



Appeal Decision

Site visit made on 14 August 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 17 August 2017

Appeal A Ref: APP/K5600/C/16/3164109

Land at 150 Warwick Road, London W14 8PS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jody Lyster against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
 - The enforcement notice was issued on 19 October 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission: i) the erection of a full width rear extension at first and second floor level; ii) the installation of non-timber windows and doors to the rear ground floor and basement elevation; and iii) the installation of a balustrade to the rear ground floor elevation.
 - The requirements of the notice are: (1) Either: a) Demolish the full width rear extension at first and second floor level, remove all non-timber windows and doors in the rear elevation at ground and basement levels, remove the balustrade at rear ground floor level and restore the rear elevation at ground, first and second floor level to its former condition as shown in photograph A. Or; b) Alter the development to comply with the terms of the approved planning permission ref: PP/14/08943 approved on 3rd March 2015. (2) On completion of step 1 above, remove all resultant materials and debris from the site.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Act.
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Appeal B Ref: APP/K5600/W/16/3164106

150 Warwick Road, London W14 8PS

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Mr Jody Lyster against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/16/03702, dated 9 June 2016, was refused by notice dated 5 August 2016.
 - The development proposed is extension and alterations to rear elevation including new balconies.
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Decision: Appeal A

1. I direct that the enforcement notice be corrected by the replacement of the word "site" with the word "Land" at the end of point 2. in paragraph 5 of the enforcement notice and that the enforcement notice be varied by:
 - i. the addition of the word "Or;" at the end of point 1 b) in paragraph 5 of the enforcement notice; and,
 - ii. the addition of a new point 1 c) in paragraph 5 of the enforcement notice comprising the following words: "c) Alter the development to comply with the terms of the approved planning permission ref: PP/17/00738 approved on 27th April 2017".

2. Subject to this correction and these variations Appeal A is allowed insofar as it relates to the installation of non-timber windows and doors to the rear ground floor and basement elevation and the installation of a balustrade to the rear ground floor elevation. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the installation of non-timber windows and doors to the rear ground floor and basement elevation and the installation of a balustrade to the rear ground floor elevation on land at 150 Warwick Road, London W14 8PS. Appeal A is otherwise 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 Act for the erection of a full width rear extension at first and second floor level.

Decision: Appeal B

3. I dismiss the appeal.

Appeal A: Preliminary matters

4. Paragraph 2 of the enforcement notice that is the subject of Appeal A defines the land at 150 Warwick Road to be "*the Land*". However that term is not then used on the face of the notice. Paragraph 4 of the notice refers, by way of example, to "*the property*" and otherwise to the "*proposal*", when it is plainly built. Whilst the reasons for issuing the notice are spent after appeal stage, such that no purpose would be served by correcting it, paragraph 5 of the notice is potentially still at issue. It refers to "*the site*", when this term is not defined. However it is clear that this is intended to be "*the Land*" as defined. I am satisfied that there would be no injustice to any party if I were to correct the notice to substitute the correct term in the interests of consistent drafting.
5. The Appellant has lodged Appeal A on grounds (a) and (f), and there is some overlap in a case such as this. In the event that ground (a) fails I shall deal, as necessary, with ground (f), but in view of one of the arguments advanced I need to deal with the approach here. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve, wholly or partly, any of the purposes set out in Section 173(4). These include remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land or by restoring the land to its condition before the breach took place.
6. However paragraph 5.9 of the grounds of appeal says, in less than a sentence, that the Appellant would be content to remove the second floor extension only. Such a scheme does not benefit from planning permission and so the only way in which that can properly be considered in Appeal A is under ground (a) rather than ground (f). This approach could allow me to grant planning permission "*in relation to the whole or any part*" [section 177(1)(a) of the Act] of the matters alleged in the notice, either with or without conditions.

Appeal B: Preliminary matters

7. There is a difference in the description of development between the application form and the decision notice in Appeal B. However the modified description on the decision notice appears to have been adopted by the Appellant in section E of the appeal form and so I propose to deal with Appeal B on that basis.
8. The Delegated Report on the application now subject of Appeal B says, at paragraph 6.1, that no proposed first floor plan had been submitted and I note that the list of drawings on the decision notice does not include drawing No

PL/01. However section 10 of the application form expressly refers to the “*as built basement, ground and first floor plans*” which, adopting the balance of probability, is likely to be a reference to that drawing. The drawing has been placed before me and in all the circumstances I shall take it into account.

9. The Appellant’s Statement of Case sought to substitute amended plans in order to address the Council’s concerns. However those plans were the subject of a contemporaneous planning application [No PP/17/00738], which was granted on 27 April 2017. In the circumstances the Appellant’s final comments confirm that there is no need for me to consider that alternative scheme. I explore the point further below, but for present purposes this means that I intend to focus on the scheme that has been built, rather than the amended scheme.

