



Appeal Decisions

Site visit made on 8 December 2021

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 10th January 2022

Appeal A Ref: APP/K5600/W/21/3280046

49 Wallingford Avenue, London W10 6PZ

- 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 Keith Macrae, Heli Ltd against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/02482, dated 17 April 2021, was refused by notice dated 21 June 2021.
 - The development proposed is rear single storey extension.
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Appeal B Ref: APP/K5600/W/21/3280050

49 Wallingford Avenue, London W10 6PZ

- 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 Keith Macrae, Heli Ltd against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/02473, dated 17 April 2021, was refused by notice dated 15 June 2021.
 - The development proposed is rear side return infill extension.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for rear single storey extension at 49 Wallingford Avenue, London W10 6PZ in accordance with the terms of the application, Ref PP/21/02482, dated 17 April 2021, subject to the conditions set out in the Schedule to this decision.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. These two appeals relate to the same site and are, effectively, alternative proposals. The Council refused them for similar reasons, although, of course, each case needs to be considered on its own individual merits. Where the issues are the same, I have considered them together, but have, differentiated where appropriate.
4. I undertook the site visit at the same time as that for a third appeal relating to this property for a proposed basement (APP/K5600/W/21/3284402). This will be the subject of a separate decision.

5. In the grounds of appeal, the appellant has partially made his cases on the basis that he considers that part of each of the proposals would be 'permitted development' under the terms of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). However, the Courts have made clear that if any part of a development falls outside the terms of this Order then the whole needs an application for planning permission. It is also the case that it is not the function of a section 78 planning appeal to determine the lawfulness of any part of the development.
6. Each case has been determined in the terms of the application as shown on the drawings. As there is no intervening division between the part asserted to be permitted development and that which is not, each should be considered as a whole. It is not realistic to consider them to be separate elements, with the applicant constructing the part asserted to be permitted development, then the part not, and finally knocking down what would become the internal wall.
7. Having said that, insofar as any part of the development might represent permitted development this may represent a 'fall-back' position. To the degree that is relevant, I have considered that within the main issues set out below.
8. As the site lies within the Oxford Gardens Conservation Area (the Conservation Area) I am required by virtue of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Main Issues

9. In each case the main issues are:
 - the effect on the character and appearance of the existing property and the terraces of which it forms part and on the Conservation Area;
 - the effect on the living conditions of the occupiers of 47 Wallingford Avenue (No 47) in terms of outlook and overbearing effect and for all neighbouring properties in terms of light spillage; and
 - whether the proposals make appropriate provision in respect of surface water drainage.

Reasons

10. The appeals property is an end of terrace dwelling. It has two substantive storeys although it is clear that the roof space has been converted in that there is a large dormer in the rear roofplane. It has a rear closet extension. The part of the closet extension closest to the dwelling is of two storeys, with a flat roof and there is a second single storey flat roofed section beyond that. The closet extension sits approximately in the middle of the rear elevation. The ground level drops slightly to the rear, so that by the end of the extension the ground level is approximately 250mm lower than that at the rear of the main part of the dwelling.
11. To the north, No 47, is a similar property although it only has a single storey extension to the rear, and this extends less far into the garden. This has windows in both the end and the side elevation facing the appeals property. The intervening wall is approximately 2.0m high for the depth of the existing

extension on the appeals property, after which it reduces to approximately 1.8m in height.

12. Most of the properties forming the two terraces on the east side of Wallingford Avenue have been extended to various degrees. However, the original overall character and appearance of the terraces from when they were built remains.
13. The Oxford Gardens Conservation Area covers an extensive area of streets to the north of the A40. For the purposes of these appeals it seems to me that its significance lies in the uniform nature of the individual streets set out in a grid-like pattern and the underlying similarity to the appearance of the dwellings.

Character and appearance

Appeal A

14. This proposal is for the demolition of the existing single storey element and the construction of a single storey flat roofed rear extension. This would extend from approximately the same place as the southern elevation up to and including the boundary wall with No 47. The drawing indicates that it would be 3.00 metres high. However, while the longitudinal section on the proposed drawings shows the change of levels at the rear (effectively a step down), this is not shown on the rear elevation.
15. Although the proposal would be noticeably wider than the existing extension, due to its single storey nature it would subsume neither the dwelling nor the rear elevation of the property, allowing the original nature of the building to be understood. The flat roof design would be in keeping with the flat roofed nature of the existing single and two-storey closet extension. From the evidence in front of me it would appear that a number of properties along Wallingford Avenue have been extended in a variety of ways. Although this proposed extension would be longer than some others, it would not be harmfully so. The glazed elements would appear in keeping when considered in light of the other rear extensions, including conservatories, in the vicinity. The proposal would be in keeping with the overall character and appearance of the Conservation Area and its significance, which would therefore be preserved.
16. Consequently, the design would be in keeping with the character and appearance of the building, the terrace and preserve the significance of the Conservation Area as a designated heritage asset. As such the proposal would comply with Policies CL1, CL2, CL3, CL6, CL9 and CL11 of the Royal Borough of Kensington and Chelsea Local Plan (the Local Plan) which seek good design, in keeping with an area and to preserve conservation areas. It would also comply with Policies C4 and C5 of the St Quintin and Woodlands Neighbourhood Plan (the Neighbourhood Plan) which require single storey rear extensions to be subordinate to the rear façade.

Appeal B

17. This proposal is for said to be for an infill extension between the existing extension and the boundary wall with No 47, which would not extend as far as the existing single storey extension. However, as set out above, the existing single storey element appears to be proposed to be replaced and therefore I am treating it as a whole. The same criticism of the drawings relating to levels set out above also applies to this proposal.

18. The proposal would involve a single storey extension with a mono-pitch, from a height of 4.00m on the southern side to 3.00m on the effective boundary with No 47. The application form indicates that the walls would be both London stock bricks and double glazed panels with polyester powder coated aluminium profiled section frames. From the drawings it would appear that the brick finish would be for the first floor which would include a porthole window to replace the existing window with the brickwork made good. The main single storey extension would be completed in glazing panels, apart from the boundary wall with No 47, and there would be a door within the rear elevation. The roof would be as the ground floor walls.
19. The proposed rear extension would be out of keeping with the architectural language of the existing building with its traditional windows and solid appearance. It would not follow the designs of the more conventional conservatories on the terraces but would rather be harmfully in contrast with it. The policies of the Local Plan cited above indicate that extensions should respect the character and appearance of an area. Paragraph 130 of the National Planning Policy Framework (the Framework) indicates that developments should be sympathetic to local character, but not prevent or discourage appropriate innovation or change.
20. I consider that this particular asymmetric design would be out of keeping and it would harm both the existing building and the wider terraces. For reasons explored more fully below in relation to drainage I do not consider that the proposal is well designed; it lacks the details that are necessary to show it has been thought through to allow construction. As the effects should be judged over the Conservation Area as a whole, I consider that this comparatively small extension would preserve the character and appearance and thus the significance of the Conservation Area as identified above, but even giving this great weight and special attention this does not outweigh the other harms I have identified.
21. Consequently, the proposal would be contrary to Policies CL1, CL2, CL6, CL9 and CL11 of the Local Plan and Policies C4 and C5 of the Neighbourhood Plan as set out above. It would however comply with Policy CL4 of the Local Plan relating to conservation areas.
22. In respect of the fall-back position, I will assume that the extension described by the appellant would be lawful. This is not to say it would be, but rather it puts the case in the most favourable light for the appellant. As described, this element would not be a conservatory and would be required to be constructed in materials to match the main house and thus would appear materially different. For this appeal, I consider that there is little real prospect of a fall-back as described taking place and thus this potential fall-back can only be given very limited weight and this does not alter my conclusion on this issue for this appeal.

Living conditions

Both appeals

23. Policy CL5 of the Local Plan requires development to ensure good living conditions for the occupants of neighbouring buildings. This includes that there should be no harmful sense of enclosure to existing buildings and neighbouring gardens.

24. Currently, the approximately 2.0m high wall affects light levels for the occupiers of No 47 not only in the single storey extension but also within the main dwelling as there is a glazed door in the rear elevation. Both extensions would increase the height on the boundary to a minimum of 3.0m adjacent to the main rear elevation which would reduce the amount of light and would result in a small increase in the sense of enclosure. However, in both appeal cases, even with the increase in height identified above, I am satisfied that the proposal would not harmfully reduce living conditions for the occupiers so that they would no longer have good living conditions.
25. Furthermore, I am satisfied within the context of an urban area such as this that any light spillage from the extensions would not harmfully affect the living conditions of any adjoining occupiers, noting the other conservatories in the vicinity.
26. Therefore, the proposals would both comply with Policy CL5 of the Local Plan as set out above.

Flood risk

Both appeals

27. The appeals site lies in the North Kensington Critical Drainage Area. Policy CE2 of the Local Plan deals with flooding and requires development to address and reduce flood risk and its impacts; in the case of these appeals this relates to surface water run-off.
28. The Council has referred to criterion g. in Policy CE2 which requires a reduction in 50% of existing rates for minor development. The explanatory text makes clear that minor development includes householder development. The appellant notes that this issue is addressed the Design and Access Statements and considers that this issue could be dealt with by a condition in each appeal.
29. Advice on planning conditions is set out in paragraphs 55 and 56 of the Framework and the national Planning Practice Guidance. In this context it seems to me that for a condition to meet the relevant tests it needs to be able to be practically delivered and thus not impact the proper implementation of a planning permission.

