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## 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**

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**Appeal Ref: APP/T5150/C/20/3245176**

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act).
  - The appeal is made by 141 Walm Lane Residents Limited against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice was issued on 10 January 2020.
  - The breach of planning control as alleged in the notice is set out in Annex A.
  - The requirements of the notice are set out in Annex B.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is allowed in part and the enforcement notice upheld. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, condition No 8 attached to planning permission Ref 15/0687 dated 6 July 2015 granted by the Council of the London Borough of Brent is discharged. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the description of development set out in Annex C, without complying with the said condition but subject to the other conditions, including condition 4, attached to that permission.

### Preliminary Matters

2. I have also dealt with another appeal (Ref: APP/T5150/W/20/3251035) on this site. That appeal is the subject of a separate decision.
3. The breach of planning control alleged in the enforcement notice relates to condition 4 and condition 8 of planning permission Ref 15/0687 dated 6 July 2015. However, the appellant has indicated they are not seeking to contest the enforcement notice in respect of condition 4. They also indicate they are content with the compliance period in relation to condition 4 and so I shall not consider condition 4 any further in my reasoning.

### Reasons

#### The appeal on ground (a)

4. 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.

5. 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 condition 8, which sought to control the type of rooflights to be installed and whether they were flush with the roof and not projecting.
6. The main issue in the ground (a) appeal is whether condition 8 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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 the 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.
  13. I note that the enforcement notice does not seek 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.
  14. I have had regard to a recent appeal decision<sup>1</sup> 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.
  15. 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 notice, namely Policies DMP1 and DMP7 of the London Borough of Brent Development Management Policies 2016.
  16. 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.

#### *Other Matters*

17. Representations received express a preference that planning conditions are adhered to and enforced as it will otherwise lead to a loss of the conservation area's character. But based on my findings above, that is not the case in respect of the rooflights and under section 172 of the 1990 Act the taking of planning enforcement action is discretionary depending on whether it is expedient having regard to the provisions of the development plan and any other material considerations.

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<sup>1</sup> Ref APP/T5150/W/19/3220561 dated 1 August 2019

*Conclusion on ground (a)*

18. In respect of condition 8 only, I conclude that the appeal on ground (a) succeeds.

*The appeal on ground (g)*

19. As I am in effect granting planning permission for the rooflights to remain as they are the appeal on ground (g) does not need to be considered in respect of the breach of condition 8 and step 2 set out in the requirements of the notice.

**Conclusion**

20. For the reasons given above I conclude that the appeal succeeds on ground (a) in so far as it relates to condition 8 only and that the enforcement notice is upheld. I discharge condition 8 the subject of the notice and grant planning permission on the application deemed to have been made, for the description of development set out in Annex C, without complying with condition No 8 enforced against.
21. Section 180(1) of the 1990 Act provides that where, after the service of an enforcement notice, planning permission is subsequently granted for the same development or some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission but the notice does not cease to have effect altogether. I place reliance on section 180 in this case, to mitigate the effect of the notice so far as it is inconsistent with the planning permission granted by this decision.

*L Perkins*

INSPECTOR

## **Annex A: Breach of Planning Control Alleged**

The breach of Conditions No.4 and No.8 of planning permission ref: 15/0687 dated 06/07/2015 and granted for "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)".

Condition No.4 states:

*"Details of the front garden layout shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. All detailed works shall be carried out as approved prior to the occupation of the premises."*

Condition No.8 states:

"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."

Reason: In the interests of ensuring a high quality of design that preserves or enhances the character and appearance of the Mapesbury Conservation Area.

There has been a breach of Condition No.4 because the detailed works have not been carried out prior to the occupation of the premises. In particular, there is no planting/landscaping strip and a hedge has not been planted behind the brick wall.

The roof lights are not non-projecting Conservation Area type, and are not installed flush with the plane of the roof in Breach of Condition No.8.

("The unauthorised breach of conditions")

## **Annex B: Requirements of the Notice**

STEP 1 All works should be carried out at the front garden of the premises in accordance with the 141 Walm Lane front driveway approved plan of planning permission ref. 16/0154, please refer to Plan A attached to this notice.

STEP 2 Install non-projecting Conservation Area type front rooflights flush with the plane of the roof, in accordance with the approved plan of planning permission ref. 15/0687, please refer to Plan B attached to this notice.

## **Annex C: 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