
Appeal Decision

No site visit

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/16/3159941

Land at Basement Flat 24 Coleherne Road, London, SW10 9BW

- 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 Mr Gian-Franco Cencelli against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 13 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, an increase in the height of the north elevation of the rear extension of 100mm and an increase in the depth of the rear extension of 900mm at the land.
 - The requirements of the notice are (i) reduce the height of the north elevation of the rear extension by 100mm in accordance with the approved drawings of planning permission dated 15/09/15 under reference PP/14/04464 at Basement Flat, 24 Colherne Road, London SW10 9BW; (i) reduce the depth of the rear extension by 900mm in accordance with the approved drawings of planning permission dated 15/09/15 under reference PP/14/04464 at Basement Flat, 24 Colherne Road, London SW10 9BW.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Background to the Appeal

2. The appellant applied for an extension to his flat which was approved in October 2014. An application was then made to vary one of the conditions attached to that approval to increase the height of the side kitchen wall by 10cm and increase the depth of the extension by 9cm. This was not determined within the time limits by the Council and a subsequent appeal was refused.
3. Prior to the appeal decision being issued another application was made in similar terms to that which was subject to the appeal with the addition of a daylight and sunlight report. The Council refused that application a month after the Inspector's appeal decision was issued. The Council then issued the enforcement notice subject to this appeal.
4. The appellant argues that while he is not seeking to disagree with the previous Inspector, the daylight and sunlight report was not available for that appeal and provides new evidence. In addition he proposes to reduce the depth of the extension by the 900mm required by the notice, but retain the side wall to its

height as built. The previous inspector found that the depth of the extension and the height of the side wall together harmed the living conditions of the neighbours at No 22. The daylight and sunlight report finds that the extension would have a limited impact on the neighbours and meets the requirements of the BRE guide "Site Layout Planning for Daylight and Sunlight". Consequently, I am invited to take the view that the modifications proposed would be sufficient to alleviate any possible harm to the neighbour's living conditions.

The Appeal on Ground (f)

5. This ground is that the steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections. This is not a ground where the planning merits of the appeal can be considered, for that a ground (a) appeal would need to have been made and the relevant fee paid. No such ground has been appealed. The appellant is asking me to adjudicate on the planning merits of a revised scheme, which he contends would not harm his neighbours and that is not something I can do on a ground (f) appeal. The Court of Appeal judgement in *Miaris v SSCLG* [2016] EWCA, Civ 75 makes this clear.
6. Further representations from the appellant sought to clarify that once the depth of the extension is reduced by 900mm that would affect the side wall which would also be proportionally reduced, letting in more light to the neighbour's garden. This may well be the case but again, it is asking me to apply my planning judgement as to the impact on the neighbour and whether that would be satisfactory. That is the purview of a ground (a) appeal which has not been made.
7. The allegation clearly identifies the excessive elements of the extension and the requirements are directed to removing them so that what remains is the same as the development that originally was granted planning permission by the Council. No lesser steps would achieve this aim and the appeal on ground (f) fails.

Simon Hand

Inspector