



Appeal Decisions

Site visit made on 17 April 2023

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2023

Appeal A Ref: APP/L5240/W/22/3302940

15 South End, CROYDON, CRO 1BE

- 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 Ahmet Yeldener against the decision of London Borough of Croydon.
 - The application Ref 21/05855/FUL, dated 23 November 2021, was refused by notice dated 6 April 2022.
 - The development proposed is Proposed single storey building to rear to create 1 x studio flat.
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Appeal B Ref: APP/L5240/Y/22/3302942

15 South End, CROYDON, CRO 1BE

- 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 Ahmet Yeldener against the decision of London Borough of Croydon.
 - The application Ref 21/05869/LBC, dated 23 November 2021, was refused by notice dated 6 May 2022.
 - The works proposed are Removal of part of the brick boundary wall shared between 15 South End and Boswell House.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed, and listed building consent is refused.

Preliminary Matters – Appeals A and B

3. There are two appeals before me. However, to avoid duplication my reasoning has considered them together where appropriate.
4. There is a dispute between the parties as to whether Boswell House's now partly removed northern boundary wall is curtilage listed. Historic England's guidance¹ states that there are three things to be taken into account when assessing whether a structure is within the curtilage of a listed building. These are the physical layout of the listed building and the structure, their ownership historically and at the date of listing, and the use or function of the relevant structures both historically and at the date of listing.
5. The law relating to curtilage dates from 1969, and Boswell House was listed in 1954. As such the guidance suggests that the decision regarding curtilage is based on the position in 1969. On the 1871 and 1890 OS maps it is clear that

¹ Listed Buildings and Curtilage, February 2018

the current plot boundary with 15 South End (No 15) aligns with the boundary shown on those maps. Both maps show open space where No 15 is now located. My observations on site lead me to conclude that No 15 was built against an existing wall, as that wall is visible as a separate entity along most of its boundary. In addition, where the wall is visible there is a clear line of coping bricks which also suggests that this was a boundary wall when No 15 was built. There are no details before me to indicate that the wall and Boswell House were in different ownership in 1969. As such, I conclude that the wall predates the building of No 15 and formed the original plot boundary to Boswell House. It is therefore curtilage listed.

6. The development and works are in part retrospective as a section of the curtilage listed wall of Boswell House has been removed, and land has been excavated to build a store with a vehicular access from the adjoining plot. As the description of development is a single storey studio flat, which would be built above the store, I have not considered the store within these appeals except where relevant.
7. The Council has advised since the appeal was lodged that its Suburban Design Guide SPG is no longer included in the local development plan.

Main Issues

8. The main issues are:
 - Whether the development would preserve the Grade II listed Boswell House and Boswell Cottage, and curtilage listed structures, or any features of special architectural or historic interest which they possess, including setting (Appeals A and B);
 - The effect of the development on the character and appearance of the area (Appeal A);
 - The effect of the development on the living conditions of occupiers of Boswell House, No 15 and Heathfield Gardens, with particular regard to outlook, external amenity space, noise and disturbance, and overlooking, and on the living conditions of future occupiers with regard to access, outlook and light (Appeal A);
 - Whether the development would accord with local plans with regard to refuse arrangements, servicing and reducing car dependency (Appeal A).

Reasons

Heritage Assets - Appeals A and B

9. Boswell House is a five bay two-storey red brick townhouse with roof accommodation and dormers, with sash windows in cased frames arranged around a central doorcase with fluted Doric pilasters, triglyph frieze and panelled metopes, cornice and pediment. It has a tiled roof and the side elevation, described as rebuilt, is flint faced with two brick stacks. It is slightly set back from the underlying building line, and is separated from No 15 by a gated vehicular entrance. This leads down beside Boswell House's flank wall to what appears to be a large flatted rear extension, with an associated undercroft used for commercial bins and parking. The rear extension is built in red brick

and at least superficially reflects the building materials, articulation and design of Boswell House.

