



Appeal Decision

Site visit made on 18 May 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2022

Appeal Ref: APP/H5960/W/22/3290197

Lancaster Mews, London SW18 1BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr D Mills against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2021/3122, dated 28 June 2021, was approved on 28 September 2021 and planning permission was granted subject to conditions.
 - The development permitted is Removal of condition 5 (the removal of permitted development rights) pursuant to planning permission dated 17/04/1991 ref 91/C/0020 [Erection of 9 houses and 2 flats in 4 x two storey blocks, conversion of main building (plus 3 storey rear extension) to provide 5 flats] as varied by 2019/2478 (Variation of condition 7 (retention of parking)).
 - The conditions in dispute are Nos. 13 and 14, which state that:
 - 13) *Notwithstanding the provisions of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, amending or re-enacting that Order) no alterations, extensions, additions or enlargements shall at any future time be erected or constructed to dwellings 5 - 11 Lancaster Mews without the prior permission of the local planning authority.*
 - 14) *Notwithstanding the provisions of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, amending or re-enacting that Order) no extensions, additions or enlargements shall at any future time be erected or constructed to the roof of dwellings 1 - 4 Lancaster Mews by virtue of permitted development under classes B and AA of the above Order without the prior permission of the local planning authority.*
 - The reasons given for the conditions are:
 - 13) *In order to control future development in the interests of preserving the significance, appearance and setting of the designated heritage asset, in accordance with Council policies DMS1 and DMS2 of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2021.*
 - 14) *In order to control future development, in accordance with Council policy DMS1 of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2021.*
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Decision

1. The appeal is allowed and the planning permission Ref 2021/3122 for removal of condition 5 (the removal of permitted development rights) pursuant to planning permission dated 17/04/1991 ref 91/C/0020 [Erection of 9 houses and 2 flats in 4 x two storey blocks, conversion of main building (plus 3 storey rear extension) to provide 5 flats] as varied by 2019/2478 (Variation of condition 7 (retention of parking)) at Lancaster Mews, London SW18 1BA granted on 28 September 2021 by the Council of the London Borough of Wandsworth, is varied by deleting conditions 13 and 14.

Preliminary Matters and Main Issue

2. Planning permission 91/C/0020 was granted for the erection of 9 houses and 2 flats in 4 x two storey blocks, conversion of main building (plus 3 storey rear extension) to provide 5 flats at the appeal site, later varied by 2019/2478. The appellant applied for the removal of a condition of 2019/2478, which was granted by the Council under permission 2021/3122 subject to two additional conditions, being conditions 13 and 14.
3. Condition 13 of permission 2021/3122 relates to Nos. 5-11 Lancaster Mews but does not explicitly state which Classes within Schedule 2 Part 1 of the GPDO are restricted. Condition 14 specifically restricts development permitted under Classes AA and B of Schedule 2 of Part 1 of the GPDO at Nos. 1 – 4. These classes relate to: the enlargement of a dwellinghouse by construction of additional storey; and additions etc. to the roof of a dwelling house, respectively.
4. The reason given for condition 13 specifically relates to preserving the significance, appearance and setting of the designated heritage asset, while the reason given for condition 14 relates to controlling future development. However, it is clear from the submissions of the Council that both conditions were imposed to control development in light of the presence of the Wandsworth Town Conservation Area and Grade II Listed Building at No. 178 East Hill.
5. The main issue is therefore whether the disputed conditions are reasonable and necessary in the interests of the character and appearance of the Wandsworth Town Conservation Area and the setting of the Grade II listed building at No. 178 East Hill.

Reasons

6. The appeal site comprises the residential Lancaster Mews, containing flats and terraced dwellings. The buildings share a consistent character, constructed from materials echoing traditional surrounding development and limited in scale. Nevertheless, there remains variety, with individual groupings having their own design. From certain points the rear facades of Tonsley Road tower above the properties, with various roof additions and alterations clearly visible.
7. The National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. It further states conditions should not be used to restrict national PD rights unless there is a clear justification to do so. Planning Practice Guidance (PPG) advises that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity.
8. While conditions 13 and 14 expand the scope of the condition they replaced, with Class AA not having been part of the GPDO at the time of the original permission for the development, section 73 of the Town and Country Planning Act 1990 sets out that s.73 applications can be granted subject to conditions differing from those of the previous permission.
9. However, the rights within Schedule 2 Part 1 relate to development within the curtilage of a dwellinghouse, defined as not including a building containing one of more flats, or a flat contained within such a building. Even though Nos. 9

and 11 have some characteristics of a house such as direct street access, I observed them to be flats. As such, the rights within Schedule 2 Part 1 do not apply, and condition 13 is not necessary insofar as it relates to Nos. 9 and 11.

Conservation Area

10. Nos. 10–16 Lancaster Mews fall within the Wandsworth Town Conservation Area (CA), with the remainder of the dwellings located close to the CA boundary. The immediate part of the CA is primarily residential, with some commercial uses evident. It contains a mix of both modern development and more traditional buildings reflective of the historic nature of the area. In complimenting the mix of development, the site contributes positively to the CA and its surrounds.
11. I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. As the site falls both within and alongside the CA, any development due to the deletion of conditions 13 and 14 would lead to a degree of visual change within or close to the CA.
12. However, with regards to No. 10 Lancaster Mews, which falls within the CA, the GPDO makes specific provision in relation to Conservation Areas, defining them as Article 2(3) land. On such land, permitted development rights for householders have additional restrictions to take account of the significance and sensitivity of the area. As such, these factors relevant to the CA have already been considered within the GPDO.
13. In any event, this section of the CA and its surrounds is defined through a range of development types. The site is not experienced in isolation but in combination with the variety of built form visible from and alongside it. As such, although a degree of uniformity at Lancaster Mews may be lost should any development under the GPDO take place once the conditions are deleted, this would not appear out of place. The dwellings at the site, while similar, are not identical, and the permitted development would be subject to the limitations in the relevant sections of the GDPO, so as not to result in overly dominant or unduly imposing additions or alterations.
14. Specific concerns have been raised regarding roof level development at Nos. 1–4 Lancaster Mews, a short terrace of dwellings with shared roof form that lie on the CA boundary. While rear dormers are currently present at these properties, the deletion of condition 14 nonetheless could permit alterations such that this uniform roofscape and symmetry of these dwellings could be disrupted.
15. However, the diverse, imposing rear facades of Tonsley Road are in close proximity. While not within the site and of a different design, these dwellings nonetheless form part of the immediate character, with a range of roof forms and additions particularly visible beside Nos. 1–4. It is also notable that the Tonsley Road properties, some of which are directly adjacent to Nos. 1–4 and sit on the CA boundary, have no such restrictions on permitted development rights. In this sense, development at Nos. 1–4 due to the deletion of condition 14 would not necessarily appear incongruous in the immediate context. In addition, there are further restrictions within the prior approval process for Class AA specifically that require an application to the Council for prior approval as the external appearance of the dwellinghouse.

16. As such, even when accounting for possible development permitted by the deletion of conditions 13 and 14, the appeal site would continue to relate to the surrounding built form and pattern of development. The deletion of these conditions would therefore have a neutral effect, preserving the character and appearance of the CA and causing no harm in this regard. Accordingly, the presence of the CA is not a clear justification for the restriction of permitted development rights at the site.

Listed Building

17. The Grade II listed building of 178 East Hill (LB) is adjacent to Lancaster Mews, deriving its significance from its traditional design and simple shape. A clear visual relationship exists between the LB and the dwellings at the site, which fall within its setting. In particular Nos. 5–11 are located in the former garden area of the LB and surround it in an 'L' shape. However, due to the scale and positioning of the LB, its setting also comprises the additional surrounding development in the area, of varying scales and design.
18. I have a duty to have special regard to the desirability of preserving the nearby LB or its setting or any features of special architectural or historic interest which it possesses. Due to their proximity, any alterations, extensions, additions and enlargements carried out under permitted development at Nos. 5-8 and 10 after deletion of condition 13 would be visible from and beside the LB. While Nos. 1-4 are further from the LB, they nonetheless remain within its setting. As such, removal of condition 14 would also allow for development visible from and alongside the LB.
19. While some uniformity at the site could be lost should permitted development be carried out, the setting of the LB is not defined solely by reference to the site. The setting comprises the range of nearby development on East Hill and the rear facades of Townley Road. As such, the addition of various alterations and extensions at the site in this context would not detract from the LB or its setting. Due to the positioning of Nos. 1-4 any alterations arising from the removal of condition 14 would not be intervisible with the more prominent street facing elements of the LB.
20. In addition, development that would be permitted at the site would be subject to the limitations in the GPDO, with the requirement for an application to the Council for prior approval as the external appearance of the dwellinghouse in the case of Class AA. As such, removal of conditions 13 and 14 would not automatically result in additions or alterations so sizeable or dominant within the setting of the LB that they would visually compete with the asset.
21. Overall therefore, the removal of conditions 13 and 14 would have a neutral effect. Although the site is within its setting, I conclude that no harm to the significance of the LB would arise, and both the LB itself and its setting would be preserved. Accordingly, the presence of the LB is not a clear justification for the restriction of permitted development rights at the site.

Conclusion

22. Conditions 13 and 14 are neither reasonable or necessary in the interests of the character and appearance of the Wandsworth Town Conservation Area and the setting of the Grade II listed building at No. 178 East Hill.

23. For the reasons given above, the appeal is allowed and the planning permission is varied by deleting conditions 13 and 14.

C Rafferty

INSPECTOR