
Appeal Decision

Hearing Held on 15 November 2022

Site visit made on 15 November 2022

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2022

Appeal Ref: APP/K5600/W/22/3305591

Land on the North West side of Penywern Road SW5 9SX

- 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 Sean Tofts against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/21/07111, dated 2 November 2021, was refused by notice dated 21 February 2022.
 - The development proposed is One-bed, one-person single storey house set around a courtyard.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following on from the hearing, the appellant has submitted a completed planning obligation to secure the new residential unit to be resident parking permit free. The Council have subsequently confirmed that refusal reason four therefore falls away. I have no reason to disagree with this position.

Main Issues

3. The first main issue is the effect of the proposal on the Character and appearance of the Earls Court Square Conservation Area (the Conservation Area) with particular regard to any impact on the adjacent London Plane tree and with regard to the design, scale, massing and position of the proposed house.
4. The second is the effect of the proposal on the living conditions of future occupiers of the house with particular regard to the useability of the courtyard.

Reasons

5. The site falls within the Conservation Area, on the north-west side of Penywern Road in between No. 58 Penywern Road and No. 56 Penywern Road (No.56) both of which form parts of wider terraces fronting Warwick Road and Penywern Road respectively.
6. The appeal site is partially directly adjacent to the south-west side elevation of No.56. Set closely to the other side of the appeal site is a mature London Plane Tree within a private garden area which is covered by a Tree Preservation

Order (TPO). At the time of my site visit the site was fronted by black coloured hoarding.

Earls Court Square Conservation Area

7. The form, scale, materials and detailing of the buildings are important features of the character and appearance of the Conservation Area. Also important are its trees which offer relief to an otherwise densely populated urban environment and gaps, including space between groups of terrace houses. The site is included within the identified gaps¹ within the Conservation Area Appraisal (CAA).
8. However, the most publicly visible elevation of the house has been designed to effectively appear as a continuation of the boundary wall which already fronts Penywern Road to the south-west. Whilst it would be positioned slightly forward of the terrace within which No. 56 is included there is already a tall projecting forward wall between this property and the development site. This would limit the prominence of the house.
9. The house would be single storey and would be of very limited scale and massing. The incorporation of a green roof would help visually assimilate it into the garden setting and also limit the prominence of the proposal in any private views from nearby property.
10. The proposal would still allow glimpses through to the rear gardens beyond from Penywern Road and would allow the neighbouring terraces to remain to be read as individual entities. The purpose of the gap would therefore be retained.
11. However, it was clarified at the Hearing that, in part, to achieve these outcomes, as well as provide level access from the pavement, the top 400mm of soil will have to be removed from the site.
12. It was agreed at the Hearing that the London Plane tree which sits closely adjacent, but not within the site is in good health. It makes a significant positive contribution to the character and appearance of the area, given its large size and full form, being prominent in both views from Warwick Road and Penywern Road.
13. It is not exceptional for dwellings to be constructed beneath or partly beneath trees, especially in dense urban areas where space is at a premium. The presence of the tree would be obvious to anyone taking on the property, and organic matter falling from the tree would likely be able to be managed at the site. There is nothing to indicate that the structure could not withstand falling debris, accounting for a worst-case scenario.
14. The investigations into the tree roots at the site were discussed at the Hearing. The Council consider that the removal of the soil would result in root damage and removal. Despite the presence of self-seeded sycamore trees on the site at the time of the investigations the appellant acknowledged that high level roots found at the site during trial trenching could be associated with the London Plane.

¹ The Royal Borough of Kensington and Chelsea - Earl's Court Square Conservation Area Appraisal – 6 June 2016, Important Townscape Gaps Map – P.9/Fig 2.3.

