
Appeal Decision

Site visit made on 12th December 2016

by Jonathan G King BA(Hons) DipTP MRTPI

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

Decision date: 31 January 2017

Appeal Ref: APP/X5990/W/16/3159367
23 Wilton Place, London SW1X 8RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Coulson against the decision of City of Westminster Council.
 - The application, Ref 16/03154/FULL, dated 7th April 2016, was refused by notice dated 14th June 2016.
 - The application was for planning permission for "*Variation of Condition 1 of the planning permission dated 17 December 2014 (14/09351/FULL) for the excavation to form basement beneath property and rear garden, external works including, rebuilding of modern rear extensions at lower ground and ground floor with a full width terrace at first floor level above and incorporating an internal lightwell, air conditioning plant to rear lightwell of lower ground floor, omission of the basement construction under the main house, omission of the glass floors to the new extension, new timber slatted screen and alterations to the terrace level at rear first floor level*", namely external alterations to rear closet wing in association with the installation of a lift."
 - The condition in dispute is No 1 which states that: *the development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.*
 - The reason given for the condition is: *For the avoidance of doubt and in the interests of proper planning.*
-

Decision

1. The appeal is allowed and permission granted for the variation of Condition 1 of the planning permission dated 17th December 2014 (12/09351/FULL) – details of which are contained in Appendix B to this decision - without complying with condition 1 attached to that planning permission, but subject to:
 - (a) the variation of condition 1 by way of its substitution with the wording included in Appendix A to this decision; and
 - (b) all other conditions previously imposed on permission 14/09351/FULL insofar as they are still subsisting and capable of taking effect.

Main Issues

2. The main issues in this case are whether the proposed variation to the development would:

- (a) preserve the listed building or its setting or any features of special architectural or historic interest which it possesses; and
- (b) preserve or enhance the character or appearance the Belgravia Conservation Area.

Background, procedural matters and clarification

3. The background to the application is a planning permission (ref 12/09109/FULL) and a listed building consent (ref 12/09110/LBC) which were granted in 2012 for substantial modification and extension works to the building. Variations to both with respect to the list of approved plans (of which there are many) were granted in 2014 (refs 14/09351/FULL and 14/09352/LBC). In the interests of clarity I set these out in Appendix B to this decision.
4. The application which is the subject of the present appeal described the proposed development simply as "*external alterations to rear closet wing in association with the installation of a lift*". However, the Decision Notice describes the application in the form given in my preamble above.
5. Neither the appeal form nor the appellant's statement of case makes any reference to the application being for the variation of a condition, nor does the former say that the description of the development had changed since submission of the application. However, in email correspondence with the Planning Inspectorate, the appellant's agent has stated that he could confirm that, although the application was submitted as a stand-alone project initially, Westminster Planning Authority had requested that it "be amended to a Variation to Condition 1 application due to its reliance on the previously approved scheme which is now at an advanced stage". I take it from this that the appellant was content for the application (and hence the appeal), to be dealt with on this basis. I have consequently amended the description of the application in the preamble to this decision.
6. Notwithstanding the appellant's tacit agreement to the approach taken by the Council, its approach has brought about practical procedural complications. Condition 1 contains only a simple requirement for the development to be carried out in accordance with drawings and documents listed elsewhere in the decision notice, or as otherwise approved. Neither in the application nor in the appeal has a substitute condition 1 been proposed by either party. No request has been made to substitute or amend the list of approved drawings or documents as if they were included in the condition - even though it would appear from an examination of the earlier planning permissions, that this is what the Council has done in the past. Moreover, the Council's description of the development included in its revised wording amounts effectively to an alteration in the description of the development already permitted by the simple addition of the words "*namely external alterations to rear closet wing in association with the installation of a lift*".
7. It is not within my power to alter or add to the description of an already permitted development within the context of an appeal against the refusal to vary a specific condition. Nor, it seems to me, would it be proper to amend the list of approved plans and documents which, though referenced by condition 1 do not actually form part of that condition and are not referred to in the application.

8. My solution to this awkward – and in my view, entirely avoidable - situation is to take a pragmatic approach: to address the appellant's wish to carry out work to alter the closet wing in association with the installation of a lift, while considering the matter as if it were related to an application to vary condition 1 of the 2014 permission. I have therefore varied the condition by incorporating into it the existing approved drawings and documents, together with the addition of a schedule of the plans relevant to the revised works. I see no reason to refer separately to the nature of those works, which are perfectly clear from the plans.
9. At the same time the planning permission was refused, listed building consent (LBC) was also refused in the same terms. I recognise that the issues relating to the LBC application are the same or similar to those relating to the planning application. However, no appeal has been made in relation to the comparable condition on that consent and the matter was not addressed in the appellant's statement of case. The LBC process, though clearly integral to the planning process, is a separate legal procedure. I appreciate that the appellant may be caused to expend additional resources in addressing the issue, but in the absence of a specific appeal, I have no alternative but to confine myself to considering the planning appeal only.

Reasons

The area

10. Wilton Place is situated within the Belgravia Conservation Area (CA) which comprises an extensive area lying between Knightsbridge to the north and Buckingham Palace Road to the south; and from the Westminster City Council boundary to the west almost as far as Buckingham Palace Gardens to the east. It is broadly centred around Belgrave Square and Eaton Square. Wilton Place leads from Wilton Crescent towards Knightsbridge, but the CA stops a little short. Most of the western side and about half of the eastern side of the street are included, as is most of Kinnerton Street, to the rear of the appeal property.
11. Belgravia was developed in the late Georgian period in a formal style incorporating squares, crescents and terraces displaying classically-inspired architecture representative of the era. The western side of Wilton Place that includes the appeal property is typical of the style. Many of the principal facades have been altered to some extent, for example at roof level and in the detail of the windows. Nonetheless, the front of the terrace as a whole largely retains much of the characteristic regularity of its design. At the rear, the terrace has been extensively and inconsistently modified.
12. At its margins, the CA also includes a number of streets having a less grand appearance. One such is Kinnerton Street, which includes mostly 2- and 2.5 - storey buildings of varying design.

The building

13. The appeal property is a grade II listed building (LB), lying within the listing of Nos 9-12 and 14-28 Wilton Place consecutively. These are described as: *a row of early 19th century houses, in brick with channelled stucco to the ground floor; slate mansards to Nos 15 to 24 and No 27. Other than Nos 14 and 25 to 28, which are of 5 storeys, they are of 4 storeys, with attic and basement. Each house is 2 windows wide, and having round headed entrances with*

various panelled doors and fanlights. On the first floors are wrought iron balconies of "Gothick" design except to Nos 25, 26 and 27, which have distinctive "lyre" pattern. They have square gauged headed sashed windows, some with glazing bars. There are also some French casements to first floor and area railings. No 25 has a GLC plaque commemorating the residence of George Bentham the botanist.

14. No 23 is not particularly identified in the listing as having any individual features of note.
15. At the time of my visit, extensive work was being carried out at the property.

The approach to decision taking

16. The National Planning Policy Framework (NPPF) defines both Conservation Areas and Listed Building as "designated heritage assets".
17. The Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) contains the following statutory duties in relation to them:

Section 66(1) - In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Section 72(1) - In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2)3, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

18. The NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through (amongst other things) alteration of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm to a grade II listed building should be exceptional. Where a proposed development will lead to substantial harm to or total loss of significance of a heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss or where a number of specific circumstances apply – none of which are relevant to the present case. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Analysis

19. The proposed alterations to the development permitted previously affects only the back of the appeal property. The formal appearance of the front of the building and its neighbours included in the listing would remain unaffected. Moreover, the grant of the earlier permissions indicates that the Council has accepted that substantial work affecting the appearance of the rear of the building is acceptable in principle. It is the detail of the present proposal to which it raises objection.

20. With respect to the LB, I note that the formal listing makes no reference to the rear of the terrace. That does not mean that the rear is of no importance or that it does not contain features of special architectural or historic interest, but it does suggest that it may be of lesser importance than those elements that are described.
21. The previously existing rear elevation had, on its top 3 floors, symmetrical pairs of windows: square on the top floor; smaller, with a slight horizontal emphasis on the floor below; and larger, with a marked vertical emphasis on the next. Although differing in detail, these pairs generally reflect those that are found on these floors at the front of the property. Below that level, all three remaining floors have been radically modified over a period of time, notably by the construction of a small closet wing with a flat roof level with the cill of the left-hand window of the floor above; a half-width terrace at first floor level extending considerably further to the rear; and a full width extension even longer, at ground and lower ground levels. Over these three lower floors, any symmetry that may once have existed has been lost.
22. The development already permitted radically alters the lowest 3 floors, but retains the flat roof of the shallow closet wing at the top of the third level. The currently proposed alterations indicate raising this small section of roof by approximately 1 metre. In so doing, it would cut across the existing left hand window to the floor above. The intention is to reconfigure the window with a raised cill, while retaining its head, matching that of the unaffected right hand pair. The Council's particular objection relates to the height and positioning of the roof and the effect on the window and loss of symmetry. In its view, this would harm the special architectural and historic appearance of the LB and fail to preserve or enhance the character and appearance of the CA. These objections relate directly to the statutory duties contained in sections 66(1) and 72(1) of the Act. It takes the view that the alteration amounts to "to less than substantial harm" to the significance of a designated heritage asset for the purposes of applying the approach to decision-making set out in the NPPF.
23. Views towards the rear of the terrace are limited to those from Kinnerton Street, and are partial. Nonetheless, it is plain that it has over a considerable period of time been substantially modified, and that these modifications vary greatly between the individual houses. Notably, it is apparent that the various closet wings that have been added are inconsistent in height, depth and in detailed design. From photographs provided by the appellant, it is clear that some, including at Nos 24, 25 and 26, have involved the complete removal of windows. Another, at No 15, has involved raising the height of a cill.
24. It is arguable, in my view, that the inconsistent extensions, some of which have been granted permission and others which may be historical, together contribute to the character of the rear of the terrace. To my mind, irrespective of how the terrace may have appeared when first built or how the modifications came about, or when, the visual variety of approach is now as much part of the character of the LB as the predominant regularity of the front. That is not to say that any alteration to the rear of the terrace would be acceptable. But, in this case, where the change would be minor, I perceive no harm to the LB.
25. I conclude that, notwithstanding that the proposed modification would lead to a degree of asymmetry at the rear of the appeal property, by reference to the statutory duty, there would be no significant effect on any features of special

architectural or historic interest which the LB possesses. The proposed modification should not be categorised as leading to either “substantial” or “less than substantial” harm to the significance of the LB. Rather there would be no material harm to its significance. As such, there is no requirement to carry out a balancing exercise as indicated in the NPPF.

26. As for the effect on the CA, views towards the rear of the appeal property are restricted, though the upper parts may be seen, notably from a partial gap on the bend in Kinnerton Street occupied by a mature tree. On the day of my visit, its rear elevation was partly obscured by scaffolding. I was not able to tell beyond doubt whether the truncated window would be visible, but there must be some doubt about whether all of it would be seen from any viewpoint in the CA, owing to the angle of view and the presence of the closet wing. In my opinion, any view would simply reveal another example of the variability in the appearance of the back of the terrace and the inconsistency in the height of the closet wings. The immediate context would be Kinnerton Street, which has a far less regular and formal character than the front of the terrace and the principal streets and spaces in the CA. In that context, the modifications to the rear of the terrace would not appear out of place or detract from the character or appearance of the CA or the setting of the LB to any material degree.
27. I conclude with respect to the statutory duty that, while the proposed modification would not enhance the character or appearance of the CA, it would at least preserve it. As with the LB, it should not be categorised as leading to either “substantial” or “less than substantial” harm to the significance of the CA. Rather there would be no material harm to its significance; and so again I am not required to carry out a balancing exercise.
28. The Council has referred to a number of relevant policies in its City Plan 2016 (LP), including DES1 *Principles of Urban Design and Conservation*; DES5 *Alterations and Extensions*; DES9 *Conservation Areas*; DES10 *Listed Buildings*; S25 *Heritage* and S28 *Design*; and to its Supplementary Planning Guidance (SPG) *Repairs and Alterations to Listed Buildings*. In reaching my conclusions, I have had regard to the specific requirements and objectives of the policies and the guidance of the SPG, insofar as it remains relevant in view of it pre-dating both the current development plan and the NPPF. I am content that these have been effectively addressed in the preceding sections of this decision and that the development is in broad conformity with them.
29. I conclude overall that a variation to condition 1 of permission 14/09351/FULL, intended to permit additional works to the closet wing is acceptable and that permission should be granted.

Other matters

30. The raising of the height of the closet wing is to accommodate lift machinery. Although the Council raises the question of the potential of the proposed lift to cause harm to the living conditions of adjoining residents by reason of noise and / or vibration, the recommendation of the case officer was made on design grounds only and the matter of residential amenity did not form a reason for refusal. Rather, an advisory note was added indicating that, had the application been considered acceptable, an acoustic report would have been required to demonstrate that the proposed lift would not cause a noise nuisance or vibration to the adjoining properties.

31. However, the Council has not followed this up in the context of the appeal and has not put forward a condition to address this issue. As part of his appeal submissions, the appellant has submitted a letter from a lift installer that indicates that the noise and vibration levels would be consistent with the latest harmonised European standards. I have no evidence to indicate that the proposed lift would be likely to cause a problem. In the circumstances, I do not propose to consider the matter further.

Conditions

32. The Council's decision Notice lists all of the plans submitted with the application. Some are existing or consented plans and elevations, or location / site plans or photographs. In my view it is not necessary for the substitute condition 1 to refer to these. I have therefore included in it only those plans necessary to illustrate the proposed additional development.
33. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, in addition to a substitute condition 1, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Overall conclusion

34. Having regard to the foregoing, I conclude overall that the appeal should be allowed, subject to the conditions indicated in my formal decision.

Jonathan G King

Inspector

--o0o--

APPENDIX A

Substitute condition 1 referred to in the formal decision.

1. The development hereby permitted shall be carried out in accordance with the drawings and other documents listed in permission number 14/09351/FULL granted on 17th December 2014, as amended by the following drawings and documents:

257-01 Design and Access Statement – Lift;
57-01 PL-04_06 Proposed Plans;
257-01 PL-07 Proposed Sections;
257-01 PL-08 Proposed Elevations

together with any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions in this decision.

--o0o--

APPENDIX B

Description of development - planning permission 14/09351/FULL

Variation of Condition 1 and Condition 8 of the planning permission dated 18 December 2012 (12/09109/FULL) for the excavation to form basement beneath property and rear garden, external works including, rebuilding of modern rear extensions at lower ground and ground floor with a full width terrace at first floor level above and incorporating an internal lightwell, air conditioning plant to rear lightwell of lower ground floor, namely omission of the basement construction under the main house, omission of the glass floors to the new extension, new timber slatted screen and alterations to the terrace at first floor level.

Condition 1 - planning permission 14/09351/FULL

The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

The plans listed on the decision notice for 14/09351 were as follows:

Plan Nos;

Originally approved under permission 12/09109/FULL

PA01, PA02, PA10, PA11, PA12, PA13, PA14a, PA15, PA20A, PA21A, PA22, PA23A, PA24A, PA25, PA30, PA31, PA32, PA33, PA34, PA35, PA40A, PA41A, PA42, PA43A, PA44A, PA50, PA51, PA52, PA53, Photographic references dated September 2012, Historical Impact Assessment dated September 2012, Planning Policy Review Statement dated September 2012, Schedule of Works dated September 2012, Planning Design and Access Statement dated September 2012, Environmental Noise level Survey and Plant Noise Analysis dated 10 September 2012, manufacturer's details of air conditioning unit and Construction Management Statement.

As amended by virtue of permission reference 14/09351/FULL:

PA01, PA02, PA10, PA11, PA12, PA13, PA14A, PA15, PA20D, PA21C, PA22A, PA23C, PA24D, PA25B, PA30C, PA31A, PA32, PA33, PA34, PA35B, PA40D, PA41C, PA42A, PA43C, PA44D, PA50, PA51, PA52, PA53, Photographic references dated September 2012, Historical Impact Assessment dated September 2012, Planning Policy Review Statement dated September 2012, Schedule of Works dated September 2012, Planning Design and Access Statement dated August 2014, Environmental Noise level Survey and Plant Noise Analysis dated 10 September 2012, manufacturer's details of air conditioning unit and Construction Management Statement dated August 2014 (ref JNY7737/01 and Letter dated 2 September 2014 from Applied Acoustic Design (12387/003/Rev A/pw)).

--o0o--