



Appeal Decision

Site visit made on 12 July 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th JULY 2022

Appeal Ref: APP/K5600/C/21/3278224

Flat 2, 47 Eardley Crescent, London, SW5 9JT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Fergus Findlay against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
 - The notice was issued on 21 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a conservatory to the side of existing rear extension and alterations to the roof and rear elevation of the existing rear extension.
 - The requirements of the notice are: 1. Demolish the conservatory to the side of the existing extension and restore the side elevation of the existing rear extension to its condition prior to the carrying out of the unauthorised works. 2. Remove the parapet and overhang from the roof of the single storey rear extension and restore the roof to its conditions (*sic*) prior to the carrying out of the unauthorised works. 3. Remove the bi-folding doors from the rear elevation of the existing rear extension and re-instate the window and make good the brickwork to match existing. 4. Remove all materials and resultant debris from the land.
 - The period for compliance with the requirements is nine 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. 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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Decision

1. 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 Act as amended.

Ground (a) appeal

Main Issue

2. The main issue in the ground of appeal is whether the conservatory and alterations preserve the character or appearance of the Philbeach Conservation Area (CA).

Reasons

Character, appearance of CA

3. The appeal property contains a two bedroom flat. The flat occupies the ground floor of a four storey residential building. The building forms part of a residential terrace dating from the mid-19th Century. The terrace, which is aligned in the form of a crescent, exhibits notable classical influences in terms of its architectural style. The well-proportioned front elevations are finished in

brick with stucco window dressings, cornicing and grand open porches, all contributing markedly to the strong sense of order and formality in the locality. Although the rear elevations are more restrained, features of the original design including closet wings, windows and brick finishes are reiterated throughout the terrace, also therefore adding greatly to the overall sense of unity. Residential terraces in this and adjacent streets display similar characteristics, furnishing the CA with the overall attractiveness and strong sense of uniformity which greatly informs its significance. The importance to the historic and architectural character and appearance of the CA of rear elevations, including their original design, features and external materials, is recognised in the Council's CA Appraisal (CAA).

4. The enforcement notice attacks a lean-to conservatory erected along one side of a single storey, flat roof rear extension. The pre-existing extension protrudes from the rear closet wing by about 6 m and was probably erected during the late 1960s. In conjunction with erecting the conservatory alterations to the pre-existing extension have also been undertaken, namely raising its overall height by forming parapet walls, creating a roof overhang at the rear and inserting bi-fold doors in the rear elevation. The notice also attacks these alterations.
5. The conservatory occupies most of the space between the pre-existing extension and the common boundary with an adjoining residential property. It also extends for almost the length of the pre-existing extension. However, the conservatory is largely glazed and it does not cover the original elevations adjoining the lightwell. As a result, it is possible to view those original parts of the building at ground floor level. The proportions of the closet wing as originally built can also still be appreciated. Views of the rear elevation upper floor levels have not been noticeably reduced. Moreover, having regard to the conservatory's relatively modest footprint, its erection has not resulted in any further significant erosion in the property's rear garden area; the size of the rear garden relative to that of adjacent rear gardens is similar and there is not a markedly more built-up feel in the environs.
6. Be that as it may, the conservatory is of a contemporary design and appearance, incorporating a thick, dark grey coloured metal frame. The thickness of the frame members bears little resemblance to the slim, elegant profiles of the traditional window frames which largely populate window openings on the rear elevation of the building and most of those in adjacent buildings. Also, the finished colour of the conservatory frame is in marked contrast to the white painted finishes of traditional window frames found on the building and at adjacent properties. Nor does the frame colour sit well with the buff tones of the brick finishes on the rear elevation of this and adjacent buildings.
7. The conservatory incorporates a sloping roof form which at its highest point exceeds the original height of the pre-existing extension, finishing just below the eventual top of the raised parapet wall. The resulting juxtaposition of differing roof profiles represents a significant change from, and is noticeably at odds with, the simple, low profile roofline of the pre-existing extension. The arrangement of the conservatory and pre-existing extension roofs has also created a somewhat lopsided appearance at the rear of the building, upsetting the previously more balanced feel. This all contributes significantly to the

conservatory having an awkward relationship with the pre-existing extension as well as with the building.

8. The bi-fold doors in the rear elevation of the pre-existing extension have a similarly dark coloured frame to that of the conservatory and to a great extent are viewed as a visual continuation of that structure. The new parapet walls together with the roof overhang are finished in a similar grey colour. The finished colours of the alterations also therefore fail to assimilate well with the traditional window frames and wall materials of the building. Furthermore, construction of the parapet walls has raised the overall height of the already substantial pre-existing extension, significantly increasing its apparent scale. Therefore, individually and in accumulation the alterations have considerably increased the visual presence of the pre-existing extension, making it appear as a noticeably more assertive built feature in views at the rear of the building.
9. Due to all the above factors, the conservatory and alterations fail to integrate satisfactorily with the building, they are not appropriately subordinate to that structure and are viewed as alien built features, entirely at odds with adjacent buildings in the terrace and other properties in the CA. This has fostered an appreciable sense of disruption to the rhythm and uniformity of the rear elevations arising from the relationship of closet wings and light wells, the latter being identified in the CAA as contributing greatly to the historic and architectural character of the CA. Owing to the few gaps between the terraces and the high retaining wall at the end of the rear garden there are limited public views of the conservatory and alterations. However, there are views of the conservatory and alterations from adjoining properties across garden walls and from rear windows. The CAA recognises the importance of such views in informing the character of the CA.
10. From the details provided, conservatories in an adjacent street are largely of traditional character and appearance, with white coloured frames and are attached directly to original rear elevations. Therefore, the conservatory in this appeal does not compare favourably with those examples. Although metal and UPVC bi-fold doors have been installed at the rear of adjacent properties, as far as I am aware none have a finished appearance similar to the bi-fold doors in this appeal. Moreover, the circumstances in which the alterations to those properties were undertaken was not made clear. As a result, I attach limited weight to the presence of other bi-fold doors.
11. Also from the details provided, the two rear extensions to nearby properties approved by the Council in recent years differ significantly in terms of the effects on the character and appearance of their respective buildings and that of the CA, compared to the conservatory and alterations. The approved extensions protrude limited distances from the original rear elevations, they have simple uncluttered lines with low profile roofs and utilise similar external materials to the main buildings. By and large, those extensions therefore integrate visually with their buildings in a manner which does not upset the uniformity and rhythm of the respective terraces. I am also mindful of the modern design and materials of a proposed residential and commercial development in the CA recently approved by the Council. However, that involves a markedly different form and scale of development. Although limited information was provided it is highly probable that public benefits, for example the scale of housing provided, would have been weighed against any effects on heritage assets. Accordingly, I also afford these examples limited weight.

12. For the above reasons, the conservatory and alterations do not preserve the character or appearance of the CA, failing to accord with Policy CL3 of the Kensington and Chelsea Local Plan, whilst the harm to the existing character and appearance of the building and its context does not accord with LP Policy CL6. For similar reasons, the conservatory and alterations fail to accord with LP Policies CL1 and CL2. Moreover, by disrupting the rhythm of rear additions and being of a detailed design which is out of character with the building, the conservatory and alterations fail to accord with criteria in LP Policy CL9. Additionally, by not preserving views of the rear of properties within the CA the conservatory and other alterations do not accord with LP Policy CL11, whilst the failure to conserve the historic environment is inconsistent with the National Planning Policy Framework (the Framework).

Other Matters

13. Erecting the conservatory and installing bi-fold doors has increased the size of the main living area and levels of natural daylight at the property as well as affording access to the rear garden from the rear elevation. However, in the absence of firm evidence regarding any significant deficiencies in terms of habitable floorspace, levels of daylight or accessibility at the property, any benefits arising can only be afforded limited weight.

Planning Balance & Conclusion on Ground (a)

14. The conservatory and alterations do not preserve the character or appearance of the CA, they do not accord with the Development Plan and are inconsistent with the Framework as well as the CAA guidance. There is 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 arising from the conservatory and the alterations are largely limited to the appellant and are in consequence private. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

15. The ground of appeal is that the requirements of the notice are excessive.
16. An enforcement notice can have the purpose of remedying the breach, including by restoring land to its condition before the breach took place. Alternatively, it can have the purpose of remedying any injury to amenity caused by the breach. Complying with the notice requirements would involve total removal of the conservatory and alterations. No part of the development attacked by the notice would remain in situ following compliance with the requirements and the property would be restored to its pre-breach condition. Therefore, whilst the notice does not state as such, its purpose must be to remedy the breach.
17. The requirements are the minimum necessary to restore the property to its condition prior to the works being undertaken and thereby remedy the breach. Altering the conservatory design and retaining the bi-fold doors would mean that development undertaken as part of the breach would remain in situ. This does not represent an obvious alternative to the requirements, as it would stop short of restoring the property to its pre-breach condition and so would not

achieve the purpose of the notice. No other alternatives to the requirements were drawn to my attention and in my view, there are none that would also remedy the breach.

18. Consequently, the notice requirements are reasonable and proportionate; they are not excessive having regard to the purpose of the notice. The ground (f) appeal fails.

Ground (g) appeal

19. The ground of appeal is that the period for complying with the notice requirements falls short of what should reasonably be allowed.
20. The remedial works are likely to be reasonably small-scale and relatively straightforward operations for a suitably experienced small building contractor. Such works are also likely to be of limited duration, perhaps taking as little as a month or so to complete. There was no firm evidence of serious difficulties currently being encountered in terms of securing the services of building contractors, or of extensive delays in their availability to undertake work. As a result, nine months affords ample time to search for and engage suitable contractors to undertake the remedial works, to arrange for and secure any necessary financing and to have the works undertaken. Further, such a timescale takes sufficient account of the possibility of a delay encountered in undertaking the works, for example whilst waiting for a contractor to become available, due to inclement weather or as an unforeseen consequence of the COVID-19 pandemic.
21. Moreover, nine months affords the appellant a reasonable opportunity to submit any revised planning application and, provided the Council are so minded, for that application to be determined. No specific evidence of extensive delays in the Council determining applications of a similar nature and scale was drawn to my attention. There is no sound reason why such an application, where the considerations are likely to be relatively straightforward, could not be determined within a couple of months.
22. Therefore, the period allowed for compliance is reasonable. It follows that extending the period to twelve months would do little other than to perpetuate the breach and the associated planning harm. The ground (g) appeal also fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR