



Appeal Decision

Site visit made on 16 November 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/Z5630/W/21/3274059

The Coigne, 84 Lower Ham Road, Kingston Upon Thames KT2 5BB

- 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 P Dockerty of Cardhu Developments Ltd against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 20/02053/FUL, dated 21 August 2020, was refused by notice dated 30 October 2020.
 - The development proposed is the demolition of the existing 3-storey building, previously converted into 2 flats, and the erection of a 4 storey building comprising 7 flats with associated basement accommodation, car parking and reconfigured access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published its revised National Planning Policy Framework (the Framework) in July 2021. The main parties have had the opportunity to refer to it as part of the appeal process. In particular, paragraphs 127, 163, 194 and 196 of the 2019 Framework as referred to in the refusal reasons on the Council's decision notice broadly correlate with paragraphs 130, 167, 200 and 202 in the revised Framework.
3. Since the Council made its decision, The London Plan, March 2021 (LP) has superseded the London Plan, March 2016. Accordingly, policies 3.5, 7.4, 7.6 and 7.8 of the 2016 plan and referred to on the decision notice are no longer in force. Both parties have had the opportunity to refer to the LP as part of the appeal process. Therefore, I am satisfied that no one would be seriously prejudiced by my determining the appeal having regard to the policies contained within it.

Main Issues

4. The main issues are the effect of the proposal on:
 - The character and appearance of the area, including trees and having particular regard to whether the character or appearance of the Riverside North Conservation Area (CA) would be preserved or enhanced;
 - The living conditions of existing residents at neighbouring buildings having regard to privacy;

- Whether satisfactory living conditions would be created for future occupants having regard to the provision of outdoor space;
- Flood risk, and;
- If harm arises, whether this is outweighed by other material considerations.

Reasons

Character and appearance

5. The CA covers a linear area on the eastern side of the River Thames, and the evolution of development and landscape has been heavily influenced by the river. Although the area nearest the appeal site contains a variety of built form, including modern apartment blocks, an important component of the CA's significance is derived from Victorian/Edwardian development. This period saw an increase in leisure uses of the river, and the creation of Canbury Gardens. Groups of large houses using architecture and styling redolent of that period are evident in the CA.
6. 84 Lower Ham Road is one such large, detached, river facing, period house. It is mentioned in the Riverside North Conservation Area Appraisal, November 2002¹ as the only remaining house built following the subdivision and sale of plots at the Albany estate in 1892. It features period detailing including the use of red brick and render, a steeply pitched clay tile roof, gables including one with a circular window, chimneys, decorative sash windows, bay windows and a balcony. Although some unsympathetic alterations have taken place, its distinctive style and form is clearly discernible and is particularly suited to address the river. Moreover, these qualities resonate with other late Victorian buildings, such as the nearby boathouse, which is designated as a building of townscape merit.
7. It follows that I cannot agree with the appellants' assertion that No. 84 has no historic or architectural merit². On the contrary, for the reasons outlined, it possesses historic and aesthetic value that makes a modest contribution to the significance of the CA, although taking the CA as a whole, the appeal site has low significance. My finding in this regard is similar to that in the Heritage Impact Statement (HIS)³ provided. I am mindful of my statutory duty⁴ to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
8. The proposal would demolish the existing building and replace it with a 4 storey block, with basement comprising 7 apartments. It would be both taller and have a deeper footprint than the existing house with a contemporary appearance, which to an extent has been drawn from existing apartment blocks in the vicinity, two of which flank the appeal site. In many respects the proposal would follow the spacing, general height and massing established by the apartment blocks either side.
9. Had it not involved the loss of the existing structure, I accept that of itself the proposal would have been a reasonably coherent response to the immediate

¹ Extract provided in paragraph 2.3, Heritage Impact Statement, prepared by Leith Planning Ltd, August 2020

² Paragraph 6.5 Appellants' Statement of Case

³ Paragraph 3.3

⁴ Section 72, Planning (Listed Buildings and Conservation Areas) Act 1990

context. Moreover, although the Council refers to the loss of trees, I observed that most of the prominent vegetation on site appeared to consist of shrubs, which the appellant states are non-native buddleia bushes. A landscaping scheme could be required to include some tree planting had the proposal been acceptable in other regards.

10. Nevertheless, central to my concern in terms of the impact on the CA is that the development would entirely remove a building that positively contributes towards the existing context. Its replacement, albeit reasonably inoffensive, would make a neutral contribution to the character and appearance of the CA, which is reinforced by the finding of the HIS⁵. Therefore, the overall effect would be harmful to the significance of the heritage asset. Given the prominent position of the appeal site close to the riverside and Canbury Gardens, it would notably lessen the ability to appreciate the way the area has evolved.
11. Paragraph 200 of the Framework states that any harm to the significance of a designated heritage asset requires clear and convincing justification. Policy HC1(C) of the LP stipulates that development proposals affecting heritage assets should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. Development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process. The design approach in this case would fail to adhere to this. For similar reasons, neither would it constitute heritage-led regeneration as advocated in Policy Guidance 2 of the Council's Residential Design, Supplementary Planning Document, July 2013 (SPD).
12. Consequently, I find that the proposal would not preserve or enhance the character or appearance of the CA and would be insufficiently sympathetic to local character and history contrary to paragraph 130(c) of the Framework. However, given the relatively modest scale of the proposal, it would result in less than substantial harm to this designated heritage asset.
13. Paragraph 202 of the Framework advises that in such circumstances the harm should be weighed against the public benefits of the proposal. The main benefit would be a net gain of 5 dwellings in an area where there is unmet need. It would also make more efficient use of a previously developed site. However, the weight given to this factor is tempered, as paragraph 124(d) of the Framework qualifies that the desirability of maintaining an area's prevailing character and setting should be taken into account when considering the efficient use of land.
14. In addition, there would be economic benefits associated with the construction and the economic activity of future occupants. However, the evidence before me does not quantify this. Given the modest gain in the number of dwellings proposed, the extent of such benefits would be limited. Overall, these public benefits attract moderate weight.
15. Although less than substantial, paragraph 199 of the Framework indicates that the harm to the significance of the CA as a designated heritage asset attracts great weight. Therefore, the moderate weight given to the public benefits identified would not outweigh the harm.

⁵ Paragraph 4.7

16. The appellants point out that the design proposed was the result of a lengthy pre-application process and the development has been reduced in scale relative to earlier iterations. Nevertheless, whilst I have had regard to the most recent pre-application advice⁶ before me, I am required to form my own judgement based on the entirety of the evidence, including my observations. In any event, the pre-application advice letter expressly states that it is not binding on formal decisions. Therefore, it would not lead me to find otherwise in relation to this main issue.
17. Reference is made to unsympathetic new builds on Lower Ham Road, and it is put to me that the proposal would be more acceptable in design terms than neighbouring properties⁷. However, this does not represent a sound justification to remove an existing building that does make a positive contribution to the CA.
18. Accordingly, I find that the proposal would fail to preserve or enhance the character or appearance of the CA and would be harmful to the local distinctiveness of the area. Therefore, it would conflict with policy HC1 of the LP and policies DM10, DM11 and DM12 of the Royal Borough of Kingston Upon Thames, Local Development Framework, Core Strategy, April 2012 (CS). In combination, and amongst other things, these policies seek high quality design that makes a positive contribution to local distinctiveness and conserves and enhances the historic environment.

Living conditions of existing residents

19. Policy DM10(k) of the CS states development proposals should have regard to the amenities of occupants and neighbours, including in terms of privacy. The SPD contains Policy Guidance 16 which sets out general minimum separation distances that should be maintained between neighbouring properties to facilitate privacy. This includes a separation distance of 7.5m between new habitable room windows and the boundary to neighbouring properties or 15m between new habitable room windows and the flank wall of a neighbouring property.
20. Neither side elevation of the existing house contains notable windows at upper levels⁸. However, the apartment block to the north has windows in the side elevation and extensive glazing and a roof terrace serving the top floor apartment that face sideways. Similarly, there are windows in the return wall of the central projection of the block to the south of No.84. In the absence of evidence to show otherwise, I have assumed they serve habitable rooms.
21. Based on the evidence before me, it is doubtful that the minimum separation distances advocated in the SPD would be achieved in all cases. Furthermore, the proposal would introduce an elongated side elevation to both blocks that would contain a notable number of upper floor windows, as well as corner terraces. The top apartment would also have access to a roof terrace, part of which would be adjacent to the flanking blocks. There would be north facing kitchen/living area windows serving apartments in the first and second floor of the proposal that would broadly align with the side window of the adjacent block. Moreover, the living area window and roof terrace shown on the third

⁶ Letter dated 1.6.18, Appendix 3, Appellants' Statement of Case

⁷ Paragraph 2.3, Appellants' Statement of Case

⁸ Drawings numbered 1526/EX11 & 1526/EX13

floor plan⁹, due to its proximity and height would have an imposing relationship with the top floor apartment in the block to the north.

22. To a lesser extent, there would also be overlooking from windows and corner terraces in the upper floors facing south towards the existing windows in the block to the south. The relationship of the roof terrace serving the top floor apartment has the potential to permit intrusive views to some of these windows.
23. In addition, I am concerned at the relative height and proximity of the proposed rear facing windows and terraces with the external garden area of the property to the east at 11 Albany Park Road. The side elevations provided show that there is an elevated terrace area to the rear of this property, which is likely to be used for sitting out. The proposal would bring the built form markedly closer eastwards and at a significantly higher level. The rear roof terraces serving the top flat would have a commanding view over the rear terrace at the adjacent property. When this is combined with the other rear facing windows serving bedrooms in the first and second floors it would significantly increase the degree of surveillance of the rear garden/terrace of No.11, by allowing intrusive views from several households. This would be at odds with the degree of privacy the occupants might reasonably anticipate when seeking to use the more private area of their grounds and the situation would be markedly worse than the present configuration.
24. Taken together these factors would result in an unreasonable level of overlooking that would significantly and unacceptably harm the privacy of several neighbouring occupants. Neither am I convinced that a condition to require obscure glazing on non-habitable room windows or directional louvres on habitable room windows would fully surmount my concerns. In any event, it would not address my concerns regarding overlooking from terraces. Hence, overall, the proposal would fail to achieve a high standard of amenity for existing users as referred to in paragraph 130 f) of the Framework.
25. Accordingly, I find that the proposal would result in unacceptable harm to the living conditions of residents at neighbouring buildings due to the reduction in privacy. On that basis, the proposal would conflict with policy D3 of the LP and policy DM10 of the CS that, amongst other things, seek to deliver appropriate levels of privacy.

Living conditions of future residents

26. The Council raise concerns that the proposal would not provide adequate communal external amenity space and thereby, the living conditions of the future occupants of the 7 apartments would be compromised. However, policy DM10(h) of the CS states that developments should ensure adequate private and/or communal amenity space. It does not specify a threshold.
27. Policy D6 of the LP stipulates that where there are no higher standards in the borough development plan documents, a minimum of 5sqm of private open space should be provided for 1-2 person dwellings and an extra 1sqm should be provided for each additional occupant. Neither party has provided detailed evidence to show whether or not the proposals would meet this standard.

⁹ Drawing number 1526/PL03

28. Policy Guidance 14 of the SPD states that communal amenity space should be provided in addition to private amenity space. It indicates that this should amount to 50sqm per development plus where less than 10sqm private amenity space is provided per flat, the shortfall in provision should be added to communal amenity space. Whilst this guidance carries moderate weight, it does not possess the status of an adopted policy and therefore, does not establish a mandatory standard.
29. The Council points out that the area to the rear of the proposal would serve the refuse store and car parking, and so would be unsuitable as amenity space. However, the area to the rear of the proposed layout is not intended to provide communal amenity space. The appellant generally relies upon the provision of private terraces and garden areas for the apartments. These would provide some space for sitting out and some limited capacity for gardening or play activity albeit that those apartments served only by terraces would, due to their limited size inhibit more boisterous children's play or the planting of larger trees or shrubs. However, this would be countered by the proximity of the proposal to the space and greenery at Canbury Gardens as well as the spaciousness of the riverside environment, which future residents would be able to enjoy.
30. On that basis, whilst the proposed outdoor space provision at the appeal site would not necessarily suit the needs of all families, it would cater satisfactorily for a reasonable proportion of them. Accordingly, I find that the proposal would create satisfactory living conditions for future occupants by providing adequate outdoor space provision in line with policy DM10 of the CS, and on the evidence before me it is not otherwise shown that there would be a conflict with the private outside space requirements of policy D6 of the LP.

Flood risk

31. The Flood Risk Assessment (FRA)¹⁰ provided confirms that the site is in Flood Zone 2 according to the Environment Agency's Flood Map. The proposal would increase the amount of 'more vulnerable' residential development in an area at medium probability of flooding.
32. Policy SI12(C) of the LP requires development proposals to ensure that flood risk is minimised and mitigated, and that residual risk is addressed. Furthermore, policy DM4 of the CS requires a FRA in these circumstances to address all sources of flooding, the future impact of climate change and take into account national guidance and good practice guidance.
33. However, the Environment Agency¹¹ have raised significant concerns regarding the adequacy of the FRA submitted. They state that the FRA has not been informed by the best available flood risk information for the area, that it fails to adequately demonstrate that no compensatory flood storage would be required and that it does not identify all potential routes for floodwaters to access the proposed basement level. Moreover, the FRA should use higher central and upper end allowances for climate change given that the proposal is for more vulnerable development in Flood Zone 2. They also refer to the proposed use of the basement for habitation. Given their preceding concerns they question whether appropriate measures for safe refuge and escape routes in the event

¹⁰ Prepared by RAB Consultants, dated 13.8.20 Version 3.0

¹¹ Letter dated 5.10.20

of a flood emergency would be secured. In light of their expertise in this area, their comments carry significant weight.

