



Appeal Decisions

Hearing held on 27 March 2013

Site visit made on 27 March 2013

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 15 May 2013

Appeal A Ref: APP/X5990/A/12/2187507

4 The Lane, St John's Wood, London NW8 0PN

- 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 Rodsal Holdings Limited against the decision of City of Westminster Council.
 - The application Ref 12/05586/FULL, dated 25 May 2012, was refused by notice dated 5 October 2012.
 - The development proposed is demolition of existing dwelling house and erection of three storey dwelling house above ground, with excavation of basement level beneath house and part of garden and associated works. Ventilation louvres serving internal plant and landscaping.
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Appeal B Ref: APP/X5990/E/12/2187505

4 The Lane, St John's Wood, London NW8 0PN

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
 - The appeal is made by Rodsal Holdings Limited against the decision of City of Westminster Council.
 - The application Ref 12/05587/CAC, dated 25 May 2012, was refused by notice dated 5 October 2012.
 - The demolition proposed is demolition of existing dwellinghouse.
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Procedural Matters

1. For economy I deal with the two appeals jointly, distinguishing between the application for planning permission (Appeal A) and the application for conservation area consent (Appeal B) as necessary.
2. The declaration on the form used to lodge the applications was dated 25 May 2012. This corresponds to the date of application cited on the decision notices. For the purposes of the appeal I therefore deploy that date as the date of the applications rather than 22 June 2012, the date cited on the appeal forms.

Decisions

3. Both appeals are dismissed.

Main Issues

4. The main issues in this case, having regard to the intentions of relevant policy, are:-
 - Whether the proposed dwelling would preserve or enhance the character or appearance of the St John's Wood Conservation Area having regard to;
 - First, the contribution of the existing dwelling to its significance, and
 - Secondly, the effect of the proposed dwelling on its significance
 - The effect of the proposed development on the living conditions of neighbouring occupiers having regard to privacy and noise.

Reasons

Site circumstances (both appeals)

5. The appeal site is one of a small group of comparatively undistinguished neo-Georgian houses opportunistically developed as an infill on the site of tennis courts during and in the immediate aftermath of the Second World War. The appeal site itself, No 4 The Lane, is largely hidden from much of the public domain, not only by the private nature of the access way but by its positioning set back within a corner formed by its more prominent immediate neighbours. Both the appeal site itself and its immediate neighbours have been extended and altered, in some cases to the detriment of the cubic theme that would otherwise create more uniformity than now exists. Arguably, such alterations have diminished the contribution of the dwelling to the narrower context of the infill development of which it is part.
6. Nevertheless, although not uniform, these altered properties and others within The Lane retain a clear sense of unity and The Lane as a whole is thereby rendered distinctive. Moreover, it represents a small part of the history of the conservation area's development, notwithstanding that its contribution to its character or its appearance is, in the context of the area as a whole, relatively limited. The individual dwellings constructed on The Lane have been classified by the Council as unlisted buildings of merit in the 2008 conservation area audit. The planning officer's report (which recommended that planning permission and conservation area consent should be granted) in effect concludes that the audit miscategorised No 4 The Lane, concluding that its contribution to the conservation area is more appropriately classified as 'neutral'. The significance of the building itself to the conservation area as a whole is limited but not, in my view, wholly negated by the circumstances I have described.
7. The period of its construction represents the end of the era during which this form of neo-Georgian architecture was popular and it seems likely that constrained circumstances at the time may account for the relative paucity of detailing that the appeal site exhibits. (Although the Council's statement points out that the setting of the timber sash windows close to the brickwork, rather than with set-back, echoes the earliest Georgian Buildings rather than those constructed since the 1707 Building Act.) No 4 The Lane appears to have been less heavily invested in since construction than its more extensively altered neighbours and this means that it is truer to its original qualities, albeit these are quite evident amongst its neighbours despite the alterations to their rooflines in particular.

Relevant policy (both appeals)

8. The Hearing was held on the first anniversary of the publication of the National Planning Policy Framework ('the Framework') and hence due weight may be

accorded to relevant policy in the development plan according to the extent to which it remains consistent with this expression of national policy.

9. Policy CS24 of the Council's Core Strategy aims to conserve Westminster's heritage assets and CS27 calls for exemplary standards of sustainable and inclusive urban design and architecture, including imaginative modern architecture appropriate to its context and respectful of the city's heritage and local distinctiveness that would enrich its world-class environment. CS28 aims, amongst other things, to safeguard residential amenity.
10. Saved policies of the Council's Unitary Development Plan are also relevant: DES 1, DES 4 and DES 9 respectively promote good design in context, appropriate standards of infill development and the protection of conservation areas consistent with the statutory duty to have special regard to the preservation or enhancement of their character or appearance. Saved UDP policy ENV 13 seeks to protect residential amenity. None of these policy intentions are fundamentally inconsistent with those of the Framework.
11. The London Plan, cited by the appellant, promotes high quality design in context, including for housing, as a strategic principle and, again, this intention, expressed through policies 3.5, 7.1, 7.4 and 7.6 seems to me consistent with the thrust of relevant policy within the Framework.
12. I have also taken into account as relevant the Council's guidance in the publications *Development and Demolition in Conservation Areas*, *Design Matters in Westminster* and the *Conservation Area Audit for St John's Wood*, all of which is material.

Preservation or enhancement of character or appearance (Appeal B)

13. Although, despite the alterations that have occurred, The Lane retains coherence as a group of buildings, the post-construction changes graphically highlighted in the Architectural Hearing Statement and the evidence of the Heritage Collective presented at the Hearing demonstrate that these to some degree diminish its significance to the heritage asset that the wider conservation area represents. The loss of No 4, in itself, would not be unduly harmful to the conservation area as a whole although, if correctly classified as an unlisted building of merit, it would be worthy of retention. Moreover, while the essential character and appearance of The Lane, with Nos. 3, 5, 6 and 7 fronting onto the circular access way at its heart, would be retained, a discernible gap at the site of No 4, if it were to be demolished, would in my view amount to a harmful detraction from the character and appearance of the tight-knit group of which it forms part, if not appropriately replaced.
14. However, whilst the loss would be discernible, I do not consider it would be so harmful to the significance of the conservation area as a whole as to be substantial harm in the sense intended by the Framework. Therefore loss without replacement of No 4 could be justified in the event of public benefits arising, but I see no such benefits arising from the act of demolition per se. Moreover, loss of the building, of itself, would neither serve to preserve or enhance the character or the appearance the conservation area. Although the contribution of No 4 is comparatively limited, especially if the planning officer's effective re-classification of its contribution as neutral were to be accepted, the creation of a gap in its place would not in my estimation amount to a public benefit.

Preservation or enhancement of character or appearance (both appeals)

15. Appeal A concerns the refused planning permission for the redevelopment of the site with a new building rather than simply an act of demolition and I note that the design of the building proposed has been evolved on an iterative basis in close consultation with officers of the Council over a period of time. Be that as it may, it falls to be considered on its specific merits in the light of relevant policy and material considerations.
16. The statutory duty arising from Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is to pay special attention to the desirability of preserving or enhancing the character or appearance of the St John's Wood Conservation Area. That does not preclude change. Nor does it necessarily preclude the replacement of older buildings with modern buildings. A preclusion of that nature would effectively freeze the built environment at a particular point in time whether or not such preservation was justified in any particular case. What it does mean, however, is that the old should not be lightly discarded in favour of the new notwithstanding that paragraph 63 of the Framework advises that...*"In determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area"*.
17. As a single building, I am in no doubt that the proposed dwelling house and its use of underground space is both outstanding and innovative and superior in many respects to the individual building that would be replaced, certainly if the latter is judged on its specific architectural merits in isolation. But it does not exist in isolation, and its proposed replacement, moreover, would not exist in isolation. Although the proposed redevelopment would involve the loss and replacement of a single building within the heritage asset that the extensive conservation area as a whole represents, it would become a significant part of a small group of buildings that is, in turn, part and parcel of that heritage asset and which, as a group, contributes in a small way to its overall significance. Hence the conclusion on this issue turns on the contribution that the new building proposed would make as an alternative to what is already there.
18. One of the arguments presented in the planning officer's report in favour of the scheme was that its contained and inherently discreet location, tucked away from the public realm, provides a much reduced townscape context. Conversely, that characteristic also reduces the public benefit that might otherwise accrue from the appreciation of a fine modern building carefully designed to be appropriate to a more historic context; and public benefit is the essential counterbalance articulated in the Framework if less than substantial harm to the significance of the conservation area were to result from the careful massing, proportions and siting proposed in this case as a result of the attention to context that the designer has in this case given, whilst consciously avoiding a pastiche approach to the sought-after replacement of the building proposed for demolition.
19. The balance of planning advantage in this case is therefore a relatively fine one. If there is harm to the significance of the conservation area that is less than substantial, the public benefits of the proposed building arising from such harm would have to outweigh such harm for it to be acceptable, notwithstanding its lack of profile in the public domain. While a like for like replacement of the currently rather run-down building that is No 4 The Lane would be significantly less contentious in planning terms, the design proposed nevertheless challenges the assumption that such an approach is necessary for the significance of the heritage asset to be maintained, or that the desirability of preserving the character or the appearance of the area would require, in this case, detailed replication or retention of what is already there.

20. The St John's Wood Conservation Area is large and diverse and characterised predominantly but not exclusively by nineteenth century, early twentieth century and inter-war street patterns and buildings, albeit with some 1930s and 1950s infill developments as paragraph 4.37 of the conservation area audit notes. Moreover, whilst The Lane is listed amongst the 'Intimate Routes and Spaces' of the area, the aspiration of the audit that the character of the space formed by The Lane should be preserved would in fact be realised. The form and massing of the proposed building would accord with the established environment created by the existing built form in terms of massing, proportions and positioning, with no disruption to the street pattern.
21. The form of building proposed is therefore appropriate to the established context in those terms, as a consequence of the careful analysis that has informed its unashamedly contemporary design. Whilst the use of brick, in the main, would resonate with the existing neo-Georgian neighbouring houses, and the massing and proportions of the building would resonate with their original, more cubic, form, the detailing, as expressed through fenestration in particular, would not. On the contrary, it would contrast markedly with the existing, albeit rather mundane, examples of neo-Georgian detailing in that respect that the original dwellings deployed.
22. Despite its arguable limitations as an example of the genre, the importance of the neo-Georgian fenestration in unifying the building group is nevertheless very evident from within the Lane and, in my view, it unequivocally transcends the changes that have been introduced through roof alterations and extensions since it was constructed. The winter scene shown as View A on page 15 of the Architectural Hearing Statement very clearly shows this and is a good representation of the sense of unity amongst the buildings evident on site and preserved by the use of appropriate fenestration in the roof alterations, notwithstanding some departure from the original building form that these have introduced. Insofar as the relatively private environment of The Lane has a public face, this is best appreciated from the circle around which the houses, said to represent a detached villa typology, are arranged. The broad similarities between them, especially the rhythm and uniform style characterising the theme of fenestration, are in my estimation more significant to their character and appearance, and the contribution of the group to the conservation area as a whole, than the differences introduced since construction.
23. Pages 32 and 33 of the submitted Design and Access Statement respectively show what are described as "critical views" of No 4 The Lane as it currently exists and as it is proposed to be redeveloped. These views are contextual, but less so than the winter scene previously referred to, or indeed the summer scene on page 15 of the Design and Access Statement. The softening and screening effect of summer vegetation in the critical views and summer scene tends to reduce the very obvious contrast between the proposed building and its neighbours. The degree of contrast that the proposed building would introduce is, however, very obvious on visiting The Lane and when viewing the appeal site from the far side of the circle from which the winter and summer scenes were photographed.
24. Despite the careful attention that has been paid to form, massing and positioning in promoting a contemporary re-interpretation of the detached villa typology in this instance, the starkly modern plain, recessed fenestration and the blank upward continuation of a central panel of brickwork at second floor level (albeit partially alleviated by the proposed corner terraces) would give rise to a fundamental difference in both character and appearance that I consider, in the particular context of The Lane, would be harmfully incongruous. In context, the qualities of the proposed building would detract from, rather than enhance, the street scene

because, within The Lane, its quality is dependent on unity of theme rather than individuality of expression. A quality modern building such as this could in the right circumstances (where contrast would create distance in design terms from the defining characteristics of existing buildings, so as to avoid an impression of pastiche, or simply to introduce excitement, individuality and creative innovation, as appropriate) be an extremely desirable and successful addition to the local environment. However, in this instance, for the above reasons, and notwithstanding the appellant's and the planning officer's analysis, I do not consider that would be the case.

25. On the contrary, the proposed building would appear rather monolithic and almost commercial in character within an environment that is, in essence, intimately domestic, even though the detached villas that it comprises of are all substantial individual buildings in their own right. While both the Framework and the development plan both encourage quality innovation in architecture, they both also emphasise the importance of appropriate design in context. *Design Matters*, referred to in the Council's statement, notes that (because of important detail such as fenestration) new buildings, even when of similar scale, colour or height, can nonetheless contribute to visual fragmentation of the streetscape. Regrettably, notwithstanding the undoubted qualities of the proposed building, that would be the case here.
26. For that reason, despite the relative obscurity of the appeal site within it, I do not consider the proposed development would either preserve or enhance the character or the appearance of the St John's Wood Conservation Area. In terms of its overall significance, the consequential harm would be less than substantial but I am not persuaded that any public benefits would arise sufficient to outweigh the harm that would nonetheless actually be inflicted. There is no compelling evidence that the building is unviable as a dwelling in its current form. Although somewhat run-down and starved of investment, I see no reason why it could not, with appropriate investment, be restored to a dwelling of value commensurate with its location and setting and of comparable attractiveness to its neighbours.
27. Moreover, part (B) of saved policy DES9 of the Council's UDP is engaged by virtue of the identification in the conservation area audit of the appeal site and its neighbours as an unlisted buildings of merit, as is pointed out by the John Lyon Trust, and I do have sympathy with the proposition that there are dangers in reviewing this categorisation of buildings on an ad hoc basis. Nevertheless, I am obliged to consider the proposal on its individual merits and, while I am conscious of the reasons in this case of the planning officer's reconsideration of the merits of the unlisted building at issue, I am also conscious that the explanation to the policy states that ... "*High quality modern architecture will be acceptable in conservation areas provided that it can be demonstrated that it is sensitively designed in response to its conservation area context and will preserve or enhance the character and appearance of the conservation area.*" On that basis, given my conclusions on the issue, there would be conflict with the intentions of saved UDP policy DES 9 that new development replacing unlisted buildings worthy of retention should positively enhance conservation areas.
28. As the house proposed for demolition is itself a non-designated heritage asset (still being formally classified by the Council as an unlisted building of merit) in the terms of the Framework, paragraph 135 is relevant and the demolition proposed would of course result in its total loss. This requires a balanced judgement as to the scale and significance of its loss. While of itself, the scale and significance of the loss would be limited as I have previously concluded, the impact of the loss on the more contained environment of The Lane would be significant in the absence of an appropriate replacement. For the reasons I have given, I do not, on balance,

consider the proposed replacement to be appropriate to the context of The Lane, and hence, in this instance, the wider conservation area. Therefore the loss of the non-designated heritage asset would, on balance, be harmful to the conservation area, albeit of limited harm in terms of its overall significance.

29. In conclusion, for the reasons I have given, I consider that the harm that would be caused by the incongruity of the proposed development within the relatively confined environment of The Lane would not be outweighed by any public benefits that would arise from the construction of the proposed building in place of the existing. There would, on balance, be harmful conflict with the intentions of the Framework and those of the development plan insofar as both are consistent with the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas and I have concluded that, bearing in mind that The Lane does represent a small, if secluded, part of the St John's Wood Conservation Area, the building proposed in Appeal A does neither. Moreover, in respect of Appeal B, while the demolition of the existing building would not conflict with relevant policy if safeguards to ensure its replacement by an acceptable form of building were to be put in place, the proposed replacement building would not, on balance, be acceptable.

