



Appeal Decisions

Site visit made on 17 May 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th JULY 2022

Appeal A Ref: APP/K5600/C/21/3276379

Appeal B Ref: APP/K5600/C/21/3276186

Land at 38 and 40 Penywern Road, London, SW5 9SX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by ACGK Investments Limited (Appeal A) and Gideon Limited (Appeal B) against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
 - The notice was issued on 22 April 2021.
 - The breach of planning control as alleged in the notice is the erection of an outbuilding in rear garden.
 - The requirements of the notice are: 1. Remove the outbuilding and restore the land to its original condition prior to the unauthorised development. 2. Remove from the land any debris associated with the above requirement.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) 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. Appeal B is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid for Appeal B within the specified period, the appeal on ground (a) and the application deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

1. Appeal A-The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an outbuilding on land at 38 and 40 Penywern Road, London SW5 9SX, subject to the conditions in the attached Schedule.
2. Appeal B-I take no further action in respect of this appeal.

Appeal A

Ground (a) appeal

Main Issues

3. The main issues in this ground of appeal are whether the outbuilding preserves the character or appearance of the Earl's Court Square Conservation Area (CA) and the effect on biodiversity.

Reasons

Character, appearance of the CA

4. The appeal site contains two substantial mid-terrace residential properties. The properties are used as a House in Multiple Occupation, with living accommodation arranged over several floor levels. There are ample-sized gardens at the rear of the properties. The enforcement notice attacks a single storey outbuilding erected towards the far end of the rear gardens. Whilst the outbuilding is not currently fitted out internally, I understand that the intention is for it to provide laundry facilities for the occupiers of each property.
5. The CA is largely made up of substantial residential properties dating from the mid-late 19th Century. The buildings exhibit notable similarities in terms of their external materials and architectural details and are arranged in lengthy rows along quiet residential streets. Due to the above factors, there is an appreciable sense of continuity and cohesion which contributes markedly to the harmonious appearance of the CA. Maturing street trees, together with trees and planting in communal open spaces and private rear gardens, provide naturalistic elements to the setting as well as having softening effects in relation to the built forms. Such planting together with public/private open space therefore adds to the pleasing and attractive visual qualities of the CA and makes a notable contribution to its significance.
6. The outbuilding sits across both rear gardens, taking up almost the entire width of the site. Even so, the outbuilding footprint occupies a relatively limited portion of the rear gardens. Around two-thirds of the rear garden areas remain open and unencumbered by built form. Moreover, the size of the remaining rear gardens, whilst appreciably smaller than those of some nearby properties, still compares favourably with the size of rear gardens generally throughout the CA. Landscaping recently undertaken including the planting of two specimen trees clearly illustrates that there is still ample opportunity to provide a more naturalistic backdrop contributing to softening the appearance of the outbuilding within the rear gardens. Therefore, the outbuilding has not harmfully eroded the spatial qualities of the rear gardens nor has it created an appreciably more built-up feel in the environs.
7. The outbuilding is noticeably larger than similar structures in the rear gardens of adjacent properties. Nevertheless, due to its low-profile roof the overall height of the outbuilding is not greatly above that of the boundary enclosures of adjoining properties on either side. The roofline is much lower than the tall boundary wall at the rear, which forms part of Earls Court underground station. The rear boundary wall and larger scale buildings in the vicinity therefore dominate the immediate and wider backdrop. The balanced arrangement of the door and window openings in the rear garden facing elevation assists in the outbuilding being viewed more as a pair of linked structures. Fencing erected subdividing the properties also assists further in relation to this visual impression. As a result, the outbuilding is perceived as a relatively small-scale built feature which sits reasonably comfortably within the site, not appearing especially cramped or restricted, either when looked at in relation to the site as a whole or in relation to the individual properties.
8. Reference was also made to an outbuilding erected elsewhere in the CA where the Council have recently taken enforcement action. I have dealt with the outbuilding in this appeal on the basis of its individual planning merits. The

mere existence of other unauthorised development is not a good reason for refusing to grant planning permission.

9. For the reasons set out above, the outbuilding preserves the character and appearance of the CA. This is consistent with criterion in Policy CL3 of the Kensington and Chelsea Local Plan (LP).

Biodiversity

10. I understand that the outbuilding occupies part of the site where two mature trees previously stood. There is no suggestion that the trees were removed unlawfully. The site is not the subject of nor adjacent to an area with a statutory or non-statutory designation regarding its nature conservation value. No recorded features of nature conservation interest were drawn to my attention. Therefore, there is no firm evidence to indicate that erecting the outbuilding has resulted in a loss of habitat. Moreover, the relatively limited reduction in open space available at the site has not significantly reduced the capacity of the rear gardens to accommodate biodiversity. The extent of the planting already undertaken at the site reinforces my view in this regard. As a result, erecting the outbuilding has afforded opportunity to be taken to enhance and attract biodiversity, in accordance with LP Policy CE4.

Conditions

11. After seeking the views of the main parties, I have imposed four conditions. Condition 1 requires the submission and implementation of approved schemes in respect of the external materials and for the landscaping of the site prior to the outbuilding being brought into use. This is necessary to safeguard the character and appearance of the CA and also in the case of the landscape planting to contribute to enhancing levels of biodiversity at the site. Condition 2 requires the submission and implementation of a surface water drainage scheme based on sustainable drainage principles and is necessary to safeguard against the risk of flooding. Conditions 3 and 4 restrict, respectively, the use of the outbuilding as primary living accommodation and use of the roof area as a roof terrace or amenity space in order to safeguard the privacy of occupiers of adjoining residential property.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Appeal B

13. In relation to this appeal it is unnecessary for me to consider whether the appeal on ground (g) should succeed as the enforcement notice will be quashed in consequence of my decision to allow Appeal A on ground (a). I shall therefore take no further action on this ground of appeal.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The outbuilding hereby permitted shall not be brought into use until schemes for: (a) the external materials of the outbuilding, and; (b) the landscaping of the site, have been submitted to and approved in writing by the Local Planning Authority and unless those schemes have been implemented in full or in the case of the landscaping scheme, implementation occurs in accordance with a timetable approved by the Local Planning Authority. Upon implementation of the approved scheme of external materials specified in this condition, the outbuilding shall thereafter be maintained in accordance with the approved details. Any trees or shrubs which, within a period of five years from the implementation of the approved landscaping scheme specified in this condition, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 2) The outbuilding hereby permitted shall not be brought into use until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Before any details are submitted to the Local Planning Authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - Include a timetable for its implementation; and,
 - Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 3) The outbuilding hereby permitted shall only be used for purposes incidental to the residential use of the site and shall not be used as primary living accommodation.
- 4) The external roof area of the outbuilding hereby permitted shall at no time be used as a roof terrace or amenity space.