

Appeal Decision

Site visit made on 6 October 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 24 October 2016

Appeal Ref : APP/K5600/C/16/3144894

Land at 9 Spear Mews, London, SW5 9NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Samurai Holdings 2004 Limited against an enforcement notice issued by the Council of the London Borough of Kensington and Chelsea.
- The notice was issued on 5 January 2016.
- The breach of planning control as alleged in the notice is without planning permission, the demolition of parts of the building.
- The requirements of the notice are to restore the land to its former condition as seen in the photograph attached to the notice by rebuilding all demolished parts of the building and complete the rebuilt structure with the following detailing: (i) gault brick in Flemish bond with flush pointing to match that existing on remainder of the terrace; (ii) a brick parapet with a dentil course to match that existing on the remainder of the terrace; (iii) a rubbed brick arched soldier course over the front windows with a Portland stone keystone; (iv) single-glazed timber sliding sash windows with window reveals and glazing pattern to match the previous with the timber frames painted white and the glass held in place with a traditional putty finish; (v) a flat roof covered in felt to match the pitch of the adjoining property at 11 Spear Mews.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Ground (b) appeal

1. In the appeal form under ground (b) the Appellant states there has not been a breach of planning permission. I consider that this is an argument more pertinent to ground (c) and deal with this as a hidden ground (c) appeal below.
2. This ground of appeal is that the breach of planning control alleged in the notice has not occurred as a matter of fact. The onus of proof rests on the Appellant and the test of evidence is the balance of probability.
3. I saw at my site visit that the roof and first floor of this two storey terraced property has been demolished as alleged and shown in the photographs before me. The alleged breach of planning control has therefore occurred as a matter of fact and the ground (b) appeal fails.

Hidden Ground (c) appeal.

4. This ground of appeal is that there has not been a breach of planning control. The onus of proof rests on the Appellant and the test of evidence is the balance of probability.
5. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55(1) of the 1990 Act (as amended) and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. By virtue of section 336 'building' includes any part of a building. Section 55(1A) provides that building operations include the demolition of buildings.
6. Planning permission is granted by virtue of permitted development rights in Part 11 of Class B of Schedule 2 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for certain building operations consisting of the demolition of a building. As the Council says development is not permitted by Class B for the demolition of a building in a conservation area. There is no evidence before me that the demolition was urgently necessary in the interests of health and safety and no written justification of the demolition presented to the Council to satisfy Class B.2 (a). But moreover Class B rights do not apply to the partial demolition of a building by virtue of the definition of building in Article 2 of the GPDO which excludes any part of a building. The unauthorised works therefore do not benefit from permitted development rights.
7. The works of partial demolition have materially affected the external appearance of the appeal site and are highly visible. As a matter of fact and degree I find that the partial demolition comprises a building operation and there is no argument before me to the contrary.
8. For the reasons given the demolition of parts of the building as described in the notice comprises development without planning permission.
9. The ground (c) appeal therefore fails.

Ground (a) appeal and deemed application

10. The deemed application is for planning permission for the matters attacked in the notice namely, the partial demolition. It is not an application for rebuilding the property and I determine this ground (a) appeal accordingly.

Main Issue

11. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area with particular regard to its location in a conservation area.

Character and appearance

12. The appeal site sits in an attractive terrace of two storey mews properties. It is located within the Nevern Square Conservation Area (the Conservation Area) which is characterised by architectural detailing including brick decoration. The appeal site is recognised as a positive contributor to the Conservation Area in the Nevern Square Conservation Area Proposals Statement.

13. The development plan (which includes the London Plan and the Kensington and Chelsea Consolidated Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in seeking to preserve or enhance the character and appearance of heritage assets, including conservation areas. Policy CL3(c) of the Local Plan provides that the Council will resist substantial demolition in conservation areas unless it can be demonstrated that (i) in the case of substantial harm or loss to the significance of the heritage asset it is necessary to achieve substantial public benefits that outweigh that harm or loss; (ii) in the case of less than substantial harm to the significance of a heritage asset that the public benefits, including securing the optimum viable use, outweigh that harm (iii) the building or part of the building or structure makes no positive contribution to the character or appearance of the area.
14. The property makes a positive contribution to the character and appearance of the area. The loss of the first floor of the property creates significant adverse visual impact on the mews street. It disrupts the pattern of the terrace. It creates a stark and alien visual appearance that is out of place in a uniform terrace. The demolition causes substantial harm to the character and appearance of the area. It fails to preserve or enhance the character or appearance of the Conservation Area.
15. I have considered whether there is any public benefit that outweighs the identified harm. I have taken into account the report provided to the Council by the Appellant from consulting engineers dated 2 February 2016. The report concludes that the existing remaining structure should be demolished and rebuilt. The basis for this conclusion is stated to be to avoid further complications and further damage to existing buildings and to safeguard workers. Proposals for rebuilding should be the subject of the planning process in the normal way. There is insufficient justification in the report to enable me to conclude that planning permission should be granted for the demolition. There is no structural justification for demolition set out in that report and the conclusions are based solely on a visual examination of the property. I am therefore not satisfied that substantial public benefits outweigh the identified harm to the character and appearance of the Conservation Area.
16. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I do not consider that any conditions could overcome the identified harm.
17. For the reasons given, the unauthorised demolition causes harm to the character and appearance of the area, fails to preserve or enhance the character or appearance of the Conservation Area and is contrary to the development plan including policy CL3 of the Local Plan. It should not be granted planning permission.

Ground (g) appeal

18. This ground of appeal is that the time given to comply with the notice is too short. The period for compliance is three months.
19. The Appellant complains of delays by the Council in determining planning applications relating to the site and discussions which led to withdrawal of applications. The slow process is cited as a justification for needing extra time to progress a planning application. No alternative timescale is proposed by the Appellant.

20. I have balanced competing private and public interests. The private property interest of the Appellant and the public interest of bringing to an end the identified harm to the character and appearance of the host property and the Conservation Area without unnecessary delay. I consider that the time period of three months is reasonable and strikes an appropriate balance between competing private and public interests. There is nothing before me to suggest that this timescale is impractical.

21. Consequently, the ground (g) appeal does not succeed.

Formal Decision

22. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector