

Appeal Decision

Site visit made on 1 October 2014

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 15 October 2014

Appeal Ref: APP/K5600/A/14/2222551
118 Finborough Road, London, SW10 9ED

- 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 Dr Shelley Chopra against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/14/02415 dated 14 April 2014, was refused by notice dated 27 June 2014.
 - The development proposed is a roof alteration and the construction of an infill extension at first and second floors in connection with the creation of 3 self-contained flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are firstly, whether the proposal would preserve or enhance the character or appearance of The Boltons Conservation Area; and secondly, whether there would be adequate internal living accommodation in the roof level dwelling. I shall also consider a third issue raised by the Theatres Trust, which is the effect of the proposal on the safeguarding of the theatre, and by implication the living conditions of future residents of the dwellings in respect of noise and disturbance.
3. The appellant has submitted a signed and dated unilateral undertaking intended to address the Council's third reason for refusal.

Reasons

The Conservation Area

4. The appeal building, the Finborough Arms, is a prominent and distinctive historic building, with the theatre on the first floor and residential use on the second. It has a shape fashioned by its position between 2 streets, rounded and narrow at the front entrance widening out towards the rear. On account of its visibility in the street scene and its unusual shape and design, it makes a strong and positive contribution to the character and appearance of this part of the conservation area.
5. I note that the Conservation Area Proposals Statement pre-dates the extension of the conservation area boundary in 2000 to include the appeal site and surrounding area.

6. The building has a semi-circular fan-shaped roof sitting behind the parapet at the front end. The roof sits quite low behind the parapet, but it is apparent from the front from long views in the street. The front roof shape is reflective of the shape of the front of the building and it is a distinctive and integral element of its intrinsic character.
7. There are no proposals to alter this element of the roof, with the exception of the addition of 4 conservation-style roof lights positioned at a low level. The Council does not dispute the roof lights, and I find no reason to disagree with the Council's view taking into account the proposed position, scale and design.
8. The proposal would also introduce an infill extension with mansards either side of the building. The mansards would be separated from the fan-shaped roof by a raised central parapet and chimney stack, so that they would appear distinct from the front roof.
9. The mansards would appear modest in scale set back behind the parapets each side and there would be limited visibility of them from the street. They would appear smaller in size than the adjoining mansard at no. 129 Ifield Road. The mansards would appear architecturally sympathetic to the form of the rear part of the building and would not harm its overall appearance. I find no persuasive reason to withhold permission for these elements of the proposal.
10. To conclude on this issue, I find that the proposal would preserve the character and appearance of The Boltons Conservation Area. There would be no conflict with Policies CL 1, CL 2 and CL 3 of the Core Strategy (CS), which require amongst other things, development to respect the context and character of buildings, to improve quality, and to enhance the character or appearance of conservation areas. The proposal also meets the design and heritage objectives set out in Saved Policies CD44, CD45 and CD63 of the Unitary Development Plan.
11. The development plan policies are compatible with the design and heritage objectives in the National Planning Policy Framework. Paragraph 64 of the Framework says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Paragraph 132 of the Framework says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I find that the proposal does not conflict with these objectives.

Internal living accommodation

12. The appellant has indicated that the floor to ceiling height could be increased to 2.5m in the living room of the roof level flat by adjusting the internal floor level between the second and third floors. The maximum height of the roof in the bedroom could also be increased to 2.5m, although the 2 sides of the bedroom would be of a lesser height, constrained by the fan-shaped roof. These alterations would significantly increase the amount of useable floor space in the habitable areas of the roof level flat, including the bedroom.
13. The proposal to adjust the floor levels would also ensure that the floor to ceiling height of the residential accommodation on the second floor would remain at an acceptable level. I am satisfied that a condition could be imposed requiring

details of internal alterations to the floor levels to achieve a satisfactory amount of useable floor space in the roof level flat.

14. On the basis of the evidence before me, there would be no material harm to the living conditions of future residents of the roof level flat in respect of the adequacy of internal living accommodation. There would be no conflict with the objectives of London Plan Policy 3.5 regarding living space standards or with CS Policy CH 2, which requires the achievement of floor space and floor to ceiling height standards.
15. The development plan policies are broadly compatible with Paragraph 17 of the Framework, which indicates that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. I find no conflict with the Framework in respect of living space standards.

The safeguarding of the theatre and residents' living conditions

16. The Council indicates that the precise use of the existing residential accommodation above the theatre, that is whether or not it is ancillary to the public house or it is an independent dwelling, is not clear from the planning history. For the purposes of the unilateral undertaking, the Council has assumed that the accommodation is ancillary.
17. The existing accommodation has 4 bedrooms above the performance area with a living area and kitchen above the back stage area. The Theatres Trust suggests that the existing accommodation is ancillary, occupied by a pub landlord or staff, with the bedrooms rarely being occupied during usual performance times. I find no substantive evidence to contradict this statement.
18. The proposal is for a 2-bedroom apartment entirely above the performance space, with a second residential unit above the back stage area, and a third dwelling in the extended roof space. There is a clear intensification of residential use, with the addition of 3 new independent dwellings within the upper floors above the theatre performance and back stage areas. Even if the existing accommodation is not ancillary, 2 new dwellings would be created, with 2 dwellings on the second floor instead of one.
19. Dwellings and theatres are noise-sensitive uses. I am told that disputes can emerge, and residents can request a Noise Abatement Notice to be served on the theatre operator to restrict activities, thereby threatening the viability and long-term operation of the theatre. An appeal decision is cited by the Theatres Trust, in which the Inspector attributed weight to examples where theatres have had to close, restrict their operation, or incur expenditure to overcome the problems of adjacent dwellings.
20. There is a high potential for noise transfer between theatre activities and the dwellings above within a historic building. I conclude that there is significant potential for noise and disturbance from loud music and theatre activities to significantly affect residents of the proposed new dwellings at the appeal property.
21. There would be harm to future residents' living conditions in respect of unacceptable noise and disturbance from theatre activities. The long term operation of the theatre would not be safeguarded. Furthermore, I have no substantive evidence to indicate that noise transference could be overcome by means of insulation or other attenuation measures. I am not satisfied that a

condition could be imposed to overcome material harm to the living conditions of future residents, and the theatre would be safeguarded.

22. The proposal is contrary to CS Policy CL 5, which requires high standards of amenity, and to CS Policy CE 6, which requires development to be protected against existing sources of noise. It is also contrary to the objectives of paragraph 70 of the Framework, which indicates that decisions should plan positively for cultural buildings to enhance the sustainability of communities and residential environments.

Other matters and conclusions

23. Notwithstanding my findings in respect of the conservation area and internal living accommodation of the roof level flat, the harm that I have identified to the safeguarding of the theatre and the living conditions of future residents is significant and overriding. The proposal is therefore unacceptable for these reasons.
24. In reaching my decision, I have taken into account all other matters, including all the policies in the National Framework and other national planning guidance. There is a signed and dated unilateral undertaking, although the Council disputes some aspects of it. There is no need for me to consider the obligation further bearing in mind my overall conclusions, and the dismissal of this appeal.

Sue Glover

INSPECTOR