The Planning Inspectorate

Appeal Decision

Site Visit made on 7 June 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd December 2021

Appeal Ref: APP/X5210/W/20/3259869
St. Mary The Virgin Church, Elsworthy Road, London NW3 3DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Mr Leonard Hawkins of MRDA Architects and Conservation Consultants against the Council of the London Borough of Camden.
- The application Ref: 2020/0964/P, is dated 25 February 2020.
- The development proposed is described as: Reversible installation of photovoltaic technology mounted on the southern slope of the nave roof of St Mary the Virgin, Primrose Hill.

Decision

1. The appeal is allowed, and planning permission is granted for a reversible installation of photovoltaic technology mounted on the southern slope of the nave roof at St. Mary The Virgin Church, London NW3 3DJ in accordance with the terms of the application, Ref: 2020/0964/P, dated 25 February 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for a full award of costs has been made by Mr Leonard Hawkins of MRDA Architects and Conservation Consultants against the Council of the London Borough of Camden. This application is the subject of a separate decision.

Preliminary Matters

3. Although the appeal has been made against the failure of the Council to issue a decision on the application within the prescribed time period, the Council has indicated in its appeal submissions that, had it been in a position to do so, it would have granted planning permission for the proposal.

4. From the submissions, as it was originally submitted, the planning application sought permission for an installation comprising 87 photovoltaic panels and during the consideration of the application, the number of panels proposed was reduced to 58. The Council's stated support for the proposal is in respect of this reduced scheme.

5. Within their appeal submissions the appellant has submitted a number of alternative proposals which include the originally submitted scheme for 87 panels in three rows (referred to as Option 2B), a scheme for 56 panels in four rows covering approximately half the roof plane at the eastern end of the roof (referred to as Option 1), and a scheme for 116 panels in four rows (referred to as Option 3). The scheme for 58 panels in two rows, which was the iteration

before the Council at the time that the appeal was lodged, is referred to as Option 2. The appellant has suggested that planning permission should be granted for the largest array of Panels (Option 3) or, alternatively, the largest array that is considered appropriate.

6. The description of the proposal set out on the planning application form is non-specific in respect of the number of panels for which permission is sought. Nonetheless, the appeal process should not be used to evolve a scheme and it is important that what is considered at appeal is essentially the same scheme which was considered by the local planning authority, and on which interested people's views were sought. From the evidence, the only iterations of the scheme that were before the Council as part of the planning application that now forms the subject of this appeal were Options 2B (87 Panels) and Option 2 (58 Panels), which superseded the original proposal.

7. The appellant suggests that it is open to me to grant planning permission for the scheme proposing 116 Panels (Option 3) and opines that this would not compromise the principals set out in *Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]* as this iteration of the proposal is essentially similar to an earlier planning application, proposing 108 panels, that was refused planning permission by the Council. Consequently, it is suggested, the views of interested parties on this proposal are known as they were sought at that time. I do not agree with this proposition as that planning application was made in 2018 and, due to the passage of time, it cannot necessarily be concluded that the views of interested parties would be the same. There is no indication that Option 1 has ever been formally considered by the Council, or consulted, on and the appellant sets out that this option is no longer being pursued. Therefore, I shall not consider these amendments to the scheme as part of the decision.

8. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The parties were given the opportunity to comment on any implications that the revision to the Framework may have on their respective cases. The appellant submitted some further comments in respect of renewable energy generation. No further comments were received from the Council. The provisions of the Framework in respect of considering the potential impacts on heritage assets are unchanged from the previous version. I have taken these comments into account and I have determined the appeal with reference to the revised Framework.

9. As the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Whilst the appeal building is listed, Section 60 of the Act provides an exemption from the requirement to apply for Listed Building Consent for buildings that are being used for ecclesiastical purposes.

Main Issues

10. The main issues in this appeal are the effect of the proposed development on the Church of St Mary the Virgin, a Grade II Listed Building [List entry: 1329902] and on the character and appearance of the Elsworthy Conservation Area.

Reasons

11. The Church of St Mary the Virgin was listed in 1974 and was built in 1871-1872, then subsequently enlarged around 10 years later. More recently, a new meeting room and a new entrance from Primrose Hill Road were added in the late twentieth and early twenty first century respectively.

12. From the evidence and from what I saw when I visited the site, the special interest of the building is largely derived from its French Gothic inspired architecture. It is noted in both the appellant's and the Council's evidence that as the church has neither a spire nor a tower, the roof slopes form large elements that contribute towards the character of the building. It also has some historic interest as a result of not being consecrated until 1885 due to the High Church practices of the first incumbent, although it subsequently went on to become a showpiece of liturgical worship and music.

13. The Elsworthy Road Conservation Area Appraisal and Management Strategy 2009 (CAAMS) identifies the church as the principal building of interest within the part of the conservation area where it is located. It is, in addition, the only listed building in the conservation area. The CAAMS sets out that it forms a very important part of the historic quality and character of the area.

14. Given the above, I find that the special interest of the listed building, in so far as it relates to these appeals, to be primarily associated with its illustration of the increasing interest in, and popularity of, the revival of the gothic architectural style during the Victorian period and its application to religious and public buildings. Due to its location and lack of a spire or tower, the apsidal end elevation and the roof of the building are important and prominent architectural features.

15. The Elsworthy Road Conservation Area covers an area encompassing approximately 16.4 hectares extending from Primrose Hill Road in the east to Avenue Road in the west. Its northern edge runs along King Henry's Road while its southern boundary follows the northern edge of Primrose Hill around to Rudgwick Terrace on the western side. It is roughly triangular in shape with a limb extending to the south east encompassing a number of properties on the east side of Avenue Road between its junctions with Elsworthy Road and Rudgwick Terrace. The appeal building is located at the eastern apex of the triangular section just inside the conservation area boundary.

16. The conservation area is primarily residential in character and developed over a period of approximately 70 years starting with larger detached and semi-detached houses on Avenue Road and King Henry's Road, followed by terraced housing at the eastern end of Elsworthy Road and Elsworthy Terrace in the 1870's, and finally the late nineteenth and early twentieth century development at the western end of Elsworthy Road and Wadham Gardens which exhibits a less formal, garden suburb, style.

17. Its significance is derived from the evidence that it provides of the changing architectural styles and tastes over the Victorian period and the illustration of the evolution of the approach to town planning during that time, from the formal layouts and more uniform designs of the early Victorian housing to the less formal and diverse approach taken by the end of the nineteenth century. Given the above, I find that the significance of the CA, in so far as it relates to this appeal, to be primarily associated with these factors.

18. The appellant sets out in the submitted "Statement of Significance" that the exterior architecture of the roof slope is of moderate to high significance, and I would concur with this assessment due to its size and prominence and its form being an integral part of the overall design of the church . The proposed works would only affect the south facing plane of the main roof where the photovoltaic panels would be installed.

19. It is accepted by the appellant that the proposed photovoltaic panels would be distinguishable from the present grey roof slates because of their black colouration and the surface finish. The scheme for 58 panels would result in approximately half of the roof plane being covered by the installation and the scheme for 87 panels would cover approximately three quarters of the roof plane.

20. Despite the monolithic form of the proposed photovoltaic panel installation, due to the colour difference and the much larger unit size of the panels compared to the roof slates, combined with the projection of the panels above the existing plane of the roof, both iterations of the proposal would result in a significant and noticeable change to the appearance of the building. The steeply sloping roof to the nave is an important part of the built form and architectural style of the church. The scheme proposing an installation of 87 panels would result in the obscuring of a much larger proportion of the current slate roof covering and its visual replacement with modern materials wholly unrelated to the historic built fabric of the church. This would be harmful to its appearance and its architectural interest.

21. The smaller scheme of 58 panels would also be harmful for similar reasons, although as it would cover a noticeably smaller area of the roof plane, 33% less that the larger scheme, this would reduce, but not eliminate, the degree of harm that would result.

22. In terms of the conservation area, the photovoltaic panels would be mainly visible in short range views in the near vicinity of the church building. However, due to orientation of church building in relation to Elsworthy Road and Primrose Hill Road, the proposal panels would be visible in views that are recognised as important in the CAAMS, notably the view into the conservation area from Primrose Hill Road and the view west along Elsworthy Road. I also observed that there is some visibility from the lower level paths within the open space area of Primrose Hill, particularly over the lower level buildings of St Pauls Primary School. At the time of my site visit, views from higher up Primrose Hill were screened by intervening trees, although I have noted from the photographs in the Design and Access Statement that visibility increases when the trees are not in leaf.

23. The CAAMS also notes that the group of houses adjacent to the church have undergone alterations at roof level that are not particularly sympathetic. No other photovoltaic installations within the conservation area have been brought to my attention and I did not note any during my site visit. The proposal would, consequently, introduce a further incongruous feature in this part of the conservation area that would add to the incremental erosion of the historic character. As set out above, the CAAMS recognises that the church building forms a very important part of the historic quality and character of the area. Consequently, harmful alterations to this building would adversely affect the conservation area.

24. The appeal building is located in a prominent position at an entry point to the conservation area and provides a visual transition from the mid-twentieth century housing on Primrose Hill Road to the Victorian buildings to the west that comprise the conservation area. The introduction of modern and incongruous elements to this building would weaken that transition and be harmful to the character and appearance of the conservation area.

25. Given the above, I find that the proposal would fail to preserve the special interest of the listed building and the significance of the conservation area. Consequently, I give this harm considerable importance and weight in the planning balance of these appeals.

26. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. The proposal would only affect one roof plane of the building and the effect on the conservation area would be restricted to the near vicinity of the appeal site. As a result, the effects of the proposal would be limited in extent and would not lead to a total or extensive loss of significance to either the listed building or the conservation area. In the light of the above, I find the harm to be less than substantial in this instance but, nevertheless, of considerable importance and weight.

27. I have also noted that it is common ground between the parties that the proposal would cause less than substantial harm to the heritage assets. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.

28. Although the generation of electricity to meet the church's own needs is not of itself a public benefit, the proposal would reduce or remove the reliance of the church on electricity generated by methods that produce carbon dioxide (CO_2) and would potentially generate a surplus of electricity from a renewable source that could be exported to the national grid.

29. From the appellant's evidence, which is not challenged by the Council, the Church's current need for electricity is estimated to be 15,126 kWh per year. The version of the scheme consisting of three rows of panels would generate 25,200 kWh per year, creating a surplus of approximately 10,074 kWh. The reduced scheme of 58 panels would produce approximately 18,300 kWh resulting in a potential surplus of approximately 3,174 kWh.

30. A balance needs to be struck between the benefits of renewable energy generation and preventing harm to the significance of historic buildings and areas. Whilst the larger scheme for 87 panels would increase the potential surplus electricity generated, it would result in a much greater degree of harm to the heritage assets which would not be overcome by the benefits of the scheme. Within this context, the smaller scheme of 58 panels whilst producing smaller scale benefits would, nevertheless, result in a reduction in CO_2 emissions and produce a small surplus of electricity that could be fed back into the national grid. This would represent a substantive environmental benefit that would justify the harm that the amended proposal would cause to the heritage assets.

31. Given the above, I conclude that although the proposed works set out in the appellant's Option 2 would not preserve the special architectural interest of the Grade II listed building nor the character and appearance of the Elsworthy Conservation Area, this harm to the heritage assets is justified by the public benefits that would arise from the proposal. This would satisfy the requirements of the Act and paragraphs 197 and 200 of the Framework. It would also meet the relevant requirements of Policies D2 and CC1 of the Camden Local Plan 2017 which seek to respectively preserve, or enhance, designated heritage assets and to minimise the effects of climate change. As a result, the proposal would be in accordance with the development plan.

Conditions

32. I have had regard to the list of conditions that have been suggested by the Council. To provide certainty in respect of what has been granted permission, I have included a condition specifying the approved drawings. The Council's suggested condition also refers to several documents which are background information and not drawings or specifications and, consequently, I have not included these.

33. As the appeal building is a listed building, it is necessary to include conditions that require any reinstatement works to match the existing building in terms of materials and finish, and to require the removal of the photovoltaic installation in the event that it becomes redundant or non-functional. For clarity, I have included within the second condition a requirement to remove the photovoltaic installation if it becomes redundant through malfunction or otherwise does not generate electricity for more than 12 months, in addition to an implementation clause.

Conclusion

34. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

1) The development hereby permitted must be begun not later than the end of three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

   Drawing Nos: 1115-12 EX.001; 1115-12 EX.002; 1115-12 EX.003; 1115-12 EX.004; 1115-12 EX.005; 1115-12 EX.006; 1115-12 EX.007; 1115-12 PL.002 Revision A; 1115-12 PL.003; 1115-12 PL.004 Revision A; 1115-12 PL.005 Revision A; 1115-12 PL.006; 7009-01; 7009-02; Sub-main Relocation Specification (dated 22/04/2020); and Q.Peak Duo Blk-G5 305-320 literature (undated).

3) All new external and internal works and finishes and works of making good to the retained fabric, shall match the existing adjacent work with regard to the methods used and to material, colour, texture, and profile, unless otherwise specified in the approved application.

4) In the event of the installation becoming redundant, or in the event that the installation does not generate electricity or is otherwise non-functional for a period of more than 12 months, the building owner shall provide written notification to the local planning authority as soon as practicable of the date on which the installation became redundant or ceased to generate electricity. Within 3 months of the date of the initial notification, details of a scheme for the removal of the photovoltaic panels and equipment (including cabling, piping, and boxes) and details of the reinstatement of any removed fabric and the making good of historic fabric, shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the photovoltaic panels and associated equipment shall be removed from the building in accordance with the submitted details within 3 months of the date of the written approval of the scheme.