
Appeal Decision

Site visit made on 14 December 2016

by Simon N Hand MA

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

Decision date: 21 December 2016

Appeal Ref: APP/K5600/C/16/3151661

Land at Flat 2, 99 Oakley Street, London, SW3 5NR

- 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 Ms Ji-Eun Gupta against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 27 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of glazed balustrade and decking to the front of the terrace on the main roof of the property.
 - The requirements of the notice are 1. Remove the glass balustrade to the front of the main roof of the property. 2. Set back the decking on the main roof of the property from its front edge to the position noted in drawing no. L (-3) 302B of non-material amendment application NMA/15/06876 granted 23 November 2015.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The enforcement notice is varied by deleting requirement 1 and replacing it with "1. Reduce the height and reposition the glass balustrade to the front of the property to the height and position shown in drawing no. L (-3) 302B of non-material amendment application NMA/15/06876 granted 23 November 2015" and delete "Two" from the Time for Compliance and replace it with "Four". Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Background to the Appeal

2. Oakley Street is a typical residential street in this part of London, lined by tall, mostly Georgian terraced houses. In the middle of one of these terraces is a group of three dwellings in a quite different late-Victorian red brick style and No 99 is the middle one of these three.
3. The roof has been converted into a sitting out area, with a decking floor and a glass balustrade to the front and back. Large chimney stacks separate the roof from its neighbours and the front balustrade fills in the gap between these stacks. The neighbour at No 100, which occupies the similar building to the north, also has a glass balustraded roof terrace.

The Appeal on Ground (b)

4. There is no dispute the decking has been positioned 150mm too far forward and the front glass balustrade is 95mm too tall. The appellant argues that as these changes are all but invisible from the street, they fall within s55(2)(a)(ii) of the 1990 Act, that is they are works of improvement that do not materially affect the external appearance of the building. Therefore they are not development and so planning permission is not required.
5. In fact the works are clearly visible from the street and in particular from Margaretta Terrace opposite. The edge of the decking is visible as is the top of the balustrade. Because the balustrade is meant to be the same height as that at No 100 and is visibly taller, it is quite obviously not that which was granted planning permission. Even had I not been able to see the changes from the street, they are clearly visible from the roof terrace itself. In my view they are not de-minimis and they do affect the external appearance of the building; the appeal on ground (b) fails.

The Appeal on Ground (f)

6. The requirements are to remove the balustrade and set back the decking to its authorised position. The appellant accepts the decking can be shortened but argues that to require the balustrade to be removed is excessive. All that is needed is to require it to be reduced in height by 95mm. The Council are of the view that the balustrade needs to be removed as it has been manufactured to the wrong dimensions. If subsequently it is replaced by a balustrade of the correct height, or the same panels are cut down and repositioned is up to the appellant, but in any event it will need to be removed.
7. I do not think that in reality there is any difference between the parties. The appellant accepts a balustrade will have to be repositioned 150mm back and 95mm lower but wants to retain the option of not necessarily having to remove it and then bringing it back, which I do not think is the Council's intention. If I vary the first requirement so that the balustrade has to be repositioned and sized as shown in the plan referred to in the second requirement, then that should satisfy both parties. The appeal on ground (f) succeeds.

The Appeal on Ground (g)

8. The appellant argues that the works required are not simple, but because of their position and the materials used, will require specialists. To identify these specialists, obtain quotes and have the work completed is likely to take longer than 2 months and 6 months is requested. In my experience 2 months is quite a short time to find even a non-specialist builder, however, 6 months does seem excessive and I shall extend the compliance period to 4 months.

Simon Hand

Inspector