



Appeal Decisions

Site visit made on 12 December 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal A: APP/K5600/W/21/3281306

107 Oakley Street, London SW3 5NR

- 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 Jamie Milne (RG Airspace Development Limited) against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/20/06868, dated 3 December 2020, was refused by notice dated 3 March 2021.
 - The development proposed is change of use of ground to fourth floor of 107 Oakley Street from a house of multiple occupation to reprovide one existing one bed unit, three studios (C3 use class) and associated cycle and bin storage.
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Appeal B: APP/K5600/Y/21/3283534

107 Oakley Street, London SW3 5NR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Jamie Milne (RG Airspace Development Limited) against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref LB/20/06869, dated 3 December 2020, was refused by notice dated 3 March 2021.
 - The works proposed are change of use of ground to fourth floor of 107 Oakley Street from a house of multiple occupation to reprovide one existing one bed unit, three studios (C3 use class) and associated cycle and bin storage.
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Decision

Appeal A

1. The appeal is allowed and planning permission is granted for change of use of ground to fourth floor from a house of multiple occupation to reprovide one existing one bed unit and to provide three new one bed units (C3 use class) and associated cycle and bin storage, at 107 Oakley Street, London SW3 5NR in accordance with the terms of the application, Ref PP/20/06868, dated 3 December 2020, subject to the attached schedule of conditions.

Appeal B

2. The appeal is allowed and listed building consent is granted for change of use of ground to fourth floor from a house of multiple occupation to reprovide one existing one bed unit and to provide three new one bed units (C3 use class) and associated cycle and bin storage, at 107 Oakley Street, London SW3 5NR in accordance with the terms of the application Ref LB/20/06869 dated 3 December 2020 and the plans submitted with it, subject to the attached schedule of conditions.

Procedural Matters

3. Notwithstanding the descriptions of development and works included in the banner headings above, following the determination of the applications, the main parties agreed upon a revised description. I have therefore determined the appeals in accordance with the following description: 'Change of use of ground to fourth floor from a house of multiple occupation to reprovide one existing one bed unit and to provide three new one bed units (C3 use class) and associated cycle and bin storage.'
4. The appeal is accompanied by a Unilateral Undertaking (UU), which has been agreed with the Council. On this basis, the Council is satisfied that the UU would enable the development to accord with Policy CT1 of its Local Plan¹ (LP). Subject to my consideration as to whether the UU meets the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (the Regulations), the proposal would satisfy the second reason for refusal on the Decision Notice for the planning application (Appeal A). I have therefore determined the appeals in accordance with the remaining reasons for refusal. The two appeals concern the same scheme under different, complementary legislation, so I have dealt with heritage matters together in my reasoning.

Main Issues

5. The appeal concerns the ground to third floors of 107 Oakley Street, as the basement is in separate ownership, with an independent access. However, there are no changes proposed to ground floor and the Council is satisfied the existing unit on that floor can remain in situ. The main issues are therefore:
 - whether the proposed development, of the first, second, and third floors, would protect against the loss of low-cost housing, as required by the development plan (Appeal A); and
 - whether the proposed works and development to the first, second and third floors would preserve a Grade II listed building, known as 101-108 Oakley Street, and any features of special historic interest that it possesses, and the effect on the character and appearance of the Cheyne Conservation Area (Appeals A and B).

Reasons

Protection of Low-Cost Housing (Appeal A)

6. The appeal building includes a house in multiple occupation on its first, second and third floors, comprising 6 units, which would be altered to three flats.
7. The Decision Notice refers to criterion (a) of LP Policy CH4, which is relevant to older people's housing. The relevant criterion is (c), which requires protection of houses in multiple occupation (HMO), except where accommodation would be converted to self-contained studio flats, and subject to a legal agreement to ensure they remain as such in perpetuity. The supporting text at paragraph 23.3.67 explains this dispensation is due to the fact rents commanded for studio flats are not generally significantly higher than some HMOs.
8. The Legal Agreement submitted with the appeal includes a clause which would guard against amalgamation of the proposed residential units, including the

¹ Adopted September 2019.

retained separate unit at ground floor, but excludes the basement flat as it is in separate ownership. This would avoid any further reduction in units. However, the appellant accepts the proposal is not for studio flats and they would evidently be flats with separate bedrooms. I also note the schemes approved by the Council at Clanricarde Gardens relate to changes from HMOs to studio flats², so would not be directly comparable with the appeal scheme.

9. In the strict sense of the terms set out in the development plan, I therefore conclude that the proposed subdivision of the existing first, second and third floors of the building to form three flats would fail to protect against the loss of low-cost housing. Hence, it would conflict with the aims of LP Policy CH4(c).

Significance of Heritage Assets

10. The appeal concerns a former mid-19th Century house within a three-storey terrace of properties, with basement and attic rooms. It is situated to the southern side of Oakley Street within a longer terrace, but Nos 101-108 are Grade II listed. The front exterior of the building is elaborate in its detailing, with the inclusion of cornices at second and third floor, the latter concealing the roof of the building. The ground floor is elevated above the street with a stepped access and the basement has stepped access down from the street.
11. The floorplan layout of the property has evidently been altered over time to meet changing living requirements, with its subdivision to two separate units at basement and ground floor levels and a HMO on the floors above.
12. Although the subdivision is consistent on each floor, it is probably associated with the current use. The principal rooms on the first and second floor are served by a lobby projecting into the rear room. On the first floor, a shower cubicle projects into the front room, aside the chimney breast. On the second floor, a pair of shower cubicles are accessed from the landing and extend to the front of the house, blocking the lefthand window. The third floor includes an ensuite bathroom to the front room served by the lefthand window and all rooms are accessed directly from the landing.
13. The proposal primarily relates to the interior of the building so, as far as it relates to the appeals before me, the significance of the listed building lies in the surviving elements of the floorplan layout and the remaining detailing of rooms and circulation spaces.
14. The building is also situated within the Cheyne Conservation Area (CA), which the appellants' *Heritage Statement* states is characterised by various historic planned residential developments. Houses in the vicinity of Oakley Street are terraces of varying length dating from the mid-19th into the 20th Century, with half and full stucco properties of high architectural quality in design and materials. The listed building is typical of these buildings, so contributes positively to the character and appearance of the CA and its significance.

The Proposal

15. At first floor, the size of the bathroom in the front room would be increased but moved to the opposite side of the room, adjacent the party wall with No 106. Existing cupboards and other fitted units would be removed and replaced with new fixtures in both rooms and the lobby between would be reconfigured.

² Planning References PP/20/06727 and PP/20/06799.

16. The showers on the second floor would be omitted, the doorway closed and a single bathroom installed in the front room. The window to the front would be uncovered. The doors into each room would be reconfigured in the lobby situated in the rear room. Fixtures in the rooms would be replaced by new units serving the proposed kitchen and bedroom spaces.
17. The ensuite bathroom to the third-floor front room would be removed and its window would serve the whole front room. The existing rear bathroom would be reconfigured, with access closed from the landing and taken from the rear room. Access from the landing to the front room would also be closed and a new lobby formed in the rear room and an opening between the rooms.
18. An Automatic Opening Vent (AOV) would also be inserted above the staircase up to the third floor to ventilate smoke in the event of a fire; and fire doors of mid-Victorian in style would be added to all landings. Cornices and chimney breasts would be retained.

Effect on Heritage Assets

19. The evidence before me does not conclusively demonstrate rooms to the front of the building, at higher levels, would have been modest within a greater cellular plan form, as argued by the Council. This would be less likely due to the arrangement of windows, stairwells, and landings. In particular, the front room at first floor would have been the grandest room in the house given the full-height windows facing the street and its decoration. Similarly, were the layout to be as suggested on the floors above, subdivision of rooms would have probably arrived close to the front window, in the corner of the room, as it does now. It is doubtful this would have been a satisfactory architectural response when the building was constructed. I have also not been referred to the layout of any of the other properties in the listed terrace to demonstrate this notion.
20. There would be greater interruption of the large space within the first-floor front room, but repositioning of the bathroom would better reveal space either side of the chimney breast and the incursions forming rooms and circulation spaces would be grouped beside the landing. The height of the room created could also be agreed by condition to ensure it would not affect the surviving decorative cornicing in the room.
21. The layout to the second floor would be similar to first, but the extent of the projection into the front room would be markedly less than at present and the removal of the bathroom in the third-floor front room resolve interruption of the space within the room, apart from a small cupboard.
22. The alterations to the front rooms at first and second floor would also be likely to better reveal the legibility of the original floor plan layout and reintroduce visibility of both front windows in these rooms. However, the new lobby at third floor and door between the rooms would create new interruptions to the floor plan layout. Thus, the overall changes to the floorplan layout would be sensible to achieve the proposal and would generally result in its improvement.
23. There would also be some removal of later fabric to facilitate new access arrangements and some existing doorways would need to be infilled. However, it is common practice for existing historic fabric associated with such openings to be retained in situ. For example, doors would be locked shut and boarded out to the interior of rooms, with architraves retained in the door lining, which

would provide evidence of evolution of the building to meet changing needs. The opening formed to accommodate the AOV would also result in a negligible amount of historic fabric being removed, but this would not be harmful to the significance of the building. Given the presence of existing services in most rooms, it is likely the insertion of new service runs could be accommodated without harm to fabric of the building and could be agreed by condition.

24. Unlike listed buildings, the significance of a conservation area is more widely experienced. Under such circumstances, proposals must be judged according to their effect on a conservation area as a whole and must therefore have a moderate degree of prominence. The alterations externally relate to the installation of the AOV on the roof of the building and cycle storage in the lightwell below street level. The cycles would be visible from the street, down into this area, but would not be visible beyond it. Given its location within a roof valley between Nos 106 and 107, the AOV would be unlikely to be visible from within the surrounding area. As such, these aspects of the proposal would not have a harmful effect on the character and appearance of the CA, which would be preserved.
25. For the above reasons, I conclude that the proposed works and development to the first, second and third floors would preserve the listed building and any features of special historic interest that it possesses, and not have a harmful effect on the character and appearance of the CA. Hence, it would accord with the requirements of Sections 16(2), 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) (England) Act 1990 and the design and heritage aims of LP Policies CL1, CL2, CL3, CL4, CL6 and CL11.

Other Considerations

Provision of Alternative Housing

26. The Council's concern with the proposal relates to the loss of low-cost housing and failure to meet the requirements of development plan policy, with provision of studio flats. However, it is material that the latter would require removal of considerable original historic fabric to deliver an open plan layout, which would be harmful to the special interest of the listed building. Notwithstanding this, were such a layout acceptable in heritage terms, it would satisfy LP Policy CH4, as studio flats would be provided. There is no affordability test written into the policy and the evidence before me demonstrates it is unlikely there would be a material difference between rent that could be charged for units based on their size, with or without dividing walls to rooms. Accordingly, this is a material consideration of significant weight in favour of the proposal.
27. It is undeniable the proposal would provide improved accommodation to that found in the HMO, as evidenced by wording in supporting text to LP Policy CH4. However, there is a place in the market for such accommodation. The upper floors of the listed building lie vacant and would be brought back into use with the proposal, which would secure the future of the property in the long term. Nonetheless, the building is in good condition and does not appear to be at risk of decline. Hence, these arguments are afforded limited weight as benefits.
28. The appeal is supported by a letter from the marketing agent for the property that states the first and last bedsits to become vacant were in September 2019 and April 2021, with the others vacated in between. While the agent points to continual interest in the bedsits from online and local marketing with estate

agents, this has been modest. The bedsits have remained vacant, while other HMOs in its portfolio have continued to be occupied. The reasons for this relate to the size of rooms, sharing of communal bathrooms, and the absence of a lift to upper floors and outdoor space. The latter point results from the rear garden only being accessible to the ground floor flat. Given the extent of properties handled by the agent, their accreditation, and the absence of any substantive evidence to the contrary, I have no reason to doubt the evidence submitted by the appellants. The accommodation provided by the HMO within the appeal building is therefore not fulfilling the role of providing housing for the Borough, which I afford considerable weight.

29. The proposal would not hinder the Council's ability to meet its housing targets, as the main parties agree there would not be a reduction in housing provided within the appeal building.

Cycle Parking

30. The proposed cycle storage would be positioned in the lightwell to the basement between its entrance and access to a storeroom, so it would be unlikely to be possible to accommodate further storage in that location, as required by the Council. However, I am mindful that the building already comprises two self-contained flats and six bedsits, with no dedicated cycle storage and the proposal would improve this existing situation.

Legal Agreement

31. The legal agreement submitted with the appeal is a UU to be provided to the Council, which refers to Section 16 of the Greater London Council (General Powers) Act 1974. The use of such legislation has been rendered effective to secure occupants of new developments being free from eligibility for parking permits. Moreover, it does not require a restriction on land, but only that an undertaking or agreement has a 'connection' with the land/property. I am satisfied that this would be the case for the appeal scheme. As I outlined above, the UU also includes a clause regarding amalgamation of the proposed residential units, except for the basement flat in separate ownership. In line with the Regulations and Framework paragraph 57, the UU would be necessary to make the development necessary in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

Planning Balance

32. The Housing Delivery Test (HDT) results for 2021 do not change the Council's position from 2020. The results indicate that, when applying footnote 8 of the National Planning Policy Framework (the Framework), the presumption in favour of sustainable development contained within paragraph 11 d) applies. The policies most important for determining the appeal are thus out-of-date which, in this case, applies to LP Policy CH4.
33. In terms of harm, the proposed development would not comply with the development plan in respect of its failure to protect against the loss of low-cost housing. Despite my finding in relation to the heritage assets, the appeal scheme would not accord with the development plan, when considered as a whole. However, the Council's Local Housing Needs Survey and Monitoring Reports indicate that studio flats are actually not affordable to the majority of

key workers. This undermines the effectiveness of LP Policy CH4 in protecting low-cost housing or promoting other housing that would meet this requirement or similar needs. The adverse impact of the proposal is therefore only a matter of moderate weight against granting planning permission.

34. While the proposal would not improve the Council's position regarding the next set of HDT results, the main other considerations I have referred to above would generally be of significant or considerable weight in favour of the appeal scheme. These are material considerations that indicate that the decision should be taken otherwise than in accordance with development plan.
35. This leads me to an overall conclusion that material considerations indicate the decision should be taken otherwise than in accordance with the development plan. This would therefore justify the grant of planning permission.

Conditions

36. In addition to the standard time limits for both appeals, in the interests of clarity I have specified the approved plans in Appeal A. This is unnecessary in the listed building consent appeal, as the decision incorporates the plans. For clarity, I have merged the planning condition requiring making good of any external works to match the existing exterior of the building, with the condition for details and associated with external alterations for the AOV and any vents, flues, and pipes. These remain separate for listed building consent as there are a greater spectrum of works.
37. In terms of the proposed works, in order to retain evidence of previous partitions, existing nibs and downstands shall be retained, the details of which are necessary to be agreed prior to the removal of partitions. Further conditions are required to reduce the impact of partitions, by requiring that they are of lightweight construction, and their height agreed where they create new rooms, to ensure that they would not affect any surviving decorative features, including cornicing; and for any works entailing covering or building up floors. As I set out above, a condition is also necessary in relation to historic door openings and retention of fabric.
38. I have omitted the conditions referring to rainwater goods and external paraphernalia as there are no alterations proposed to the configuration of the roof of the building affecting drainage; and, in any event, the abovementioned condition requiring details of vents covers some of these matters. The Council has also not indicated why existing rights to install lights, CCTV or alarms should specifically be omitted for this property, when they could be exercised with the existing building. These conditions would therefore be unreasonable. For the reasons outlined in 'other considerations' I have also omitted the reference to cycle parking in the conditions suggested by the Council.

Conclusion

39. The proposal would conflict with the development plan, taken as a whole, but there are material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be allowed.

Paul Thompson

INSPECTOR

Schedule of Conditions

Appeal A: APP/K5600/W/21/3281306

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: WP-0750-A-0001-P-00 Revision A; WP-0750-A-0002-P-00 Revision A; WP-0750-A-0100-P-XX Revision A; WP-0750-A-0101-P-XX Revision A; and WP-0750-A-0150-P-XX Revision A.
- 3) Specifications and samples of the materials to be used in the construction of the proposed Automatic Opening Vent and any proposed external vents, extract flues, and soil pipes associated with the development hereby granted, shall be submitted to and approved in writing by the local planning authority prior to their use on site. The details shall include 1:10 scaled drawings of these aspects of the development, indicating their location, size, fixings, projection from building, materials, colour, and finish.

The materials required for any making good associated with these aspects of the development shall be finished to match the existing exterior of the building in colour, texture, profile and, in the case of brickwork, bond and pointing.

The development shall thereafter only be carried out in accordance with the approved specifications/samples and shall thereafter be so maintained.

Appeal B: APP/K5600/Y/21/3283534

- 1) The works authorised by this consent shall begin not later than three years from the date of this consent.
- 2) Prior to the commencement on site of the works hereby granted, specifications and samples of the materials to be used in the construction of the works shall be submitted to and approved in writing by the local planning authority. The details shall include scaled drawings of no less than 1:10, unless otherwise specified, and include cross-section, elevation, glazing, materials, colour/finish, in respect of the following:
 - (a) new plumbing and service runs for all kitchens and bathrooms, to include soil stacks;
 - (b) proposed external vents and extract flues, indicating location, size, projection from building, materials, colour and finish;
 - (c) proposed doors, door linings, architraves (at 1:10 or 1:5 showing the profile of mouldings, elevation and sections), including retention of historic doors and their location; and
 - (d) Drawings of proposed new Automatic Opening Vent rooflight to main roof at 1:10 or 1:5 showing upstand, materials fixings and finish.The works shall thereafter only be carried out in accordance with the approved specifications/samples and shall thereafter be so maintained.
- 3) Prior to the removal of any existing partitioning hereby granted, details of any significant nibs and downstands to be retained shall be submitted to

and approved in writing by the local planning authority. The nibs and downstands shall be retained in accordance with the approved details.

- 4) Prior to any works to install new partitions hereby granted, except where they relate to doors as detailed in Condition No 7, details of their construction shall be submitted to and approved in writing by the local planning authority. The details shall indicate the method of construction to ensure they are lightweight and easily removable, and their height in relation to ceilings, where they form new rooms. The works shall only be carried out in accordance with the approved details and shall thereafter be so maintained.
- 5) Prior to any works to build-up or cover flooring, details of the same shall be submitted to and approved in writing by the local planning authority. The details shall include scaled drawings at 1:5 in section and elevation, showing retention of historic joists, floorboards, and skirting, and how it would abut historic skirting, as well as details of any under floor heating or acoustic dampening where appropriate. The works shall only be carried out in accordance with the approved details and shall thereafter be so maintained.
- 6) All new works and works of making good to the retained fabric, whether internal or external, shall be finished to match the adjacent retained / historic work with regard to the methods used and to colour, material, texture, and profile. This includes, but is not limited to, lath and lime plaster and painted timbers.
- 7) Except where indicated on the approved drawings, all existing historic fabric shall be retained, including historic hearths where uncovered, all joinery, lath, and plasterwork.
- 8) Where historic door openings are to be 'blocked', they shall be locked shut and retained, in order to remain visible as doors to the landing and/or corridors, and boarded out to the interior of rooms, with architraves retained in the door lining.

End of Schedule