



Appeal Decision

Site visit made on 7 March 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/X5990/W/22/3307863

Flat 3, 39 Chilworth Mews, City of Westminster, London W2 3RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Dennis Fabian on behalf of Curzon Holdings Limited against the decision of the City of Westminster Council.
 - The application Ref 22/01926/FULL, dated 22 March 2022, was refused by notice dated 30 May 2022.
 - The development proposed is the use of the existing flat roof as a private residential terrace, including the installation of railings and decking, a new door to provide access, stairs and a planted screen and other associated works (part retrospective)
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. From my site inspection I noticed that part of the proposed works have been undertaken, relating to the formation of the roof terrace, stairs, decking and part of the railings. The appeal has been determined on this basis.
3. The description of development in the banner heading above refers to the proposal being 'part retrospective', this is not an act of development in itself, the appeal has been determined on this basis.
4. The Council identified some anomalies between a proposed elevation plan and submitted CGI's, the appellant has confirmed that drawing no. LA1570-1004 Rev 2 – Proposed Elevations is the proposed plan, and the CGI's are indicative only. I have also determined the appeal on this basis.

Main Issues

5. The main issues are the effect of the development upon:
 - the Bayswater Conservation Area (the CA); and,
 - the living conditions of neighbouring occupiers, with particular regard to noise and privacy.

Reasons

Bayswater Conservation Area

6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires with respect to any buildings or other land in conservation areas that special attention shall be paid to the desirability of

preserving or enhancing the character or appearance of that area. At paragraph 197, the National Planning Policy Framework (the Framework), sets out matters which should be considered, including sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 199 of the Framework states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

7. Bayswater Conservation Area contains a mixture of property types, many are tall, terraced properties, often with mews development behind them, that are served by access roads that are much narrower than the main thoroughfares. Many of the buildings in the immediate part the CA are of a similar appearance, with sash windows, and most are without roof terraces.
8. The appeal site is a first floor flat within a tall, terraced property. It has openings onto Chilworth Street to the front of the building, with access to the flat to its side from Chilworth Mews. Its rear elevation is visible from Chilworth Mews, which contains a row of terraced mews properties perpendicular to the rear of the appeal property. The window the subject of this appeal is a large vertical sash window on the rear side of the building, which is one of many vertical sash windows on the rear elevation of the terrace the building forms part. These windows have a relatively uniform pattern, albeit with some variation in window sizes, across the rear of the host property and adjoining terraced properties. This relatively unaltered uniformed appearance of windows, which is seen from Chilworth Mews, makes a positive contribution to the CA.
9. Whilst the proposed roof terrace itself would mostly be sunken below existing parapet walls it would be seen from nearby properties, moreover I saw that part of the proposed new door opening would also be seen from Chilworth Mews. The existing window opening would be increased in size by lowering its cill height, to accommodate the proposed new glazed door and large fan light above. This change would significantly disrupt the uniformity of openings on the rear of these properties. The fan light would also be wider than the glazed door and its small paned glazing would not match that of the fan light or other larger windows on the rear of the building. It would be an alien addition on the rear of the building and the terrace of which it forms part. Whilst the appellant has suggested that the window details could be conditioned, this would not address the change in the size of the opening and the loss of uniformity.
10. The proposed privacy screen, in view of its diamond shaped pattern together with its 2-metre height would represent an incongruous feature at first floor level, particularly against the backdrop of the buildings and surrounding roofs. Whilst it is proposed that planting would grow through the screen, this in itself would appear alien and out of keeping with the character and appearance of the area. Furthermore, the appearance of the new timber decking, railings that are proposed to be painted black, and the proposed timber steps would appear as discordant features in this urban context, particularly in stark contrast to the mainly masonry buildings, walls and roofs that surround the new roof terrace. Notwithstanding that these elements would not be visible from public viewpoints, they would be visible from surrounding properties, and paragraph 134 of the Framework is clear that development that is not well designed should be refused.

11. In view of the above, the development will be harmful to, and would neither preserve or enhance the character and appearance of the CA, in conflict with the duty within the Act. Furthermore, given the identified harm to the significance of the CA as a designated heritage asset there is conflict with Policies 38, 39, and 40 of the City of Westminster, City Plan 2019-2040 adopted April 2021 (CP), that amongst other things, requires high quality development that positively contributes to Westminster's townscape, conserves and enhances its heritage assets without causing harm to them, and seeks to ensure alterations that respect the character and uniformity of buildings.
12. Policy HC1 of The London Plan, adopted March 2021 has been raised in support of the appeal. Whilst the policy seeks to identify enhancement opportunities for heritage assets, this is qualified by amongst other things, seeking to ensure the conservation of heritage assets and prevent harm to their significance. This policy must be read as whole, along with other relevant policies in the development plan. The limited support from the cited policy is not outweighed by the identified conflict with other policies within the development plan.
13. The appellant has also stated that they consider the Council's Development and Demolition in Conservation Areas SPG (1996); and Bayswater Conservation Area Audit (CAA) (2000) to be considerations on this appeal. The Council has not stated that they are relevant, and I have not been provided with any copies of such documents. Consequently, I have not been able to take these into account and my decision has been based on the evidence provided.

Living conditions

14. The roof terrace is above a lower ground floor flat roof. To one side of the new roof terrace and at roughly the same level, is a large window of a neighbouring flat. Given this relationship, there would be some views from the new roof terrace towards that window. However, and notwithstanding the conflict identified above, the proposed privacy screen would disrupt most of these views towards the neighbouring window and protect the privacy of the adjoining occupiers. The type of planting and how long it would take to establish, would affect how quickly the privacy screen was formed. Had I been minded to allow the appeal, planning conditions could have been imposed in this respect.
15. The new roof terrace is above, below and to the sides of existing residential units. However, the use of the roof terrace for residential purposes in the context of other residential uses nearby is not inherently conflicting, for example sitting out on the roof terrace is unlikely to cause harm to neighbouring occupiers. Whilst parties and/or loud music could create noise, there could also be noise from such activities within properties with windows open, or within nearby gardens. In judging the effect of this proposal upon neighbouring occupier's living conditions, I have had regard to reasonably expected behaviour and not necessarily a worst-case scenario. In coming to this view, I have had regard to the concerns made by surrounding occupiers.
16. To conclude, the proposed development subject to a privacy screen condition, would ensure that the effects upon the living conditions of neighbouring occupiers were acceptable and the proposal would comply with Policies 7 and 38 (C) of the CP that amongst other things, requires new development to be neighbourly, provide a good standard of amenity for existing occupiers and to

protect and where possible enhance amenity, including preventing unacceptable privacy impacts.

Other Matters

17. I note that the property is not listed, and that the appellant has sought to engage with the occupiers of neighbouring properties, and not all the surrounding occupiers have objected to the proposal, but these points do not alter my conclusions.
18. The appellant's comments about creating an enjoyable and high-quality outdoor space are noted, but they do not outweigh the above identified harm and conflict with the development plan policies.
19. I have been made aware of other roof terraces nearby, but precise details of them have not been provided, so I am unable to assess whether they are directly comparable to the proposal before me. This limits the weight I can give them in my overall assessment. The roof terrace to the rear of a property on Westbourne Terrace is noted and I note its rear elevation is visible from the appeal property. Whether it has planning permission or not, this roof terrace is different to the appeal proposal as it is located at the rear of an extended part of the building and not on its main rear elevation. Its relationship with Chilworth Mews is also much different. Accordingly, it is not comparable to the appeal proposal, and it has not altered my conclusions on the appeal scheme.
20. The appellant has advised that the Council did not engage with them during the consideration of the planning application. This is a matter between the respective parties and is not relevant to the determination of the appeal.

Balance

21. I have found that the proposed development fails to preserve or enhance the character or appearance of the CA. I give this harm considerable importance and weight in the planning balance of this appeal.
22. I find the harm to the CA to constitute less than substantial harm owing to the small scale of the proposal and its effect being localised. Although, this does not equate to a less than substantial planning objection, especially where the statutory tests are not met. Paragraph 202 of the Framework requires public benefits to outweigh such harm. In this case the public benefits associated with the proposal are limited, they include a relatively small economic benefit associated with the completion of the parts of the development not already undertaken. I am not persuaded that the other benefits raised by the appellant are public benefits. I therefore find the public benefits to be limited, and not to outweigh the harm identified above to the significance of the designated heritage asset. Accordingly, there is conflict with the heritage protection policies of the Framework.

Conclusion

23. I conclude the proposed development would fail to preserve or enhance the character or appearance of the CA, contrary to the requirements of the Act, the requirements and objectives of the development plan taken as a whole, and the Framework. I therefore dismiss the appeal.

A Hunter

INSPECTOR