



Appeal Decision

Site visit made on 4 November 2019

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

an Inspector appointed by the Secretary of State

Decision date: 26 November 2019

Appeal Ref: APP/K5600/C/18/3215054

Land at Flat 2 (first floor flat) 131 St Mark's Road, London W10 6NP

- 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 Julian Stevenson against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 19 September 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the erection of black metal railings around the roofline of the rear ground floor extension.
 - The requirements of the notice are:
 - (i) *Remove the unauthorised railings together with all associated fixtures and fittings from the roof of the rear ground floor extension at 131 St Mark's Road, London W10 6NP.*
 - The period for compliance with the requirements is 2 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.
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Decision

1. 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.

Appeal on ground (a) – that planning permission should be granted

Main Issue

2. The main issue is the effect of the development on the living conditions of neighbouring residential occupiers, with particular regard to privacy.

Reasons

3. The Council argues that the railings facilitate the use of the flat roof of the ground floor extension as a roof terrace, and that the facilitated use would result in the harmful overlooking of the gardens and windows of adjacent properties, in particular those at 129 St Mark's Road. The flat roof is accessed from the first floor flat by French windows. The Council explains that the approved plans for the extension and the conversion of the property to flats showed a Juliette balcony in front of the doors, which would have prevented access to the roof, but that the balcony was not installed. I have not been told of any conditions which would have precluded access to the roof, or required the installation of the balcony, and the Council accepts that the use of the roof as a terrace is lawful.

4. The roof terrace is surfaced in timber boarding, accessed from a bedroom via inward opening French windows. The roof is edged with a parapet wall about 0.3m high, on top of which decorative black-painted metal railings have been added, about 0.8m high. At the time of my visit, the only structures on the terrace are 2 pots which contain small bay trees, and 6 planters containing deciduous shrubs.
5. From the roof terrace, views of windows in the side and rear elevation of 129 St Mark's Road can be readily obtained, and, to a lesser extent, the rear garden of that property. I consider that the degree of overlooking would be uncomfortable for those neighbouring occupiers and would be unneighbourly. The rear garden of 131 St Mark's Road can also be overlooked; whilst that garden is in the appellant's ownership, it is in separate occupation, and this would also harm the privacy of occupiers of that property. The appellant does not refute the Council's assessment of the extent of overlooking that is obtainable from the flat roof.
6. In my view, the railings provide a considerable degree of security which would enable anyone to feel safe while using the roof terrace for sitting out or other recreational purposes and would encourage occupiers to use it for such purposes. The appellant argues that the terrace is not used for sitting out, and that the railings are required solely as a safety measure for maintaining the planting. The railings have been in place for about 3 years, and there is no evidence that this is not the case, so I have no reason to doubt this claim.
7. Even so, it seems to me that the terrace is such an obvious amenity feature that, even if the current occupiers do not wish to use it as a sitting out area, future occupiers may want to do so. The appellant suggests that a condition should be imposed to restrict the use of the terrace to prevent it being used other than for the maintenance of the planting. However, conditions on a planning permission must comply with the tests set out in paragraph 55 of the revised National Planning Policy Framework, one of which is that conditions must be relevant to the development permitted. As the development in question here is not the use of the terrace as such, but the erection of railings, such a condition would not pass this test, and should not be imposed.
8. I therefore conclude on the main issue that the railings encourage the use of the terrace which materially harms the living conditions of occupiers of neighbouring residential properties, with particular regard to privacy. It also conflicts with Policy CL5 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan, which deals with living conditions and requires that there is reasonable visual privacy for occupants of new development and for occupants of existing properties affected by new development.

Other matters

9. The railings provide an obvious safety function. However, the inner faces of the planters are well away from the edge of the roof, and the 0.3m high parapet serves as a degree of protection, and so maintenance or watering can be undertaken with a degree of safety. Whilst I recognise that this would not be as safe as with the railings in place, it is also possible that planting could be moved further away from the edge. The safety benefits do not outweigh the harm that I have identified.

10. The requirement of the enforcement notice to remove the railing engages with the rights of respect for family life and for the occupier's 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 protecting others' privacy are matters of legitimate public interest. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellant's and occupier's rights would be material, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
11. The site lies with the Oxford Gardens Conservation Area, the significance of which, in the vicinity of the site, is derived mainly from the design and appearance of the front elevations of Victorian and Edwardian properties, along with the Kensington Memorial Gardens. Although the railings can be glimpsed from the Memorial Gardens, they make have no material effect on the significance of the conservation area, and thus preserve its character and appearance.

Conclusion on ground (a)

12. For the reasons given above I conclude that the appeal on ground (a) fails, and that the deemed application for planning permission under section 177(5) of the Act is refused.

Appeal on ground (f) – that the requirements of the notice are excessive

13. The notice requires the breach of planning control to be remedied and the requirements do no more than is necessary to restore the land to its condition before the unauthorised development took place. I have given consideration under ground (a) to the imposition of conditions to mitigate the effect of the development, but have found that it would not be appropriate to do so. There are no obvious lesser alternatives that would suffice to address the harm that I have found which arises from the development. Accordingly, the appeal on ground (f) fails.

Overall conclusion

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

JP Roberts

INSPECTOR