10. The listing indicates that Boswell House dates from the late 17th century, and the 1871 OS map shows it sited within a linear frontage with gardens associated with the now demolished Boswell Court to the rear. Boswell Cottage is of similar age and style to Boswell House, but is attached to its southern flank wall, and turns a corner with its principal elevation fronting a former yard now used for parking.
11. Although the 1871 OS map shows that the House had extensive gardens and openness to its rear, this spaciousness has largely been lost by subsequent urbanisation.
12. The significance of Boswell House and Boswell Cottage is derived from their high quality and intact historic fabric, their aesthetic qualities and positive contribution to the street scene, and the spatial relationship with each other and the current street plan which evidences Croydon's evolution and early layout. Their settings have been heavily urbanised but the vehicular entrance between Boswell House and No 15 allows greater appreciation of its principal and side elevations.
13. The boundary wall to No 15 has an aged appearance and has random patterns of headers and stretchers which do not appear to conform to any standard or recognisable bond. The historic maps show that there was formerly an attached building along part of the boundary wall, and it may be that the wall has been rebuilt variously over time. I conclude that the significance of the boundary wall arises from its position, historic fabric and evidential value in relation to the former layout of the House and early Croydon.

Proposals and effects

14. The development comprises a single storey studio flat to be built on top of the built store. The store would be a combined refuse storage area and garage with a vehicular door, accessed from the undercroft of the adjoining Boswell House.
15. A section of the boundary wall between No 15 and Boswell House has been removed to excavate land behind No 15 and to build the store. A short section of the original wall has been rebuilt in what appears to be banded multi second-hand brick. Although this section has been built in stretcher bond, there is a brick pier which mirrors an original a short distance away and the bricks are a sympathetic choice in this context.
16. However, the wall of the store has been built in a brick with a brighter and more uniform face which is clearly contemporary, and which sits uncomfortably with the adjoining sections of wall. The incongruity of the new wall is reinforced by the crudeness of the cut rebates for the vents, and the poor detailing of the brick slip lintel over the new opening.
17. This section of the new wall is clearly out of keeping with the original boundary wall brickwork, as well as the section apparently built with second-hand bricks. Notwithstanding that the undercroft is not a particularly attractive space, the section of new wall and its oversized opening detracts further from this area which provides part of the setting for Boswell House as well as entry to its flats.

18. As such, I conclude that the proposals fail to preserve a section of the original boundary wall. This represents a loss of historic fabric and a diminution of the significance of Boswell House and its setting. This amounts to less than substantial harm.
19. The studio flat would not be seen in the context of the side or principal elevations of Boswell House and would be set back from the side boundary. Although it would be seen from the undercroft, above the rebuilt boundary wall, Heathfield Gardens is already a dominant feature in this context. I am satisfied that the studio flat in isolation would have a negligible adverse or neutral effect on the settings of Boswell House and Boswell Cottage. However, this does not diminish my concerns in relation to the loss of the wall.
20. Where there is less than substantial harm Paragraph 202 of the National Planning Policy Framework (the Framework) sets out that the harm is to be weighed against the public benefits of the proposal. The development of a studio flat would be of very minor benefit to local housing supply and would not outweigh the great weight to be attributed to an asset's conservation, as set out in Paragraph 199 of the Framework. The demolition and rebuilding of the boundary wall allows access to the store but the evidence before me indicates that previous applications have indicated that refuse access would be facilitated from No 15's northern boundary. There are no public benefits sufficient to outweigh the harm arising from the loss of the wall.
21. Accordingly, the proposals are contrary to Sections 16(2) and 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) which requires the decision maker to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. There is also conflict with LP Policy DM18 which requires development to preserve and enhance heritage assets and their settings.

Character and appearance – Appeal A

22. There is limited openness at the rear of the buildings lining South End. The extension to Boswell House dominates its plot at the rear, the long mansion block of Heathfield Gardens is some 8 metres from No 15's rear plot boundary and there is a single garage located on No 9's rear plot boundary. Nonetheless, before the small open space at the rear of No 15 was built over to form the store, there was a series of small interconnected open spaces at the rear of the South End frontage.
23. The rear of No 15 is already considerably more built up than shown on the drawings with a balcony and fenced amenity area on its rear elevation and an extension into and roofing over what is shown as a patio area at ground floor level. The proposed studio flat would therefore represent significant additional built form in a context where there is already a considerable diminution of the open space within the development pattern.
24. Moreover, LP Policy DM10.4 requires that where there is development in the grounds of an existing building, a minimum length of 10 metres and no less than half, or 200 sqm, whichever is the smaller is retained for the host property. There would be no external amenity space provided for the host property.

