



Appeal Decision

Site visit made on 11 September 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Appeal Ref: APP/X5210/W/23/3319858

St Johns Lodge, Harley Road, London NW3 3BY

- 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 Clarke against the decision of London Borough of Camden.
 - The application Ref 2022/2203/P, dated 24 November 2022, was refused by notice dated 17 January 2023.
 - The development proposed is timber orangery.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning application form, as there is no evidence before me that the appellant agreed to the altered description on the Council's decision notice.

Main Issues

3. In considering this appeal, any impact upon the character and appearance of the area would be interlinked with any associated impact upon the historic environment. The main issues are therefore;
 - i) whether the proposal would preserve or enhance the character or appearance of the Elsworthy Road Conservation Area (CA), including the impact on protected trees; and
 - ii) the effect of the proposal on the living conditions of the occupants of the lower ground floor flat, with particular regard to privacy, outlook and loss of light.

Reasons

Character and Appearance of the CA

4. The appeal site is located within the Elsworthy Road CA. In so far as this relates to the appeal site, I find the significance of the CA derives in part from the spacious residential streets, where buildings are set back from the road in generously laid-out plots, framed by mature and verdant tree planting. The quality of architecture is high with much of the character of the area being drawn from the proportions of facades, fenestration patterns and other architectural detailing, as well as a consistent palette of yellow London stock brick and red brick. It is this spatial composition and architectural quality that is of historical and aesthetic value to the significance of the CA.

5. The appeal site forms part of a large detached Victorian villa located on a prominent corner plot at the junction of King Henry's Road and Harley Road. It has an imposing scale with an elevated entrance door. Bay windows to the lower and upper ground floors, one over one sash windows, projecting and contrasting brick string courses and large overhanging eaves combine to produce a building of fine architectural detailing. The proportions of wall to window are also finely balanced. The age, architectural quality and set back position of the appeal building with maturely planted boundaries, reflects and complements the attributes of the CA as described above. It therefore contributes positively to the character and appearance of the CA.
6. The proposed orangery in contrast would have an elaborate and fussy appearance including an abundance of multipaned windows and an alien lantern roof form. It would thus fail to respect the existing simple fenestration pattern and solid to void ratio of the host building, as well as competing for attention with the architecturally important bay windows, a key feature of the elevation. Irrespective of the retention of the external cornice, the proposal would result in a clash of architectural style with the more refined and restrained host building, such that the proposal is not considered to be sensitively designed.
7. Due to the location of the appeal site on the upper ground floor level of the host building, the proposed orangery would be constructed on raised piers above the garden level. Its elevated position would increase its visibility, emphasising its jarring and inharmonious appearance in localised views from within King Henry's Road. I observed that even in summer the proposed orangery would be visible above the boundary wall and through the mature landscaping, more so when the trees are not in leaf or when lights would be on internally. The prominence of the extension would not therefore be satisfactorily mitigated by the presence of the mature boundary trees.
8. The proposed extension would further jut into the side garden close to the external boundary such that it would appear cramped against the boundary, eroding the spaciousness of the plot and the contribution this makes to the character and appearance of the CA.

Protected Trees

9. A number of trees protected by a Tree Preservation Order (TPO) (33H-T65, T66 & T77) lie in proximity to the proposed position of the orangery. I observed that the canopy of at least one of the trees extends over the area proposed for the orangery and thus, it is likely that the root protection area (RPA) will extend similarly. Despite the extension being erected on pillars, this will not negate the need for excavations within the RPA.
10. In the absence of an Arboricultural Impact Assessment there is no substantive evidence that the proposal would not result in harm to the roots of the TPO trees. In addition, it is likely that the lower branches or limbs of the nearest trees would need to be pruned to accommodate the proposed extension. In the absence of any baseline data including an assessment of the impact of the proposed development on the condition and longevity of the trees, I am not satisfied that a planning condition relating to tree protection measures and methods of construction would be reasonable in this instance to prevent long-term harm to the trees. Based on the evidence before me, I cannot be satisfied

that the proposal would not result in an adverse effect on protected trees which I have identified as being a key feature of the CA.

Conclusion – Character and Appearance of the CA

11. Consequently, the presence of the proposed orangery, plus the potential damage to protected trees would in combination, harm the aesthetic and historical value evident in the CA. Although moderate and localised, such negative impacts can cumulatively erode the quality of the CA as a whole. Hence, the proposal would not preserve or enhance the character or appearance of the CA and would be contrary to Policies D1, D2 and A3 of the Camden Local Plan (CLP) 2017. These policies aim amongst other things that development is of a high quality that protects trees and preserves and where appropriate, enhances heritage assets including CA's.

Living Conditions

Outlook

12. The lower ground floor flat contains 2 bedroom windows facing the communal garden to the side of the host property. The occupants therefore have a pleasant, verdant outlook from these rooms, particularly given the mature trees to the boundary. The plans indicate that the base of the proposed orangery would be just above the height of the lower ground floor windows. The proximity, height and depth of projection would therefore result in the proposal having a dominating presence, looming over the window to bedroom 3, in particular¹. Being positioned on pillars would only serve to emphasise, rather than diminish its overbearing impact.
13. Whilst there are railings and a number of trees and shrubs immediately to the front of the adjacent bedroom windows, they are small and enable filtered views through the side garden. In contrast, the proposed structure rather than being transparent, would be a solid structure including reflective glass, considerably taller than the existing planting. The outlook from bedroom 3 would be significantly and oppressively enclosed to one side, even if there would be no change to the other. This would be to the detriment of the living conditions of the existing occupants.

Privacy

14. The depth of the projection from the side elevation would enable internal views from the proposed orangery back towards the window of bedroom 3 of the adjacent lower ground floor flat. Views would also be possible from the external staircase down into the window from close quarters. Although I acknowledge that the staircase would provide a means of access for the orangery, it would not rule out occasional use of the platform for sitting out.
15. Views are possible into the lower ground floor windows from occupants of the flats using the communal garden. However, any loss of privacy would be temporary for the duration that the side garden is in use. The extension on the other hand would be permanent, likely to be used more frequently and all year round. I find that the concerns regarding privacy are not exaggerated and that the impact would be significantly greater than the existing situation.

¹ A shown in the floorplan at Figure 2 of the Council's appeal statement.

Loss of Light

16. I am referred to the Council's 'Amenity' Planning Guidance (CPG) 2021 which advises that the impact of a scheme on daylight and sunlight levels should be considered, and that the 45 degree 'test' should be used to assess whether a daylight and sunlight report is required.
17. The mature trees within the garden will have an impact on the amount of natural light that is able to reach the bedroom windows of the lower ground floor flat. However, they will enable dappled daylight through the canopy, more so when the trees are not in leaf. The proximity, scale and solidity of the proposed orangery in enclosing one side of the window to bedroom 3 could affect the amount of ambient daylight that is able to reach the window. The Council advise that the proposal intercepts the 45-degree test in plan and elevation when applied to the window of bedroom 3. In the absence of a daylight assessment, I cannot be certain that the amount of daylight received by this window would not be materially worsened or reduced to an unacceptable degree. The window to bedroom 2 is unlikely to be significantly affected given its bay arrangement and its greater distance from the position of the proposed orangery.
18. The side elevation of the host building faces north-east, resulting in the associated windows receiving little direct sunlight. Being to the north-western corner of the appeal site, I am satisfied that the proposal would not result in a loss of direct sunlight to the bedroom windows of the lower ground floor flat.

Conclusion – Living Conditions

19. I have found that the proposed development would not result in a loss of sunlight to neighbouring habitable windows. However, the proposal would be harmful to the living conditions of the occupants of the lower ground floor flat, with particular regard to outlook and privacy. The appellant has also failed to demonstrate that the proposal would not result in a loss of daylight to the window of bedroom 3 in the lower ground floor flat. Accordingly, conflict is found with Policy A1 of the CLP which seeks to ensure amongst other things, that the amenity of neighbours with regard to privacy, outlook and daylight is protected. The proposal would also conflict with paragraph 130 of the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing users.

Other Matters

20. Reference is made to the context of the appeal site including the modern developments opposite, that form part of the character of the area. The majority of the contemporary buildings lie outside of the CA and therefore have a different context to the appeal site. No details of the circumstances leading to the St John's Studio development are before me. Nevertheless, their presence does not justify permitting a development that I have found would be harmful to the significance of the CA.

Heritage Balance and Conclusion

21. In the language of the Framework, the harm to the significance of the CA would be less than substantial, but nevertheless important, given the adverse effect on the character and appearance of the CA. I am therefore directed to weigh the harm against the public benefits of the proposal.

22. The development would improve the size and quality of the dwelling for existing and future occupiers. Whilst this is largely a private benefit, there would be a limited public benefit arising from the improvement to the housing stock given the small size of the proposed development. There is no substantive evidence that the proposal would sustain the significance or secure the optimum viable use of a heritage asset. The dwelling already exists such that is already in an optimal viable use.
23. Consequently, when giving considerable importance and weight to the special regard I must have to the desirability of preserving or enhancing the character or appearance of the CA², I find that the moderate harm that would arise from the proposal, would not be outweighed by the limited public benefit. Conflict would occur with paragraph 200 of the Framework, as any harm to the significance of the designated heritage asset would not have clear and convincing justification.
24. For the above reasons, I have found that the proposed development would not result in a loss of sunlight to the lower ground floor flat. However, this lack of harm is neutral in the planning balance, so it does not outweigh my findings in respect of the effect of the proposal on the living conditions of the occupants of this adjacent flat, with particular regard to outlook and privacy. Furthermore, the appellant has failed to demonstrate that the proposal would not result in a loss of daylight or harm to protected trees. I have also found that the proposed development would fail to preserve the character and appearance of the CA, for which there are no public benefits of sufficient weight to outweigh the harm. Having considered the development plan as a whole, the approach in the Framework and all other considerations, the appeal is dismissed.

M Clowes

INSPECTOR

² As set out in Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act).