



Appeal Decision

Site visit made on 14 July 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/T5150/W/20/3251035

Flat 1-6, 141 Walm Lane, London NW2 3AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by 141 Walm Lane Residents Ltd in conjunction with Mssrs Marks, Feiz, Fulton, Pattni, Orr and Haines against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/4235, dated 2 December 2019, was refused by notice dated 3 March 2020.
 - The application sought planning permission for the development set out in Annex A without complying with a condition attached to planning permission Ref 15/0687, dated 6 July 2015.
 - The condition in dispute is No 8 which states that: *The proposed rear roof light and replacement front rooflights shall be of the non-projecting Conservation Area type and shall be installed flush with the plane of the roof. All works shall be carried out in accordance with the approved plans.*
 - The reason given for the condition is: *In the interests of ensuring a high quality of design that preserves or enhances the character and appearance of the Mapesbury Conservation Area.*
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Decision

1. The appeal is allowed and planning permission is granted for the description of development set out in Annex A, at 141 Walm Lane, London NW2 3AU in accordance with the application Ref 19/4235 made on the 2 December 2019 without complying with condition No 8 set out in planning permission Ref 15/0687 granted on 6 July 2015 by the Council of the London Borough of Brent, but otherwise subject to those conditions that are still subsisting and capable of taking effect.

Preliminary Matter

2. I have also dealt with another appeal (Ref: APP/T5150/C/20/3245176) on this site. That appeal is the subject of a separate decision.

Background and Main Issue

3. Planning permission was granted in 2015 to change the use of the appeal building from a nursing home to flats. From the information available, that development has been carried out and is complete. The scheme included the insertion of a rear rooflight and the drawings showed two rooflights on the front of the building.

4. There is a dispute between the main parties over whether the front rooflights are replacements or whether they are the rooflights which existed prior to the 2015 permission. From an examination of all the evidence provided they appear now to be in slightly different positions to those which existed previously. Moreover, the approved plans for the 2015 permission annotated that the rooflights are 'new' and I have no reason to believe that permission was not implemented as per the plans in this respect. The permission was subject to conditions including the disputed condition, which sought to control the type of rooflights to be installed and whether they were flush with the roof and not projecting.
5. The main issue is whether this condition is necessary and reasonable having regard to the effect of the development on the character and appearance of the area, including the Mapesbury Conservation Area within which the appeal site is situated.

Reasons

6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The Mapesbury Conservation Area Character Appraisal (the MCACA) describes the area as characterised by largely unaltered historic town-houses. The special character of the area is said to be based on the design of the buildings and their relationship to the streetscape and each other. The houses are large and attractive, constructed of brick, with intricate detailing and are set in tree-lined streets. I have no reason to disagree with this description from the MCACA.
7. There are examples of rooflights seen on other houses in the area. But the front roof slopes are generally free of rooflights. However, evidence indicates two small rooflights existed on the front elevation of the appeal property since as long ago as 2008. From the images available in the evidence, these rooflights were of substantially the same size and design, and in substantially the same location, as those which exist on the property now.
8. Whilst those which existed prior to the implementation of the 2015 permission may not have been granted planning permission by the Council, the evidence indicates they were a long established feature of the front elevation of the appeal property. From the information available to me, on the balance of probability, they had become lawful and were immune from planning enforcement action under the provisions of section 171B of the Town and Country Planning Act 1990.
9. Even though the former front rooflights may have been unauthorised when the 2015 application was determined, the Council accepted the principle of rooflights of this size and in this location by granting the 2015 permission which included two rooflights of this size in this location. I also note the Council said in its delegated report at the time that it was not considered fair to request the removal of the existing two front rooflights. The key point therefore is whether the rooflights should be flush with the roof or not, rather than whether they should exist in this location at all.
10. The rooflights which exist, following the 2015 permission, are limited in size and are partly obscured from view when travelling past the property from left to right by the property's front gable feature. They are partly obscured from

view when travelling past the property from right to left by the property's front dormer features and mature street trees.

11. The projection of the rooflights from the front roof slope is slight. Given their limited size and the extent to which they are obscured, I do not find them bulky or obtrusive and I am satisfied these small rooflights being flush with the roof, as envisaged by condition 8 of the original permission, would not have any appreciable beneficial effect on the character or appearance of the area, including the Mapesbury Conservation Area. The statutory requirement of preservation can be achieved by development which leaves the character or appearance of the conservation area unharmed and, in my judgement, this is the situation here, given what the front rooflights have replaced.
12. I note that in the enforcement notice which has been issued¹ for the appeal property the Council has not sought to enforce against the rooflight on the rear elevation. That rooflight is also the subject of condition 8. But there is no evidence before me which indicates the projection of the rear rooflight is harmful in this case and so I have no reason to consider it so either.
13. I have had regard to a recent appeal decision² relating to rooflights on a property on the opposite side of the street, at No 176. However, from the information available to me, the proposed rooflights in that case were significantly larger, and the existing rooflights subject to an enforcement notice requiring their removal. So I do not find the circumstances of that case directly comparable with those in the case before me, despite the proximity of the two properties.
14. I conclude condition 8 is not necessary or reasonable in this case, having regard to the effect of the development on the character and appearance of the area, including the Mapesbury Conservation Area, the character and appearance of which is preserved by the development before me. Accordingly, I find no conflict with the policies identified in the Council's decision, namely Policy CP17 of the London Borough of Brent Core Strategy 2010 and Policies DMP1 and DMP7 of the London Borough of Brent Development Management Policies 2016.
15. My attention has been drawn to the Mapesbury Conservation Area Design Guide 2018 (the Design Guide). This states that where rooflights are proposed they should always be flush fitting. But in this case, I ascribe more weight to the material consideration of what existed on the appeal property previously, and the fact the rooflights are particularly limited in size and are obscured from some views, as set out above, than I do to the Design Guide.
16. For the same reasons, I do not accept the concern expressed in representations received, that allowing the rooflights to remain as they are would set a precedent for further rooflights as each case must be decided on its individual merits in light of the specific circumstances of the case.

Conclusion

17. Notwithstanding that I have sought the views of the parties on which conditions remain necessary, it remains unclear which conditions may or may not have been discharged or are no longer subsisting or capable of taking

¹ Dated 10 January 2020, the subject of appeal ref APP/T5150/C/20/3245176

² Ref APP/T5150/W/19/3220561 dated 1 August 2019

effect. Therefore, for the reasons given above, I grant planning permission without condition 8 but subject to any conditions contained on the 2015 planning permission that are indeed still subsisting and capable of taking effect.

L Perkins

INSPECTOR

Annex A: Description of Development

Change of use of existing nursing home (Use class C2) to residential (C3) with conversion of the building into six self-contained flats (4x 2 bed, 1x 3bed and 1x studio flat). To include:

- demolition of existing rear conservatory and rear storage structures and erection of new single storey side/rear extension adjacent to no. 143 Walm Lane;
- removal of rear fire escape stairs
- replacement of existing rear dormers and lift shaft with 2 new rear dormers containing timber sash windows and insertion of 1 rear rooflight
- replacement of existing roof tiles with natural slates tiles;
- removal of white paint from frontage
- restoration of original porch front
- replacement of all existing uPVC windows and windows to existing front dormers with double glazed timber sash windows
- setting-back of existing single storey side extension and insertion of non-opening side-hung timber garage doors to frontage and insertion of 1 rooflight
- associated forecourt landscaping and 2 parking spaces
- Car-free