



Appeal Decision

Site visit made on 2 March 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2023

Appeal Ref: APP/T0355/W/22/3308700

Blomfield Place, 30 Frances Road, Windsor SL4 3EE

- 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 conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Gilbert against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/00319, dated 31 January 2022, was refused by notice dated 20 September 2022.
 - The application sought planning permission for Change of use from D1 (medical) to C3 (residential) with alterations to the roof to include a new roof terrace and glass balustrade following the removal of the existing dormer and rooflight, new front entrance, doors with glass balustrade to the first floor side elevation, part render, alterations to fenestration, pergola and associated works to provide 1 x studio, 4 x one bedroom flats and 2 x two bedroom flats without complying with a condition attached to planning permission Ref 19/03431, dated 14 April 2020.
 - The condition in dispute is No 14 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed below.
 - The reason given for the condition is: To ensure that the development is carried out in accordance with the approved particulars and plans.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my site visit, I saw that the proposed development appeared to be completed. However, what has been completed on site does not match the plans submitted with the appeal, most notably, the mezzanine level of Flat 4 was laid out as a second bedroom and a door had been installed on the bedroom of Flat 5. Given these discrepancies, I will determine the appeal based on the plans submitted with the appeal.
3. The address on the application form refers to the site as Highbury Place, 30 Frances Road while the Council refer to the site as Blomfield Place, 30 Frances Road. The address on the appeal form also refers to the site as Blomfield Place, so I have used this address in the banner heading above.

Background and Main Issues

4. Planning permission was granted in April 2020 for the change of use from D1 (medical) to C3 (residential), with various alterations, under application ref 19/03431. The appellant seeks to vary the plans condition attached to this permission in order to include the provision of a blind dormer to the rear of the

building, a new dormer in a side roof slope towards the front of the building, the omission of the previously approved pergola and private garden area for ground floor Flat 1, additional parking spaces, and changes to fenestration. It is clear from the first and second reasons for refusal that the Council's concerns largely relate to the blind dormer on the rear. Therefore, the main issues are:

- the effect that varying the plans condition would have on the character and appearance of the area, having particular regard to the Inner Windsor Conservation Area;
- the effect that varying the plans condition would have on the living conditions of neighbouring occupants, most notably those along Helena Road, in respect of outlook; and
- whether the alterations to the approved layout fundamentally affects the description of development of the planning permission originally granted.

Reasons

Character and Appearance

5. Blomfield Place is a modern, detached building, situated in a backland position along Frances Road. The site is accessed via an undercroft within Fountain Court, a residential building which is directly adjacent to Frances Road. The terraced properties of Helena Road lie to the rear of the appeal site and the rear elevation of Blomfield Place sits on the shared boundary with the Helena Road properties.
6. The site is situated within the Inner Windsor Conservation Area (CA). The appeal site is a more modern building than the more traditional Victorian terraces which surround the appeal site, and which contribute towards the significance of the CA. However, Blomfield Place sits appropriately and relatively discreetly to the rear of the more traditional terraces and contributes neutrally to the character and appearance of the CA.
7. Due to the scale of the rear dormer, whilst it is set down marginally from the ridge, and set in slightly from the eaves and the edges, it still dominates the section of roof on which it is sited. Unlike the smaller, more proportionate pitched roof dormers on the front roof slope of Blomfield Place, the rear dormer occupies more than half the width and depth of the roof slope. Whilst Blomfield Place is more modern than the surrounding Victorian terraces, the rear dormer still represents a poorly designed, disproportionate addition to the appeal building. Furthermore, whilst the finishing of the rear dormer in hung tiles assists in incorporating it in to the roofscape, the resultant expanse of solid wall on the face of the dormer, due to the lack of any windows, only further emphasises its inappropriate design.
8. Public views of the rear dormer are limited to only glimpses across an office car park from Keppel Street. However, such visibility is not a prerequisite for harm to occur and does not make up for the inappropriateness of the rear dormer's scale and design. In any event, the incongruous rear dormer would be seen by residents from the neighbouring properties to the rear, along Helena Road.
9. My attention has been drawn to other similar box and flat roofed dormers in the area, including those to the rear of Fountain Court, the presence of which were confirmed on my site visit. An earlier appeal decision at 28 Helena Road

for a rear dormer¹, which was dismissed, has also been cited by both parties. However, the circumstances of each proposal are likely to be different. In any event, the fact that similar dormers exist in the area is not a reason, on its own, to allow unacceptable development in the above context. I also note that none of the other dormers referred to are blind dormers, unlike the appeal development. I have considered this appeal on its own merits and concluded that it would cause harm for the reasons set out above.

10. Therefore, in view of the above, the rear blind dormer harms the character and appearance of Blomfield Place and subsequently fails to preserve the character and appearance of the CA. The harm to the significance of the CA would be less than substantial, to which I attach considerable importance and weight.
11. Paragraph 202 of the National Planning Policy Framework (the Framework) (2021) states that where a proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal.
12. The rear dormer provides extra headroom to the mezzanine level of Flat 4, which was originally identified as an office/library. The appellant states that the existing roof was not accurately shown on the original application which has resulted in the dormer to be added to make the habitable spaces work. However, Flat 4 would still be able to function as a 1 bedroom flat without the blind dormer as built. Therefore, whilst the development provides some limited economic and social benefits associated with the provision of greater habitable floorspace, these public benefits are not significant enough to outweigh the harm to the CA identified.
13. Taking the above matters in to consideration, I conclude that the development, in respect of the rear blind dormer, causes harm to the character and appearance of the area. Notably, it fails to preserve the character and appearance of the Inner Windsor CA. The development is in conflict with Policies QP1, QP3 and HE1 of the Royal Borough of Windsor and Maidenhead Borough Local Plan (adopted 2022) (the Local Plan). These policies, in combination, expect new development to contribute towards achieving sustainable high quality design in the Borough, which respects and enhances the local or historic character of the environment and positively contributes to the places in which they are located. Policy HE1 requires the historic environment to be conserved and enhanced in a manner appropriate to its significance. Development proposals are also required to demonstrate how they preserve or enhance the character, appearance and function of heritage assets (whether designated or non-designated) and their settings and respect the significance of the historic environment.
14. The development is also contrary to principle 10.5 of the Royal Borough of Windsor and Maidenhead Borough Wide Design Guide Supplementary Planning Document (adopted June 2020) (the SPD) which states that all types of dormers must be set back from the sides and ridgeline of the roof and not occupy more than half the width and depth of the roof slope. The development is also in conflict with the principles within Chapter 12 of the Framework, which seek good design sympathetic to the local area. It is also in conflict with the principles set out in Section 16 of the Framework, which requires great weight to be given to heritage assets' conservation.

¹ APP/T0355/D/10/2129870

Living Conditions

15. The rear elevation of the main building sits on the shared boundary with the Helena Road properties to the rear. The rear elevation is a blank brick wall facing the rear gardens and rear habitable windows of the Helena Road properties.
16. Whilst the rear dormer is additional built form, with a blind elevation in close proximity to the shared boundary, it is not be any more overbearing to the outlook of the Helena Road properties than the main building of Blomfield Place.
17. Therefore, I conclude that the rear dormer does not harm the living conditions of neighbouring occupiers, most notably those along Helena Road, in respect of outlook. It complies with Policy QP3 of the Local Plan which requires development to have no unacceptable effect on the amenities enjoyed by the occupants of adjoining properties in terms of privacy, light, disturbance, vibration, pollution, dust, smell and access to sunlight and daylight. It is also in accordance with paragraph 130 (f) of the Framework which states that development should have a high standard of amenity for existing and future users.

Layout Alterations

18. The *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868* (Finney) judgement sets out that a section 73 application may not be used to obtain planning permission that would require a variation to the 'operative' part of the planning permission, in other words, the description of development for which planning permission has already been granted. It follows from Finney that where amending a condition would result in a conflict between the new condition and the description of development, then that particular amendment is beyond the powers under section 73 and cannot be made.
19. The ethos behind a studio flat is that it combines the living room, bedroom and kitchen in to one open space. The replacement of the originally proposed movable partition wall between the bedroom and the living/kitchen/diner in Flat 5 and replacement with a solid wall provides a permanent division of the bedroom space. The lack of a formal door on the bedroom does not provide sufficient openness between the spaces to allow Flat 5 to still be considered as one open space. Therefore, this alteration fundamentally changes the accommodation described in the original description of development. Consequently, this particular amendment is beyond the powers under section 73.
20. In regard to the changes in the layout to Flat 7, whilst the replacement of the bathroom with a small habitable room is acknowledged, I note that the plans do not identify this room as a second bedroom. Therefore, the allegation of the Council that this alteration creates a second bedroom is unfounded and the alterations to the layout in Flat 7 are within the scope of section 73.
21. The removal of the previously approved pergola to Flat 1, whilst it was specifically mentioned in the description, its removal does not fundamentally conflict with the original description of development. I note that the Council raise no objection to the removal of the pergola in regard to the living

conditions of the future occupants of Flat 1, in relation to private amenity space. Therefore, the removal of the pergola is within the scope of section 73.

22. Consequently, whilst the layout changes to Flat 1 and Flat 7 are acceptable as they do not result in a conflict between the development and the description of development, the layout changes to Flat 5 varies the accommodation described in the original description of development which would fail to accord with the principles set out in Finney.

Other Matters

23. The Council do not object to the other variations to the approved plans. After consideration of the development, I have no reason to come to a different conclusion.
24. The Officer's report also noted concerns regarding the size of the revised cycle store. It appears that there is sufficient space on the site for the cycle store to be increased in size. However, given that I am dismissing the appeal on other grounds, I have not pursued this matter any further.
25. I note that it was queried whether the Conservation Officer visited the site before issuing their consultation response, objecting to the development. Nevertheless, following my own site visit, I have found that the development causes harm to the character and appearance of the area, most notably the Inner Windsor CA. Therefore, I can only attach limited weight to this concern.

Conclusion

26. I have found that the variation of the plans has an acceptable effect on the living conditions of the residents of neighbouring properties, most notably the occupants of Helena Road. I have also found that the layout changes to Flat 1 and Flat 7 do not result in a conflict between the new condition and the description of development. However, the adverse impact of the blind dormer to the rear on the character and appearance of the area, most notably the Inner Windsor CA, brings the development into conflict with the development plan as a whole. The material considerations outlined above are not sufficient to outweigh that conflict. Furthermore, the layout alteration to Flat 5 goes beyond that which can be considered under a section 73 application.
27. For the reasons given above I conclude that the appeal should be dismissed.

Laura Cuthbert

INSPECTOR