



Appeal Decision

Site visit made on 24 November 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2021

Appeal Ref: APP/A5840/W/21/3278615

Constance Court, 47 Blenheim Grove, Peckham, London, SE15 4QR

- 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 Constance Court Limited against the decision of London Borough of Southwark.
 - The application Ref 20/AP/3730, dated 15 December 2020, was refused by notice dated 12 April 2021.
 - The development proposed is mansard roof extension of the existing flatted residential building to the front of the site to create one residential dwelling (Class C3); external alterations to the existing building including windows and brickwork; erection of a 2-storey building comprising two residential dwellings (Class C3) to the rear of the site at lower ground and upper ground level; and associated car and cycle parking; refuse storage; landscaping and associated works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal application followed a pre-application submission to which the Council provided several positive comments.
3. A New Southwark Plan is at an advanced stage of preparation, but the Council has not expressly relied on its policies in defending the appeal.

Main Issues

4. The main issues are (a) the impact of the proposal on the character and appearance of the area and on a conservation area, (b) the adequacy of the standard of accommodation proposed in relation to floor area and outlook and (c) the impact on the living conditions of adjoining occupiers in relation to privacy and outlook.

Reasons

Character and appearance

5. Constance Court is a post war building of 6 apartments arranged over 3 floors on the southern side of Blenheim Grove. It is rectangular in form with a shallow hipped pitched roof. A vehicular access to the site's western side leads to a communal parking area at the rear beyond which is a grassed area abutting the rear boundary to dwellings in Chadwick Road. The surrounding area is mainly residential in character, comprising older buildings to the southern side of Blenheim Road with a modern development of 5 houses opposite.

6. The site is located within Sub Area 3 of the Holly Grove Conservation Area; this comprises predominantly two storey late 19th Century housing laid out on a grid pattern. Much of this housing is of good quality and is visually consistent. It forms an important element in the significance of the conservation area. The existing building is of late 20th Century construction, replacing a former terrace. Whilst its brick and slate construction with string courses replicates characteristics seen in the conservation area, it is a plain rather bulky building with poorly proportioned windows. The Holly Grove Conservation Area Appraisal refers to the existing building as "*undermining the otherwise pleasing building frontage being three storeys in height and taking a much wider plot width than its neighbours*". The parties concur that it makes a minor adverse contribution to the conservation area.
7. Section 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
8. The present shallow hipped pitched roof would be replaced by a mansard style roof to provide a penthouse flat. Whilst this would not be higher than the existing ridge it would result in a greater mass, particularly at the front where 4 dormers would be inserted. A common feature of Constance Court with much of the older housing in Blenheim Grove is that it is the strong eaves line rather than the ridge that is apparent from most public viewpoints. The upright profile of the new roof and forward positioning of the dormers would be conspicuous and would exacerbate the prominence of the property in the street scene. The mansard roof form with dormers is not characteristic of this part of the conservation area and would detract from its appearance. Alays Court, at 35 Blenheim Grove, appears to be marginally higher than Constance Court, but its roofscape is more sympathetic to that prevalent in the road.
9. The brickwork at Constance Court is yellow but not consistent in tone with the yellow London stock bricks on most of the older housing. There are other materials nearby, red bricks to 55-61 Blenheim Grove, pale bricks on the new development opposite and black staining to the flank of no.53. The staining of Constance Court black would not therefore be out of keeping with the character of the area. But it would accentuate the contrast with neighbouring buildings. The extent of the brickwork to be treated would add to the prominence of the building and detract from its appearance of the conservation area.
10. The proposed front fenestration changes would result in improved proportioned windows with a greater vertical emphasis that would better reflect window shapes to older buildings in the road. This would be a visual enhancement, but changes to the frontage building as a whole would be harmful to the appearance of the building and its setting in the conservation area. In relation to Chapter 16 of the National Planning Policy Framework (the Framework), the harm would be less than substantial.
11. The new building proposed at the rear of the site would not reflect historic street patterns. But would be low-lying, not readily visible from public viewpoints and not perceived in the immediate context of how older housing contributes to the significance of the conservation area. It would have a neutral impact. The Council has objected to the proposed brick tone for the new build units, but in the event of the appeal being allowed, approval of bricks could have been addressed by a planning condition.

12. Paragraph 199 to the Framework states, *"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"*. Paragraph 202 comments, *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*. The appellant's Heritage Statements reference the Nuon¹ case which in relation to *"less than substantial"* refers to a range of impacts from *"negligible"* to *"something approaching demolition"*. In my judgement, the impact of the additional massing and dark staining of the brickwork on the character and appearance of the conservation area would be more than *"negligible"*. The building's present minor adverse contribution would be exacerbated by the scale of the changes.
13. There would be public benefits from the provision of 3 additional homes in a sustainable location to contribute towards overall housing need. Data in the appeal submissions indicate that the Council is not currently delivering on its housing targets. Its Housing Delivery Test result published in January 2021 shows delivery at 72%, below the threshold at which the presumption of sustainable development at Paragraph 11(d) of the Framework should apply. Footnote 7 to Paragraph 11(d) cites protection of designated heritage assets as a reason where the presumption may not apply. The adverse impacts of the proposal would significantly and demonstrably outweigh its benefits in providing 3 additional homes and other benefits cited by the appellant, such as installation of electric charging points, when assessed against the policies of the Framework as a whole.
14. The appellant has submitted amended drawings to retain the existing brickwork but to still incorporate the fenestration changes. Whilst this would represent an improvement on the originally submitted proposal, the amendments would not address the harm arising to the appearance of the building in the street scene from the massing of the mansard roof and dormers.
15. The scale and massing of the changes to the frontage building would not be appropriate to the local context. The proposal would thereby be contrary to Saved Policies 3.13 'Urban design' and 3.16 'Conservation areas' of the Saved Southwark Plan (2007). There would also be conflict with Policy 12 of the Southwark Core Strategy (2011) which expects development to conserve or enhance the significance of heritage assets. The proposal would not satisfy the requirements of the statutory duty for special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
16. The appellant contends the Council has allowed the erection of other buildings not sympathetic to the character and appearance of the conservation area, such as the modern building opposite. However, the building opposite and others on the northern side of Blenheim Grove need to be understood in the context of abutting the railway line from Peckham Rye Station. The northern side of the road is more industrial in character whereas the appeal building is alongside buildings that make a positive contribution to the conservation area.

¹ Bedford Borough Council v SSCLG & Nuon UK Ltd [2013] EWHC 2847

Standard of accommodation

17. The open plan kitchen, dining and living areas for both Unit 1 of the new build dwellings and Flat 7 in the new roof at Constance Court would be below minimum floor areas recommended in Section 2.4 of the 2015 Technical update to the Residential Design Standards SPD (2011). However, the overall floor area for both units would satisfy the SPD and space standards within the London Plan (2021). Amended plans submitted during the consideration of the planning application to rearrange internal layouts to address these concerns were not formally accepted by the Council but have been included in the appeal submissions. These plans show satisfactory room sizes and layouts to both units. Having regard to the Wheatcroft principles² it would be reasonable to accept the amendments as part of the appeal. The development would not be so changed that to grant it would deprive those who should have been consulted on the changes of the opportunity of such consultation.
18. As originally submitted, bedroom 2 to unit 2 of the new building would have had a relatively poor outlook with one obscured glazed window and a wooded screened window. The amended plans have rearranged the layout of unit 2 to provide a clear glazed front facing window to both bedrooms. Outlook from all habitable rooms and the revised layout to the unit would be satisfactory. The amended plans can be accepted under the Wheatcroft principles.
19. There would not be conflict with Saved Policy 4.2 of the Southwark Plan (2007) or with the Residential Design Standards SPD on the quality of accommodation proposed for all 3 new dwellings.

Living conditions

20. The proposed rear building would be sunken approximately 0.95m below ground level which would reduce its apparent massing when viewed from neighbouring dwellings. The Design and Access statement indicates various measures to mitigate impacts from overlooking from the upper floor. There would be narrow, full depth, clear glazed first floor bedroom windows in the north facing front elevation towards Constance Court. These would be the only windows to the bedrooms and so would be important for light and outlook. There would be a separation of about 14m to rear facing habitable room windows at Constance Court. A high fence to the gardens to ground floor flats at Constance Court would offer some screening but the inter-visibility between upper floor units would result in a degree of mutual overlooking at a distance significantly below the standards adopted by the Council.
21. As Constance Court is a relatively deep building in its plot, separating distances would be greater to the adjacent buildings at 43 and 53 Blenheim Grove. The angle of overlooking would also be more oblique. There would not be a material loss of privacy for the occupiers of these adjacent dwellings.
22. To the rear of the site are 42-46 Chadwick Road, dwellings with relatively short back gardens. There would be a separation distance of only some 12m between facing rear walls. Even allowing for the sinking of the proposed building below ground level, the upper floor would protrude substantially over the height of the boundary fence. It would appear as a close intrusive feature from the rear windows of the Chadwick Road dwellings resulting in loss of outlook.

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

23. The rear boundary fence would be sufficient to safeguard privacy within the back gardens to the new units which would be at a low level. However, as these gardens would be small it would not be practicable to raise the height of the fence or to provide meaningful landscape screening that would mitigate the impact of the massing of the new building. As the rear facing first floor window proposed would be obscure glazed, there would not be any material loss of privacy arising.
24. To the west of the site, at 101-107 Bellenden Road, there are long back gardens with vegetative screening in their rear parts. There would not be a material loss of privacy within these gardens in relation to the proposed facing flank windows.
25. Nonetheless, there would be a material loss of amenity for occupiers of upper floor flats at Constance Court in relation to privacy and to the Chadwick Road dwellings in relation to outlook. The proposal would thereby conflict with Saved Policy 3.2 of the Southwark Plan (2007) on protection of amenity and with the guidance in the technical update to the Residential Design Standards SPD.

Other Matters

26. Local residents have submitted representations in relation to other matters. Whilst there would be a reduction in the number of parking spaces at the site, due to the high public transport accessibility level in the area, the resultant level of parking provision would be acceptable in planning policy terms. A willow tree in the back garden would need to be felled for construction of the new building. The tree's amenity value is not so great as to warrant refusal of permission on this ground. A landscape condition could have been applied if the proposal had been acceptable on other grounds.

Conclusion

27. I acknowledge that the appellant has followed best practice in seeking pre-application advice on the proposal and that the Council's stance on some issues has changed following submission of the appeal proposals. The planning application has been subject to public notification and the Council is entitled to revise its position in the light of all relevant considerations.
28. I have accepted the appellant's reasoning on some issues. However, the massing of the additional floor to Constance Court would be harmful to the character and appearance of the area and to the Holly Grove Conservation Area. The rear building would result in a material loss of amenity for the occupiers of existing dwellings. For the reasons given I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR