



Appeal Decision

Site visit made on 5 December 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/K5600/D/23/3329652

2 De Vere Cottages, Kensington and Chelsea, London W8 5AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by McAuliffe against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/23/02963, dated 5 May 2023, was refused by notice dated 30 June 2023.
 - The original application sought planning permission for the construction of mansard roof extension with dormer windows in traditional style, and sliding glazed doors leading to rear roof terrace with metal guard rail. Removal of all windows and replacement with timber-framed, double-glazed casement windows with lead-effect details. Relocation of door and addition of fanlight in courtyard-facing (west) elevation. Addition of 1st floor window and enlargement of 2nd floor window in south elevation, Ref PP/18/06318, dated 7 February 2019.
 - The conditions in dispute are those on a subsequent approval (Ref. PP/22/04757) to vary the conditions of the original planning permission, namely condition No.2 which states that: *"The development shall not be carried out except in complete accordance with the details shown on submitted plans 356_PL000, 356_PL001; 201 rev. 01 (Ground Floor Proposed); 202 rev. 01 (First Floor Proposed) received 17th October; 204 rev. 01 (Third Floor Proposed); 205 rev. 01 (Roof Plan Proposed); 206 rev. 02 (South Elevation Proposed); 207 rev. 01 (East Elevation Proposed); 208 rev. 01 (West Elevation Proposed) and; 209 rev. 01 (North Elevation Proposed)."*, and condition No.5 which states that *"The railings to the roof terrace shall be painted black, and so maintained"*.
 - The reasons given for the conditions are: *"The details are material to the acceptability of the proposals, and to ensure accordance with the development plan"*, and *"To preserve the appearance of the building and the character of the area, in accordance with policies of the development plan in particular policies CL1, and CL6 of the Consolidated Local Plan."*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site is located within the De Vere Conservation Area ("the CA") and in determining this appeal, I shall have regard to my statutory duty under Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 ("the Act"), to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

3. The revised National Planning Policy Framework (the Framework) has been published since the appeal was submitted. Both main parties have been given the opportunity to comment on the revised Framework. I am satisfied that there are no material changes relevant to the substance of this appeal and therefore no party would be prejudiced by the changes to the national policy context.

Background and Main Issues

4. I have used the description of the original planning permission¹ in the banner heading above, as the description on the application form and the decision notice for the refused application is not an act of development.
5. The Council approved² the variation of condition 2 of the original planning permission in October 2022, to allow small scale alterations to the fenestration and a slight increase in height of the approved dormers (approximately 100 mm), to align with the dormers at 48 De Vere Cottages.
6. The appeal before me follows a subsequent refusal of the Council to vary conditions 2 and 5 of the planning permission to approve amendments to the roof terrace guarding. The proposal seeks approval to, in effect, 'replace' the approved metal railings for balustrades comprising black painted metal railings with glazing panels to the east and south elevations, and timber trellises to the north elevation facing the courtyard and to the sides of the east facing roof terrace. As such, the main issues are the effect of the proposal on:
 - the character and appearance of the building, and whether it would preserve or enhance the character or appearance of the CA.
 - the living conditions of the occupiers of nearby properties with particular regard to outlook, and access to sunlight and daylight

Reasons

Character and appearance, including the CA.

7. The appeal property is encompassed within the CA and occupies a corner plot position within the substantial residential building of De Vere Cottages. The appellant's evidence identifies that the appeal building was constructed around 1877-78, as a multi-storey Mews building and was converted to residential use between 1918 and 1925. As a rare example of a Mews building, it is of historic interest.
8. Based on my observations at my site visit and the evidence before me, the character and appearance of the CA, and thus its significance as a designated heritage asset, is derived predominantly from the relationship between the rows of mostly large, architecturally detailed buildings and the historic street pattern in the area. The buildings are predominantly of a period style and are set close to the edge of the streets, resulting in a strong sense of enclosure and formality. These elements combined gives the area an attractively formal and urban character and appearance, displaying an appreciable richness of traditional architecture.

¹ Ref. PP/18/06318

² Ref. PP/22/04757

9. De Vere Gardens and Canning Place are relatively wide and straight roads. They allow several terraces within the De Vere Cottages building, including the prominent corner plot position of the appeal property, to be clearly visible and appreciated from street level. Seen from these streets, the De Vere Cottages building, including the appeal property, is appreciated as an attractive and architecturally detailed building of a traditional style, with a pattern of well-ordered window and door openings, and built from consistent materials and colour finishes. In particular, the elevations of the terraces facing De Vere Gardens, display a repetitive pattern of front bays and pilasters, with a row of upper floor mansards set back behind roof terraces and parapet walls, mostly with black metal railings set between pillars. In these respects, De Vere Cottages, and the appeal property within the group, displays a distinctive style in comparison to the buildings around it.
10. Based on the evidence before me and my experiences at the site visit, I find that the appeal property and the De Vere Cottages building of which it forms part, is of historic and architectural interest, and it makes a positive contribution to the character and appearance of the CA as a whole. The building is not listed and has been altered during its lifetime. However, this does not alter my findings on this matter.
11. Several high-level roof terraces serving properties within the De Vere Cottages building are visible from street level. Except for a relatively low height glass screen to the property to the north (Number 48), those roof terraces are mostly fronted to the streets by a combination of thin-profiled black coloured railings of varying heights, set behind the parapet walls. Furthermore, the balconies to other buildings in the wider area, appeared to be enclosed by thin profile black coloured railings, and were devoid of glass screens. As such, whilst glass for the glazing of windows is evidently a characteristic of the area, glass screens to balconies and roof terraces are not so numerous as to constitute a characteristic of the appearance of the De Vere Cottages building or the CA.
12. The proposed balustrade and glass screens to the roof terraces would be subservient in scale and would not harmfully affect the vertical and horizontal emphasis to the building's appearance. Nonetheless, the proposed glass screens, which appear to have exposed fittings to their frames, would project noticeably above the roof parapets in views from street level. Seen in these elevated positions, the shiny and reflective qualities of the proposed glass screens and their uniform appearances, would contrast markedly with the consistent materials and finishes of the group of properties in the De Vere Cottages building, and their traditional period style. They would stand out as discordant features in the context of the consistent materials and period styles of the buildings in the wider area and would be visually incongruous additions to the street scenes.
13. The glazing for the proposed screens could be required to be opaque. However, this would not overcome the harm identified above as it would give the glass screens the appearance of solid structures, and it would obscure views of the mansard roof in the street scene.
14. For these reasons, the proposed glass screens to the roof terraces would harmfully detract from the consistency of the architectural character and appearance of the host building and the De Vere Cottages building, and would

harmfully diminish their positive contribution to the character and appearance of the CA as a whole.

15. Compared to the existing glass screen to the roof terrace of Number 48, the proposed glass screen to the east terrace would be markedly taller and with a greater massing, and therefore its incongruity would be far more noticeable in views from the street. As such, the existing glass screen at Number 48 is materially different to the appeal proposal and I have limited evidence regarding any planning approvals for it. The ornate black coloured railings with opaque screen panel to the nearby roof terrace, which the evidence indicates is at Number 1 De Vere Cottages and is likely to be historic, is in any case materially different in appearance to the glass screens proposed in this appeal. As such, these examples do not alter my conclusions on this matter, and they do not justify the harm that the appeal proposal would cause.
16. Trellis is by its nature permeable. However, it can appear somewhat solid in certain views and therefore if I was allowing the appeal, I could have imposed a condition to control the permeability of the trellis. Nonetheless, I find that a trellis of the height and colour finish proposed would relate satisfactorily to the dark coloured permeable railings that enclose the gallery balconies within the courtyard area of the De Vere Cottages building, and to the dark tones of the slate covering to the walls of the nearby roof dormer.
17. Although the proposed trellis would be set at an elevated level above those balconies, I saw that the roofscape on this part of the building is largely devoid of uniformity in views from within the enclosed courtyard. The evidence suggests that the roof of the building has been altered with the removal of the pitched sloping roof and the erection of a parapet wall to the west roof terrace at the appeal property. A large roof dormer is also present close to the appeal property. In these views, which are largely limited to the private views of nearby occupiers, the roofscape and rear walls facing the courtyard do not contribute positively to the character or appearance of the building or the CA. In this context, I find that the height and extent of the proposed trellis to the west roof terrace would not harmfully disrupt the roofscape in views from the courtyard and nearby properties, and it would not appear visually incongruous.
18. Short trellises are common between roof terraces facing De Vere Gardens. Seen in this context, the proposed trellises to the east facing roof terrace would not harm the character and appearance of the building, and it would preserve (leave unharmed) the character and appearance of the CA. Nonetheless, an absence of harm in this respect does not weigh in favour or against the proposal.
19. For these reasons, I conclude on this issue that the proposal would have a significantly harmful effect on the character and appearance of the host building and area, and it would fail to preserve or enhance the character or appearance of the CA as a whole, contrary to the requirements of Section 72(1) of the Act. As such, it would be contrary to Policies CL1, CL2, CL3, CL6 and CL11 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019 ("the LP"), which seek to ensure, amongst other requirements, that development is of the highest architectural quality, respects the character and appearance of the building and its context, and preserves or enhances the character or appearance of the Conservation Area.

20. In terms of the Framework, the harm that would be caused by the proposal to the significance of the CA as a designated heritage asset would be less than substantial. Nevertheless, this is a matter of considerable weight and importance, and Paragraph 208 of the Framework requires me to weigh this harm against the public benefits of the proposal. The proposed trellises could potentially enhance privacy to nearby occupiers. However, as the approved proposals were not found to be harmful in this regard, negligible weight would attach to this. Although the proposals would benefit the living conditions of the occupiers of the appeal property, this would be a private benefit. It follows that there are no public benefits associated with the proposal which outweigh the considerable importance and weight that even less than substantial harm to the significance of the designated heritage asset carries. As such, the proposal conflicts with the conserving and enhancing the historic environment objectives of the Framework.

Living conditions

21. The proposed trellis would project out for some distance along the north side of the roof terrace, and it would occupy an elevated position visible from the courtyard, balconies and several windows in the rear walls of nearby properties. These windows are relatively wide and likely to provide the occupiers with a generous field of vision from the rooms they serve.
22. Seen from these vantage points, the proposed trellis would not be particularly tall, and its massing would be relatively modest in the context of the existing residential units. Although the proposed trellis would be likely to be most noticeable in views looking out of the rooms served by the upper floor windows of Numbers 46 and 48, it would not be set so close to these windows to have a visually oppressive effect on the occupiers' views. Furthermore, in views out of the room served by the top floor window in Number 48, the proposed trellis would not be so tall as to prevent views over it.
23. For these reasons, I find that the proposed trellis would not have a dominant or overbearing effect on the outlook of the occupiers of the nearby properties in views from their windows, balconies or courtyard area.
24. Despite its permeable nature, the position and extent of the proposed trellis to the north side of the roof terrace is likely to result in some reduction to the levels of daylight and sunlight reaching nearby properties. However, the enclosed nature of the courtyard to the properties is likely to act as a restriction to the amount of daylight and particularly sunlight reaching certain properties. In this context and based on the evidence before me, I find that the modest massing of the proposed trellis would not lead to a significantly harmful reduction in the extent and duration of daylight or sunlight reaching these nearby properties and the rooms served by their windows. This is particularly the case given that the sun would be at its highest in the sky from the south as it moves from east to west.
25. For these reasons, I conclude on this issue that the proposal would not harm the living conditions of the occupiers of nearby properties with particular regard to outlook, and access to sunlight and daylight. As such, it would accord with LP Policy CL5, which seeks to ensure that development provides good living conditions for occupiers of existing buildings, including through resulting in no harmful increase in the sense of enclosure to existing buildings and spaces.

Conclusion

26. The proposed development would not harm the living conditions of nearby residential occupiers. However, for the reasons given above and having considered all matters raised, the appeal proposal's harmful effect on the character and appearance of the host building, and its failure to preserve or enhance the character or appearance of the CA, leads to conflict with the development plan as a whole. There are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding and indicate that a decision should be made other than in accordance with the development plan. As such, the conditions in dispute are necessary and I conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR