



Appeal Decision

Site visits made on 20 December 2022.

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/K5600/W/22/3294212

Land rear of 61 Cambridge Gardens, London, W10 6JD

- 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 Sitwell Investments against the decision of Royal Borough of Kensington and Chelsea (the Council).
 - The application Ref PP/21/07133, dated 29 October 2021, was refused by notice dated 28 January 2022.
 - The development proposed is the erection of two storey building over basement, comprising commercial floorspace at basement and ground floor and a one bedroom flat at ground and first floor.
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Decision

1. The appeal is dismissed.

Main Issues

2. During the appeal, the Appellant has submitted an executed unilateral undertaking which would secure the proposed new building as being parking permit free. The Council have been provided with the opportunity to comment on the submitted planning obligation and have confirmed that in the event that the appeal is allowed in respect of impact on living conditions of residents, then the second reason for refusal given on the decision notice would be withdrawn. I shall return to consider that matter below.
3. Accordingly, and in light of the submissions before me, the main issue in this appeal is the effect of the proposed development on the living conditions of residents at 61 Cambridge Gardens with reference to outlook.

Reasons

4. The appeal site comprises land situated to the rear of 61 Cambridge Gardens and its associated garden space. The site is located within an area comprising a mix of residential and commercial development, and is positioned at the corner of Malton Mews and Malton Road. To the south of the site, and on the other side of Malton Road from the site, is the elevated A40 highway. The properties fronting onto Cambridge Gardens are predominately arranged in pairs of semi-detached substantial and well proportioned dwellings. As I observed on my site visit, a number of neighbouring and nearby properties have the benefit of single storey garages and outbuildings positioned to the rear and which appeared to be accessible from Malton Road or Malton Mews.
5. The appeal scheme concerns the erection of a two storey mixed use development with a basement. Office space would occupy the basement and

part of the ground floor level, with the remaining parts of the proposed building for residential use.

6. Amongst other matters, Policy CL5 of the Royal Borough of Kensington and Chelsea Local Plan (September 2019) (the Local Plan) requires that development ensures good living conditions for occupants of new, existing and neighbouring buildings and that development would not result in a harmful increase in the sense of enclosure to existing buildings, neighbouring gardens, balconies and terraces.
7. The rear garden space at 61 Cambridge Gardens is very modest in terms of depth and width, separated from the appeal site by a boundary wall. The evidence confirms that 61 Cambridge Gardens comprises a number of flats and I was able to see on my visit that the rear windows of accommodation located at the ground floor and lower ground floor level look directly out onto the modest amount of garden space and towards the site, Malton Road and the elevated A40 highway beyond.
8. Planning history for the site confirms that a scheme for the erection of a two storey mix use building was recently dismissed on appeal. The proposed development that is the subject of this appeal, has sought to overcome issues regarding the impact of the proposal on the living conditions of existing residents by reducing the height, spread and scale of the proposed building and through the introduction of additional planting.
9. By reason of the presence of the boundary wall that separates the site from the rear garden at 61 Cambridge Gardens, the ground floor of the proposed building would not result in any increased sense of enclosure for occupants at 61 Cambridge Gardens, nor would alter the current position with regards to outlook from the rear garden at that property.
10. Overall, the proposed building would be reduced in height when compared to the scheme recently dismissed at appeal, albeit by a very limited amount. It is also acknowledged that the roof form would be angled away from the garden space, that the upper floor of the proposed building would be set back from the shared boundary to a limited degree, and would include a terrace that would be set back from the eastern elevation of the proposed ground floor.
11. Nonetheless, the upper floor of the proposed building would rise substantially above the height of the boundary wall and, in my view, would appear as a dominant feature when viewed from the ground floor and lower ground floor rear windows at 61 Cambridge Gardens. The height and dominance of the upper floor of the proposed building would have an overbearing impact, creating a harmful increase in the sense of enclosure experienced by occupants of the ground floor and lower ground floor at 61 Cambridge Gardens.
12. With regard to the effect on occupants of the lower ground floor accommodation, whilst noting the abovementioned set back of the upper floor of the proposed building, by reason of the depth of garden and position of rear windows at the lower ground floor of 61 Cambridge Gardens, I conclude that the proposal would significantly and substantially reduce outlook and would result in an unacceptable overbearing impact on occupants of that lower ground floor accommodation. I saw on my visit that whilst the lower ground floor accommodation also has windows on its east and north elevations, given

the change in land level from the front to the rear of 61 Cambridge Gardens, those openings were somewhat limited in terms of size.