Effect on living conditions

30. Insofar as the proposed dwelling is a re-interpretation of the original building form in terms of scale and massing and is broadly coincident in terms of positioning, I am satisfied that it would be accommodated within the existing urban fabric without giving rise to an overbearing presence for neighbouring occupiers or causing undue shading. However, I am not satisfied that access to the proposed terraces at the rear second floor corners would adequately respect the privacy in their gardens of occupiers of the adjacent properties No 3 The Lane and No 64 Marlborough Place. Nor do I consider that the relationship between the front right hand terrace proposed at that level would have a satisfactory relationship with the front and main garden of No 5 The Lane. Overlooking of gardens at close quarters from outside living space is a particularly intrusive form of harm to privacy and the development ought not to proceed on that basis alone if the potential for such harm could not be resolved.
31. I am conscious that the 'cut-back' of the corners of the building as proposed is an important design ploy to reduce the mass and otherwise potentially blank and top-heavy appearance of the second floor to accommodate it within its context. I am also conscious that conditions to limit the use of terraces to emergency purposes only are apparently routine in Westminster. Equally, I am cognisant of the reasoning of one of my colleagues in an appeal decision¹ brought to my attention by an objector in this case. There was some debate at the Hearing about these matters and it was accepted by the appellant that the aesthetic advantages of the terraces could be retained whilst simultaneously incorporating physical design features that would be largely unseen but which would, in practical terms, prevent use of the terraces other than for emergencies and occasional maintenance.
32. I consider that such a condition, effective beyond what appears standard practice locally, could be imposed in this case and that the changes involved would remain within the relevant guidelines of Circular 11/95 *The Use of Conditions in Planning Permissions*. The necessary modification would not be so substantial as to render it unacceptable in those terms.

¹ Ref APP/N1920/D/10/2138285

33. Finally, as regards the living conditions of neighbours, understandable concerns were expressed about the potential for noise from the ventilation of the basement area and pool to intrude upon the quietude of the rear garden of No 64 Marlborough Place, owing to the positioning of venting at ground floor level on the adjacent proposed elevation. However, I am satisfied that such concerns may be satisfactorily addressed by the imposition of a necessary condition expressed in a manner that would require the Council to be satisfied as to the efficacy of the arrangements for silencing the relevant equipment.
34. For the above reasons, while I acknowledge that there is the potential for conflict with the intentions of the development plan and the Framework in respect of residential amenity, I am satisfied that the living conditions of the living conditions of neighbouring occupiers, having regard to privacy and noise, are capable of being safeguarded by the imposition of appropriate conditions.

Other matters

35. Concerns have been raised in respect of Appeal A regarding the depth of excavations required in proximity to other properties, but I have no evidence of ground instability such that it would be a decisive planning concern, and I note that the Council's Building Control officers have advised that the structural engineer's report submitted with the application indicates that the anticipated approach appears satisfactory. I note also that the basement plan was amended during the course of the application to adequately protect the roots of nearby trees.
36. Disruption and disturbance to neighbouring occupiers is frequently a concern when property is redeveloped but is not a reason for withholding planning permission, given that it can be kept within acceptable limits by the imposition of a suitable condition.

Overall conclusions

37. I have considered all other matters raised, including the extensive work and pre-application discussions undertaken, but none are sufficient to alter the overall balance of my conclusions that, for the above reasons, the proposed demolition of No 4 The Lane would not be acceptable in the absence of an acceptable replacement and that, in all the circumstances, and notwithstanding its merits as an individual building, the proposed replacement, in the context of its immediate environment and consequently the wider context of the St John's Wood Conservation Area, would not be acceptable. I therefore conclude that both appeals should be dismissed.

Keith Manning

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr D Morris MRTPI	DP9
Mr J Fobert	Jamie Fobert Architects
Mr I Froneman IHBC IfA	Heritage Collective

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Wilman BA (Hons) EUC PG	Conservation Officer
Dip PG Cert IHBC	
Mr D Cox	Senior Planner

INTERESTED PERSONS:

Mr I Coward MRTPI	Collins & Coward (for Mr & Mrs Cole and Mr Fass)
Mr R Fass FCA	Chair of The Lane Residents' Association
Mr N Abbott MA MRTPI	Cluttons (for the John Lyon Trust)
Mr Cole	Local resident
Mrs Cole	Local resident
Mr S Samra	
Mr E Shahmoon	

DOCUMENTS

- 1 Council's notification letter and list of those notified
- 2 Rebuttal to Council's Hearing Statement prepared by DP9 Planning Consultants, Jamie Fobert and Heritage Collective on behalf of Rodsal Holdings Ltd
- 3 Coloured map extract from St John's Wood Conservation Area Audit
- 4 Guidance on Conservation Area Appeals *English Heritage*

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