34. The appellants state that Appendix 6 of their appeal statement sets out additional plans that comply with updated flood risk information and which would result in only minor amendments to the scheme¹². However, only one plan is provided with a red line. It is not clear what this is intended to signify, nor how this updates the submitted FRA or addresses the concerns raised by the Environment Agency.
35. Planning Practice Guidance articulates the government's general planning approach to development and flood risk¹³. It sets out a stepped approach whereby the flood risk should be assessed. Thereafter, development in higher risk areas should be avoided where possible. However, where development needs to be in locations where there is a risk of flooding as alternative sites are not available, it should be ensured that development is appropriately flood resilient and resistant, safe for its users for the development's lifetime and will not increase flood risk overall. If these steps are not followed, then broadly speaking development should not be permitted. This approach is reflected in Paragraph 167 of the Framework.
36. Given the deficiencies highlighted in the assessment of flood risk in the FRA, I am not satisfied that the general sequential approach has been followed. It follows that this undermines the conclusions drawn in the document such that I am not assured that the development would appropriately manage and mitigate flood risk.
37. The appellants assert that a Grampian condition could address the concerns raised by the Environment Agency but do not provide any suggested wording. However, in those circumstances the principle of development would have been permitted and there would be limited ability to materially revise the proposal to respond to any requirements of a revised FRA. In any event, national policy states that the FRA must demonstrate the criteria listed in paragraph 167 of the Framework. Given the potential risk to life and property this warrants a high degree of certainty. It would not be appropriate to leave this matter to a condition, as it goes to the heart of the principle of the development.
38. Accordingly, I find that it has not been demonstrated that the proposed development would have no materially harmful effects on flood risk. Therefore, the proposal would be contrary to policy DM4 of the CS and policy SI12 of the LP.

Other Matters

39. The appellant considers that the Council has behaved unreasonably by not allowing an extension of time within which to determine the planning application and failed to follow the approach set out in its pre-application advice. Be that as it may, these factors lie outside the scope of my determination which I have determined on its planning merits. Moreover, a costs application was not submitted as part of the appeal submission¹⁴.

Planning Balance and Conclusion

¹² Paragraph 2.11, Appellants' Statement of Case

¹³ Paragraph 001 Reference ID: 7-001-20140306

¹⁴ Section H(b), Planning Appeal form

40. There is no dispute between the parties that the Council is unable to demonstrate a 5-year supply of deliverable housing sites¹⁵, and the Council give a figure of 3.5 years supply which represents a significant shortfall. In these circumstances, footnote 8 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. The presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the tilted balance).
41. I have found, having undertaken the heritage balancing exercise set out in paragraph 202 of the Framework, that the proposal would adversely affect the significance of the CA, a designated heritage asset. Furthermore, the appeal site lies in an area at risk of flooding and the criteria listed in paragraph 167 of the Framework have not been satisfied. Footnote 7 to paragraph 11 stipulates that the policies in the Framework relating to the protection of designated heritage assets and areas at risk of flooding provide clear reasons for refusing the proposal. As such, the tilted balance in paragraph 11d)(ii) is not engaged and the presumption in favour of sustainable development would not apply in this instance.
42. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁶. The proposal would provide 5 additional dwellings, thereby boosting the overall supply of housing in an area where there is a considerable shortfall. The proposal would also make more efficient use of a previously developed site. In addition, as outlined earlier, there would be some economic benefits arising from the development. Overall, given the extent of the housing supply shortfall, these benefits attract moderate weight.
43. Balanced against this is the permanent harm that would result to the significance of the CA and character and appearance of the area. Paragraph 189 of the Framework reminds us that heritage assets are an irreplaceable resource, and paragraph 199 confirms that great weight should be given to the conservation of designated heritage assets. In addition, the proposal would fail to maintain a high standard of amenity for nearby residents due to an unacceptable reduction in privacy. Finally, it has not been clearly demonstrated that the development would have no materially harmful effects on flood risk. The conflict with the relevant policies in the development plan are broadly consistent with the Framework in these respects and hence, attract significant weight.
44. There are no other compelling reasons, including the provisions of the Framework, which outweigh this finding. Accordingly, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor Inspector

¹⁵ Paragraph 7.2 Council's Appeal Statement

¹⁶ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.