
Appeal Decisions

Site visit made on 20 February 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 03 March 2017

Notice A: Appeal Ref: APP/K5600/C/16/3150947

Land at 104 Gloucester Road, London SW7 4RH

- 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 Syed Husain (Kingsmead Properties Limited) against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 19 April 2016.
 - The breach of planning control as alleged in the notice is erection of an unauthorised roof extension and alterations without planning permission at the rear of the building.
 - The requirements of the notice are remove the unauthorised roof extension and alterations on the rear roof slope and either (i) restore the rear roof to its former condition or (ii) reinstate a pitched roof slope at the rear to match the roof at the rear of the neighbouring building at 102 Gloucester Road in terms of profile and materials.
 - The period for compliance with the requirements is three calendar months.
 - The appeal was made on the grounds set out in section 174(2) (a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Notice B: Appeal Ref: APP/K5600/C/16/3149203

Land at 104 Gloucester Road, London SW7 4RH

- 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 Syed Husain (Kingsmead Properties Limited) against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 23 March 2016.
 - The breach of planning control as alleged in the notice is erection of an unauthorised roof extension and alterations without planning permission.
 - The requirements of the notice are remove the unauthorised roof extension as shown in photo 1 and restore the roof to its former appearance as shown in photographs 2 and 3 appended to the notice.
 - The period for compliance with the requirements is three calendar months.
 - The appeal was made on the grounds set out in section 174(2) (a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Notice A: Appeal Ref: APP/K5600/C/16/3150947

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.
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Notice B: Appeal Ref: APP/K5600/C/16/3149203

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

3. On 20 July 2016 the appellant withdrew the appeal on ground (d) in respect of both notices. In both the appeal statement dated 25 August 2016 and the final comments letter dated 10 October 2016 the appellant further confirmed that the appeals on ground (c) would not be pursued in respect of either notice. However, what the appellant characterised as an appeal on ground (b) was added in respect of notice A. In reality however the case made is that notice A is either a nullity or invalid and incapable of correction without injustice to the appellant. The Council anticipated such an argument and addressed it in its statement. In the light of all this I shall address the nullity/invalidity issue relating to notice A before addressing the remaining appeals on grounds (a) and (g) as necessary in relation to both notices.

Notice A

4. Notice A relates to development that has taken place at the rear of the building. Looking through the archway leading into Cornwall Mews South the works appear as if they may comprise at least two elements. The first is a dormer addition between the two parapet walls. The second is the lift shaft housing that also features an external door.
5. The appellant does not understand the breach of planning control to encompass the lift shaft. Principally I understand this to be because there was already a lift shaft at the property although this may have been altered. It was this that formed the basis of the appeal on ground (d) initially made.
6. The Council however maintains that the notice covers the full extent of the works to the rear roof and that it is not necessary to set out what constitutes the individual parts of the extension. Significantly, it does not specify with any precision what those individual parts are.
7. *Miller-Mead*¹ established the fundamental principle that an enforcement notice must tell the recipient of it fairly what s/he has done wrong and what s/he must do to remedy it.
8. In this case, the Council starts the relevant paragraph of its appeal statement 'However, the Council would like to clarify that the notices do...'. This is immediately indicative that the breach alleged is not, in fact, clear. In my view, the requirements, which are set out in the alternative, further confuse. As far as I could tell, the roof slope at No 102 does not have a lift shaft. It is not clear therefore how requirements (i) and (ii) differ unless it is acknowledged that the 'former condition' included some type of lift shaft or other alteration that would distinguish it from the roof slope at No 102. If that is so, then, if the alleged unauthorised development includes the lift shaft, it is not clear why one requirement would be drafted to leave it in place while the effect of the other would be to require its complete removal. If it does not

¹ *Miller-Mead v Minister of Housing and Local Government* [1963] 1 All ER 459

include the lift shaft then what is meant by 'alterations' and why these are distinguished from the 'roof extension' is unclear.

9. In my judgement therefore the notice is ambiguous. It is not clear if it bites on the whole of the lift shaft, some recent alteration to it or no part of it. Consequently, it is not clear what has to be removed in order to comply with the requirements. The notice therefore fails to comply with s173(2) of the Act and is a nullity.

Notice B: the appeal on ground (a) and the deemed planning application

Main Issue

10. The appeal property lies within the Cornwall Conservation Area (CA) and, indeed, within the first part of it to be designated in 1969. Following a fire, the dormer that is the subject of the notice replaced another that is shown in the photographs referred to in the requirements. The main issue therefore is whether the development carried out preserves or enhances the character or appearance of the CA.

Reasons

11. The most recent CA appraisal appears to be that adopted by the Council on 31 March 2016². Extracts have been provided by the Council with the appeal questionnaire for the notice A appeal while the full version of the Proposals Statement³ accompanied the notice B appeal questionnaire. This appears to have been adopted in February 1985 following public consultation and is considered by the Council to be supplementary planning guidance to which appropriate weight should be given.
12. The centre piece of the CA is Cornwall Gardens. Built between 1863 and 1879 it comprises Victorian houses at five stories in height plus half-basements and further mansard storeys in some cases. The CA appraisal notes that they have fully stuccoed frontages with moulded stucco dressings in the Italianate style so strongly associated with the early-mid Victorian period. Other houses in Grenville Place, Southwell Gardens and Gloucester Road follow this style in pale gault brick with stuccoed lower storeys.
13. The CA appraisal specifically mentions the appeal property as part of the terrace at Nos 104 to 110 Gloucester Road. It notes that this was also built in the Italianate style and says this by way of description:
- These terraces are built in gault brick, three windows wide with slight accentuation given to some houses in the form of stucco quoins and pediment to first floor window. The ground floors have paired Doric porches and canted channelled bays topped with the typical continuous double-bellied balustrade at first floor level.
14. This terrace, of which the appeal building is a part, is noted as including 'positive buildings' that '...make a positive contribution to the historic and architectural character and appearance of the conservation area. They are a key reason for the designation and significance of the conservation area'.
15. The variety of roof types is considered to be an important part of the special character of the CA. However, among the negative elements noted as causing

² Cornwall Conservation Area Appraisal

³ Conservation Area Proposals Statement: De Vere, Kensington Court and Cornwall Conservation Area

harm to the historic and architectural character of the CA are roof extensions that harm the uniform design of a terrace or group of houses and out of character replacement windows.

16. The front elevation of the appeal property is prominent in view from Gloucester Road. The dormer that is the subject of the notice is wholly unlike any other on this terrace in several respects.
17. First, it stands very much forward on the roof thus exacerbating its visual prominence.
18. Second, it actually comprises two dormers that are slightly different in design. One has a window that comprises three casements each having small panes in a two by four arrangement (although it may be five-it was not possible to be sure looking up from street level and access to the building was not available) while the other had four casements of the same design.
19. Third, the flank elevations and the non-window parts of the front elevations appeared to be some kind of treated timber.
20. Finally, the window casements appeared to be treated in a light brown or tan stain while the elevations were painted in a much darker colour that seemed almost black from street level.
21. The appeal development does not therefore reflect the materials used in the rest of the building or the terrace, it fails to respect the symmetry characteristic of both, the window designs are wholly out of keeping with those of all other windows in the building and the terrace and the colours used are again wholly out of character with the building and the terrace.
22. The roof alteration is therefore not architecturally sympathetic to the age and character of the building or the building group. It therefore conflicts with policy CL 8 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (LP), adopted in July 2015. In failing to protect and enhance the view of this building and terrace that contribute to the character and quality of the area it also conflicts with LP policy CL 11. Given the importance of this building to the terrace and the contribution the terrace itself makes to the CA, the development carried out fails to preserve both the appearance and the character of the CA as a whole. It therefore conflicts with LP policies CL 1, CL 2, CL 3 and CL 4 which have this overarching requirement.

Other matters

23. I acknowledge the appellant's point that different materials and external treatment could be secured by condition. That would however not address the position of the development on the roof or the asymmetry and window design issues identified.
24. I also note the appellant's view that the development complies with LP policy CL 5 and certain policies of the London Plan which, together, address the standard of accommodation provided and housing choice. However, any compliance with these policies is far outweighed by the conflict with those relating to the main issue identified.
25. The appellant also argues that several paragraphs of the National Planning Policy Framework (the Framework) support the development and that it

delivers sustainable development. In doing so the appellant seeks to portray this part of Gloucester Road as being peripheral to the role, purpose and function of the CA. On this latter point the appellant either ignores or misreads what the CA appraisal actually says.

26. With regard to the Framework, paragraph 6 (which the appellant does not reference), makes clear that the policies in Framework paragraphs 18 to 219 taken as a whole constitute the government's view of what sustainable development in England means in practice for the planning system. Paragraph 7 then goes on to set out the three dimensions of sustainable development. For the reasons set out above, the appeal development does not perform the environmental role since it makes no contribution to the protection and enhancement of the historic environment. The development does not therefore represent sustainable development and the policies in the Framework do not amount to a material consideration that should outweigh the conflict with the development plan identified.

Conclusion

27. In its appeal statement the Council draws attention to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended and the special attention that shall be paid to the desirability of preserving or enhancing the character or appearance of that area when considering development within a conservation area. That statutory test is embraced by the main issue identified and, for the reasons set out, the development carried out preserves neither. The appeal on ground (a) therefore fails and planning permission shall not be granted on the application deemed to have been made.

Notice B: the appeal on ground (g)

28. The gist of the case made on this ground is twofold. First, it is argued that the alterations are at a high level on the building and that substantial scaffolding and complex building works would be required. Second, it is stated that vacant possession would be required of what are now occupied premises. A period of 18 months is suggested as reasonable.
29. It seems to me that access to the front of this property from Gloucester Road is likely to be much simpler than in many other parts of central London where working on tall buildings is hardly unusual and therefore likely to be well within the scope and experience of many contractors. With regard to the second point, the implication is that the current occupiers need to be evicted rather than simply relocated to alternative accommodation for the duration of the work.
30. I therefore see no reason to extend the period for compliance. Indeed, to grant the period requested would be tantamount to a grant of temporary planning permission. Nevertheless, the Council has the power under s173A(1)(b) to waive or relax any requirement of the notice and, in particular, may extend the period for compliance if circumstances brought to its attention appear to it to justify the exercise of that power.
31. The appeal on ground (g) therefore does not succeed.

Overall Conclusions

32. I have concluded that notice A is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.
33. For the reasons given above I conclude that the appeal against notice B should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Brian Cook

Inspector