

00/0164

TO: SEE DISTRIBUTION LIST

**FROM: EXECUTIVE DIRECTOR OF
PLANNING &
CONSERVATION**

MY REF(S): RAG/~~PD/04/00164/SG~~
~~04/00164/SG~~

YOUR REF:
SEE DISTRIBUTION LIST

ROOM NO: 324

EXTN: 2081

DATE: ...28 October 2004...

TOWN AND COUNTRY PLANNING ACT, 1990

APPEAL3 St Charles Place, London W10 6EG

I attach for your information a copy of the decision for the appeal on the above-mentioned premises.

EXECUTIVE DIRECTOR OF PLANNING AND CONSERVATION

DISTRIBUTION LIST:

COUNCILLOR TIM AHERN, CHAIRMAN, PLANNING SERVICES COMMITTEE
COUNCILLOR L. A. HOLT, VICE CHAIRMAN, PLANNING SERVICES COMMITTEE
COUNCILLOR IAN DONALDSON
COUNCILLOR RIMA HORTON
COUNCILLOR BARRY PHELPS
COUNCILLOR DANIEL MOYLAN, CABINET MEMBER FOR PLANNING &
TRANSPORTATION

TOWN CLERK & CHIEF EXECUTIVE	A.KHAN	RM: 253
DIRECTOR OF LAW AND ADMINISTRATION	H. TITCOMBE	RM: 315
LAW AND ADMINISTRATION (<u>ENFORCEMENT ONLY</u>)	H. TITCOMBE	RM: 315
LAND CHARGES.....	M. IRELAND	RM: 306
COUNCIL TAX ACCOUNTS MANAGER.....	T. RAWLINSON	RM: G29
TRANSPORTATION.....	R.. CASE	RM: 230

EXECUTIVE DIRECTOR OF PLANNING & CONSERVATION
HEAD OF DEVELOPMENT CONTROL
APPEALS OFFICER

NORTH

CENTRAL

SOUTH-EAST

SOUTH-WEST

INFORMATION OFFICE

FORWARD PLANNING..... G. FOSTER

DESIGN. D. McDONALD

STATUTORY REGISTER

~~FILE(S)~~

SYSTEMS.....C. STAPLETON

Other Documents

Please Index As

File Number TP/00/0164

Part 1

Part 10

Part 2

Part 11

Part 3

Part 12

Part 4

Part 13

Part 5

Part 14

Part 6

Part 15

Part 7

Part 16

Part 8

Part 17

Part 9

Part 18



The Planning Inspectorate

3/07 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

<http://www.planning-inspectorate.gov.uk>

Direct Line 0117-3728930
Switchboard 0117-3728000
Fax No 0117-3728443
GTN 1371-8930

Mrs R Townley (Dept Of Planning &
Conservation)
Kensington And Chelsea R B C
Planning Services Department
3rd Floor
The Town Hall
Hornton Street
London
W8 7NX

Your Ref: CC/04/00165/CAC
Our Ref: APP/K5600/E/04/1146316
APP/K5600/A/04/1146266
Date: 20 October 2004

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990
PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990
APPEALS BY R C JUDGES
SITE AT 3 ST. CHARLES PL, LONDON, W10 6EG**

I enclose a copy of our Inspector's decision on the above appeals.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252
Fax No. 0117 372 8139
E-mail: Complaints@pins.gsi.gov.uk

Yours faithfully

Mr Dave Shorland

COVERDL1

EX DIR	HDC	TP	SEC	AD	CLU	AO	AK
R.B.		K.C.		22 OCT 2004		64	
N	C	S.H.	SE	APP	IO	REC	
HBS			ARB	FPLN	DES	FEES	



Appeal Decision

Site visit made on 21 September 2004

by **Robert Mellor BSc DipTRP DipDesBEnv DMS**
MRICS MRTPI
an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date
20 OCT 2004

3 St Charles Place, Kensington, London W10 6EG

- These two appeals are made by R C Judges against the decisions of The Council of The Royal Borough of Kensington & Chelsea.

Appeal A Ref: APP/K5600/E/04/1146316

- 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 application (Ref. CC/04/00165/CAC), dated 15 January 2004, was refused by the Council by notice dated 12 March 2004.
- The demolition proposed is that of an existing single storey studio flat.

Summary of Decision: The appeal is allowed and conservation area consent is granted in the terms set out in the Formal Decision below.

Appeal B Ref: APP/K5600/A/04/1146266

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application (Ref. PP/04/00164/MIND), dated 15 January 2004, was refused by notice dated 12 March 2004.
- The development proposed is the demolition of an existing single storey studio flat and the erection of a three storey house (first floor, ground floor, and basement).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Conservation area consent has previously been granted for the demolition of the existing dwelling on the appeal site in association with an extant alternative planning permission for a two-storey dwelling at ground and basement levels. The Appellant points out that the current application for conservation area consent may thus be unnecessary. Nevertheless I have determined both appeals on the basis on which the applications were determined by the Council and on which the decisions were subsequently appealed by the Appellant.

Planning Policy

2. The development plan here includes the Royal Borough of Kensington and Chelsea Unitary Development Plan (2002) (the UDP). Relevant policies are referred to in the reasoning.
 3. The Council has (with public consultation) prepared the 'Oxford Gardens St Quintin Conservation Area Proposals Statement' (1990) (the CAPS) as supplementary planning guidance.
 4. I have also had regard to material Government planning policy guidance (PPG) notes.
-

Main Issues

5. The Council and its policies are not opposed in principle to residential redevelopment. I thus consider the main issues to be: what effect the proposals would have on the character and appearance of the designated Oxford Gardens St Quintin Conservation Area; and what effect they would have on the living conditions of nearby residents with particular regard to the effect on natural light and outlook at those properties.

Reasoning

Character and Appearance

6. Amongst other things, UDP Policy CD60 resists the demolition of buildings in conservation areas unless a satisfactory scheme of redevelopment has been approved. The Appellant agrees that conservation area consent should not be granted before planning permission is granted for a replacement development. However conservation area consent for a similar demolition proposal was granted in June 2003 (Council ref: CC/03/0993). The Council also granted planning permission then for an alternative replacement development with accommodation at ground floor and basement level but with no first floor accommodation. Those permissions remain extant but have not been implemented.
7. UDP Policies CD57 and CD61 reflect a statutory duty by requiring special attention to the desirability of preserving or enhancing the character or appearance of each conservation area and for any development there to have that effect. UDP Policy CD27 seeks to ensure that all development is to a high standard of design and is sensitive to and compatible with the scale, height, bulk, materials and character of its surroundings. UDP Policy CD62 emphasises similar requirements in Conservation Areas. UDP Policy CD30 includes similar requirements for infill development and additionally requires that regard be had to open spaces which are important to the proposed development and the surrounding area. The CAPS defines this part of the Conservation Area as District A, a residential area developed in the high Victorian style in the late 19th century as long terraces of houses with only small rear gardens or yards. At page 18 there is reference to the value of gaps between buildings and the statement in bold that: 'Proposals which would spoil the effect of gaps will not be permitted. The Council strongly discourages development on return frontages.'
8. The CAPS Proposals Map includes the appeal site in a defined 'important gap'. The appeal site is also on the return frontage at the end of the terrace. It is likely to have once formed part of the rear garden of an adjoining house. The adjacent end of terrace house at 3 St Charles Square is now occupied as flats with windows facing the site. It is not disputed that the appeal site was for many years occupied by a garage serving No 1 St Charles Square or that the garage was subsequently occupied for some years as an independent single dwelling, leading to the issue in 2001 of a Certificate of Lawful Existing Use.
9. The existing structure is a flat roofed building which retains the appearance of a large domestic garage. Glazing in the hinged wooden double doors provides natural light to the interior. However these doors and the rest of the building are usually hidden from the road behind a wall and closed wooden gates. There is a small paved open area between the doors and the gates. To one side the building abuts the tall and windowless flank wall of No 1 St Charles Place. The other side abuts the rear garden wall of No 3 St Charles Square and to the rear the building abuts the flank garden wall of No 1 St Charles Square.

10. When the wooden gates are closed, the existing building is scarcely visible from its surroundings at street level and thus has hardly any impact on the street scene. It's utilitarian design and materials are typical of domestic outbuildings and, being usually hidden, make no positive (or negative) contribution to the character and appearance of the area. The scheme approved in June 2003 would retain the existing solid timber gates and would be scarcely more visible. As submitted, the appeal proposal would substitute a metal gate providing clear views of what appear from the floor plans to be the substantially glazed ground floor and basement elevations of the new building. No drawings of these elevations are included in the submission. At a late stage in the appeal, the Appellant has suggested the substitution of wooden gates similar to those existing. However such solid gates would restrict light and outlook to the ground and basement level windows and it is not clear how they would relate to the excavated basement courtyard immediately behind them. If the gates were left open the entire 3 storey façade would be on public view.
11. The proposed building would be significantly taller than the existing structure or the scheme permitted in June 2003 and much more visible from the street. The always visible first floor would resemble a bulky mansard roof extension which I consider would appear clumsy and out of scale with the rest of the structure, whether viewed from the street, facing properties in St Charles Place or the adjoining properties in St Charles Square. Neither would the scale of the building as a whole relate satisfactorily to the surrounding tall houses, being much smaller as a house and yet too large to appear as an ancillary outbuilding.
12. The additional bulk of the building would substantially encroach into what is already a relatively small but important gap between buildings. It would significantly screen views from the street of two mature trees to the rear which currently soften the built character of their surroundings. Whilst it is arguable whether this gap constitutes an 'open space' for the purposes of UDP Policy CD30, it is clearly identified as an important gap in the CAPS.
13. I conclude that because planning permission already exists for a satisfactory replacement building, and because there is already an extant conservation area consent, there is no justification to refuse conservation area consent for the demolition of the existing building. However for the reasons given above I conclude on this issue that the proposed replacement building would not preserve or enhance the character and appearance of the conservation area and would contravene the objectives of the CAPS and of UDP Policies including CD57, CD61, CD27, and CD62.

Living Conditions of Nearby Residents

14. UDP Policy CD36 resists development where it would result in a harmful increase in the sense of enclosure to nearby property. UDP Policy CD33 resists developments which would significantly reduce the sunlight or daylight enjoyed by existing adjoining buildings and amenity spaces.
15. The additional building volume at first floor level would be between only about 4.5m-5.5m from the directly facing principal windows of habitable rooms at No 3 St Charles Square. It would certainly curtail the present outlook and increase the sense of enclosure experienced by the occupiers of these rooms, thus contravening UDP Policy CD36.
16. I acknowledge that the direct sunlight received from the south within the rear rooms and gardens at Nos 1 & 3 St Charles Square is already restricted by the high flank wall of No 1 St Charles Place. No sunlight calculations have been provided in evidence. However, it

appeared from my site visit that the proposed building would be likely to also considerably reduce the afternoon sunlight which would currently be available from the south west within the adjoining gardens and garden level flats. As the available sunlight is already so restricted, I conclude that this risks unacceptable harm to the living conditions of the occupiers of those properties and would contravene UDP Policy CD33.

Other Matters

17. I have taken into account all other matters raised in written representations. In particular, I do not consider, having regard to the existing lawful use of the building and the extant planning permission for its replacement, that the proposal would materially reduce the available on-street parking provision. Neither would the proposal result in a material loss of privacy for adjoining residents. However, neither these nor the other matters raised outweigh the considerations which have led to my decision.

Conditions

18. In accordance with advice in PPG15 'Planning and the Historic Environment' and to prevent the risk of an unsightly derelict site being left for an indefinite period after demolition, the conservation area consent should be subject to a condition preventing its implementation until a contract has been let for an approved replacement building.

Conclusions

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal in respect of conservation area consent for demolition should succeed but that the appeal in respect of the refusal of planning permission for the proposed replacement buildings should be dismissed.

Formal Decision

Appeal A

20. I hereby allow the appeal and grant conservation area consent for the demolition of an existing single storey studio flat at 3 St Charles Place, Kensington, London W10 6EG in accordance with the terms of the application Ref. (Ref. CC/04/00165), dated 15 January 2004 and the plan submitted therewith subject to the following conditions:
- 1) The works hereby authorised shall be begun not later than 5 years from the date of this consent.
 - 2) The works of demolition hereby authorised shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

Appeal B

21. I hereby dismiss the appeal and refuse planning permission for the demolition of an existing single storey studio flat and erection of a three storey house (first floor, ground floor, and basement).



