
Appeal Decision

Site visit made on 1 June 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 27 June 2017

Appeal Ref: APP/K5600/W/17/3168558

6 Earl's Court Gardens, London SW5 0TD

- 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 R McKeeve against the decision of the Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref PP/16/07254, dated 28 October 2016, was refused by notice dated 28 December 2016.
 - The application sought planning permission for formation of basement under rear garden, rebuilding and enlargement of existing half width three storey back addition at ground, 1st, and 2nd floor levels, and rebuilding and enlargement of existing conservatory type structure at rear at lower ground floor level without complying with conditions attached to planning permission Ref DPS/DCPP/09/02486/Q21/S49, dated 27 May 2011.
 - The conditions in dispute are Nos 6 and 7 which state that: (6) The roof of both the extensions hereby permitted shall not be used at any time as a terrace; (7) The existing juliet balcony in front of the existing french doors at the rear at ground floor level shall be retained and not removed.
 - The reasons given for the conditions are: (6) To protect the privacy and amenity of neighbouring property; (7) To protect the privacy and amenity of neighbouring property by means of preventing the roof of the conservatory type extension at the rear at lower ground floor level from being used as a roof terrace.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) the effect that varying the conditions concerned would have on the living conditions of the occupiers of neighbouring properties in respect of privacy;
 - ii) whether the proposed fencing would preserve or enhance the character or appearance of the Courtfield Conservation Area (the CA).

Reasons

Living conditions

3. The appeal relates to the proposed use of the roof of the lower ground floor single storey rear extension as a terrace. Without the proposed screen fencing

adjacent to the boundaries with Nos 5 and 7, the use of the roof area as a terrace would enable: direct overlooking into ground floor side facing windows of No 5, at closer range than is currently possible from a side window of No 6; more direct overlooking into a ground floor rear facing window of No 5 and into a skylight window in its adjacent single storey extension; and direct overlooking down into No 7's conservatory. The proposed fencing would therefore be required to prevent an unacceptable level of overlooking, and due to its height above the corresponding roof level, it would be likely to achieve that.

4. However, the fence would not prevent outlook to the rear. In relation to No 5 in particular, it would enable direct overlooking of varying amounts of the private garden area of that property close to the dwelling. That would also be from a fairly short distance, over existing boundary fencing, and at not such an oblique angle as would currently be possible from windows in No 6's outrigger. It would also be from closer range than the rear windows in the main elevation of No 6.
5. I acknowledge that No 5's garden is also already overlooked to varying degrees from properties to the rear. However, in relation to the more private space nearer to the dwelling, it is not from as close a range as would be the case from the proposed terrace, and so less likely to cause a harmful loss of privacy. It is claimed that No 4 has a similar terrace as that proposed which was granted a Lawful Development Certificate. I do not have the full details and circumstances of that proposal in relation to its terrace. Nevertheless, it is not a reason for exacerbating any existing loss of privacy to the residents of No 5 through the cumulative addition of the proposed terrace.
6. It is likely that No 7's rear garden would also be overlooked to some degree, particularly were the existing vegetation on the boundary not to be present in the future. However, the main part of the proposed terrace would be set away from the boundary with that property. Furthermore, windows in No 6's outrigger are already close to that boundary and the garden area concerned. It is therefore unlikely that any overlooking of No 7's garden would be increased, as a result of the proposed terrace, to such an extent as to amount to a harmful loss of privacy to its residents. The same would apply to properties to the rear of the site, which would be separated from the terrace by the length of No 6's rear garden. However, these factors do not detract from the unacceptable harm that I have found would be caused in respect of the privacy of the residents of No 5 in using their rear garden.
7. I acknowledge that there are other cases of terraces to the rear of properties in the vicinity. However, I have determined this proposal on its own merits based on all of the evidence submitted and my own observations.
8. For the above reasons, I conclude on this issue that varying the conditions concerned would cause unacceptable harm to the living conditions of the occupiers of No 5 in respect of privacy. As such, the proposals would be contrary to policy CL5 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (the CLP) which requires all development to ensure good living conditions for occupants of neighbouring buildings, including reasonable visual privacy.

Character or appearance of the CA

9. The site is located in the CA and as such special attention has to be paid to the desirability of preserving or enhancing the character or appearance of the CA.
10. The proposed timber fencing would be positioned atop existing low parapet walls. The extent of that fencing in itself would therefore be fairly modest in height. Furthermore, it would only project a fairly short distance beyond the rear elevations of the four storey outriggers of Nos 5 and 6 and at a relatively low level compared with the overall height of the rear elevations of the dwellings. It would also be seen in the context of various existing alterations and additions to the rear of properties in this terrace, albeit that it is disputed as to whether some of those have benefitted from planning permission.
11. These factors would combine to ensure that the proposed fencing, whilst visible from neighbouring properties, would be fairly discrete and not a dominant, obtrusive or jarring feature of No 6 or the terrace generally.
12. For the above reasons, I conclude on this issue that the proposed fencing would preserve the character and appearance of the CA. As such, in respect of this issue, it would accord with policies CL1, CL2, CL3, CL6 and CL11 of the CLP which together, amongst other things, require all development to respect the existing context, character and appearance, to be of the highest architectural design quality and to preserve or enhance the character or appearance of CAs.

Conclusion

13. I have found that the proposed fencing would preserve the character and appearance of the CA. However, this does not deflect from my finding that varying the conditions concerned would cause unacceptable harm to the living conditions of the occupiers of No 5 in respect of privacy.
14. Therefore, for the above reasons, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

Andrew Dawe

INSPECTOR