
Appeal Decision

Site visit made on 6 February 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/K5600/C/16/3162618
29 Gunter Grove, London SW10 0UN

- 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 Joanna Kosek against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 12 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, (1) the inaccurate re-instatement of the V-shaped rear parapet wall and associated hopper; (2) the installation of a metal framed door and rendered door surround at rear second floor level; (3) the installation of terrace tiling to the main roof; and (4) alterations to the rear main flat roof edge.
 - The requirements of the notice are:
 - (i) Re-instate the "V" shaped rear wall and parapet to the level of that of immediately adjacent neighbouring properties, reduce the height of the hopper beneath the bottom of the lowered reinstated "V" to its original height; and remove all exposed roof upstands on the flat roof part at the rear of the main roof;
 - (ii) Lower the height of the rear second floor door opening to the height shown in approved drawing V875 of PP/14/08187 and remove the rendered door surround and make above in brick to match existing;
 - (iii) Remove metal door and install a solid wood frame and glazed door at rear second floor level within lowered opening noted in (ii) in the design shown on approved drawing V875 of PP/14/08187;
 - (iv) Remove raised tiling and associated supports to front and rear edge of main roof to match that shown in approved drawing V875 of PP/14/08187 and then make good resulting roof surface; and
 - (v) Remove all resulting demolition material from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (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. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. A number of policies are referred to in the enforcement notice including Policy CL4¹ of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (July 2015) (LP). The Council have advised in their Statement of Case that reference to Policy CL4 was made in error, this policy is not relevant to the

¹ Policy CL4 Heritage Assets – Listed Buildings, Scheduled Ancient Monuments and Archaeology

appeal and they no longer seek to rely on it. The appellant makes no comment in relation to this policy but quotes Policy CL5 Living Conditions, which is not listed in the notice as it does not form part of the Council's case. The appellant would not be prejudiced if I were to disregard both policies and as such, they have not formed part of my considerations in determining this appeal.

Background

3. The appellant received planning permission for the formation of a roof terrace on the main roof and the formation of a terrace on the roof of the closet wing in 2015.² Condition No 2 attached to the grant of planning permission required that the development be carried out in accordance with the approved plans. The appellant however, for various reasons, deviated from the approved plans and attached conditions. Some of these matters have been remedied, some are not being pursued by the Council and four matters are the subject of the notice. These are: (i) The 'V' shaped parapet wall and associated hopper; (ii) A metal framed door and rendered door surround; (iii) The fixing of terrace tiling to the main roof; and (iv) Alterations to the rear main flat roof edge.

The ground (c) appeal

4. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. The appellant's submissions in relation to this ground of appeal are made only in relation to the first allegation which is concerned with the 'V' shaped rear parapet wall and associated hopper.
5. A breach of planning control comprises the carrying out of development without the required planning permission. The appellant claims that re-building the main roof, rear parapet wall, which had previously been filled in, into the shape of a 'V' and re-positioning the hopper is not an act of development which requires planning permission and refers to the *Burroughs Day*³ case to support her view.
6. The meaning of development is set out in Section 55(1) of the Town and Country Planning Act 1990 (the Act) and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. Section 55(1A) confirms that such operations include rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.
7. Section 55(2) of the Act goes on to clarify at subsection (a)(ii) that the carrying out of works that do not materially affect the external appearance of the building shall not be taken to involve development of the land. Therefore a judgement needs to be made depending on the facts of the case.
8. I consider that the removal of the infill works and the re-instatement of the 'V' shape have clearly affected the exterior of the building. The building is tall and narrow with a half width, closet wing. The window pattern and the position of the rain water pipe in the middle of the rear wall draw the eye upwards to the 'V' shape. In the *Burroughs Day* case it was held that it is the effect of the development on the external appearance of the building and not just the exterior of the building which must be considered. Furthermore, judging the

² 15 January 2015 Ref: PP/14/08187

³ *Burroughs Day v Bristol City Council* [1996] 1 PLR 78

effect must be in relation to the building as a whole and not by reference to a part of the building taken in isolation.

9. The works to the 'V' shaped parapet are on the rear elevation of this mid terrace property. The appellant refers to there being just a lateral view of the works from Edith Terrace in the public domain but the Council's opinion is that this view is more substantial. At the site visit I found that it was difficult to view the building as a whole from Edith Terrace due to the short depth of the rear gardens and the consequent restricted line of sight, the intervening closet wings and the existence of a mature tree. It is therefore my view that there has been no noticeable change to the appearance of the building when seen from this location.
10. From private vantage points the whole of the rear of the building and the roof works can be seen from a number of rear windows and roof terraces on the houses in the adjacent street, Fernshaw Road. The properties are so near each other that it is possible to see the details of the different finishing edges to the 'V' shaped parapet walls. The new 'V' shaped parapet at the appeal site is in clear view as it is accentuated by the new brick work, which is a lighter colour. The large hopper is also in clear view as it is located above the slightly projecting, capped-off, chimney stack on the rear elevation.
11. The appellant submits development has not occurred because the new 'V' shaped roof is not materially different from the original 'V' shaped roof before it was filled in. However, this approach is incorrect as the test is whether the works, as carried out, materially affect the external appearance of the building. The test is not for a comparison to be made between what was originally there (for which no clear evidence has been submitted) and the works referred to in the notice. The appellant also refers to the context of the appeal site within a larger terrace and the lack of consistency in the treatment of the 'V' shaped parapets at Fernshaw Road. However, these submissions more properly relate to the ground (a) appeal and will be addressed there.
12. Having regard to all of the above considerations, I conclude, as a matter of fact and degree, that significant alterations have been made to the exterior of the building. These were the removal of one shape of parapet wall and its replacement with a 'V' shape. These alterations are visible from a number of private vantage points and amount to a material change to the external appearance of the building. The alterations therefore amount to development within the meaning of s55 of the Act, for which planning permission would be required. The appeal on ground (c) therefore fails.

The ground (a) appeal and the deemed planning application

13. The appellant's submissions in relation to this ground of appeal are made only in relation to the 'V' shaped parapet roof, associated hopper, the metal framed door and the rendered surround. The appellant does not seek planning permission for the enlarged area of terrace tiling and its associated supports on the main roof.⁴

Main Issue

14. The main issue is the effect of the development on the Sloane/Stanley Conservation Area (CA), having regard to the statutory duty to pay special

⁴ Allegations (iii) and (iv) on the notice

attention to the desirability of preserving or enhancing the character or appearance of the CA.

Reasons

15. The CA is a compact, residential area of Victorian properties which are laid out either as terraced houses or semi-detached villas in a grid street pattern. Many of these have now been subdivided into flats and maisonettes, as at the appeal site, where the appellant occupies the first and second floor of the building. The Council's CA appraisal⁵ (CAA) describes the terraces as 'well mannered'. Gunter Grove marks the western boundary of the CA and comprises an imposing terrace on its eastern side, where the appeal site can be found. The terrace is three storeys in height with a basement area, and is finished in stucco at ground level with brickwork above. Each of the houses has a paired entrance portico, one of the many matching details along the terrace, and the terrace has a generally unbroken, parapet roof line. From Edith Terrace there is a view of part of the rear of the terrace which reveals the historic butterfly roof formation. I find the distinctive character and appearance of the area stems, in part, from the general uniformity of the built form and the historic roofs, which are largely intact.

'V' shaped parapet wall and associated hopper

16. This feature, as built, can be seen from a number of private view points, as already discussed in the ground (c) appeal. The closet wings sit one storey below the top floor of the buildings revealing the zig zag pattern and rhythm of the original butterfly roofs, which remains largely intact. The point of the 'V' shaped parapet at the appeal site springs from a higher position on the rear elevation of the building than others along the terrace and has a markedly greater acute angle than neighbouring roofs. I find this disrupts the proportions of the rear elevation of the appeal site and the appearance of the terrace. As such, it causes harm especially as uniformity and the roofscape are defining characteristics of this CA.
17. The appellant submits that the works result in limited changes to the rear elevation, which are barely noticeable and are not incongruous. However, the change in the angle of the roof is pronounced and the higher position of the rain water hopper and lighter colour brickwork make the parapet works more obvious.
18. Reference is also made by the appellant to two appeal decisions.⁶ At the first one in Fernshaw Road the Inspector concluded that there was a miscellany of changes to the rear elevations of the Fernshaw Road terrace. The appellant states that that is also the case in respect of the terrace in Gunter Grove. However, the description of the development at Fernshaw Road made no mention of any alteration to the 'V' shaped parapet but was concerned with an extension to the closet wing to form a roof terrace. It was in this context that the Inspector made his comments about the changes to the rear elevations where he saw there were a number of roof terraces.
19. With regard to the second appeal, this concerned the erection of a roof terrace on the main roof as well as on the roof of the closet wing. The Inspector concluded that the 'V' shaped parapet was a strong characteristic of London

⁵ Sloane Stanley Conservation Area Appraisal adopted 15 October 2015

⁶ APP/K5600/D/16/3147111 28 Fernshaw Road and APP/K5600/A/11/2161100 7 Gunter Grove

roofs and contributes to the architectural rhythm of the rear roofline of the terrace. He noted that some parapets had been infilled at Nos 5 and 17 but that this was some time ago under a different policy framework; nevertheless he commented on the disruption they caused to the architectural rhythm of the rear roofline. Therefore, rather than supporting the appellant's position on the effect of the works to the parapet, these decisions accord with my own views.