INSPECTOR



The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime
Minister and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

High Court Section
The Planning Inspectorate
4/07 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8962

Website

www.planning-inspectorate.gov.uk

General Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints

Phone: 0117 372 8252

E-mail: complaints@pins.gsi.gov.uk

Cardiff Office

The Planning Inspectorate

Room 1-004

Cathays Park

Cardiff CF1 3NQ

Phone: 0292 082 3866

E-mail: Wales@pins.gsi.gov.uk

The Parliamentary Ombudsman

Office of the Parliamentary

Commissioner for Administration

Millbank Tower, Millbank

London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

E-mail: opca-enqu@ombudsman.org.uk



INVESTOR IN PEOPLE



The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.



INVESTOR IN PEOPLE

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under the terms of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report on our performance. APOS regularly examines the way we deal with complaints and we must satisfy it that our procedures are fair, thorough and prompt.

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"If you cannot change a decision, what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

Further information

Every year we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with and how we plan to meet the targets which Ministers set for us. At the end of each financial year we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

Contacting us

Quality Assurance Unit
The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Website

www.planning-inspectorate.gov.uk

Enquiries

Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

Complaints

Phone: 0117 372 8252
E-mail: complaints@pins.gsi.gov.uk

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary Ombudsman

Office of the Parliamentary
Commissioner for Administration
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail: opca-enqu@ombudsman.org.uk

~~CONFIDENTIAL~~

TO: SEE DISTRIBUTION LIST

FROM: EXECUTIVE DIRECTOR OF
PLANNING &
CONSERVATION

MY REF(S): RAG/PP/04/00164/SG
~~04/00164/SG~~

YOUR REF:
SEE DISTRIBUTION LIST

ROOM NO: 324

EXTN: 2081

DATE: ...28 October 2004...

TOWN AND COUNTRY PLANNING ACT, 1990

APPEAL3 St Charles Place, London W10 6EG

I attach for your information a copy of the decision for the appeal on the above-mentioned premises.

EXECUTIVE DIRECTOR OF PLANNING AND CONSERVATION

DISTRIBUTION LIST:

- COUNCILLOR TIM AHERN, CHAIRMAN, PLANNING SERVICES COMMITTEE
- COUNCILLOR L. A. HOLT, VICE CHAIRMAN, PLANNING SERVICES COMMITTEE
- COUNCILLOR IAN DONALDSON
- COUNCILLOR RIMA HORTON
- COUNCILLOR BARRY PHELPS
- COUNCILLOR DANIEL MOYLAN, CABINET MEMBER FOR PLANNING & TRANSPORTATION
- TOWN CLERK & CHIEF EXECUTIVE A.KHAN RM: 253
- DIRECTOR OF LAW AND ADMINISTRATION H. TITCOMBE RM: 315
- LAW AND ADMINISTRATION (ENFORCEMENT ONLY)H. TITCOMBE RM: 315
- LAND CHARGES..... M. IRELAND RM: 306
- COUNCIL TAX ACCOUNTS MANAGER..... T. RAWLINSON RM: G29
- TRANSPORTATION.....R.. CASE RM: 230
- EXECUTIVE DIRECTOR OF PLANNING & CONSERVATION
- HEAD OF DEVELOPMENT CONTROL
- APPEALS OFFICER
- NORTH
- CENTRAL
- SOUTH-EAST
- SOUTH-WEST
- INFORMATION OFFICE
- FORWARD PLANNING..... G. FOSTER
- DESIGN. D. McDONALD
- STATUTORY REGISTER
- ~~FILE(S)~~
- SYSTEMS.....C. STAPLETON



Appeal Decision

Site visit made on 21 September 2004

by **Robert Mellor BSc DipTRP DipDesBEnv DMS**
MRICS MRTPI
an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date **20 OCT 2004**

3 St Charles Place, Kensington, London W10 6EG

- These two appeals are made by R C Judges against the decisions of The Council of The Royal Borough of Kensington & Chelsea.

Appeal A Ref: APP/K5600/E/04/1146316

- 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 application (Ref. CC/04/00165/CAC), dated 15 January 2004, was refused by the Council by notice dated 12 March 2004.
- The demolition proposed is that of an existing single storey studio flat.

Summary of Decision: The appeal is allowed and conservation area consent is granted in the terms set out in the Formal Decision below.

Appeal B Ref: APP/K5600/A/04/1146266

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application (Ref. PP/04/00164/MIND), dated 15 January 2004, was refused by notice dated 12 March 2004.
- The development proposed is the demolition of an existing single storey studio flat and the erection of a three storey house (first floor, ground floor, and basement).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Conservation area consent has previously been granted for the demolition of the existing dwelling on the appeal site in association with an extant alternative planning permission for a two-storey dwelling at ground and basement levels. The Appellant points out that the current application for conservation area consent may thus be unnecessary. Nevertheless I have determined both appeals on the basis on which the applications were determined by the Council and on which the decisions were subsequently appealed by the Appellant.

Planning Policy

2. The development plan here includes the Royal Borough of Kensington and Chelsea Unitary Development Plan (2002) (the UDP). Relevant policies are referred to in the reasoning.
 3. The Council has (with public consultation) prepared the 'Oxford Gardens St Quintin Conservation Area Proposals Statement' (1990) (the CAPS) as supplementary planning guidance.
 4. I have also had regard to material Government planning policy guidance (PPG) notes.
-

Main Issues

5. The Council and its policies are not opposed in principle to residential redevelopment. I thus consider the main issues to be: what effect the proposals would have on the character and appearance of the designated Oxford Gardens St Quintin Conservation Area; and what effect they would have on the living conditions of nearby residents with particular regard to the effect on natural light and outlook at those properties.

Reasoning

Character and Appearance

6. Amongst other things, UDP Policy CD60 resists the demolition of buildings in conservation areas unless a satisfactory scheme of redevelopment has been approved. The Appellant agrees that conservation area consent should not be granted before planning permission is granted for a replacement development. However conservation area consent for a similar demolition proposal was granted in June 2003 (Council ref: CC/03/0993). The Council also granted planning permission then for an alternative replacement development with accommodation at ground floor and basement level but with no first floor accommodation. Those permissions remain extant but have not been implemented.
7. UDP Policies CD57 and CD61 reflect a statutory duty by requiring special attention to the desirability of preserving or enhancing the character or appearance of each conservation area and for any development there to have that effect. UDP Policy CD27 seeks to ensure that all development is to a high standard of design and is sensitive to and compatible with the scale, height, bulk, materials and character of its surroundings. UDP Policy CD62 emphasises similar requirements in Conservation Areas. UDP Policy CD30 includes similar requirements for infill development and additionally requires that regard be had to open spaces which are important to the proposed development and the surrounding area. The CAPS defines this part of the Conservation Area as District A, a residential area developed in the high Victorian style in the late 19th century as long terraces of houses with only small rear gardens or yards. At page 18 there is reference to the value of gaps between buildings and the statement in bold that: 'Proposals which would spoil the effect of gaps will not be permitted. The Council strongly discourages development on return frontages.'
8. The CAPS Proposals Map includes the appeal site in a defined 'important gap'. The appeal site is also on the return frontage at the end of the terrace. It is likely to have once formed part of the rear garden of an adjoining house. The adjacent end of terrace house at 3 St Charles Square is now occupied as flats with windows facing the site. It is not disputed that the appeal site was for many years occupied by a garage serving No 1 St Charles Square or that the garage was subsequently occupied for some years as an independent single dwelling, leading to the issue in 2001 of a Certificate of Lawful Existing Use.
9. The existing structure is a flat roofed building which retains the appearance of a large domestic garage. Glazing in the hinged wooden double doors provides natural light to the interior. However these doors and the rest of the building are usually hidden from the road behind a wall and closed wooden gates. There is a small paved open area between the doors and the gates. To one side the building abuts the tall and windowless flank wall of No 1 St Charles Place. The other side abuts the rear garden wall of No 3 St Charles Square and to the rear the building abuts the flank garden wall of No 1 St Charles Square.

10. When the wooden gates are closed, the existing building is scarcely visible from its surroundings at street level and thus has hardly any impact on the street scene. It's utilitarian design and materials are typical of domestic outbuildings and, being usually hidden, make no positive (or negative) contribution to the character and appearance of the area. The scheme approved in June 2003 would retain the existing solid timber gates and would be scarcely more visible. As submitted, the appeal proposal would substitute a metal gate providing clear views of what appear from the floor plans to be the substantially glazed ground floor and basement elevations of the new building. No drawings of these elevations are included in the submission. At a late stage in the appeal, the Appellant has suggested the substitution of wooden gates similar to those existing. However such solid gates would restrict light and outlook to the ground and basement level windows and it is not clear how they would relate to the excavated basement courtyard immediately behind them. If the gates were left open the entire 3 storey façade would be on public view.
11. The proposed building would be significantly taller than the existing structure or the scheme permitted in June 2003 and much more visible from the street. The always visible first floor would resemble a bulky mansard roof extension which I consider would appear clumsy and out of scale with the rest of the structure, whether viewed from the street, facing properties in St Charles Place or the adjoining properties in St Charles Square. Neither would the scale of the building as a whole relate satisfactorily to the surrounding tall houses, being much smaller as a house and yet too large to appear as an ancillary outbuilding.
12. The additional bulk of the building would substantially encroach into what is already a relatively small but important gap between buildings. It would significantly screen views from the street of two mature trees to the rear which currently soften the built character of their surroundings. Whilst it is arguable whether this gap constitutes an 'open space' for the purposes of UDP Policy CD30, it is clearly identified as an important gap in the CAPS.
13. I conclude that because planning permission already exists for a satisfactory replacement building, and because there is already an extant conservation area consent, there is no justification to refuse conservation area consent for the demolition of the existing building. However for the reasons given above I conclude on this issue that the proposed replacement building would not preserve or enhance the character and appearance of the conservation area and would contravene the objectives of the CAPS and of UDP Policies including CD57, CD61, CD27, and CD62.

Living Conditions of Nearby Residents

14. UDP Policy CD36 resists development where it would result in a harmful increase in the sense of enclosure to nearby property. UDP Policy CD33 resists developments which would significantly reduce the sunlight or daylight enjoyed by existing adjoining buildings and amenity spaces.
15. The additional building volume at first floor level would be between only about 4.5m-5.5m from the directly facing principal windows of habitable rooms at No 3 St Charles Square. It would certainly curtail the present outlook and increase the sense of enclosure experienced by the occupiers of these rooms, thus contravening UDP Policy CD36.
16. I acknowledge that the direct sunlight received from the south within the rear rooms and gardens at Nos 1 & 3 St Charles Square is already restricted by the high flank wall of No 1 St Charles Place. No sunlight calculations have been provided in evidence. However, it

appeared from my site visit that the proposed building would be likely to also considerably reduce the afternoon sunlight which would currently be available from the south west within the adjoining gardens and garden level flats. As the available sunlight is already so restricted, I conclude that this risks unacceptable harm to the living conditions of the occupiers of those properties and would contravene UDP Policy CD33.

Other Matters

17. I have taken into account all other matters raised in written representations. In particular, I do not consider, having regard to the existing lawful use of the building and the extant planning permission for its replacement, that the proposal would materially reduce the available on-street parking provision. Neither would the proposal result in a material loss of privacy for adjoining residents. However, neither these nor the other matters raised outweigh the considerations which have led to my decision.

Conditions

18. In accordance with advice in PPG15 'Planning and the Historic Environment' and to prevent the risk of an unsightly derelict site being left for an indefinite period after demolition, the conservation area consent should be subject to a condition preventing its implementation until a contract has been let for an approved replacement building.

Conclusions

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal in respect of conservation area consent for demolition should succeed but that the appeal in respect of the refusal of planning permission for the proposed replacement buildings should be dismissed.

Formal Decision

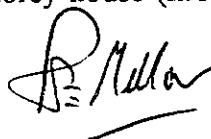
Appeal A

20. I hereby allow the appeal and grant conservation area consent for the demolition of an existing single storey studio flat at 3 St Charles Place, Kensington, London W10 6EG in accordance with the terms of the application Ref. (Ref. CC/04/00165), dated 15 January 2004 and the plan submitted therewith subject to the following conditions:

- 1) The works hereby authorised shall be begun not later than 5 years from the date of this consent.
- 2) The works of demolition hereby authorised shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

Appeal B

21. I hereby dismiss the appeal and refuse planning permission for the demolition of an existing single storey studio flat and erection of a three storey house (first floor, ground floor, and basement).



INSPECTOR