



Appeal Decision

Site visit made on 11 May 2021

by C J Ford BA Hons BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2021

Appeal Ref: APP/K5600/W/20/3262527

180 Brompton Road, London SW3 1HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Acai Group against the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/20/03889, is dated 15 July 2020.
 - The development is first floor terrace confined to the south west corner of the flat roof.
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Decision

1. The appeal is dismissed and planning permission for first floor terrace confined to the south west corner of the flat roof is refused.

Preliminary Matters

2. The planning application was made retrospectively and at the time of my site visit the composite decking and perimeter black metal planters containing bamboo were in position. However, the tables and chairs and the new glazed doors to the first-floor office, as shown in the submitted plans, had not been installed. 'Retrospective' is not a form of development and it is therefore omitted from the description of the development in the banner heading and the decision above.

Main Issue

3. The appeal follows the Council's failure to determine the respective planning application. In response to the lodging of the appeal, the Council confirms that had it determined the application, it would have been refused. The main issue is therefore the effect of the development on the living conditions of the occupiers of neighbouring residential properties with particular regard to privacy and noise.

Reasons

4. The north west edge of the terrace is sited only a short distance away from the rear of the residential properties at 53-59 Cheval Place. The rear elevation to Nos 53-59 includes numerous windows and there are also two recessed balconies with further windows and glazed doors set behind. It is apparent from the evidence submitted by the appellant that some of the windows serve habitable rooms which are not secondary living spaces. Moreover, that arrangement will continue in the permitted changes to Nos 53-59, (Council Ref: PP/19/04247).

5. The south west edge of the terrace is similarly sited only a short distance away from the front of 72 and 74 Cheval Place, which are also residential properties. The front elevations include several first-floor windows, some of which serve habitable rooms.
6. Given its general low density and the ability for gaps to momentarily appear in gusts of wind, the bamboo in the perimeter planters is ineffective in preventing views from the terrace across to the windows and balconies at Nos 53-59 and down into the first-floor windows at Nos 72 and 74. As a living screen, it also lacks permanence.
7. While the appellant would be willing to supplement the bamboo with fixed screening to be secured by condition, the close proximity of such screening would be visually oppressive and harmful to the outlook from the neighbouring residential properties. Furthermore, like the planters, it would not address the gap which provides access to the fire escape via the adjoining external staircase. Views of Nos 53-59 would therefore still be possible from the terrace.
8. It is acknowledged that views of Nos 53-59 were previously possible from the first-floor office windows. However, the terrace enables views at a much closer distance and from a more prominent external position. It is therefore far more intrusive to the occupiers of Nos 53-59. There are also more intrusive direct views of Nos 72 and 74 than the previous oblique views from the office windows.
9. Although Brompton Road is a busy thoroughfare with many commercial properties, residential properties dominate in Cheval Place and it is considerably quieter. While the submitted plans show three tables with nine chairs, the space is of a sufficient size that many more people than those seated could gather on the terrace at the same time.
10. Given the close proximity of the neighbouring residential properties and the fairly quiet nature of the immediate locality, the sound of potentially numerous conversations emanating from the terrace would be intrusive for the occupiers of those neighbouring properties. Furthermore, the terrace is most likely to be used during the summer when the windows and balcony doors of the neighbouring properties are likely to be open, thereby heightening the intrusiveness.
11. The appellant would agree to conditions restricting the use of the terrace to the occupants of the first-floor office between 08:00 and 18:00, Monday to Friday. However, even if they were imposed in combination with the suggested fixed screening to supplement the bamboo, they would fail to successfully mitigate the intrusiveness of the noise arising from the use of the terrace.
12. In light of the above, it is concluded the development has an unacceptably harmful effect on the living conditions of the occupiers of neighbouring residential properties with particular regard to privacy and noise. As such, it conflicts with Policy CL5 of the Royal Borough of Kensington and Chelsea Local Plan 2019, which seeks to ensure good living conditions for occupants of neighbouring buildings, with specific consideration of visual privacy and noise.

Other Matters

13. It is acknowledged the development provides several benefits including; making use of an otherwise underutilised space to provide an outdoor respite

area and area for private phone calls and 1-1 catch ups for staff of the adjoining first-floor office, making the office space more attractive to prospective tenants that will contribute to activity within the Central Activities Zone, and softening the built environment with greenery that introduces biodiversity. However, those considerations do not outweigh the harm to the living conditions of the neighbouring residential occupiers.

14. It is also noted the building is situated within the Brompton Conservation Area (CA). The roof terrace materials are sympathetic to the character and appearance of the office building and the locality. The proposed alterations to the first-floor rear elevation would also be sympathetic to the building. The development would therefore preserve the character and appearance of the CA. However, this consideration similarly does not outweigh the harm to the neighbouring residential occupiers.

Conclusion

15. The development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise than in accordance with the development plan.
16. For the reasons given above and having had regard to all other matters raised, the appeal is dismissed.

C J Ford

INSPECTOR