



Appeal Decision

Site visit made on 15 August 2023

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/K5600/W/22/3307881

97C Drayton Gardens, London SW10 9QU

- 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 F Macnamara against the decision of the Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref PP/22/00369, dated 18 January 2022, was refused by notice dated 13 July 2022.
 - The development proposed is erection of a new dwelling following demolition of the existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has highlighted errors in the decision notice. The first reason for refusal should have included the guidance in the Trees and Development Supplementary Planning Document 2010 (the Trees and Development SPD) and the second reason for refusal should have included the Transport and Streets Supplementary Planning Document 2016 (Transport and Streets SPD). The appellant has had the opportunity to comment on this. I am therefore satisfied that no party has been prejudiced by this and I have had regard to these documents in my decision.

Main Issues

3. The main issues are whether a planning obligation is necessary to restrict future occupiers from obtaining a parking permit and the effect of the proposal on a tree.

Reasons

Planning obligation

4. The appeal site is a three-storey mid-terrace building with two garages at ground floor level. A controlled parking zone is in operation and from my observations at my site visit, the on-street parking spaces are limited.
5. Policy CT1 of the Local Plan 2019 (the LP) seeks to deliver alternatives to car use and manage traffic congestion and the supply of car parking. To deliver this, amongst other things, this policy requires that new additional residential development is permit-free. As the proposal would not create an additional unit, this part of the policy would not be applicable. The policy does however require development to demonstrate that it will not result in any material increase in traffic, congestion or on-street parking pressure.

6. The Transport and Streets SPD states that proposals involving the loss of existing garages will be assessed against their suitability for garaging an average sized car such as a Volkswagen Golf. In my view, reference to this car is given as an example, as opposed to a minimum. The measurements show a small difference between the width of this example car and the width of the garages. As such, the garages could accommodate cars which are only marginally smaller. Nonetheless, the SPD is guidance. Whilst I recognise that the accessibility and size of the garages restrict the size of the car that could be parked inside and that the appellant has stated the garages are used for storage, there is no substantive evidence before me to show that the garages could not accommodate a smaller car and are therefore not suitable for parking.
7. The proposed development would result in a reduction in the availability of existing off-street car parking that would arise through the loss of the garages for which no mitigation measures have been put forward. This would be contrary to the guidance in the Transport and Streets SPD which sets out that mitigation measures are required to address the impact of parking demand being displaced on-street.
8. The existing house is not subject to any restrictions on eligibility to apply for a parking permit. However, the guidance in the SPD is clear that the swapping of permit eligibility between existing and new houses is not accepted. Whilst in the same location, the existing house appears to be a one-bedroom unit and the proposed house would be a three-bedroom unit and would be occupied by more people than the current house. It is therefore reasonable to conclude that should any future occupiers of the house have access to a car, this would result in increased demand for parking permits, and consequently greater competition for parking spaces than exists at the current time.
9. The appellant argues that there is a realistic fall-back position whereby the garages could be converted into habitable accommodation under permitted development rights, despite the restrictive condition, with the garages lost regardless of the outcome of this appeal.
10. Information in support of the appeal suggests that the use of the garages for purposes other than car parking may have become lawful through the passage of time. However, it is not for me within the context of an appeal under section 78 of the Town and Country Planning Act 1990 ('the Act') to determine lawfulness. Such provisions exist under sections 191/192 of the Act, and to that end, it is open to the appellant to apply for a determination under those provisions. Consequently, in the absence of a Certificate of Lawfulness, I find the suggested fallback position to be of limited weight in the determination of this appeal.
11. The proposal would therefore be likely to increase the competition for on-street parking spaces, in an already limited area. Increased demand would increase parking stress and consequent illegal or unsafe parking, which would be harmful to pedestrian and highway safety. As the proposal does not include any off-street parking provision, it would be necessary for a suitable mechanism to be secured, on the grounds of delivering development that does not result in a material increase in on-street parking pressure.
12. The appropriate mechanism to secure this would be through the entering into a planning obligation to restrict future occupier's eligibility to apply for a parking

permit. This planning obligation would be necessary to make the development acceptable in planning terms so that it would comply with the development plan and mitigate the harmful effects I have identified above. Furthermore, it would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. Such an obligation would therefore accord with the provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework (the Framework).

13. I therefore conclude that a planning obligation is necessary to restrict future occupiers from obtaining a parking permit. In the absence of a suitable mechanism to ensure that the proposal would not lead to additional demand for on-street parking, the proposal would conflict with Policy CT1 of the LP and the guidance contained in the Transport and Streets SPD.
14. I have taken account of the appellant's comments in relation to the consistency of how the Council has applied Policy CT1 of the LP. However, this does not alter my findings that the proposal is in clear conflict with this policy.

Trees

15. There is an existing magnolia tree which overhangs into the appeal site. It stands in the rear garden of No. 1 Thistle Grove and is within a Conservation Area. The appellant's tree report¹ (the tree report) describes the tree as being at an early mature stage of growth with at least 20 years of life remaining. The tree is mostly visible from private views and has a significant lean with its canopy that has been elongated and diminished as a result of restricted light.
16. There is dispute between the main parties over the graded classification of the tree. It is unclear how the stature and quality of this tree, in a confined area, leads to the Council's categorisation as 'A2', which is reserved for trees of high quality with particular visual importance as arboricultural and/or landscape features. Based on my observations, and without more explicit reasoned evidence, given its structural and physiological condition, it appears to me that category 'B' more accurately describes the tree.
17. Whilst the tree makes a moderate contribution to the character and quality of the area, it is a rather isolated specimen and appears to stand in a position squeezed by the boundary treatment and its relationship with the surrounding buildings. As such, its contribution to amenity and its value to the townscape is limited.
18. The basement would be outside of the tree's Root Protection Area (RPA). Notwithstanding the dispute over its execution, the trial pit evidence as well as the findings in the tree report, are reassuring in confirming that the roots of the tree in the direction of the basement, likely do not extend beyond the RPA in any significant measure. Even if some small roots were to extend beyond the RPA, the basement incursion into that extended root area would be limited.
19. Given the findings of the tree report relating to the ground assessment and the exposure of the soil, I have no reason but to conclude, that the proposal would not cause significant root damage or future root constriction. Appropriate

¹ CONDITION OF SINGLE MAGNOLIA TREE TO REAR OF 97C DRAYTON GARDENS, LONDON SW10 9QU - D Daniell BA (Hons), Dip.LD, Tech Cert Arboriculture – Issue 2 – 10.05.2021.

conditions could ensure a sensitive foundation and construction method, as well as protection of the tree during construction.

20. I appreciate that due to the proximity of the proposed balcony to the tree, the Council could come under pressure to allow pruning of the tree. However, future occupiers would be required to give notice to the Council should they wish to carry out any works to the tree and the Council would be entitled to refuse consent. The peripheral branches of the tree are proposed to be pruned in accordance with the tree report and this would enhance daylight to the balcony. The tree report also identifies that the tree does not feature any evidence of stability risk and that pruning works for this species of tree is routine.
21. Without any evidence to the contrary, minor trimming work to the small branches overhanging the boundary, would not diminish to any significant degree the shape of the tree canopy, its density, its longevity, its long-term health, nor, given my conclusion above, its contribution to amenity.
22. For these reasons, I find that the proposal would not cause harm to the tree. As such, there would be no conflict with Policies CL7(d) and CR6 of the LP and the guidance contained within the Trees and Development SPD, which when taken together, seek development that does not result in the loss, damage or long term threat to trees of townscape or amenity value.

Planning Balance and Conclusion

23. I have found that whilst the proposal would not have a harmful effect on the existing tree, this carries limited weight and would not outweigh the harm that would be caused to the highway.
24. The appeal site is near The Boltons Conservation Area and Thurloe/Smith's Charity Conservation Area. The existing building makes a neutral contribution to the setting of these heritage assets and the character and appearance of the area. The proposal would not significantly enhance the appearance of the site and its contribution to the character of the area and setting of the heritage assets, given that the existing building does not have a negative effect. Whilst there are no objections on the grounds of design, as the proposed building would also make a neutral contribution, this is afforded limited weight.
25. The house would be in a sustainable location and there would be some limited economic benefits during construction. Whilst I attach some weight to these benefits, they would not outweigh the harm I have identified.
26. The proposal conflicts with the development plan, read as a whole. There are no other relevant material considerations that have been shown to carry sufficient weight to indicate a decision otherwise than in accordance with it.
27. Therefore, the appeal is dismissed.

L Reid

INSPECTOR