



Appeal Decision

Site visit made on 7 March 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/A5270/W/22/3296515

Land to rear of Harewood Terrace and Bryanstone Close, Southall UB2 4JN

- 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 Mark Randall of Q Developments Limited against the decision of the Council of the London Borough of Ealing.
 - The application Ref 215624FUL, dated 9 September 2021, was refused by notice dated 14 January 2022.
 - The development proposed is the redevelopment of site to provide 9 townhouses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would preserve or enhance the character or appearance of the Canalside Conservation Area (the CCA);
 - whether the proposed development would protect the London Canal's Site of Importance to Nature Conservation (SINC);
 - the effect of the proposed development on the living conditions of neighbouring occupiers of the canal moorings, Harewood Terrace and Bryanston Close in respect of daylight, outlook, privacy and sunlight; and
 - whether the proposed development would provide adequate private garden spaces for future occupiers.

Reasons

Character and appearance

3. The appeal site is located immediately adjacent to the Grand Union Canal (the canal) which forms part of the CCA. Although the site is not located within the CCA, paragraph 200 of the National Planning Policy Framework (the Framework) requires clear and convincing justification for any harm to the significance of a designated heritage asset from, amongst other things, development within its setting.
4. The significance of the CCA is derived from the canal's role as part of a national network of transport routes providing a reliable and safe inland waterway connecting key industrial areas. Whilst no longer a heavily used transport network, the industrial character of the canal is retained through its engineered

form and the many locks and bridges along the route. The character of the CCA is also heavily influenced by the relationship between the built form and the land uses adjoining it. In the immediate surroundings, this relationship varies: some properties are orientated towards and overlooking the canal, with boundary features that facilitate a visual connection: whilst others have solid fencing and walls directly onto the canal edge of the towpath, creating a clearly defined barrier. The boundary of the appeal site with the canal comprises a combination of solid fencing, and the rear or side elevations of several workshops, with a sole window opening. A towpath is located on the opposite side of the canal, with an area of open space beyond.

5. The proposed development comprises four-storey townhouses, sited with their rear elevations orientated towards the canal. Although terraced, the front and rear building lines of each townhouse would be stepped forward or backwards from its neighbour. Whilst a range of two, three and some four-storey terraced forms are in the area, the proposed development would be higher and longer than the existing development nearby. The limited setback of the built form from the canal would result in the proposed development dominating this part of the CCA and would introduce a sense of enclosure uncommon to the area. Additionally, despite the setback of the fourth storey from the rear elevation, given the straight alignment of the canal, the overall bulk of the proposed development would be prominent in views within the canal corridor. It would also be highly visible from the open space opposite the site.
6. Whilst the Council refer to the canal side elevation being articulated mainly by windows and the overhang on the fourth floor, and a lack of variation in the roofline, I do not consider these features to be incongruous in the area. These elements, therefore, are not reasons in themselves to refuse the grant of planning permission. Nevertheless, the scale and bulk of the proposed development overall, would not preserve the character or appearance of the CCA, and thereby its significance.
7. In the words of the Framework, the proposed development would result in less than substantial harm to the significance of the designated heritage asset. As advised by paragraph 202 of the Framework, less than substantial harm should be weighed against the public benefits of the development. I have attached great weight to the desirability of avoiding any such harmful effect.
8. The proposed development would provide economic and social benefits from the construction and occupation of nine dwellings and contribute to the local housing supply and mix and is supported by Policy H2 of the London Plan 2021 regarding the role of small sites in achieving this. As the Framework affirms the Government's objective of boosting the supply of homes, I attach significant weight to this public benefit. Further, the removal of the workshops would provide a visual improvement to a predominately residential area and the proposed development would make an efficient use of a previously developed site. I attach modest weight to this public benefit.
9. In conclusion, the weight attributed to the public benefits identified above does not outweigh the great weight to be given to the harm to the heritage asset and, as a result, the proposed development would not satisfy the requirements of the Act or paragraph 202 of the Framework.
10. Consequently, I conclude that the proposed development would conflict with policies D3 and HC1 of the London Plan and policies 7.4, 7B and 7D of the

Ealing Development Management – Development Plan Document 2013 (the DPD). These policies, amongst other aspects, require development to respond to the local distinctiveness, character and heritage values of the area, and make a positive visual impact. I also find conflict with Sections 12 and 16 of the Framework concerning the need for new development to be sympathetic to the character and appearance of its surroundings, including the historic environment.

