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## Appeal Decisions

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: 20 August 2021**

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### **Appeal A Ref: APP/K5600/F/18/3204098**

#### **Flat 5, 24 Harrington Gardens, London SW7 4LS**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Giuliano Lotto against a listed building enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
  - The enforcement notice was issued on 24 April 2018.
  - The contravention of listed building control alleged in the notice is the unauthorised formation of a terrace and an internal staircase leading up to a pavilion and terrace – includes the installation of large planters fixed to the parapets of the roof.
  - The requirements of the notice are 1. Remove the pavilion structure and terraced area at roof level; 2. Remove the decking that forms part of the flooring, walls and seating area associated with terraced area (This will necessitate the removal of the planters); 3. Remove the internal staircase providing access to the pavilion and terrace and make good using matching materials; and 4. Re-instate the roof to the same appearance, pitch and construction as can be seen in photograph 1 which shows the property prior to the unauthorised works being undertaken (in the same manner of the pitched roof to the front gable).
  - The period for compliance with the requirements is one calendar year.
  - The appeal is made on the grounds set out in section 39(e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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### **Appeal B Ref: APP/K5600/W/20/3255667**

#### **Flat 5, 24 Harrington Gardens, London SW7 4LS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Giuliano Lotto against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref PP/19/08460, dated 18 December 2019, was refused by notice dated 10 March 2020.
  - The development proposed is retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units.
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### **Appeal C Ref: APP/K5600/Y/20/3255668**

#### **Flat 5, 24 Harrington Gardens, London SW7 4LS**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr Giuliano Lotto against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref LB/19/08461, dated 18 December 2019, was refused by notice

dated 10 March 2020.

- The works proposed are retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units.
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### **Appeal D Ref: APP/K5600/W/20/3255669**

#### **24-26 Harrington Gardens, London SW7 4LS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Giuliano Lotto against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref PP/19/08453, dated 18 December 2019, was refused by notice dated 20 February 2020.
  - The development proposed is retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units – installation of replacement leaded lights within front elevation of 26 Harrington Gardens.
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### **Appeal E Ref: APP/K5600/Y/20/3255670**

#### **24-26 Harrington Gardens, London SW7 4LS**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr Giuliano Lotto against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref LB/19/08454, dated 18 December 2019, was refused by notice dated 20 February 2020.
  - The works proposed are retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units – installation of replacement leaded lights within front elevation of 26 Harrington Gardens.
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## **Decisions**

### **Appeal A Ref: APP/K5600/F/18/3204098**

1. The appeal is dismissed.

### **Appeal B Ref: APP/K5600/W/20/3255667**

2. The appeal is allowed and planning permission is granted for 'retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units' at Flat 5, 24 Harrington Gardens, London in accordance with the terms of the application Ref PP/19/08460, dated 18 December 2019, subject to the following conditions:

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
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2. The development hereby permitted shall be carried out in accordance with details shown on drawing nos. J1208:AS103 Rev A, AP1300, AP1301, AP1302, AP1303, AP1304, AP1305, AP1306, AP1307, AP1308, AP1309, AP1311, AP1312, AP1313, AP1315, AP1316 and AP1308.
3. All works hereby permitted and all works of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture and profile.
4. The railings to the roof terrace hereby permitted shall be painted black.
5. Noise emitted by relocated air conditioning units shall not exceed a level 10 dBA below the existing lowest LA90 (10 min) background noise level at any time, and where the noise is tonal it shall not exceed a level 15 dBA below. Noise emitted shall be measured at 1 metre from the façade of the nearest residential property or at 1.2 metres above any adjacent residential garden, terrace, balcony or patio. The air conditioning units shall be serviced in accordance with the manufacturers' instructions to ensure that the requirements of this condition are met. If at any time the air conditioning units are determined by the local planning authority to be failing to comply with this condition, they shall be switched off upon written instruction from the local planning authority and not used again until they are able to comply.
6. The relocated air conditioning units shall not be operated unless they are supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises.

**Appeal C Ref: APP/K5600/Y/20/3255668**

3. The appeal is allowed and listed building consent is granted for 'retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units' at Flat 5, 24 Harrington Gardens, London in accordance with the terms of the application Ref LB/19/08461, dated 18 December 2019, subject to the following conditions:

1. The works authorised by this consent shall begin not later than 3 years from the date of this consent.
2. The works hereby authorised shall be carried out in accordance with details shown on drawing nos. J1208:AS103 Rev A, AP1300, AP1301, AP1302, AP1303, AP1304, AP1305, AP1306, AP1307, AP1308, AP1309, AP1311, AP1312, AP1313, AP1315, AP1316 and AP1308.
3. All works hereby permitted and all works of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture and profile.
4. The railings to the roof terrace hereby authorised shall be painted black.

5. All existing fabric including existing wall and ceiling plasterwork shall be retained, unless noted otherwise on the drawings approved under this consent.

**Appeal D Ref: APP/K5600/W/20/3255669**

4. The appeal is allowed and planning permission is granted for 'retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units – installation of replacement leaded lights within front elevation of 26 Harrington Gardens' at 24-26 Harrington Gardens, London in accordance with the terms of the application Ref PP/19/08453, dated 18 December 2019, subject to the following conditions:

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with details shown on drawing nos. J1208:AS102 Rev A, AP1200, AP1201, AP1202, AP1203, AP1204, AP1205, AP1206, AP1207, AP1208, AP1209, AP1210, AP1211, AP1212, AP1213, AP1214, AP1215, AP1216 and AP1218.
3. All works hereby permitted and all works of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture and profile.
4. The railings to the roof terrace hereby permitted shall be painted black.
5. Noise emitted by relocated air conditioning units shall not exceed a level 10 dBA below the existing lowest LA90 (10 min) background noise level at any time, and where the noise is tonal it shall not exceed a level 15 dBA below. Noise emitted shall be measured at 1 metre from the façade of the nearest residential property or at 1.2 metres above any adjacent residential garden, terrace, balcony or patio. The air conditioning units shall be serviced in accordance with the manufacturers' instructions to ensure that the requirements of this condition are met. If at any time the air conditioning units are determined by the local planning authority to be failing to comply with this condition, they shall be switched off upon written instruction from the local planning authority and not used again until they are able to comply.
6. The relocated air conditioning units shall not be operated unless they are supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises.

**Appeal E Ref: APP/K5600/Y/20/3255670**

5. The appeal is allowed and listed building consent is granted for 'retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units – installation of replacement leaded lights within front elevation of 26 Harrington Gardens' at 24-26 Harrington Gardens, London in accordance with the terms of the

application Ref LB/19/08454, dated 18 December 2019, subject to the following conditions:

1. The works authorised by this consent shall begin not later than 3 years from the date of this consent.
2. The works hereby authorised shall be carried out in accordance with details shown on drawing nos. J1208:AS103 Rev A, AP1300, AP1301, AP1302, AP1303, AP1304, AP1305, AP1306, AP1307, AP1308, AP1309, AP1311, AP1312, AP1313, AP1315, AP1316 and AP1308.
3. All works hereby permitted and all works of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture and profile.
4. The railings to the roof terrace hereby authorised shall be painted black.
5. All existing fabric including existing wall and ceiling plasterwork shall be retained, unless noted otherwise on the drawings approved under this consent.

## **Reasons**

6. 24 and 26 Harrington Gardens is a Grade II listed building that was a pair of houses but is now apartments, that was built in the late 19<sup>th</sup> century. The building has brick elevations and is designed in the Dutch style. No. 24 has three storeys and three gables with pediments, whilst no. 26 has four storeys and one gable that is Flemish in outline with a cambered pediment. The building has many features typical of the Dutch style such as mullioned and transomed windows with leaded lights, two polygonal bay windows with leaded semi-domed roofs and stone mullions and transoms, and arched recessed porches with carved brick panels over. The listed building is situated in the Courtfield Conservation Area (CCA).

## **Appeal A Ref: APP/K5600/F/18/3204098**

7. The main issue in the ground (e) appeal is the effect of the unauthorised works on the architectural and historic interest and significance of the listed building and on the character and appearance and significance of the CCA.

The Development Plan and National Planning Policy

8. 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, and LP policy CL3 generally seeks to preserve historic assets such as listed buildings and conservation areas. LP policy CL4 requires development to protect the heritage significance of listed buildings and LP policy CL11 requires development to protect views that contribute to the character and quality of the CCA, including developments whose visual impacts extend beyond that of the immediate street.

9. 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 main issue - the architectural and historic interest of the listed building and the character and appearance of the CCA

10. The listed building has a complex roof form and no. 24 has an area of flat roof behind a parapet on the east elevation of the building. Timber decking has been introduced on the flat roof to create a terrace, with access from a pavilion that has a glass wall facing the terrace. Access up to the pavilion is via a staircase that has been introduced at third floor level of the building, and planters have been placed on parapets around the roof terrace to create balustrading. Many changes have been made to the interior of the building to facilitate its conversion to apartments and the introduction of the staircase has not harmed the architectural and historic interest of the building. Nor has the installation of decking on the flat roof which simply creates a slightly raised surface.

11. The glass sided pavilion, however, has seriously compromised the original form of the complex roof structure of the listed building. It is an incongruous feature that has harmed the architectural and historic interest and significance of the listed building. The bulky planters are also incongruous and harmful to the listed building. Whilst these features, given their position on the roof of a three storey building, are only glimpsed at some distance from ground level, they are visible from upper storey properties in the vicinity. LP policy CL11 specifically addresses the potential visual impact caused by development seen other than at street level, and the pavilion and planters have also harmed the character and appearance and significance of the CCA.

12. The unauthorised works have caused harm to the architectural and historic interest of the listed building and to the character and appearance of the CCA. The works harm the significance of the heritage assets and conflict with LP policies CL1, CL2, CL3, CL4 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.

#### Conclusion

13. The unauthorised works that are the subjects of the listed building enforcement notice have caused harm to the architectural and historic interest and significance of the listed building and to the character and appearance and significance of the CCA. The ground (e) appeal thus fails.

#### **Appeals B and C Refs: APP/K5600/W/20/3255667 & Y/20/3255668**

14. The main issue in the appeals is the effect of the proposed works on the architectural and historic interest and significance of the listed building and on the character and appearance and significance of the CCA.

15. The applications sought to address the Council's concerns regarding certain elements of the unauthorised works that have been carried out and that are the subjects of Appeal A; the pavilion and the planters. These elements would be removed though the terrace would be retained, with access provided to it through a sliding hatch at the top of the staircase from third floor level and with simple balustrading provided to replace the planters and to protect use of the terrace.

16. The staircase and the decking have, under Appeal A, been judged not to be harmful and the provision of the sliding hatch would be a simple, unobtrusive and inconsequential addition that would provide, at least, for maintenance of the flat and surrounding pitched elements of the roof. The balustrading would be a simple

black painted bar that would be fixed by a few curved brackets to the inside of the parapets. It would not harm the architectural and historic interest of the listed building. The balustrading, most likely, would not be discernible from ground level, and from upper storey properties in the vicinity only a part of the feature would be glimpsed against the backdrop of the complex roof structure of the building. The balustrading would not harm the character and appearance of the CAA.

17. The retention of the terrace and the installation of the balustrading would result in greater activity at roof level on the building than would be associated with maintenance activities. But activity at roof level on buildings is not unusual and use of the terrace by occupants of, and visitors to, the flat at third floor level would not be incongruous, visually intrusive or harmful to the historic interest of the listed building or to the character and appearance of the CAA. The proposed development would not cause harm to the architectural and historic interest of the listed building or to the character and appearance of the CCA. The development would not harm the significance of the heritage assets and does not conflict with LP policies CL1, CL2, CL3, CL4 and CL11.

#### Conditions

18. For the planning appeal the Council has suggested six conditions and for the listed building appeal five conditions; the first four being common to both. The Appellant's Agent has not, in his final comments, raised any concerns with the suggested conditions and they are all deemed to be necessary and to meet the tests set out in the National Planning Practice Guidance. They have been amended, where necessary, in the interests of clarity and precision.

19. Condition 1 is the standard time limit condition and there is no reason, as suggested by the Council, to depart from the normal three year time limit. Condition 2 is for the avoidance of doubt and in the interests of proper planning; the drawings nos. have been taken, as they were not included in the suggested condition, from the delegated report. Conditions 3 and 4 are necessary to preserve the architectural and historic interest of the listed building. Conditions 5 and 6 in the planning appeal relate to the relocated air conditioning units and are necessary to protect the amenities of occupants of nearby properties. Condition 5 in the listed building appeal is required to preserve the historic interest of the building.

#### Conclusion

20. The proposed development would not cause harm to the architectural and historic interest of the listed building or to the character and appearance of the Courtfield Conservation Area. The appeals thus succeed and planning permission and listed building consent have been granted, subject to conditions, for 'retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units' at Flat 5, 24 Harrington Gardens, London.

#### Appeals D and E Refs: APP/K5600/W/20/3255669 & Y/20/3255670

21. The appeal site differs from that for Appeals B and C by including 26 Harrington Gardens. The proposed development in the appeals is the same as in Appeals B and C but with the addition of the installation of replacement leaded lights within the front elevation of 26 Harrington Gardens. The applications, in this regard, were submitted to offer works of mitigation to offset any harm that the

Council might conclude would be caused to the architectural and historic interest of 24 Harrington Gardens. They did so conclude but also concluded, with regard to the alternative applications, that the installation of replacement leaded lights at No. 26, though beneficial, would not mitigate the harm caused at No. 24.

22. It has been concluded above for Appeals B and C that the proposed development at No. 24 would not cause any harm. The replacement leaded lights would not, as accepted by the Council, be harmful, so the proposed development that is the subject of Appeals D and E would also not cause any harm. There is therefore no reason not to allow the Appeals, and planning permission and listed building consent have been granted, subject to the same conditions as in Appeals B and C, for 'retention of existing roof terrace and associated internal works – removal of existing roof extension and planters and installation of new flat sliding access hatch, new black metal railings to enclose the terrace and relocation of existing air conditioning units – installation of replacement leaded lights within front elevation of 26 Harrington Gardens' at 24-26 Harrington Gardens, London.

*John Braithwaite*

Inspector