
Appeal Decision

Site visit made on 4 December 2014

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 January 2015

Appeal Ref: APP/X5210/W/14/3000030
Portland House, Ryland Road, London, NW5 3EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Delbanco Meyer and Co Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2014/3918/P, dated 11 June 2014, was refused by notice dated 20 August 2014.
 - The application sought planning permission for change of use of existing showroom building (Class B1) to 1 x 3 bed residential unit (Class C3) and associated works namely to allow minor external alterations to balconies, entrance doors, windows, creation of sedum roof and internal modifications to add an extra bedroom without complying with a condition attached to planning permission Ref 2014/0405/P, dated 1 May 2014.
 - The condition in dispute is Condition No 1 which replaces condition 7 of planning permission 2012/6012/P dated 27 August 2013, and which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: 1051.25 Rev A; 1051.26 Rev A; 1051.29; 1051.30 Rev A; 150 Rev P2; 210 Rev P2; 211 Rev P2; 350 Rev P2; Lifetime Homes Checklist by CSA; Design and Access Statement dated 09/11/2012 Ref 1051/3.1/JM; Energy Statement by Energytest Ltd dated 01/11/2012; Report on the use and marketing activity of the showroom premises by Salter Rex dated 18/12/2012.*
 - 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. The Council has provided me with an updated decision notice which reflects the plans that were submitted with the planning application. The appellant was provided with a copy of this notice and it was confirmed on the site visit that the plans referred to were correct.
3. The appellant has submitted a deed of variation to reflect the application the subject of this appeal, and to address the Council's second reason for refusal. The content of this is discussed later in my decision.
4. Within its decision notice the Council is concerned that the proposal would not represent a minor material amendment (MMA). I have had regard to the guidance within the Planning Practice Guidance (PPG) in respect of this matter.

The PPG is clear that amendments to conditions attached to a planning permission can be made under section 73 of the Act to seek a MMA where there is a relevant condition that can be varied. There is no statutory definition of a MMA either within the Act or within the PPG. However, the PPG states that a MMA is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

5. I acknowledge that the new dwelling would be significantly different in appearance to the original showroom building on the site. However, I am determining the appeal on the basis of the design approved in May 2014. I consider that the proposed roof terrace and associated boundary treatment would be modest in scale and would not result in a development that was substantially different from the one that has already been approved. Accordingly, I have determined the appeal on the basis of the submitted section 73 application.

Background and Main Issues

6. The application reference 2014/0405/P was a section 73 application which was granted planning permission by the Council in May 2014, for alterations to a scheme that was originally granted planning permission in August 2013 (Ref 2012/6021/P). The appellant is now seeking to amend the design of the building further and a roof terrace with a green wall privacy screen is proposed. A variation of condition No 1 of planning permission 2014/0405/P is therefore sought by replacing it with a condition specifying the plans that reflect the building's amended design.
7. The main issues in this case are the effect of the amended design on:
 - the character and appearance of the host property and whether this would serve to preserve or enhance the character or appearance of the Inkerman Conservation Area;
 - the living conditions of the intended future occupiers of the appeal property and neighbouring residents in Brinsmead Apartments, having particular regard to privacy; and
 - whether there is a suitable mechanism to secure infrastructure contributions that would arise as a result of the development.

Reasons

Character and appearance

8. The appeal site is located in Ryland Road, a predominantly residential area, which is within the Inkerman Conservation Area. The appeal property is 3 storeys in height and is set back from the road behind a walled courtyard that also serves Portland House. To the north of the appeal site is Portland House, an imposing 6 storey building, within which are Brinsmead Apartments; to the south is Imperial Works, a 2 storey building with planning permission for an additional storey, and to the west a railway line and Kentish Town West Station.
9. The proposed roof terrace would occupy approximately a third of the roof area of the building. There would be a 1.65 metre high green wall privacy screen on

the northern and eastern edge of the roof terrace, a 1.65 metre high timber screen to the viaduct and a 1.1 metre high glass balustrade on the southern and western boundaries. Access to the roof terrace would be internally from an opening roof light.

10. The roof terrace and associated boundary treatment would be set back from the front of the building by 3.5 metres, and set in from the side boundary with Portland House by 4.5 metres. The appellant has indicated that approximately 0.5 metre of the walls would be visible from the street. Given their position upon the roof, and having regard to the height of the property and its location in the street scene, I have no reason to doubt the appellant's findings. I am satisfied that the proposal would not be unduly prominent in the street scene, nor would its modest scale have a harmful effect on the character and appearance of the host property.
11. On my site visit I was unable to view the appeal site from the railway station because of the presence of hoarding. However, it is clear from the photographs submitted by the Council that the proposed timber screen would be visible from the railway line and from the platform at Kentish Town West Railway Station. This screen would be seen in the context of much taller buildings abutting the railway line, as well as with the fencing and other equipment upon the railway. It would therefore not be unduly prominent from either the station or the railway line.
12. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In this respect national policy on heritage assets, which includes conservation areas, is set out in the Framework. It states, at paragraph 131 that in determining planning applications, local planning authorities should take account of certain matters including the desirability of new development making a positive contribution to local character and distinctiveness.
13. The Council has provided me with a copy of the conservation area statement (CAS) for Inkerman, within which the appeal property is identified as making a positive contribution to the conservation area. The section on roof extensions sets out criteria that the Council will adopt in considering planning applications for such development. Paragraph Ink24 states that regard will be had to the design of the building, the adjoining properties and streetscape. Roof extensions are unlikely to be acceptable where the roof is prominent, particularly in long views and where the proposal would be detrimental to the form and character of the existing building.
14. Since the adoption of the CAS, the Council has granted planning permission for residential use of the appeal property, along with an additional storey at second floor level. I noted on my site visit that there is a roof terrace at Brinsmead Apartments and as such they feature in the wider conservation area.
15. Given my findings above, I conclude that the proposal would not be harmful to either the appeal property or to the character and appearance of the area. The character and appearance of the Inkerman Conservation Area would be preserved. There would be no conflict with the objectives of Policies CS5 and

CS14 of the Camden Core Strategy 2010-2025 Local Development Framework (Core Strategy), and Policies DP24 and DP25 of the Camden Development Policies 2010-2025 Local Development Framework (Development Policies) relating to design, character, local context and conservation areas.

Living conditions

16. The appellant considers that the proposed outdoor space would be of benefit to the living conditions of future residents of the property. The Council does not share this view and whilst not specifically referred to within its decision notice, concern was raised within its delegated report about the impact of the proposal on the living conditions of future residents of the property. On my site visit, I observed that residents on the third, fourth and roof level of Brinsmead Apartments would be able to look directly into the new roof terrace from both the windows of their apartments, from their balconies and from the roof terrace. As a consequence, users of the new roof terrace would be unlikely to enjoy using their outdoor space, because of the significant overlooking that would occur. There would be no privacy within this area and the provision of the privacy screen would not mitigate this harm, particularly as the overlooking would occur from above.
17. As well as balconies facing towards the appeal site, there are large glazed windows serving rooms within Brinsmead Apartments. The balconies are directly above each other and afford residents of the apartment building privacy whilst using this outdoor space. The close proximity of the new roof terrace to these balconies, would allow users of the terrace to have a direct view into the balcony areas. As a result, there would be a significant loss of privacy to residents of the apartment building. The proposal would make these balconies less pleasant places for residents to relax on.
18. Furthermore, users of the roof terrace would also be able to look directly into the windows closest to the corner of Brinsmead Apartments, particularly at third floor level. The plans submitted with the Council's evidence indicate that these windows serve a living and dining area. The separation distance is small, and the Council has calculated this to be around 10 metres. This is not disputed. This proximity would provide the opportunity for activities within the building being observed from the new roof terrace. This would be harmful to the privacy currently enjoyed by residents of this apartment. The modest height of the privacy screen would not prevent this from occurring.
19. I therefore conclude that the proposal would result in harm to the living conditions of the intended future occupiers of the appeal property and neighbouring residents as a result of overlooking and loss of privacy. A good level of amenity would not be provided for all existing and future occupants of buildings which would be in conflict with the core planning principle of the National Planning Policy Framework. This would also bring the scheme into conflict with the objectives of Policy CS5 of the Core Strategy and Policy DP26 of the Development Policies relating to the protection of quality of life. Whilst some degree of overlooking is inevitable within an urban situation, this does not provide justification for a development that would be significantly harmful to living conditions.

Mechanism to secure infrastructure contributions

20. The appellant has submitted an executed deed of variation dated 24 November 2014 which would provide for infrastructure contributions that were agreed as part of the original planning permission, and subsequently varied by a deed of variation submitted with the previous section 73 application. The Council has not raised any objections to this matter. However, I have not been provided with a copy of the original Section 106 Agreement to which this deed of variation would relate. I am therefore unable to determine whether the tests set out in paragraph 204 of the Framework would be complied with. Given that the appeal is to be dismissed on other grounds, it was not necessary for me to request a copy of the original Agreement as the scheme is unacceptable for other reasons.

Conclusion

21. In light of my findings, I conclude that the variation of the disputed condition would be harmful to living conditions. For the reasons given above, and having regard to all other matters raised, including that no objections were raised by third parties, I conclude that the appeal should be dismissed and condition no 1 of planning permission Ref 2014/0405/P retained in its present form.

R C Kirby

INSPECTOR