



Appeal Decision

Site visit made on 4 October 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/K5600/W/22/3297465

3-4 Lansdowne Mews, London W11 3AN

- 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 The Rich Group and Thomas Pocklington Trust against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/05973, dated 31 August 2021, was refused by notice dated 25 February 2022.
 - The development proposed is the demolition of two existing 2-storey mews houses and the erection of a 3-storey residential building comprising 6 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended proposed rear elevation plan was submitted with the appeal. The amended plan proposes a minor change to incorporate a sliding screen to the rear windows of the proposed first and second storey flats. Given the minor nature of the changes, I am satisfied that in accepting this amended plan it would not cause prejudice or injustice to any interested party. I have therefore determined the appeal on the basis of this amended plan as well as the other plans that formed the basis of the Council's reason for refusal.
3. I have received a copy of an obligation under Section 106 of the Town and Country Planning Act 1990. This was completed following the Council's decision on the application. It includes a mechanism to secure a parking permit free development. The Council has not disputed its content.

Main Issue

4. The main issue is the effects of the proposed development on the living conditions of nearby residents with regard to privacy, outlook and light.

Reasons

5. The appeal site comprises a pair of two storey mews houses (nos. 3 and 4) that front onto Lansdowne Mews, a mainly residential street of houses and flats of varied form. The mews houses are of a relatively modest scale to the front, with a slight recess at first floor level forming a front terrace. Both dwellings have been extended to the rear towards 92 and 94 Holland Park Avenue. To the west are the buildings at 2 - 10 Clarendon Road, a row of three storey terraced properties with commercial uses at ground floor and residential accommodation above. The residential development of Green's Court and its

communal outdoor area (podium) is adjacent to the east. Cranleigh, a development of flats, sits across Lansdowne Mews from the site.

6. The proposed development would comprise the demolition of both mews houses and the construction of a three storey building with six flats. The entire plots of nos. 3 and 4 would be used together with the rear courtyard of 92 Holland Park Avenue.

Privacy

7. In a densely built central London location, occupiers of properties might expect to be overlooked from neighbouring buildings to some extent. In this case, privacy distances are relatively tight and there is a degree of mutual overlooking between the surrounding properties and the mews houses.
8. The appellant identifies that there would be just under 10 metres separation between the first floor windows of 92 and 94 Holland Park Avenue, which would be shorter than the existing arrangement by approximately 3.7 metres. The first floor of the proposed building would therefore be in much closer proximity to the properties directly to the rear at 92 and 94 Holland Park Avenue, and to the properties on each side at no. 96 and 6 Green's Court. The first floor roof terraces would be closer still.
9. The separation distance between the rear elevation of the nearest second floor flat and the properties to the rear would be similar to that between Green's Court and Holland Park Avenue. However, the roof terrace of the flat identified as 2.2 on the plans would be almost directly opposite some of the windows in the rear elevation of 92 Holland Park Avenue at a distance of around 9.8 metres.
10. The proposed roof terraces to the first and second floors would introduce elevated and projecting vantage points, which would afford users a closer and more open view of those properties to the rear and to some of the closest windows within the rear elevation of Clarendon Road, in particular nos. 4 and 6. Although not large, these terraces would be of a useable area to support activities such as sitting or eating out. They would therefore extend the living space of the flats and would enable occupants to linger upon them. Consequently, residents of those properties to the rear and on Clarendon Road would be more aware of the proposed development compared to the mews houses, which would amplify the sense of being overlooked. The proposed development would therefore have an unduly intrusive effect on these residents, and a reasonable visual privacy would not be maintained.
11. The effect of overlooking from the proposed second floor roof terrace on the windows of 12 Green's Court, the nearest property to the east, would be less pronounced and therefore less intrusive, given the more oblique angle of view. This would also be the case for the other properties in Green's Court given the more oblique angle of view and/or separation distance. As the podium is a communal open area, privacy concerns would be less significant. The proposed ground and first floor flats would be set at a sufficiently low level below the Green's Court podium and its boundary wall to prevent future occupiers of these flats having other than very limited views of most of this neighbouring development.

12. Currently there is intervisibility between the mews houses and a number of flats in Cranleigh, particularly the two at first floor level which have habitable rooms and balconies facing the site. The proposed building would have an additional storey and it would be set slightly further forward at first floor level than the mews houses. However, the separation distance would be similar to that of the three storey building on the corner of Lansdowne Mews and Clarendon Road which also has windows facing towards Cranleigh, and that of the front terrace of the mews houses.
13. The separation distance would be less than the figure of about 18 metres which the supporting text to Policy CL5 of the Local Plan¹ states reduces inter-visibility to a degree acceptable to most people, and there would be an increased number of properties that would have an outlook towards Cranleigh. Nonetheless, the effect on privacy for residents of this building would not be materially more harmful than the overlooking that can already occur from the site or other neighbouring properties.
14. While concerns about overlooking and loss of privacy for residents of Clarendon Road in particular would be addressed to an extent by the proposed screens on the end of the roof terraces, residents of these properties would still have a perception of being overlooked given the height of the terraces and their proximity. The amendment to the scheme to include sliding screens to the rear windows would provide some mitigation, although their use would be in the control of future occupiers of the flats. Moreover, this would not provide mitigation for the overlooking from the roof terraces.
15. I note the appellant's willingness to carry out further work to safeguard the living conditions of the neighbouring residents and accept conditions requiring a reduced size of terrace or their removal and the installation of a fixed screen on one half of the rear windows. The Planning Practice Guidance allows for conditions to make minor modifications to the development permitted. However, such amendments would not fall into that category.

Outlook

16. The rear windows of 8 and 10 Clarendon Road face towards the gable of the mews houses and its hipped roof at a relatively close distance. However, the proposed building would be taller and would extend further back into the site. It would therefore have a significantly greater bulk, mass and presence when viewed from those neighbouring rear windows as well as those of 6 Clarendon Road where occupiers currently enjoy a more open view towards the Green's Court podium.
17. The appellant states that these properties do not have rear facing habitable rooms at first floor level, with their evidence indicating kitchens and stairwells at first floor and stairwells and bathrooms to second floor. My attention has not been drawn to any definitions used by the Council, but it is reasonable that I take the view that bathrooms are not habitable rooms and living rooms, bedrooms and kitchens are. Due to the scale of the proposed gable wall and its proximity to the rear windows of the above properties, it would be appreciated as a dominant and enclosing development harming the outlook from the rear first floor windows and from the roof terrace of no. 6.

¹ Royal Borough of Kensington and Chelsea Local Plan, adopted 2019

18. To the rear, most of the proposed building would be against the wall of Green's Court. It would project above this at second floor level but only the roof terrace of the nearest flat would extend beyond the building line of Green's Court, which would not harmfully affect the outlook for residents. To the front, the end wall of the proposed building would project beyond that of 12 Green's Court, with some consequent limited increase in the sense of enclosure for residents when occupying their balcony.
19. The building would have a staggered form at the rear. Therefore, although the building would be higher than the mews houses, the separation distance to the rear at second floor level would be similar to that between Green's Court and Holland Park Avenue. This staggered form would limit the additional sense of enclosure for residents of properties to the rear to an acceptable extent, including those directly opposite at 92 and 94 Holland Park Avenue.
20. The proposed development would extend the building line slightly closer to Cranleigh at first floor level, although this would not substantially change the outlook for residents. There would be some additional sense of enclosure for residents of the first floor flats in particular facing the site due to the increased height of the built form, but this would be limited by the stepped in nature of the second floor.

Light

21. I have had regard to the appellant's daylight and sunlight study² (the July 2021 Assessment), the one submitted by an interested party³ (the GIA Assessment) and the appellant's response to this⁴ (the March 2022 Assessment), all of which are based on the Building Research Establishment guidance published in 2011⁵ (the BRE Guide). The update to this guidance published in 2022 made no significant changes to the methodology for the assessment of the impact of a proposed scheme on neighbouring properties.
22. In measuring daylight, the appellant has undertaken the Vertical Sky Component (VSC) test and the Daylight Distribution (DD) test for a number of windows that would face the proposed development. The BRE Guide confirms that if the VSC with the development in place would be both less than 27% and less than 0.8 times its former value, the existing building's occupiers will notice a reduction in the amount of skylight. If the DD is reduced to less than 0.8 times its former value this will be noticeable to the occupants and more of the relevant room will appear poorly lit.
23. The July 2021 Assessment finds that all but two of the windows assessed would pass the sunlight and daylight figures recommended in the BRE Guide. The affected windows are identified as a kitchen window of 8 Clarendon Road which would not meet the VSC figures in the BRE Guide, and living/dining room windows of the first floor flat in Cranleigh nearest to the site which would not meet the DD figure. The effect on these two windows is judged in the July 2021 Assessment as being in the 'minor adverse' range.

² Daylight and Sunlight Study Neighbouring Assessment, Behan Chartered Surveyors, 21 July 2021, ref 20213269

³ Daylight and Sunlight 12 Green's Court, GIA, 21/01/22, ref EHA/18554

⁴ Sun on Ground & Shadow Assessment of 12 Green's Court, Behan Chartered Surveyors, 17 March 2022, ref 20213269

⁵ Site layout planning for daylight and sunlight: A guide to good practice (Second Edition) 2011

24. The appellant's March 2022 Assessment highlights that the small balcony of 12 Green's Court already falls below the recommendations in the BRE Guide in terms of the amount of area that receives direct sunlight. However, the GIA Assessment illustrates that at present, the area of the balcony nearest the site receives direct sunlight for around five to six hours on 21 March, reducing to around two hours within the centre of the balcony, and to less than one hour further from the site. With the proposed development, the GIA Assessment finds that no part of no. 12's balcony would receive sunlight on 21 March. I appreciate that the amount of sun received by the communal open area of Green's Court would not change as a result of the proposed development. However, this does not provide residents with a private outdoor area in the way that the balcony does.
25. Based on the information within the daylight and sunlight assessments, the proposal would fall short in terms of meeting the requirements in the BRE Guide. Consequently, the affected spaces would likely become less pleasant for the residents and this weighs against allowing the proposal. However, while the BRE Guide offers advice on generally acceptable standards of daylight and sunlight, I am mindful that it is intended to be applied flexibly, particularly in urban areas. Furthermore, the Planning Practice Guidance advises that in areas of high-density historic buildings, or city centre locations where tall modern buildings predominate, lower daylight and sunlight levels at some windows may be unavoidable.

Conclusion on Living Conditions

26. Pulling these points together, I find that there would be significant harm to the living conditions of residents of properties to the rear and on Clarendon Road with regard to overlooking and outlook. There would also be harm to the living conditions of residents of 12 Green's Court and those flats within Cranleigh at first floor level with regard to a loss of outlook and light. When considered individually, these concerns may not be sufficient to warrant dismissal of the appeal. However, when considered cumulatively, they are a further indication that the proposed development would have an uncomfortable relationship with the nearby properties and would not ensure good living conditions for neighbouring residents.
27. Overall, I therefore conclude that the proposed development would cause significant harm to the living conditions of neighbouring residents. Consequently, it would conflict with the living conditions requirements of Policy CL5 of the Local Plan relating to privacy, outlook and light.

Planning Balance and Conclusion

28. The undisputed evidence from the appellant is that the local planning authority has not met the Housing Delivery Test requirement. Therefore, paragraph 11d of the National Planning Policy Framework (the Framework) is engaged.
29. I have found that the appeal scheme would cause significant harm to the living conditions of neighbouring residents. This harm would be long lasting. I therefore attach substantial weight to it, having regard to paragraph 130 of the Framework.
30. The Framework also emphasises the importance of delivery of housing. The proposal would contribute a net addition of four dwellings to the supply of

housing in an area where delivery is currently poor. Accordingly, I afford the potential increase in the delivery of homes in the area moderate weight in the planning balance.

31. There would also be social and economic benefits such as construction employment and additional residents supporting local shops, businesses and community facilities. However, given the small number of dwellings proposed, this positive matter is given only limited weight.
32. The proposed development would accord with the relevant space standards, although this would be expected of new development. The green roofs would provide some ecological benefits, but this would be very limited given the size of the area. The submitted evidence indicates that the site itself is located within Flood Zone 1, is at a low risk of surface water flooding and there is a very low risk of groundwater flooding. Nevertheless, there would be a betterment in terms of surface water discharge rates due to the proposed attenuation tank and green roofs.
33. Although the mews houses do not make a positive contribution to the significance of the character or appearance of the street scene or the Ladbroke Conservation Area (the CA), given their form and scale neither do they detract from them. Although the proposed building would be of a contemporary design, its form would mean that it would sit comfortably in the context of what is a varied built form on Lansdowne Mews, which retains little of its historic fabric. The proposed development would therefore not harm, and would preserve, the character and appearance of the area and CA. However, a lack of harm is a neutral consideration in the balancing exercise.
34. On balance, I conclude that the adverse impacts of granting a planning permission for the proposed development, including the identified conflict with development plan policy, would significantly and demonstrably outweigh the above benefits when assessed against the policies in the Framework taken as a whole. Therefore, the proposal would not represent sustainable development and hence the appeal should be dismissed.

F Wilkinson

INSPECTOR