The Planning Inspectorate

Appeal Decisions

Site visit made on 11 February 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal A: APP/X5990/W/19/3240584
Flat 41, Bank Chambers, 25 Jermyn Street, London SW1Y 6HR

- 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 Bruce Embley against the decision of City of Westminster Council.
- The application Ref 19/04066/FULL, dated 28 May 2019, was refused by the Council by notice dated 24 July 2019.
- The development proposed is installation of balustrades in connection with the use of part of the roof as a terrace.

Appeal B: APP/X5990/Y/19/3240586
Flat 41, Bank Chambers, 25 Jermyn Street, London SW1Y 6HR

- 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 Bruce Embley against the decision of City of Westminster Council.
- The application Ref 19/04067/LBC, dated 28 May 2019, was refused by the Council by notice dated 24 July 2019.
- The works proposed are installation of balustrades in connection with the use of part of the roof as a terrace.

Decisions

1. I dismiss both appeals.

Reasons

2. The buildings 25 Jermyn Street and 207 – 209 Piccadilly are listed Grade II and the site is within the St. James's Conservation Area. The main issue in both appeals is the effect of the proposal on the significance of designated heritage assets. Policies S25 and S28 of Westminster's City Plan state that heritage assets will be preserved, and that development must incorporate exemplary standards of sustainable and inclusive urban design and architecture. Unitary Development Plan Policy DES 1 sets out the principles of urban design and conservation, while Policy DES 5 concerns alterations and extensions, and Policy DES 6 is specific to roof level alterations and extensions. Policies DES 9 and DES 10(A) set out requirements for conservation areas, and for applications for planning permission involving the extension or alteration of a listed building, and the paragraphs 10.108 to 10.146 cited in the Reasons for Refusal are the supporting text to these latter 2 policies.

3. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

4. Paragraph 124 of the 2019 National Planning Policy Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

5. The proposal is to make use of an existing area of flat roof above flat 41, presently used in part as a fire escape from flats 41 and 42 and leading as an alternative means of escape onto the adjacent 'Waterstones' building. The drawings show the position of railings that tightly define the escape route being moved nearer to the edge of the flat roof area facing Piccadilly. The Council has clarified that the escape route is located on top of the listed 207 – 209 Piccadilly, notwithstanding the postal address and entry at 25 Jermyn Street.

6. Whether or not the existing railings comply with the Building Regulations, the access to the roof is currently for maintenance and repair, as well as escape, and that latter use would only be required if the internal escape routes were impassable. Fire doors were noted along the internal corridor and to the flat, which should contain any outbreak long enough to allow escape.

7. The proposed change of use to a roof terrace would most likely bring the need for a fully compliant balustrade design, the circumstances being set out in the surveyor's report to the head lessor's letter of objection. That report also queries the need for structural strengthening to the roof for the proposed loading and fixings for the railings. There remains considerable doubt over the precise nature of the railings and the associated works, and the appellant suggests alternatives such as glass or other transparent material. An application for listed building consent should provide firm details and there is a limit to the extent that conditions should be used to seek them after consent has been granted.

8. Be that as it may, the enlargement of the area of accessible roof would risk putting the new railing on the Piccadilly side onto the skyline of the building, and whilst possibly not so obtrusive in the view as the existing water tank housing from viewpoints in Air Street, would likely be associated with other items such as chairs, parasols or planting, in addition to the activity of people enjoying the extensive and very attractive views over London. It would be difficult to control activity and paraphernalia by condition, the nature of a roof terrace being to allow leisure access. The use of transparent materials could catch the eye through reflection and would still allow activity and leisure items to be seen.

9. In addition to that harmful, albeit limited, street-level view, the terrace would be visible in many other high-level views from windows to buildings on surrounding streets. Whilst not a public view, weight does attach to those viewpoints, it being accepted however that elevated views in the area could encompass less attractive aspects of buildings, such as roof-top plant and

lightwells. Nevertheless, the appeal proposal would add activity and possibly paraphernalia and a more obtrusive form of railings to what is at present a flat mansard roof that is more in keeping with the architectural treatment of the building and others nearby.

10. There are other roof terraces seen in use from the appeal site, and the Council list one that is there without consent or permission. In particular the Waterstones building to the west has terrace features with visible railings, but that building appears to have been designed as a composition with those features, whereas the appeal building is a complete composition and with limited exceptions like the water tank housing, has a distinct, finished skyline with the pinnacles on the elevation and the dormers behind. The addition of the proposed balustrade would cause harm to the architectural significance of the listed building and that of its neighbours and would not preserve the character and appearance of the conservation area.

11. The level of harm would be 'less than substantial', a differentiation required between paragraphs 195 and 196 of the Framework. In this case the latter applies, and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. In fact, there do not appear to be any public benefits to the proposal, as the use would be private, and the attractive view would be enjoyed as a private benefit.

12. The head lessor has raised matters not objected to by the Council such as noise and disturbance, and a risk of harmful overlooking. Whilst the intention may be for quiet relaxation, it would be difficult to condition only that use, and whilst the Council consider the angle of view to bedroom windows too acute to allow a view into the room, there could be a perception of being overlooked. Although not a reason to refuse permission alone, these concerns add weight to the finding that the proposal is unacceptable.

13. In the balance required in paragraph 196, the conclusion is that there are no public benefits that outweigh the harm and that the proposal would fail the tests in Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would not accord with the aims of Policies S25, DES 9 and DES 10(A) and the Framework on designated heritage assets, and would not be of the standard of design sought in Policies DES 1, DES 5 and DES 6 together with Paragraph 124 of the Framework. For the reasons given above it is concluded that both appeals should be dismissed.

S J Papworth

INSPECTOR