

Appeal Decision

Site visit made on 19 October 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/A5840/W/21/3270317

240 Old Kent Road, London SE1 5UB

- 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 Mr Dayal Kohli against the Council of the London Borough of Southwark.
 - The application Ref 20/AP/1919, is dated 17 July 2020.
 - The development proposed is described as: 'conversion of existing residential dwelling (house in multiple occupation (HMO)) to one 2-bed flat and two 1-bed flats'.
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Decision

1. The appeal is dismissed, and planning permission for the conversion of existing residential dwelling (HMO) to one 2-bed flat and two 1-bed flats is refused.

Procedural Matters

2. For clarity, I have taken the name of the appellant from the appeal form as it is more precise.
3. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of this appeal. The main parties have had an opportunity to comment on the significance of the changes.
4. The appeal is against the failure to give notice within the prescribed period of a decision on an application for planning permission. Following the lodging of the appeal, the Council considered the application and indicated in its Appeal Statement (AS) that they would have refused the application. Whilst not specifically cited on the Council's suggested reason for refusal in relation to character and appearance, the proposed roof extension is quoted in the AS. Therefore, I will not prejudice any party in taking this element of the proposed development into account in reaching my decision.
5. During the course of the appeal the Thomas A'Becket & High Street Conservation Area (the CA) was designated on 2 November 2021. In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Both parties have been given the opportunity to provide comments on this matter.

Main Issues

6. As outlined in the AS, the Council's reasons for refusing planning permission would have been regarding the effect of the proposed development on character and appearance, living conditions of existing and future occupiers and matters surrounding flood risk. I have formulated my main issues on this basis.
7. Accordingly, I identify that the main issues on this appeal are:
 - i. the effect of the proposed development on the living conditions of occupiers at 242 Old Kent Road;
 - ii. the living conditions of future occupiers, with particular regard to natural daylight/sunlight, outlook and noise; and,
 - iii. the effect of the proposed development on the character and appearance of the appeal site and surrounding area.

Reasons

Living conditions of neighbouring occupiers

8. The proposed development is in proximity to the shared boundary with No 242, which appears to have little rear outdoor space. Nonetheless, there are a number of room windows, which would be affected by the proposed development. I noted on my visit that an opening on the 2-storey bay window at No 242 facing the site was built up with no glazing. The central upper ground floor window was operational and was open during my visit.
9. Given the orientation of the site, I still consider that the central upper ground floor window at No 242 would receive a notable amount of sun/day light, but due to its modest distance from the proposed development, I am not convinced that the projection and height of the upper ground floor element of the proposed development would not create a sense of enclosure, whilst restricting the outlook currently afforded by neighbouring occupiers. This would likely be further exacerbated due to the proposed terrace above.
10. The proposed rear terraces that would be located on the first and second floors of the proposed development would have a particularly close relationship with some of the rear windows at No 242. These comprise the window facing the site in the first-floor bay window and the second-floor window above. I note the presence of a commercial style flue that would be between these windows and the proposed development, but it would do little to prevent any overlooking or loss of privacy. A frosted glass privacy screen has been proposed for the first-floor terrace. Whilst this may overcome issues of privacy, I am not convinced that the proximity of such a feature would not raise any adverse issues on the level of amenity currently afforded by neighbouring occupiers, with particular regard to outlook, even when taking into account the 2no. other windows within the bay.
11. The enclosure surrounding the proposed terrace at second floor would comprise of metal balcony railings. These would be modest in height and thus, I am not convinced that there would not be any harm to the living conditions of neighbouring occupiers through a loss of privacy to the adjacent second floor window at No 242 or the lower first-floor bay window, particularly the

windowpane facing the site. I have considered whether a suitably worded condition to ensure that otherwise unacceptable development could be imposed to make the proposed development acceptable, but I am not confident that other harm to the living conditions of neighbouring occupiers through dominance and outlook would not occur as a consequence.

12. For the reasons given above, I therefore conclude that the proposed development would harm the living conditions of the neighbouring occupiers at No 242, particularly through an unacceptable loss of outlook, sense of enclosure and privacy. This would fail to accord with the amenity aims of Policy D6 of the London Plan 2021 (LonP), Strategic Policy 13 of the Council's Core Strategy 2011 (CS), Saved Policy 3.2 of the Southwark Plan (SP), 2015 Technical Update to the Residential Design Standards 2011 (the SPD) and the requirements of the Framework.

Living conditions of future occupiers

13. Within Flat B, a kitchen/dining room on the upper ground floor is proposed that would aim to utilise the existing lightwell within the building. On my site visit, I was unable to enter this room as the room was locked by the occupant. Thus, I could not assess the level of shared light that the room receives. As the room does not benefit from a direct source of light and in the absence of substantive evidence to the contrary, I am not satisfied that the proposed kitchen/dining room in Flat B, which constitutes a habitable room, would receive a sufficient amount of natural daylight for future occupiers. I recognise that this room is currently inhabited as a bedsit, but this does not provide sufficient justification for the proposed development to outweigh the concerns raised.
14. With regards to noise and possible noise transfer, I note that the currently residential bedsits are present on all floors, except for the lower ground floor. Additionally, there is little evidence to suggest that the current residents experience any harmful effects regarding the transfer of noise between units/floors. In any event, I consider that such matters in this instance would be sufficiently controlled by other legislation¹. In any event, even if details were required, I consider that such information could be requested through the imposition of a suitably worded condition.
15. For the reasons given above, I therefore conclude that the proposed development would not provide satisfactory living conditions for future occupiers, particularly through an unacceptable level of natural/day light to a habitable room. This would fail to accord with the amenity aims of LonP Policy D6, CS Policy 13, Saved SP Policy 4.2, the SPD and the requirements of the Framework.

