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# Appeal Decision

Site visit made on 30 May 2023

**by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC**

**an Inspector appointed by the Secretary of State.**

**Decision date: 29<sup>th</sup> June 2023**

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**Appeal Ref: APP/G3110/D/22/3307102**

**129 Kingston Road, Oxford OX2 6RW**

- 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 Dr Edward Mitchell against the decision of Oxford City Council.
  - The application Ref 22/00387/FUL, dated 15 August 2020, was refused by notice dated 27 June 2022.
  - The development proposed is described as a proposed small wooden bicycle store.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The Decision Notice notes two reasons for refusal, with the first reason relating to the listed buildings and the Conservation Area, whereas reason for refusal No.2 relates to the character and appearance of the area and the conservation area. As both issues revolve around interrelated concepts in terms of character and appearance and heritage assets, for the avoidance of doubt, I have combined these issues and will deal with them together within this letter.

## Main Issue

3. The main issue is the effect of the bicycle store upon the significance of the Grade II listed existing building (No. 129 Kingston Rd), the surrounding listed buildings (No.s 114-138 (consecutive) Kingston Road), including their setting or any features of special architectural or historic interest which the buildings possess. Additionally, the effect of the bicycle store upon the character and appearance of the locality, with special attention given to the North Oxford Victorian Suburb Conservation Area (CA).

## Reasons

### *Legal and Policy Context*

4. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) prescribes a duty upon a decision maker to give special regard to the desirability of preserving a building/structure or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72(1) of the PLBCA, in respect of development affecting conservation areas, states that special attention shall be paid to the desirability of preserving or enhancing the character and/or appearance of the area.
5. Paragraph 193 of the National Planning Policy Framework (The Framework) 'that great weight should be given to the asset's conservation ... irrespective of

whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance. Paragraph 200 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 202 requires that, where a proposal would lead to 'less than substantial harm,' the harm should be weighed against the public benefits of the proposal.

6. Turning to the development plan, the Oxford Local Plan 2036 (LP) Policy DH1 seeks that development meets key design objectives and principles for delivering high quality development. LP Policy DH3 is related to designated heritage assets and seeks that development respects and draws inspiration from Oxford's unique historic environment, where there is an emphasis on understanding significance and avoiding harm towards heritage assets. LP Policy DH7 is specifically related to external servicing and stores and seeks that bicycle storage is provided in a way that does not detract from the surrounding area, are positioned to minimise their impact and utilise high quality materials, amongst others.

#### *Site Description*

7. The appeal site is Grade II listed where the listing relates to the entire terrace of 114-138 (consecutive) Kingston Road, which all carry the Grade II listing. The appeal site lies at the end of the terrace with the terrace being constructed in the late 19<sup>th</sup> Century by Clapton Rolfe in the polychrome style of Butterfield. The dwellings that make up the terrace are located on relatively narrow plots with a small front garden with brick front boundary wall and hedging, and long narrow gardens. The dwellings are one and a half storeys tall with accommodation within the roof space and a small centrally placed dormer window with hipped roof that breaks through the eaves of the dwellings. Each of the dwellings is a single bay wide with canted bay window at ground floor level and decorative polychrome brick banding arched entrances and large chimney stacks that dominate the roof plane. The majority of dwellings along the street have low brick walls and hedging with well planted front gardens which contribute to the leafy, open and well vegetated feel of the area.
8. A few of the dwellings along the terrace have removed vegetation from the front gardens and replaced this with gravel, some having lower ground floor levels with light wells within the front garden, with there being evidence of Sheffield stands and occupants using the front garden for bicycle parking, chaining their bikes to the railings along the side boundaries; and using the front garden for bin storage. Some dwellings have timber sheds in the front garden however the Council in their Planning Officer Report comments that many of these are without planning consent. The clutter provided by these elements does detract from the character of the area and it is further noted that the CA Appraisal states that negative features of the CA are the loss of front gardens to gravel and bin storage, amongst others.

#### *Significance*

9. Whilst the group of buildings which make up the terrace have significance, the part of the dwelling that relates to this appeal also has individual importance and significance. This predominantly concerns the remaining historic fabric, the ornate polychrome construction, the quality of the materials, design and craftsmanship and how they relate to this group of largely unaltered domestic buildings. These buildings are experienced together as a historic terrace and

are valuable in allowing an understanding of the speculative expansions and the work of prominent architects during the Victorian times. Additionally, the setting of the appeal site and adjoining terraces provides a strong influence as to their contribution towards the positive character, appearance and local distinctiveness of the street scene.

10. The CA's significance is highlighted in the North Oxford Victorian Suburb CA Appraisal, where relevant components of the significance in relation to the appeal site relate to the speculative development of a Victorian estate which comprised of predominantly larger residential villas which were developed for an aspiring social scale and status. The appeal site was part of a later phase of development along Kingston Road where groups of terraces were constructed in the 1870s which offered smaller accommodation, however contained a high quality of design, construction and decoration. The terraced buildings contribute positively to the character and appearance of the CA and display a distinctive and unifying level of rich, ornate detailing in brickwork, polychromatic patterning to facades, positive spaces in and around dwellings, leafy character and materials which make an important contribution to the character and appearance of this part of the CA.

*Effect on designated heritage assets*

11. The proposed bin store would be constructed of timber and be positioned along the side boundary. There would be some screening present from the front garden hedge, and the appellant in their SoC has also sought to place a green roof to the bicycle store to assist in mitigating the appearance of the bicycle store. Whilst these features may assist in mitigating the appearance of the bicycle store, the building would still add clutter to the small front garden of the site, and erode part of the open front garden which is part of the significance that positively contributes to the area. I note comments from the Appellant's Statement of Case (SoC) that they have counted some 30 front garden stores in the locality, which I too observed on my site visit.
12. The appeal documents do not provide any background for the installation of these sheds, with the Council's Officer report commenting that many of the sheds do not have planning consent and where the CA Appraisal notes that for smaller gardens, having a negative impact. As such the presence of these sheds on other properties does not provide evidence for their acceptability of the proposed scheme, particularly given that the CA Appraisal specifically notes that these are a negative aspect of the area. I also note commentary within the appellant's SoC that the bicycle sheds are similar in size to coal stores of the Victorian times. Whilst this may be the case, I have no evidence before me to suggest that such coal stores were present to these particular buildings and that the installation was going to be an authentic reinstatement of what is shown to be a historically significant element.
13. It is clear to me that the installation of the bicycle store fails to preserve the significance of the listed building and the surrounding listed buildings from development within their setting, as well as failing to preserve or enhance the character and/or appearance of the CA. As per paragraph 199 of the Framework, this harm is afforded great importance and weight. Consequently, the scheme would be detrimental to LP Policies DH1, DH3 and DH7 as described previously.

14. Although serious, the harm to the listed building and the CA as a result of the proposed development in this case would be 'less than substantial,' within the meaning of the term in paragraph 202 of the Framework. Paragraph 202 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum use. I turn to this assessment below.

#### *Public Benefits*

15. The public benefits of this proposal would include the provision of a bicycle store which would facilitate environmental benefits with regards to alternative transport methods which are promoted in the Framework and Council's policy objectives and LP Policies. I also note efforts to assist mitigating the appearance of the store such as the placement of a green roof which would also carry environmental benefits and assist in attempting to mitigate the harmful appearance of the character and appearance of the area. Taking the above into account, it has not been shown that public benefits would outweigh this harm and so the proposal would conflict with the duty under S66 and S72 of the PLBCA which I am required to give great weight to, the framework and the development plan when taken as a whole.

#### *Material Considerations, Human Rights and the PESD*

7. The Appellant in their SoC mentions that the bicycle store is necessary to store their electric bicycle in order for them to carry out their day-to-day activities as they have an impairment which restricts their movement and that they are reliant on the bicycle to undertake their day-to-day activities. There is a side gate to the property which a bicycle in theory could be wheeled through, however as per the appellant's SoC, the narrow nature of the gate makes this very difficult given their impairment and there is no ability to widen this gate. Further evidence of the Appellant's impairment and how they experience day to day activities has been submitted with the appeal documents.<sup>1</sup> I am willing to consider the needs of the appellant as a material consideration, particularly as I recognise that the failure of this appeal needs to consider the appellant's rights under Article 14 of the European Convention on Human Rights or Human Rights, as incorporated by the Human Rights Act 1998 as well as the Public Sector Equality Duty (PSED).
8. Whilst a fixture of a permanent nature would be contrary to the Development Plan when taken as a whole, further correspondence<sup>2</sup> was had with the appellant with regards to a personal condition whereby the shed would be removed once the appellant had finished with the shed or moved property, whatever was sooner. According to the correspondence the appellant feels that they would only want to reside in the property another 1-2 years and that the installation of the bicycle shed on a temporary basis would not be suitable.
9. Having regard to the legitimate and well-established planning policy aims to give regard to the significance of heritage assets, in this case I consider that greater weight attaches to the public interest. Having reviewed these personal circumstances, I feel that there may be other ways of accommodating the appellant's needs which may be more compliant with the policies of the development plan. There are consequently no material considerations that

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<sup>1</sup> Email exchange between the planning Inspectorate and the Appellant 13/06/2023 and 18/06/2023

<sup>2</sup> Email exchange between the planning Inspectorate and the Appellant 13/06/2023 and 18/06/2023

warrant a decision other than in accordance with the development plan.  
Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the Appellant and would fulfil the duties under the PSED.

### **Conclusion**

16. For the reasons given above, the appeal is dismissed.

*J Somers*

INSPECTOR