



Appeal Decisions

Site visit made on 7 August 2019

by Simon Hand MA

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

Decision date: 21 August 2019

Appeal A - Ref: APP/A5840/X/18/3214932

1 Victory Place, London, SE17 1PG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Colin Brown against the decision of the Council of the London Borough of Southwark.
- The application Ref 17/AP/2199, dated 1 June 2017, was refused by notice dated 31 July 2017.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is to remove the metal louvres from in front of the ground and first floor windows of 1 Victory Place, that face Balfour Street.

Appeal B - Ref: APP/A5840/W/18/3214915

1 Victory Place, London, SE17 1PG

- 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 Colin Brown against the decision of the Council of the London Borough of Southwark.
- The application Ref 17/AP/4525, dated 30 November 2017, was refused by notice dated 11 September 2018.
- The development proposed is the permanent removal of the louvres covering the ground and first floor windows on the elevation to No. 1 Victory Place facing Balfour Street.

Decisions

Appeal A - 3214932

1. The appeal is dismissed.

Appeal B - 3214915

2. The appeal is allowed and planning permission is granted for the permanent removal of the louvres covering the ground and first floor windows on the elevation to No. 1 Victory Place facing Balfour Street at 1 Victory Place, London, SE17 1PG in accordance with the terms of the application, Reference 17/AP/4525, dated 30 November 2017, and any plans submitted with it.

Appeal A – The LDC Appeal

3. Planning permission was granted for a major development including the building in Victory Place the subject to this appeal. A condition on this planning permission required a redesign of the east façade of building RC1 (the appeal building) which was duly allowed. This redesign included louvres on the ground and first floor windows of the façade facing Balfour Street.
4. It is agreed the works required by this condition were carried out and the condition discharged; the louvres were attached to the relevant windows. The appellant argues that the act of removal of the louvres is not development within the meaning of the Act and as the condition does not require the louvres to be retained, it follows that they can be removed without the need for planning permission. The Council argue the removal of the louvres materially affects the appearance of the building and so fall within the meaning of development.
5. Development is defined in s55 of the Act which says “(1) *Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*”. This is a very wide definition indeed. Section 1A goes on to explain “(1A) *For the purposes of this Act “building operations” includes— (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder*”. However, this is not a closed list, but in any event, section (2) makes further comment that “(2) *The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land— (a) the carrying out for the maintenance, improvement or other alteration of any building of works which— (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building*”.
6. The louvres are large and cover windows on the first and ground floor. Their installation or removal is clearly either a building or another operation on the land, and I would suggest would also be an operation undertaken by a builder. I would think they would need some form of specialist equipment to lift them off the windows to the ground. Finally, although S55(2)(a) is worded in the negative, it is usually taken to mean that works to maintain or improve a building that *do* materially affect its external appearance would be development. Clearly the large louvres do materially affect the external appearance of the building, and their removal would create a quite different look to this façade – hence, I assume, the reason to install them in the first place. For all these reasons I consider the removal of the louvres falls within the definition of development in s55.
7. The appellant argues that as they were part of a redesign required by condition, they could not be development by definition. It seems their argument is that works that are development cannot be required by condition, presumably as a matter of law. I do not agree with this. The NPPG does suggest that minor changes can be made by condition, but they must not be substantial, but this is not to say they cannot amount to development, which is quite a different matter. It is quite obvious that many elements in conditions refer to building operations that fall within 1A(c) or (d) and so would be

development. In the context of a large scheme they might well be minor details, as in this case, but when considered on their own, they satisfy the definition of development.

8. In my view therefore, although the removal of the louvres is not prevented by the wording of the condition, which I assume was an oversight on the part of the Council, it would amount to development for which planning permission is required. The LDC as applied for therefore cannot be granted.

Appeal B – The Planning Appeal

9. Victory Place is part of a substantial redevelopment that fits into a traditional street pattern, so that there are a number of areas where the modern flats adjoin Georgian or Victorian streets. In this case, the large flank wall of 1 Victory Place faces onto Balfour Street. The latter street consists of 3 storey terraced houses that sit directly opposite the flank wall in question. All the windows on the new development on this wall have large fixed vertical louvres, that prevent the occupants from looking out onto Balfour Street. The key issue for the Council is the threat of overlooking from the new development towards Balfour Street. Although the windows in the new development are large, they provide no greater opportunity for overlooking than a standard sized window. Balfour Street is wide, and the window to window distances are 25% greater than the minimum distances required by the Council's guidance. Indeed they would seem to be greater than the distances between the houses in the nearby Henshaw Street, another generously proportioned Georgian residential street.
10. As the proposal only affects the ground and first floor windows it is difficult to see how there could be any real loss of amenity for the occupiers of the properties in Balfour Street. I note that those properties affected all front directly onto the pavement so the real amenity issue is from pedestrians, rather than occupants of the new development. Indeed I noticed that all the ground and first floor windows in Balfour Street already had either curtains or blinds firmly closed, presumably because of this issue.
11. The council policy most relevant is 3.2 in the Southwark Plan, which seeks to protect the amenity of neighbours and the proposal would not offend this policy. There does not seem to be a design issue with the removal of the louvres. Therefore I consider the proposal would be in accordance with national and local policy and should be allowed. No conditions are required, so I shall dismiss appeal A but grant planning permission by allowing appeal B.

Simon Hand

Inspector