
Appeal Decision

Hearing Held on 25 April 2023

Site visit made on 25 April 2023

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/K5600/W/22/3313442
44 Victoria Road, London W8 5RQ

- 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 M Hacking against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/22/00484, dated 24 January 2022, was refused by notice dated 26 August 2022.
 - The development proposed is Demolition of existing building comprising three flats and replacement with a new four storey building plus basement and mansard to provide four residential units (Class C3) and associated landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the Hearing the appellant submitted an incomplete planning obligation. The final completed obligation was received after the close of the Hearing.
3. Firstly, one of the purposes of this obligation is to prevent the occupiers of the new residential unit from applying for on street parking permits.
4. The Council agree with the appellant that the scheme would not be viable if an affordable housing contribution were made. Regarding this matter, the obligation secondly also enables the viability of the scheme to be reviewed later such that were viability to improve sufficiently, the appellant could make provision for a payment towards the provision of affordable housing off site.
5. The evidence indicates that the submitted planning obligation would therefore be necessary to make the development acceptable in planning terms, in relation to these matters, to enable the proposal to accord with policies CH2 and CT1 of the Royal Borough of Kensington and Chelsea Local Plan (2019) (RBKCLP) and policies H4 and H5 of the London Plan (2021) (LP).
6. It is directly related to the development and fairly and reasonably related in scale and kind to the development. The planning obligation therefore meets the tests within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and at Paragraph 56 of the Framework¹.

¹ National Planning Policy Framework 2021.

7. The Council have subsequently confirmed that refusal reasons three and four no longer stand.

Main Issues

8. The main issues therefore are the effect of the proposal on the character and appearance of the De Vere Conservation Area (the Conservation Area) and the effect of the proposal on the living conditions of the occupiers of No. 46 Victoria Road (No.46) with particular regard to daylight and sense of enclosure.

Reasons

De Vere Conservation Area

9. The appeal site falls within the Vallotton Estate character area. This part of the Conservation Area comprises largely of residential buildings of a well-established and attractive appearance. The form, scale, materials and detailing of the buildings are defining features of the character and appearance of the Conservation Area with trees in front gardens also making a significant contribution.
10. The timeline of the appeal building was discussed at the Hearing. The property is dated between 1800 and 1850 in the Conservation Area Appraisal² (CAA) being more specifically identified to between 1847-49 by the appellant.
11. The evidence indicates that it formed the southern half of a villa pair along with No.42 Victoria Road (No.42), with which it is attached. Although it appears that the two properties were not a symmetrical pair, the evidence suggests that the two properties shared broadly similar footprints and were therefore also likely to have been of broadly similar scale and massing.
12. During the first half of the 20th century the property was significantly extended and altered as a single dwelling and during the mid-part of the century the property further altered, largely internally to instead provide three separate flats.
13. Whilst there has been loss of fabric, the resultant building has a rather quirky appearance which incorporates prominent exposed machine-made brick spandrels to the front elevation and a side extension with a pitched roof which terminates well above the butterfly roof of the main part of the property. The latter roof form does however appear to be reflective of that at No.42 and the appeal building also incorporates the same eaves height and detailing, along with a broadly repeated pattern of windows.
14. Despite the extensive alterations, these matters, combined with the significant setback of the side wing, which is limited in views from many viewpoints on the street, means that the property can still be read as a pair with its neighbour to the north. That relationship makes a positive contribution to the significance of the Conservation Area given that the CAA³ indicates that the Vallotton Estate was originally mainly made up of semi-detached villa pairs.
15. The property more broadly makes a positive contribution to the character and appearance of the Conservation Area as it reflects the distinctly eclectic nature of the buildings within this part of the Vallotton Estate character area, where

² Royal Borough of Kensington and Chelsea De Vere Conservation Area Appraisal 31 March 2016.

³ The Vallotton Estate P18, 3.12.

buildings of different heights, form and materials co-exist, to form an interesting, varied and attractive townscape which serves to chart the changing building styles, fashions and tastes over time.

16. The CAA identifies the appeal property as a positive building⁴. While the case is made within the evidence and was made at the Hearing that this is not the case, nothing compelling has been put before me to convince me to come to a different conclusion.
17. The proposal would also see the loss of a Holly Tree within the front garden that is protected by a tree preservation order. Despite, as discussed at the Hearing, not being a tree which blossoms, this established tree is of a form and size which are common within front gardens within the Conservation Area and which contribute so positively to its often-verdant appearance from the kerbsides despite the extensive built development.
18. The demolition of the appeal property and the removal of the Holly Tree would therefore detract from the heritage significance of the Conservation Area which lies in part with the form, scale, materials and detailing of its buildings and the trees in front gardens. There would be harm to the character and appearance of the Conservation Area.
19. The harm to the significance of the Conservation Area would be less than substantial. Regardless of the level of less than substantial harm, which I do not consider would be at the very lowest end of less than substantial, I must afford this harm considerable importance and weight. Paragraph 196 of the Framework requires such harm to be weighed against any public benefits of the proposal.
20. The building that would be constructed in place of that existing would seek to closely align its finishing materials and detailing including window openings to No.42. The overall design and form would not be unfamiliar to the Conservation Area.
21. However, it would be large and seeks to develop on the bulk and mass of the existing property instead of referencing the original building in this sense. The ability to read the proposed building as a villa pair would be diminished. This would be because of the increased presence from within the street scene of the southern wing which would sit much further forward than that which is in place at the existing building, as well as the proposed roof extension, which would at a minimum be clearly visible from the windows of properties opposite.
22. Therefore, any positive weight that I could potentially afford to the proposal as a restoration of the original villa pair is severely diminished. The provision of the replacement building would not form a benefit that would outweigh the harm arising from the demolition of that existing.
23. Replacement trees for the Holly that would be lost are proposed, but despite this, it would take some time for the planting to become as established and make the same contribution to the character and appearance of the area that the Holly Tree makes.
24. There would be some benefit in removing the existing unsympathetic garage and providing a more traditional boundary treatment which is of modern

⁴ Royal Borough of Kensington and Chelsea De Vere Conservation Area Appraisal 31 March 2016 p.14.

appearance, but the garage is set down and partially obscured by the boundary treatment which despite its more modern design is consistent in terms of materiality and height with that in the wider area.

25. The proposal would provide accessible and well sized residential units, including an additional unit, that would make a cuttngly efficient use of the site and which would all have outdoor space. I accept that the resultant building would be likely to have energy efficiency that would be much improved upon that existing. However, the weight to be afforded to these matters is tempered by the small scale of the scheme.
26. There would be a contribution to housing supply, although the positive weight that can be afforded to this matter, even if accepting the lowest figure, is limited by the small scale of the proposal. There could be an off-site affordable housing contribution, however this would only come forward were viability to improve and this again tempers the weight that I can afford this matter.
27. There would be some opening of the view behind the property resulting from the removal of the magnolia tree and loss of the interwar roof. However, the view from Cottesmore Gardens (CG) is partly that of a rear garden, and such garden views are identified within the CAA as being an important characteristic of the area. There may be some greater visibility of part of the spire of Christ Church further to the south from CG. Even if I were to consider these matters benefits, they would not outweigh the harm identified.
28. I do not therefore find that the public benefits are sufficient to outweigh the less than substantial harm identified in this case.
29. The proposal would conflict with Policy CL3 of the RBKCLP which amongst other things require development to preserve or enhance the character or appearance of conservation areas.

Living Conditions

30. In terms of daylight, the Daylight and Sunlight Study⁵ has identified that a second-floor window (W1) at No. 46 would fail to meet the level required by the BRE⁶ criteria with regard to daylight distribution. The same outcome has been identified for that window with regard to the Vertical Sky Component test along with window W3.
31. However, I was able to inspect No. 46 during my site visit following the Hearing. I observed that neither window serves habitable accommodation with W1 not serving any internal room and W3 serving a shower room only.
32. The reduction in daylight as a result of the proposal would not therefore significantly adversely affect the living conditions of the occupiers of No. 46 with regard to daylight due to this arrangement.
33. The side wing of the replacement building, which would be further forward than that on the existing would result in the reduction of some outlook to the large window principally serving the stairwell within No.46. However, despite noting that it can be seen from more primary areas of living accommodation, it primarily serves a type of space within the house which is likely to be passed

⁵ Daylight & Sunlight Study Neighbouring Assessment, Behan Chartered Surveyors June 2021.

⁶ Building Research Establishment (BRE) Guidelines "Site Layout Planning for Daylight & Sunlight. A Guide to Good Practice" 2011 Second Edition and British Standard 8206:2 Part 2.

through. Therefore, the proposal would not be likely to give rise to a sense of enclosure that have any significant adverse impact on the living conditions of the occupiers of No.46.

34. There would be no conflict with Policy CL5 of the RBKCLP which seeks to protect the living conditions of neighbouring occupiers amongst other things by ensuring good standards of daylight are achieved in existing properties effected by new development and require that there is no harmful increase in the sense of enclosure to existing buildings. The policy also appears to be geared more towards habitable rooms and also emphasises the importance of on-site judgement.

Other Matters

35. Pre-application advice about the site was raised often at the Hearing but I can only afford such matters very limited weight, along with concerns over communications with the Council which are a matter to be resolved between the Council and Appellant. Despite the updates to the BRE guidance since the daylight and sunlight guidance both parties still considered the identified tests and guidance of relevance and I have no reason to disagree.
36. I have been advised that there is a certificate of lawfulness in place to provide a super-prime residential apartment with two small studios at the appeal site. Although this would be likely to involve extensive internal alterations, there is no suggestion that it would involve the demolition of the existing building.
37. Whilst the delivery of this other scheme would not provide an additional dwelling and would be unlikely to be as energy efficient or accessible as the new units, these benefits are very limited in relation to the small scale of the scheme and I therefore afford this matter limited weight.
38. The evidence indicates that planning permission has previously been granted to demolish and replace No.s 24, 25 and 26 Eldon Road, which were detailed as positive contributors to the Conservation Area and which are nearby. Whilst I note this, there is nothing to indicate that those schemes with reference to both the previous and replacement buildings are directly comparable in detail and content to that before me such that they provide justification for the scheme. I therefore afford these matters limited weight.
39. Regarding the five-year housing land supply position, the lowest figure identified was 3.7-years. However, regardless of this, both parties agreed at the Hearing that the delivery of housing has been substantially below the housing requirement over the past 3 years.
40. Nonetheless, given the 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

41. The proposal would conflict with the Framework in that it would result 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.

42. 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

DOCUMENTS SUBMITTED AT HEARING – Incomplete planning obligation & CIL Compliance statement.

DOCUMENTS SUBMITTED AFTER HEARING – Completed planning obligation.