
Appeal Decisions

Site visit made on 24 January 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 15 March 2017

Appeal A - Ref: APP/X5990/W/16/3162008 18-20 York Buildings, London WC2N 6JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by CIP Management Sa against the decision of City of Westminster Council.
 - The application Ref 16/07886/FULL, dated 17 August 2016, was refused by notice dated 4 October 2016.
 - The application sought planning permission for use of building to create 11 residential units of one studio flat, 3 x 1 bed units, 4 x 2 bed units and 3 x 3 bed units. External works include a new extension and terraces at rear third floor level and at fifth floor level (front and side) and provision of new ground floor entrance and new front facade without complying with a condition attached to planning permission Ref 14/11564/FULL, dated 25 April 2016.
 - 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.
-

Appeal B - Ref: APP/X5990/W/16/3161508 18-20 York Buildings, London WC2N 6JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by CIP Management Sa against the decision of City of Westminster Council.
 - The application Ref 16/08368/ADFULL, dated 30 August 2016, sought approval of details pursuant to condition No 9 of a planning permission Ref 14/11564/FULL, granted on 25 April 2016.
 - The application was refused by notice dated 4 October 2016.
 - The development proposed is use of building to create 11 residential units of one studio flat, 3 x 1 bed units, 4 x 2 bed units and 3 x 3 bed units. External works include a new extension and terraces at rear third floor level and at fifth floor level (front and side) and provision of new ground floor entrance and new front facade.
 - The details for which approval is sought are: detailed drawings of windows, doors and ground floor front elevation pursuant to Condition 9 (parts a, b, c).
-

Decisions

Appeal A - Ref: APP/X5990/W/16/3162008

1. The appeal is dismissed.

Appeal B - Ref: APP/X5990/W/16/3161508

2. The appeal is dismissed.

Appeal A

Procedural Matters and Background

3. The appeal relates to an application to make a minor material amendment to the original planning permission by revising two of the approved plans. The revisions incorporate a change from a window to a door to enable the retention of the door, already in place, opening onto the fourth floor flat roof area at the rear of the building.
4. The appellant has also submitted amended plans in the course of the appeal, Refs 8326/6011 Rev P8 and 8326/6012 Rev P6, to reflect the fact that, in addition to the change of a window to a door referred to above, the parapet, adjoining the fourth floor flat roof area at the rear of the building, has been increased in height, as built. The Council refers to the increased height of the parapet in its submissions and has had the opportunity to comment on the amended plans. A third party has also commented on the proposed changes. I do not believe that any party would be unfairly prejudiced by my determining the appeal with regard to the amended plans and I have done so on that basis.
5. Normally, s73 and by implication s73A of the Town and Country Planning Act cannot be used to make minor material amendments if there is no relevant condition in the permission listing the originally approved plans.¹ Though the plans are not listed within the body of Condition 1 itself, it refers to drawings and other documents listed in the decision letter. Those plans and documents are listed in the schedule of the Council's decision letter. Therefore, I consider the condition could be amended via that procedure.
6. Since the determination of the application the City Council has adopted two sets of revisions to the Westminster's City Plan: Strategic Policies (adopted 2013). They comprise a Basement and Mixed Use Revision (adopted 13 July 2016) and Special Policy Areas and Policies Map Revision. The revisions were incorporated into the latest version of Westminster's City Plan (WCP) adopted on 9 November 2016. The main parties have had the opportunity to comment on any relevant policies during the course of the appeal. I am obliged to determine the appeal on the basis of the current development plan.

Main Issue

7. The main issue is the effect of proposed amendments to the approved plans on the living conditions of future occupiers of Ingram House at 13-15 John Adam Street, with particular regard to privacy and overlooking.

¹ Planning Practice Guidance: Paragraph: 018 Reference ID: 17a-018-20140306

Reasons

8. The appeal site at 18-20 York Buildings comprises a six storey building with a mansard roof, near Charring Cross Station. It lies within the Adelphi Conservation Area but is not listed. The appellant has planning permission to convert the former office building into 11 residential flats.
9. The rear of the appeal site is in close proximity to Ingram House, 13-15 John Adam Street and another building at 2-3 Robert Street, both of which have planning permission for conversion from offices to residential flats.
10. The Council is concerned that the change from a window to a door in combination with the raising of the parapet, both of which have already taken place, would enable future residents of the proposed flat to access the fourth floor roof area.
11. That flat roof area is immediately adjacent to a window, which is to serve a bedroom at one of the flats at Ingram House, which is currently undergoing the process of conversion. The Council refer to that flat and window as on the second floor of Ingram House but it was confirmed to me on my site visit by the agent, acting for the owner, that it is on the third floor. The flat roof area is a long narrow strip in front of the rear glass door and windows of the fourth floor residential unit. It would be accessed from the glass sliding door currently in place in the bedroom of the flat. The increased height of the parapet, gives the area the appearance of a balcony or small terrace. It abuts the side elevation of Ingram House.
12. It was clear from my site visit to the relevant flats in both properties, that someone standing on the flat roof area would be able to look directly into the bedroom window of the flat at Ingram House, which is to the northwest and oriented side-on to the flat roof. Occupiers of the flat would also have the perception of being potentially overlooked by the presence, in such close proximity, of what appears to be a small terrace or balcony. The owner of Ingram House has also objected to the proposed amendments for reasons of privacy and overlooking.
13. Though not referred to in the Council's reason for refusal, there would also be an effect or perceived effect, though to a lesser extent, on the privacy of future occupiers of 2-3 Robert Street. The planning permission for conversion of that property to residential use is referred to in the Council's statement of case. A number of the rear windows of that building face the 4th floor flat roof area of the appeal site. Whilst it is accepted that the windows of both properties would face each other in any case, and though the distances involved are further than from the window at Ingram House, the proximity of that building is also a relevant consideration and influenced the Council's consideration of the original scheme.
14. Condition 11 of the original planning permission, Ref 14/11564/FULL, states:
'You can only use the third floor terrace as shown on drawing 8326/6005./Rev. P4 for sitting out or for any other purpose and the glazed screen hereby approved must be installed prior to the use of the third floor terrace and thereafter permanently maintained. The remainder of the third floor flat roof and the fourth floor flat roof must not be used for sitting out or for any other

purpose. You can however use the area of flat roof to escape in an emergency or for maintenance purposes.'

15. It is apparent, therefore, that the proximity of adjoining buildings was considered in relation to the terraces and flat roof areas. A condition was imposed to attempt to ensure that the living conditions of future occupiers of those properties would not be compromised. The reason given for that condition is to protect the privacy and environment of people in neighbouring properties.
16. The appellant submits that condition 11 would prevent use of the fourth floor flat roof area by future residents as a terrace. It is suggested by the appellant that the motivation for the change to a door and the raising of the parapet is to facilitate access for maintenance, which is permitted by condition 11.
17. Whilst I note the Health and Safety Executive (HSE) guidance referred to by the appellant, it offers a range of alternatives, albeit hierarchical, to enable inspection and maintenance work to be carried out safely. Given the approved parapet and window access, together with the size of roof area, it should be possible to devise a safe methodology for carrying out inspections and maintenance without the changes that the appellant holds are necessary.
18. The HSE guidance also suggests that working at height should be avoided where possible. The appellant's proposed inspection regime of monthly visits from September to March and visits every two months from April to August to inspect the roof, gutter, rainwater outlets and the adjoining structure, seems excessive. No explanation has been provided to explain the necessity for such regular visits and, given that access would have to be arranged through a private flat, it is not clear how such a schedule would be successfully implemented in practice.
19. The appellant refers to measures to ensure that the roof terrace is not accessed by future occupiers. They are: not including the roof area in the demise when the flat is sold; and not giving the occupier access to the master key for the door. It is suggested that the key would be held by the relevant management company. I am not persuaded by the practicality or enforceability of such arrangements contained in a private management agreement, even if subject to condition. The coarse pebbles on the roof do not prove a substantial obstacle to its use as a terrace and that surface could be changed in the future.
20. Moreover, given that condition 11 permits use of the roof as a means of emergency escape, replacing an openable window with a locked door and depriving the occupants of the flat of a key would not be in the interests of their health and safety.
21. Overall, therefore, I am not convinced that the measures detailed by the appellant to prevent future occupiers from using the area as a terrace would be effective. The dual effect of legitimising the installation of the door and raising the parapet would create a permanent situation which would facilitate potential use of the area as a terrace. It would also make condition 11 more likely to be breached. The Council makes clear that the proximity of the adjoining buildings also due for residential conversion, was carefully considered when the scheme was originally evaluated. It was permitted on the basis that the combination of conditions and appropriate design disincentives would protect

the privacy of neighbouring occupiers, particularly with regard to the third floor terrace and other roof spaces.

22. Paragraph 9.234 of saved Policy ENV 13 of the Westminster Unitary Development Plan (UDP)² recognises that not all residents have access to a garden and that: *'As a result, many residents want to create private outdoor space on existing roofs or on the roofs of extensions. Such proposals can often overlook adjoining windows and gardens resulting in a loss of privacy to neighbours.'* That clearly anticipates the type of situation that could arise if the appeal were allowed.
23. The above factors lead me to conclude that the proposed amendments to the approved plans would be likely to harm the living conditions of future occupiers of Ingram House at 13-15 John Adam Street, with particular regard to privacy and overlooking. Modifying the plans associated with the condition would conflict with Policy S29 of WCP which states that proposals that result in an unacceptable material loss of residential amenity will be resisted. It would also be contrary to saved policy ENV 13 of the UDP which states that development should not result in a significant increase in the sense of enclosure or overlooking.

Other Matters

24. The appellant refers to an informative on the Council's decision notice stating that, as the original planning permission was subject to a s106 Agreement, a Deed of Variation to that agreement would be required to accompany any application to vary conditions. The appellant states that the Deed of Variation will be forwarded when signed by all parties. Though I have not received that document, as I am dismissing the appeal it would not be required.

Appeal B

Procedural Matters and Background

25. As stated in the linked Appeal A, since the determination of the application the City Council has adopted two sets of revisions to the Westminster's City Plan: Strategic Policies (adopted 2013). They comprise a Basement and Mixed Use Revision (adopted 13 July 2016) and Special Policy Areas and Policies Map Revision. The revisions were incorporated into the latest version of Westminster's City Plan (WCP) adopted on 9 November 2016. The main parties have had the opportunity to comment on any relevant policies during the course of the appeal. I am obliged to determine the appeal on the basis of the current development plan.

Main Issue

26. The main issue is whether sufficient information has been provided in respect of windows, doors and the ground floor front elevation to ensure that the character and appearance of the Adelphi Conservation Area is preserved or enhanced.

Reasons

27. The appeal site lies within the Adelphi Conservation Area (ACA). The reason given for condition 9 is to make sure that the appearance of the building is

² Adopted 2007

suitable and that it contributes to the character and appearance of this part of the ACA.

28. The condition expressly states that detailed drawings are required. With regard to the ground floor front elevation, according to the appellant's statement of case, the drawings submitted with the application, Refs 8326/C(32)105/Rev C1 and 8326/C(32)106/Rev P2, consisted of front and rear elevations of the entire building, apparently at A3 scale. It seems to me that as the condition specifically requests a detailed drawing of the ground floor front elevation, such a submission is not sufficient.
29. The Council refers to the ground floor front elevation as being the subject of detailed design alterations in respect of brick detailing above the doors and windows, which has not been disputed. That makes the submission of suitably detailed drawings essential. Moreover, the sensitive location of the site within the ACA increases the need for sufficient detail to be provided, as supported by the reasoning for the condition.
30. The appellant states that they received a request from the Council following the initial submission for '*existing and proposed plans of ground floor front elevation*'. It appears that in response, two floor plans were submitted rather than plans of the ground floor front elevation. Though the application was validated, I consider that the plans submitted are inadequate.
31. The Council were also dissatisfied with the level of information provided in respect of the windows and doors. Again, whilst I note that the appellant says that similar levels of information have been provided with other applications and accepted, I do not consider that given the location within the ACA the submitted drawings and documentation are sufficient.
32. Overall therefore, I conclude that insufficient information has been provided in respect of the details of windows, doors and the ground floor front elevation to ensure that the character and appearance of the Adelphi Conservation Area is preserved or enhanced.
33. Discharging the condition on the basis of the information supplied would be contrary to Policies S25 and S28 of WCP and saved Policies DES 1, DES 5, DES 6 and DES 9 of the UDP which, amongst other things, recognise Westminster's historic environment, seek to preserve or enhance the character and appearance of conservation areas and require that development incorporates exemplary standards of sustainable and inclusive urban design and architecture.

Conclusions

34. For the reasons given above, and having regard to all other matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

Jonathan Tudor

INSPECTOR