15. It was argued that the intrusion into the Root Protection Area (RPA) would only be small in comparison to the RPA as a whole. However, the RPA for the tree is constrained by reason of the presence of basements and level changes nearby. Even the amended RPA diagram² includes large areas under Penywern Road and its footways. Even if roots were to be present in these areas, these sections of the RPA are likely to be less valuable to the tree as opposed to those sections within the largely undeveloped ground of the development site. I accept that some parts of the tree's rooting system are likely to be deeper than 400mm.
16. It was discussed at the Hearing that the concrete slab, which would be set on pile foundations, would cover an area of approximately 37.7m², which would be the area covered by the house excluding the associated courtyard.
17. Whilst noting that London Plane trees are used to coping with city conditions, bearing in mind that upper levels of the soil often contain important roots for the health of a tree, and that mature trees are more at risk of decline and failure than young trees as a result of root damage, I find that this particular aspect of the proposal would be unacceptable. There would be a real risk of the proposal resulting in decline and loss of the tree.
18. Subsequently, the proposal would conflict with Policy CR6 of The Royal Borough of Kensington and Chelsea Local Plan (2019) (RBKCLP) which states that the Council will require the protection of existing trees and that this will be achieved amongst other measures by resisting development which results in the damage or loss of trees of townscape or amenity value.
19. The potential decline and loss of the tree would detract from the heritage significance of the Conservation Area which lies in part with its trees and would not preserve nor enhance its character and appearance.
20. The harm to the significance of the Conservation Area would be less than substantial. Paragraph 202 of the Framework requires such harm to be weighed against any public benefits of the proposal.
21. The public benefits in this case include a contribution to housing supply, although the positive weight that can be afforded to this matter, even if accepting the figures from the appellant, is tempered by the very small scale of the proposal being a single one-bedroom dwelling.
22. The site would be well located for the use of more sustainable modes of transport and would use a site that appears to have little beneficial use at present. There could be some economic benefits in terms of construction and local spend although these would be very limited owing to the small scale of the development.
23. It is likely that some anti-social behaviour associated with the site would be remedied although any tipping on the site is unlikely to have been visually harmful to those passing given the presence of the hoarding. That now rather tatty feature of the site would be removed offering some visual improvement but it may be within the site owners' orbit to tidy its appearance in any case.
24. I do not find that the public benefits are sufficient to outweigh the less than substantial harm identified in this case.

² Appendix A Quaife Woodlands 25th October 2022.

25. The proposal would therefore conflict with policies CL3 and CL11 of the RBKCLP which amongst other things require development to preserve or enhance the character or appearance of conservation areas and which protects and enhances views that contribute to the character and quality of the area. For similar reasons, the proposal would conflict with the policies set out in Chapter 16 of the Framework³.

Living conditions (courtyard)

26. Following the submission of further evidence, it is the case that the Council has partly withdrawn its concerns relating to levels of light for the house that were initially included within refusal reason no. 3. It was clarified at the Hearing that the Council still had concerns around the usability of the courtyard area.
27. However, the modest courtyard area would be entirely commensurate in size with what is only a modest dwelling. Despite being underneath the tree, it would provide a private area to relax within a busy urban area that would be likely to be valued by future occupants. There is nothing to indicate that the area would be lacking in light. The tree is so tall that light would be likely to penetrate beneath and the area would be set to the south east of the house.
28. There would subsequently be no conflict with Policy CH3 of the RBKCLP which states that the Council will require housing schemes to include outdoor amenity space nor Policy D6 of the London Plan (2021) which requires a minimum of 5m² of private outdoor space for such a dwelling. The area provided would be in excess of this requirement.

Other Matters

29. There is nothing compelling to confirm that the proposal, even though a green roof would be included alongside landscaping, would improve biodiversity interest in the site to any significant degree. I have therefore afforded this matter limited weight.
30. Other schemes have been brought to my attention by the appellant. These include the site at land between 1 and 3 Earls Court Square (1a Earls Court Square) which is a residential property incorporating a basement. It is therefore clear that development has been permitted in the past within close proximity to trees including those protected by a TPO. However, the evidence and my observations, lead me to conclude that the trees within close proximity to that development are not as large or prominently placed as the appeal site. I therefore afford this matter limited weight.
31. I have also been supplied with details relating to a dwelling with basement at land adjacent to 89 Holland Park. Again, this demonstrates that development within close proximity to trees has been accepted in the past within the Borough. However, in terms of root impact, there is nothing within the evidence which confirms that the circumstances under which the impact on those tree roots were found to be acceptable are repeated exactly at the appeal site.
32. There is disagreement as to whether the Council can demonstrate a five-year housing land supply. The Council suggest that it can be demonstrated while the appellant suggests a 3.7 year supply. However, both parties agreed at the

³ National Planning Policy Framework 2021.

Hearing that the delivery of housing has been substantially below the housing requirement over the past 3 years.

33. Nonetheless, given the real risk of decline and loss of the tree, and subsequent harm to the character and appearance of the Conservation Area, the application of Framework policies relating to designated heritage assets provide clear reasons for refusing the development proposed. Therefore, paragraph 11 (d) of the Framework is not engaged in terms of supporting the proposal.

Planning Balance and Conclusion

34. The proposal would conflict with the Framework in that it results in less than substantial harm to the significance of the Conservation Area, harm which would not be outweighed by the arising public benefits. The application of Framework policies relating to designated heritage assets provide clear reasons for refusing the development proposed. These are matters which weigh against the proposal.
35. To conclude, the proposal would conflict with the development plan and there are no material considerations which indicate a decision should be made otherwise than in accordance with it. The appeal is therefore dismissed.

T J Burnham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sean Tofts
Jim Quaife
Simon Pryce
Joel Semakula
Joanna Burton
Claire Taggart
Nick Mayhurst

FOR THE COUNCIL:

Alice Culver
Kate Orme
Angus Morrison