



Appeal Decision

Site visit made on 19th April 2022

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/X5990/W/21/3289036

2 Cleveland Gardens, LONDON, W2 6HA

- 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 Khan against the decision of City of Westminster Council.
 - The application Ref 20/03593/FULL, dated 8 June 2020, was refused by notice dated 26 October 2021.
 - The development proposed is change of use from store cupboard C8 to C3 residential so creating 1 bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. No. 2 Cleveland Gardens is part of a listed building known as 1-8 Cleveland Gardens. The appellant submitted a combined application for planning permission and listed building consent for the proposal. The Council refused the application for planning permission but granted listed building consent for the proposal on 26 October 2021.
3. A revised set of plans were submitted by the appellant during the appeal, referred to as revision B. They provide further information to show the context, including two additional section drawings. These drawings do not seek to amend the proposal but rather provide additional detail. I do not consider the interests of any party to be prejudiced if I take the revised set of plans into account. I shall therefore determine the appeal on the basis of the revised plans.

Main Issues

4. The main issues are:
 - a) Whether the proposal would secure adequate living conditions for future occupants with regard to natural light, outlook and ventilation, and
 - b) The effect of the proposal on the living conditions of the occupiers of No. 1 Cleveland Gardens, with regard to privacy.

Reasons

Living conditions for future occupants

5. The proposed ground floor plan, which would provide the upper level of accommodation for the proposed dwelling, comprises a single room that would

serve as a kitchen. This room would benefit from two windows that would face southeast and two rooflights. The windows would look out over the courtyard. The proposal would thus provide users of this room with a pleasant sunny outlook, as well as a good level of natural light and natural ventilation.

6. The lower level accommodation would provide a living room, bedroom, bathroom and separate WC. This floor would be served by just two obscurely glazed doors. The level of natural light to the living room would be much lower than the upper level. The primary source of natural light to this room would be through a single doorway that opens out onto a modest courtyard. Natural light to the courtyard is restricted by substantial buildings, particularly to the southwest side. Even if I take into account the light borrowed from the upper level roof light, the level of natural daylight to this room would be low and would be insufficient for a primary living space.
7. The appellant suggests that the living room would serve as a snug, where a lower level of natural light might be acceptable. This could be satisfactory if the ordinary day to day function of a living room could be provided elsewhere in the dwelling, in an area that would receive adequate natural light. The only area for this would be the kitchen, however this room would not be large enough to function as a living room whilst also providing space for cooking and dining, taking into account the area that is given over to circulation. I am therefore not satisfied that the deficiencies of the living room can be offset by alternative accommodation elsewhere in the proposed dwelling.
8. Although it may be possible to make out some shapes and colours, the obscured glass openings at the lower level would not provide the occupiers of the proposed dwelling with a meaningful outlook from the lower level rooms. This would be particularly problematic for the living room where users are likely to feel hemmed in, especially as the room would also be gloomy as a result of its insufficient level of natural light.
9. Although the plans show that both of the lower level doors would open, the appellant says that such access is not assumed, and trickle vents could be used to provide natural ventilation in place of opening doors. Whilst these may provide sufficient air changes to this lower level, the inability to open a window to allow fresh air to move properly through these rooms would further compound the inadequacies of the lower level accommodation.
10. In summary, the proposal would not secure adequate living conditions for future occupiers of the proposed dwelling. It would not accord with Policy 12 of the City Plan 2019-2040 (CP), which seeks to ensure that new dwellings provide a well designed and high-quality living environment.

Living conditions of existing occupants

11. Persons using the proposed Kitchen would be able to look out of the two windows towards the existing first floor accommodation of No. 1 Cleveland Gardens. The windows face each other directly. They are at the same level and in close proximity. This would result in a significant reduction to the level of privacy that the occupants of this flat currently enjoy, on the basis that the likely permanent occupation of a dwelling would be very different to the occasional use of the room for storage.

12. The appellant suggests that the arrangement would be typical of separation distances in the locality. However, no evidence has been submitted to support this suggestion, and the modest distance between two elevations of separate domestic units that directly face each other is not replicated elsewhere in the courtyard.
13. Occupants of the proposed dwelling would also be able to look down over the existing courtyard area from the Kitchen windows. This area is however already heavily overlooked by the upper floors of the building, which comprise separate flats, and does not therefore benefit from a significant degree of privacy. I am thus satisfied that the ability to look out from the proposed Kitchen over the courtyard area would not make this situation worse.
14. The Council also referred to the harmful impact of additional noise and disturbance that could be caused by the future occupants of the proposed dwelling. However, the appeal site is in an area that is densely developed with existing separate dwellings close to each other. I am not satisfied that the addition of a further dwelling would deliver significant additional noise or disturbance that would be experienced within external courtyards or adjoining dwellings to the extent that the living conditions of the occupiers of the neighbouring dwellings would be harmed.
15. In summary, the proposal would harm the living conditions of the occupants of No. 1 Cleveland Gardens as a result of the direct overlooking from the proposed Kitchen. It would not accord with Policy 7 of the CP, which seeks to ensure that development proposals are neighbourly by preventing unacceptable impacts in terms of privacy and overlooking.

Other Matters

16. The appeal building is part of a Grade II listed building. The appeal site is within the Bayswater Conservation Area (BCA). Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The Council has already granted listed building consent for the work. Based on my assessment of the proposal and my observations on site I am satisfied that the proposed alterations would preserve the special interest of the building.
17. In terms of the BCA, the area of the building that would be affected is enclosed at the rear of the site and would be little altered externally. I am thus satisfied that the proposed alterations would preserve the character and appearance of the BCA.
18. The proposal would deliver a dwelling, which would boost the supply of housing. This is a matter that weighs in favour of the proposal; however it is limited by its small scale and is not sufficient to outweigh the significant level of harm to the living conditions of the occupants of neighbouring dwellings.
19. Representations were made to the effect that the rights of the occupiers of neighbouring dwellings under Article 1 and 8 of the Human Rights Act 1998

would be violated if the appeal were to be allowed. However, as I have decided to dismiss the appeal, my decision would not lead to any violation.

Conclusion

20. In conclusion, the proposal would conflict with the development plan and there are no other considerations that outweigh this conflict. Therefore, the appeal should be dismissed.

A Tucker

INSPECTOR