Appeal A

30. In this case the appellant notes that due to the current impermeable nature of the area to be covered by development the proposal would not increase the amount of hardsurfacing. He also seeks to reduce the amount of water entering the mains sewers by the use of water butts with the water collected for use in the garden. Due to the underlying London clay, infiltration measures may not be possible but other measures such as an underground tank could be used to reduce peak flows to the sewer.
31. Although no down pipe is shown, the design of the extension would facilitate the use of a water butt on the south elevation against the short section of wall. However, this volume would not ensure a 50% reduction in line with Policy CE2. An underground tank in the garden could be utilised to hold water on site for use either within the garden or pumped around the dwelling for use for flushing toilets and the like.

32. While it is possible that the tank could completely fill and therefore there be a need to overflow into the public sewer system, I am satisfied that this would be only an occasional occurrence and that taken in the round, subject to a condition to secure a scheme, there would be compliance with Policy CE2 of the Local Plan.

Appeal B

33. Due to the asymmetric roof any water falling on the proposed extension would run to the north. The details do not show how the rainwater would be disposed of.
34. The Design and Access Statement for this appeal only indicates the use of water butts, but in this case, there is no practical location where it could be installed. Any disposal would have to be in the northeast corner where a door is shown and any down pipe and butt would conflict with this. Even if the solution was to be a solely downpipe leading to a sustainable drainage system within the garden this would interrupt the design. Hence my comment above about this element of the proposal not being well designed since it does not appear that this element has been fully worked through.
35. In light of this I do not consider that a practical solution to surface water drainage could be delivered by condition without either adding to the harm of the design or impacting the implementation of any planning permission. Consequently, the proposal would fail to comply with Policy CE2 of the Local Plan.

Other Matters

36. A local resident is concerned about noise and disturbance during any construction. In this regard I am satisfied that for a development of this nature other environmental protection legislation would ensure that the proposal does not cause unacceptable effects.

Conditions

37. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
38. I have also imposed conditions relating to materials and surface water disposal; the former to ensure the appearance of the proposal preserves the character and appearance of the Conservation Area the latter to minimise on and off-site flooding risk. Due to the need to incorporate the drainage system within the fabric of the building, this condition needs to be imposed as a pre-commencement condition. I do not consider any further details in relation to a Flood Risk Assessment are necessary beyond those set out in the Design and Access Statement.
39. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusions

Appeal A

40. The development complies with the development plan as a whole and there are no material considerations sufficient to outweigh the presumption in favour of determining the proposal in accordance with the plan.
41. For the reasons given above I conclude that the appeal should be allowed.

Appeal B

42. The development is contrary to the development plan as a whole and there are no material considerations sufficient to outweigh the presumption in favour of determining the proposal in accordance with the plan.
43. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR

SCHEDULE OF CONDITIONS

Appeal A Ref: APP/K5600/W/21/3280046

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

LP 100	Location Plan
SP 100	Site Plan
EX PSE 100 Rev B	Existing Ground Floor Plan, Longitudinal Section and Rear Elevation
EX PSE 100 Rev C	Existing Ground Floor Plan
EX PSE 200 Rev C	Existing Longitudinal Section, Rear, Front, North and South Elevations
GA PSE 100-01 Rev B	Extension Option 1, Ground Floor Plan, Longitudinal Section and Rear Elevation
GA PSE 100-01 Rev C	Extension Option 1, Ground Floor Plan, Longitudinal Section and Rear Elevation
GA PSE 200-01 Rev C	Extension Option 1, Rear, North and South Elevations

- 3) No development shall take place until a Sustainable Drainage System (SuDS) scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - (a) a detailed analysis of surface water run-off and attenuation volume to demonstrate how the proposed measures will aim to achieve a reduction of 50% of existing rates including climate change in the calculations and factoring in all flows into the sewer system including groundwater or other flows;
 - (b) information about the proposed SuDS types, their location, attenuation capacity, specification, structural integrity, construction, operation, access, and maintenance;
 - (c) section/profile drawings of the SuDS, if relevant; and
 - (d) drainage plans to show clearly how surface water run-off will be conveyed to the SuDS and any connections to the sewer system if necessary.

The approved scheme shall be fully implemented before the development hereby permitted is first occupied and shall thereafter be maintained in accordance with the approved scheme.

- 4) No development above ground level shall commence until details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

END OF SCHEDULE