



Appeal Decision

Site visit made on 29 July 2021

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date:

Appeal Ref: APP/K5600/C/20/3253286

1-3 Lexham Gardens, London W8 5JL

- 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 Lexham Securities Ltd against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 17 April 2020.
 - The breach of planning control as alleged in the notice is the erection of three temporary structures in the rear garden of the hotel comprising of: i) the lounge/café made from galvanised steel posts with PVC fabric and roof; ii) the covered smoking area and associated WC; and iii) the timber servery.
 - The requirements of the notice are A. Remove from the land the unauthorised structures comprising of the following: i) the lounge/café made from galvanised steel posts with PVC fabric and roof; ii) the covered smoking area and associated WC; and iii) the timber servery; and B. Remove from the land any debris associated with the above requirement.
 - The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, 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.

Reasons

The ground (a) appeal

2. 1-3 Lexham Gardens was originally two terraced dwellings but is now a hotel. It has a south-east road frontage. Attached to the north-east is an embassy and to the south-west is another hotel. At the rear of the hotel is an outdoor amenity area and backing on to this area are properties on Pennant Mews. The ground floor of the hotel is raised above street level. The three structures that are the subjects of the enforcement notice are in the rear amenity area, along with two other smaller structures. Access to the structures is possible from the rear of the hotel but there is also a narrow passageway off the street to the amenity area. This passageway is partly subterranean with stairs at both ends.

3. The main issues in the ground (a) appeal are the effect of the use of the structures on; first, the character and appearance of the Lexham Conservation Area (LCA); and second, the amenities of occupiers of neighbouring properties, on Pennant Mews in particular.

The Development Plan and National Planning Policy

4. The Development Plan includes the Royal Borough of Kensington and Chelsea's Local Plan 2019 (LP). LP policy CL1 requires all development to respect existing context, character and appearance, LP policy CL2 requires development to be of the highest architectural and urban design quality, LP policy CL3 generally seeks to preserve historic assets such as conservation areas, and LP policy CL11 requires, amongst other things, that views, including those that extend beyond the street, will be preserved. LP policy CL5 requires all development to ensure good living conditions for occupants of existing and neighbouring buildings.

5. Paragraph 202 of the National Planning Policy Framework (NPPF) states that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset the harm should be weighed against the public benefits of the proposal.

The first issue – the character and appearance of the LCA

6. The amenity area at the rear of the hotel cannot be seen from any public vantage points. It is, however, overlooked from many windows in the hotel and from many windows in the neighbouring embassy and hotel. Views from these windows across the roofscape and downwards into private rear areas are as important, in the context of preserving the character and appearance of the LCA, as public views. The previous unkempt nature of the amenity area at the hotel is not relevant. It is the impact of the development that is the subject of the enforcement notice that is relevant.

7. The largest of the three structures, the lounge/café which abuts the hotel, has metal posts supporting 'walls' and a roof of white PVC fabric. It dominates the amenity area and is, given its physical dimensions and material, visually intrusive. The other two structures, the smoking area and servery, are timber clad and, particularly the smoking area, somewhat makeshift. They are, like the lounge/café, unappealing and unattractive. The three structures are cramped together in the amenity area and are obtrusive and visually intrusive. The structures have a harmful effect on, and do not preserve, the character and appearance of the LCA and thus conflict with LP policies CL1, CL2, CL3 and CL11. The harm, with regard to NPPF paragraph 202, is less than substantial but there are no public benefits to weigh against the harm.

The second issue – the amenities of occupiers of neighbouring properties

8. Properties on Pennant Mews are in a mix of commercial and residential uses and are in close proximity to the amenity area at the hotel. Third party representations, both to the appeal and to a previous planning application for retention of the three structures, indicate that noise resulting from activity in the amenity area, supported by the facilities provided by the three structures, has caused significant disturbance to occupants of these properties. The Appellant maintains that activity is associated with the hotel use but evidence clearly indicates that the structures have been independently used with separate access from the street provided by the partly subterranean passageway. Such independent use could not be adequately prevented by imposition of a condition.

9. Activity to the extent that can be provided in the large main structure and supported by the other structures, whether independent of the hotel use or not, results in noise nuisance that is harmful to the amenities of occupiers of neighbouring properties. The activity conflicts with LP policy CL5.

Other matters

10. The previous planning application was for a temporary permission but there is nothing in the Appellant's appeal statement to indicate that a temporary permission is being sought in the ground (a) appeal. Nevertheless, even temporary continuation of activity associated with the three structures would cause continuing harm, particularly to amenity, which is unacceptable.

Conclusion

11. The unauthorised development that is the subject of the enforcement notice causes harm to the character and appearance of the LCA and to the amenities of occupants of neighbouring properties. The ground (a) appeal thus fails and planning permission is refused for the erection of three temporary structures in the rear garden of the hotel at 1-3 Lexham Gardens, London.

The ground (f) appeal

12. The Appellant argues that removal of only the two smaller structures would address both reasons for issue of the notice and would remedy the breach of planning control. The largest structure is the most visually intrusive element of the three and its retention would not remedy the breach of planning control. It is the collective harm caused by the three structures that is important and only the removal of all three would remedy the breach. The ground (f) appeal thus fails.

The ground (g) appeal

13. A breach of planning control should be remedied as soon as is reasonably possible. Removal of the structures would be necessary to undertake any fall back position and, with Covid-19 restrictions now mostly withdrawn, two months is a reasonable period for removal of the structures. The ground (g) appeal thus fails.

John Braithwaite

Inspector