



Appeal Decision

Site visit made on 30 June 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Appeal Ref: APP/K5600/C/19/3241831

Land at 118 Woodsford Square, London W14 8DT

- 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 Andrew Righelato against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 1 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of a glass balustrade, which facilitates the use of the flat roof as a terrace, is in breach of conditions 2 and 4 of the planning permission PP/18/01100; and the installation of an external metal stairway in breach of condition 2 of the planning permission PP/18/1100.
 - The requirements of the notice are to:
 - I. Remove the balustrade and all associated fixtures and fixings from the flat roof of the ground floor rear extension;
 - II. Remove the external metal stairway and all associated fixtures and fixings;
 - III. Remove all materials from the land and make good.
 - The period for compliance with the requirements is 4 calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Replacing paragraph 3 (the breach of planning control alleged) in its entirety by "Without planning permission, the installation of a glass balustrade around the edge of the flat roof of the ground floor rear extension and the installation of an external metal stairway".
2. Subject to this correction 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.

Preliminary Matters/The enforcement notice

3. Planning permission PP/18/01100 (the planning permission) was granted by the Council on 17 April 2018 for "Enlargement of single storey rear addition at ground floor level to create full width extension; partial enclosure of roof terrace at first floor at rear to create extension to reception room at first floor level. Removal and replacement of external concrete staircase from rear roof terrace to rear garden".

4. The appeal development in effect creates a terrace on top of the flat roof to the ground floor rear extension (through the installation of a glass balustrade around its edge) contrary to condition 4 of the planning permission, together with the installation of an external metal stairway instead of the concrete staircase approved. As a consequence, the development is materially and substantially different from what was approved. It is therefore a development without planning permission rather than one in breach of conditions of approval.
5. Accordingly, and taking into account the submissions of the parties, the breach of planning control is better described as "Without planning permission, the installation of a glass balustrade around the edge of the flat roof of the ground floor rear extension and the installation of an external metal stairway". I have consulted the main parties on this correction and no objections were received. Therefore, I am correcting the notice accordingly without injustice to the parties.

Ground (a) and the Deemed Planning Application

Main Issues

6. The main issues in this appeal are the effect of the appeal development on:
 - the character and appearance of the appeal property, the Woodsford Square estate and the Holland Park Conservation Area (CA); and
 - the living conditions of neighbouring occupiers.

Reasons

Character and appearance

7. The appeal site lies within the CA. I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA by attaching considerable importance and weight to that desirability.
8. The appeal dwelling is a 4-storey terraced house within the Woodsford Square estate. The estate is characterised by post-war residential properties sharing considerable uniformity, having been built to a very similar design, and involving a fairly dense pattern of development of terraced dwellings. There is a row of 14 terraced houses within the estate to the rear of the appeal property. The Holland Park Conservation Area Appraisal (2017) recognises the houses in Woodsford Square as being 'better than others' in comparison to other post-war developments within the CA, due to the contemporaneous style adopted.
9. While I accept that there are limited examples of glass balustrades and metal stairways locally, including within view of the appeal property to its rear, black metal railings and concrete staircases prevail within the significantly uniform setting of the estate. I am also not clear as to whether the examples indicated by the appellant are lawful, particularly since he also makes the point that he cannot find evidence to that effect himself in the Council's online planning records.

10. The metal stairway, despite concrete coverings to the treads, is visually inharmonious with the concrete staircase next door at 117 Woodsford Square and appears commercial in character in comparison. Notwithstanding the clear aspect of the balustrade, both it and the appeal stairway can clearly be seen from other dwellings and gardens within the CA, and their jarring incongruity with the prevailing characteristics and design features of the estate cause significant harm when viewed within its setting. These harms are not contingent on the fact the appeal development cannot be seen from public viewpoints.
11. Having regard to paragraph 196 of the National Planning Policy Framework (the Framework), whilst the harm caused to the significance of the CA is less than substantial, it is a matter of considerable weight and importance. Furthermore, in this case there are no public benefits which outweigh the harm caused.
12. I conclude that the development causes significant harm to the character and appearance of the of the appeal property, the Woodsford Square estate and the CA. It fails to preserve the character or appearance of the CA, and causes less than substantial harm to its significance as a designated asset. The public benefits do not outweigh this harm and the development is therefore contrary to Policies CL1, CL2, CL3, CL6 and CL11 of the Royal Borough of Kensington and Chelsea Local Plan (2019) (LP) which together seek to ensure that alterations and additions are of good design and protect the character and appearance of places, including conservation areas. The development is also contrary to the heritage protection and design principles of the Framework.

Living conditions of neighbours

13. The creation of a terrace encompassing the whole of the flat roof of the ground floor rear extension, facilitated by the installation of the glass balustrade, permits users thereof to have very close and direct views into the first-floor kitchen windows of 119 Woodsford Square. This significant degree of overlooking causes an unacceptable loss of privacy to the occupiers of that property and significantly harms their living conditions. In addition, although the distance is greater, the occupiers of the terraced properties to the rear experience increased and unacceptable overlooking from the appeal property as a result of use of the elevated external area created by the development. These views are more immediate and extensive than obtained by looking through the French doors approved under the planning permission.
14. I find therefore that the development significantly harms the living conditions of neighbouring occupiers and as such it is in conflict with Policy CL5 of the LP which seeks to protect living conditions.

Conclusion

15. For the reasons given above the development does not accord with the development plan as a whole and there are no other considerations which outweigh this finding. I conclude that the ground (a) appeal does not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR