



Appeal Decision

Site visit made on 18 July 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2023

Appeal Ref: APP/E5330/W/22/3301256

26 Kidbrooke Gardens, Kidbrooke SE3 0PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr M Ward against the Council of the Royal Borough of Greenwich.
- The application Ref 22/0433/HD, is dated 4 February 2022.
- The development proposed is the demolition of existing garage/annex and rear conservatory, removal of first floor 'turret', erection of two-storey side and rear extensions (including loft extension), single-storey side and rear extensions, basement and associated external alterations, terrace and means of enclosure.

Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The proposed development relates to the setting of a listed building and lies within a conservation area. Accordingly, I have had special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it may possess, as required under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area under Section 72(1) of the Act.
3. The Council appear not to have notified Historic England, as should have been the case where it considers that the proposed development would affect the setting of a Grade I listed building¹. However, as I have concluded that the proposed development should be dismissed and planning permission refused, little would be gained by delaying the decision to undertake that notification. However, had my decision been otherwise, I would have provided an opportunity for the notification to take place.
4. As this appeal is made against a failure to give notice within the prescribed period of a decision (non-determination) no decision notice exists. However, the Council has, in its appeal statement, set out the decision that it would have made and its putative reasons for refusal. I have therefore based my decision on these. I am satisfied that no parties would be prejudiced by this approach.

¹ Regulation 5A(3) of the Town and Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended).

Main Issues

5. The main issues are:

- the effect of the proposed development on the character and appearance of the building and area;
- whether the proposed development would preserve the setting of the Grade I listed building, Morden College, and the extent to which the development would preserve or enhance the character or appearance of the Blackheath Conservation Area;
- the effect of the proposed development on the living conditions of neighbouring occupiers, with particular reference to loss of privacy and outlook; and
- whether or not the proposal would have acceptable flood prevention and/or mitigation measures.

Reasons

Character and appearance

6. The appeal site comprises a detached property set within a reasonably large garden plot. Several extensions and alterations have historically taken place. Beyond the site's rear boundary lies a public footpath, separating the site from the grounds of Morden College. The site lies within the Blackheath Conservation Area.
7. There is variation in the scale, period and detailed design of properties within this part of Kidbrooke Gardens. However, consistent features typically exist including the setback of properties from the street behind front gardens and the existence of undeveloped gaps between each dwelling or pair of semi-detached dwellings, albeit in some cases a garage or single-storey addition exists. Through these gaps can typically be seen open sky, mature trees in gardens or elements of properties beyond. This historic arrangement provides a sense of separation and spaciousness between properties and makes a positive contribution to the character and appearance of the area.
8. The proposed two-storey side extension would be highly visible from Kidbrooke Gardens. I acknowledge that this element of the proposed development would meet the requirements of the Council's Residential Extensions, Basements and Conversions Guidance Supplementary Planning Document (the SPD, adopted 2018) insofar as it would be set back from the front elevation of the existing property, set down from the ridge level, measure less than half of the width of the original property and be finished in matching materials. However, it is also a requirement of that guidance that two-storey extensions avoid terracing effects or the loss of open character between properties. This is consistent with the requirements of policy DH(a) of the Royal Greenwich Local Plan Core Strategy with Detailed Policies (CS, 2014).
9. Although the proposed side extension would be set back by approximately 1-2 metres from the side boundary, it would infill much of the existing break between the property and the shared boundary with adjoining 28 Kidbrooke Gardens. This would be at odds with the prevailing character of the area.

Consequently, I find that the scale and design of the proposed two-storey side extension would fail to respect the established streetscape rhythm, harming the character and appearance of the host property and area.

10. The position, nature and combined extent of the proposals set to the rear of the existing dwelling would undoubtedly be large and change the relationship of the site with its neighbours. However, those elements would not be readily visible from Kidbrooke Gardens and, where seen from the rear footpath and private vantage points, would be experienced within the context of a range of architectural styles to the rear of existing properties. The loss of historic fabric, as raised by the Council, would be acceptable in this instance given the nature and position of the proposals, together with the appeal property's status as an unlisted building.
11. The proposed materials, features and detailing would largely match that of the historic part of the property, with some contemporary elements such as the use of copper shingle cladding, light-coloured brickwork and basement lightwells. However, these would all assimilate appropriately with the established and varied rear elevations of properties within Kidbrooke Gardens. Nevertheless, the lack of harm in those respects does not overcome or outweigh the harm identified above.
12. Overall, although some elements of the proposed development would have an acceptable effect on the character and appearance of the host property and area, the proposed two-storey side extension would have a harmful effect, contrary to the relevant provisions of Policy D3 of the London Plan (LP, 2021), CS Policies DH1 and DH(a), and the SPD, which in summary seek high quality design in development which respects its context.

Heritage assets - special interest and significance

Listed building

13. Morden College² lies to the south of the appeal site. It is a large Grade I listed building, set within expansive but well-defined grounds, enclosed by walls and railings. Designed by Sir Christopher Wren, it dates from the late seventeenth century with the historic purpose of providing almshouse accommodation for 'decayed Turkey merchants'. Despite the expansion of the surrounding complex over time, the listed building maintains a strong architectural form and presence.
14. The special interest and significance of the listed building is largely derived from its historic and architectural interests. Important contributors in these regards are its powerful presence within its grounds, its surviving historic fabric, its association with the architect Sir Christopher Wren and its historic, and continued, use for communal accommodation.
15. Pertinent to the appeal, in relation to the settings of the listed buildings and the contribution they make to the special interest and significance of assets, I have had regard to the definition of setting within the National Planning Policy Framework (the Framework).
16. The open and landscaped grounds of Morden College have an historic, visual and functional connection with the heritage asset. These grounds are clearly

² List Entry Number: 1289879

defined by boundary treatments including railings and walls. These grounds form the asset's immediate setting and it is from here that the asset is best appreciated. This immediate setting contributes considerably to the asset's special interest and significance. Beyond this, the surrounding area is made up of predominantly suburban development, indicative of the urbanisation of the surrounding area over time. Some limited but key views of the asset are possible from larger gaps between built form. This surrounding area forms the asset's wider setting.

17. The later suburban development which now surrounds the asset has, however, compromised the wider setting to a degree. Whilst the asset might once have formed a very prominent and imposing building from further afield, viewed across undeveloped land, the tightly packed suburban development has altered how the asset is experienced and moderates the contribution this wider setting makes to its special interest and significance. Although, as set out above, there are occasional key views of the asset, these are limited. Accordingly, the wider setting, which includes the appeal site, makes a limited contribution to the asset's special interest and significance.

Conservation Area

18. The special interest and significance of Blackheath Conservation Area (CA) is largely derived from its historic townscape, in part formed of a suburban character, and large expanses of open heathland (Blackheath). Insofar as the appeal is concerned, there is variation in dwelling style and period along Kidbrooke Gardens and neighbouring streets. However, the material palette is typically reserved, limited to brick, tile and render and dwellings are typically positioned within large, spacious plots.
19. It is common ground that the appeal property, individually, makes a neutral contribution to the character and appearance of the CA. Nonetheless, the gaps present between it and the adjacent properties, which are typical between dwellings in Kidbrooke Gardens, provide a sense of separation and spaciousness. These positive traits make a meaningful contribution to the character and appearance of the CA as a whole and thus to its significance as a designated heritage asset.

Heritage assets - appeal proposal and effects

20. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.

Listed building

21. There is no doubt that the proposed extensions would be large, increasing the overall scale and footprint of the established property. Nevertheless, the physically and functionally separate relationship between the appeal site and listed building would be maintained and the asset's historic and architectural interest would remain unaffected by the proposed development. The retention of a considerable separation distance, intervening landscaping features and the

adjoining footpath would all reinforce this. Furthermore, the immediate setting and most of the wider setting that contributes to the asset's significance would remain undisturbed by the proposed scheme.

22. Taking these factors into account, the proposed development would not compromise the setting of the listed building, rather it would have a neutral effect that would not detrimentally alter how the asset would be experienced and would not adversely affect the ability to appreciate its significance. Consequently, the setting of the listed building and the contribution that it makes to the asset's significance would be preserved.
23. Overall, I conclude that the proposed development would preserve the setting of the nearby Grade I listed building, Morden College, and cause no harm to the significance of this heritage asset. Consequently, the proposed development would accord with the requirements of Section 66(1) of the Act and the relevant provisions of LP Policy HC1, CS Policies DH1, DH3, DH(a) and DH(i), and the SPD. These policies, in summary, seek to protect heritage assets and their settings. In a similar vein, the proposed development would comply with the provisions of the Framework insofar as they seek to sustain and enhance the significance of heritage assets.
24. Since there would be no harm to this heritage asset, there is no need to balance the public benefits of the scheme.

Conservation Area

25. As reasoned above, the proposed two-storey side extension would be highly visible from Kidbrooke Gardens, infilling much of the existing break between the property and the shared boundary with adjoining 28 Kidbrooke Gardens. Such an intervention would be at odds with the prevailing character of the area and would erode the open and spacious character and rhythm of the streetscene. Accordingly, this element would have a harmful effect on, and thereby fail to preserve, the character and appearance of the CA as a whole.
26. Although the existing garage extension is not original and is of a design which is at odds with the main dwelling, it does not form a particularly prominent feature of the streetscene and, unlike the proposed development, still maintains an open gap between properties. That Morden College cannot be readily seen through this particular gap does not diminish the importance of the gap.
27. The position, nature and extent of the proposals set to the rear of the existing dwelling, including lightwells, would have little appreciable effect on the streetscene, and would not unduly dominate the existing dwelling where viewed from the rear footpath and private vantage points. Accordingly, these elements would have a neutral effect on the CA, thereby preserving its character and appearance. Nevertheless, the lack of harm in that respect does not overcome or outweigh the harm identified above.
28. Overall, the proposed development would fail to preserve or enhance the character or appearance of the CA, in conflict with the requirements of Section 72(1) of the Act and the relevant provisions of LP Policies D3 and HC1, CS Policies DH1, DH3, DH(a) and DH(h), and the associated policies of the Framework which, together, seek to achieve high quality design and to conserve heritage assets in a manner appropriate to their significance.

29. Given the extent of the development relative to the asset as a whole, I find the harm to the CA would be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. This is a matter I return to subsequently.

Living conditions

30. The existing appeal property, by reason of the position and number of established windows within the rear elevation, allows views over the neighbouring garden of No 24 and oblique views over that of No 28. However, natural outlook from the appeal property is out over its own garden towards the landscaping at the rear.
31. The proposed rear extensions would be large. However, the projection of proposed extensions further into the appeal plot would not result in a harmful increase in overlooking towards neighbouring properties. The removal of the mature boundary tree, the principle of which has been accepted by officers, would not alter this conclusion.
32. The proposed raised terrace would be set to the outermost part of the appeal property. It would project beyond the existing rear elevation of adjoining No 28. Nevertheless, there would be limited meaningful opportunity for a greater degree of overlooking from the raised terrace, with natural outlook from the terrace remaining out over the garden of the appeal site. The setback of the proposed terrace from No 24 would ensure that no harmful overlooking would occur, particularly when compared with the established arrangement of extensions and windows here. Moreover, in both cases, details of boundary treatments and screening of an appropriate height could be appropriately controlled by condition.
33. For similar reasons, although boundary treatments and screens would be visible from within Nos 24 and 28, I do not consider that this would unacceptably change or harm the outlook from those properties, or cause an unacceptable sense of enclosure. As is the case at the appeal site, natural outlook from the single-storey extension at No 28 is down through its own garden. The terrace and boundary treatments would only be partially glimpsed when looking at an oblique angle. As the plots of Nos 24 and 28 are deep, the effect of the terrace near to neighbouring rear elevations would represent a fractional change with reference to relatively expansive plots.
34. Overall, I conclude that the proposed development would have an acceptable effect on the living conditions of the occupiers of neighbouring properties, in accordance with the relevant provisions of CS Policy DH(b), and the SPD, which in summary seek to ensure that the amenity of adjoining occupiers is not lost through development.

Flood risk

35. The Council sets out that the proposed development, in particular the basement, fails to demonstrate that it would have an acceptable impact in respect of flood risk and existing public infrastructure.
36. The Framework seeks to direct development away from areas at highest risk of flooding. The site is identified as falling within Flood Risk Zone 1, an area with

a low probability of flooding. The supporting text to CS Policy E2 sets out that flood risk assessments are required for development proposals in Flood Risk Zones 2 and 3 and only in Flood Risk Zone 1 where sites are greater than 1 hectare in size, where surface water flooding is shown as 0.3 metres or deeper, is within 100m of a sewer flooding incident or within 250m of a groundwater flooding incident. There is no substantive evidence before me to demonstrate that any of the above criteria are relevant to the appeal site or proposal. Therefore, I am not of the view that a flood risk assessment is required in support of the proposal.

37. Notwithstanding the above, which relates to designated flood zones and the need for flood risk assessments, I note that part of the site is at medium risk of surface water flooding. However, this is not in the location of the proposed development, rather to the end of the site, and there is no substantive evidence before me that demonstrates that the proposed development would increase the risk of surface water flooding in the locality.
38. In any case, based on the overall nature and scale of the development, I consider that an appropriately worded condition could satisfactorily deal with this matter. I note the comments received from neighbours in respect of sewerage infrastructure. However, this does not lead me to conclude differently on the main issue.
39. Based on the evidence before me, I conclude that the proposed development would have an acceptable effect on flood risk and public infrastructure, in accordance with the relevant provisions of LP Policy SI 13, CS Policies E2 and E3, and the SPD, which in summary seek to avoid development in areas at high risk of flooding. This would be in a similar vein to the objectives of the Framework insofar as flood risk is concerned.

Other Matters

40. I have noted the Council's reference, in its appeal statement, to the effect of the proposed development on locally listed 22 Kidbrooke Gardens. No 22 is located to the west of the appeal site, is of a larger scale and highly decorative. It sits in a prominent position within the streetscene, directly opposite Liskeard Gardens and stands slightly away from other properties along this part of Kidbrooke Gardens. This, to my mind, contributes to an understanding of its origins. The wider street forms the setting of the locally listed building, from which it is best appreciated, particularly from the west. As a result, Kidbrooke Gardens contributes to how this asset is experienced and so adds to its significance.
41. By reason of the nature of the proposed development and as the appeal site is set away from No 22, in undertaking a balanced judgment, I do not consider the proposal would result in any harmful effects to its setting, and therefore its significance as a non-designated heritage asset, having regard to Framework paragraph 203.
42. My attention is drawn to two-storey elements at other sites including at 3 Kidbrooke Gardens, 37 Kidbrooke Grove and White Lodge. I have only limited information before me as to the planning or historic context of those sites. For this reason and given that those other sites are not positioned in the same part of Kidbrooke Gardens, I do not consider them to be directly comparable. In any event, each scheme is the subject of its own individual circumstances and

assessment. Ultimately, the existence of those other sites has not led me to an alternative conclusion on the main issues.

43. I accept the frustration of the appellant in that a decision notice was not issued by the Council in a timely manner, and in their communication with the Council during the course of the application. Nevertheless, I have assessed the merits of the case based on the evidence before me and my observations on site. Matters of unreasonable behaviour are not within the remit of this appeal, and would instead be relevant to a costs application.
44. I note the representations received in support of the proposal. However, these do not lead me to an alternative conclusion on the main issues.

Planning Balance and conclusion

45. I have found that the proposal would result in less than substantial harm to the significance of the CA. Paragraph 202 of the Framework requires the harm to be weighed against the public benefits of the proposal.
46. Economic benefits would be brought about through the construction phase and the general investment in the property. However, the scale of those benefits is short-term and limited by the nature of the development.
47. I acknowledge the highly unusual arrangement of the property where two separately accessed annex elements exist to the rear. The property would be reverted to a single dwelling as a result of the proposed development, with the living conditions in some parts of the property improved. Nevertheless, the primary outcome of the scheme, namely the extension of the property, would be a private benefit to the appellant.
48. The removal of the existing extensions to the property is of some benefit. However, their removal and any enhancement of the property is not, in my view, inherently linked with the wider redevelopment or extension of the property. Moreover, there is no reason why this could not happen under an alternative, less harmful scheme.
49. Overall, the weight I ascribe to the public benefits that would accrue from the proposed development, is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found.
50. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed and planning permission refused.

A Price

INSPECTOR