



Appeal Decision

Site visit made on 8 October 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/K5600/C/18/3213199

Land at Flat 1, 97 Addison Road, London W14 8DD

- 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 Mohammadreza Azizi against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 7 September 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension.
 - The requirements of the notice are: -
 1. Remove the rear single storey ground floor extension;
 2. Remove from the land all building materials, rubble and waste resulting from compliance with requirement (1) above.
 - The period for compliance with the requirements is four calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. The appellant's statement of case identifies what he considers are the failings of the notice. The breach of planning control alleged in the enforcement notice refers to the erection of a single storey extension. The appellant considers that it is not clear whether the requirements of the notice include removing the structure of the 'landing area' that is shown on the submitted photographs or the stairs that connect the extension to the garden.
3. I consider that the description of the breach of planning control at paragraph 3 of the enforcement notice is clear and precise and that the stairs leading to the extension are not part of the breach. I also consider that the requirements of the notice at point 1 do not lack precision as the appellant will know how much of the single storey extension he has erected and what parts of it pre-existed prior to the development being carried out. The enforcement notice enables the appellant to understand the matters considered to constitute the breach of planning control and what steps are required to remedy this and its requirements are therefore not vague or imprecise.

4. My conclusion is that the notice tells the recipient fairly what he has done wrong and what he must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds available in an appeal and make corrections where they have shown to be justified. For the reasons given above, I conclude that the enforcement notice is valid and does not need correcting.

Decision

5. 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 Matters

6. It came to my attention that on 11 September 2019, the Royal Borough of Kensington and Chelsea adopted its Local Plan Partial Review (LPPR) Publication Policies, February 2017 incorporating the recommended 'main modifications' and the 'minor/additional modifications', including the new Foreword, published by the Council. The Council confirmed that Policies CL1, CL2, CL3, CL5, CL9 and CL11 cited in the Enforcement Notice have not been altered or replaced. It also confirmed that LPPR Policy CL4 does not apply to the appeal site, as the building is not a listed building and that this policy was cited in error. I have dealt with the appeal on this basis.
7. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the sections relevant to this appeal have not materially altered. As such, in the circumstances of this case I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeal on the basis of the current Framework.

Main Issues - ground (a) appeal and deemed planning application

8. The main issues are: -
 - The effect on the living conditions of the occupiers of basement Flat A, 97 Addison Road (Flat A) with regard to daylight and outlook;
 - The effect on the character and appearance of the area with regard to its location within the Holland Park Conservation Area (HPCA).

Reasons

Living conditions

9. The single storey extension is to the rear of Flat 1, 97 Addison Road (Flat1) and it extends between a boundary wall and a 2-storey outrigger over the top of a rear facing window to a bedroom in Flat A.
10. Flat A's bedroom window is at the basement level and the amount of daylight received by that window would have been significantly restricted by the adjacent boundary treatments, the proximity of the flank wall of Flat A's bathroom extension, the structure of the 'landing' area that adjoined the rear elevation of Flat 1 and the timber and plastic canopy over the 'landing' area.

11. It is not clear from the evidence before me as to the methods of construction and the materials utilised in the whole of the 'landing' area that is shown on the submitted photographs. Whilst it appears that the area immediately adjoining the rear door was a concrete slab it is not clear if that slab extended all the way to the boundary wall. I note that the appellant has stated that a timber beam was replaced by a steel one in the same position as part of the development. It is not clear why a timber beam would have been utilised to support a concrete slab in this situation. Moreover, the bottom of the large expanse of timber cladding appears to be at a slightly higher level than the bottom of the concrete slab on the submitted photographs.
12. It was also not clearly discernible on site what the previous method of construction had been as the existing single storey extension virtually masked all of the previous structure. In addition, I have not been provided with a copy of any submissions that may have accompanied an application for building regulation approval. In my experience and based on the submitted evidence it is highly likely that a large proportion of the 'landing' area to the rear of the timber cladding was a timber structure supported on a timber beam.
13. There is dispute between the parties as to whether the single storey extension projects further from the main rear elevation of 97 Addison Road and whether its base is lower than the bottom of the 'landing' area. I acknowledge that the appellant has submitted 'before' and 'after' photographs with the amount of brick courses indicated on the adjoining boundary wall. However, the number of brick courses shown on that version of the submitted 'before' photograph appears to be more than is discernible on the other versions of that photo that had previously been submitted by the appellant.
14. Furthermore, based on my observations and the submitted photographs the base of the extension as built appears to be appreciably closer to the top of Flat A's bedroom window than is apparent on the submitted 'before' photographs. In addition, I consider that it is highly likely that even if the timber beam cited above was rotten that a steel beam or beams would have been required, to meet building regulations, to support the external wall of the extension. Moreover, to simplify any construction issues involved in removing or altering the concrete slab it is more than likely that the beam/s is/are located adjoining the concrete slab. Additionally, in my experience it is also likely that the beam/s is/are deeper than the concrete slab and therefore extend below it.
15. As such, I consider that on the balance of probabilities and the evidence before me that the single storey extension is deeper and lower than the previous structure. Whilst, those differences may not be substantial given the proximity of the single storey structure to Flat A's bedroom window it is likely that they materially reduce the amount of daylight received in that bedroom. As the daylight received in this room was already significantly restricted a further reduction causes material harm and detracts from the living conditions of its occupiers.
16. I acknowledge that the timber and plastic canopy over the 'landing' area was, on the balance of probabilities, on the appeal property prior to the single storey extension being constructed. It did extend out further than the extension. Nonetheless, the plastic would have allowed a degree of daylight through it even with some moss and leaves on it and it was significantly further away from the bedroom window than the extension. No technical evidence has been

submitted, but my assessment of the appeal site and the single storey extension as built lead me to conclude that it is likely that the development appreciably reduces the daylight received by the bedroom window of Flat A.

17. The appellant has proposed alterations to the stairs that link the extension to the garden and the insertion of a light tube adjacent to the stairs in relation to this issue. The power to grant planning permission in an enforcement appeal is limited by section 177(1)(a) of the 1990 Act to granting planning permission "in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates". I cannot therefore, grant planning permission for alternative proposals, except to the extent that they can be carried out by granting planning permission for the whole or part of the development enforced against.
18. Since these proposed alterations would require planning permission to be granted for development that is not, and is not part of, the development enforced against, I do not have the power to deal with them.
19. The outlook from the bedroom of Flat A would have been relatively restricted due to the structures highlighted above in relation to daylight. Based on my findings above, the extension is lower and deeper than the previous structure. The aspect looking towards the garden area from the bedroom window is not substantially altered by the extension. Nonetheless, the alterations to the proximity of the extension to and above that window is likely to have increased the sense of enclosure experienced when within the bedroom and this exacerbates the harm to the living conditions of the occupiers of Flat A.
20. I acknowledge that the appellant could place plant pots and other items of garden furniture adjacent to the railings that are within his garden. These may further reduce the amount of daylight and outlook from Flat A's bedroom window. However, they do not form part of the development that is before me.
21. In conclusion, I consider that the single storey extension harms the living conditions of the occupiers of Flat A with regard to daylight and outlook. It follows that it conflicts with LPPR Policy CL5 which, amongst other things, require that all development ensures good living conditions for occupants of neighbouring buildings by; ensuring that good standards of daylight are achieved in existing properties affected by new development; and where they are already substandard, that there should be no material worsening of the conditions; requiring that there is no harmful increase in the sense of enclosure to existing buildings.

Character and appearance

22. Flat 1 is part of 97 Addison Road which is one of 3 pairs of late 19th Century buildings that are 4 storeys over a basement. The appeal site is within HPCA. From my observations, and the details available to me including the HPCA Appraisal I consider that the character, appearance and significance of HPCA is mainly drawn from the high quality of historic buildings that it contains and their architectural features and materials, the pattern of development and the relationship of buildings to the spaces around them including Holland Park.
23. The rear gardens of the buildings along this part of Addison Road, Holland Park Avenue and Holland Park Gardens form the central area of this block of

buildings and as such these gardens and the appeal development are not visible from the public domain. However, the duty contained within section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to have special attention to the desirability to preserve or enhance the character or appearance of a conservation area applies with equal force whether or not the development is in public view. Moreover, the HPCA Appraisal states that historic features and uniformity of rear elevations with neighbouring houses make a very important contribution to the historic and architectural character of the conservation area.

24. The rear elevation of 97 Addison Road and that of the adjacent buildings are mainly brickwork, but large parts of the lower storeys have been painted or rendered at some time in the past. These elevations lack the refined uniformity of the fronts as there is variance in fenestration design, size and siting especially at the lower storeys. As a result, the uniformity and rhythm that historically could have formed part of their design had been substantially eroded at their lower storeys prior to the development being undertaken.
25. There is a closet wing projecting from Flat 1's rear elevation and I observed that there are other extensions to the rear of a few of the adjacent buildings. The single storey extension as built is suspended over the basement light well to Flat A. However, this aspect of the design would not be clearly discernible in the majority of views from the neighbouring properties. The extension is set well back from the rear elevation and is below the roof height of the closet wing. This helps to ensure that the closet wing remains a dominant feature on the rear elevation and ensures that the extension is subservient to it and the overall building in terms of its massing.
26. I acknowledge that the main elevation of the extension has been rendered. However, given the amount of painted brickwork and render already in place on the lower storeys this does not appear incongruous. I also accept that the design of the fenestration that has been utilised in the extension is not entirely sympathetic to this building. Nonetheless, as stated above there is a variance to the design and siting of the fenestration in the lower storeys of 97 Addison Road and its adjacent buildings. Moreover, there is little before me to indicate that the removal of the historic fenestration within the rear elevation of Flat 1 would have required the benefit of planning permission.
27. Consequently, even though the extension is visible above the boundary wall and is visible to the occupiers of neighbouring dwellings given my findings above I do not consider that the extension appears oversized or inappropriate when seen in this context. As such, the character and appearance of HPCA is preserved and its significance unharmed.
28. For the above reasons, I conclude that the development is in accordance with the Act. It follows that it does not conflict with LPPR Policies CL1, CL2, CL3, CL9 and CL11 which together require development to respect the existing context, character and appearance of the area, and preserve the character or appearance of the conservation area including views within it and extensions to be subordinate to the original building.

Other matters

29. I appreciate that the appellant undertook the works in good faith and did not seek to flout the planning regulations. However, this point has not affected my decision, which is based on the planning merits of the development.

Conclusion on ground (a) and the deemed planning application

30. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Ground (f)

31. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or to remedy any harm to amenity resulting from the breach. Given that the requirements in paragraph 5 of the notice require the complete removal of the single storey extension, the purpose of the notice is clearly to remedy the breach of planning control.
32. The appellant considers that the external materials of the extension and the stairs could be altered, and a light tube added as an alternative scheme. However, I have found above that the stairs and light tube are not part of the development before me. I have also found that the external materials of the extension do not harm the character and appearance of the area.
33. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

Overall Conclusion

34. 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. Boffin

INSPECTOR