The Planning Inspectorate

Appeal Decision

Site visit made on 21 December 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 7 February 2017

Appeal Ref: APP/K5600/C/16/3156045
96 Kensington High Street, London W8 4SG

- 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 The Ivy/Ocubis Ltd against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
- The notice was issued on 27 June 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of terrace canopy and stairway enclosure at rear and the installation of glazing around rear terrace area.
- The requirements of the notice are:
  Step 1 Remove the terrace canopy, pergola, glazing and stairway enclosure structure from the rear of the building and restore the land to its former condition.
  Step 2 Remove all resulting demolition and building materials from the land.
- The period for compliance with the requirements is four calendar months after this notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision

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

Preliminary Matters

2. The Council was unable to attend the site visit for reasons beyond its control. However, I was able to view the premises from public vantage points, and was permitted access to view inside the canopy and stairway enclosure, gaining sufficient information to determine the appeal. A letter was sent to the Council to inform it of the action taken and seeking confirmation that the Planning Inspectorate could proceed with the decision but no response was received.

3. It is undisputed that the pergola structure forms part of the unauthorised development. As this is omitted from the description of the breach of planning control, and as to do so would not prejudice any party, I will exercise my powers under s176(1)(a) of the Act to correct the notice so as to include it.

Ground (a) and the deemed application for planning permission

Main Issue

4. The main issue on this ground is the effect of the development on the character and appearance of the Kensington Conservation Area (CA) and the nearby listed buildings.

Reasons

5. No 96 is an unlisted modern five-storey commercial building to the north of Kensington High Street at the junction with Kensington Church Walk. There is a restaurant in part of the ground floor where an extension in the form of a sheltered dining area has been created by enclosing the terraced area, railings and stairway to the rear of the building with a timber constructed canopy, painted grey/green with a retractable roof, pergola and retractable glazing. The stairway enclosure is also timber built and painted grey/green.

6. Two grade II listed buildings, St Mary Abbot's primary school to the north-east and the Melli Bank, formerly a public library, to the west, are close to the appeal site. St Mary Abbot's church, a grade II* listed building, is further to the north-east.

7. The appeal premises are within the CA where a duty exists, when considering the grant of planning permission to pay special attention to the desirability of preserving or enhancing its character or appearance. Further, in considering applications that affect a listed building or its setting there is a duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

8. The parties agree that the unauthorised development produces no adverse effect on the church or its setting. I note that the listing, which dates from 1949, includes the churchyard railings some of which can be seen in views of extension. Those closer to the appeal site appear to be later replacements or additions similar in design to the enclosed railings around the pre-existing terraced area. In any event my assessment of the effect of the extension on the railings in isolation yields no discernible impact, however they and the enclosed railings are part of the context of the CA considered below.

9. The CA Proposals Statement (CAPS) adopted in 1995, refers to out of date policies that predate the National Planning Policy Framework (Framework) but I have not been persuaded of any fundamental conflict with the latter document. I am also requested to limit the weight given to CAPS due to several alterations and new developments in the CA. Although of some age, CAPS reflects the general character and arrangement of this part of the CA, is a detailed and considered document of a type usually made before statutory designation of a conservation area. I therefore give it moderate to significant weight here.

10. The appeal site is in The Old Village character area as set out in CAPS, a small but significant quarter that contains an attractive blend of open spaces including St Mary Abbots Gardens and surrounding buildings of architectural and historic interest, including the listed buildings. Features of the open space include the public gardens with mature trees next to the appeal site, sitting out areas and railings, hedges and walls that define segments of the open space.

11. Whilst these segments offer individual seclusion they combine in a coherent ensemble of open air activity, making a positive contribution to the CA. The pre-existing open terraced area, now occupied by the unauthorised development, would have been seen as related to the sitting out areas within this quarter, not as a mere private space with no visual connection to it.

12. The extension is a structure of considerable size and solidity. I did not see the glazing retracted, although this would only be likely to occur in mild to warm,

dry and calm weather conditions. As I viewed it the extension is a prominent and unsympathetic intrusion into the openness of the area, whose mass and overall appearance has diminished the unique character of this tranquil setting focussed on the immediately adjacent gardens.

13. The associated border planting does not in my view assist in blending the extension into the local landscape. Whilst unobjectionable in itself, its florist-like display contrasts with the simpler, more formal and uniform appearance of hedging found in the adjacent gardens. As one progresses north from the high street frontage along Kensington Church Walk the strong connection which the rear area of No 96 has to the gardens, becomes increasingly apparent.

14. Furthermore the enclosed railings provide continuity in the relationship between the terrace and gardens. Their enclosure breaks that continuity and significantly diminishes their effectiveness as a townscape feature.

15. I approached the appeal site from Kensington Church Court where I found that the extension obscures views into the gardens and of an attractive mid-19thc building. It is non-listed but in my view is a building of merit with imposing gabled elevations, arched and roundel windows and finial cross. Only the tip of the first, taller, gable and its cross is visible from this approach, the rest being masked largely by the extension.

16. The building is the former mortuary and is referred to in CAPS as a "striking little Gothic building [and] is a prominent feature of Kensington Church Walk". It is shown photographed from a viewpoint similar to that which obtains from Kensington Church Court with the pre-existing terraced area in front.[1] The building contributes to the historic and architectural interest of the CA. The unauthorised extension however obscures it and the gardens from views along this street which, less restricted in this way, would have encouraged more pedestrian ventures into the quarter from a mainly unprepossessing street. The extension has had the unfortunate result of effectively closing off a townscape view which is of some merit, as the photograph in CAPS suggests.

17. As far as concerns the former library building the main significance of this asset lies in the front elevation which is unaffected by the development. The Council says that the development would not significantly impact on the setting of the bank, which, contrary to the appellant's suggestion is not the same as "not causing harm to the significance of the bank". In my view due to the distance and angles of view between the rear of the bank and the extension, there is an impact on the setting although it is only slightly adverse.

18. Turning to the listed primary school building, this is an attractive mid-Victorian public building in plain Gothic style. Its setting in my view includes the pre-existing terraced area and railings on which the extension has been built. A rear elevation of the school buildings still has the cement render applied in the wake of the demolition of other adjoining buildings[2] which lessens its interest, and it is also accepted that the reason for the listing lies in the figures on an elevation facing away from the appeal site.

19. That said, the extension has obscured views of significant parts of the south and west elevations in views across the appeal site from Kensington Church Walk. I consider that visually its setting is considerably reduced in value due

[1] CAPS, p.47, and photograph B10
[2] CAPS, p.47, and (p.48) photograph B11. See also p.55 and Photograph E5

to the prominent and unsympathetic design of the extension, despite such views not being specifically referred to in CAPS.

20. Drawing these factors together I attach significant weight to the harm caused by the extension to the setting of the school building and that caused by the intrusion into and erosion of, the open character of this secluded hinterland and deterioration of visual links into it. I saw that this area is a small but popularly used part of an otherwise densely developed CA, and it is essential that its character is not undermined by development unsympathetic to it.

21. The development is constructed of high quality materials. Further it is said that year round surveillance of the area would be enhanced through its use in all weathers. In addition I note that the stairway enclosure is required for security purposes. The grey/green render of the extension has a neutral effect on the appearance of the host building although it does compete unfavourably in my view with the period architecture surrounding it. Its scale is not insubordinate to No 96 or MacMillan House of which No 96 forms part. However none of these factors taken singly or together cause me to reach a different view on the effect of the extension on the CA or of the setting of St Mary's primary school.

Conclusion on ground (a)

22. The scale, location and design of the pergola, roof canopy, stairway housing and glazing would unacceptably erode the open character of the adjacent garden areas, failing to preserve or enhance the character or appearance of the CA or of the setting of the nearby listed school building. Considerable importance and weight is given to the desirability of preserving the setting of listed buildings as with the harm to the CA, also a designated heritage asset.

23. I therefore conclude that the development is contrary to the Royal Borough of Kensington and Chelsea *Consolidated Local Plan* 2015 (CLP), Policies CL1, CL2, CL3, CL4, CL9 and CL11. These policies aim, among other matters to secure development that respects local character, contributes positively to the townscape, preserves or enhances the character or appearance of the CA and preserves the heritage significance of the setting of buildings of special architectural or historic interest. They also seek to prevent extensions that block or diminish important views whilst seeking to preserve or enhance views generally within the CA.

24. In light of my reasoning above I have concluded that the extension harms the CA and the setting of the listed school building to a considerable extent, and to a slight extent the setting of the listed former library, contrary to the expectations of paragraph 132 of the Framework. Overall the development causes harm that would be less than substantial under the Framework but still serious such that the harm would significantly and demonstrably outweigh its public benefits.

25. The appeal on ground (a) therefore fails.

Overall Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice as corrected and refuse to grant planning permission on the deemed application.

Formal Decision

27. It is directed that the allegation of the breach of planning control in the notice be corrected by the insertion of ", pergola" after "canopy".

28. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR