



Appeal Decision

Site visit made on 28 May 2025

by **L J O'Brien BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th June 2025

Appeal Ref: APP/K5600/W/25/3359673

1 Lexham Mews, LONDON, W8 6JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by EcoProperties (UK) Ltd against the decision of Royal Borough of Kensington and Chelsea.
- The application Ref is PP/24/06756.
- The application sought planning permission for demolition, excavation to form a new underground floor level below footprint of premises to provide additional residential floorspace; elevational alterations comprising installation of replacement/new windows on front (east) elevation; and rendering and installation of new windows on rear (west) elevation; and erection of an additional storey without complying with conditions attached to planning permission Ref PP/23/00459, dated 30 June 2023.
- The conditions in dispute are:
 - No 3 which states that No development shall commence until: A) An Appendix A Checklist and Site Construction Management Plan (SCMP) for the development have both been submitted to, and approved in writing, by the Council's Construction Management Team, and then B) Copies of the approved Checklist and Plan, and their written approval, have been submitted to the local planning authority to be placed on the property record. The development shall be carried out in accordance with the Appendix A Checklist and SCMP so approved, or in accordance with a subsequent Checklist or SCMP as may be approved under this condition.
 - No 6 which states that No development shall commence until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works forming the subject of this permission.
 - No 18 which states that Sample panels of facing brickwork showing the proposed colour, texture, facebond and pointing shall be provided on site, and approved in writing by the local planning authority before the relevant parts of the approved works are commenced, and the sample panels shall be retained on site until the work is completed in accordance with the panel(s) so approved.
 - No 20 which states that Notwithstanding the approved drawings, the rear wall shall be constructed in brick rather than rendered and so maintained.
- The reasons given for the conditions are:
 - No 3 To mitigate the impact of construction work upon the levels of amenity that neighbouring occupiers should reasonably expect to enjoy, and to comply with the Basements and Transport and Streets SPDs and policies CL5, CT1, CE5 and CE6 of the Local Plan 2019. It is necessary for the condition to be on the basis that "No development shall commence until" as compliance with the requirements of the condition at a later time would result in unacceptable harm contrary to the policies of the Local Plan 2019.
 - No 6 To mitigate the impact of construction work upon the levels of amenity that neighbouring occupiers should reasonably expect to enjoy, and to comply with the Basements SPD and policy CL5 of the Local Plan 2019. It is necessary for the condition to be on the basis that "No

development shall commence until" as compliance with the requirements of the condition at a later time would result in unacceptable harm contrary to the policies of the Development Plan.

- No 18 In order to safeguard the special architectural or historic interest and heritage significance of the building and comply with policy CL3 of the Local Plan 2019.
 - No 20 To preserve the appearance of the building and the character and appearance of the conservation area, in accordance with policies of the development plan in particular policies CL1, CL2, CL3 of the Local Plan 2019.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2024, during the consideration of this appeal. Insofar as is directly relevant to the appeal, there are no substantive changes and no parties have been prejudiced as a result.
3. Following the approval of the original planning application in 2023 and prior to the submission and determination of the application which is the subject of this appeal the Royal Borough of Kensington and Chelsea New Local Plan Review, July 2024 (LP) was adopted. As the 2024 plan is now the adopted development plan for the area I have determined the appeal on the basis of the policies within the LP.

Background and Main Issues

4. In 2023 planning permission was granted, subject to a number of conditions, for demolition, excavation to form a new underground floor level below footprint of premises to provide additional residential floorspace; elevational alterations comprising installation of replacement/new windows on front (east) elevation and rendering and installation of new windows on rear (west) elevation; and erection of an additional storey.
5. The current proposal seeks to remove conditions 3, 6, 18 and 20. However, the Council refused the application and consider the conditions remain necessary. The Council state that the proposed removal of condition Nos 18 (sample panels required) and 20 (rear wall to be built in brick rather than in render) fails to demonstrate the development would be carried out in a manner so as to either preserve or enhance the character and appearance of the individual building as well as those of the Edwardes Square, Scarsdale and Abingdon Conservation Area (CA).
6. The Council also consider that the proposed removal of condition Nos. 3 (Code of Construction Practise) and 6 (Considerate Constructor's Scheme) fails to demonstrate the development would be carried in a manner so as to fully address the combined construction impacts which highly intrusive forms of developments such as this, would have on the living conditions of the occupiers of nearby properties.
7. Consequently, the main issues in this appeal are:
 - whether conditions 18 and 20 are reasonable and necessary having regard to the effect of the proposal on the character and appearance of the area; including whether or not the proposed development would preserve or enhance the character or appearance of the Conservation Area; and

- whether conditions 3 and 6 are reasonable and necessary having regard to the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.

