
Appeal Decision

Site visit made on 2 December 2016

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 6 January 2017

Appeal Ref: APP/V5570/W/16/3158085

34 - 40 Exmouth Market, Islington, London EC1R 4QE

- 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 Debenham Property Trust against the decision of the Council of the London Borough of Islington.
 - The application Ref P2015/4927/FUL, dated 19 November 2015, was refused by notice dated 11 April 2016.
 - The development proposed is the creation of two roof terrace areas to nos. 38 & 40 on rear single storey flat roof with balustrade surrounding including two new rear doors with stairs to access each new roof terrace from 1st floor and installation of maintenance / emergency access ladder to the rear of no. 34 with a new access gate to the lower ground level rear fence.
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Decision

1. The appeal is dismissed insofar as it relates to the roof terrace area to No 40 on rear single storey flat roof with balustrade surrounding at 40 Exmouth Market. The appeal is allowed insofar as it relates to the roof terrace area to No 38 with balustrade surround including rear door with stairs to access the roof terrace and the installation of maintenance / emergency access ladder to the rear of 34 Exmouth Market with a new access gate to the lower ground level rear fence at 34 - 40 Exmouth Market, Islington, London EC1R 4QE in accordance with the terms of the application, Ref P2015/4927/FUL, dated 19 November 2015, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans, so far as they are relevant to that part of the development hereby permitted: 3840/EXM/1001; 3840/EXM/1002; 3840/EXM/1004; 3840/EXM/1005; 3840/EXM/1006; 3840/EXM/1007; 3840/EXM/1008; Site Plan (Revised 11.02.16); Location Plan; Podium and Balustrade Proposals; (untitled) podium and balustrade specifications; and Proposed Access Ladder, Access Door and Ladder Guard.

Procedural Matters

2. The address of the appeal site in the banner heading above is taken from the Council's decision notice and the appellant's appeal forms which I consider to
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be a more accurate reflection of the appeal site location than that given on the original application forms. I have taken the development description set out on the Council's decision notice and the appellant's appeal form, rather than that from the planning application form, noting that a revised development description was agreed during the course of the application. I have therefore determined the appeal on that basis.

3. At the time of my visit, a door at first floor level at No 38 had been inserted to provide access to the roof area. Additionally, a set of timber framed steps with timber balustrades were also in-situ, and timber decking installed to the roof terrace area. Although I was not able to access No 40 or its external roof area at the time of my site visit, it was clear that a similar range of works had also been undertaken at that property. However, it is clear that elements of the work undertaken, particularly the stepped access from the rear of No 38 and the layout of the roof terrace area at No 38 do not tally with the details set out in the submitted plans. Therefore, for the avoidance of doubt, I confirm that my determination of the appeal is based upon the drawings submitted and not upon the works undertaken.
4. For the reasons that follow, I find the roof terrace area to No 38 with balustrade surround including rear door with stairs to access the roof terrace and the installation of maintenance / emergency access ladder to the rear of 34 Exmouth Market with a new access gate to the lower ground level rear fence to be acceptable. I am satisfied that these elements are clearly severable, both physically and functionally from the roof terrace area to No 40 on rear single storey flat roof with balustrade surrounding. I therefore intend to issue a split decision in the terms set out in my decision above.

Main Issue

5. The main issues are the effect of the proposed development on:-
 - The character and appearance of the Roseberry Avenue Conservation Area, and upon the setting of the nearby grade II* listed Church of Our Most Holy Redeemer; and
 - The living conditions of occupiers of adjoining properties, with particular reference to overlooking arising from the proposed roof terraces.

Reasons

Character and Appearance

6. The appeal site encompasses a total of four properties (Nos 34 – 40) on the south side of Exmouth Market. All have commercial uses at ground floor level, with residential accommodation across the three floors above. The rear of properties on the south side of Exmouth Market back onto Spa Fields Park, the south western corner of which is dominated by the imposing and substantial presence of the grade II* listed Church of Our Most Holy Redeemer.
7. At the rear, the ground floors of Nos 34, 36 and 40 extend to the rear of their plots, whilst that at No 38 stops short with a small, enclosed, ground level courtyard at the rear. Although the extent of rearward projections at ground floor level varies along the southern side of Exmouth Market, their upward extent is largely limited to just one storey. The exception however being No 40, which has a substantial, full-height and full-width projecting rear

- element, beyond which a further ground floor element extends to the rear boundary.
8. As a result of its generally larger proportions, I noted that the rear ground floor elevation of No 40 has a sizeable presence immediately adjacent to Spa Fields Park, more so than the smaller counterparts on properties elsewhere along this side of Exmouth Market. This combination of the greater height and additional bulk of No 40 when compared with the more low key nature of the rear of other properties along the terrace draws the observer's eye towards the appeal property. Whereas the extent of the terrace and balustrade at No 38 would be in line with those at Nos 34 and 36, and therefore set some way back from the end ground floor elevation, this would not be the case at No 40 where the balustrade would be mounted more prominently on the coping stone above the end elevation, directly adjacent to the park.
 9. The installation of balustrade atop the stone coping around the roof terrace, together with the type of domestic paraphernalia typically found on such terraces that would undoubtedly follow, would add to the already somewhat incongruous and prominent nature of the rear of No 40. The result would be a jarring visual counterpoint to the more discrete, low key roof terraces elsewhere along this part of Exmouth Market, and one that would fail to respond positively to the character and appearance of the host property, and to the terrace as a whole.
 10. Thus, for the reasons set out, I conclude that the proposed roof terrace and surrounding balustrade at 40 Exmouth Market would fail to accord with policies DM2.1 and DM2.3 of Islington's Local Plan: Development Management Policies (DMP) and policy CS9 of Islington's Core Strategy. In failing to respond positively to the character and appearance of the host property and to the terrace as a whole, I find that the proposal would cause harm to the character and appearance of the Roseberry Avenue Conservation Area and to the setting of the grade II* listed Church of Our Most Holy Redeemer. That harm however would, in the parlance of the National Planning Policy Framework (the NPPF), be less than substantial. Where less than substantial harm is identified, this harm should be weighed against any public benefits arising from the proposal. Any harm should require clear and convincing justification.
 11. This element of the proposal would provide outdoor amenity space for the occupiers of the first floor residential flat at No 40. I note too that it has been suggested that the installation of an enclosing balustrade would prevent users of the roof terrace sitting on the coping stones and looking over the edge of the terrace. However, these are private rather than public benefits and are not sufficient to outweigh the harm I have identified above, to which I am required to give significant weight. Thus, the proposal would also be contrary to the NPPF in this respect.
 12. I note that the creation of the roof terrace atop the existing ground floor rear element of No 38, together with the installation of railings on top of the existing stone coping and steps to access is not a matter of contention for the parties. In this respect, I agree with the Council's conclusion. I find that it would be a relatively unobtrusive alteration to the rear of No 38 that would not cause demonstrable visual harm, nor would it cause harm to the character or appearance of the host property, those adjoining it, the rear of this part of Exmouth Market or indeed to the Roseberry Avenue Conservation Area. For

similar reasons, I also conclude that this element of the proposal would not harm the setting of the grade II* listed Church of Our Most Holy Redeemer. This element of the proposal would therefore accord with DMP policies DM2.1 and DM2.3, or Core Strategy policy CS9 in this respect.

13. Turning to the remainder of the development, the proposed emergency access ladder would be positioned on the rear face of the ground floor extension at the rear of No 34. It would be positioned behind and between two of a number of large trees located along Spa Fields Park's boundary with Exmouth Market. Although I accept that these trees are deciduous, and therefore the level of screening they provide will vary with the season, I nonetheless find that their substantial trunks would divert attention from the ladder in views from the rear and offset its presence at the rear of No 34. Together with other sculptural and hard landscaping structures within the park, the black-painted ladder would blend into the rear elevations of Exmouth Market to the extent that it would not, in my judgement, be the highly visible, intrusive feature that the Council suggest.
14. Thus, I conclude that this element of the proposal would also avoid harm to the character and appearance of the host property, those adjoining it, the rear of this part of Exmouth Market and to the Roseberry Avenue Conservation Area. For similar reasons, I also conclude that it would not harm the setting of the grade II* listed Church of Our Most Holy Redeemer. There would, therefore, be no conflict with DMP policies DM2.1 or DM2.3 or Core Strategy policy CS9 in this respect.

Living Conditions

15. The roof terrace at No 40 would have an elevated position above the equivalent rooftops of Nos 34 – 36 and No 42, and the proposed roof terrace at No 38. Its position relative to properties at Nos 38 and 42 would also mean that there would be significant potential for users of the terrace to look down, back and across, adjacent terraces and towards the rear windows of adjacent properties. I agree that this would represent an invasive and unwelcome presence that would be harmful to the living conditions of occupiers of those nearby properties, and as such would be contrary to DMP policy DM2.1.
16. The relationship between the proposed roof terrace at No 38 and that at No 36 does not appear to be a point of dispute between the parties. I have not been presented with any evidence to conclude otherwise and, thus, I find that no harm would arise to the living conditions of adjoining occupiers from the proposals at No 38 in respect of overlooking. This element of the proposal would accord with DMP policy DM2.1.

Other Matters

17. I have noted the appellant's comments regarding the informatives set out on the Council's decision notice. These are, however, matters between the Council and the appellant which, other than the matter of access to / from the ladder which I have addressed below, do not fall before me to consider.

Conditions

18. I have considered the Council's list of suggested conditions in light of the Framework and Planning Practice Guidance. In addition to the time limit condition, I agree that a condition setting out the approved plans is necessary

in the interests of certainty. I have however modified this condition so as to ensure that it relates only to those parts of the proposal that I have allowed.

19. I note that the Council's condition 3 refers to the use of matching facing materials. However, I am satisfied that the submitted plans provide sufficient detail of the proposed finish and colour of the balustrade and ladder and that the plans condition would adequately deal with this matter. The matter of access to, and from, the maintenance / emergency ladder is a matter for the appellant and the Council. I note the Council's intention, expressed in their delegated report and on the decision notice, to deal with this matter by way of an informative, which I consider to be a more appropriate approach. I have not therefore imposed suggested condition 4.

Conclusion

20. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be dismissed insofar as it relates to the roof terrace area to No 40 on rear single storey flat roof with balustrade surrounding and allowed insofar as it relates to the roof terrace area to No 38 with balustrade surround including rear door with stairs to access the roof terrace and the installation of maintenance / emergency access ladder to the rear of 34 Exmouth Market with a new access gate to the lower ground level rear fence.

Graeme Robbie

INSPECTOR