
Appeal Decisions

Site visit made on 28 February 2017

by Simon N Hand MA

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

Decision date: 9 March 2017

Appeal A: APP/K5600/C/16/3159151 17 Cheniston Gardens, London, W8 6TG

- 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 Chris Christodoulou against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice, numbered E/15/00510, was issued on 30 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, retention of air conditioning unit located in the lower ground floor courtyard.
 - The requirements of the notice are remove the air conditioning unit from the lower ground floor courtyard.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/K5600/A/16/3159152 17 Cheniston Gardens, London, W8 6TG

- 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 Chris Christodoulou against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/03737, dated 9 June 2016, was refused by notice dated 22 August 2016.
 - The development proposed is retention of air conditioning condenser unit.
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Decisions

Appeal A – 3159151

1. The enforcement notice is varied by deleting "1 month" from the Period for Compliance and replacing it with "6 months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B – 3159152

2. The appeal is dismissed.

Background to the Appeals

3. In 2015 permission was granted to refurbish No 17 and convert it into 11 residential flats. As part of that conversion the building was converted solely to

electricity and a large air conditioning condenser unit was installed in the rear courtyard. This unit was not included in the original planning permission. Several neighbours complained about the noise from the unit and the appellant commissioned a report which showed the noise issue could be overcome by an acoustic enclosure. In the meantime the appellant applied for planning permission for the condenser unit but did not provide details of the enclosure.

4. The Council refused permission for the condenser unit on visual amenity grounds and issued an enforcement notice to require its removal. Appeal A relates to the notice and Appeal B to the refusal of planning permission.
5. The appellant has provided full details of the acoustic enclosure and requests that it is considered as part of the appeals. The ground (a) can only refer to the matters alleged or part of those matters. The acoustic unit is not a part of the matters alleged and has not yet been installed so it cannot form part of the ground (a) appeal.
6. The Council argue that it should not be considered as part of Appeal B. Had it been introduced as an amendment to the application they would have refused to consider it as it was not a minor change. The acoustic enclosure is larger than the condenser unit, and would inevitably have a greater impact on visual amenity. Furthermore they have had several complaints about the condenser, mostly about noise but at least one concerned at its size. If a larger unit were installed this would be very likely to generate further interest from third parties who would be denied the opportunity to comment. They also have no plans showing how the unit would fit into the confined space in the rear yard. I am also uncertain whether it would solve any noise problem for the occupier of the ground floor flat next to the unit.
7. I agree with the Council, an amendment to the application subject to Appeal B to include the acoustic enclosure would offend the principles of the Wheatcroft judgement, which covers material changes to an application, in three ways. It would be likely to prompt further comment from third parties, and it would result in a significantly different development from just the retention of the condenser unit and, without further information I cannot be certain it would solve any noise problem for the occupier of the ground floor flat next to the unit. I shall not consider the acoustic enclosure in either appeal.

The Appeal on Ground (a) and the s78 Appeal

8. The condenser unit sits in a small courtyard accessed through double doors from a ground floor flat in number 17. The unit is essentially a large rectangular box, stood on end, about 2m tall and painted white. It is not particularly unsightly and in my experience is typical of the sorts of equipment found in these sorts of courtyards.
9. The courtyard itself is a subdivision of a larger space surrounded by the backs of much taller residential buildings, most, if not all of which would be converted into flats. I was able to see out of one of the second floor windows of a flat in No 17. The view down into the larger space was not inspiring. It was not possible to see the condenser unit as it was directly below the window, unless one leaned out and made an effort to do so, however, other parts of the larger space could be seen so it is reasonable to assume from windows in other flats on the other side of the open space the courtyard where the unit is placed would be visible. However, only the top of the unit would be seen and in the

context of an entirely utilitarian courtyard. Even if it were larger and more visible (that is with an acoustic enclosure around it for example) it is hard to see what harm it would cause visually. There is literally nothing of interest to see in the wider space and the condenser unit is not inherently unpleasant to look at so it would not cause harm to the visual amenity of anyone who happened to be looking down into the courtyard or the wider space.

10. The same can be said of its effect on the users of the courtyard itself. While the large unit would not be a welcome addition to the yard, the latter is so small and constrained by tall walls and buildings it is difficult to see what beneficial use it would have for the occupier of the small flat from where it is accessed. Consequently, I do not think the condenser unit does harm visual amenity.
11. There is no dispute the condenser unit is noisy, and the Council have issued an abatement order with which the appellant has complied. Although neither the notice nor the refusal were issued on the basis of noise, this is clearly the main issue for local residents and it is accepted by the appellant that an acoustic enclosure is needed to solve the problem. I cannot grant planning permission without such an enclosure, nor, for the reasons explained above, can I consider the enclosure in my decision. Consequently, I have no choice but to refuse both appeals.

The Appeal on Ground (g)

12. The appellant has made a further application for the condenser unit with the acoustic enclosure, but this had not been validated at the time the Council wrote their statement. The obvious way forward is for the appellant to seek permission for the unit and enclosure together, and this process would seem to be underway. I shall therefore extend the compliance period to 6 months to enable this to be sorted out. In the meantime the noise abatement order will prevent any recurrence of the noise issues suffered by local residents.

Simon Hand

Inspector