Reasons

Character and appearance

8. The appeal property is sited at the end of a two-storey terrace of three dwellings on the corner of Lexham Mews and Lexham Gardens. The property at No 1 terminates the terrace and adjoins the brickwork archway which marks the entrance to Lexham Mews. The property is constructed of brickwork and render.
9. The appeal site is located within the Edwardes Square, Scarsdale and Abingdon Conservation Area (CA). The Edwardes Square, Scarsdale and Abingdon Conservation Area Appraisal, January 2022 (CAA) states that the conservation area as a whole possesses historic and architectural merit and is indicative of the development of this part of Kensington from the 19th century onwards. Lexham Mews is characterised by similar terraced properties which directly address the narrow street. Despite differences in the specific designs and scales of buildings in the area a sense of cohesion is created by the similarities which do exist; particularly through the use of similar materials such as brickwork (whether it is painted or exposed) which is the dominant material in the area.
10. The rear elevation of No 1 is highly visible, across the open parking area, from Lexham Gardens. The CAA is clear that the fact that the rear elevations of buildings within the CA are often less decorative does not mean they do not make a positive contribution to the character and appearance of the conservation area. Indeed, in my view, the brickwork to the rear elevation provides a degree of cohesion between the building and the wider area and ensures that the building assimilates well within its context; thus making a positive contribution to the significance of the CA.
11. The proposed use of render across the rear elevation would harmfully erode the consistency of the palette of materials along this stretch of the CA. Moreover, a vast expanse of render would be of a different visual scale to brickwork in terms of the detailing. Therefore, given the minimal degree of articulation and the lack of visual breaks offered by the limited number of openings within the elevation, the rendered rear wall would appear as a prominent, solid and broadly featureless surface. This would be exacerbated by the already approved rendered rear elevations of the neighbouring properties. Consequently, a rendered rear elevation would appear as a visually dominant form of development which would fail to assimilate well with the prevailing character and appearance of the area.
12. I accept that schemes have been allowed at appeal at Nos 2A and 2B Lexham Mews¹ which include render to the rear elevation and I accept that in the view of the Inspector's representative, and subsequently the Inspector, "the rendering of the western elevation is not an uncommon feature of the area". However, my observations on site, as set out above, have led me to the view that the prevailing character of the area in respect of materials is brickwork or painted brickwork and, though rendered elevations are indeed present, the examples of render within the

¹ APP/K5600/W/23/3327606 and APP/K5600/W/23/3323393

area are largely to either the upper or ground floor only with brickwork or painted brickwork at the alternative level. Examples of vast expanses of unbroken render across an entire elevation of a building are not, in my view, commonplace. Even if the proposed lower ground floor was constructed of brickwork, the balance would sway heavily towards the rendered finish, and this would be the dominant material thus failing to respect the materials which characterise the area.

13. With this in mind, I acknowledge that the rear elevation of the building as a whole would not be consistent and would be partially rendered. However, the rear elevations of Nos 2A and 2B are deeper into the site and are more screened from public view than the property at No 1. The property at No 1 is also directly connected to the important brickwork archway which marks the entrance to Lexham Mews. The characteristics further serve to distinguish the differences between the proposal before me and the previous appeals. The brickwork which would be present at No 1 would serve to visually break up the overall bulk and massing of the rear elevation and would lessen the impact of the previously approved rendered sections.
14. For the reasons set out above, I consider that the proposal would cause harm to the character and appearance of the host building and to the wider CA. Due to the small scale of the scheme, this harm would be less than substantial.
15. The approach in the Framework is that where a proposal would lead to less than substantial harm to a heritage asset, as in this case, that harm should be balanced against the public benefits of the proposal. The evidence before me does not persuade me that sufficient public benefits of this nature are present in this case. The Framework indicates that great weight should be given to a heritage asset's conservation. Accordingly, the public benefits of the scheme do not outweigh the harm identified.
16. I note the appellant's statement that the rendering of the rear wall was previously permitted as part of an earlier application². Nevertheless, the evidence before me indicates that this permission has now expired and was not implemented and as such does not form a legitimate fallback position in respect of this appeal. In any event, each case must be determined on its own merits based on its specific circumstances. These circumstances will rarely, if ever, be identical. In this instance, the previous permission was granted under a different policy context and prior to the adoption of the CAA.
17. Though I recognise the appellant's view that the conditions imposed on Planning Permission Ref PP/23/00459 in respect of the materials to be used on the rear elevation could be considered somewhat contradictory, to my mind, the expectations of the Council are nevertheless clear and the use of such a mechanism to secure a minor alteration to a scheme is not uncommon.
18. For the reasons set out above, I find that conditions 18 and 20 are reasonable and necessary as they are in place to ensure that the proposal would not have an adverse effect on the character and appearance of the area. The removal of these conditions would result in a scheme which would fail to preserve or enhance the character or appearance of the Conservation Area. The removal of these conditions would conflict with LP policies CD1, CD2, CD10 and CD15. Amongst other things these policies seek to ensure that development is of a high standard of

² Ref. PP/18/04192

design which respects the existing context, character and appearance including historic characteristics. The proposal would also fail to comply with Policy CD4 which relates specifically to the requirement for developments to preserve or enhance the character or appearance of conservation areas.

Living conditions

19. The appeal site is highly constrained and is in close proximity to surrounding properties in residential use. Works such as basement excavations have a high potential construction impact. As such, it is vital that suitable conditions and mitigation measures are in place to prevent undue harm to the living conditions of the occupiers of neighbouring properties.
20. The appellant contends that conditions requiring the appellant to submit, and have approved, a Site Construction Management Plan (SCMP) and an Appendix A Checklist as set out in the Council's Code of Construction Practice (CCP) and a requirement to enter into the Considerate Constructors Scheme are superfluous as other conditions attached to the original planning permission are sufficient to ensure that living conditions are protected. Condition 5 requiring a Construction Traffic Management Plan (CTMP), in particular, has been discharged by the Council and included a number of key details in respect of the management of the construction of the proposal.
21. However, whilst I recognise that there is indeed some degree of overlap, the Council's Code of Construction Practice (CCP) is clear that the required SCMP includes details above and beyond those which have been approved as part of the CTMP. For example, demolition and construction details (e.g. piling methodology), more specific details regarding hours of operation and noise and vibration mitigation. Moreover, there is a specific policy requirement for imposing condition 3 set out within LP Policy GB7 which states that relevant developments as specified in the RBKC Code of Construction Practice must not create unacceptable impact on local residential amenity including neighbouring properties as a result of demolition and construction impacts by complying with the Code.
22. The Considerate Constructors Scheme also differs from the other conditions attached to the permission and requires constructors to respect the community (for example by ensuring courteous and respectful language and behaviour around the site and preventing unnecessary disturbance and reducing nuisance), care for the environment and value their workforce.
23. In my view, due to the high potential for disturbance during works such as those permitted and the tight-knit nature of the site it is not unreasonable to impose these further conditions in order to safeguard residential amenity during construction.
24. I note that in two previous appeals³ the Inspector's representative and the Inspector found it would be unnecessary to impose a condition requiring the submission of a considerate constructor's scheme. However, each case is determined on its own merits and the evidence which was presented as part of that appeal may have been different to that which is before me now and which I have explored above. As such, it follows that the views of two Inspectors may well be different in matters such as this.

³ APP/K5600/W/23/3327606 and APP/K5600/W/23/3323393

25. For the reasons set out above, I find that conditions 3 and 6 are reasonable and necessary having regard to the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance. The proposal would therefore be contrary to LP Policy CD11 which states that all basement development must ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works. The proposal would also conflict with Policy GB8 which specifically states that noise and vibration must not create unacceptable impact on local residential amenity including neighbouring properties in development.
26. The proposal would further fail to accord with LP Policy CD9 which requires all development to ensure good living conditions for occupants of new, existing and neighbouring buildings and LP Policy GB7 which requires compliance with the Code of Construction Practice.

Conclusion

27. For the reasons set out above, the proposal is contrary to the development plan. There are no material considerations that indicate that permission should be granted. Therefore, taking all other matters raised into account, the appeal is dismissed.

L J O'Brien

INSPECTOR