The Planning Inspectorate

Appeal Decision

Site visit made on 16 June 2014

by Alison Roland BSc DipTP MRTPI

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

Decision date: 22 August 2014

Appeal Ref: App/X5210/A/13/2209985
4-6 Charlotte Street, London, W1T 2LP.

- 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 Cosmichome Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref: 2013/4500/P, dated 17 July 2013, was refused by notice dated 25 September 2013.
- The development proposed is extension of mansard roof on 4-6 Charlotte Street and extension to extraction duct on rear of the property.

Application for Costs

1. An application for costs was made by Cosmichome Ltd against the Council of the London Borough of Camden. This application is the subject of a separate decision.

Procedural Matters

2. The description of the proposal cited on the planning application forms is: *Extension of mansard roof on 4-6 Charlotte Street and extension to extraction duct on rear of the property.* However, it is clear that the application involved the creation of an additional living unit which was the basis on which the Council determined the application. Accordingly, I consider a more accurate description to be conversion of existing flat to 1 x studio flat and 1 x 2 bed flat, erection of mansard roof and alterations to rear extraction flue. In addition, the address is given as 4 Charlotte Street, whereas the proposals also include 6 Charlotte Street. These changes are reflected in my decision below.

Decision

3. The appeal is allowed and planning permission is granted for conversion of existing flat to 1 x studio flat and 1 x 2 bed flat, erection of mansard roof and alterations to rear extraction flue at 4-6 Charlotte Street, London, W1T 2LP, in accordance with the terms of the application Ref: 2013/4500/P, dated 17 July 2013 subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drwg No: P-978-001: Existing Site Plan; Drwg

No: P-978-002: Existing Third Floor and Roof Plans; Drwg No: P-978-003: Existing Front Elevation; Drwg No: P-978-004: Existing Rear Elevation; Drwg No: P-978-005: Existing Section; Drwg No: P-978-101: Proposed Floor Plans; Drwg No: P-976-120: Proposed Front Elevation; Drwg No: P978-121: Proposed Rear Elevation; Drwg No: P-978-130: Proposed Section A-A.

3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Main Issues

4. The main issues in this appeal are (1) whether the proposal would preserve and enhance the character or appearance of the Charlotte Street Conservation Area and (2) whether, in the absence of a legal agreement to restrict the eligibility for parking permits, the proposal would give rise to unacceptable levels of on street parking and congestion in the area.

Reasons

5. The Council maintain that the appeal property is situated in a group with largely unimpaired roof lines, although they acknowledge the existence of the nearby mansard roof at No 10 Charlotte Street. Camden Planning Guidance: *Design* which has been adopted as a Supplementary Planning Document (SPD), states that mansard roofs are acceptable where it is the established roof form in a group of buildings or townscape. The guidance goes on to state that such a roof form is often the most appropriate form of extension for a Georgian or Victorian dwelling with a raised parapet wall and low roof structure behind.

6. I take the Council's point that other than No 10 Charlotte Street, this particular row of terraced properties on the East side of the street have a roof line that is largely unimpaired by roof extensions. However, whilst paragraph 5.8 of the SPD refers to such a scenario as one of the circumstances where a roof alteration is *likely* (my emphasis) to be unacceptable, the guidance qualifies that is the case only where there is likely to be an adverse effect on the skyline, the appearance of the building, or the surrounding street scene.

7. I consider that the appeal property is able to accommodate a mansard roof of the type proposed due to the irregular height of the properties which make up the terrace and consequently, their parapets, which breaks up the symmetry of the block and presents an inconsistent skyline. The differences in fenestration and also the colour of the individual buildings within the terrace also emphasises their individuality, unlike many other terraces which exhibit considerable uniformity in design.

8. In this context, the proposal would appear unremarkable. This is all the more the case given the prevalence of mansard roofs, dormers and other roof alterations on properties in the vicinity, including further to the North along both sides of Charlotte Street, as well as properties on Percy Street, Rathbone Place and Rathbone Street. Many of these are visible from the vicinity of the appeal site and as such, they form an established part of the townscape, albeit that they vary in scale and form.

9. Whilst the dimensions of the mansard would depart from the size thresholds in the SPD, they would do so only marginally and given their height from ground level, I consider, the difference would be barely, if at all perceptible to the passer by.

10. Overall on the first main issue, I conclude that the proposed mansard would integrate comfortably with the appeal property and wider terrace in which it sits. Accordingly, I consider it would preserve and enhance the character and appearance of the Charlotte Street Conservation Area. I therefore find no conflict with Policies CS14 of the Camden Core Strategy 2010 and DP24 of the Camden Development Policies Document, which require development to exhibit the highest standard of design that respects local context and character, as well as Policy DP25 of the latter document which states that development in Conservation Areas will only be permitted where it preserves and enhances its character and appearance.

11. In relation to the second main issue, the appellant maintains that recent case law [1] (hereinafter referred to as the Westminster case) has established that the use of an undertaking under Section 106 of the Act as a means to prohibit parking permits, no longer has any legal basis. I am also referred to an appeal decision APP/X5210/A/13/2196094, in which, with reference to the aforementioned case, the Inspector concluded that the undertaking was not a valid planning obligation and accordingly, gave it no weight in her decision.

12. In relation to the latter, the Inspector's conclusions need to be interpreted in the context of the circumstances pertaining to that particular case. At paragraph 29 of her letter it is stated that the appellant acknowledges that this covenant (the one before the Inspector) was similar to that which was the subject of the Westminster case. At paragraph 22 the Inspector goes on to qualify why in more detail, the particulars of the covenant would be difficult for the Council to enforce.

13. For similar reasons, I consider the details of the Westminster judgement needs to be interpreted in context. Again and unlike the appeal before me, there was an obligation of sorts before the Judge. As it amounted merely to a personal undertaking, which did not run with the land and was not capable of being registered as a local land charge, it was held that the Inspector had wrongly taken it into account as a Section 106 Planning Obligation.

14. I do not consider that these cases are directly comparable to the appeal before me, in which there is no obligation to consider, lawful or otherwise. The question remains however, whether the Council were correct in seeking to secure a legal agreement in principle, in order to ensure that the proposed development is car free. The starting point here is Policy DP18 of the Camden Development Policies Document 2010-2025 which states that the Council will expect development to be car free in the Central London Area and for such developments, will use a legal agreement to ensure that future occupants are aware that they are not entitled to on street parking permits. This document has been the subject of independent examination, is up to date and accordingly, I accord DP18 significant weight.

15. However, I have not been provided with sufficient information to establish that the obligation is necessary to meet the three tests for obligations set

[1]. Westminster City Council v Secretary of State for Communities and Local Government and Acons

out in Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations. One of these is that the obligation is necessary to make a proposed development acceptable in planning terms. In particular, I have been given no explanation as to how the proposal would unacceptably contribute to parking stress and congestion in the surrounding area. It does not follow to my mind, that this is an automatic corollary, in the absence of a completed Obligation. Moreover, with a Public Transport Accessibility Level rating of excellent and sited within the Congestion Charge zone, this would suggest to me that residents of the proposed development would be disinclined towards car ownership in any event.

16. On the second main issue, I therefore conclude that it has not been demonstrated that the proposal would give rise to unacceptable levels of on street parking and congestion in the area and the absence of an Obligation is not accordingly, a decisive factor in this appeal.

17. In addition to the standard time limit for commencement of development, the Council suggest a condition requiring all external work to be carried out in materials that resemble as closely as possible those of the existing building. However, given that there are a variety of materials employed in the external surfaces of the building, I consider a more appropriate condition should require samples of materials to be submitted to and approved by the Council in order to secure a satisfactory external finish. A condition confining the approval to the submitted plans is necessary for the avoidance of doubt.

ALISON ROLAND

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 16 June 2014

By Alison Roland BSc DipTP MRTPI

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

Decision date: 22 August 2014

Costs application in relation to Appeal Ref: APP/X5210/A/13/2209985 Land at at 4-6 Charlotte Street, London, W1T 2LP.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Cosmichome Ltd for a partial award of costs against the Council of the London Borough of Camden.
- The appeal was made against the refusal of planning permission for conversion of existing flat to 1 x studio flat and 1 x 2 bed flat, erection of mansard roof and alterations to rear extraction flue.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The application for costs was made on the basis of Circular 03/2009, which has been superseded by the national Planning Practice Guidance (PPG). However, having regard to the submissions put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the PPG.

3. The application is in respect of reason No 2 and the appellant essentially claims that the Council have ignored relevant judicial authority [1] and the Inspector's judgement in appeal APP/X5210/A/13/2196094. In the related planning appeal I have explained why I believe that both of these cases are not directly comparable to the appeal before me. Either way, decisions made on individual planning appeals do not constitute case law and I do not consider a High Court ruling dating from 27 March 2013 could reasonably be construed as well established case law. I therefore do not consider that the advice at paragraph 049 referring to a local planning authority acting contrary to or not following, well established case law is applicable in this case. Nonetheless, insofar as the appellant's submissions on this issue were advanced specifically in response to reason for refusal No 2, I consider the appellant has incurred wasted time and expense.

1. Westminster City Council v Secretary of State for Communities and Local Government and Acons

4. Moreover, insofar as the request for the obligation was based solely on Policy DP18, with no objective analysis of whether it was necessary to make the development acceptable in planning terms, I consider the Council acted unreasonably in relation to reason for refusal No 2. In particular, no evidence was submitted to substantiate the assertion that the proposal would unacceptably worsen congestion in the area. The fact the site falls within the Central London Area with a Public Transport Accessibility level of 6a (excellent), does not go far enough in this respect. Neither is it sufficient to defend that position by stating that the Council have used S106 agreements for a number of years with success, because this purports to obviate the necessity to assess each case on its merits.

5. I find that the request for the obligation was not necessary to make the development acceptable in planning terms; one of the three tests at Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations. This being the case, it follows that I do not have to consider the two remaining tests.

6. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has been demonstrated and that a partial award of costs is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Camden shall pay to Cosmichome Ltd the costs of the appeal proceedings described in the heading of this decision, limited to the cost of the appeal proceedings incurred in advancing the case in relation to reason for refusal No 2, such costs to be assessed in the Senior Courts Costs Office if not agreed.

8. The applicant is now invited to submit to Council of the London Borough of Camden, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

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