

6-10 CAMBRIDGE TERRACE AND 1-2 CHESTER GATE LONDON

OPINION

1. I am instructed on behalf of Allsop LLP. My instructions raise the question whether the installation of one of two rooflights on the roof of 1-2 Chester Gate would constitute effective commencement of the development authorised by planning permission 2009/3041/P granted by the London Borough of Camden on 7 September 2010. I understand that the client now wishes to install the rooflight in the roof of 10 Cambridge Terrace for the purpose of commencing development. I shall therefore give my opinion on the question posed in respect of that rooflight.
2. The planning permission authorised the following development –
Change of use 6-10 Cambridge Terrace and 1-2 Chester Gate from offices (Class B1) to 3 x dwelling houses (Class C3), excavation of basement, alterations at roof level, including rebuilding part of roof and installation of glazing sliding roof, lift overrun and rooflight to 6-10 Cambridge Terrace, rooflights on 1-2 Chester Gate and associated landscaping works to forecourt.
3. The approved drawings are listed on the planning permission. They include Drawing 639-2.008 (Nov 2008) which shows the proposed roof plan, including the installation of a rooflight on the roof of 10 Cambridge Terrace and on the roofs of both 1 and 2 Chester Gate.
4. Planning permission was granted subject to seven conditions. I mention two of those conditions –
 - (a) Condition 1 is the requisite commencement condition, in the following terms –
 1. *The development hereby permitted must be begun not later than the end of three years from the date of this permission.*
 - (b) Condition 3 requires that, prior to commencement of the development, an acoustic report must be submitted to and approved in writing by the Council.
5. Section 56 of the Town and Country Planning Act 1990 [‘the TCPA’] provides the statutory rules for determining the time when development is to be taken to have been begun. The relevant provisions are to be found in subsections 56(2)-(6). I set out below those that, in my view, relate directly to the question in the present case –

(2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

(3) The provisions referred to in subsection (2) are ...sections...91...

(4) In subsection (2) "material operation" means-

(a) any work of construction in the course of the erection of a building...

6. Section 91(1) of the TCPA requires that (as was done in the present case) planning permission be granted subject to a condition that the development to which it relates must be begun not later than the expiration of (ordinarily) three years beginning on the date on which the permission is granted.

7. In order to understand subsection 56(4)(a), it is necessary to have in mind the definitions of "building" and "erection" given in subsection 336(1) of the TCPA-

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.

"erection", in relation to buildings as defined in this subsection, includes extension, alteration and re-erection.

8. Reading those definitions into subsection 56(4)(a) above, a "material operation" includes "any work of construction in the course of the extension or alteration of any part of a building".

9. The case law has now established that the question whether a proposed work of construction would constitute a "material operation" within section 56(2)-(4) is an objective one. In other words, the answer is to be found by examining the development authorised by the planning permission and the work that is proposed for the purpose of commencing that development. It is wrong in principle to seek to understand or to take account of the motive or intention of the developer. In R (Ashfield) v Welsh Assembly [2003] EWHC 3309 (Admin), paragraph 13, Pitchford J reviewed the authorities and cited the exposition of the correct test in these terms –

The objective test is satisfied by the court first considering whether the work has been done in accordance with the relevant planning permission and, secondly, whether it is material in the sense of not being de minimis.

10. I apply that test to the facts of the present case.

11. Here, the planning permission expressly authorises the installation of rooflights in the roof of 10 Cambridge Terrace and of 1-2 Chester Gate. The position of the rooflights is shown on the approved plans. The installation of any one of those rooflights would indisputably constitute a “work of construction in the course of the alteration of a part of a building”. To install a rooflight on the roof of a building in which there is presently no such feature is to alter that part of the building. Provided, therefore, that any one of the rooflights is installed in accordance with approved Drawing 639-2.008 (Nov 2008), in my opinion, the first part of the test cited in paragraph 9 above will have been satisfied.
12. In so advising, I have taken into account the further instructions received by email on 26 July 2013 which confirmed that condition 3 of the planning permission (requiring the prior written approval of an acoustic report) has been discharged.
13. It is also necessary to consider whether the installation of a single rooflight would be “material” in the sense of being more than *de minimis*. In other words, would that work be sufficient within the context of the development authorised by the planning permission to be of legal significance?
14. In my opinion, that second element of the test cited in paragraph 9 above would also be satisfied. My reasons are as follows. The planning permission authorises both a material change in the use of the buildings and operational development in the form of building operations. Of the building operations authorised the planning permission, the installation of each of the three rooflights is expressly identified and authorised in terms in the planning permission. See paragraph 2 above. The installation of a raised rooflight on the roof of an existing building clearly constitutes a “building operation” within the meaning of section 55(1)(1A) of the TCPA. The installation such an element in the roof of a building clearly, in my view, amounts to an alteration that materially affects the external appearance of the building. It is, accordingly, not excluded from the definition of development by virtue of section 55(2)(a) of the TCPA. It is relevant to note that alterations to the roof of existing buildings often attract permitted development rights: in other words, such alterations are generally seen as constituting development that requires planning permission. Given the sensitivity of these buildings and their location, I can see no good reason to conclude other than that the installation or any one or more of the rooflights authorised by the planning

permission would constitute a “material operation” for the purposes of section 56 of the TCPA.

15. For these reasons, I conclude by stating my opinion that the installation of any one of the three rooflights authorised by the planning permission in the locations shown on the approved drawing prior to 7 September 2013 would be effective to begin (or commence) the development authorised by that planning permission for the purpose of section 56 of the TCPA. I do not consider that the fact that one of the rooflights would be partially obstructed by the presence of a steel beam (as described in the email date 23 July 2013) would affect that conclusion.
16. By email dated 26 July 2013 I have drawn my instructing solicitors’ attention to the consequences of beginning the development authorised by the planning permission in triggering obligations under the section 106 agreement dated 7 September 2013. I have also mentioned the position in respect of the listed building consent. My instructing solicitors have informed me that these matters are in hand.
17. I have given my opinion on the question raised in my instructions. If I can be of further help, I should be pleased to do so.

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27 July 2013