



---

## Appeal Decision

Site visit made on 20 December 2021

**by Alison Scott (BA Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 January 2022**

---

**Appeal Ref: APP/K5600/W/21/3275577**

**13 Kensington High Street, LONDON, W8 5NP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Gregory Ireland, Pickering Estates 2000 Ltd against the Royal Borough of Kensington and Chelsea.
  - The application Ref PP/20/05733, dated 16 October 2020, was refused by notice dated 11 December 2020.
  - The application sought planning permission for Extension to rear at ground and lower ground floor incorporating the single storey building at the back of the property to create upgraded office floorspace and a residential unit; roof and rear extensions at upper floors to create of 5 residential units at ground, first, second, third and fourth floors; and relocation of dental practice from first floor level to lower ground floor without complying with conditions attached to planning permission Ref PP/19/06571 dated 24 January 2020.
  - The conditions in dispute are No 2 which states that: The development shall not be carried out except in complete accordance with the details shown on submitted plans 1505.000 (Location Plan 1:1250), 1505.001 (Location Plan as Existing), 1505.002 (Basement, Ground and first Floor Plans as Existing), 1505.003 (Roof, Third, and Second Floor as Existing), 1505.010 (Section AA as Existing), 1505.020 (Elevations as Existing), 1505.150 (Basement, Ground and First Floor Plans -Proposed), 1505.151 (Roof, Third and Second Floor Plans -Proposed), 1505.160 (Section AA -Proposed), 1505.160 (Other Section AA -Proposed ), 1505.170 (Elevation Sections BB & CC), Condition 3 that states that: All work and work of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture, profile and, in the case of brickwork, facebond and pointing, and shall be so maintained; and Condition 5 which states that: External windows and doors hereby permitted shall be timber framed and painted, with the windows being double hung, white painted, sliding sashes, and so maintained.
  - The reasons given for the conditions are: The details are material to the acceptability of the proposals, and to ensure accordance with the development plan; To preserve the appearance of the building and the character of the area in accordance with policies of the development plan in particular policies CL1, CL2, CL3 and CL6 of the Local Plan 2019; and; To preserve or enhance the appearance of the building and/or the character of the area, in accordance with policies of the development plan in particular policies CL1, and CL2 of the Local Plan 2019.
- 

### Decision

1. The appeal is dismissed.

## **Preliminary Matter**

2. I have been furnished with the previously approved plans relating to the original permission for development at the site. I have taken these into account as part of my assessment of the proposal before me.

## **Main Issues**

3. The main issues of the proposal are:
  - Whether or not it would preserve or enhance the character and appearance of the Kensington Court Conservation Area (CA); and
  - The effect on the living conditions of neighbouring occupiers with regard to light levels and outlook.

## **Reasons**

### *Character and appearance of CA*

4. The appeal building is located within the Kensington Court CA. The local area is urban in character and is further characterised by its design influences taken from the Queen Anne Revival style. Tall, red brick houses and mansion flats with very ornate decoration including framing around windows and painted decorative string courses, is a unifying feature of the local area, set in a very tight grain of built development.
5. The appeal site dates from between 1891 and 1906 and is sandwiched between buildings of broadly the same period with ground floor commercial space onto Kensington High Street. The neighbouring buildings share similar characteristics to the appeal site although the appeal building varies as it is lower in height and includes a peaked gable end to the front elevation, with Tudor style influences, notably to its fenestration, representative of this historical period. Whilst there is contrast to the group of buildings it is experienced within, nonetheless, they represent some fine examples of this particular style of architecture and contribute as a whole to the heritage value of the CA.
6. The appeal site is a narrow and long building with basement and extends to the far boundary where it meets Kensington Court.
7. As previously stated, permission to extend and alter the property, including creating five residential units, has been recently approved planning permission by the Council. The appellant explains that because of Right to Light issues of the development affecting Number 15 Kensington High Street, they seek to amend a number of imposed conditions to this approval, specifically relating to design.
8. This includes altering the internal layouts by reducing the ceiling height of the commercial ground floor unit and thereby creating split level changes to the residential layout of the upper floor flats of extensions to the back elevation of the building. External side walls to some flats would also be chamfered. In addition, notably to the fourth-floor, additional mass would be created to compensate for the proposed splay, and a new roof configuration would extend above the rear of the development.

