
Appeal Decision

Site visit made on 30 August 2017

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 07 September 2017

Appeal Ref: APP/X5990/W/17/3175178

Flat 1, 10 Westbourne Terrace, LONDON, W2 3UW

- 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 Mr Lateef Adegoke against the decision of City of Westminster Council.
 - The application Ref: 17/00670/FULL dated 27 January 2017, was refused by notice dated 3 April 2017.
 - The development proposed is temporary change of use from Use Class C3 (flat) to Use Class C1 (short-term let).
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider there are three main issues in this case: Firstly, the effect of the proposed change of use on the supply of permanent residential accommodation in Westminster, and secondly; the effect of the proposed change of use on the living conditions of neighbouring residents with regard to noise and other disturbance, and thirdly, the effect on the special architectural and historic interest of the Grade II listed building and the character and appearance of the Bayswater Conservation Area.

Reasons

3. No 10 Westbourne Terrace is a Grade II listed building, being part of an impressive terrace of similar tall stuccoed houses within the Bayswater Conservation Area. The appeal relates to the basement level flat accessed from the pavement 'area'. The rest of the building is divided into flats. Permission is sought for a temporary change of use (five years) to allow the flat to be let on a short-term basis.

Effect on supply of permanent residential accommodation

4. Section 25 of the *Greater London Council (General Powers) Act 1973* works within the current planning system and deems that the use of residential premises as temporary sleeping accommodation in Greater London is a material change of use. This brings such changes of use within the definition of 'development' and means that they require planning permission. The purpose behind the provision was to protect London's existing housing supply by giving the London Boroughs planning control to resist the conversion of family homes into short-term lets.

5. The development plan comprises the *London Plan 2016* (TLP), the *Westminster City Plan November 2016* (WCP), and the saved policies of the *Westminster Unitary Development Plan 2007* (UDP).
6. TLP Policy 3.14 C states that the loss of housing to short-term provision (lettings less than 90 days) should be resisted. The WCP¹ states that "*optimising the number of new homes delivered is even more important in Westminster than other Boroughs because significant amounts of market housing are unavailable to residents as its global city role means some housing is used as second homes, left empty as an investment, or is used as temporary sleeping accommodation/short-term lets*". WCP Policy S14 seeks to protect all residential floorspace across Westminster except where certain criteria apply,² and states that proposals that would result in a reduction in the number of residential units will not be acceptable. None of these criteria apply to the appeal proposal.
7. Similarly, saved UDP Policy H2 makes it clear that planning permission will not be granted for the use of housing as temporary sleeping accommodation. Saved UDP Policy TACE3 explains that the Council recognises the contribution that lawful short-let accommodation can make to meet the accommodation needs of certain visitors to Westminster, but wishes to ensure that the housing stock is not reduced as a result³.
8. The appellant places emphasis on *The Deregulation Act 2015*, saying all of its provisions can be satisfied. The Act sets out that use for temporary sleeping accommodation of any residential property in Greater London does not constitute a change of use (for which planning permission would be required) provided certain conditions (exceptions) are met⁴. The most relevant exception in this case is that the number of nights use as temporary sleeping accommodation in the same calendar year should not exceed 90 days.
9. However, the Design and Access Statement submitted with the application clearly states that the proposed short-term lets will occur for more than 90 days per calendar year over the five years applied for. Consequently *the Deregulation Act* holds no weight in my consideration of this appeal, which must be determined in accordance with the provisions of the development plan and any other material considerations.
10. As the change of use would not be permanent, and would revert to C3 use at the end of the period, the appellant says this would mitigate any loss and should be taken into account. However, this is not a good argument, particularly as five years is a considerable period of time.
11. The appellant also says that personal circumstances should play a part in the assessment of the merits of the proposal, explaining that short-term renting would enable the family income to be supplemented whilst the mother can study to complete her PhD and look after her young son. I also note that the appellant has had problems in the past arising from renting to individuals on an Assured Shorthold Tenancy (AST) basis. However, whilst I note the personal

¹ Part 1V Paragraph 4.5

² 1) Where the Council considers that redevelopment or reconfiguration of affordable housing would better meet affordable housing need; 2) a converted house is being returned to a family size dwelling, or 3) 2 flats are being joined to create a family size dwelling.

³ Paragraph 38.36 of supporting text

⁴ Sections (2) and (3) of Section 25A of the Deregulation Act 2015

circumstances of the appellant, these are not a matter to which I can afford much weight as similar and other personal circumstances could be put forward in many similar cases.

12. There are strong and clear-cut policy objections to the proposal and I find that no persuasive arguments have been put forward to justify determining this appeal other than in accordance with the development plan. Although only one small flat is involved, allowing the appeal would exacerbate the shortage of dwelling units available for households in Westminster, and this would be unacceptable given the shortage of such accommodation in London generally and Westminster in particular. It would significantly undermine the objectives of the development plan to maintain the stock of housing available for permanent residential use, and in my view the harm caused in this regard alone would warrant dismissal of the appeal.

Effect on living conditions

13. WCP Policy 29 and saved UDP Policies ENV6 and ENV7 seek to resist proposals that would result in a material loss of residential amenity and to control noise pollution. The Council says the use of these residential premises as short-term accommodation is likely to adversely affect the quality of life of nearby residents who occupy flats on a permanent basis, by reason of tangible factors such as multiple comings and goings to the property, noise and disturbance at unsocial hours (particularly from tourists and other visitors who are most likely to occupy the accommodation). It is also concerned about less tangible factors, such as perception or fear of crime and anti-social behaviour. Representations have been received from local residents, the South East Bayswater Residents Association and a City Councillor expressing similar concerns and fears.
14. Overall however I am not convinced that there is sufficient evidence in this instance to demonstrate that there would be a harmfully material impact on the living conditions of nearby residents. In this regard, I accept that some degree of vetting of 'tenants' would be possible, and that tenants would also be made aware of the need to keep noise levels and disturbance to a minimum. Furthermore, flat has just one bedroom and is likely to be occupied by a maximum of two people; and the separate entrance from street level should ensure that noise and disturbance arising from multiple comings and goings is kept to a minimum, especially compared with a situation where shared hallways and stairs area involved. As such, I find no conflict with the WCP/ UDP Policies referred to above.

Listed Building/Conservation Area

15. Although not a reason for refusal, the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires special regard to be given to the desirability of preserving a listed building and any features of architectural or historic interest it possesses, and for special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 132 of Framework⁵ states that when considering the impact of new development on the significance of a listed building, great weight should be given to its conservation, and adds that significance can be harmed or lost through alteration. This is therefore a matter I need to address.

⁵ National Planning Policy Framework

16. However, no internal or external alterations are indicated, and there is no evidence before me to suggest that the issues raised by the proposal have listed building or conservation area implications. I find no reason to disagree and am satisfied that the proposed would preserve the special architectural and historic interest of the listed building and the character and appearance of the Bayswater Conservation Area, causing no harm to these heritage assets.

Conclusion

17. I have found that the proposal would not materially harm the living conditions of nearby residents with regard to noise and other disturbance. I am also satisfied that the special architectural and historic interest of the listed building and the character and appearance of the Conservation Area would be preserved. However, for the reasons given above I consider the proposed change of use would be materially harmful in terms of its effect on the supply of permanent residential accommodation in Westminster. This represents a substantive and overriding objection which must be decisive. I find it conflicts with TLP Policy 3.14, WCP Policy S14, saved UDP Policies H2 and TACE3, and the policies of the Framework taken as a whole.
18. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR