
Appeal Decision

Site visit made on 27 September 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/K5600/W/22/3309014

Flat 3, 38 Stanhope Gardens, London SW7 5QY

- 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 CY Law against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/22/02377, dated 6 April 2022, was refused by notice dated 8 September 2022.
 - The development proposed is described as 'Removal of 2 sash windows (1180mm x 2780mm) to be replaced by 2 sets French timber doors painted white to match existing neighbouring properties to allow access to existing balcony'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has confirmed that despite 'Mr Michael Wilmot' being cited on the original application form, the owner of the property has always been Mr CY Law and he is the party making the appeal, and the Council have raised no objection to this explanation. Furthermore, the parties have confirmed that the appeal property is known as Flat 3, 38 Stanhope Gardens notwithstanding various references to Flat 2 in the information before me. It is on the first floor of the property. I have determined the appeal on this basis.
3. Flat 3, 38 Stanhope Gardens forms part of the Grade II listed building known as 32-45 Stanhope Gardens (hereafter referred to as the listed building) located within the Queen's Gate Conservation Area (CA). Accordingly, in reaching my determination I have been mindful of the duties in sections, 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. This appeal concerns the refusal of planning application reference PP/22/02377. Notwithstanding that a concurrent listed building consent application was refused (reference LB/22/02378), it has been confirmed that no appeal has been made in relation to this. Therefore, despite references by the parties to the listed building consent application, the scope of my determination relates only to the planning application.
5. The Council's decision notice contains two refusal reasons, the first of which refers to insufficient information regarding the loss of an internal partition wall.

The Council have acknowledged¹ this was an error as it relates entirely to internal works, and so would not constitute development that required planning permission under the Town and Country Planning Act 1990 (as amended). Accordingly, refusal reason 1 falls away.

6. The National Planning Policy Framework (the Framework) was updated on 5 September 2023 and after the submission of the appeal. The historic environment policies have remained unchanged within the new version of the Framework, which is a material consideration.

Main Issues

7. The main issues are the effect of the proposal on the special interest of the Grade II listed building and the character and appearance of the CA.

Reasons

Significance and special interest

8. Stanhope Gardens comprises a series of predominantly Victorian terraces set around a rectangular communal garden. The listed building is a terrace of late 19th century townhouses fronting the south side of Stanhope Gardens. According to the Queen's Gate Conservation Area Appraisal, February 2020² (QGCAA) the terrace was designed by Thomas Cundy III and built in 1871.
9. Collectively, the listed building presents a classically ordered frontage of five storey plus basement townhouses. The houses are finished in stucco, and each is two windows wide, punctuated at regular intervals by mostly coupled Doric porches, with a balustraded first floor balcony above.
10. The fenestration proportions and detailing generally reflects the original hierarchy of the storeys within the listed building. Hence, the upper ground floors of the houses have canted bay windows and larger windows opening onto the balcony serve the principal spaces at first floor level. There are smaller vertical timber sash windows evident in the upper storeys set within architrave surrounds. Window openings to the first and second floors have corniced heads. Many of the houses have French casements at first floor level, but some, including no.38, have vertical sliding timber sash windows.
11. The significance and special interest of the listed building is drawn principally from its architectural interest and association with the 19th century architect Thomas Cundy III. An important element is that of the imposing frontage ornamented with a variety of detailing that reflects the neo-Classical architectural aesthetic of the late 19th century. Moreover, together with other terraces in Stanhope Gardens, the layout of the listed building is one component of a set piece of 19th century town building. The list entry states that the building is listed mainly for group value owing to this layout.
12. The listed building has retained a high degree of integrity and authenticity within its most prominent elevation that faces towards the gardens, owing in part to surviving elements of original historic fabric and traditional detailing. Although there is some variety in window type, the pattern and design of the windows along the listed building's frontage are important components of its architectural interest.

¹ E-mail dated 9 June 2023

² Paragraph 3.69

13. The CA is broadly comprised of groups of residential buildings that range from grand terraces to more intimate mews houses and streets that contrast with a small number of mansion blocks and world-renowned museums. The residential properties form attractive and characterful streets that date from the late Georgian period to the mid-twentieth century, primarily laid out as terraces and using a limited palette of materials. The use of stucco is prevalent as is the incidence of timber sash or casement windows. The significance and special interest of the CA as a whole is drawn from, amongst other things, the homogeneity and authenticity of its imposing townscape and the contribution listed buildings make to its attractive built backcloth.
14. Situated centrally within the listed terrace, no.38 presents directly to the road in front and aligns with the road adjacent to the western side of the gardens. Its front elevation conforms with the aesthetic description outlined above. Consequently, the architectural form and detailing of no.38's primary frontage is highly prominent and forms an integral component of the listed building and wider townscape. Hence, it makes a positive contribution to both the listed building and the character and appearance of the CA as a whole. As such, the appeal property comprises part of the significance of both designated heritage assets.

