
Appeal Decision

Site visit made on 25 July 2017

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 07 August 2017

Appeal Ref: APP/X5990/W/17/3175247

138 Upper Floor, Ebury Street, London SW1W 9QQ

- 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 Ms Gemma Dreelan against the decision of City of Westminster Council.
 - The application Ref: 16/09669/FULL, dated 10 October 2016, was refused by notice dated 3 February 2017.
 - The development proposed is the installation of plant equipment and acoustic enclosure to the rear roof terrace above the ground floor apartment.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council confirmed that since the determination of the planning application, a consolidated version of the Westminster's City Plan: Strategic Policies was adopted in November 2016. The policies contained within this plan have replaced those referred to within the Council's decision notice. However, the Council has further confirmed that the policy numbering and content referred to within the decision notice remains unchanged. As such, I do not consider that the interests of any parties will have been prejudiced by taking these policies into account. I have therefore dealt with the appeal on this basis.

Main Issues

3. The main issues of the appeal are:
 - (i) whether the proposal preserves or enhances the character or appearance of the Belgravia Conservation Area; and
 - (ii) the effect of the proposal on the living conditions of the neighbouring residential occupiers, with particular regard to noise and vibration.

Reasons

The Conservation Area

4. The appeal property consists of the upper floor flat of 138 Ebury Street. The site is part of a wider terrace of 18th century stucco rendered dwellings and is located within the Belgravia Conservation Area (the Conservation Area). A

conservation area audit has been provided by the Council¹. The area around Ebury Street has a mixed townscape, with a number of independent shops and cafes being evident. From information contained within the audit, and observations made during the site visit, the main significance of the Conservation Area in this particular location relates to the coherence of architectural detailing and materials and their overall setting within the street scene.

5. Due to the proposed location of the site in the Conservation Area, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
6. I am mindful of the fact that the site has been the subject of a previous refusal for planning permission² for a similar scheme and a dismissal at appeal³. As such, I note that the appellant has aimed to address the reasons for refusal in the subsequent planning application which was refused and is the subject of this appeal. From observations made during the site visit, it is apparent that the equipment relating to the initial planning application and appeal has been installed on an area of flat roof above the second floor landing. From the evidence submitted by the Council, it is understood that this is the subject of an ongoing enforcement investigation. This is a separate process and is not a material consideration in the determination of the appeal before me.
7. The proposed equipment and acoustic enclosure is proposed to be located at the rear of the building at first floor level, beyond the metal railings at the end of the wooden decked outdoor terrace. Additional screening is proposed in the form of landscaping. Whilst a photomontage has been supplied in the submitted Design and Access Statement⁴ limited details have been provided in relation to the scale and nature of the screening. The appellant contends that the setback location beyond the parapet wall would enable the enclosure to be partially obscured from view. Given the relatively low height of the parapet, it is not considered a significant reduction in visibility of the enclosure would occur.
8. In relation to the proposed use of a timber acoustic enclosure, it is noted that this is necessary to mitigate any noise impact. There is no evidence before me to doubt the efficiency of the enclosure. Nevertheless, the overall footprint of the proposal, when compared to the previous scheme, is significantly larger. No substantive information has been provided in relation to the increase in size or whether the use of a more modest enclosure would be feasible.
9. The appellant contends that the timber design of the enclosure would be well assimilated into the wider terrace setting. It is accepted that both the decking on the host terrace and the hand rail around the metal railings are both constructed from timber. The adjacent terraces also are constructed from timber decking. However, no timber structures of a similar scale and mass were evident in proximity to the host terrace or building.

¹ City of Westminster Conservation Area Audit – Belgravia. Consultation Draft 2013

² Council reference 16/02295/FULL

³ Appeal reference APP/X5990/W/16/3151332

⁴ 138 Ebury Street Design & Access Statement Revision B, October 2016

10. My attention has also been drawn to an air conditioning unit to the rear of a second floor flat at 130 Ebury Street⁵. However, I have little information relating to the particular circumstances of this development and as such, a comparison is of limited relevance in this instance. Accordingly, I have considered the appeal before me on its individual merits.
11. It is acknowledged that views of the proposal from public vantage points would be limited given the proposed location. Nonetheless, despite the amended location and screening, the proposal would be of a significant scale in a prominent location at the rear of the terrace. As such, it would be visible from the rear windows and gardens of a number of dwellings on Burton Mews and from some locations on South Eaton Place. Despite the lack of views from within the public realm, the requirement for new development to preserve or enhance the character or appearance of the Conservation Area applies with equal force whether or not the proposal is available to public view.
12. For the purposes of the Framework, the Conservation Area is a designated heritage asset. Within the overall context, it is considered that the proposal would lead to less than substantial harm to the significance of the Conservation Area. Paragraph 134 of the Framework requires that such harm be weighed against the public benefits of the proposal, but in the context of the requirement of paragraph 132 that great weight should be given to an asset's conservation.
13. The proposal is clearly of benefit to the occupier of the upper floor Flat of 138 Ebury Street, but as a public benefit this carries very little weight given that there is no indication in the evidence before me that the proposal is the only available effective means of providing adequate heating and cooling. Accordingly, it is considered that the public benefits of the proposal are very limited and do not outweigh the identified material harm to the designated heritage asset. The proposal is therefore contrary to the historic environmental policies contained within the Framework.
14. Despite the use of the timer enclosure, the proposal is found to be inimical to the relatively attractive residential environment of the surrounding locality. Consequently, the proposal fails to preserve or enhance the character or appearance of the Conservation Area. The proposal is therefore contrary to Policies S25 and S28 of the Westminster City Plan 2016 (the WCP) and Policies DES1, DES5, DES6 and DES9 of the Westminster Unitary Development Plan 2007 (the UDP). When taken together these policies, amongst other things, seek development to be of a high quality design which is of an appropriate scale, prominence and design that reflects the style and details of buildings. Development should also not have an adverse impact on the architectural character of a building and should preserve the significance of conservation areas.

Living Conditions

15. Paragraph 123 of the Framework states that planning policies and decisions should avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development. In addition, Policies S29 and S32 of the WCP and Policy ENV 6 of the UDP, amongst other things, seek that new development does not result in an unacceptable loss of residential

⁵ Council reference 04/04411/FULL

amenity. Policy ENV 7 of the UDP also requires applicants to submit an acoustic report in order to demonstrate compliance with the relevant noise standards detailed within the policy.

16. Neighbouring dwellings and outdoor amenity space is in proximity to the proposed location of the development. Due to the presence of outdoor seating, domestic paraphernalia and planting, observations made during the site visit confirm that the adjacent outdoor amenity space appears to be regularly used by the neighbouring occupiers.
17. It is acknowledged that during the day time, noise levels around the appeal site are likely to be higher than early evening and night time. As such, any noise generated by the proposal may not result in an impact on the living conditions of the adjoining occupiers. However, later in the evening or during weekends and bank holidays, vehicle noise from the surrounding road network and commercial units is likely to be reduced. It is at these times, particularly during the summer months or when the weather is fine, that residents living in proximity of the site might reasonably expect to be able to open their windows or make use of their outdoor amenity space whilst enjoying a reasonable degree of peace and quiet.
18. As a result of the proximity to neighbouring residential occupiers' windows and outdoor amenity space, an acoustic report⁶ was submitted with the initial planning application. Following the refusal of this planning application, and to reflect a change in location of the proposal, a revised report⁷ was submitted with the application to which the appeal before me relates.
19. It is noted that sections 3 and 4 of the revised report do not appear to have been updated, with particular regard to the new location of the proposal. Despite figure 2 on page 4 of the report illustrating the new location, section 3 on page 3 makes reference to the location as being the flat roof above the second floor landing. Section 4 of the report also makes reference to measurement being made at a single location on scaffolding some 1.5 metres from the flat roof where the proposed unit is to be installed.
20. Having regard to the available information, it is considered that insufficient evidence has been submitted to enable me to conclude whether the proposal would materially harm existing residential amenity, with particular regard to noise and vibration. Accordingly, the proposal therefore conflicts with the relevant provisions of Policies S29 and S32 of the WCP, Policies ENV 6 and ENV 7 of the UDP.

Conclusion

21. For the above reasons, and having regards to all matters raised, I conclude that the appeal should be dismissed.

Helen Cassini

INSPECTOR

⁶ Ion Acoustics 138 Ebury Street Condenser Units Noise Assessment Rev A925/R01 October 2015

⁷ Ion Acoustics 138 Ebury Street Condenser Units Noise Assessment Rev A925/R01a April 2017