



Appeal Decisions

Site visit made on 6 November 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Appeal A Ref: APP/X5990/W/19/3231805 12 Garway Road, London W2 4NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Marco Arosio against the decision of City of Westminster Council.
- The application Ref:19/00995/FULL, dated 9 February 2019, was refused by a notice dated 15 April 2019.
- The application sought planning permission for "Variation of condition 1 of planning permission dated 19 June 2018 (RN:17/01993/FULL) for the Excavation of a basement below existing house and part of front and rear gardens, demolition and rebuilding of rear lower ground floor level conservatory, enlargement of front lightwell, insertion of rooflight with decorative metal grille over within front lightwell and removal of tree from rear garden. Namely, to allow the provision of skylight to rear basement in the back garden without complying with conditions attached to planning permission Ref: 18/08673/FULL, dated 5 February 2019.
- The conditions in dispute are Nos. 1 and 5 which state that:
Condition No 1: 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.
Condition No 5: You must apply to us for approval of detailed drawings of the following parts of the development: Decorative grille to front lightwell shown in context with surrounding paving and rooflight below. You must not start work on these parts of the development until we have approved what you have sent us. You must then carry out the work according to these drawings and you must not occupy the basement extension until the grille has been installed. Thereafter the grille must be permanently retained in accordance with the details we approve.
- The reasons given for the conditions are:
Reason No 1: For the avoidance of doubt and in the interests of proper planning.
Reason No 5: To protect the special architectural or historic interest of this building and to make sure the development contributes to the character and appearance of the Bayswater Conservation Area. This is set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007.

Appeal B Ref: APP/X5990/Y/19/3231806 12 Garway Road, London W2 4NH

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
- The appeal is made by Mr Marco Arosio against the decision of City of Westminster

Council.

- The application Ref: 19/01102/LBC, dated 9 February 2019, sought to vary condition 1 and remove condition 3 of listed building consent Ref:18/08813/LBC granted on 5 February 2019.
 - The works proposed are described as "Variation of Condition 1 of listed building consent dated 19 June 2018 (RN:17/01994/LBC) for the Excavation of a basement below existing house and part of front and rear garden, demolition and rebuilding of rear lower ground floor level conservatory, enlargement of front lightwell, insertion of rooflight with decorative metal grille over within front lightwell and internal alterations. Namely, to allow the provision of skylight to rear basement in the back garden.
 - The conditions in dispute are Nos. 1 and 3 which state that:
Condition No 1: The works 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.
Condition No 3: You must apply to us for approval of detailed drawings of the following parts of the development: Decorative grille to front lightwell shown in context with surrounding paving and rooflight below. You must not start work on these parts of the development until we have approved what you have sent us. You must then carry out the work according to these drawings and you must not occupy the basement extension until the grille has been installed. Thereafter the grille must be permanently retained in accordance with the details we approve.
 - The reasons for the conditions are:
Reason No 1: For the avoidance of doubt and in the interests of proper planning.
Reason No 3: To protect the special architectural or historic interest of this building and to make sure the development contributes to the character and appearance of the Bayswater Conservation Area. This is set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for a development described as: Variation of condition 1 of planning permission dated 19 June 2018 (RN:17/01993/FULL) for the Excavation of a basement below existing house and part of front and rear garden, demolition and rebuilding of rear lower ground floor level conservatory, enlargement of front lightwell, insertion of rooflight with decorative metal grille over within front lightwell and removal of tree from rear garden. Namely, to allow the provision of skylight to rear basement in the back garden at 12 Garway Road, London W2 4NH in accordance with the application Ref: 19/00995/FULL, dated 9 February 2019 without compliance with condition numbers 1 and 5 previously imposed on planning permission Ref: 18/08673/FULL, dated 5 February 2019 and subject to the conditions set out in the attached Schedule for Appeal A.

Appeal B

2. The appeal is allowed and the listed building consent Ref: 19/01102/LBC, dated 9 February 2019 for works described as: Variation of Condition 1 of listed building consent dated 19 June 2018 (RN:17/01994/LBC) for the Excavation of a basement below existing house and part of front and rear garden, demolition and rebuilding of rear lower ground floor level conservatory, enlargement of front lightwell, insertion of rooflight with decorative metal grille over within front lightwell and internal alterations. Namely, to allow the provision of

skylight to rear basement in the back garden at 12 Garway Road, London W2 4NH is varied by deleting condition Nos. 1 and 3 and substituting for them with the following conditions.

