



Appeal Decision

Site visit made on 21 February 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/X5990/W/22/3301333

200 Sutherland Avenue, London W9 1RX

- 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 David Djanogly against the decision of City of Westminster Council.
 - The application Ref 22/00575/FULL, dated 28 January 2022, was refused by notice dated 28 March 2022.
 - The development proposed is described on the application form as, "The proposal comprises of the installation of a roof light to the existing front light well, the replacement of existing planters and the installation of a painted hardwood bin store to the front garden".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Amended plans were submitted at the appeal stage, which include the replacement of the metal balustrade to the boundary wall of the site with a bottle balustrade, and the introduction of a secondary bottle balustrade to enclose the lightwell. The Procedural Guide: Planning appeals – England (Procedural Guide) constitutes the current guidance in this area, rather than Good Practice Advice Note 09, and in this regard the Procedural Guide makes it clear that if an appeal is made the appeal process should not be used to evolve a scheme, and that it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority and interested parties at the application stage.
3. The Procedural Guide further states that whilst amendments to a scheme might be thought to be of little significance, in some cases even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested people. This guidance takes into account the fact that interested parties are notified of the appeals process and have an opportunity to comment on proposals.
4. In this case, the above-mentioned changes would materially alter the aesthetic design of the scheme, which is a matter which goes to the heart of the first main issue in this appeal. As such, taking account of the *Wheatcroft*¹ principle, I have considered the same plans that the Council determined the planning application on. To do otherwise would deprive those who should have been consulted on the changes, the opportunity of such consultation.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

Main Issues

5. The main issues are whether the proposed development would preserve or enhance the character or appearance of the Maida Vale Conservation Area, and the effect of the proposed development on trees.

Reasons

Conservation Area

6. The appeal site relates to 200 Sutherland Avenue (No 200), a semi-detached house on 4 levels situated on the corner of Sutherland Avenue and Lanark Road in the Little Venice ward of Westminster, a mixed commercial and residential area. 198 Sutherland Avenue (No 198), the other half of the semi-detached pair, is of a similar design.
7. No 200 was identified as a non-designated heritage asset by the Council during the course of the planning application. Paragraph 203 of the National Planning Policy Framework (the Framework) provides that, amongst other things, in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
8. The significance of No 200 as a non-designated heritage asset lies in its retention of much of its original character as a mid-to-late 19th century semi-detached villa, including a lightwell that, based on the evidence before me, appears to be nearly the same size as it was in approximately 1870, even if, as suggested in the submitted Heritage Appeal Statement² it may have been slightly extended.
9. The site is within the Maida Vale Conservation Area (conservation area). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s72(1) that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
10. The significance of the conservation area, as a whole, as a designated heritage asset is derived predominantly from its numerous well-maintained late Georgian and Victorian properties, including villas and traditional terraces, often in groups of a uniform appearance. The site contributes to the significance of the conservation area primarily by it forming one part of a semi-detached villa which is part of a wider group of 19th century housing, with the original symmetry with No 198 largely retained, including with respect to its front lightwell.
11. The proposed new glazed area would be a wide structure relative to No 200 as a whole, and it would stretch across a significant proportion of the length of the existing lightwell. Due to this, and its sloping nature, it would appear as a conspicuous addition to No 200 and it would serve to undermine the currently clearly-articulated classical proportions of the windows on its front elevation. Moreover, it would have the appearance of a contemporary glass box which stylistically would jar with the period architecture exhibited by No 200.

² Handforth Heritage (June 2022)

12. The proposal would not involve the creation of any new light source, although as the lightwell would be enclosed by the proposed glazing, it is likely that the enclosed area would have the appearance of being illuminated if light were to enter the lightwell during the hours of darkness. The glazed area would also likely reflect daylight and sunlight, particularly during the summer months. These factors would increase the prominence of the glazed area, further emphasising its incongruity in relation to No 200.
13. In this regard, mitigation measures have been suggested, including internal louvred fins and tinted glass. However, at this stage, given the lack of technical evidence on this matter, the extent to which such mitigation measures would be effective in reducing these harmful effects is unclear. It is therefore uncertain whether a planning condition requiring details to be submitted to the Council for approval would serve to adequately remedy these harmful effects.
14. The proposal would remove the railing to the side of the lightwell, and the steps and handrail down into it, in addition to removing the metal security bars around the windows facing into the lightwell. However, whilst the removal of these items would complement No 200 in visual terms, considering the size and sloping nature of the proposed glazed area set against the evident classical features exhibited by No 200, these elements of the proposal would do little to mitigate the harm caused to No 200 by the proposal as a whole. Additionally, there is no evidence before me to suggest that a less harmful scheme could not achieve the same aims in terms of the removal of these features.
15. At the time of my site visit the existing lightwell area was largely obscured from nearby views due to the wall along Lanark Road, the shorter wall with railings and planting fronting Sutherland Avenue, and the trellis and planting to the side of the lightwell. Even so, in principle, it is not appropriate to mostly rely on planting to screen an otherwise harmful development, as this planting could be removed at any time, either by the current or future occupiers of No 200.
16. In this regard, I have considered the possibility of a condition being imposed to secure a soft landscaping scheme. I accept that such a condition could require the replacement of trees or shrubs, if required, for a period of 5 years. However, this would not secure screening for the site in perpetuity and it would not be reasonable for a longer period to be specified.
17. After such a 5 year period, if the planting to the frontage of the plot were to be removed for any reason, due to its size and sloping nature the proposed glazed area would be visible to passers-by through the railings above the low wall, even taking account of the set-back of the lightwell from the footway and that the front gate could be altered without planning permission. Similarly, if the trellis and planting to the side of No 200 were removed for any reason, views of the enclosed lightwell would likely be visible from the parking / garden area directly in front of No 198. In these circumstances the harmful effects of the proposal upon No 200 would be evident.
18. The enclosure of part of the front lightwell at 164 Sutherland Avenue³ related to the side passage at the front of the property, rather than to the front of the building itself, meaning that this example is not directly comparable with the appeal proposal. Whilst the Council granted consent for a glass ceiling over a

³ 17/06282/FULL

lightwell at 184 Sutherland Avenue⁴, which is a Grade II listed building, the brief comments provided in relation to this aspect of that proposal in the Council's Officer's Report mean that the Council's assessment of this part of the proposal in design terms is not wholly clear. As such, neither of these examples are sufficiently persuasive so as to change my findings.

19. I observed all of the examples of lightwells highlighted by the appellant which were visible from public vantage points. In this regard, the lightwells at 26 Blomfield Road, and 16, 20, and 22 Warwick Avenue were either not visible, or were not readily apparent from street level. Consequently, these examples neither support nor detract from the merits of the appeal proposal.
20. Nos 14, 24 and 32 Warwick Avenue are all Grade II listed buildings and appear grander in scale and with a greater degree of architectural ornamentation than the relatively simple villa-style of No 200. As such, the impact of the glazed areas above those lightwells is less pronounced than would be caused by the appeal proposal at No 200.
21. All in all, although these examples demonstrate that glazed areas above lightwells are present in the conservation area, for the reasons given above my finding that the proposal would unduly harm the significance of No 200 as a non-designated heritage asset remains unchanged.
22. Consequently, the proposal would diminish the positive contribution No 200 makes to the architectural integrity of the wider group and to the conservation area. As the harm to the character and appearance of the conservation area identified above would be localised, the proposal would cause less than substantial harm to the significance of the conservation area as a designated heritage asset, but nevertheless this harm is of considerable importance and weight. The Framework advises that such harm should be weighed against the public benefits of the proposal.
23. In this regard, the proposal would provide habitable accommodation, which would benefit both the current and future occupiers of No 200 in terms of enhanced living conditions. Few details have been provided to substantiate the assertion that the proposal would assist in maintaining its long-term and continued use as a single dwellinghouse, and no specific mechanism is before me to secure this. Hence, these benefits would be largely private in nature. The proposed additional planting, at the scale proposed, would provide a small scale benefit to the local area in environmental terms, and would support the objectives of the Council's Environmental SPD.
24. The Framework makes clear that great weight needs to be given to designated heritage assets' conservation. Due to the modest scale of the public benefits involved in this appeal I give no more than moderate weight to all the public benefits of the proposal and find that they do not amount to public benefits which outweigh the harm that would be caused to the significance of the conservation area.
25. I therefore find that the proposal would not preserve or enhance the character or appearance of the conservation area. The proposal would conflict with part A of Policy 38 of the Westminster City Plan (2019 – 2040) (adopted 2021) (City Plan) which provides that, amongst other things, new development will

⁴ 14/09271/FULL

incorporate exemplary standards of high quality, sustainable and inclusive urban design and architecture befitting Westminster's world-class status, environment and heritage and its diverse range of locally distinctive neighbourhoods.

26. The proposal would conflict with part K of Policy 39 of the City Plan which provides that, amongst other things, development will preserve or enhance the character and appearance of Westminster's conservation areas, and with part B of Policy 40 of the City Plan which provides that, amongst other things, features that form an important element in Westminster's local townscapes or contribute to the significance of a heritage asset will be conserved, enhanced and sensitively integrated within new development, including open lightwells.

Trees

27. The horse chestnut tree within the front garden on site is of good health and positively contributes to the moderately verdant character of the local area. I have had regard to the submitted Arboricultural Impact Assessment⁵ which states that excavations would not be required and that whilst the floor of the existing lightwell would be lowered by approximately 175mm this would merely reduce the extent of the current built form and would not extend to a greater depth than the existing floor formation.
28. As the installation of the roof light would not require any excavation beneath the existing foundations nor any new foundations, and the proposed bin store would also not require any new foundations, on the basis of the evidence before me I consider that the proposal would not be likely to damage the roots of the tree. Additionally, a planning condition could be imposed requiring the submission of an Arboricultural Method Statement for the Council's approval which would ensure that the tree would be protected during construction works.
29. I am therefore satisfied that the proposed development would have an acceptable effect on the horse chestnut tree on site. The proposal would comply with Policies 34, 38 and 39 of the City Plan which collectively provide that, amongst other things, trees of amenity, ecological and historic value and those which contribute to the character and appearance of the townscape will be protected.

Other Matters

30. The finding on the second main issue above, that the proposed development would have an acceptable effect on the horse chestnut tree on site, is a neutral matter, which does not weigh in favour of the proposal.
31. I have summarised within the first main issue above, the key benefits of the proposal. In addition to these, the proposal incorporates a hardwood bin store which would form part of an enhanced refuse strategy.
32. I am mindful that paragraph 189 of the Framework provides that, amongst other things, heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Taking all of the above into account, as a matter of planning

⁵ Thomson environmental consultants (letter dated 15 June 2022)

judgement I find that the matters advanced in support of the proposal, do not, either individually or collectively, outweigh the harm identified, nor the conflict with the development plan identified.

Conclusion

33. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR