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## Appeal Decisions

Site visit made on 29 July 2015

**by Brendan Lyons BArch MA MRTPI IHBC**

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

**Decision date: 09 October 2015**

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### **Appeal A: APP/A5270/W/15/3011998**

#### **45 Eaton Rise, London W5 2HE**

- 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 Heronsbrook Homes against the decision of the Council of the London Borough of Ealing.
  - The application Ref PP/2014/5980, dated 19 November 2014, was refused by notice dated 11 March 2015.
  - The development proposed is the alteration and extension of existing dwellinghouse to provide nine flats, private and communal amenity space, vehicle and cycle parking and associated landscaping.
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### **Appeal B: APP/A5270/W/15/3017932**

#### **45 Eaton Rise, London W5 2HE**

- 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 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 Heronsbrook Homes against the Council of the London Borough of Ealing.
  - The application Ref PP/2014/5575 is dated 24 October 2014.
  - The application sought planning permission for a four storey rear extension / raising of roof ridgeline of the existing roof in conjunction with the conversion of building into 8 self-contained (7 x two-bedroom and 1 x one-bedroom) flats, with associated amenity space and refuse store, parking for four cars (including one disabled car parking space) and cycle parking (following demolition of rear outrigger), without complying with a condition attached to planning permission Ref PP/2013/2908, dated 12 June 2014.
  - The condition in dispute is No.2, which states that: The development hereby approved shall be carried out in accordance with drawing title number(s) 12-P795-300-Rev D, 12-P795-301-Rev D, 12-P795-302-Rev B, 12-P795-303-Rev B, 12-P795-305-Rev A and 12-P795-306-Rev B unless otherwise agreed in writing by the local planning authority.
  - 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. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for a four storey rear extension / raising of roof ridgeline of the existing roof in conjunction with the conversion of building into 8 self-contained (7 x two-bedroom and 1 x one-

bedroom) flats, with associated amenity space and refuse store, parking for four cars (including one disabled car parking space) and cycle parking (following demolition of rear outrigger), at 45 Eaton Rise, London W5 2HE, in accordance with the application Ref PP/2014/5575 dated 24 October 2014, without compliance with condition No.2 previously imposed on planning permission Ref PP/2013/2908 dated 12 June 2014 and subject to the conditions set out in the annex appended to this decision.

### **Background to appeal proposals**

3. Eaton Rise is a broad tree-lined residential road not far from Ealing Broadway underground station and public transport interchange. The road forms the central spine of the Mount Park Conservation Area. No.45 Eaton Rise is a detached house, built in stock brick and predominantly of two tall storeys, but with a third floor in the gabled roof space. Much of Eaton Rise is lined by generously scaled two-storey and three-storey Victorian villas, but No.45 is flanked on each side by modern four-storey blocks of flats.
4. Planning permission<sup>1</sup> was granted in 2014 to raise the ridge of **No.45's** main roof and to extend the house to the rear, in order to allow its conversion to eight flats. The approved layout includes parking for four cars to the rear of the plot, comprising three standard spaces and one larger space for use by a disabled person. A legal agreement was completed to restrict future residents from applying for parking permits in the controlled parking zone that includes Eaton Rise and adjoining roads. This permission has proceeded to implementation and work was well under way at the time of my visit to the site.
5. A separate application<sup>2</sup> submitted at around the same time had sought permission for eight flats, with a rear extension but also with an extension to the side in the space between the house and the block of flats to the south, West Park Court. Permission was refused and a subsequent appeal<sup>3</sup> was dismissed in April 2014.
6. Following the grant of permission for the scheme now under construction, a new application was made for permission for nine flats, with a four-storey rear extension similar to that earlier approved and with a three-storey side extension, whose top floor would be accommodated within the roof and whose ground floor would form an open '**undercroft**' **vehicular access**. Eight parking spaces, including one for a disabled user, would be provided. That application was refused in November 2014 and is now the subject of Appeal A.
7. The Council has chosen not to submit a statement in respect of appeal A, but the justification for the reasons for refusal is **set out in the officers' report on the planning application**, a copy of which has been provided by the appellant. I **have taken that as the basis of the Council's case in the appeal**.
8. Appeal B seeks permission for a variation of the permitted scheme. The proposal includes a number of minor changes to window and door openings and the addition of a rooflight. The appellant states that these had already received permission from the Council in December 2014<sup>4</sup>. The Council has not made any

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<sup>1</sup> Ref PP/2013/2908

<sup>2</sup> Ref PP/2013/2906

<sup>3</sup> Ref APP/A5270/A/13/2206838

<sup>4</sup> Ref PP/2014/5257

submissions on the appeal, which is made against the failure to issue a decision, but the **officers' report on the Appeal A application** confirms that some changes were approved. The changes would not in my view have any adverse consequences. Therefore, the only matter still at issue is the proposed increase in the number of parking spaces from four to eight, in a layout similar to that proposed for Appeal A. **I have taken the officers' report on the Appeal A proposal**, which was endorsed by the refusal of that application, as the basis of **the Council's position** on the issue in Appeal B.

## **Main Issues**

9. The first two main issues in Appeal A are the effects of the proposed extended building on the character and appearance of the conservation area and on **adjoining residents' living conditions**.
10. The third main issue in Appeal A, which is also the main issue in Appeal B, is whether the proposed parking provision would provide for safe and sustainable access, in accordance with national and local policy objectives.

## **Reasons**

### Appeal A

#### *Character and appearance*

11. In considering proposed development affecting a conservation area, section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to pay special attention to the desirability of preserving or enhancing the **area's character or appearance**. Government policy guidance set out in the **National Planning Policy Framework ('NPPF')** confirms the great weight in **favour of the conservation of 'designated heritage assets', such as conservation areas**. The particular significance of any heritage assets likely to be affected by a development proposal should be identified and assessed. Any harm should require clear and convincing justification.
12. **The Council's Mount Park Conservation Area Character Appraisal** outlines the history of the area as a planned suburban estate of the late nineteenth century, following the arrival of commuter rail services. Eaton Rise was one of the first roads to be developed, and its spacious tree-lined layout still reflects the original design intent. The street space is generally well enclosed by rows of regularly spaced substantial semi-detached and detached Victorian houses.
13. The Character Appraisal identifies No.45 as a key unlisted building that makes a positive contribution to the character of the area. **The appellants' submitted Statement of Significance & Heritage Impact Assessment** broadly endorses that assessment. The house has historic interest, confirmed by map evidence, as part of the original development of the area. Its architectural interest derives from its assured Gothic style and proportions, characterised by the entrance porch and the tall narrow front gable. Its special quality is emphasised by its contrast with the more classically-influenced style of much of the surrounding original development.
14. The proposed rear extension and alterations to the height and pitch of the main roof of the house, with the addition of dormer windows, would be in the same form as those previously approved by the Council. The existing permission therefore provides a fallback position, already in the process of

implementation. Therefore, notwithstanding the concerns expressed by the previous Inspector about these matters, I accept that the current proposal would not have any more adverse effect on the character and appearance of the conservation area. **The Council's concern relates solely to the effect of the proposed side extension and I accept that this is the main matter for consideration in the current appeal.**

15. The side extension would be only slightly set back from the front wall of the house, and would greatly enlarge the width of the house. It would thus alter the proportions of the front of the house from being markedly vertical in emphasis to considerably more horizontal. The proposed bay window at first floor level would appear incongruous and slightly out of alignment with the existing windows. The introduction of a half-hipped roof would echo the rear extension, but would not relate well to the gabled form of the original main roof. The ground floor opening for vehicular access would appear disproportionately large. **The building's distinctive character would be diluted as a result of these changes.**
16. Furthermore, the extension would be built right to the plot boundary, almost completely filling the gap between No.45 and West Park Court to the south. The Character Appraisal identifies a specific threat to the character of the conservation area from extensions that disrupt the traditional spacing between buildings, particularly along Eaton Rise. I agree that retention of an appropriate space between buildings is an important factor in the preservation of the character and appearance of the area.
17. The appeal building is separated from its neighbours by considerably wider gaps than those generally found between the rows of detached and semi-**detached houses along the road. This adds emphasis to the building's special** identity, as it stands somewhat apart and is seen much more in the round than other houses nearby. The gaps are particularly important because of the inappropriate scale and design of the apartment blocks to each side, particularly of West Park Court. The proposed minimal gap would create a very awkward conjunction with West Park Court, which would mirror **that block's** poor relationship with the house at its opposite end. Although the proposed gap might be more comparable with the dimension of other spaces between houses on Eaton Rise, the circumstances here would not be the same.
18. The proposal would be detrimental to the character of the building and to the quality of the street scene. The character and appearance of the conservation area would not be preserved or enhanced. The only public benefit of the proposal, compared to the permitted scheme, would appear to be the addition to the housing stock of an extra apartment, and this would not outweigh the less than substantial harm to the significance of the heritage asset.
19. The proposal would not be in accordance with the guidance of the NPPF and would be contrary to Policy 1.1 (h) of the Ealing Development Strategy 2026 **Development Plan Document ('DPD'), which aims to care for the borough's** historic character and heritage assets, and to Policy 7C of the Ealing Development Management DPD, which seeks to protect the character of conservation areas, as well as to Policies 7.4 and 7B, which seek development that will complement local context. Similar objectives are set by Policies 7.8, 7.4 and 7.6 of the London Plan ('LP'), with which the proposal would again fail to comply.

### *Living conditions*

20. The effects of the proposed rear extension with regard to outlook from neighbouring properties, overlooking and overshadowing would be the same as those of the approved scheme, which provides a fallback position in this regard. I agree that there would be no unacceptable effect on the living conditions of neighbouring occupiers.
21. The side extension would project beyond the rear wall of West Park Court and would be built close to the common boundary. When checked on the site, the projection appeared to be nearer 3m than the 2m assessed by the main parties. As a result of the projection of the flank wall, there would be slightly increased enclosure of views from the row of rear windows in West Park Court closest to the boundary, which serve habitable rooms. However, the effect would not be overbearing and the modest reduction in outlook would not be significantly detrimental to living conditions at the four flats affected by the proposal.
22. The proposed kitchen and bedroom windows to the rear of the side extension would increase overlooking of the gardens to the rear of West Park Court, but as this space is communal and is already overlooked by the numerous flats in West Park Court, there would be no loss of privacy.
23. The proposal would comply with the amenity objectives of Policy 7B of the Ealing Development Management DPD and of Policy 7.6 of the London Plan, which are consistent with the core principles of the NPPF.

### *Access and parking*

24. The planning application that was the subject of the previous appeal included eight parking spaces in a layout very similar to that now proposed. The application was refused on grounds of design and residential amenity, similar to those set out in the first reason in the current case. As a result, parking provision was not considered in the appeal, and no weight can be attached to **the appeal decision's silence on the matter.**
25. **The officers' report on the application sets out** transportation advice that the location would be ideal for car-free development. However, the particular concern about the level of parking provision proposed appeared to be based on safety concerns arising from the lack of manoeuvring space within the site and the potential need for vehicles to have to reverse onto the road. The report is clear that reduced parking provision, supported by a legal agreement, would have been sought if the proposal were otherwise acceptable. This is in fact what occurred in the approval of the now permitted scheme, with the reduction to four parking spaces and the restriction on applications for parking permits in the controlled zone.
26. **By the time of consideration of the application now under appeal, the Council's position appears to have altered.** Concern is no longer raised about safe access, but the increase in parking provision over that previously permitted is resisted **because of the site's suitability in principle for 'low car' housing, which is endorsed by the Council's** adopted Sustainable Transport for New Development Supplementary Planning Document ('SPD').
27. The dimensions of the access now proposed are very close to those previously approved. Sufficient evidence has been provided to show that the proposed layout would allow adequate space within the drive and parking area for the

- proposed eight spaces to be used without significant safety risk. The issue to be addressed is therefore the principle of the level of provision.
28. There is no dispute that the site has a high level of accessibility to public transport, with a PTAL rating of 6. LP Policy 6.13 states that car-free development should be promoted in such locations. But that part of the policy is specifically directed to LDF preparation. For planning decisions, the policy advises maximum parking standards, dependent on type of location, accessibility and density. These requirements are said to be endorsed by the Ealing Development Management DPD, subject to a local amendment on provision for disabled people, which would be met by the proposed provision of one dedicated space.
  29. National policy set out in paragraph 39 of the NPPF is also directed to plan making, but sets out a range of factors to be taken into account in setting local standards. However, the policy has been supplemented by an update in March 2015, which advises that local parking standards should be imposed only when there is clear and compelling justification of their necessity for the management of the local road network. This change is set in the context of government concern that maximum standards can lead to increased congestion and of an earlier statement calling for new development to be provided with sufficient parking to meet local demand. The approach is reinforced by the Planning Practice Guidance ('PPG'), which advises that maximum parking standards can lead to poor quality development and congested streets and advocates parking provision appropriate to the needs of the development and not reduced below a level that could be considered reasonable.
  30. There is a common theme in both local and national policy of the need to strike an appropriate balance in the level of private parking provision and against the imposition of rigid standards. The LP standards are drafted with a degree of flexibility, **to be applied subject to particular circumstances. Even the Council's SPD, which is primarily directed at larger scale development than the appeal proposal, speaks of 'encouraging' low car housing** rather than insisting upon it.
  31. In this case, the proposed provision of seven car spaces and one disabled **persons' space would comply with the LP and DPD standard of up to one space** per dwelling unit. I accept that this would be an appropriate level of provision, taking account of the type of development, the clearly suburban character of the location and of the evidence of local car ownership rates. Notwithstanding **the site's high PTAL, there is a lack of evidence that provision at this level would contribute to an unsustainable congestion and reliance on private car usage.**
  32. This reason for refusal of the application cannot be sustained. The proposal would comply with national policy guidance, with LP Policy 6.13, and with Policy 6.13 of the Ealing Development Management DPD and Policy 1.1(f) of the Ealing Core Strategy, which seeks sustainable, safe and convenient transport networks.

### ***Conclusion on Appeal A***

33. **Although I have found that the proposal would not adversely affect neighbours' living conditions and that the proposed arrangements for parking and access would be consistent with policy, the proposed extension would fail to preserve or enhance the character and appearance of the conservation area. There are**

no other considerations that could outweigh the harm caused. The appeal must therefore be dismissed.

### Appeal B

#### ***Access and parking***

34. The considerations set out above for Appeal A apply with equal effect to Appeal B. The only significant difference would be that the ratio of parking provision would be slightly higher for eight units of accommodation rather than nine, as in appeal A. However, the level would still be within the LP and DPD standard. The evidence suggests that the variation sought would comply with national and local policy and would provide safe and sustainable access.

#### ***Conditions***

35. The proposal seeks to vary condition No.2 of the permission, by identifying a different set of approved plans that would show the altered parking and access arrangements and minor variations to the design and layout. I shall amend the proposed wording to delete reference to approval of alternatives by the local planning authority, which would potentially undermine the effect of the condition.

36. Allowing the appeal creates a new planning permission. The PPG guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all the other original conditions, including some wording clearly omitted in error from the original conditions Nos.5 and 7. In the event that some conditions have in fact been discharged, that is a matter which can be addressed by the parties.

#### ***Conclusion on Appeal B***

37. For the reasons set out above, Appeal B should be allowed and planning permission granted subject to amended and re-imposed conditions.

*Brendan Lyons*

INSPECTOR

## **Annex**

### **Appeal Ref APP/A5270/W/15/3017932**

#### **45 Eaton Rise, London W5 2HE**

#### **Schedule of Conditions**

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby approved shall be carried out in accordance with drawing title number(s) 12-P795-300-Rev F, 12-P795-301-Rev F, 12-P795-302-Rev C, 12-P795-303-Rev C, 12-P795-305-Rev A and 12-P795-306-Rev C.
3. Samples of the materials to be used for the external surfaces as shown on the approved plans of the development shall be submitted to and approved in writing by the Local Planning Authority before any part of the development is commenced, and this condition shall apply notwithstanding any indications as to these matters which have been given in this application. Development shall be carried out in accordance with these approved details.
4. Refuse storage, in accordance with the standards adopted by the Local Planning Authority shall be provided and shall be brought into use prior to the occupation of the development and retained permanently.
5. Prior to the commencement of the development a Noise and Vibration Mitigation Strategy shall be submitted to and approved by the Local Planning Authority, including, as appropriate, the noise exposure category, the BS4142 rating noise and the predicted vibration levels. The details shall also include the noise mitigation measures with windows closed and other means of ventilation provided and also mitigation of vibration. Such details as approved shall be implemented prior to the first occupation of any residential units and thereafter permanently retained.
6. Prior to the commencement of development, a Construction Logistics Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include the following:
  - a) Construction traffic management proposals including details of delivery routes and HGV movements and details of any temporary site access/parking;
  - b) Details of construction hours;
  - c) Noise mitigation and monitoring measures;
  - d) Details of enclosure of working areas and the location of compounds for storage of plant and materials;
  - e) Details of temporary lighting;
  - f) Dust suppression and monitoring measures, having regard to BRE guide 'Control of Dust from Construction and Demolition Activities';

- g) Wheel wash measures;
- h) Site security during construction;
- i) A drainage strategy to operate setting and controls of contamination, including controls to surface water run-off, water pumping, storage of fuels and hazardous materials, spill response plans and pollution control measures;
- j) Procedures for on-site contractors to deal with complaints from local residents.

The Construction Logistics Plan shall be implemented on commencement of any works on site and the site shall be managed in accordance with the approved plan for the duration of demolition and construction, or as otherwise agreed in writing by the Local Planning Authority.

7. Full details of both hard and soft landscape works, including a phased programme of works, details of boundary treatment and details of the refuse & recycle enclosure and cycle & garden equipment enclosure shall have been submitted to and approved in writing by the Local Planning Authority. These works shall be carried out as approved prior to the occupation of any part of the dwelling or in accordance with the programme agreed by the Local Planning Authority. Any trees or other plants which die or are removed within the first five years following the implementation of the landscaping scheme shall be replaced during the next planting season.