The proposed development and its effect on the listed building and CA

15. It is proposed to replace the two existing sash windows at first floor level on the front elevation of no.38 with timber French casement doors with a glazed light above. Based on my own observations, the existing first floor one over one, timber sash windows share a similarity in terms of material, detailing and construction with other upper storey windows elsewhere in the front elevation of no.38 and the wider listed building. Similar first floor sash windows are also evident at nos.32 and 36.
16. Moreover, the extract of the illustration taken from the Survey of London: Volume 38, South Kensington Museums Area³ gives an indication of the original design of the townhouses in the terrace. This shows one over one sash windows at all levels of the frontage, resulting in a high degree of architectural coherence.
17. Taking these factors together, and in the absence of evidence to show otherwise, it is probable that the first floor sash windows of no.38 are the original windows.
18. Consequently, as original architectural features serving the principal rooms of no.38 in the most prominent elevation, the windows possess notable significance as historic fabric, and because they reveal the original design of the building. Policy CL4 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019 (LP) requires development to protect the heritage significance of listed buildings. Amongst other things, it requires the preservation of original architectural features. It follows that a compelling case would need to be made to justify the removal and replacement of the windows with a different design.
19. The appellant points out that many of the other houses within the terrace have timber French doors at first floor level and therefore, the proposal to introduce

³ Paragraph 1.15 Council's Appeal Statement

new doors that match them would result in greater architectural uniformity. I observed the incidence of French doors at first floor level and note that this is described in paragraph 3.69 of the QGCAA. Furthermore, I accept that the proposed detailing and design for the proposed replacement timber doors would not intrinsically be offensive to the character and appearance of the listed building or wider CA which carries weight in its favour.

20. Nevertheless, I cannot accept that this ought to be at the expense of removing probable original historic fabric that makes a positive contribution to both designated heritage assets, as this would dilute the authenticity and heritage value of the listed building. It follows that the weight given to increased uniformity of appearance at first floor level would not outweigh the greater harm to the significance and special interest of the listed building owing to the loss of the original sash windows.
21. Moreover, the proposed removal of the first floor one over one sashes at no.38 would be inconsistent with the other one over one sash windows within the upper storeys of no.38, and other houses within the listed terrace.
22. Accordingly, I find that the proposed replacement French doors would fail to preserve the special interest of the Grade II listed building. For similar reasons it would not preserve or enhance the character and appearance of the CA. Conflict would therefore arise with sections 66(1) and 72(1) of the Act.
23. It follows that there would be harm to the significance of both designated heritage assets. However, given the relatively minor nature of the proposals, this would be limited in extent. Consequently, the degree of harm caused to the listed building and CA would be less than substantial. In these circumstances, paragraph 202 of the Framework states that this harm should be weighed against the public benefits of the proposal.

Heritage balance

24. Reference is made to the proposals allowing the property to be extended to accommodate a growing family⁴. Even if this were the case, this would primarily be a private benefit. In any event, it is difficult to see how the proposed replacement of the windows would extend the property in any meaningful way. As such, I give this matter negligible weight.
25. Paragraph 199 of the Framework stipulates that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation.
26. Therefore, I find that there are not public benefits sufficient to justify the proposals. Conflict therefore arises with the historic environment protection policies in the Framework. Furthermore, for the reasons outlined, the development would also conflict with policy CL4 of the LP.

Other matters

27. The appellant contends that approvals have been given by the Council for proposals involving replacement windows. Whilst several reference numbers⁵ are listed, few or no details are given of the property concerned or the details

⁴ Paragraph 6.3, Appellant's Statement of Case

⁵ LB/21/03517 & CON/22/03545, LB/19/07698, LB/21/00885 and LB/21/03515, Paragraph 5.4, Appellant's Statement of Case

of the individual schemes. This impedes any meaningful comparison with the proposal before me. However, the Council's analysis indicates⁶ that one of the references appears to concern a certificate of lawfulness application, and the others either concern windows at different levels or are for like for like window replacements. Furthermore, it is not shown that any example relates to the listed building that is the subject of this appeal.

28. Accordingly, I am not persuaded that the other approved schemes cited are directly comparable to the appeal proposal. Therefore, they are of little weight and would not lead me to find otherwise on the main issues.

Conclusion

29. In conclusion, I find that the development would conflict with the statutory provisions set out in the Act; the historic environment policies within the Framework; as well as heritage policy in the development plan. There are not wider public benefits sufficient to outweigh the identified harm to designated heritage assets.
30. Planning law requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. I have not found material considerations of sufficient weight to justify deciding other than in accordance with the development plan.
31. Therefore, for the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁶ Paragraph 1.16, Council's Appeal Statement