
Appeal Decisions

Site visit made on 10 January 2017

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

Decision date: 2 February 2017

Appeal A Ref: APP/K5600/W/16/3159720

2 Blenheim Crescent, London W11 1NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Mr and Mrs Desmond Guinness against the decision of the Council of the Royal London Borough of Kensington and Chelsea.
- The application Ref PP/15/06367, dated 9 December 2015, was refused by notice dated 27 April 2016.
- The application sought planning permission for the installation of two roof lanterns to second floor flat roof, window alterations to rear and side elevation at first floor level, without complying with a condition attached to planning permission Ref PP/12/03905, dated 17 December 2012.
- The condition in dispute is No 5 of planning permission Ref: PP/12/03905 which states that:
The main roof of the building and rear extension shall not be used at any time as a terrace without a further planning permission.
- The reason given for the conditions is:
To protect the privacy and amenity of neighbouring property.

Appeal B Ref: APP/K5600/W/16/3159617

2 Blenheim Crescent, London W11 1NN

- 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 Desmond Guinness against a decision of the Council of the Royal Borough of Kensington & Chelsea.
- The application Ref PP/15/07020, dated 2 November 2015, was refused by notice dated 27 April 2016.
- The development proposed is the removal of existing sash window to rear roof and replacement with French doors at 2nd floor half landing level; erection of black painted steel railings to rear roof terrace, incorporating railings to barrier off that part of roof prohibited for use as terrace.

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the installation of two roof lanterns to second floor flat roof, window alterations to rear and side elevation at first floor at 2 Blenheim Crescent, London W11 1NN in accordance with the application Ref PP/15/06367, dated 9 December 2015 without complying with condition No 5 set out in planning permission Ref:
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PP/12/03905, granted on 17 December 2012 by the Council of the Royal Borough of Kensington and Chelsea.

Appeal B

2. The appeal is allowed and planning permission is granted for the removal of existing sash window to rear roof and replacement with French doors at 2nd floor half landing level; erection of black painted steel railings to rear roof terrace, incorporating railings to barrier off that part of roof prohibited for use as terrace at 2 Blenheim Crescent, London W11 1NN in accordance with the terms of the application, Ref PP/15/07020, dated 2 November 2015 subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 P-TR REV A, 02 P-TR REV C, 04 P-TR REV B, 05 P-TR REV D and 06 P-TR REV D.
 - 2) The part of the roof shown hatched on approved drawing no. 04 P-TR REV B shall not be used at any time as a terrace.

Procedural matters

3. The condition subject of Appeal A has been in breach prior to the making of the appeal application. The development subject of Appeal B has been carried out insofar as the French door has been installed as have part of the railings. I shall therefore treat both applications as being made under s.73A of the Act.

Main Issue

4. The main issues are:

Appeal A

The effect of removing the condition in dispute on the living conditions of the neighbouring residential occupiers at 210 and 203 Portobello Road, with particular regard to privacy and noise.

Appeal B

- i) the effect of the proposal on the living conditions of the neighbouring residential occupiers at 210 and 203 Portobello Road, with particular regard to privacy and noise, and
- ii) whether the proposal would preserve or enhance the character and appearance of the Ladbroke Conservation Area.

Background

5. The appeal site is occupied by a three storey building, the ground floor of which is in use as a shop. The lawful use of the upper floors is as an office. Planning permission to use the upper floors as a live/work unit was refused by the Council in July 2016, and an appeal against that refusal was dismissed in November 2016¹.
6. Planning permission Ref: PP/12/03905 was granted for alterations to the appeal premises subject to the condition in dispute which prohibited use of the flat roof as a terrace. Subsequent to the grant of that permission, in 2013, a

¹ Ref: APP/K5600/W/16/3156851

Certificate of Lawful Development (CLD) (Ref: CL/13/07648) was issued by the Council which certified that "the rear roof terrace is lawful (Certificate of Existing Use)."

Reasons

Appeal A

7. The Council has issued a CLD which confirms that the use of the rear roof terrace is lawful. The Council accepts that it did not take the existence of the condition in question into account, because the application did not refer to it. In my view, there was no requirement for the applicant to do so; it was for the local planning authority to determine whether there were any conditions which would be in breach.
8. The condition in dispute prohibits the use of the roof as a terrace, and the period during which enforcement action may be taken against a breach has not passed. However, section 191(6) of the Town and Country Planning Act 1990 provides that "the lawfulness of any use, operations or other matter for which a certificate is in force under s.191 shall be conclusively presumed". The CLD certifies that the use of the terrace, which would otherwise have been prohibited by the disputed condition, is lawful. I note the comments from and on behalf of neighbours, which suggest that the certificate was issued in error and is flawed. However, it is a legal document that has not been challenged in the courts, and therefore its effect stands.
9. No discontinuance order under s.102 of the Act has been made by the Council, and thus the certificate provides that the use as a terrace is now lawful and that the condition in question cannot now be enforced. It therefore serves no useful purpose, and I shall therefore grant permission without the disputed condition, and as the other conditions imposed no longer serve any useful purpose, I shall not re-impose them.

Appeal B

Living conditions

10. The roof terrace is very close to windows in habitable rooms in upper storeys of 201 and 203 Portobello Road. Those windows in 201 Portobello Road face the side elevation of the main part of the appeal building, and so views from the terrace into the rooms served by these windows are very limited. However, there are direct and very close views into windows at 203 Portobello Road. On my visit, I saw that two of those windows were screened by blinds, but a third clearly served a bedroom, which was overlooked at only a few metres' distance.
11. Whilst the area is typified by dense development where there are varying degrees of overlooking, some at very close distances, anyone standing or sitting on the terrace would have such a close view into neighbours' windows, particularly those at 203 Portobello Road, that their privacy would be seriously compromised and noise from groups of people using the terrace would be likely to be disturbing.
12. It is clear from the appeal decision referred to above relating to the proposed live/work unit that there has been residential use made of the premises without planning permission. The Inspector's findings make it clear that such a use is

unacceptable. However, even with an office use, the rooftop could be used as an amenity area, where staff might take breaks, in which circumstances overlooking and noise would be equally harmful.

13. The proposal involves changing a sash window to a French window. This has already been carried out, and it provides easier access onto the terrace than would have been the case with a sash window, and therefore it facilitates the use as a terrace. The photographs provided by a neighbour show that the sash window would have been awkward to climb through and wooden steps had been provided to climb down onto the terrace. On the other hand the Council must have been satisfied that the roof has been used as a terrace for 10 years to justify the grant of the CLD to which I have referred above, and thus the previous sash window did not act as a substantial deterrent to the use of the terrace.
14. The proposal involves the erection of railings around much of the terrace, excluding the part of the terrace nearest to the Portobello Road properties, which would be precluded from use as an amenity area. This too would facilitate the use of the terrace, but only to a minor degree. In my view, because of the close and intrusive nature of the existing position in respect of overlooking, I consider that there would be tangible benefits by restricting the area of the terrace which could be used as a sitting out area. This would outweigh the dis-benefit of allowing easier access via the French doors.
15. Having regard to the fallback position of unfettered use of the rooftop as an amenity area, I find that the proposal would improve neighbours' living conditions, and would not conflict with Policy CL5 of the Royal Borough of Kensington and Chelsea Consolidated Plan 2015 (CLP) which requires that all development ensures good living conditions for occupants of new, existing and neighbouring buildings.

Character and appearance

16. Although the Council considers that the character and appearance of the conservation area would be preserved, local residents argue that it would be harmed. The site lies in the Ladbroke Conservation Area. Its significance is derived from the numerous high quality buildings of various ages, designs and architectural treatment. The front of the appeal building shares some similarities with its neighbours to the west, and has an ornate shopfront, a brick façade with typical Victorian sash windows and a roof parapet. I consider that the building makes a modest but positive contribution to the significance of the conservation area.
17. The rear elevations, however, are of far less significance. They are not as detailed as the front elevations and there are numerous unsympathetic alterations apparent on the rear roofs and rear elevations in the vicinity, such as extensions, windows, flues, aerials, security bars, terraces and associated paraphernalia. There are no public views of the rear terrace, and only limited views from private viewpoints. A pitched roof of the adjacent Salvation Army Hall lies immediately behind the terrace, blocking views from the north. The clearest views, other than from the windows in the neighbouring Portobello Road properties, are from other roof terraces in Blenheim Crescent, several of which also have railings and screens around them. The proposed development would not be out of keeping in such a mixed scene of small heritage significance.

18. In these circumstances I find that the proposal would preserve the character and appearance of the conservation area, and would not conflict with CLP Policies CL1, CL2 and CL3, which respectively deal with context and character, design quality and heritage assets – conservation areas and historic spaces.

Other matters

19. Local residents have also raised concerns about the safety of the French doors on a landing and the effect of the development on light, but I consider that neither of these matters would be sufficient to justify dismissing the appeal.

Conditions

20. The Council has suggested a number of conditions which I have considered in the light of national guidance. A condition to require the part of the development not yet completed to be carried out in accordance with the approved plans is needed in the interests of good planning and for the avoidance of doubt. A condition to prohibit the use of the area nearest to 203 Portobello Road as an amenity area is needed for the reasons I have explained above.
21. The Council suggested a condition relating to a sash window, but no window is proposed. The French doors have already been provided in white painted timber and so no additional condition is necessary. A condition to require materials to match the exterior of the building is also inappropriate for the development proposed.

Conclusions on Appeals A and B

22. For the reasons given above, I conclude that both appeals should be allowed.

JP Roberts

INSPECTOR