
Appeal Decision

Site visit made on 29 August 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 29 September 2023

Appeal Ref: APP/K5600/C/22/3302484

Land at Park House, Onslow Square, London SW7 2NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Patricia Caring against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 25 May 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of three dormer windows to the south-eastern roof slope.
 - The requirements of the notice are:
 - i) Remove the three dormer windows to the south-eastern roof slope and build the roof slope in accordance with PP/18/05784 (drawing reference D2701 Rev 010, D2501 Rev 6 and Proposed Roof Plan Rev 04 attached as appendix A to this enforcement notice;
 - ii) Remove from the land all resultant debris.
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (a), deemed planning application

Main Issues

2. The main issues are the effect of the development on:
 - The character and appearance of the host property and Thurloe Estate and Smith's Charity Conservation Area; and
 - The living conditions of neighbouring residents.

Reasons

Character and appearance

3. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act, 1990 (the Act) places a statutory duty on decision makers to pay special attention to the desirability of preserving or enhancing the character or

appearance of conservation areas. Policies CL1 and CL2 of The Royal Kensington and Chelsea Local Plan, September 2019 (LP) seek to ensure that new development, amongst other things, is of the highest quality design which respects context, character and appearance, taking opportunities to improve the quality and character of the buildings and the area. Policy CL3 of the LP requires development to preserve or enhance the character or appearance of the conservation area and protect the special architectural or historic interest of the area and its setting. Policy HC1 of the London Plan, 2021 seeks, amongst other things, to ensure that development proposals affecting heritage assets, and their settings, conserve their significance.

4. The National Planning Policy Framework (the Framework) also requires the significance of a designated heritage asset to be assessed and advises when considering the impact of a proposed development on a designated heritage asset, great weight should be given to the asset's conservation. It goes on to categorise any harm to the significance of a designated heritage asset as either '*substantial harm to or total loss of significance of an asset*' or '*less than substantial harm to the significance of an asset*'. It is well-established that where any harm is caused, considerable importance and weight must be given to the desirability of preserving the character or appearance of the conservation area.
5. Park House has been developed on a backland site which is enclosed by terraced properties on Pelham Street, Pelham Place, Pelham Crescent and Onslow Square. The appeal site is accessed through a listed archway from Onslow Square, and through an alleyway from Pelham Place. It is situated within the Thurloe Estate and Smith's Charity Conservation Area (CA).
6. From the evidence before me, including the Thurloe Estate and Smith's Charity Conservation Area Appraisal, 2016 (CAA) and observations made on my site visit, the significance of the CA as a heritage asset is in my opinion derived from the high-quality design of the buildings, a significant number of which are listed buildings, which display highly typical architectural features of their period, for example decorative fanlights, timber sash windows and stucco detailing. The Victorian terraced streets are designed as whole pieces, set in crescents, and built around private garden squares which give the area a coherent design and special character and appearance.
7. Park House is a new dwelling which has been recently constructed on land formerly occupied by Pelham Cottages and Park House. I understand that the former development also included a studio building, link buildings, and an orangery. During the 1980's, buildings on this site were amalgamated to form one large residential property. In 2019 planning permission was granted for demolition and reconstruction of a two-storey family dwelling above a basement. The replacement dwelling, Park House, has been designed by an established, award-winning architectural practice, with the aim of re-instating key aspects of the original appearance of the cottage buildings in the new design, including a new low-rise range on the site of the former studio annex to reflect and respond to the historic development of the site¹. The resultant authorised development has been designed in a classical revival style which reflects the relatively low-rise nature of this site's historic development. In my

¹ Local Planning Authority Statement of Case, Section 6.

view the new dwelling, as authorised, open space and garden within the appeal site make a positive contribution to the character of the wider CA.

8. The unauthorised dormers have been constructed on the south-eastern facing roof slope of the single storey wing of the new building. This part of the replacement dwelling was designed to reflect the studio element of the historic development. It was to have a single storey form, incorporating a simple slate pitched roof with rooflights, and linked to the main dwelling by a glazed courtyard and atrium. Consequently, its appearance was subordinate to the two-storey element, and there was a legible relationship to the site's historic development.
9. The three substantial dormers have been set into the sloping pitched roof and constructed so that they break the eaves line and thus have the appearance of wall dormers. The front of each dormer has been divided into three sections, with each section comprising three over three timber sash windows. The dormer cheeks are clad in slate, and they have intricate leaded roofs. Although the dormers have been set down from the ridgeline, their number and scale are such that they dominate the roof. Their bulk and prominence are exacerbated by the leadwork, depth of the timber fascia and mullions which surround the individual window frames. Their appearance contrasts sharply with the recessed fine joinery found on the ground floor doors. Furthermore, the width of the dormers gives them a dominant horizontal form which is at odds with the vertical rhythm provided by the ground floor fenestration, and the dormers give this part of the dwelling a top-heavy appearance. Consequently, the original design and composition of this elevation of the building has been distorted by the addition of the dormers, which has diminished the design quality of the building as a whole.
10. I appreciate that the dormers are not visible from the public realm, and although there are some views of them from the upper floor windows of neighbouring properties, given the amount of vegetation and recent planting, those views are restricted. The effect of the dormers on the appearance of the CA is thus limited. However, the character of the CA and identified as part of its significance as a HA, is substantially derived from the high quality of its built form. It is evident from the design process undertaken by the architects, in consultation with the Council, that ensuring the replacement dwelling was a high quality design, that responded to the historic development of the site, was a material consideration and fundamental to the decision making process. For the reasons given above the dormers have a harmful effect on the appearance of the single-storey wing. This part of the building now appears as a dominant form. It does not have the appearance of a subservient/ancillary building, or a studio, which was part of the design rationale for the replacement building.
11. I have taken into consideration the appellant's view that many artist's studios have windows in attics and large areas of glazing to provide natural light, and examples can be found throughout the CA. I also saw on my visit that many properties within the CA have dormer windows, in a variety of sizes and forms. However, whilst some properties within the CA have original dormers and others have been altered with dormer additions, those other examples are not directly comparable to the unauthorised development in this case. Park House has a bespoke high quality design which as approved would make a positive contribution to the character of the CA. The dormers have had a harmful effect

on the overall design quality of the building and thus fail to preserve the character of the CA.

12. I have attached considerable importance and weight to the desirability of avoiding any such harmful effect in accordance with Section 72 (1) of the Act. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal. There are no public benefits attributable to the unauthorised works and the harm is not outweighed by public benefits. The development thus conflicts with the Framework in this regard.
13. I conclude that the development has a harmful effect on the character of the CA. In the language of the Framework, the resultant harm would be less than substantial to the significance of the heritage asset. It follows that the proposal would conflict with Policies CL1, CL2 and CL3 of the LP and Policy HC1 of the London Plan, the aims of which are set out above. I also find conflict with Policy CL8 of the LP which requires roof alterations and additional storeys to be architecturally sympathetic to the age and character of the building. I have had regard to Policy CL11 of the LP which relates to 'views'. However, I find no conflict with this Policy as the development does not affect any views which are identified within the CAA and nor does the development have a harmful impact on views from both within, into, or out of the CA.

Living conditions

14. Although not a reason for the Council issuing the enforcement notice, I have had regard to the significant number of representations received from neighbouring residents concerning the impact of the dormer windows on their living conditions, with particular regard to privacy and light pollution.
15. The replacement dwelling is located in a backland position and thus encircled by the terraced properties which line the adjoining streets. Many of those properties are 4/5 stories in height and windows in their rear elevations overlook the appeal site. However, taking into consideration the amount of vegetation within and around the appeal site, which provides natural screening for most of the year, there are only glimpsed views of the dormer windows from those neighbour's windows. I appreciate that during the winter months the dormers are likely to be more visible. However, where there is a direct line of sight between these new windows and existing properties on Pelham Crescent, the distance between those facing windows is sufficient to ensure that there is no infringement of privacy. The dormers are closest to properties on Pelham Place, but the new windows are not orientated towards those neighbouring properties. I observed from within the children's bedrooms, which the new dormer windows serve, that there is no direct line of sight to them neighbouring windows on Pelham Place. Furthermore, the character and scale of the existing terraced development which surrounds the appeal site is such that there is a significant amount of mutual overlooking between the rear gardens and elevations of these properties. From the evidence before me, including observations on my site visit, I conclude the new dormers do not have a harmful impact on the privacy of the occupiers of neighbouring residents on Pelham Place, Pelham Crescent or Onslow Square.
16. Residents have also expressed concern over light pollution. My attention has been drawn to a number of photographs taken at night-time, which show

bright lights in the location of the dormer windows and glazed courtyard. It is understood that some of these photographs were taken when there were construction lights still in place and before the dwelling was occupied.

17. The dormer windows currently serve children's bedrooms. From observations within the property on my site visit, and considering the photographic evidence produced at appeal, by the appellant and neighbouring residents, it seems to me that the light emitted from those bedrooms and through their windows, which have blinds and voiles, is no greater than that emitted from the rooms and fenestration which characterise the extensive rear elevations of the surrounding terraces which overlook the appeal site. Furthermore, the appeal site is located within a well inhabited and urban environment, where during the hours of darkness it is not uncharacteristic for rooms within properties to be visibly illuminated.
18. For the reasons given above I conclude that the dormer windows do not have a harmful effect on the living conditions of neighbouring residents, with particular regard to privacy and light pollution. There is therefore no conflict with Policy CL5 of the LP which requires all development to ensure good living conditions for occupants of new, existing and neighbouring buildings. I also find no conflict with paragraph 130 of the Framework which promotes a high standard of amenity for existing and future users.

Other Matters

19. There are a number of listed buildings within the vicinity of the appeal site, and which are identified in the appellant's Heritage Appeal Statement² and the Heritage Appeal Statement prepared on behalf of a neighbouring resident³. The Council did not consider that the unauthorised development has a harmful effect on the setting of any of those listed buildings, and from observations during my site visit, and the evidence before me, I see no reason to disagree. I am therefore satisfied that the proposal would accord with the provisions of Section 66(1) of the Act and would preserve the setting of the neighbouring listed buildings.

Overall Planning Balance

20. Considerable importance and weight is to be given in the planning balance to the significance of a heritage asset. Even though I have found that the harm to the heritage asset is less than substantial, it is not to be treated as a less than substantial objection to the proposal. There are no public benefits attributable to the development that would outweigh the great weight to be given to the harm to the heritage asset. As such the proposal does not comply with paragraph 202 of the Framework.
21. Although I have found that there is no harm to the living conditions of neighbouring residents, the harm that is caused to the character of the CA also leads me to conclude that the development conflicts with the development plan. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 and as set out in paragraph 2 of the Framework, development that conflicts with the development plan should be refused unless material considerations indicate otherwise. In this case there are no material

² Heritage Appeal Statement, Prepared by Built Heritage Consultancy, dated September 2022.

³ Heritage Statement, Prepared by Iceni Projects Limited, September 2022.

considerations which indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

22. For the reasons given above, the appeal on ground (a) should not succeed.

Appeal on ground (g)

23. This ground is that the period specified for compliance with the notice is unreasonably short. The appellant contends that the period of six calendar months falls short of what is reasonable given that removal of the dormers will require extensive internal and external alterations and the sourcing of additional materials. A period of twelve months is requested to allow sufficient time to make design changes and appoint a suitable contractor to undertake the works.

24. I appreciate that the works will result in some disruption to the family's accommodation. However, it seems to me that six months would provide sufficient time for the materials for the approved design sourced, a contractor appointed and for the works to be undertaken. The appeal on ground (g) therefore fails.

Overall Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR