
Appeal Decisions

Site visit made on 25 June 2019

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

an Inspector appointed by the Secretary of State

Decision date: 27 August 2019

Appeal A - Ref: APP/X5990/W/18/3215775 103 Star Street, London W2 1QF

- 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 Robert O'Hara (ROH Architects) against the decision of City of Westminster Council.
 - The application Ref: 18/05354/FULL, dated 25 June 2018, was refused by notice dated 22 August 2018.
 - The development proposed is glass enclosure to rear courtyard garden to form a garden room.
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Appeal B - Ref: APP/X5990/Y/18/3215286 103 Star Street, London W2 1QF

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Robert O'Hara (ROH Architects) against the decision of City of Westminster Council.
 - The application Ref: 18/05355/LBC, dated 25 June 2018, was refused by notice dated 22 August 2018
 - The works proposed are glass enclosure to rear courtyard garden to form a garden room.
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Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published on 24 July 2018, after the Council had determined the applications. It has since been subject to an update in February 2019, when the latest edition was published. However, the parties have had the opportunity to take account of any relevant changes during the course of the appeals.
4. As the appeals relate to a listed building within a conservation area, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also taken account of the guidance within section 16 of the Framework.

Main Issue

5. The main issue, relating to both appeals, is the effect of the proposal on the special interest of the Grade II listed terrace at 93-107 Star Street, of which the appeal property forms a part, and on the character and appearance of the Bayswater Conservation Area (BCA).

Reasons – both appeals

6. The appeal property at 103 Star Street is a mid-terrace building comprising three upper storeys and a lower ground floor, which has been converted into two self-contained flats. The building forms part of a Grade II listed terrace comprising 97-107 Star Street and lies within the BCA.
7. The proposal relates to the flat which occupies the ground and lower ground floors and, specifically, its small rear courtyard garden. The garden area backs onto properties which run along Junction Mews. A rear first floor projection of the building at 17 Junction Mews overhangs part of the garden. It is proposed that a glass covered extension would extend out from the rear elevation of No 103, below the escape balcony and staircase of the flat above, and under the overhang of 17 Junction Mews, whilst allowing for an open lightwell area adjacent to windows within the rear elevation of the existing building. French doors would face towards the lightwell and the rear elevation of the house.
8. This Georgian terrace was first listed in 1975 and, according to its brief list description, dates from the early 19th century. Although a few of the properties appear to have had later shopfronts installed at ground floor level, the façade of the predominantly residential terrace is otherwise consistent in form and style with each house occupying two bays. The buildings are constructed of London stock brick and most feature round-arched entrances, with panelled doors and fanlights, and regularly spaced sash windows. Spear-headed railings at street level enclose the basements.
9. Although the appellant suggests that the rear lower elevation of the building has been substantially altered in the past, the nature of those alterations, apart from the conversion of the building into flats, is not specifically explained or evidenced. Moreover, historic mapping provided by the Council appears to indicate that the footprint of the appeal building, including its rear courtyard and relationship with Junction Mews, has been largely consistent since at least 1890.
10. From what I saw on my site visit, there did not appear to be significant alterations to the rear elevation of the appeal building or the upper levels of the elevations of adjoining houses in the terrace. Therefore, whilst the public face of the terrace and its modest, late Georgian façade makes the principal contribution to its special interest, the small historic open courtyards to the rear, which form part of these Georgian townhouses, also contribute to their significance.
11. Notwithstanding the existing overhang from 17 Junction Mews, the proposal to enclose much of the open garden area, apart from the lightwell, with a glazed structure, would remove virtually all of the outdoor space and be unsympathetic to the existing form of the host building and this historic terrace. It would, effectively, extend the lower level of the rear elevation outwards into the small garden. There is no evidence before me of other

similar structures along the terrace. The extension would appear as a discordant addition to the detriment of the building and the special interest of the listed terrace of which it forms part.

12. Whilst all proposals are judged on their individual merits, if the appeal were allowed, it is reasonable to think that it could set a precedent which would increase the likelihood of similar proposals at other houses along the terrace being accepted. Cumulatively, such changes would further erode the historic design and layout of the buildings and harm the special interest of the listed terrace.
13. Policy DES 5 of the Council's Unitary Development Plan (UDP)¹ indicates, at parts (B) 2) and 3), that alterations or extensions which occupy '*an excessive part of the garden ground*' or seek to add floorspace by '*the roofing over or physical enclosure of basement areas*' may be refused. Similarly, paragraph 5.6 of the Council's 'Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings' (SPG)² advises that where extensions are proposed they should relate sensitively to the original building. The SPG also notes that: '*Many buildings in Westminster occupy very constricted sites, and extensions may be unacceptable where they would result in the loss of original gardens or yards.*'
14. Whilst the UDP and SPG are of some age, there is no inherent inconsistency in the content referred to with more up to date policies in the Westminster City Plan (November 2016) (WCP)³ or the Framework. Therefore, I consider that content relevant. It seems to me that the appeal site, with its proximity to Junction Mews, constitutes such a constricted site and enclosing the space, albeit within a glass structure, would, effectively, result in the loss of that historic garden or yard and be contrary to the thrust of UDP policy DES 5 and advice in the SPG.
15. Whilst, given the mid-terrace rear location, there would not be public views, the extension would be visible from the flat immediately above and from the upper floor windows of some other surrounding buildings. In any event, listed buildings are safeguarded for their inherent architectural and historic interest, irrespective of whether or not public views of the building can be gained.
16. The appellant submits that the glazed design represents '*as light a touch as possible*' and that its transparent glazed form would reflect the sky. However, it is also said that the intention is to provide a space with more privacy and reduced noise and that at night blinds would be drawn to prevent light pollution. Given that privacy motivation and the likely heat implications of a glazed design, at least during the summer months, the use of blinds could extend into the day which would create the perception of a more solid structure. That would potentially undermine the suggested benefits of the glass design as less visually obtrusive.
17. The BCA was first designated in 1967 and later extended. Bayswater retains much of its fashionable residential housing and character. It was first developed in the early 19th century, with grand boulevards, crescents, squares and fine classical terraces. It includes in the region of 1800 listed buildings.⁴