25. The box-like flat-roofed studio flat, would have a utilitarian appearance. The argument is advanced that the studio flat would be in scale with No 9's garage. However, this is not shown on the drawings to enable me to make a comparison. In any case, the existence of structures along the boundary with Heathfield Gardens does not necessarily justify adding more.
26. As such the development would not make a positive contribution to the townscape of the area and would intrude into such limited openness as there is at the rear of the South End frontage buildings. It would have an adverse effect on the character and appearance of the area, contrary to LP Policies SP4 and DM10 which taken together require development to be of high quality and contribute positively to townscape, and London Plan Policy D5 which requires high quality inclusive design and high quality people spaces. To a lesser extent there would be also conflict with London Plan Policy D4 which is concerned with design strategy and delivery. There would also be conflict with LP Policy DM10.4 in relation to development within the plot, as set out above.
27. The Council has cited other policies in its decision. However, London Plan Policy D8 is concerned with public realm. Although there would be access to the flat through the store, accessed from the Boswell House plot, I am satisfied that a gated entrance with a key code does not represent public realm. This policy weighs neither for nor against the appeal. I see no particular conflict with LP Policy SP2 as this is concerned with housing supply.

Living conditions – Appeal A

Existing occupiers

28. The plans show that the studio flat's rear wall would be considerably taller than the former boundary treatment. The occupiers of ground floor flats at Heathfield Gardens would therefore be looking out onto a blank wall, rising to about 4 metres in height above ground level and about 8 metres away. Even allowing for this dense urban environment, this would have a detrimental impact on outlook for those occupiers, particularly as the boundary is situated on slightly elevated ground relative to Heathfield Gardens.
29. The appeal statement sets out that the studio flat would not be much taller than the former boundary wall but this is not supported by the evidence which shows the 'existing' boundary treatment to be about 1.5 metres tall.
30. There would also be a distance of about 6 metres between the side windows and private amenity space of the studio flat and the side of Boswell House, which itself contains flatted accommodation. This would lead to intervisibility and the potential for overlooking, as well as an adverse impact on outlook for those existing occupiers. Moreover, there would be access to the studio flat through the store accessed from the Boswell House plot. If used as intended in the appeal statement, there would be comings and goings associated with the cycle storage, as well as increased noise and disturbance associated with bin emptying or movement. This would be detrimental to the living conditions of occupiers of Boswell House.
31. There would also be intervisibility between the studio flat and No 15's first and second floor flats which could lead to overlooking, as well as a loss of outlook and increased enclosure. Moreover, the entrance to the studio flat would directly overlook what is shown on the plans as the patio area abutting the

ground floor flat at No 15. This would lead to overlooking as well as increased noise and disturbance from the comings and goings at the studio flat, for occupiers of the ground floor flat. The appeal statement argues that there is already mutual overlooking but this does not justify additional harm in that regard.

32. The loss of the former open space also removes an area of communal amenity space for occupiers of No 15.

Future occupiers

33. No 15 has been extended at the rear to accommodate flats. The separation between the studio flat and the existing first floor flats is less than shown on the drawings as No 15's first floor flat has a fenced amenity space built on the flat roof. There would therefore be a loss of privacy for future occupiers as the studio flat's principal elevation would oppose the first floor amenity area at a distance of less than 10 metres, and there would be direct overlooking of the studio flat and its outdoor amenity space from the second floor balcony at the rear of No 15. There would also be potential overlooking of the studio flat and its outdoor space from the flats in the rear of Boswell House, which would be about 6 metres away.
34. Moreover, the studio flat would look out onto the taller Boswell House and No 15 at distances of between 6 – 10 metres which would give considerable enclosure and contribute to a loss of outlook.
35. There would be four windows on two elevations and although the Council has raised concerns in relation to light entry into the flat, I see no particular reason why internal light levels should not be adequate given the separation from the rear of No 15 and Boswell House.
36. The flat would meet Mayoral standards with regard to internal floorspace. There would be outdoor amenity space of dimensions which appear to meet the Mayoral requirements.
37. Policy D7 of the London Plan requires that dwellings meet Building Requirement M4(2) for *accessible and adaptable dwellings*. The studio flat would have stepped access and would not therefore meet this policy requirement.
38. I conclude that there would be an adverse effect on the living conditions of both future occupiers of the studio flat, as set out above, as well as for the existing occupiers of Heathfield Gardens, No 15 and Boswell House. This would be contrary to London Plan Policy D5 which requires high quality inclusive design and high quality people spaces. There would be conflict with LP Policy DM10.6 which seeks to protect the amenity of occupiers of adjoining buildings, prevent direct overlooking of private outdoor space within 10 metres of the rear elevation of a dwelling, and provide adequate sunlight and daylight to both future and existing occupiers. The development would also be contrary to Paragraph 130 of the Framework which requires high standards of amenity for existing and future occupiers.
39. Although the evidence indicates that the studio flat would meet the Mayoral standards with regard to floor space, there would be conflict with London Plan Policy D7 A2) in respect of accessibility and conflict with LP Policy DM10.4 as outlined above, with regard to amenity space.

Refuse, servicing and reducing car dependency – Appeal A

40. The store below the flat would provide covered space for refuse bins for the flat and other units at No 15 as well as the commercial enterprise at the front. However, there is no evidence that this area is accessible by refuse lorries. Moreover, having reviewed the evidence and observed the area on site I have concluded that it is highly unlikely that refuse lorries would be able to access this area as a consequence of the height of the undercroft, width of the vehicular access and the area available for turning. In the absence of refuse lorry access the commercial bins would need to be wheeled in excess of 40 metres to get to the public highway. This would be highly unsatisfactory.
41. It is unclear whether the garage would be used for car parking as well as secure cycle storage and refuse storage. The width of the sliding doors suggests that it would be. However, with regard to secure cycle storage there is nothing before me to indicate that secure cycle storage could not be provided within the store. As such there would not be conflict with LP Policies DM29 and DM30 in this regard.
42. The access to the cycle store would be through the undercroft of Boswell House. This is not a particularly welcoming space. However, it is used for access to the flats within Boswell House and appears to have a secure gated entrance. As such, I conclude that there would be no conflict with any other policies in this regard. Nonetheless, there would be a fairly long route for service and delivery access which would be either through the store, exit through the other side and then up a flight of steps, or through the long passage within No 15, out into the rear space and up the steps. Either way, access for deliveries and servicing would be unsatisfactory.
43. I conclude that the development would fail to accord with local policies with regard to refuse, access and servicing. This would be contrary to LP Policies DM13 and DM29 which taken together require refuse arrangements to be conveniently located and easily accessible by occupants, operatives and their vehicles, and also promote sustainable travel and reduce congestion. There would also be conflict with London Plan Policy T7 which requires development to facilitate safe, clean and efficient deliveries and servicing.
44. In the light of the evidence before me I am unable to find particular conflict with LP Policy SP8 which is concerned with transport and communication.
45. The appellant has advanced the argument that Paragraph 111² of the Framework indicates that development should not be refused on highway grounds unless the cumulative impact is severe. However, Paragraph 112 of the Framework states that development should allow for the efficient delivery of good and access by service and emergency vehicles. London Plan T7 is consistent with the Framework in this regard and as such I give it full weight.

Other Matters

46. One of the reasons for refusal for Appeal A concerns the absence of any mechanism to ensure that residents are unable to have car parking permits. However, as the appeal is being dismissed on other grounds there is no need for me to consider this further. The appeal statement sets out that further

² Cited as Paragraph 109 in the appeal statement

details would be provided at final comments stage but no final comments were received.

47. It is argued by the appellant that the former space at the rear of No 15 was unused. However, there is no requirement for small pockets of open space within a building pattern, particularly in a dense urban environment, to be built on whether seemingly unused or not.
48. I acknowledge that the development would provide an additional studio flat, but there is nothing before me to indicate that there is a shortage of studio flats in this area. In any case the benefits arising from one studio flat do not outweigh the harm identified above.

Conclusion

49. The development and works would conflict with the Act, the local development plan and the London Plan, and there are no material considerations sufficient to lead me to conclude otherwise.
50. Appeal A is dismissed.
51. Appeal B is dismissed and listed building consent is refused.

A Edgington

INSPECTOR