



Appeal Decision

Site visit made on 4 November 2019

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2019

Appeal Ref: APP/X5990/W/19/3227637

22E Westbourne Gardens, London W2 5PU

- 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 & Mrs A C Baker against the decision of the City of Westminster Council.
 - The application Ref 18/10441/FULL, dated 11 December 2018, was refused by notice dated 01 February 2019.
 - The development is described as: the installation of external metal safety railings at 4th floor level on an unprotected flat roof. The railings have been installed already and this application is for retrospective planning permission.
The fourth-floor flat roof is currently unsafe without any protection against the risk of falling. Access is regularly required to the roof to remove leaves and other debris which block the rainwater outlets and hopper heads. Failure to unblock these causes water to seep into the fabric of the building and cascade down the rear facade causing disrepair. The installation of the railing will enable safe working on the roof without the need for the erection of scaffolding.
The railings have been designed to match existing in cast iron and are likewise painted black in keeping with the local style.
The view of the rear elevation from Westbourne Park Road (the only public highway from which they can be seen-albeit only through a narrow gap between nos 23 and 25) is virtually unchanged because of the design of the railings matching the existing at fourth floor parapet level.
Likewise, from the adjoining properties the railings are below the current roof line to the north and do not affect rights of light or throw shade.
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Decision

1. The appeal is dismissed.

Procedural matters

2. I observed that the development described above has already been carried out. I have therefore dealt with the appeal on this basis.
3. Since the determination of application 18/10441/FULL, the National Planning Policy Framework (the Framework) has been revised. Policies within the Framework are material considerations which should be considered for the purposes of decision-making from the date of its publication. The parties have had the opportunity to comment upon the Framework as part of the appeal and I have therefore determined the appeal on this basis.

Main Issues

4. The main issues are:

- whether the development would preserve or enhance the character or appearance of the Westbourne Conservation Area (CA), and
- the effect of the development on the living conditions of existing users of adjacent properties, with particular regard to privacy and noise disturbance.

Reasons

Character and appearance

5. The site comprises a top floor flat within a four-storey terraced building located on Westbourne Gardens, which is in a primarily residential area within the Westbourne CA. The CA is characterised by a traditional gridiron pattern of development, where buildings are often positioned back to back. The rear elevation of the terraced building within which the site is located faces the rear elevations of other semi-detached and terraced residential properties fronting Westbourne Park Road. Westbourne Gardens consists mainly of fine, terraced properties of ample proportions with grand entrance porches, elaborate Italianate detailing, fine railings and faced in stucco cement.
6. Railings are a significant townscape feature, primarily located at ground and first-floor levels only, enclosing front gardens or the space in front of basements and above the entrance porches. At first-floor level they often extend the entire width of the terraces. I observed during my site visit that several of the areas enclosed by railings at first-floor level, at the front of the properties, were used as outdoor amenity space.
7. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of a CA, which is therefore a matter of considerable importance and weight. In addition, paragraph 193 of the National Planning Policy Framework (the Framework) requires decision-makers to give great weight to the conservation of a designated heritage asset, CAs being designated heritage assets.
8. The development consists of vertical cast-iron railings approximately 1 m high painted black. These are installed around the perimeter of a flat roof area, on top of a parapet wall approximately 0.4 m high, at fourth-floor level, above an outrigger at the rear of the building.
9. The railings are visible from some public vantage points, but they are also visually intrusive and unsightly when viewed from many of the rear gardens/properties on Westbourne Gardens and Westbourne Park Road. The installation of railings on the rear elevation of this property detrimentally changes the character and appearance of the terraced building and the space between existing properties. Consequently, I conclude that the development does not preserve or enhance the character or appearance of the CA.
10. I acknowledge that the property already has some railings at fourth-floor level and some of the other properties along Westbourne Gardens and Westbourne Park Road have installed railings at the rear, some of which are similar in design, materials and colour to the appeal railings. However, I do not know the full details of any of these cases, and in any event each case must be determined on its own merits. Furthermore, such examples are very much in the minority and do not create a baseline against which to judge future developments in the area. The presence of such insensitive

alterations/additions does not justify permitting what I consider to be development that further erodes the CA.

11. The appellant contends that access is required regularly to the flat roof to clear rainwater outlets and hopper heads. Without the railings there is insufficient protection against the risk of falling, which makes it unsafe. Failure to unblock the rainwater outlets and hopper heads causes water to seep into the fabric of the building and cascade down the rear façade, causing disrepair. Regular removal of the leaves in a safer environment would therefore enable the preservation of the building and its longevity. In addition, the railings will enable safe working on the roof without the need for the erection of scaffolding.
12. However, I am not convinced that the development is the only way to create safe conditions to enable clearing of leaves from the rainwater outlets and hopper heads. Nor am I convinced that without such railings the building would fall into a state of disrepair.
13. With regards to Paragraph 196 of the Framework, I consider the extent of the harm identified would be less than substantial. As such, the harm should be weighed against the public benefits. I consider that the benefits proposed do not amount to public benefits that outweigh the environmental harm to the CA which I have identified.
14. In light of the above, the development would not accord with policies S25 and S28 of the Westminster City Plan: Consolidated with changes since November 2013 (2016) (WCP), saved policies DES 1, DES 5, DES 9 and paragraphs 10.108 to 10.128 of the Unitary Development Plan (2007) (UDP), or heritage policies in the Framework. These policies collectively generally seek to ensure developments are of the highest quality design, reflect the style and detail of existing buildings and preserve or enhance the townscape of Westminster and the character and appearance of CAs. In addition, saved Policy DES 6 of the UDP only supports roof level alterations to existing buildings in certain circumstances, which include development not adversely affecting the architectural character or unity of a building or group of buildings, and development not being visually intrusive or unsightly when seen in longer public or private views from ground or upper levels.

Living conditions – existing occupiers

15. I consider that should the flat roof area be used as a terrace for outdoor amenity purposes there would be a loss of privacy and noise disturbance to immediate neighbouring properties.
16. However, I note that the appellant did not apply to use the flat roof as a terrace. In addition, their statement contends that it is not their intention to utilise the space as such, and therefore the development would not result in any loss of residential amenity.
17. I also note that gaining access to the flat roof requires one to climb out of the building through a sash window, onto a narrow area behind a parapet, and then proceed to climb down from there onto the flat roof. Therefore, I consider that such a restrictive access does not readily encourage the use of the space as an external amenity area.

18. Notwithstanding the above, the appellant contends that there are similar spaces on neighbouring properties that have been enclosed with railings and they are used as private outdoor space. Within this context, it is suggested that, even if the flat roof area were to be used as a terrace, it would not be harmful to the area. It is also suggested that as the railings are below the current roof line to the north, they do not affect the light or shade of neighbouring properties.
19. Bearing the above factors in mind, should the development be used as a terrace it would not accord with policies S29 and S32 of the WCP, or saved policies ENV 6 and ENV 13 of the UDP, which collectively seek to protect residential amenities from loss of privacy and noise disturbance. However, should the appeal be allowed, I consider that a condition could be attached preventing the use of the flat roof as a terrace, in which case the development would accord with policies S29 and S32 of the WCP and saved policies ENV 6 and ENV 13 of the UDP.

Conclusion

20. Notwithstanding my conclusions regarding living conditions, I have concluded that the development does not preserve or enhance the CA, and therefore the appeal is dismissed.

J Williamson
INSPECTOR