



Appeal Decision

Site visit made on 17 December 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2020

Appeal Ref: APP/K5600/C/19/3225722

Land at 18 Vernon Yard, London W11 2DX

- 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 Miss Georgina Kerr against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice, numbered ENF/18/05229, was issued on 6 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of timber slatted fencing at roof top level.
 - The requirements of the notice are:
 1. Remove the unauthorised wooden slatted fencing from the terrace together with all associated fixtures and fittings.
 2. Remove all materials from the land and make good.
 - The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (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.

The appeal on Ground (c)

2. The ground of appeal is that the matters stated in the notice which give rise to the alleged breach of planning control, do not constitute a breach of planning control. The burden of proof is on the appellant, and the standard of proof is the balance of probabilities.
3. The site is a three storey dwelling in a mews terrace of four similar properties in Ladbroke Conservation Area. It has a flat roof which is used as a roof terrace. It is enclosed partly by metal railings and partly by a section of brick wall forming a party wall with the neighbouring properties. Timber fencing has been attached to the railing and is higher than any other part of the roof of the building.
4. The appellant claims that the timber fencing is permitted development under Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). This relates to alterations to the roof of a dwellinghouse. Limitations are set out in paragraph C.1 and include (c) which states that development is not permitted if it would result in the highest part of the alteration being higher than the highest part of the original roof. 'Original' is defined in the GPDO as the building as it existed on 1 July 1948 or if built after that date, as it existed when it was built.

5. The appellant states that the four mews houses were constructed in approximately 1974, and that the roof lines and shape have been significantly altered since construction, with the remaining original party or firewall between Nos 17 and 18 in evidence. The basis for this is an Estate Agent's illustration. It shows the four mews houses in a perspective ground level view, but is sketchy and lacks detail. It is also not clear whether the drawing was made before the development was built or afterwards.
6. The drawing shows the two houses nearest the viewpoint with steeply pitched roofs with dormer windows. This is different to their current mansard roof form. The appeal site is the furthest from the viewer and the sketch is imprecise, but broadly indicates the current roof form. It does not show that the roof was originally higher than the brick party wall I saw on my site visit. The very limited evidence put forward in support of the contention that the roofline was originally higher falls well short of discharging the burden of proof. I am not therefore satisfied that the timber fencing accords with the limitation of paragraph C.1 (c) of the GPDO, as on the basis of the information before me, it is higher than the original roof.
7. I therefore conclude that the appellant has not shown that the timber fencing is permitted development under Class C, Schedule 2, Part 1 of the GPDO. The matter alleged in the notice constitutes a breach of planning control and the appeal on ground (c) fails.

Conclusion

8. For the reasons given above, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR