
Appeal Decision

Site visit made on 8 November 2016

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 12th December 2016

Appeal Ref: APP/K5600/D/16/3159474

6 Earl's Court Gardens, London, SW5 0TD

- 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 Mr and Mrs McKeeve against the decision of The Royal Borough of Kensington and Chelsea.
 - The application Ref PP/16/04252/Q21, dated 4 July 2016, was refused by notice dated 5 September 2016.
 - The development proposed is "*the retention of glass balustrade over lower ground rear extension*".
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a glass balustrade over lower ground rear extension at 6 Earl's Court Gardens, London, SW5 0TD in accordance with the terms of the application, Ref PP/16/04252/Q21, dated 4 July 2016, and the plans numbered MA5-2101-250, MA5-2101-202, MA5-2101-206 and MA5-2101-207.

Application for Costs

2. An application for costs was made by Mr and Mrs McKeeve against The Royal Borough of Kensington and Chelsea. This application will be the subject of a separate Decision.

Procedural Matters

3. This application is retrospective and relates to the erection of a glass balustrade which has been attached to the roof of a lower ground floor rear extension. This extension (reference PP/09/02486) was approved in 2011 and is subject to a number of attached planning conditions. Condition 6 of this consent prevents the roof being used as a terrace, and condition 7 requires the retention of the Juliet balcony in front of existing French doors at ground floor level. These conditions have been imposed to protect the privacy and amenity of neighbouring occupants.
4. A separate appeal at this property to remove these conditions has been withdrawn¹ and I have no reason to consider that the use of the roof area does not continue to be controlled by condition. As a consequence and for the avoidance of doubt, I have considered the appeal only in respect of the glass balustrade. Any future application or action relating to the use of the roof lies outside of my determination of this appeal.

¹ Ref: APP/K5600/D/16/3159471 withdrawn on 31 October 2016

5. In allowing the appeal, I have amended the description of the development as the 'retention of' is not an act of development in accordance with s55 of the Town and Country Planning Act 1990.

Main Issue

6. The main issue is the effect of the development upon living conditions of neighbouring occupants, with particular regard to privacy.

Reasons

7. The Council consider that the glass balustrade results in the creation of a roof terrace which would give rise to overlooking of neighbouring properties. While the proposal would reduce the safety risk to persons accessing the roof, as I have set out above, the use of the roof as a terrace is not a matter before me as this is subject to separate control.
8. The balustrade is glazed with a metal handrail and has been located to the rear part of the ground floor extension. I am satisfied that the development in isolation cannot give rise to any overlooking and accordingly, the erection of the balustrade has no practical effect on living conditions.
9. Overall I conclude that there is no harm caused to living conditions in respect of privacy. Therefore there is no conflict with Policy CL5 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015 which seeks to ensure that there is reasonable visual privacy for occupants and neighbours.

Other Matters

10. The Council are clear in their Officer Report that they do not consider there to be any adverse impact on the character and appearance of the Conservation Area. I saw that the balustrade was a simple and modest addition which has been discreetly sited. I therefore see no reason to disagree with their assessment.
11. I am mindful of the submissions of nearby residents and interested parties which have clearly expressed an interest and concern in the potential use of the roof as a terrace; particularly in respect of security, noise and antisocial behaviour. However, while understandable in the context of the additional proposal and withdrawn appeal into the conditions upon the 2011 permission, such comments do not directly relate to the erection of the balustrade in isolation and therefore they do not lead me to any different conclusion.

Conditions

12. The Council have suggested only a single condition which is the standard time limit for commencement, however as the development has already been erected this is not necessary.

Conclusion

13. For the reasons above, taking into account all other matters raised, the appeal should be allowed.

C Searson
INSPECTOR