20. For the reasons given, it is concluded that the design and position of the 'V' shaped rear parapet wall and associated hopper harm the character and appearance of the CA. As such, the works do not accord with LP Policies CL1, CL2, CL3, CL6, CL8 and CL11 of the LP. These policies require, amongst other matters, that new development, including roof alterations, respects the existing context, preserves or enhances the character or appearance of the CA and protects views that contribute to the character of the area.

Metal framed door and rendered surround

21. The previous grant of planning permission authorised the installation of a timber framed door on the new second floor roof terrace. The appellant has installed a metal framed glass door and included a wide, white painted, rendered surround. Although the door is recessed, the white painted surround unduly highlights the presence of the door when viewed from the public domain in Edith Terrace. It also unacceptably exaggerates the height and width of the door when openings within the rear elevation are generally subservient to the solid expanse of the brickwork. These alterations can easily be seen from a number of properties in Fernshaw Road overlooking the appeal site. With regard to the use of metal, this is not generally found in use for doors or windows in the CA, where the predominant material is timber, as identified in the CAA. Its use therefore fails to preserve the character and appearance of the CA.
22. The appellant refers to the installation of metal doors at Nos 24 and 28 Fernshaw Road and the treatment of the brickwork around them to support her argument that this component of her development is not harmful. The Council though point out that the door at No 28 was not authorised by them and that at No 24 is in a different position than at the appeal site, being lower, and is also partially screened by a parapet wall. These doors therefore do not represent a direct parallel to the appeal site. In any case I have determined the appeal on its own merits.
23. For the reasons given, it is concluded that the installation of a metal framed door and rendered surround harm the character and appearance of the CA. As such, the works do not accord with Policies CL1, CL2, CL3, CL6, CL8 and CL11 of the LP.
24. Although the harm to the Conservation Area is less than the "substantial harm" referred to in Paragraph 133 of the National Planning Policy Framework (the Framework), it nevertheless weighs significantly against the development. Paragraph 134 of the Framework requires the harm in such instances to be weighed against any public benefits of the proposal. The appellant has not directly suggested any public benefit, as such, but the Council refer to the overall improvement to the Borough's housing stock through the provision of external amenity space to an upper storey maisonette. However, for the reasons set out above, I consider that this would be an insufficient public benefit to outweigh the harm I have found to the character and appearance of

the CA. Accordingly the proposal is at odds with the advice in Paragraph 134. The appeal on ground (a) therefore fails in respect of the parapet, hopper, door and surround.

The ground (f) appeal

25. The appeal on ground (f) is that the requirements of the notice in relation to the parapet, hopper, door and surround exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require the parapet and hopper to be re-built to match neighbouring properties, the door frame to be lowered, the metal door to be replaced with a timber framed door and the rendered surround to be replaced with brick. The purpose of the notice must therefore be to remedy the breach of planning control.
26. The appellant states that the parapet could be altered without affecting the door and the door could be lowered without requiring any works to the parapet. The basis of the ground (f) appeal is that the Inspector can decide between the two options. However, the onus is on the appellant to state the precise details of any lesser steps otherwise it is not possible to judge whether the Council's requirements are excessive or not.
27. With regard to the rendered surround, the appellant points out that if this were to be removed, it would necessitate a great deal of remedial work in respect of the brickwork. Given the age of the property there would be a limited likelihood of a perfect response which could be more harmful to the appearance of the building and the rendered surround should therefore be left intact. However, this does not remedy the breach of planning control and the employment of a skilled craftsman would address the appellant's concerns.
28. In conclusion, if I were to allow the appeal on ground (f) then I would need to vary the requirements of the notice in such a way that unambiguously sets out what would need to be done. The appellant has not adequately identified what needs to be done to remedy the breach of planning control and as such I am not able to vary the requirements. As no other lesser steps have been submitted, I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.

Conclusion

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

D Fleming

INSPECTOR