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# Appeal Decision

Hearing held on 19 June 2012

Site visit made on 19 June 2012

**by Kay Sheffield BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 6 August 2012**

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**Appeal Ref: APP/X5210/A/12/2169504**

**39-45 Kentish Town Road, London, NW1 8NX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval of details required by conditions of a planning permission.
  - The appeal is made by Samuel Smith Old Brewery (Tadcaster) against the decision of the Council of the London Borough of Camden.
  - The application Ref 2011/2812/P, dated 2 May 2011, sought approval of details pursuant to condition Nos. 2 and 4 of a planning permission Ref 2005/0530/P, granted on 23 June 2006.
  - The application was refused by notice dated 28 July 2011.
  - The development proposed is the demolition of existing buildings and the construction of a new building containing B1 units and a public house with garden.
  - The details for which approval is sought are: the materials to be used in the construction of the external surfaces of the building (condition 2) and the hard and soft landscaping of the garden and terrace (condition 4).
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## Decision

1. The appeal is dismissed.

## Procedural matters

2. The planning permission for the redevelopment of the site was granted on appeal<sup>1</sup> on 23 June 2006 and Conservation Area Consent<sup>2</sup> was granted at the same time. The permission was valid for five years and development was required to have been started on site by 23 June 2011. Although some work was carried out on site prior to the five year deadline, there is dispute between the parties as to whether the permission is extant. However, the parties were in agreement at the Hearing that this is a matter which is to be pursued separately with the Council and does not fall to be considered under the appeal.
3. Whilst not cited in the reasons for refusing the application, both parties have referred in their written submissions to Planning Policy Statement 1: *Delivering Sustainable Development*, Planning Policy Statement 3: *Housing* and Planning Policy Statement 5: *Planning for the Historic Environment*. These documents were cancelled by the publication of the National Planning Policy Framework (the Framework) on the 27 March 2012, and are therefore no longer relevant to the appeal. However, the Framework is a material consideration in planning decisions and regard has been had to it in determining the appeal.

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<sup>1</sup> Appeal ref: APP/X5210/A/05/1183439

<sup>2</sup> Appeal Ref: APP/X5210/E/05/1190971

4. In refusing the application the Council cited policies of the Local Development Framework Core Strategy and Development Policies (LDF) adopted in November 2010. In accordance with paragraph 214 of the Framework full weight can presently be given to these policies even if there is a limited degree of conflict with the Framework as they were adopted after 2004. In any event, there was consensus at the Hearing that the policies relevant to the appeal are generally consistent with the Framework.

### **Main Issues**

5. The main issues are:
  - (a) Whether the proposed development would preserve or enhance the character or appearance of the Regent's Canal Conservation Area with regard to the choice of materials and the level of detail submitted.
  - (b) Whether the proposed landscaping would preserve or enhance the character or appearance of the Regent's Canal Conservation Area and enhance the Green Chain, the Metropolitan Site of Nature Conservation Importance and the biodiversity of the area generally.

### **Reasons**

#### *The site and its surroundings*

6. The appeal site lies within the Regent's Canal Conservation Area and part of it is within a Metropolitan Site of Nature Conservation Interest. In addition the canal is identified as a Green Chain providing a habitat for wildlife as well as a pedestrian route. The site is located on the western side of Kentish Town Road and the canal towpath abuts its southern boundary. To the north are modern four storey buildings beyond which there is an elevated section of the railway. To the south of the canal the buildings are older and industrial in character. The site is currently vacant, the previous buildings having been demolished.

#### *Materials*

7. The materials specified on the application form are Wienerberger Olde Alton Yellow Multi facing brick and Tadcaster Magnesian Limestone for the external walls and Marley Eternit Clay Red Smooth tiles for the main roof. The Council has raised no objection to the roofing tile and I agree with its conclusion.
8. The sample of the facing brick submitted as part of the application was not the Olde Alton Yellow Multi specified on the application form. Although the Council advised the appellant of the discrepancy it was not until late in the process and the Council refused the application partially on the grounds of conflicting information. The Council contends that the submission of a correct brick sample as part of the appeal is tantamount to new evidence and should not be considered. However, the proposed brick type has not changed and although the sample was incorrect, the Council in reaching its decision was aware of this. In addition the Council has had an opportunity to consider the correct sample as part of the appeal process and I am satisfied that no prejudice would result from my consideration of it in determining the appeal.
9. A variety of materials is evident in the buildings and structures in the vicinity of the appeal site. Some of the older buildings, boundary walls and the railway bridge are of London Stock which has darkened over the years. Although some of the more modern buildings are of a light coloured brick, the use of colour in

the fenestration and other detailing contrasts with the brick and adds interest to their overall appearance. Other buildings, including the Grade II listed Elephant House to the south of the canal, are red brick with light stone used for window sills, headers and other detailing.

10. The proposed appearance of the building is very detailed and reflects a traditional style Victorian building, part of it being a decorative public house and the remainder being of an industrial warehouse design. The Olde Alton Yellow Multi facing brick would constitute the majority of the external walls of the proposed building with the use of the Tadcaster Magnesian Limestone for copings and window sills, headers, mullions and other detailing. Although the sample panel of the facing brick erected on site more accurately displayed the quality of the brick than the submitted sample and the use of lime mortar for pointing brought out the depth and range in its colour, the similar tone of the brick and the limestone provided little contrast between them.
11. It is acknowledged that the limestone is a quality material and although the appellant contended that its smooth polished finish would provide sufficient contrast in the texture of the materials which would be discernible at a distance, the examination of the samples on site did not confirm this. In addition, the finish of the limestone would be out of keeping with the character of the building and could weaken the overall architectural approach. This, together with the lack of tonal contrast between the brick and the limestone, raises concerns that the building would appear incongruous in its setting, to the detriment of the character and appearance of the area.
12. The detailing of the elevations of the proposed building includes varying window sizes and designs, which include bays, dormers and shop fronts; balconies with roof canopies; external staircases and glazed verandas. However, no details of the materials to be used in these elements of the design have been submitted. Given the level of detail in the design of the building and the concerns identified regarding the lack of tonal contrast in the main facing materials, it is difficult to assess the overall impact of the scheme without these details.
13. The appellant acknowledged the need for the details of outstanding materials to be approved and suggested that this could be done by way of a condition. However, the application did not indicate that partial approval of the materials was being sought and I am in agreement with the Council that it would not be appropriate to do so in this instance. In any event the choice of materials for these outstanding elements makes a significant contribution to the overall design and given the level of detailing it is difficult to make a reasoned decision in respect of the limited details submitted for approval and the concerns already raised.
14. The location of the site within the Regent's Canal Conservation Area requires the use of appropriate materials which will result in a quality scheme. The concerns raised in respect of the facing materials submitted for approval together with the lack of details regarding the materials which would be used in the detailing of the design leads me to conclude that the use of the proposed materials would be detrimental to the character and appearance of the proposed building and would result in a development which would neither preserve nor enhance the character or appearance of the Regent's Canal Conservation Area, contrary to Policies DC24, DP25 and CS14 of the LDF.

### *Landscaping*

15. Whereas the scheme allowed on appeal indicates the retention of a number of trees on the site as part of the development, only one remains. This tree, a fig, makes a significant contribution to the visual appearance of the site and the proposed landscaping scheme confirms its retention. It is also proposed to create an area of hard surfacing immediately to the rear of the building and a walkway to a pavilion on the western boundary of the site. The remainder of the open space would be grassed. A feature boundary wall consisting of brick columns and arches with integral railings would be erected to the boundary with the towpath. The brick and stone proposed to be used on the boundary wall and the pavilion would be the same as those proposed for the building. However, no details of the type of railings, which form an integral part of the design of the wall, have been submitted.
16. Although the Council raised no objection to the design of the wall, it did not consider the proposed choice of materials to be acceptable. The concerns I have already identified regarding the lack of tonal contrast between the facing brick and the limestone in respect of the main building are also relevant to the boundary wall and the pavilion, as are those regarding the lack of detail regarding the railings.
17. It is acknowledged that the open area of the site is limited in size and its use as a beer garden would restrict the amount of planting which could be undertaken. However, the only soft landscaping proposed is the retention of the fig tree and a grassed area which would do little to enhance the site in its relationship with the Regent's Canal Conservation Area, the Green Chain, the Metropolitan Site of Nature Conservation Importance, and the biodiversity of the area generally. The Council has indicated that the introduction of one tree and boundary planting would be sufficient to overcome its concerns and I am satisfied that this level of additional planting would enhance the biodiversity of the site whilst not significantly limiting the functional use of the outside space as a beer garden.
18. The concerns I have raised with regard to the submitted materials for the wall and pavilion together with the lack of detail of the railings and the level of soft landscaping proposed lead me to conclude that the proposed landscaping scheme would neither preserve nor enhance the character or appearance of the Regent's Canal Conservation Area. In addition it would fail to enhance the biodiversity of the site or the quality of the Green Chain and the Metropolitan Site of Nature Conservation Importance. The development would therefore fail to comply with Policies CS14, CS15, DP24 and DP25 of the LDF. It was confirmed at the Hearing that although Policy CS15 had been listed twice in the Council's fourth reason for refusal this was in error and the first reference should have been to Policy CS14.

### **Conclusions**

19. For the reasons given above and having had regard to all other matters raised, the appeal is dismissed.

*Kay Sheffield*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr Adam Beamish BA(Hons),      Senior Planner with Cunnane Town Planning LLP.  
DipTRP, MRTPI

Mr Chris Hearn BA Arch,          Architect with Samuel Smith Old Brewery  
DipArch, RIBA                      (Tadcaster)

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Charles Rose BA(Hons)      Urban Design and Conservation Officer

Mr Alex Hutson                      Trees and Landscape Officer

## DOCUMENTS

- 1 Plan showing the location of the appeal site in relation to the boundary of the Regent's Canal Conservation Area, submitted by the Council.
- 2 Regent's Canal Conservation Area Appraisal and Management Strategy, omitted from documents submitted as part of the appeal questionnaire.
- 3 Policies 1.1, 5.3, 5.4, 7.6, 7.7 and 7.8 of The London Plan, 2011, referred to by the appellant.
- 4 Drawing Nos. P 104/A and P 105/A: elevations of the proposed building annotated to indicate the use of the materials submitted for approval, submitted by the appellant.
- 5 Set of photographs of the previous building on the site and its surroundings, submitted by the Council.