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## Appeal Decisions

Site visit made on 11 January 2023

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 January 2023**

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### **Appeal A Ref: APP/K5600/C/22/3291045**

#### **3 Kensington Mall, London W8 4EB**

- 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 3 Kensington Mall Ltd (c/o Savills) against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
  - The enforcement notice was issued on 13 December 2021.
  - The breach of planning control as alleged in the notice is: without planning permission, the installation of a glass balustrade to the roof terrace at rear second floor level.
  - The requirements of the notice are:
    - i) Remove all of the glass and stainless steel balustrade from the roof terrace at rear second floor level, as shown on drawing Nos. 3KM/5461/104 and 3KM/546/108 submitted with planning application reference PP/21/06552, attached as Appendix A;
    - ii) Remove from the land all the resulting debris.
  - The period for compliance with the requirements is 2 months.
  - The appeal is proceeding on the grounds 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.
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### **Appeal B Ref: APP/K5600/D/21/3289043**

#### **3 Kensington Mall, London W8 4EB**

- 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 Kensington Mall Ltd (c/o Savills) against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref PP/21/06552, dated 11 October 2021, was refused by notice dated 02 December 2021
  - The development proposed is the installation of balustrade to existing roof terrace at second floor level (Retrospective).
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## **Decisions**

### **Appeal A:**

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 1990 Act as amended.

### **Appeal B:**

2. The appeal is dismissed.

## **Procedural Matters**

3. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical development, the considerations in that appeal are the same, and I have treated both cases together

## **Appeal A on ground (a), the deemed planning application (DPA) and Appeal B**

### *Main Issue*

4. The main issue is whether the unauthorised development preserves or enhances the character or appearance of the Kensington Palace Conservation Area (CA).

### *Reasons*

5. The appeal property is a traditional three-storey mid terrace property, situated close to the junctions of Lucerne Mews and Palace Gardens Terrace, which run perpendicular to the street. The property is located within the CA.
6. With regards to the effect on designated heritage assets, Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
7. The National Planning Policy Framework, 2021 (Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
8. The significance of the CA largely derives from its architectural and historic interest, associated with Kensington Palace itself, its gardens, Kensington Palace Gardens, and the surrounding traditional terraces. The Kensington Palace Conservation Area Proposals Statement highlights the rich variety of traditional materials found within the CA, which make a positive contribution to the significance of the CA. I also observed during my site visit the variety of painted metal railings which compliments the attractive facades of the surrounding traditional buildings.
9. In contrast, the current unauthorised development, comprising a glass balustrade screen at high level, surrounding the perimeter of the roof terrace is at odds with the more traditional materials found elsewhere on the appeal building, terrace and CA generally. The prominence of the unauthorised development is accentuated by its visibility from a number of neighbouring properties on Kensington Mall, Kensington Palace Terrace and Lucerne Mews and Palace Gardens Terrace. Therefore, despite the current development being located to the rear of the property and away from any public vantage points,

the unauthorised development diminishes unacceptably the character and appearance of the host building with consequent harm to the character and appearance of the CA.

10. I acknowledge that glass window and doors and infill extensions have been approved in the vicinity of the appeal site. However, these relate to infill extensions and fenestrations to neighbouring buildings which are not the same as a high level glass balustrade surrounding a roof terrace. I also observed glass 'Juliet' balconies on neighbouring properties, but these are attached close to the building façade, and are therefore not as prominent as the current unauthorised development, which projects on top of the flat roof of the rear addition. I also observed a glass balcony at the rear of a neighbouring property on Palace Gardens Terrace, although this was positioned at ground floor level, and therefore had only limited visibility from neighbouring properties.
11. Reference has also been made to another development at 44 Uxbridge Street, W8 7TG. However, that development related to the installation of security shutters which is materially different to the appeal development before me. As such the examples sited nearby do not lend support for the current unauthorised development, which I have considered on its own merits.
12. In the terms of the Framework and paragraph 202, the harm that the development causes to the significance of the designated heritage asset, that is the CA, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development. However, no public benefits have been identified to offset the identified harm to the character and appearance of the CA, to which I must attach considerable importance and weight.
13. I therefore conclude that the unauthorised development results in a visually discordant and incongruous addition, which is harmful to the character and appearance of the CA, as a whole. As such, it fails to preserve or enhance the character or appearance of the CA, contrary to policies CL1, CL2, CL3, CL6, CL8 and CL11 of the Royal Borough of Kensington and Chelsea Local Plan, 2019. Amongst other things these state that the Council will require: all development to be of the highest architectural and urban design quality; all development to respect the existing context, character and appearance; development to preserve or enhance the character or appearance of the conservation area and protect the special architectural or historic interest of the area; and roof alterations and additional storeys to be architecturally sympathetic to the age and character of the building and group of buildings.
14. It would also conflict with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it would not preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. This carries considerable weight and importance to my decision.

#### *Other matters*

15. I have considered the effect of the development on the setting of nearby Grade II listed building at Mall Chambers. However, in light of the separation distances from this building, I find no harm in this respect.

16. Comments made by third parties have been taken into account but do not alter the conclusions reached in this decision.

### **Conclusions**

17. **Appeal A:** 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.
18. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

*R Satheesan*

INSPECTOR