¹ Adopted 24 January 2007

² Adopted 7 December 1995

³ Consolidated with all changes since November 2013

⁴ General Information Leaflet 6: Bayswater Conservation Area (October 2004)

Whilst the terraces along Star Street are more modest in scale, backing onto mews developments, their notable Georgian façades make a positive contribution to the character and appearance of the BCA.

18. However, despite the harm that would be caused to the listed terrace I do not find that the proposal would be detrimental to the character or appearance of the BCA. This is because the proposed changes to the rear of one building within the terrace, would not be visible from the public domain and have limited prominence in private views. Unlike listed buildings, the significance of a conservation area is dependent upon how it is more widely experienced. In such circumstances, it is established that proposals should be judged according to their effect on a conservation area as a whole and should, therefore, have a moderate degree of prominence to cause material harm. Given the above, on balance, I find that the proposal would not be detrimental to the BCA and thus would preserve its significance.
19. Overall therefore, I conclude that the proposal would fail to preserve the special historic interest of the listed terrace at 93-107 Star Street, of which the appeal property forms a part. It follows that the proposal would fail to satisfy the requirements of the Act and paragraph 192 of the Framework. It would also fail to comply with WCP policies S25 and S28 which seek to ensure that development conserves and respects Westminster's extensive heritage assets, including its listed buildings, and meets exemplary standards of sustainable and inclusive urban design.
20. In addition, it would conflict with policies DES 1, DES 5 and DES 10(A) of the UDP, insofar as they also seek to ensure that development is of high quality design, takes account of the style and details of existing buildings, does not occupy excessive parts of gardens or enclose basement areas and demonstrates that it respects the special architectural and historic interest of listed buildings. The relevant WCP and UDP policies appear to be broadly consistent with the Framework, notwithstanding that the UDP predates the publication of the original Framework in 2012. There would also be conflict with parts of the SPG.
21. Paragraph 193 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm. Echoing that approach, Framework paragraph 194 advises that any harm, or loss of, the significance of a designated heritage asset, including from its alteration, should require clear and convincing justification.
22. Whilst I give great weight and importance to the harm to the listed terrace, given that the proposal relates to the addition of a small glass enclosure to the rear of one of the houses along it, with no public views of it, I find that the harm would, in the language of the Framework, be 'less than substantial'.
23. In such circumstances, paragraph 196 of the Framework indicates that the 'less than substantial harm' should be weighed against the public benefits of the proposal, which can include the optimum viable use of listed buildings.
24. The appellant has advised that the proposal is intended to cut out unwanted noise, air pollution and overlooking from the upper floors of the building and the balcony/fire escape of the flat above, and thereby make the small

courtyard space usable. However, those are essentially personal or private benefits rather than public benefits.

25. With regard to noise and air pollution, the interior of the flat already provides enclosed living space over two floors. Furthermore, as the structure is glass and none of it is shown as opaque on the submitted plans, it is not apparent how it would significantly reduce overlooking, although it is possible that aspect could be dealt with by condition. The acknowledgement that the area is overlooked also appears to confirm that the new structure would be seen by occupiers of neighbouring dwellings.
26. In any case, the courtyard, albeit small, offers the only outdoor space associated with the building, which is already of benefit. It is bounded by high walls and a tall timber fence dividing it from the garden of 104 Star Street. However, as I saw on my site visit, with the white walls reflecting the light and its attractively tiled floor and pot plants, it offers a relatively bright, pleasant space, with room enough to sit out in. The area beneath the overhang of the first floor of 17 Junction Mews was being used for storage. Therefore, it did not appear that the outdoor space is currently unused or unusable.
27. The appellant refers to chapter 11 of the Framework regarding making effective use of land. However, paragraph 117 indicates that should be done '*while safeguarding and improving the environment and ensuring safe and healthy living conditions.*' It is generally acknowledged that living accommodation with access to outdoor space contributes to healthy living conditions for occupiers. In any event, such policies must be considered in the context of the special protection offered by statute and the Framework to designated heritage assets, such as listed buildings.
28. The continued viable use of the appeal property as a residential dwelling is not dependent on the proposal, as the building has an ongoing residential use that would not cease, irrespective of whether the proposal was permitted. There is no compelling evidence that any significant public benefits would accrue to outweigh the 'less than substantial' harm already identified to the special interest of the Grade II listed terrace.

Conclusion

29. 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.

JP Tudor

INSPECTOR