9. Substantial zinc cladding with a reduced number of windows and a longer profile, with an emphasis on aluminium frames to correspond with the zinc metal would be introduced as part of this scheme. Zinc material may have been approved to the original permission. However, this was to a considerably lesser degree, and occurred mainly to the fourth floor as a specific design feature.
10. In terms of the use of zinc, it is not a common material seen locally in other traditional buildings, even though it has been identified by the appellant. Nevertheless, from the evidence before me and what I viewed on site of examples, it is not the same circumstances as the proposal before me.
11. Furthermore, the use of traditional materials to rear elevations is further reinforced as it is explained within the Kensington Court Conservation Area Appraisal (CAA) that there is a hierarchy to the use of materials within rear elevations, usually constructed in a cheaper yellow stock brick with the more expensive bricks saved for public frontages only. I would agree with this account as from the rear elevations I viewed yellow stock brick and red chimney stacks as the predominant finished materials. Whilst there are other materials and finishes seen locally including white rendered finishes, they are nonetheless seen in limited quantities.
12. The amount of zinc material proposed would appear discordant in this location. The framing of zinc around the windows extending higher into the roof level as a non-traditional feature, would appear incongruous in this context. It would not correspond with the traditional aesthetic of the local area I have identified.
13. The proposed fenestration detail would jar with the traditional timber sliding sash window style that is a consistent characteristic of the rear elevations of properties seen locally, even though there are examples of other simple fenestration styles also experienced. Nonetheless, these are very measured. Overall, there is no significant variety of windows seen in this part of the CA and therefore the use of aluminium material to their frames and general style, would not be a harmonious addition to this rear elevation.
14. In addition, the chamfered corners proposed to walls would not correspond with square edges that is a defining feature seen across rear elevations from the appeal site. Other development elsewhere at Kensington High Street may taper to the rear. Irrespective of this, in the circumstances of the appeal before me, it is the combination of materials and finishes and the irregular shaped development that would emphasise its incongruous appearance.
15. Whilst the appellant suggests imposing a condition to replace the zinc material with stock brick as well as imposing a condition to replace aluminium windows with timber sliding sash, I have considered this in light of the National Planning Policy Framework (the Framework), in particular paragraph 56. However, given the fenestration detail has significantly changed to upper floors and I have found harm would arise as a consequence of the splayed edges to walls, I do not find that it would be reasonable to impose conditions to this effect.
16. The rear elevation of the appeal site and its adjacent neighbours are seen in private views from properties of Kensington Court, including properties located on the same side of Kensington High Street. The rear elevation of the appeal site would not be visible from the public domain. Although the CAA may not identify significant views onto the rear elevations of this group of buildings, nor

are these specific rear elevations directly referred to within the CAA, nonetheless, development within the CA should respond positively to its character and appearance. The CAA recognises the contribution rear elevations make to the character and appearance of the CA.

17. Therefore, looking at the development as a whole, with a combination of design, fenestration pattern, finishes including large quantities of zinc, and use of aluminium materials, would introduce an uncharacteristic blend of architectural languages to this building.
18. In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas ) Act 1990 I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character and appearance of that area.
19. I do not share the appellant's view that the proposal before me would have a neutral effect on the character and appearance of the CA. All things considered, the extent of harm that would arise to the character of the host building, with its contribution as a component of the Queen Anne style, the proposal would therefore not preserve or enhance the character and appearance of the CA.
20. With reference to the Framework and proposals affecting heritage assets, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given that the impact of the development would be limited to a relatively small section of the CA, I find that the harm to be 'less than substantial' in this instance. On this basis, harm should be weighed against the public benefits of the proposal.
21. The benefits would be predominantly private benefits to the appellant. However, there are some public benefits. In particular, the broad condition of the building would be improved. However, there is no information before me to explain how this is the only scheme that could improve the condition of the building. Overall, it would not amount to a clear and convincing justification to outweigh the totality of harm I have identified.
22. No letters of objection may have been received to the proposal. However, this is a neutral matter that neither weighs for or against it. There are no details before me to consider how an alternative to the solution to Right to Light issues apart from this one, would reduce the number of residential units.
23. Considerable importance and weight has to be attached to harm to designated heritage assets and the modest benefits that would result from the proposal would not overcome this. Therefore, to conclude on the main issue, the development, when taken as a whole, would not preserve or enhance the character and appearance of the CA. As such the proposal would be contrary to the context and character, design aims and heritage protection objectives of policies CL1, CL2, CL3, CL6, CL8 and CL9 of the Kensington and Chelsea Local Plan 2019.

#### *Living conditions*

24. The appellant has provided a daylight and sunlight report in support of the appeal. This assesses the effect of the proposal on the extent of daylight and sunlight levels into the adjacent development of 11 Kensington High Street to the east of the appeal site. This is especially relevant as the scheme proposes changes to the original approval, in particular, to the rear elevation.

25. The assessment has been undertaken on the basis that the neighbouring upper floors are in residential use. However, the appellant is of the view that this is office space. However, without evidence to substantiate this, I have proceeded on the basis that adjacent floors are in residential use.
26. In addition, the drawing results table submitted with the report identifies 'Rooms Use' as bedrooms. The rear of this neighbouring building contains windows in a slightly staggered arrangement. An image of the rear elevation within the report labels room windows as W1 and W2 across the rear elevation of three floors. However, the assessment within the table includes windows detailed as W3.
27. Moreover, the table of results is further complicated as it includes a list of more windows than illustrated on the image of the rear elevation. As results from all the windows listed within the table are not included, the relevance of why this is the case is unclear. The analysis presented leads to ambiguity. Therefore, I cannot be certain there would be no harmful impact to occupants of this building as a consequence of the proposal.
28. Turning to the matter of outlook from adjacent rear windows, I have taken into account the previous approval that was found to be acceptable by the Council, and is a fall-back position to the appellant. I have also assessed this against the scheme before me and the resultant changes.
29. In this circumstance however, given the changes that includes additional mass and scale of development proposed, and the relationship and orientation with the adjacent windows of No 11, I am of the view that the outlook from habitable room windows within close quarters, would be considerably different to what has previously been approved. This proposed difference would be sufficiently great to adversely affect the outlook from these windows, and thus the living conditions of the occupants of this neighbouring property.
30. Therefore, to conclude on this main issue, as a result of the proposal it would lead to detrimental harm arising to the living conditions of neighbouring occupiers with regards to light levels and outlook from rear windows. It would thus conflict with Local Plan 2019 Policy CL5 in its aims for new development to ensure good living conditions for occupants of new, existing and neighbouring buildings.

## **Conclusion**

31. This proposal would be significantly different to the previously approved scheme. Having taken into account the differences, there would be harm to the character and appearance of the CA, and to the living conditions of adjacent occupants.
32. Therefore, the proposal would lead to conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal is dismissed.

*Alison Scott*

INSPECTOR