Character and appearance

16. The appeal site comprises a mid-terraced property dating from the Georgian period, prominent in the street scene and its presence makes a positive contribution to the character of the CA. Surrey Place Terrace (the terrace) of which the site forms part is located between Surrey Square and Madron Street, comprising mostly late 18th century town houses, originally with London brick as the external surface and three storeys in height. All of these properties have

¹ The Building Regulations 2010

notable ground floor extensions that front Old Kent Road with commercial uses located within.

17. Although, a small number of buildings close to Surrey Square differ in design with a single storey unit turning the corner and mansard styled roofs at 220 to 224 Old Kent Road (even) that includes a pronounced roof top gable between 224 and 226 Old Kent Road, the majority of the terrace exhibits roofs behind parapet walls, with little or no articulation between the properties.
18. Paragraph 197 of the Framework requires local planning authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets, and the desirability of development making a positive contribution to local character and distinctiveness. Paragraph 203 says the effect of an application on the significance of a non-designated heritage asset should also be taken into account, requiring a balanced judgement to be made having regard to the scale of harm or loss and the significance of the asset.
19. The Council considers the host property to represent a non-designated heritage asset for the purposes of the Framework. However, although I note that the host property and the wider terrace is not listed as a key unlisted building or building group in the CA appraisal², the Council's observation concurs with my view, as the age and architectural merit of the building is a good example of a building of its era and it has prominence in the CA. The terrace forms Michael Searles first building that he designed and dates from 1784. Although, I accept that some erosion to detailing on the host property has occurred through the passage of time with the loss of sash windows, the installation of UPVC rain and foul water goods and the application of render to both front and rear elevations.
20. The site is located within Character area A: Historic commercial high street in the CA appraisal. The significance of this area of the CA includes many early 18th-century townhouses, with Victorian and 20th-century ground floor front extensions fronting the street and predominantly London stock brick facades, and pitched roofs behind parapet walls, amongst other things.
21. I find harm in respect of the proposed extension and alterations to the rear through its overall scale and massing, the loss of an original feature in the form of the 2no. storey bay window and the overall alterations to fenestration on the rear elevation, which would detract significantly from the existing appearance of the host property, including its vertical emphasis and overall proportions. Furthermore, in respect of the proposed alterations to the existing roof through the creation of a mansard style roof, this feature would be readily visible from Old Kent Road and would become a notable feature within the CA through its strident appearance on the terrace.
22. The statutory duty in Section 72 of the Act is a matter of considerable importance and weight. I note the proposed development seeks to incorporate traditional pattern sash windows at the rear of the property and the replacement of existing uPVC windows to the front. Nonetheless, the proposal would have a negative effect on the significance of a designated heritage asset and would result in "less than substantial" harm in the words of paragraph 202 of the Framework. To allow the proposal the resultant harm would need to be clearly outweighed. The proposal would create additional accommodation,

² Thomas A'Becket & High Street Conservation Area Appraisal 2021

particularly through the proposed roof extension and the conversion of the lower ground floor. However, I find that the public benefits of the proposal would not outweigh the harm to the significance of the CA.

23. For the above reasons the development would fail to preserve or enhance the character or appearance of the CA and would lead to less than substantial harm to a designated heritage asset; and would adversely affect the significance of the non-designated heritage asset. Accordingly, I find that the proposal would conflict with the heritage, character and appearance aims of CS Policy 12, Saved SP Policies 3.2, 3.13 3.15, the SPD. Additionally, the proposed development would not conserve the heritage assets in a manner appropriate to their significance in line with the Framework.

Other Matters

24. The appellant has drawn my attention to a development at 253 Old Kent Road that was granted planning permission. However, relatively little detail has been provided regarding the particular planning background to this scheme. Without such information a full and detailed comparison between this development and the case before me cannot be drawn. In any event, even if there were similarities between this development and the proposed development, this would not provide sufficient justification in the face of the harm identified. This is further compounded by the recent designation of the CA. I have considered this appeal proposal on its own particular merits and concluded that it would cause harm for the reasons set out above.
25. My attention has been drawn towards the objection to the appeal scheme by the Environment Agency³ (EA). I also acknowledge that the appellant has provided an updated Flood Risk Assessment⁴ and a copy of a letter⁵ from the EA for a neighbouring property, but this is of little consequence to the case before me. In any event, there are no corresponding comments from the Environment Agency on the proposed development, which is a misgiving on the submission. However, as I am dismissing the appeal in any event, I have not needed to consider this matter further.

Conclusion

26. For the above reasons, I therefore conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

³ Letter dated 4 August 2020 Ref: SL/2020/120360/01-L01

⁴ Flood Risk Assessment by ARK Environmental Consultancy Ltd dated March 2021.

⁵ Environment Agency letter dated 21 January 2013, regarding 236 – 238 Old Kent Road, London