1. The works hereby permitted shall be carried out in accordance with the following approved plans: 534 GR-01, 534-GR-02B, 534 GR-03, 534 GR-06, 534 GR-07, 534 GR-11, 534 GR-17C, 534 GR 18-E, 534 GR-20J, 534 GR-22G, 534 GR-24F, 534 GR 56 and 534-GR 83G.
3. Prior to its installation a sample of the glazing to the front lightwell shall be submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details.

Main Issue

3. The main issue in both appeals is whether the works/development would preserve the Grade II listed building known 12 and 14 Garway Road and whether it would preserve or enhance the character or appearance of Bayswater Conservation Area.

Reasons

4. The appeal site relates to one half of a pair of semi-detached houses (No 12) which were listed in 1987 and known as 12 and 14 Garway Road. It is a three-storey with basement mid-19th century brick property which has a simple hipped slate roof. From the evidence before me and my own observations, I consider the significance of the appeal property as a heritage asset to be mainly attributable to the historic evidence it provides of the growth of the western residential suburbs of London and to its fine architectural detailing and proportions, including casement and sash windows, panelled doors and square gauged headed windows with blind boxes to the ground and first floors.
5. The building makes a positive contribution to the significance of Bayswater Conservation Area (BCA), the character of which is largely derived from the composition of the predominantly residential streets and Squares which bring about a unity and harmony to the fine buildings within the CA.
6. Listed building consent and planning permission have been granted for works/development at this property which include the excavation of a basement at No 12 and creation of an enlarged front lightwell with a rooflight and decorative grille inserted within it. The appellant is seeking to make an amendment to those permissions by replacing the approved decorative grille with a frosted glass panel which would be set flush within the front lightwell floor.
7. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. These requirements are the starting point for consideration of the proposals and are a weighty statutory requirement.
8. The Council are concerned that the frosted glass rooflight would be a prominent and stark intervention to the front of this classical styled building and would

heighten the appearance of the lower ground floor of the property, drawing attention to a part of the building which was originally intended to be distinctly subservient to the main composition above. In addition, the light which would be emitted via the rooflight would spill up the building and have an unacceptable impact on the setting of the property and appearance of the conservation area, particularly at night time.

9. The approved front lightwell is located between the property's common boundary with No 14 and the stone steps that lead up to the No 12's front door. It extends to a depth of 1.3m and projects just over a metre from the front wall of the property. Despite the low front wall and proposed railings, the rooflight itself would not be visible from the street, although there may be some limited visibility of it from the neighbour's upstairs windows. I appreciate that the requirement for works to preserve or enhance the special interest of the building applies with equal force whether or not the proposal is prominent or in public view. However, in this case the proposal would not involve any loss of historic fabric and despite its proposed size, the frosted or etched piece of glass would not to my mind be an uncharacteristic intervention in this location. Fitted flush within the floor of lightwell, it would neither complete with, nor diminish the existing architectural composition and detailing of this property's front façade.
10. I recognise that some light would be emitted through the rooflight, and that this would be more apparent at night time. However, the frosted glass would, to a certain extent, mute that light. Given the presence of the existing lower ground floor window, the depth and relatively tight enclosure by the lightwell walls and front steps, I do not consider that light seepage to the street or upper floors of the building would be significant. Indeed, the illumination would be unlikely to be much greater than the light which would be emitted from the approved rooflight and grille and would not have a materially harmful effect on the character or appearance of the BCA or the setting of the listed building.
11. I have taken into account my colleagues' decision's which relate to this listed building¹. However, in those cases almost all of the floor of the lightwell was to be glazed, and in addition clerestory windows were proposed within it. It was not therefore directly comparable to this case where only a single glazed rooflight is proposed within the central part of the lightwell floor. The rooflight proposed in this case would be a much more discreet intervention than the works proposed in the previous cases.
12. I conclude that the works/development would preserve the special architectural character and historic interest of Nos. 12 and 14 Garway Road and its setting, and would preserve the character and appearance of Bayswater Conservation Area. It would therefore satisfy the requirements of the Act and there would be no conflict with paragraph 193 of the National Planning Policy Framework which anticipates great weight being afforded to the conservation of designated heritage assets. I also find no conflict with the design and heritage aims of Policies S25 and S28 of Westminster's City Plan (November 2016) and Policies DES1, DES5 and DES10 (A) of their Unitary Development Plan, adopted January 2007. I also find no conflict with the Council's Supplementary Planning Document, Basement Development in Westminster which seeks to ensure that

¹ APP/X5990/W/16/3142364 & APP/X5990/Y/16/3142361
APP/X5990/W/16/3141359 & APP/X5990/Y/16/3141360

basement development conserves heritage assets, including listed buildings, conservation areas and significant archaeological deposits.

Conditions

13. Conditions specifying the approved plans and a requirement for a sample of the glazing to the front lightwell are necessary on both the planning permission and listed building consent for reasons of certainty and to protect the special architectural and historic interest of this listed building.
14. Conditions previously imposed relating to hours of work, control over construction practices, matching materials, position of the rear rooflight, landscaping, protections of trees and drainage remain necessary to protect the living conditions of neighbouring residents, protect the character and appearance of the BCA and special architectural and historic interest of this listed building and to reduce flood risk in the area. A condition specifying when the development must commence is not necessary as development has already commenced on the site.

Conclusion

15. For the reasons given above and taking into account all other matters raised, I conclude that the appeals should be allowed.

Elizabeth Pleasant

INSPECTOR

Schedule of Conditions (Appeal A)

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 534 GR-01, 534-GR-02B, 534 GR-03, 534 GR-06, 534 GR-07, 534 GR-11, 534 GR-17C, 534 GR 18-E, 534 GR-20J, 534 GR-22G, 534 GR-24F, 534 GR-56 and 534GR-83G.
- 2) Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only:
 - Between 08.00 and 18.00 Monday to Friday;
 - Between 08.00 and 13.00 on Saturdays; and
 - Not at all on Sundays, bank holidays and public holidays.

You must carry out piling, excavation and demolition work only:

- Between 08.00 and 18.00 Monday to Friday; and
- Not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside there hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet traffic restrictions, in an emergency or in the interests of public safety).

- 3) Prior to the commencement of any demolition or construction on site the applicant shall submit an application to the City Council as local planning

authority comprising evidence that any implementation of the scheme hereby approved, by the applicant or any other party, will be bound by the Council's Code of Construction Practice. Such evidence must take the form of a completed Appendix A of the Code of Construction Practice, signed by the applicant and approved by the Council's Environmental Inspectorate, which constitutes an agreement to comply with the Code of Construction practice and requirements contained therein. Commencement of any demolition or construction cannot take place until the City Council as local planning authority has issued its written approval of such an application.

- 4) All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission.
- 5) Prior to its installation a sample of the glazing to the front lightwell shall be submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details.
- 6) You must apply to use for approval of detailed drawings of a hard and soft landscaping scheme which includes the number, size, species and position of trees and shrubs. The landscaping must include the provision of at least one tree to replace the Bay tree that is to be removed from the rear garden. You must not start work on the relevant part of the development until we have approved what you have sent us. You must then carry out the landscaping and planting within one planting season of completing the development (or within any other time limit we agree to in writing).

If you remove any trees that form part of the landscaping scheme we approve or find that they are dying, severely damaged or diseased within 5 years of planting them, you must replace them with trees of a similar size and species.

- 7) Notwithstanding the content of the submitted arboricultural assessment, you must apply to us for approval of the ways in which you will protect the trees which you are keeping, as shown on drawing 534GR-83 E. You must not start any demolition, site clearance or building work, and you must not take any equipment, machinery or materials for the development onto the site, until we have approved what you have sent us. The tree protection must follow the recommendations in section 7 of British Standard BS5837:2005. You must then carry out the work according to the approved details.
- 8) You must provide a minimum of 1m soil depth (plus minimum 200mm drainage layer) and adequate overall soil volume above the top cover of the basement where it extends beyond the front to the building and the front lightwell, as shown on the drawings hereby approved. The soil depth and soil volume above the basement must thereafter be retained as approved.
- 9) You must apply to us for approval of detailed drawings of the following parts of the development:

The sustainable urban drainage to be incorporated into the design of the structure of the front part of the basement to enable the flow of water through the areas of spoil around the perimeter of the basement structure and below the highway. You must not start work of these parts of the development until we have approved what you have sent us. You must then carryout the work according to these drawings.

- 10) The rear rooflight hereby approved shall be flush with the rear patio level.

End of Condition Schedule