



Appeal Decision

Site visit made on 24 September 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2024

Appeal Ref: APP/K5600/W/24/3346981

Flat G, 60 Oxford Gardens, London W10 5UN

- 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 Mr Simone Milani Foglia against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref is PP/24/00529.
 - The development proposed is second floor rear extension, above existing consented rear/side extensions that are currently under construction and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is in a conservation area wherein I have a statutory duty under Section 72 (1) of the Planning (Listed Buildings 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. In addition, the National Planning Policy Framework (the Framework) requires great weight to be given to the conservation of designated heritage assets.
3. The Council has confirmed that the policies from the Local Plan (September 2019) referred to in the Decision Notice have been superseded by policies from the new Local Plan (adopted July 2024) (the LP). Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. In the case of this appeal, the Council has suggested that Policies CD1, CD2, CD3, CD9, CD12 and CD15 of the new LP are now the policies relevant to the determination of the appeal. The appellants are aware of the policies and have had the opportunity to comment upon its relevance to the appeal.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the living conditions of the occupiers of Flat H, 60 Oxford Gardens (Flat H) with regard to light and outlook; and
 - the effect of the proposed development on the character and appearance of the appeal building, and whether it would preserve or enhance the character or appearance of Oxford Gardens St Quintin Conservation Area (the CA).

Reasons

5. The appeal relates to an upper floor flat (Flat G) within a large detached three storey residential property over basement. The property has been subdivided into flats. Flat G is next to Flat H on the upper floor. Flat G benefits from rear extensions and a roof terrace accessed through a window on the rear elevation. The most recent second floor rear extension was allowed on appeal¹. Flat H has a part second floor rear extension with a small roof terrace. The appellant has pointed to the fact that they also own Flat H.

Living Conditions

6. Flat H has a small window on its rear elevation which provides access to a small roof terrace. The window serves a narrow steep stairwell and is positioned where the stairwell curves, close to the level of the steps. Consequently, the window is at foot level when one passes the window on the stairs. My site visit confirmed that the window primarily serves to provide light to the stairwell. Due to its scale and proximity, the proposed extension would reduce the amount of light received by the stairwell window. However, as the window does not serve a habitable room, it would not adversely affect the living conditions of the occupiers of Flat H to a significant degree.
7. Flat H has a small roof terrace which sits above the level of Flat G's roof terrace and is accessed via the small stairwell window. The awkward access to the roof terrace through the window somewhat compromises the quality of the outdoor amenity space. Despite this, the roof terrace appears used for growing small plants and drying laundry. While small in size, it could also be used as a place to stand or sit out to get fresh air. The scale and proximity of the proposed extension would box in the roof terrace and have a detrimental enclosing effect that would significantly reduce the amount of light received by it and the outlook currently enjoyed from it.
8. For the reasons above, I conclude that while the proposal would not unduly harm the outlook from the window of Flat H, it would adversely affect the outlook from, and light received by the roof terrace of Flat H, thereby causing harm to the living conditions of the occupiers of Flat H. Hence, it would conflict with Policy CD9 of the LP which requires development to ensure good standards of daylight and sunlight and not increase the sense of enclosure.

Character and Appearance

9. The CA, within which the appeal site is located, derives its significance largely from the well-preserved Victorian and Edwardian housing in the area, and its distinctive orderly streetscapes and green spaces. The appeal building is identified in the Oxford Gardens - St Quintin Conservation Area Appraisal (October 2021) (the CAA) as a building which makes a positive contribution to the character and appearance of the CA.
10. The proposed second floor rear extension would sit atop the existing first floor extension, extending the building upwards to the eaves. The appeal building itself has a part second-floor rear extension on its western section which reaches up to the eaves. The proposal would therefore match the height of the existing extension but would box in the roof terrace of Flat H and create a small, isolated gap in the upper middle section of the rear elevation.

¹ APP/K5600/W/22/3290939

11. The Inspector of the 2022 appeal noted that “the height of the extension would be set down from the height of the host property, thereby maintaining the articulation that the Council refers to.” The appeal proposal would result in the loss of this articulation and the creation of a dominant large boxy form on the rear of the building. The proposed extension combined with the existing extension, would appear as an unacceptably dominant and incongruous feature on the building and within the CA.
12. The appellant has pointed to the variety of extensions in the vicinity and drawn my attention to examples of similar extensions at 52, 54, 74, 76 and 80 Oxford Gardens. However, the clear material difference between those examples and the appeal proposal is that those rear extensions, while extending up to the eaves, only cover part of the rear elevation of their host building, when viewed as a whole, so therefore remain subservient to the host building. Consequently, the impact on the character and appearance of those buildings and the surrounding area is not the same as the proposal. Furthermore, I do not have the full details of those schemes or the policies that applied at the time so cannot be certain that the circumstances were the same.
13. The appellant has also pointed to an appeal decision² where the Inspector allowed a proposal in a conservation area. That appeal involved a proposal for a hip to gable roof and rear dormer in a different conservation area so is not directly comparable to the appeal proposal. In any event, I have considered and determined the appeal proposal on its own individual merits.
14. The CAA notes that rear elevations contribute to the character of the conservation area and key features include their rhythm of solid structure and void/ open elements, articulation and gardens. While the proposed extension would be on the rear elevation of the building and not visible from the street, it could still be viewed from rear windows of surrounding dwellings and across private gardens and roof terraces.
15. Consequently, the proposal would neither preserve nor enhance the character or appearance of the CA, although the harm would be less than substantial in the terms of the Framework. Paragraph 208 of the Framework establishes that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset (in this case the CA), this harm should be weighed against the public benefits of the proposal.
16. The proposal would enhance the living accommodation of the property and provide benefit to its occupiers in terms of increased space. However, this would amount to a private benefit to occupiers of the dwelling, so I am only able to give this very limited weight.
17. Compliance with the development plan with regard to internal space standards and the appeal site’s location in a Public Transport Accessible Location score of 5 will weigh neither in favour or against the proposal and is therefore considered neutral.
18. Paragraph 205 of the Framework establishes that great weight should be given to the conservation of a designated heritage asset, and the very limited benefits I have found would not be sufficient to outweigh the harm identified.

² APP/Q5300/D/21/3274676.

19. For the reasons above, I conclude that the proposed development would harm the character and appearance of the appeal building and would thus fail to preserve or enhance the character or appearance of the CA. Accordingly, it would conflict with Policies CD1, CD2, CD3, CD12 and CD15 of the LP. Together, these policies, amongst other things, require development to respect existing character and appearance, achieve high quality design, preserve or enhance heritage assets including conservations areas, protect views that contribute to the character and quality of the area, and require additional storeys to be sympathetic to the form and character of the building.

Other Matters

20. The appellant indicates that the proposal is supported by paragraph 124(d) of the Framework. However, this refers to support for the use of airspace above existing residential and commercial premises for new homes. The proposal is not for a new home, so this policy is not relevant to this appeal.
21. The appellant has referred to Class AB of the of The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 (the GDPO). However, this relates to the construction of new dwellinghouses immediately above the topmost storey on a terrace building. The proposal is not for the construction of a new dwellinghouse. Furthermore, the GDPO is not relevant to this appeal.
22. The appellant contends that the London Plan (March 2021) promotes optimising site capacity. However, it also requires development to respond to existing character and respect heritage assets. The appellant has also referred to Policy H2 of the London Plan. However, this relates to the development of new homes on small sites so is not determinative on this appeal.

Conclusion

23. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

U P Han

INSPECTOR