The Planning Inspectorate

Appeal Decision

Site visit made on 21 December 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 January 2023

Appeal Ref: APP/K5600/C/22/3290101
235a Portobello Road, London W11 1LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Charles Freeman against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
- The enforcement notice was issued on 6 December 2021.
- The breach of planning control as alleged in the notice is the installation of two air conditioning units to the side elevation at ground floor level.
- The requirements of the notice are:
  i. Remove the air conditioning units in full, including any associated fixtures and equipment;
  ii. Remove from the land any resultant debris;
  iii. Make good the side elevation.
- The period for compliance with the requirements is six calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (a)

1. The ground of appeal is that planning permission should be granted. The main issue is the extent to which the development preserves or enhances the host property and the character or appearance of the Ladbroke Conservation Area

Preliminary Matter

2. As the proposal is in a conservation area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), paying special attention to the desirability of preserving or enhancing the character or appearance of the Ladbroke Conservation Area.

Reasons

3. The appeal property is a three storey end of terrace building, with a retail unit on the ground floor and a residential flat on the two floors above. However, I noted at my site visit and from the evidence submitted that the residential property is also used as recording studio. It is situated on the west side of Portobello Road and the side elevation fronts onto the entrance road to Hayden's Place and Tavistock Mews. It is situated within the Ladbroke Conservation Area.

4. Hayden's Place is a relatively narrow side street off Portobello Road, which is a busy bustling historic retail and commercial area. The street primarily exhibits

the side elevations of properties that face onto Portobello Road or Tavistock Mews which is a traditional residential mews development which runs parallel to Portobello Road. The appeal property is constructed of London stock brick with attractive detailing such as traditional timber sash windows, ornate stucco window surrounds, ornate metal security grilles, brick soldier courses and painted render. Although very much secondary to the high quality attractive frontages of local properties in the immediate vicinity, the appeal elevation on which the air conditioning units have been situated nevertheless makes a positive contribution to the character and appearance of the Conservation Area through the use of traditional materials and design features.

5. The two units are situated on the side elevation of the property at ground floor level and are at a relatively elevated position on the wall, one above the other at approximately eye level. They have a rather utilitarian and industrial appearance and are both supported by a heavy bracket. They are situated on a section of brick wall such that attention is drawn to the incongruous modern visually intrusive additions.

6. The wall faces onto the entrance of Hayden's Place and Tavistock Mews and can easily and clearly be seen from Portobello Road in this prominent location. Consequently, the air conditioning units and associated fixtures and equipment constitute visually dominant and incongruous features that are harmful to the character and appearance of the property, the street scene, more generally and the conservation area. Therefore, the units, as a result of insensitive placement and industrial design, appear as harmful and incongruous features that are visually intrusive and out of keeping with the context of the property, the street scene and the Conservation Area.

7. Given the scale of the development within the context of the Conservation Area as a whole, I consider that it would cause less than substantial harm to the character and appearance of the Ladbroke Conservation Area. In accordance with the provisions of the Framework, I must weigh the harm against the public benefits of the development.

8. It was stated that the purpose of the units is to provide air conditioning to the home recording studio and they were installed to mitigate noise issues reported by neighbours when recording with the windows open during the summer months. There is no evidence of noise complaints as a result of the use of the property for recording purposes. I can understand that the recording studio provides a facility for local musicians and provides a service for a range of people within the local community. I have also taken account of the appellant's comments regarding the use of green heat exchangers and the limited options available to keep the property cool and noise proof. It is also my understanding that the air conditioning units in question run efficiently. However, in my view the public benefits would be minimal, and insufficient to outweigh the harm identified. I conclude therefore that the development would fail to accord with national policy.

9. For these reasons the development would fail to preserve or enhance the character and appearance of the Ladbroke Conservation Area and, as such, would conflict with Policies CL1, CL2, CL3 and CL6 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019. Among other objectives these seek to ensure that all developments contribute positively to the context and character of the area, all developments should be of the highest

architectural quality, development is required to preserve or enhance the character or appearance of conservation areas ad protect their special architectural and historic interest, and all alterations and additions should not harm the existing character and appearance of buildings.

10. I have taken account of the appellant's comments with respect to the other unauthorised air conditioning units in the locality, but I have considered this particular case on its merits. I have also taken account of the comments on malicious reporting and the fact that the units were installed by certified installers, but those matters have little bearing on this decision. I understand that the area is not a museum and that the appellant believes that the Council should seek to achieve its wider mission statemen, but those matters are not material to the determination of the appeal on ground (a).

The appeal on ground (f)

11. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or the remedy injury to amenity (s173(4)(b)). Since the Notice requires the entire removal of the air conditioning units, including any associated fixtures and equipment, the purpose is clearly to remedy the breach.

12. In this case the appellant has suggested painting the upper part of the newly installed trunking to match the bricks and to paint the units to look like a silhouette. Notwithstanding the purposes of serving the Notice, the suggested changes would not sufficiently mitigate the harm I have identified with respect to the effect on the character and appearance of the Conservation Area. The appeal on ground (f) fails.

Conclusion

13. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Notice and refuse to grant planning permission on the deemed application.

Formal Decision

14. 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.

A A Phillips

INSPECTOR