The Planning Inspectorate

Appeal Decision

Site visit made on 2 April 2024

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2024

Appeal Ref: APP/K5600/W/23/3331134
Hungerford House, 22 Napier Place, London W14 8LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Hungerford House Residents Association Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
- The application Ref is PP/23/04297.
- The development proposed is described as new railings and gate across the Napier Place frontage of Hungerford House.

Decision

1. The appeal is allowed and planning permission is granted for new railings and gate at Hungerford House, 22 Napier Place, London W14 8LY in accordance with the terms of the application, Ref PP/23/04297, subject to the following conditions:

   1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2282 SK20 P01, 2282 SK21 P01, 2282 SK24 P01 and 2282 SK25 P01 and retained as such.

   3) The railings hereby approved shall be painted black and maintained as such.

Applications for costs

2. An application for costs was made by Hungerford House Residents Association Ltd against the Council of Royal Borough of Kensington and Chelsea. This application is the subject of a separate decision.

Preliminary Matters

3. Since the original application was refused, the appellant has secured a lawful development certificate ("LDC"), Ref CL/23/06667, for a 1m high railing and gate under Schedule 2 Part 2 Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015. The Council acknowledge that such development could be erected within these terms, and I have therefore taken this into account as part of this decision.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site is located on Napier Place near to where it meets Holland Road. Buildings are sited close to each other on either side of this part of Napier Place and the resultant gap between the buildings gives the local street scene a limited sense of openness. The erection of railings and gates would introduce a prominent feature further reducing the sense of openness and while they would be open in design with views through the railings, harm would arise through the additional enclosure of this local vista.

6. I note the appellant has secured an LDC for a similar development of railings and a gate to a height of 1 metre. This therefore creates a viable fallback position which is a material consideration. The Courts have held that in considering the concept of a fallback development there should be a "real prospect" of it being implemented and not just a theoretical possibility that the development might take place.

7. In this regard, the appellant has taken clear steps to show that a comparable development could be achieved under Permitted Development and there is no clear evidence to support a conclusion that the fallback scheme would not be implemented if the appeal were dismissed. This therefore represents a fallback which is material to my consideration of the current proposal.

8. I am therefore satisfied that there is a real prospect of the fallback development taking place and I attach substantial weight to this consideration. The proposed development would be broadly 200mm higher than the fallback position apart from two modest sections near the existing railings which would be 350mm and 800mm higher than the fallback.

9. The increase in 200m as a matter of fact and degree would have a marginal visual difference when compared to the fallback position and the existing site. The taller sections at 350mm and 800mm higher than the fallback would be more visually dominant. However, given the modest width of these sections and their siting, the harm arising would not be fatal.

10. Therefore, as a matter of planning judgment, the proposed development while taller would sit just within the limits of acceptability and would not be materially more harmful than the fallback position. On this basis and having carefully considered the evidence, the proposed development would not unacceptably harm the character and appearance of the area.

11. The appeal scheme would therefore comply with the relevant provisions of Policies CL1, CL2, CR4 and CL11 of the Royal Borough of Kensington and Chelsea Local Plan 2019 ("the Local Plan"). These, amongst other things, seek to promote high quality design which responds to local distinctiveness. I have included Policy CL11 of the Local Plan as this refers to protecting views including local vistas.

12. There is an emerging policy within the Council's New Local Plan Review which seeks to resist the construction of high garden walls and fences along street boundaries. The New Local Plan has yet to receive the Inspector's report and the Examination remains open. As such this emerging policy carries limited weight and does not alter my findings above.

Conditions

13. I have had regard to the conditions suggested by the Council and, where appropriate amended the suggested wording in accordance with national Planning Practice Guidance[1].

14. I have imposed the standard commencement condition and one specifying the approved plans for the sake of certainty. The material finish condition is also necessary to ensure that the development is in keeping with the character and appearance of the area.

Conclusion

15. For the above reasons, having regard to the development plan as a whole, the approach in the Framework and all other relevant considerations, the appeal is allowed.

N Praine

INSPECTOR

[1] Paragraph: 003 Reference ID: 21a-003-20190723