



Appeal Decision

Site visit made on 6 September 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/H5390/C/20/3265516

9 Eyot Gardens, London W6 9TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Jane Katyar against an enforcement notice issued by London Borough of Hammersmith and Fulham.
 - The notice, numbered 2020/00422/TERRAC, was issued on 11 November 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of timber screening on the two sides of the flat roof of the single storey rear extension to enclose the roof terrace, as marked in red on the attached drawing titled "Existing First Floor".
 - The requirements of the notice are to remove from the land, the timber screening situated on the sides of the flat roof of the single storey rear extension which enclose the roof terrace (as marked in red on the attached drawing titled "Existing First Floor").
 - The period for compliance with the requirement is three (3) months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
-

Decision

1. It is directed that the enforcement notice is corrected by (a) attaching the drawing titled "*Existing First Floor*" (as attached to this decision) to the enforcement notice and (b) the deletion of the words '*as marked in red*' from Sections 2 and 4 and their replacement with '*in the approximate position marked in red*'.
2. Subject to the corrections, 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.

The Notice

3. There is disagreement between the main parties as to whether the plan referred to as "*Existing First Floor*" on the enforcement notice was attached when it was served. The Council has provided a copy of a plan marked in red during the appeal process, but the appellant disputes firstly that this was served with the enforcement notice and secondly that it accurately depicts how the timber screening in question has been erected on the flat roof.
4. I cannot be sure whether the plan was attached to the notice issued by the Council or not. Consequently, in order to provide certainty, I will attach the plan. The appellant has provided both '*as currently existing*' and '*as previously existing*' drawings which evidence that their understanding of the location of

the timber screening subject to the enforcement notice is the same as that of the Council.

5. On that basis, I am satisfied that there would be no prejudice caused to the appellant as a result of correcting the notice in this way. Whilst the appellant's representations regarding the positioning of the timber screening are noted, the plan is adequate to show without any doubt as to which two sides of the flat roof the enforcement notice is directed and my correction of the notice to add the words '*in the approximate position*' further addresses this matter.

Preliminary Matter

6. The height of the timber screening above the roof terrace is shown as 1.545 metres on the drawings submitted by the appellant with the appeal, in comparison to the 1.8 metres referred to throughout the written submissions of both main parties. The fence was measured during my visit to the site by the Council's Enforcement Officer, and the main parties were in agreement that the height as built is consistent with that which is denoted on the appellant's drawings. I proceed with my determination of the appeal on that basis.

Reasons

7. The main issues are the effect of the development on (i) the character and appearance of the host dwelling and of the Mall Conservation Area and (ii) the living conditions of the occupiers of 11 Eyot Gardens, with particular reference to outlook, light and massing.

Character and appearance

8. The appeal dwelling is located within the Mall Conservation Area (CA) whose significance is defined by the historic association of the area with the adjacent River Thames and by the presence of period properties, including rows of terraced dwellings such as those found along Eyot Gardens. The terrace in which the appeal property sits is identified as a building of merit in the Conservation Area Character Profile 1996 (CACP), primarily due to the contribution made by the front elevations. Overall, the rear elevations of the properties make a lesser contribution to the CA, which is a point acknowledged in more general terms within the CACP. That said, despite an absence of a visual impact on the public domain in this case, the development is clearly visible from adjacent dwellings, especially due to its elevated height. It does as a result have an impact on the character and appearance of the host dwelling, and upon that of the CA.
9. The roof terrace has enclosures to its two other sides which are not subject of the notice. These are trellis like structures with planting, and metal railings, which have a less solid appearance and a softer visual impact compared to the appeal development. By contrast, the timber screening represents an enclosure that, despite allowing limited vision between the individual slats, has a solid appearance. The use of timber is also in stark contrast to the brick which is prevalent on the dwellings themselves and on their boundary treatments. The impact of these factors is compounded because the screening sits at first floor level, giving it a prominence when viewed from adjacent dwellings and which causes a visually oppressive and awkward impact. Collectively, by reason of its solid appearance, the use of timber and its elevated position, the screening has caused harm to the character and appearance of the host dwelling and the CA.

10. Given the nature of the proposed development and that the harm is localised, I consider that less than substantial harm to the significance of the CA has been caused. Policy DC8 of the Hammersmith & Fulham Local Plan 2018 (LP) refers to what is now Paragraph 202 of the National Planning Policy Framework (the Framework), in instances where such harm is identified. This requires the weighing of the public benefits of the development against the harm that would arise to the CA. However, there have not been any public benefits advanced in this case. Furthermore, I have a statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Accordingly, the harm that I have found to the designated area is a matter which must carry considerable importance and weight.
11. Although the timber panels appear to be softening in their colour as compared to the earlier photographs with which I have been provided and may well continue to soften further over the passage of time, this does not overcome the harm that arises in the respects that I have identified. The fact that the development screens off activity taking place on the roof terrace does not negate or justify the harm caused visually by the presence of the timber screens.
12. In conclusion, for the reasons set out above I find that the development causes harm to the character and appearance of the host dwelling and to that of the CA. Consequently, it fails to accord with Policies DC1, DC4 and DC8 of the Hammersmith & Fulham Local Plan 2018 (LP), where they collectively seek to protect character and appearance and designated heritage assets. Furthermore, the development does not accord with the aims of Key Principle CAG3 of the Planning Guidance Supplementary Planning Document 2018 (PG) in the same respects. There is also a conflict with the Framework, where it seeks to achieve well-designed places and because the harm to the CA is not outweighed by public benefits.

Living conditions

13. The timber screening is sited substantially above the rear garden and the ground floor of 11 Eyot Gardens. However, it is set in from the common boundary and it does not extend along the full length of the garden of No.11. This limits the impact that it has on the rear garden area of this adjoining dwelling. Whilst there is some impact on the windows and doors of No.11, in particular with respect to the ground and first floor windows on its main rear elevation, the timber panels are not of an overall size or positioning so to give rise to an unduly harmful impact in terms of a loss of outlook, loss of natural light or by reason of having an overbearing impact. Accordingly, I conclude that the development has not resulted in harm to the living conditions of the occupiers of No.11 and that there has been no conflict with Policy DC4 of the LP where it refers to living conditions.
14. Reference is also made by the Council to Key Principle HS7 of the PG, and specifically to the 15% rule referred therein, in relation to a ground floor window to the main rear elevation of No.11. However, such guidance needs to be applied in the circumstances of the case. In this instance the outlook from the ground floor window to the main rear elevation of No.11 would already have been substantially affected by the presence of boundary treatments and

the outriggers of the dwellings themselves, prior to the erection of the timber screening subject to this appeal. Therefore, the outlook from the window has not been materially worsened by the appeal development and there has been no conflict with the aims of the PG in that regard.

Other Matters

15. The appellant considers that the timber screening is necessary in order to ensure that the roof terrace can be used in a safe manner and to address concerns regarding overlooking onto adjoining dwellings, in particular No.11. It may also have some limited benefits in terms of noise and light attenuation. However, the evidence before me does not show that this is the only way to achieve that. Indeed, both main parties have referred to an alternative scheme that could also address these matters and it is not evident to me, on the information available, that such a scheme should be ruled out. While no such alternative scheme is before me as part of this appeal, the possibility of an alternative nevertheless reduces the weight I attach to any need for the development that has been carried out. On that basis, whilst I concur that the presence of the timber screening does serve some purpose in each of those respects, these considerations do not outweigh or justify the harm caused to the character and appearance of the host dwelling and the CA.
16. Interested parties have raised a number of matters relating to the outside area that the timber screening partially encloses, including in terms of the use of the roof itself as a terrace. However as these are not matters to which the enforcement notice relates, and because in any event I am dismissing the appeal, I need not address those matters further.

Conclusion

17. Although I find no harm to living conditions, I do find harm to the character and appearance of the host dwelling and CA and consequent conflict with the development plan.
18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Graham Wraight

INSPECTOR



Plan

This is the plan referred to in my decision dated: 27 September 2022

by Graham Wraight BA(Hons) MSc MRTPI

9 Eyot Gardens, London W6 9TN

Reference: APP/H5390/C/20/3265516

Scale:NTS



EXISTING FIRST FLOOR