SINC

11. Part of the appeal site adjoins a section of the London Canal's SINC, an area designated due to its importance for wildlife. Paragraph 179 of the Framework requires components of local wildlife-rich habitats and wider ecological networks to be safeguarded and is supplemented by Policy G6 of the London Plan which seeks to protect SINC.
12. The proposed development would be significantly taller than the existing single-storey workshops on the site and, although set further back than the workshops from its edge, would increase the amount of shade over the canal. This is confirmed by the Light and Over Shading diagrams included in the Design and Access Statement. Notwithstanding that any boats positioned at the existing moorings immediately adjacent to the site also shade the canal, the degree of shade cast from the proposed development would be substantially greater.
13. Whilst the Ecologist Report¹ submitted with the appeal application highlights the overall low ecological value of the site, it also recognises that the adjacent canal is of some ecological value. However, little information or assessment of the ecological value of the SINC has been included in the report. Even if localised shading of the canal is a common characteristic within the canal environment, the assertion that the increased shading of the canal would not be detrimental to local wildlife has not been confirmed. Similarly, based on the evidence before me, it has not been demonstrated that the increase in shading of the canal, even if it is seasonal or could be described as "minimal" or "not significant", would safeguard the SINC.
14. Enhancement measures such as green roofs and gardens, bird and bat boxes, are included within the proposed development and would make a positive contribution to wildlife habitats. These factors weigh in favour of the grant of planning permission but it has not been shown how they would compensate for potential adverse effects on the canal ecosystem. Reference has also been made regarding the potential for other measures, including initiatives being delivered by the Canal and River Trust, which could be secured via a financial contribution should I be minded to allow this appeal. Moreover, as limited details of these have been provided and an appropriate mechanism for securing them is not in place, they attract little weight in my determination of the appeal.
15. Overall, the proposed development would fail to protect the SINC and, as a result, would be contrary to Policy G6 of the London Plan in this regard.

¹ Prepared by AAe Environmental Consultants, dated 14 October 2021

Living conditions – neighbouring occupiers

16. Despite the desire to transfer the ownership of the moorings in the future and the generally transient nature of canal living, based on the evidence before me, the existing moorings located immediately adjacent to the site boundary are in residential use. At the time of my visit, two boats were moored: one in use and the other derelict. As already highlighted, whilst there would be some shading from the existing workshops of the site, the proposed development would significantly increase the amount of shading of the canal. Therefore, it would also increase the amount of time any boats moored here would be in shadow, unacceptably reducing the amount of daylight reaching the boats.
17. Proposed Townhouse 1 would be located close to the boundary with the existing flatted development at the end of Harewood Terrace. Given the oblique relationship between the elevations and the distance between the existing and proposed built form, the proposed development would overlook the communal gardens to an unacceptable degree. Moreover, conditions relating to privacy screens on the fourth floor of TH01 and new planting on the site boundary could provide additional mitigation were I to allow this appeal.
18. Proposed Townhouse 9 (TH09) would be sited close to the boundary with 12 Bryanston Close (No 12), both with rear gardens orientated towards the canal, albeit at different angles and setback distances. Given that the side elevation of No 12 is devoid of openings and no windows are proposed on the side of TH09, any loss of privacy to existing occupiers or No 12 would be limited to views from the proposed fourth floor. However, given the urban context of the appeal site and the potential for privacy screens to be required via a condition, this arrangement would not result in harmful living conditions in respect of the privacy of occupiers using the garden area of No 12. Similarly, as No 12 benefits from a predominantly open aspect to the rear, combined with its slight orientation away from the side elevation of TH09, the proposed development would not be an intrusive feature in the outlook from the garden area of No 12.
19. The additional overshadowing analysis diagrams submitted with the appeal demonstrate an increase in shadows over the garden area of No 12 and other properties beyond. However, as this would be primarily limited to late afternoons and evenings in the summer months, I see no reason to conclude that existing occupiers of No 12 and properties beyond would not benefit from adequate levels of sunlight or daylight.
20. I have found that the proposed development would not cause unacceptable harm to the living conditions of existing occupiers in respect of outlook, privacy and sunlight, regardless of the lack of representations on these matters from occupiers of neighbouring properties. I have, however, found that the proposed development would cause unacceptable harm to the living conditions of occupiers of boats moored adjacent to the site, in respect of levels of daylight. As such, it would be contrary to Policy D6 of the London Plan and Policy 7.B of the DPD which seek to achieve a high standard of amenity, including good levels of daylight, amongst other provisions, for adjacent users. I also find conflict with Section 12 of the Framework which seeks to ensure development is well designed with a high standard of amenity for existing users.
21. Although the Council also refer to Policy 7.4 of the DPD and policies 1.1, 1.2 and 4.1 of the Ealing Development Strategy 2026 Development Plan Document 2013 on the decision notice, as these relate to local character and the strategic

delivery of housing across the Borough, they are not determinative in this main issue.

Private garden space

22. When applying the minimum standards per person set out in Table 7D.2 of Policy 7D of the DPD, the total outdoor amenity space required for the four-bed, eight-person proposed dwellings would be exceeded by the proposed development within the rear gardens and fourth floor terraced areas. However, the supporting text to Policy 7D also stipulates that a typical amount of private, fit-for-purpose and usable garden space would be 50 sqm per house to safeguard the privacy and amenity of existing and future occupants. Assessed against this typical figure, only two of the proposed dwellings would meet this standard. Furthermore, the orientation of the proposed dwellings on the constrained site would result in irregularly shaped rear gardens of limited depth, particularly on Houses TH01-TH04, and restricted functionality.
23. Although the measurements of the front garden spaces have been provided within the appeal documentation, as these are proposed for car parking, bicycle and bin storage, with little screening, I am not persuaded that they would be genuinely private. Furthermore, as set out in the supporting text to Table 7D.2, "narrow, unusable areas and leftover strips adjacent to parking areas should not count towards this provision requirement".
24. Whilst my attention has been drawn to the flexibility of Policy 7D, this focuses on the ability of public open space or garden space to be genuinely playable, and therefore have the potential to be substituted for additional child play space. This does not mean that the shortfall in external spaces within the proposed development can be compensated by the provision of internal space, even if the proposed dwellings exceed the Technical Housing Standards – Nationally Described Space Standards (March 2015).
25. In conclusion, the proposed development would not provide adequate private garden spaces for future occupiers and would be contrary to Policy 7D of the DPD in this respect.

Other Matters

26. In addition to the public benefits derived from the provision of nine additional dwellings and the removal of existing workshops in poor condition identified above, the proposed development would also provide environmental benefits from new planting, green roofs, an ecological buffer to the canal and energy efficiencies. Whilst I attach substantial weight to these benefits, this does not outweigh the great weight to be given to the harm to the heritage asset I have identified above.
27. My attention has been drawn to another planning application² for a similar development on the appeal site. This application was approved by the Council on 20 December 2022, subject to conditions. As there is a real prospect that the approved development could be constructed, regardless of the outcome of this appeal, it represents a fallback scenario to which I attach substantial weight.

² Planning application ref: 223459FUL

28. Based on the evidence before me, this fallback scenario comprises a scheme which addressed the reasons against which the proposed development was refused including: increasing the buffer between the built form and the canal; splitting the townhouses into two, slightly lower, blocks; and creating a more open relationship with the canal moorings. Given the fallback scenario also comprises nine dwellings, it would provide similar public benefits concerning housing supply and mix as the proposed development. In addition, the environmental benefits resulting from the increased buffer with the canal would be greater. Consequently, the proposed development would be significantly more harmful than the fallback scenario. It does not, therefore, weigh in favour of allowing the appeal scheme.
29. Reference has been made to existing canal-side residential developments within the Borough and across London with similar attributes and features to the proposed development. However, I have limited evidence before me regarding the circumstances of these developments, their location and context, or the planning regime in place at the time they were approved. As such, they are not determinative in my decision.

Conclusion

30. The proposed development conflicts with the development plan when considered as a whole, and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, I conclude that the appeal should be dismissed.

Juliet Rogers BA (Hons) MA MRTPI

INSPECTOR