
Appeal Decisions

Site visit made on 18 November 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Appeal Ref: APP/X5990/D/19/3241956

48 Wilton Crescent, London SW1X 8RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Espalier Ventures Property (Wilton Crescent) Ltd against the decision of City of Westminster Council.
 - The application Ref 19/07045/FULL, dated 10 September 2019, was refused by notice dated 5 November 2019.
 - The application sought planning permission for replacement of front and rear windows with single glazed sash windows, new lead clad pitched roof at front and rear, use of roof as terrace with a new staircase connecting it from the fourth floor level, installation of sliding rooflight, and associated internal and external alterations, without complying with a condition attached to planning permission Ref 18/04377/FULL, dated 20 July 2018.
 - The condition in dispute is No 1 which states that: 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.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A related application for variation of the listed building consent associated with the planning application in question has already been approved by the Council. The statutory basis for and consequences of varying a listed building consent differ from those of a planning permission.
3. In this regard, an application under Section 73 of the Act cannot be used to obtain a planning permission that would require variation of the description of development for which permission was originally granted. Therefore, if amending a condition would result in a conflict between it and the description of development, then that amendment is beyond the powers available under Section 73, and cannot be made.
4. The application subject of this appeal seeks variation of the 'plans condition' in order to add a closet wing extension housing a lift. Situated off the stairs, the closet would extend between part of the ground floor, and part of the second

floor, effectively appearing as a 2-storey structure externally. The lift itself would run all the way down into the basement.

5. The description of development for which planning permission was originally granted is specific in listing the main items of work to it applies. Though it nonetheless contains the ambiguous phrase, 'associated internal and external alterations', read in context, this cannot be reasonably understood as embracing the proposed closet extension. Indeed, such an extension would be as distinct and independent an item of work as any other specifically listed within the description. As the works detailed on the submitted plans would therefore substantially exceed those detailed within the description of development for which planning permission was originally granted, conflict would result.
6. I have consulted the parties on the above matter. Having done so, I can appreciate the appellant's desire for some form of determination to be made in relation to the issue in contention. However, insofar as my findings above indicate that the scheme falls outside the scope of Section 73 of the Act, my further consideration of the matters raised in relation to the appeal would not be appropriate.
7. For the reasons outlined above, I conclude that the appeal scheme falls outside the scope of Section 73 of the Act, and therefore that a new planning application is required. That being so, no further action will be taken on the appeal.

Conclusion

8. For the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR