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# Appeal Decision

Site visit made on 17 February 2016

**by R M Pritchard MA PhD MRTPI**

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

**Decision date: 30 March 2016**

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**Appeal Ref: APP/K5600/W/15/3141343**  
**Chelsea Lodge, 58 Tite Street, London, SW3 4JD**

- 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 Constantine Land Limited against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref PP/15/04228, dated 6 July 2015, was refused by notice dated 1 September 2015.
  - The development proposed is the formation of a 4-bedroom apartment on the lower ground and ground floors following the rearward extension of the lower ground floor, relocation of plant from the lower ground floor and related refurbishment and landscaping.
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## Decision

1. The appeal is dismissed.

## Procedural Note

2. During the Council's consideration of the application, the appellants suggested amendments that would respond to some of the concerns raised about the proposed development. The first was a change to the design of the rear extension, the outcome of which would be to bring back the lightwell to align with the existing building line. The result would be a smaller scheme. The second was to reduce in size, or even eliminate completely, the bicycle store proposed for the rear garden.
3. The Council disputed that these were 'minor changes' as claimed by the appellants. Moreover, it cited the significant interest from local residents as reason for not accepting such amendments without a reconsideration of the proposal in its entirety. It contended that to do otherwise risked prejudicing the interests of third parties. The Courts have set a test that amendments to proposals should only be entertained during the course of an application or appeal if it is clear that the interests of any other party would not be prejudiced.<sup>1</sup> In this case, I have no evidence that there was any public consultation on the proposed changes. In these circumstances, I consider that it would offend natural justice if I took them on board, especially given the level of third party interest. I have therefore considered the appeal on the same basis as the Council, that is in terms of the application as submitted.

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<sup>1</sup> Cf Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P.&C.R. 233.

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## **Main Issues**

4. I consider the main issues to be –
  - i. Whether the net loss of one residential unit would be compatible with the policies of the adopted development plan;
  - ii. Whether the proposed development would preserve or enhance the character or appearance of the Royal Hospital Conservation Area;
  - iii. The effect of the proposed development on the living conditions of the occupants of the existing residential property in terms of loss of privacy and increased noise and disturbance; and
  - iv. Whether the proposed development would make appropriate drainage arrangements for the site.

## **Reasons**

### *Background*

5. No 58 is a six-storey, mansion block of flats that stands on the corner of Tite and Dilke Streets. The block was built in the late 1930s as replacement for an Arts and Crafts style building previously on the site. The main entrance is from Tite Street. There is a garden to the rear, which is entered from Dilke Street via a single-width gate, which I was told at the site visit is normally kept locked. There is a mature tree in the garden that is the subject of a Tree Preservation Order (TPO), but it is accepted that this would not be affected by the proposed development. No 58 is neither locally nor nationally listed but is situated within the Royal Hospital Conservation Area.
6. The proposed development would completely reconfigure the lower ground floor of No 58. This is currently occupied by a substantial area of storage and machinery space – boilers to provide heating and hot water to the whole block – as well as the lower half of what was formerly a one-bedroomed, caretaker's flat, but which has been vacant for some years. The machinery would be relocated to a smaller space and the redundant floorspace would be amalgamated with the upper part of the caretaker's flat and a currently separate one-bedroomed flat, both of which are on the ground floor. In addition, the new residential space thereby created would be extended to the rear at both ground and lower ground floor levels. The outcome would be a four-bedroomed apartment on two floors. In addition, a new cycle store would be sited in the garden. With space for up to 26 cycles, it would serve the whole mansion block.

### *The net loss of one residential unit*

7. The proposed development would reduce the number of units of accommodation in No 58 by one – although there would be a significant increase in the total amount of residential floorspace because of the proposed extensions. The key policy quoted by the Council against the proposed development is Policy CH2 of its Consolidated Local Plan. Criterion (f) of this policy states that development that results in the net loss of five or more residential units will be resisted. The proposed development would, obviously, not breach the five unit criterion in Policy CH2.
8. However, over the past few years, the Council has become concerned that an increasing number of smaller-scale amalgamations (i.e. involving the net loss

of less than five residential units) has resulted in a growing conflict with its policies for housing supply. It has submitted evidence to me to support this contention. In 2014, the Council therefore changed its policy. Henceforth, it would resist all amalgamations that would lead to any net loss of residential units. That change of policy has included a requirement that all such proposals will now require planning permission. It has not, however, sought formally to amend Policy CH2(f), arguing that this is unnecessary as the policy provides no positive support for amalgamations resulting in net losses of less than five residential units. The Courts have, however, recently concluded<sup>2</sup> that, in simple terms, development plan policies must mean what they say. In these terms, Policy CH2(f) provides limited support for the Council's present stance.

9. Notwithstanding the extent to which Policy CH2 supports resisting amalgamations of properties that lead to net losses of less than five units, the Council's change of stance largely relies on the greater emphasis on housing delivery, as expressed in the Government's National Planning Policy Framework ('the Framework'), and the most recent policies of the London Plan. In particular, as amended in 2015, the London Plan has adopted policies to increase housing supply in London. The Council considers these policies are being undermined in Kensington and Chelsea by the rising tide of residential amalgamations.
10. Moreover, both the London Plan and the Mayor's draft interim Supplementary Planning Guidance (SPG), *Housing*, have commented on these issues. The latter states that '*Where there is local evidence that the amalgamation of separate flats into larger units is leading to the sustained loss of homes, Boroughs are encouraged to resist this process in line with London Plan Policy (LPP) 3.14.*' The appellants correctly point out, however, that LPP 3.14 specifically refers to the loss of residential floorspace rather than the loss of units. The proposed development would not be contrary to LPP 3.14 in that respect. Despite this specific reference to residential floorspace, the reasoned justification of both LPP 3.14 and the *Housing* SPG indicate a clear direction of travel in which there are growing concerns about the effects of the amalgamation of residential units, especially in parts of central London.
11. By contrast, the appellants have directed me to a set of recent appeal decisions in the Royal Borough (PINS Refs APP/K5600/W, X & Y/3028100, 3028049 and 3028120) that dealt with the amalgamation of two self-contained flats into a single unit. In that case, the Inspector concluded, in the context of a Lawful Development Certificate (LDC) appeal that, '*Given that the Council accepts that no harm would be caused to the character of the building or to the surrounding area the proposed amalgamation of the two flats to create one residential units, as a matter of fact and degree, is not a change of use that is material and that constitutes development as defined in Section 55 of the Act. Planning permission is not required for the proposed use.*'
12. I do not have an LDC appeal before me but it is a well established principle that, irrespective of whether a proposal constitutes development or requires planning permission, an application or appeal has to be determined and that determination must be in accordance with the provisions of the adopted development plan or other material considerations<sup>3</sup>. Especially material in this case are the effects of the proposed development on the character and

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<sup>2</sup> Tesco Stores Ltd v. Dundee City Council [2012] UKSC 13 (SC).

<sup>3</sup> Section 38(6), Planning and Compulsory Purchase Act, 2004.

appearance of the Royal Hospital Conservation Area. These effects constituted an additional reason for the Council refusing the application and I consider the matter below.

13. The appellants have also sought to persuade me that the proposed amalgamation would achieve improvements in housing quality and would therefore comply with paragraph 5.1.8 of the Mayor's Draft Interim *Housing SPG*. This comments that the redevelopment of existing properties, including amalgamations, may be appropriate where, amongst other matters, it would achieve improvements in housing quality. It is central to the appellants' case that this is exactly what their proposal would achieve.
14. In particular, the former caretaker's flat suffers from a number of deficiencies in terms of its internal space standards and arrangements. Although the total space available is only slightly less than current national standards, the split between the lower ground and ground floors results in a very uncomfortable arrangement. The staircase linking the two floors is so narrow as to be virtually inaccessible and the overall living environment is unattractive and does not meet the requirements of modern living.
15. Nevertheless, I am not convinced that the current state of the lower ground floor flat sufficiently justifies the proposed development. If the rationalisation of machinery space on the lower ground floor is to take place – and I appreciate how there are advantages totally separate from the proposed development in doing so – there would be opportunities to improve the quality of the accommodation on the lower ground floor, bringing it up to modern standards whilst retaining it as a separate residential unit. I therefore do not accept that bringing together the ground and lower ground floor residential units is the only means to achieve a good standard of accommodation.
16. The proposed development is a four bedroomed apartment on two floors: it would thereby replace two small residential units – one of which is admittedly at present sub-standard – with a single large unit. In this respect, the appellants – though not the Council - have pointed me to saved Policy H17 of the Royal Borough's Unitary Development Plan (UDP). Policy H17 states that the loss of existing small, self-contained flats of one or two habitable rooms will be resisted.
17. The appellants' statement claims that Policy H17 is not relevant. However, both the existing floor plans submitted to me and the observations of my site visit lead me to question that assertion. I accept that there is no formal definition of a 'habitable room'. The Building Regulations, for example, both include and exclude kitchens from the definition of a habitable room depending on the matters with which they deal. Nevertheless, Policy H17 is clearly directed at the loss of small units and I am of the view that the proposal before me that would replace two one-bedroomed flats with a single four-bedroomed apartment is contrary to the thrust of that policy. That conclusion is supported by the recent policies of the London Plan and the evidence that amalgamations that lead to the loss of less than five residential units are putting at risk policies to increase housing supply in the Royal Borough.
18. I therefore conclude, taking all the above matters into account, that it must be a matter of fact and degree whether the consequences of the proposed development are acceptable in relation to both the policies of the development plan and the wider material considerations that apply. In this case, I conclude

that the consequences would not be acceptable. The proposed amalgamation would result in material harm as a result of its conflict with the wider objectives of both the Council and the London Plan.

*The character or appearance of the Royal Hospital Conservation Area*

19. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on all decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area. That duty is carried forward in the Government's National Planning Policy Framework ('the Framework') and is reflected in Policy CL3 of the adopted Consolidated Local Plan for the Royal Borough. Furthermore, in addition to Policies CL1 and CL2 that seek the highest quality of design for new development that respects local character and appearance, Policy CL9 provides criteria to be applied to proposals to extend or modify existing buildings.
20. 58 Tite Street is not a building that makes an especially positive contribution to the character and appearance of the Royal Hospital Conservation Area and is not specifically referred to in the Character Appraisal of the Area. No 58 is, however, situated on '*...a prominent corner plot...*' and the rear of the property can be seen from Dilke Street, at least above those sight lines that are screened by the fence that surrounds the rear garden.
21. The appellants suggest that both the height and rearward projection of the proposed extension would represent an insignificant addition to No 58 and that neither in terms of the overall scale of the extension and the materials to be used would the proposed development fail to preserve the character and appearance of the Conservation Area. I agree that the proposed extension would be subordinate to the scale of No 58. I also accept that the present form of the rear elevation of No 58 lacks legibility. The best that might currently be said of the rear of No 58 is that it is sufficiently indistinct not to draw attention to itself. Furthermore, I recognise that the design of the proposed extension deliberately seeks to reflect the form and materials of No 37, a modern building that has infilled a site on the opposite side of Tite Street.
22. Nevertheless, I am concerned that the extension would be so distinctive from the host property as to clash with its current form. No 37 is too far away and would not, in my view, be seen in the context of the proposed extension. Consequently the references to it would, in my view, largely be obscured. My fear is therefore that the proposed extension would create a new visual emphasis that would be neither sufficiently distinctive to create a design language for the rear elevation whilst being visually prominent enough to result in an incongruous combination of styles and materials.
23. The proposed extension would represent material harm and that harm would be sufficient as to fail to preserve the character and appearance of the Royal Hospital Conservation Area. As such it would be contrary to Policies CL1, CL2, CL3 and CL9 of the Consolidated Local Plan.
24. The Council has also raised the issue of the cycle store proposed for the rear garden. It has commented that not only is the cycle store excessively large and disproportionate to the size of the garden but that the provision of such a store is not a Council requirement where flats already exist. I have already commented at the beginning of this decision about the appellants' response by way of proposed amendments.

25. Here, I will only comment that the proposed cycle store would dominate No 58's rear garden. Moreover, although I do not consider that it would be especially prominent in terms of public views – the fence surrounding the garden would largely screen it – it would be visible from the rear windows of both No 58 and the properties to its north in a manner that would conflict with the prevailing visual character of the area. As with the proposed rear extension, the cycle store would in my view result in sufficient material harm as to fail to preserve the character and appearance of the Conservation Area. It would thereby conflict with Policies CL1, CL2 and CL3 of the Consolidated Local Plan.

*The living conditions of the occupants of the existing residential property*

26. Policy CL5 of the Consolidated Local Plan seeks to protect the living conditions of neighbours from the effects of development. The proposed rear extension would be visible both from the flank windows of No 58's rear return and from the rear of the neighbouring property to the north-west. In respect of the former, the rear projection would represent a potentially uncomfortable relationship, but the appellants have pointed out that the window most affected lights a staircase. Windows lighting the upper storeys of No 58 and its northern neighbour would be unlikely to be affected by the extension and I conclude that no existing flat would suffer significant losses of sunlight and daylight. I therefore conclude that the proposed development would not conflict with Policy CL5 and that this matter should not weigh against the appeal.

*Drainage arrangements for the site*

27. The appeal site is close to the Thames and a detailed site specific flood risk assessment accompanied the application in line with Policy CE2 of the Consolidated Local Plan. That assessment concluded that the proposed development would not increase the flood risk on the site and that mitigating measures could be put in hand that would actually reduce the flood risks that exist on the site at present.

28. The appellants have commented that they consider these matters could have been adequately dealt with by a condition attached to any permission. I agree and it does not seem to me that this matter should weigh against the proposed development.

**Conclusion**

29. For the reasons given above I conclude that the appeal should be dismissed.

*R M Pritchard*

INSPECTOR