13. In terms of the effect on occupants of the ground floor accommodation, whilst the proposed building would increase the sense of enclosure for those occupants and would be harmful in that respect, given the height and position of windows serving that flat and by reason of the amount of open sky that would remain beyond the appeal scheme, the harm to the outlook for residents at ground floor would be less than that experienced by occupants of the lower ground floor accommodation. Whilst the impact would not be as severe when compared to the position for residents of the lower ground floor flat, there would be harm to the living conditions of residents at the ground floor accommodation.
14. Due to its height and proximity to the garden space, whilst I acknowledge that the upper floor would be set back from Malton Mews, the proposed building would also diminish the outlook from the garden at 61 Cambridge Gardens and would result in it having a moderate overbearing impact on users of that amenity space, undermining its value as a place for outdoor recreation. I would concur that the presence of the elevated A40 highway currently dominates outlook from the garden space. Nonetheless, I also conclude that the existing position provides a greater sense of space and a less oppressive environment than would be the case if the appeal scheme was introduced to the site. As noted, I saw on my visit that there were examples of buildings positioned to the rear of the properties that front onto Cambridge Gardens. However, those garage and outbuilding structures were single storey, and were not comparable to the appeal scheme before me in terms of height.
15. I have had regard to the proposed use of a 'green wall' on the north elevation of the appeal scheme. Whilst fast growing plants could be planted, they would be likely to take time to cover the elevation on the upper floor of the proposed building. In any event, due to the height and proximity of the proposed building, I do not consider that, even when fully established, the 'green wall' would adequately mitigate the identified harm to outlook for the ground floor and lower ground floor accommodation at 61 Cambridge Gardens or would be sufficient to overcome the harmful sense of enclosure that would be experienced by users of the garden space.
16. For the above reasons, while I have noted and considered the reduction in height and spread of the appeal proposal when compared to the previous scheme as well as the introduction of additional planting, I conclude that the proposed development would result in an unacceptable sense of enclosure and would harm the living conditions of occupants of the ground floor and lower ground floor flats at 61 Cambridge Gardens, and also cause harm to the users of the rear garden. As such the appeal scheme would conflict with the provisions, aims and objectives of Policy CL5 of the Local Plan.

Planning Balance

17. The Appellant maintains that as a result of Housing Delivery Test results, the policies which are most important for determining the planning application and appeal are deemed out of date and, in accordance with paragraph 11 d) of the National Planning Policy Framework (the Framework), permission for the scheme should be granted unless any adverse impacts of doing so would

significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies of the Framework taken as a whole.

18. While the submissions regarding the Housing Delivery Test results are noted, for the reasons given above the appeal proposal would harm living conditions of residents. It would also conflict with the provisions, aims and objectives of the Framework in respect of achieving well designed places that provide a high standard of amenity for existing users. The proposed building would cause harm to varying degrees to the living conditions of occupants in the ground floor and lower ground floor flats, as well as for users of the garden space, at 61 Cambridge Gardens. Cumulatively, I attach significant weight to those matters in the determination of this appeal.
19. Against those matters, the scheme would provide some commercial office space and would make a limited contribution towards local housing supply in an area where there is convenient access to services and facilities. The proposal would make use of an untidy site which the evidence indicates has a history of suffering from fly tipping. Economic benefits would arise in respect of employment opportunities during construction, through the spend of future residents in local businesses, and from the provision of office space. The scheme would improve drainage at the site and there would be the potential for some biodiversity enhancement through additional planting. I also accept that the proposal would provide additional surveillance for parts of Malton Road and Malton Mews.
20. As noted above, the appeal submissions included an executed planning obligation which would secure the development as car permit free and given the provision of garage space within the proposal, the scheme would not result in additional demand for parking within the locality. Nonetheless, the proposed mitigation in that respect is neutral in the planning balance.
21. Whilst there are material benefits associated with the scheme, I attach only limited weight to them in this appeal by reason of the scope and scale of the development proposed. Any weight I attach to them is significantly and demonstrably outweighed by the permanent harm that would be caused to the living conditions of existing residents. The proposal would not therefore benefit from the presumption in favour of sustainable development contained within the Framework.

Other Matters

22. The Appellant submitted the proposed development following pre-application advice from the Council. The Framework stresses the benefits of early engagement and of good quality pre-application discussion. Whilst it is not binding, it is clearly unfortunate if proposals are initially supported but then the final outcome is an adverse one. Nevertheless, at appeal the proposal is considered afresh and, as a consequence of this, the positive feedback given at pre-application stage does not bind me in my decision or warrant allowing the appeal.
23. Interested parties also raise additional objections to the appeal scheme on the grounds of increase in traffic congestion, highway safety, the living conditions of future occupants of the scheme, as well as raising concerns regarding the impact of the proposal on the character and appearance of the surrounding area. These are important matters and I have taken into account all of the

evidence before me. However, given my findings in relation to the main issue above, these are not matters that have been critical to my decision.

Conclusion

24. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR