



Appeal Decision

Site visit made on 11 October 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 01 February 2023

Appeal Ref: APP/K5600/D/21/3286902

33 Moore Street, LONDON, SW3 2QW

- 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 Mr Xavier Colin against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref: PP/21/04732, dated 20 July 2021, was refused by notice dated 13 September 2021.
 - The development proposed is the erection of metal railings at roof level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is retrospective and relates to the erection of metal railings which have been attached to the roof of the appeal property.

Main Issues

3. The main issues are:-
 - i) the effect of the development on the character and appearance of the host property, terrace and wider area and whether it preserves or enhances the character or appearance of the Chelsea Conservation Area; and
 - ii) the effect of the development on the living conditions of occupants of neighbouring dwellings having particular regard to noise and disturbance.

Reasons

Character and appearance

4. The appeal dwelling lies within the Chelsea Conservation Area (CA) which is a predominantly residential area characterised by groups of high quality residential terraces mainly constructed in yellow stock brick with some stucco decoration and sliding sash windows. Traditionally detailed metal railings painted in black are commonly used as a method of enclosure and together with a strong formal arrangement of buildings with some occasional green spaces the area displays an attractive, cohesive and uniform character. Based upon the evidence before me and my observations, I consider the heritage significance of the CA is largely derived from its layout and the high quality buildings therein.

5. The appeal property is an attractive five storey dwelling forming part of a terrace of similar properties. Dwellings within the terrace are comprised of brick elevations, stucco detailing at ground floor level and fenestration that is typical of the CA. Within the terrace, there is a consistency of roof style being mainly comprised of a large flat roof positioned behind a short parapet wall with tall chimney stacks positioned more centrally. Consequently, I consider that the appeal property makes a positive contribution to the CA.
6. Despite there being a small number of similar examples of rooftop metal railings in the locality, including one example that I observed at the time of my site visit to be erected above a dwelling within the host terrace, these are not commonplace within the area. Policy CL3 of The Royal Borough of Kensington and Chelsea Local Plan (2019)(LP) requires new 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 its setting. The supporting text to the policy explains that the character and appearance of a conservation area is not only provided by the high quality and appearance of the individual buildings and their relationship to each other but also from the whole and partial street views and views into and out of the area.
7. The appeal scheme has introduced railings to the roof structure of some 1.1 metres in height, taking the appellant's measurements, which have not been disputed by the Council. However, notwithstanding their height, elevated position and the extent by which they span around most of the perimeter of the roof structure of the host dwelling, by reason of their set back position behind the parapet wall, based upon my observations from street level, the development is not readily visible in these public views.
8. Nevertheless, the development is clearly seen above the parapet wall from a number of private viewpoints mainly from within windows of upper floors of neighbouring buildings. Whilst they do not project above the existing chimneys, given the position of these more centrally within the roof structure, the chimneys have little effect in obscuring or mitigating views of the development. In views from the rear upper windows of properties positioned along Clabon Mews, the existing flat roof and parapet wall provides a consistent and clean edge to the terrace when set against the skyline.
9. The railings span almost the entire width of the front and rear elevations of the appeal dwelling. As a result, the development has increased the height of the property relative to other dwellings within the terrace by adding visual clutter above the roof line. The consequent disruption in the consistency of the terrace results in the development appearing as a discordant and inharmonious addition that is uncharacteristic of the surrounding area. This detracts from the overall architectural quality of the host property and the uniformity of the terrace thus eroding views into and out of the area, particularly when viewed from properties along Clabon Mews, thus diminishing the quality of the character and appearance of the CA.
10. The railings comprise a simple design, slim form and are painted in a light colour. However, they are not representative of the locally prevalent type of traditional railing, and even if they were to be painted in black to match those within the area or replaced by a more traditional style of design, it would not overcome the harm that has been caused.

11. Additionally, as a consequence of the installation of these railings, a large and enclosed area is created which could facilitate the use of the area as an outdoor amenity space. A use of this nature would be likely to attract garden furniture and other associated equipment which would add further visual clutter above the roofline thus drawing the eye towards the appeal dwelling and detracting from the uniformity of the terrace. Furthermore, individuals utilising the outdoor space would be readily apparent in both private and public views. This usage would be contrary to the character of the CA and overall, this would further add to the harmful effect on the appearance of the host dwelling, the terrace and the wider CA.
12. However, it would be possible to restrict the use of the roof area with an appropriately worded planning condition to prevent its use as an outdoor amenity space. In these circumstances, the harm that could arise from the accumulation of outdoor paraphernalia and persons using the space would not arise. However, the use of a planning condition would not overcome the visual harm that has arisen.
13. Overall, I conclude that the appeal scheme has resulted in a harmful effect upon the character and appearance of the host property and terrace which results in a materially erosive effect on the character and appearance of the CA. It therefore fails to preserve the heritage asset and would conflict with the provisions of LP Policies CL1, CL2, CL3, CL6 and CL11 insofar as these policies require a high quality development to contribute positively to the townscape and seek to preserve or enhance the character or appearance of conservation areas.
14. The harm identified would amount to "less than substantial harm", and in the context of paragraph 202 of the National Planning Policy Framework (the Framework), it requires such harm to be balanced against the public benefits of the proposal. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.
15. I acknowledge the appellant's desire to provide a safe egress from the property in the event of an emergency such as a fire, particularly for younger family members including children in light of a recent fire at a neighbouring property. I accept that the railings have the potential to provide a person(s) with a safe refuge on top of the roof structure and reduce the potential for a person to suffer a fall whilst seeking refuge. Whilst a latched gate provides access through the railings and onto the neighbouring rooftop, no similar railings exist as a method of safe enclosure on these neighbouring rooftops to prevent any accidental falls. To my mind, this limits its potential for safe use. Nevertheless, I recognise the government's aims to improve fire safety and I accept that it could amount to a public benefit to which I attribute it moderate weight.
16. Whilst the development would provide additional protection to any person whilst carrying out maintenance at roof level, there is little information regarding the likelihood of such instances arising nor has any information been provided that alternatives that would have less impact have been considered and discounted. I therefore attach limited weight to this matter.
17. Taking everything into consideration, I find there would be insufficient public benefit to outweigh the identified harm to which I attribute great weight. I therefore conclude that the appeal scheme also fails to comply with national

policy outlined in section 16 of the Framework which seeks to conserve and enhance the historic environment.

Living conditions

18. The host dwelling is positioned within a predominantly residential area where the layout of built form results in a close-knit arrangement of properties. As a result, there is already some degree of mutual overlooking between properties.
19. Notwithstanding that the railings have not been installed onto the parapet wall and are positioned away from the edge of the front and rear of the property, a large rectangular area is formed that, by reason of its enclosure and size, is capable of use as an area of outdoor amenity space.
20. As a consequence of its use as a roof terrace it would give rise to direct overlooking of windows and to a lesser extent, some garden areas to properties located along Moore Street and Clabon Mews. To my mind, this would create an unacceptable loss of privacy that would materially compromise the living conditions of residents of those properties. The parapet wall does not adequately minimise this impact given its limited height.
21. Furthermore, by reason of the footprint of the enclosed space, it has the potential to accommodate a large number of people. It serves a dwelling with a private rear garden area and therefore the roof top area does not form the only area of private amenity space. However, I note from the comments of a third party that by reason of their position on the eastern side of Moore Street, dwellings within this terrace receive less sunlight and this concurred with my observations at the time of the site visit. As such, this makes use of a roof top terrace an attractive alternative and increases its likelihood of use. Given the proximity of bedrooms within the upper floors of these dwellings, I consider that the appeal scheme would be likely to generate an unacceptable level of noise and disturbance that would be unduly harmful to the living conditions of neighbouring occupiers.
22. However, the imposition of an appropriately worded planning condition to preclude use of the roof as an outdoor amenity area would ensure that no adverse harm as a consequence of overlooking or noise and disturbance would arise.
23. Therefore, subject to the imposition of the aforementioned planning condition, I consider that the living conditions of neighbouring occupiers would be adequately safeguarded and thus there would be no conflict with LP Policy CL5 insofar as it seeks to ensure good living conditions for existing and neighbouring buildings.

Other Matters

24. I note that there was some support for the appeal scheme, however, this does not lead me to a different view in relation to the main issues above.
25. No adverse harm has been identified with regards to the living conditions of neighbouring occupiers with particular regard to loss of light. However, the absence of harm is a neutral matter that weighs neither for nor against the appeal scheme.

26. The appellant has drawn my attention to a number of other similar developments within the local area which the Council suggest are unauthorised. With particular regard to the railings on the adjoining dwelling, I observed these had been removed from the neighbouring property, which lends weight to the Council's argument that these were unauthorised. In any event, I am required to determine the appeal scheme before me on its individual planning merits and the presence of similar developments within the locality does not provide adequate justification for the appeal scheme. Moreover, it points to a need to carefully control these types of development if the character and appearance of the heritage asset is to be preserved.

Conclusion

27. I have concluded that there would be no adverse harm to the living conditions of neighbouring occupiers with regards to privacy, noise and disturbance, subject to the imposition of an appropriately worded planning condition to control the use of the roof area.
28. However, I have found that there would be harm caused to the designated heritage asset. The public benefits of the appeal scheme are insufficient to outweigh the harm. Consequently, the appeal scheme conflicts with the development plan and I find there are no material considerations which, either individually or cumulatively, indicate that a decision should be made otherwise than in accordance with the development plan. For the reasons given above, I conclude that the appeal should be dismissed.

E Brownless

INSPECTOR