



Appeal Decisions

Site visit made on 17 May 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2022

Appeal A Ref: APP/K5600/C/21/3278672

3 Cremorne Road, London SW10 0NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by 3 Cremorne Limited against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
 - The notice was issued on 1 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission the installation of unauthorised fencing on top of the new terrace at the rear of 3 Cremorne Road.
 - The requirements of the notice are: Remove the timber cladding attached to the balcony railings and all associated structures, fixtures and fittings and make good. Remove from the land any debris associated with the above requirement.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/K5600/W/21/3277291

3 Cremorne Road, London SW10 0NA

- 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 3 Cremorne Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/01231, dated 15 March 2021, was refused by notice dated 10 May 2021.
 - The development proposed is the installation of cladding on balcony railings (retrospective).
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Appeal C Ref: APP/K5600/W/21/3277294

8 Lots Road, London SW10 0QF

- 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 3 Cremorne Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/01688, dated 15 March 2021, was refused by notice dated 11 May 2021.
 - The development proposed is described on the application form as "*retrospective application for fence to replace trellis above existing rear wall*".
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Decisions

1. Appeal A-the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

2. Appeals B and C-the appeals are dismissed.

Preliminary Matters

3. I have taken the description of the development in Appeal B from the Council's decision notice, whilst in Appeal C the description has been taken from the application form. This is because it is unclear whether the appellant had agreed the revised description used by the Council in Appeal C.
4. At my visit it became apparent that the fencing in Appeals A and B has been removed. However, as the appeal against the enforcement notice in Appeal A has not been withdrawn I am still bound to determine the deemed application arising from the ground (a) appeal.

Appeal A

Ground (e) appeal

5. The ground of appeal is that copies of the enforcement notice have not been properly served on everyone with an interest in the land to which the notice relates. The appellant has to show why their appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.
6. The appeal form states that the appellant is the owner of the appeal property. According to the Council, copies of the notice were sent to the occupier, owner, freeholder and proprietor on 1 June 2021, using the recorded delivery 'signed for' service. My understanding is that the Council had obtained the owner's address from a search of the Land Registry undertaken in mid-May 2021. The notice copy addressed to the freeholder was signed for on 2 June 2021.
7. At s329, the Act provides for a number of methods by which an enforcement notice may be served. These include, at s329(1)(c), sending a copy of the notice by recorded delivery, addressed to the person on whom it is to be served at their usual or last known place of abode. Although the appellant had apparently changed their address sometime after March 2021, that had yet to be reflected in the Land Registry's records. There was no clear and compelling evidence to show that an intended change in the appellant's address had been communicated to the Council prior to the issuing of the notice. Even if that had been the case, it is not unreasonable for the Council to rely on up-to-date official documentation, such as a Land Registry search, for the purposes of establishing a usual or last known place of abode.
8. Details of how to make an appeal were enclosed with copies of the notice, in the form of the information sheet provided by the Planning Inspectorate. The notice copies were also accompanied by an explanatory note containing the information specified in Regulation 5 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (as amended). This is in line with the Planning Practice Guidance "Enforcement and post permission matters", which superseded Circular 10/97 some time ago.
9. Therefore, on the balance of probability I find that copies of the notice were served in accordance with s329 and as required by s172(2) of the Act. It follows that the Council has fulfilled its statutory responsibilities in terms of serving copies of the notice.

10. In any event, at s176(5) the Act provides for disregarding a failure of service of copies of a notice where persons do not suffer substantial prejudice as a result. Although the appellant became aware of the notice less than twenty eight days before it was due to take effect, they were nonetheless able to make an appeal within the almost two-week period left to do so. The appellant made full arguments during the course of these proceedings as to why their appeal should be allowed and planning permission granted for the fencing. Therefore, the appellant has not suffered prejudice. There is no suggestion that any other person may have been prejudiced. As a result, even if there had been a failure of service by the Council, I would have concluded that it should be disregarded in this instance.
11. The ground (e) appeal fails.

Appeal A, Ground (a) appeal, Appeals B and C

Main Issue

12. The main issue in these appeals is whether the fencing preserves the character or appearance of the Lots Village Conservation Area (CA).

Reasons

Character, appearance of the CA

13. The appeal property contains a three storey residential building which forms part of a terrace dating from the late 19th Century. The mostly red brick front elevations have substantial stucco finished porches and bay windows and incorporate a wealth of architectural features. The plainer rear elevations are open to view from the eastern end of the adjacent street, Lots Road and are finished in stock brick, their shallow three storey closet wings and later, deeper two storey rear extensions protruding beyond 'butterfly' roof forms. The terrace is identified as having merit in the Council's CA Appraisal (CAA). It is one of a number of well preserved, Victorian-era terraces with original architectural details which contribute to the CA's significance. The CAA also identifies public views of the terrace rear elevations and gardens as contributing to relief from the tightly packed townscape.
14. The purpose of the timber fencing in Appeals A and B is to envelope a roof garden atop the two storey rear extension at the property. The roof garden is otherwise surrounded by dark coloured railings mounted above the extension walls, similar to the roof gardens of adjoining properties.
15. Photographs of the fencing in situ show it as being of largely solid construction with a light coloured finish, covering the outer faces of the railings. These factors mean that the fencing is of markedly different appearance to the more permeable visual qualities and muted colouring of the railings. Its appearance also differs appreciably from the rougher textures and varied buff tones of the stock bricks found on the rear elevation of the building and the rest of the terrace. The elevated position of the fencing emphasises the resulting awkward juxtaposition of materials and colour finishes in relation to the rest of the building and adjacent properties. Weathering of the fencing over time or future treatment with paint or staining to prolong its life would only accentuate the significant differences in appearance with other external materials.

16. Furthermore, given its largely solid nature the fencing results in a noticeably greater sense of enclosure on the rear elevation of the building and it appreciably erodes views of the rear elevation. This does not compare favourably with the more open and recessive characteristics of the railings, with their greater visual subservience to the building and the terrace as a whole. Although adjoining properties have been altered over time, there are no similar examples of such fencing in the immediate vicinity.
17. The above factors all contribute to the fencing being viewed as an assertive built element, visually disrupting the otherwise strong sense of cohesion in terms of building heights, design and external materials at the rear of the terrace and in the wider environs within the CA. Consequently, the fencing fails to integrate visually with its context, being seen as an obvious, alien feature in views from Lots Road and appreciably and harmfully eroding historic built features and views that contribute to the significance of the CA.
18. The fencing in Appeal C is similar in style and finished colour to that in Appeals A and B. The fencing has been erected on top of a tall brick wall fronting onto Lots Road and returns along the boundary with an adjoining residential property, raising the overall height of the frontage and return boundary enclosures by about 0.5 m. There are no examples of similar fencing in the immediate or wider context within the CA. Similar considerations apply in relation to the awkward juxtaposition of the materials and colour finishes, the elevated position and the resulting appearance of the fencing as an obvious, alien feature in relation to the immediate and wider setting within the CA. Replacement of a previous trellis is not a good reason for permitting further unsympathetic development.
19. Reference was made to an example of a fence erected above a wall adjacent to the street at a property in the Carlyle Conservation Area. I was also able to visit that property. Unlike in these appeals, the visual presence of the example fence is softened by maturing planting. Moreover, even after weathering there remains a marked difference in the appearance of that fence compared to the wall materials, thus reflecting aspects of the shortcomings of the appeal fencing. In any event, the mere existence of outwardly similar development is not a good reason for permitting the fencing. Without further details, it is not clear whether the circumstances in which the example fence was erected are of relevance to these appeals. For instance, it is unclear whether that fence benefits from planning permission. As a result, I afford this example limited weight.
20. Therefore, the fencing in these appeals does not preserve the character or appearance of the CA, failing to accord with Policy CL3 of the Kensington and Chelsea Local Plan (LP). As the existing context, character or appearance is not respected, the fencing does not accord with LP Policy CL1. By not being of the highest architectural and urban design quality, the fencing does not accord with LP Policy CL2. By harming the existing character and appearance of the building and its context, the fencing does not accord with LP Policy CL6. Also, by not preserving views in the CA the fencing does not accord with criterion in LP Policy CL11. Furthermore, by not protecting the built and historic environment, the fencing does not achieve the environmental objective of sustainable development and is therefore inconsistent with the Framework.

Other matters

21. I am given to understand that the fencing was erected primarily in the interests of the privacy of residential occupiers of the building. Be that as it may, in tightly-knit urban areas, such as in this instance, residential occupiers might reasonably expect some degree of overlooking of private rear gardens and roof terraces. It is unclear exactly how the fencing contributes to maximising the use of land. Therefore, I afford these matters limited weight.

Planning Balance & Conclusion

22. The fencing in these appeals does not preserve the character or appearance of the CA, it does not accord with the Development Plan and is inconsistent with the Framework. There has been less than substantial harm to the significance of the CA. The Framework advises that such harm should be weighed against any public benefits. It also advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to that asset's conservation. The benefits of erecting the fencing are largely limited to the occupiers of the building and are in consequence private. The fencing does not provide any public benefits. Therefore, I conclude that the ground (a) appeal in Appeal A and Appeals B and C should not succeed.

Appeal A

Ground (g) appeal

23. The ground of appeal is that the period for complying with the notice requirements is unreasonably short.
24. As the fencing in this appeal has been removed, the three-month compliance period specified in the notice clearly afforded ample time for the remedial works to be undertaken. In any event, the Council were not bound to await the outcome of the appeal following the refusal of the retrospective planning application in Appeal B before taking enforcement action. Issuing an enforcement notice so that any resulting appeal is dealt with concurrently with planning appeals relating to the same or similar development at the property is in the interests of an efficient and effective planning system and reflects good practice.
25. Therefore, the period for compliance is reasonable and the ground (g) appeal also fails.

Conclusions

26. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. Also, for the reasons given above I conclude that Appeals B and C should be dismissed.

Stephen Hawkins

INSPECTOR