



Appeal Decision

Site visit made on 5 August 2019

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/K5600/C/18/3215023

25 Pembroke Gardens Close, London W8 6HR

- 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 Charles Moorman against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 18 September 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the erection of 8x flues on the rear roof slope.
 - The requirements of the notice are:
 - i Remove the ducts.*
 - ii Remove from the land any building materials or waste resultant from compliance with requirement (ii) above and make good the roof.*
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (c) – that the flues do not constitute a breach of planning control

2. My consideration under this ground requires me to determine whether, as a matter of law, the development enforced does not amount to a breach of planning control. The merits of the development are irrelevant to such considerations. Firstly, I find that the flues amount to development, comprising a building operation. This is not disputed by the appellant. The second question is whether the proposal benefits from permission granted under the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). The GPDO, in Class G of Part 1 to Schedule 2, is described as relating to “chimneys, flues etc on a dwellinghouse”. Specifically, Class G specifies that the development permitted is “The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.”
3. Class G.1 sets out types of development not permitted under this Class, but it is common ground between the main parties that the flues do not constitute any of the kinds of development expressly outside the provisions of Class G, and I agree.

4. The Council argues that only “a flue,” in the singular, is permitted under this Class, so that 8 flues fall outside that permitted class. In my view, the wording in the singular is specific, and is intended to apply only to “a flue”. The conditions under this Class do not impose any limit on the number of flues that would result on the dwellinghouse or within its curtilage, so that the permitted development right could be exercised on more than one occasion, in separate operations. However, on the evidence available, this is not what has happened here; on the basis of what I have read, the flues were installed in a single operation, in February this year, and therefore only one flue was permitted under the Order. Thus, I consider that the erection of 8 flues is not development permitted under Class G of the GPDO.
5. I note that the Council has, on a number of occasions, indicated that it considered the flues to be permitted development, but it had a change of mind, leading to the issue of the enforcement notice. The appellant did not obtain a lawful development certificate and there is no suggestion that the Council was estopped from taking enforcement action. I consider that they were not barred in law from doing so. This matter does not influence my finding on this ground.
6. Accordingly, I find that the matters alleged in the notice constitute a breach of planning control and so the appeal on ground (c) fails.

Ground (a) – that planning permission ought to be granted

Main Issue

7. The main issue is whether the flues preserve or enhance the character or appearance of the Edwardes Square, Scarsdale and Abingdon Conservation Area.

Reasons

8. The site lies in the large conservation area, which encompasses a wide variety of buildings of various ages, sizes and designs. In the vicinity of the appeal site, the significance of the heritage asset is derived from the architectural and historic interest of the mainly residential buildings and the nearby gardens in Edwardes Square and Pembroke Square.
9. The appeal property is a two-storey semi-detached dwelling which dates from the mid-20th century. It is constructed in red brick, with a slate hipped roof located towards the rear of the building, largely hidden from the street by a parapet wall. It possesses some features of interest, including 12-pane sash windows and decorative brick window heads. It is one of a number of similar properties on a private cul-de-sac. The appeal site backs onto Victorian 3-storey plus basement terraced dwellings on Pembroke Square. The appeal property and its similar neighbours do not possess the same richness in architectural detail as most of the older properties nearby. Nevertheless, they are well-mannered in their form and composition and complement the surrounding buildings. In my judgement they make a modest contribution to the significance of the conservation area.
10. The flues are black coloured, erected in two rows of four, running up the roof slope on the southern end of the rear-facing roof. They emerge vertically from the roof before being angled with a 90° bend, with the outlet being angled at about 45°. There is already a single tall vertical flue emerging near the roofline.

The sheer number of flues appears incongruous on a dwelling, and the design and cumulative impact is more akin to ventilation found on industrial premises. The black colour stands out against the more muted grey colour of the roof, and this contributes to their prominence.

11. Moreover, the flues disrupt the uniformity and symmetry of the roofscape in this side of the close. The appellant makes the point that there are a number of alterations which have taken place on roofs nearby. These include rooflights, single flues, satellite dishes, aerials and, on one property, solar panels. However, these additions are all typical domestic accoutrements, and none of them has the industrial appearance of the flues in this case. Moreover, none of them is as disruptive to the appearance of the roof slope as are the flues. The development damages the uniformity and symmetry of the roofscape which is a feature which contributes to the distinctiveness of the close.
12. The flues cannot be seen from any public place. However, they can be seen from numerous rear windows of houses on Pembroke Square which backs onto the site. Although these properties are separated from the roof by what the appellant says is a distance of 24 metres, this is an insufficient gap to prevent the flues from appearing discordant and out of character. I saw the flues from the house directly behind the appeal site, and from a number of windows of habitable rooms. From two rooms on a lower floor and a small part of the garden nearest the house, the uppermost flues stand out against the skyline. Rooms on upper floors look down on the appeal building from where the flues are an obvious and uncharacteristic feature.
13. Neighbouring occupiers are likely to experience similar views of the development and would perceive the harmful effect on the appearance of the conservation area to which I have referred.
14. The harm would, in the terms of the Revised National Planning Policy Framework, be "less than substantial". This means that the public benefits of the development need to be weighed against that harm. However, no such benefits have been put forward by the appellant and none is obvious to me.
15. I have had regard to the fallback position under the GPDO, whereby the same outcome could result from the carrying out of 8 separate operations. The appellant has not argued that such a fallback would be relied on and I have no reason to believe that it would be a realistic possibility. I therefore afford the fallback little weight.
16. I therefore conclude on the main issue that the flues fail to preserve or enhance the appearance of the Conservation Area, and conflict with Policies CL1, CL2, CL3, CL6, CL8, CL9 and CL11 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015, which respectively deal with context and character, design quality, conservation areas and historic spaces, small scale alterations and additions, existing buildings – roof alterations/additional storeys, existing buildings – extensions and modifications and views.
17. The flues also fail to accord with the Council's conservation objectives as set out in its Conservation Area Proposals Statement.

Other matters

18. The requirement of the enforcement notice to remove air conditioning flues in a dwelling engages with the rights of the appellant to respect for his family life and his home under Article 8, as well as the right to respect for property, under Article 1 of the First Protocol, which are Convention rights enshrined into UK law by the Human Rights Act 1998. However, these rights are not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, and the importance of preserving and enhancing the character and appearance of conservation areas are matters of legitimate public interest.
19. There are no lesser steps which could be taken to meet the policy and conservation area objectives, and whilst I recognise that the appellant's rights would be interfered with, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

Conclusion on ground (a)

20. I therefore conclude that planning permission should not be granted and that the appeal on ground (a) fails.

Overall conclusion

21. For the reasons given above, I conclude that the appeal on grounds (a) and (c) should be dismissed and that the notice should be upheld.

JP Roberts

INSPECTOR