agreed statement of common ground would secure further detail in relation to tree protection, and that careful site investigation and analysis during the work would be sufficient to accommodate any additional findings arising from areas of the site that have not been investigated. These could include matters such as a modest repositioning of the proposed planter wall. In the event that the appeal is allowed, the suggested conditions would secure a further level of detail in relation to the trees, which could include additional site investigations or monitoring during construction.
41. In addition, the appellants propose the use of the arboraft system, which is a geo-cellular system that supports a paved surface without significantly impacting the permeability of the section and underlying root zone. The units can be filled with soil and can be laid over existing tree roots or laid so that existing roots are within its structure, as the units come apart and can be adapted for such purposes.
42. The Council is concerned about whether this system can be laid to accommodate the varying gradient proposed across the site, and how robust it is when sections are cut away to accommodate existing roots. At the hearing the appellants confirmed that the system can be laid at a variable gradient, and the plans show that the actual difference in gradient across the site would be very modest. It was also confirmed that the aim would be to lay the system above the main bulk of tree roots, but that it would be possible to accommodate tree roots at the level of the arboraft by laying the system around the root or inserting stone seams to avoid manipulating the units. It was also suggested that units with a shallower depth than specified could be used if necessary.
43. The appellants are confident that even if roots need to be cut to facilitate the proposal the level of injury would not be beyond that which the trees could cope with. At the hearing they pointed out that 3-4 metres of growth are removed from the lime tree approximately every 8 years as part of a management regime accepted by the Council. I accept that roots and branches have different characteristics, and that pruning either can have a different impact on a tree. However, the regular branch pruning that the tree withstands is significant, and significant loss of roots is not proposed. Furthermore, evidence suggests that the Council has accepted the principle of some root pruning.
44. In summary, I am satisfied that the effect of the proposal on the existing trees is understood adequately at this stage, and conditions could be imposed sufficient to manage the effect of the proposal on the trees. The proposal would thus accord with Policies 34, 38 and 39 of the CP, which seek to ensure that development proposals will preserve trees that are valuable to the character and appearance of the townscape, including those that contribute positively to the significance of conservation areas.

Heritage Balance

45. In terms of the National Planning Policy Framework (the Framework) the harm to the special interest of the listed building and the character and appearance of the conservation area would be less than substantial. Paragraph 196 of the Framework establishes that any harm should be weighed against the public benefits of the proposal.
46. The proposal includes facilities for the charging of an electric vehicle within the appeal site and secures a financial contribution towards a further electric charging point in the area. These are public benefits that attract considerable weight.
47. Although I have found that the effect of the proposal on the existing lime tree would be acceptable, I am not satisfied that the proposal would actually secure an overall improvement to the environs of the tree. Significant disturbance would be carried out within the root protection area, including a reduction in ground level. Introducing new soil within the area of the proposed planter and the arboraft system would help to mitigate the impacts, rather than secure an overall improvement. Furthermore, the parties agree that the tree is in good health.
48. The proposal would secure the removal of the redundant dropped kerb to the front of No. 46 Marlborough Place. The visual benefit of this would be very modest. As such this public benefit attracts only modest weight.
49. At the hearing the appellants suggested that the proposal would secure the best use of the appeal property. The appeal building is a very attractive historic property that appears to be in good condition. There is no evidence before me to suggest that resisting the proposal would put the future of the building at risk. I therefore give this matter little weight.
50. At the hearing the appellants suggested that the maintenance of the existing level of parking provision and the manner by which the proposal would address the condition of the wall would also be public benefits that should weigh in favour of the proposal. However, I have found that the proposal would result in the loss of one on-street parking space and that the full demolition of the wall is not justified. I have also found that the existing piers are not harmful. I am therefore not satisfied that these matters constitute public benefits.
51. Paragraph 184 of the Framework states that heritage assets are an irreplaceable resource. The proposal would result in the loss of historic fabric, a significant permanent and harmful alteration to the listed building, and a harmful change to the character and appearance of the CA. Paragraph 193 of the Framework establishes that great weight should be given to the conservation of a heritage asset. In this context I find that the public benefits of the proposal would not be sufficient to outweigh the degree of harm identified.

Other Matters

52. It is suggested that the proposal would create a safer environment for the appellants, with reference to mugging incidents that have taken place in the area. However, I give this matter little weight as the provision of a more open front boundary, with a wide pair of gates that could be left open to allow easy

vehicular access, would have the potential to make the front garden area and the front of the house less private and less safe.

Conclusion

53. For the reasons above, both of the appeals should be dismissed.

A Tucker

INSPECTOR

APPEARANCE

FOR THE APPELLANTS:

Mr Stuart Minty Dip TP MRTPI
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Mr Guy Ailion M.Arch(prof) dist. Pr.Arch SACAP
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FOR THE LOCAL PLANNING AUTHORITY:

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Documents submitted during the hearing

- 1) An email from the appellants giving agreement to the use of two pre-commencement conditions set out in the statement of common ground, in the event that the appeal is allowed. This was received on the day of the hearing.