Appeal A, Ground (a) and Appeal B: Planning merits of the development

Main issue

10. The main issue that is common to both appeals is the effect of the development on the character and appearance of the area and, in particular, whether it would, at a minimum, preserve the character or appearance of the Edwards Square/Scarsdale & Abingdon Conservation Area.

Reasons

11. The Design Statement that accompanied the application subject of Appeal B says that the rear of the building, which is at issue in these appeals, is barely visible from any public street. I agree that to the extent that it can be seen from a public vantage-point it is from the small cul-de-sac and associated footway at the side of the Warwick Arms. In this vista the distinctive form of the butterfly roof is seen along the rear of the terrace between the Warwick Arms and the appeal site. Whilst the extraction flue projects from a high level at the rear of No 152, I have no reason to doubt the assertion in the Design Statement that the: “*...form of the main butterfly roof remains visible*”.
12. Whereas both permitted schemes¹ include a roof design that mirrors, but is subservient to, the main butterfly roof form, the rear extension that has been erected includes a flat roof that obscures this distinctive feature². In my view this is exacerbated by the protruding coping stone that demarcates the roof of the extension. When seen from the side of the Warwick Arms the light coloured coping stone distinguishes the protruding form of the extension against the higher and larger mass of the building to the south-east of the appeal site.
13. The Development Plan [DP] includes *The RBKC Consolidated Local Plan 2015* [LP], which was adopted in July 2015. LP Policy CL9 says that extensions will be resisted where c) the extension would spoil or disrupt the even rhythm of rear additions. Even if it might be said that the butterfly roof form is not an addition, LP Policy CL9 requires extensions to be subordinate to the original building, to allow the form of the original building to be clearly understood and to reinforce the character and integrity of the original building. By virtue of cutting across the distinctive roof form the extension breaches this policy.
14. I also find that the roof form conflicts with LP Policy CL11, which requires all development to protect and enhance views, vistas and gaps that contribute to the character and quality of the area. Criterion c) of LP Policy CL11 requires that within Conservation Areas development should preserve or enhance views

¹ Planning permissions PP/14/08943 and PP/17/00738.

² As shown on refused drawing No PL/03.

- (ii) generally within Conservation Areas, including the rear of properties [added emphasis]. I acknowledge that this is a narrow vista in which the extraction flue detracts from the character and appearance of the Conservation Area, but this does not alter my finding that the development does not, at a minimum, comply with this policy by preserving the view of the rear of these properties.
15. It follows that I find a conflict with LP Policy CL3, which requires development to preserve and to take opportunities to enhance the cherished and familiar local scene. Criterion a) of LP Policy CL3 reiterates the statutory duty in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and, for the reasons already given, the development would fail, at a minimum, to preserve the appearance of the Conservation Area.
16. LP Policy CL1 requires all development to respect the existing context, character and appearance, including requirements for development to:
- a) contribute positively to the townscape by addressing matters such as scale, height, mass, rhythm and roofscape; and, b) respond to the local context.
- By virtue of the fact that the height of the flat roof would obscure the butterfly roof I find a conflict with these aspects of LP Policy CL1.
17. LP Policy CL2 requires all development to be of the highest architectural and urban design quality, taking opportunities to improve the quality and character of buildings. Amongst other things the criteria set out in the policy require development to respond well to its context [criterion a. iv] and to be of an appropriate architectural style in response to its context [criterion b. i]. For the reasons previously identified I find a conflict with these policy requirements.
18. In reaching this view I have noted the grounds of appeal and in particular the claim that if the extension was removed that the revealed facade would not be visible due to the adjacent flue. However, whilst I acknowledge that the flue is a detracting feature, I am unconvinced that this claim has been made out. The butterfly roof is a distinctive feature that has been obscured by the extension. There are likely to be private views from dwellings on Warwick Gardens toward the appeal site in addition to the public vista that is identified in the Design Statement. Whilst there might not be a regular pattern of fenestration in the rear elevation of the terrace and there is a mismatch of materials evident on the rear of the adjoining properties, this does not alter my earlier findings.
19. The grounds of appeal assert that the height of the extension has already been established by the extant consent, which must be a reference to the 2015³ planning permission. To the extent that it and the most recent planning permission⁴ permitted accommodation at second floor level that might be true. However detailed comparison between the respective drawings⁵ shows that the scheme that has been erected is higher than either of the permitted schemes. Drawing No PL/03 shows that the extension that has been built cuts across the butterfly roof form, which contradicts the claim in paragraph 5.4 of the grounds of appeal. As such the claim is not made out and because of the higher absolute height of what has been built the extension is not subordinate.
20. Turning to materials, it was agreed during the site inspection that the brick is of London stock, albeit that it might be of metric dimensions. Nevertheless it

³ Planning permission PP/14/08943, noting that the grounds of appeal pre-date the date of the grant of the 2017 planning permission.

⁴ Planning permission PP/17/00738.

⁵ Compare drawing No PL/03 [refused scheme] with drawing Nos PL301 and MRPL/03 [2015 and 2017 planning permissions, respectively].

is an attractive warm hue which in my view is entirely appropriate, particularly in its context. Whilst the ground floor is a slightly darker brick this might be because it is of a slightly earlier date or because the bricks have been reused. Regardless of the reasons I take no issue with this aspect of the materials.

21. The Delegated Report takes issue with the materials that are used in the glass balustrading and the modern style of windows. In this respect I have no reason to doubt the claims in the grounds of appeal that the windows and balustrade are not visible from any public vantage-point and that there is no planning policy which seeks to restrict the use of modern materials. The most relevant criterion is d) of LP Policy CL9, which resists proposals for materials that would not be in character with the existing building. In this respect I believe it would be appropriate to draw a distinction between the public face of the building, including the attractive shopfront, and the largely hidden rear elevation.
22. Whilst there are likely to be private views of the rear extension, given what exists at the rear of adjacent properties within the terrace⁶, the use of modern materials, such as those which have been used for the windows and balustrade, would not clearly breach LP Policy CL9. This is particularly true of the windows and doors to the rear ground floor and basement elevation and the balustrade at the rear ground floor level, which are separately identified as the second and third components of the breach alleged in the notice. In these circumstances I consider that it would be appropriate to grant an unconditional planning permission in this respect, as no conditions are suggested. However I do not believe it would assist anyone to issue a split decision in Appeal B.
23. It is material to note that the Council has not taken issue with the dimensions of the openings, even though this is a factor within relevant criterion d) of LP Policy CL9. When one looks at drawing No PL/03 perhaps the most striking feature of the rear elevation, in comparison to the adjacent terrace, is not the materials used in its execution but the size of the openings, which contrasts with the domestic scale of adjacent properties. The size of the openings at first and second floor level appears to be materially larger than those which have been permitted by the Council. However, to a large extent, this is a consequence of the fact that the extensions that have been permitted do not extend across the full width of the property. In all of the circumstances I have no clear basis on which to take issue with the dimensions of the openings. In particular, given my earlier indication that it is appropriate to issue a planning permission for part of the development in Appeal A, it is material to note that the size of the opening at ground floor level is no larger than what is permitted.
24. It is common ground that the development has not harmed neighbours' living conditions by reason of sunlight and daylight levels, sense of enclosure or overlooking. Whilst I note the correspondence submitted by a neighbour in relation to Appeal B this positive consideration does not outweigh the harm and conflict with policy that I have identified in my earlier reasoning.
25. On the main issue that is common to both appeals I conclude that the development as a whole harms the character and appearance of the area and, in particular, fails, at a minimum, to preserve the character or appearance of the Conservation Area, in conflict with LP Policies CL1, CL2, CL3, CL9 and CL11. Nevertheless, for the reasons I have given, the installation of non-timber windows and doors to the rear ground floor and basement elevation and the installation of a balustrade to the rear ground floor elevation would not cause

⁶ In particular the unattractive metal flue at No 152.

harm and would preserve the character and appearance of the Conservation Area in broad compliance with relevant LP Policies.

Appeal A, Ground (a): *The prospect of granting planning permission for part of the development without the second floor extension*

26. Under this head I deal with the prospect of granting planning permission for the development without the second floor extension. There is no qualification to paragraph 5.9 of the grounds of appeal and so no claim is made that any part of the second floor should be retained. That immediately gives rise to a problem because the second floor accommodation that would be removed is bedroom 1, except for perhaps a very thin part thereof⁷. Even if I were to assume that a new rear wall was proposed at this point, there are no details of fenestration, if any, proposed at the end of the passage serving the en-suite.
27. The grounds of appeal fail to articulate what form the roof would take in any such scenario. It might be implicit that a flat roof is proposed but, if so, no drawings have been provided to show whether a coping stone is proposed or whether the finished height might still be visible from the public realm. Even if I were to assume that was not the case the Council has drawn my attention to paragraph 34.3.92 of the supporting text to LP Policy CL11, which emphasises the importance of views from upper floors of other buildings. In my view a flat roof would not mirror the distinctive butterfly roof and hence not comply with the aforementioned aspects of LP Policies CL1, CL2, CL3, CL9 and CL11. In summary it would not represent an appropriate response to its context.
28. Noting again the brevity of the Appellant's submission on this point it is material to say that it is not my role to make the Appellant's case for him. There is no obvious alternative in which some part of the second floor was retained, whether it is that part permitted under the 2015 or 2017 planning permissions is unclear, because no details of how the first floor element that is outwith that part of the second floor, if any, to be retained would be finished. Having regard to the recessed window it would appear that any roof to the first floor element would cut across the sill level⁸, which is a further reason to take issue with this scenario and find a conflict with criterion d) of LP Policy CL9.
29. I have noted the claim that full width extensions have been permitted at Nos 152, 154 and 158 Warwick Road, but few details have been provided. I note the Council says those at Nos 152 and 158 Warwick Road are "*considerably smaller*". The Council also says that it appears that the permitted extension at No 154 has not been built in accordance with the approved scheme. For these reasons I am unconvinced that these justify the appeal development. Whilst I have considered the possibility of granting planning permission for part of the development, namely without the second floor accommodation, neither this nor any other material considerations outweigh the identified policy conflict.

Appeal A, Ground (a) and Appeal B: *Overall conclusion*

30. I have taken account of all other matters raised in the Appellant's submissions, but there are no material considerations of sufficient weight that indicate that the determination should be made otherwise than in accordance with the DP. For the above reasons, having regard to all other matters raised, I conclude that the ground (a) appeal in Appeal A, and Appeal B, insofar as they relate to

⁷ See line of hatched area on drawing No PL/01 that runs in line with the adjacent rear elevation, which would effectively result in a narrow passage parallel to the rear en-suite.

⁸ Revealed in permitted drawing Nos PL301 and MRPL/03 [2015 and 2017 planning permissions, respectively]; see in particular the annotation "second floor level" on those drawings.

the development as a whole, should both fail. I have also given reasons why it would not be appropriate to grant planning permission in part for the development without the second floor extension. However, for the reasons I have given, I shall grant planning permission in Appeal A for the installation of non-timber windows and doors to the rear ground floor and basement elevation and the installation of a balustrade to the rear ground floor elevation.

Appeal A, Ground (f)

31. Having regard to paragraph 5 above, the requirements of the notice appear to have been drafted in order to remedy the breach of planning control. The alternatives that are set out in points 1 a) and b) of paragraph 5 of the notice mirror 2 of the 3 purposes set out in section 173(4)(a) of the Act. Given my earlier consideration of the alternative advanced by the Appellant I do not need to consider it further here because I have identified harm and policy conflict. Given my adverse finding in Appeal B I do not need to consider the scenario outlined in paragraph 5.10 of the Appellant's grounds of appeal.
32. At final comments stage, following the grant of planning permission in 2017, the Appellant refers to section 180 of the Act. It provides that where, after service of an enforcement notice, planning permission is granted for development carried out before the grant, the notice shall cease to have effect so far as inconsistent with that permission. However when one compares the respective schemes⁹, they are significantly and materially different. To the extent that there might be some commonality, it would nevertheless be appropriate to formalise this scenario by varying the notice to recognise that implementation of the 2017 permission is an alternative to demolition. I shall therefore vary the requirements to provide for this scenario because I am satisfied that there would be no injustice to either party from such a variation.
33. I conclude that no reason is advanced as to why the requirements of the notice exceed what is necessary to remedy the breach, which appears to be the limited scope of the ground (f) appeal. I do however propose to vary the first step of the notice to allow for the prospect of implementing the most recent planning permission, which post-dates the issue of the enforcement notice.

Appeal A, Ground (g)

34. The grounds of appeal say that the property is tenanted, but paragraph 3.1 of the Delegated Report says the extension has not been completed as: "*...the internal floors have not been finished*". During my site inspection I gained the strong impression that remained the position. This might suggest that either the property is not in fact tenanted or that any tenancy that does exist would be unaffected by works at the rear of the building, for example because the tenant does not occupy that part of the building.
35. Even if I might be wrong I am unconvinced that 6 months is an inappropriate period for compliance. The Appellant acknowledges the need for a 12-week build programme and so the only variable appears to be the need to obtain vacant possession. However the Council has a power under section 173A of the Act to extend the period in the event that circumstances are brought to its attention. If it were provided with evidence that court proceedings had proved to be necessary to obtain vacant possession then it might be appropriate to exercise that power. However at the present time I find no reason why the compliance period is too short. I conclude the ground (g) appeal should fail.

⁹ Compare drawing Nos PL/03 and MRPL/03 [2016 and 2017 planning applications, respectively].

Appeal A: Conclusion

36. For the reasons given, and having regard to all other matters raised, I conclude that, in line with the powers that are available under section 177(5) of the Act, it is appropriate to grant planning permission in part in Appeal A. However I refuse to grant planning permission on the whole application deemed to have been made or for part for the development without the second floor extension. I shall therefore uphold the corrected and varied enforcement notice in respect of the erection of a full width rear extension at first and second floor level.

Appeal B: Conclusion

37. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Pete Drew

INSPECTOR