



Appeal Decision

Site visit made on 12 January 2023

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 April 2023

Appeal Ref: APP/K5600/C/21/3284380

1 Southwell Gardens, London SW7 4SB

- 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 Kawaljit Singh Arora against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice is dated 27 August 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a chimney stack and alteration of roof to create mansard roof with dormer windows to front and rear.
 - The requirements of the notice are: 1. Demolish the extension to the chimney stack and mansard roof with dormer windows to front and rear and reinstate the roof to its condition prior to the carrying out of the unauthorised works, as shown on drawing reference EX-151 submitted with PP/21/03134, and photograph A, both in Appendix A to the enforcement notice. 2. Remove all materials and resultant debris from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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. It is directed that the enforcement notice be corrected by:
 - The deletion of the text of the allegation in full and its replacement by the text: 'Without planning permission, the extension and enlargement of a chimney stack and alteration of roof to create mansard roof with dormer windows to front and rear.'
 - The deletion of the text of the requirements in full and its replacement by the text: '1. Demolish the mansard roof with dormer windows to front and rear and reinstate the roof slopes to their condition prior to the carrying out of the unauthorised works, as shown on drawing reference EX-151 submitted with PP/21/03134, and photograph A, both in Appendix A to the enforcement notice. 2. Remove all materials and resultant debris from the land.'
2. Subject to these corrections, the appeal is allowed insofar as it relates to the extension and enlargement of a chimney stack and planning permission is granted for this development on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to alteration of roof to create mansard roof with dormer windows to front and rear, and planning permission is refused on the application deemed to have been made for this element under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. At the time of my site visit, the roof of No 1 was obscured by scaffolding. However, the information submitted by the main parties, in combination with my observations of the appeal building, the wider terrace and the surrounding streets, has been sufficient to determine the appeal.

The enforcement notice

5. The enforcement notice alleges the 'erection of a chimney stack', whereas it appears more accurate to say that an existing chimney stack at the appeal site has been enlarged and extended. In the interests of clarity, I therefore direct that the notice should be corrected to reflect this situation. I am satisfied that no injustice arises to the main parties from this change.

The appeal on ground (c)

6. Ground (c) is that there has not been a breach of planning control. The onus of proof lies on the appellant under this ground.
7. The enforcement notice refers to a mansard roof with dormer windows to front and rear. The appellant states that dormer windows to the rear of the property have already been granted by a 2010 planning permission, ref: PP/10/02530, for the 'erection of an additional underground storey below footprint of the main host property, insertion of two new dormers to main rear roof slope, insertion of conservation type skylights to main front roof slope and reconfiguration of internal floorspace to existing residential units'.
8. The Council include at their Appendix 1 the 2010 proposals, including the roof plan. This drawing shows that the scheme proposed two dormer windows which were to be inserted into the rear roof slope. Sections of the original roof slope would have remained beside the dormers, and between the dormers and the eaves of the roof. The appellant confirms that these dormer windows have never been built.
9. The Council argue that this planning permission is not valid because the construction traffic management plan condition was not formally discharged prior to the commencement of the development.
10. However, regardless of the status of the permission, it is clear from the submissions that this proposal would have been substantially different in appearance to the unauthorised mansard roof, as it is shown in paragraph 5.2 of the Council's statement of case. Even if the appellant can show the 2010 permission to be extant, it would not convey permission for the mansard, which is a materially different development.
11. In the absence of compelling evidence to the contrary, I am therefore satisfied that a breach of planning control has occurred, and so the appeal on ground (c) fails.

The appeal on ground (a)

12. Ground (a) is that planning permission should be granted for what is alleged in the notice.

Main Issue

13. The main issue is the effect of the development on the significance of the Cornwall Conservation Area (CA).

Reasons

Significance

14. The CA is relatively small in size, taking in Cornwall Gardens to the north, and extending south to cover Southwell Gardens and a few other streets. According to the Council's document 'Cornwall Conservation Area Appraisal' (CCAA), Cornwall Gardens is a magnificent set piece built around a long private garden dating from 1863-1879. The houses here are amongst the tallest Victorian houses in the area, at five storeys plus half-basements, some having a further mansard storey.
15. The Cornwall Gardens houses have fully stuccoed frontages with moulded stucco dressings in the Italianate style associated with the early-mid Victorian period. Other houses in Grenville Place, Southwell Gardens and Gloucester Road follow this style in pale gault brick with stuccoed lower storeys. All these elements are characteristic of the traditional urban terraced form found in the CA. Despite some alterations, the block in which No 1 is located is typical of the style of townhouse in the CA, and retains its traditional character and uniformity of appearance.
16. The CCAA confirms that roof types form an important part of the CA's special character. On Southwell Gardens, it states that the houses have pitched roofs whose slopes run the length of the terrace, and are concealed from view by simple moulded cornicing. Only the tall, slender chimney stacks and pots are visible.
17. Along with its neighbours, No 1 is identified as a positive building, making a positive contribution to the CA. These positive buildings are highlighted as a key reason for the designation and significance of the CA.

Effect of the development

18. Policy CL8 of the Royal Borough of Kensington & Chelsea Local Plan (LP) relates to roof alterations and additional storeys, and requires such developments to be architecturally sympathetic to the age and character of the building and group of buildings. It permits additional storeys and roof level alterations where the character of a terrace or group of properties has been severely compromised by a variety of roof extensions and where infilling between them would help to reunite the group.
19. On my visit, I saw a small number of mansard extensions on Southwell Gardens. Of these, the Council state that the roof extension at No 11 was granted permission in 1958, prior to the designation of the CA in 1969. They further confirm that they have not been able to find records for permission having been granted for the mansards at Nos 12 and 14.

20. Notwithstanding the planning status of these developments, it is clear that mansard extensions are in the minority in the immediate vicinity of the appeal site. No 12 and 14 are on the other side of the road, which lessens their visual impact on the block comprising Nos 1-11. There is no evidence that the terrace has been severely compromised by roof alterations, or that the unauthorised development at No 1 has re-established architectural unity on the street.
21. The appellant refers to the presence of other mansard developments in the wider area. However, LP Policy CL8 refers to the character of 'a terrace', or group of properties. This wording strongly suggests that the effects of a development may be fairly localised. In a similar vein, the National Planning Policy Framework (NPPF) advocates that development should respond to its local character, and it is well established that local character need not extend to a particularly large area.
22. The mansard at No 1 is therefore uncharacteristic of the prevailing roofscape along Southwell Gardens. Its large, boxy shape fundamentally alters the traditional form of the concealed roof slopes, appearing neither sympathetic nor subsidiary to the building. It gives disproportionate bulk to the upper level, adding an element of visual complexity at roof level, and detracting from the simplicity of the existing built form of the appeal property and its neighbours.
23. I have been provided with existing and proposed section drawings from the 2021 planning application, ref: PP/21/03134. These show that the chimney stack previously sat back from the front and rear eaves of the building. The development has extended the stack approximately equally to the front and back, so that its edges now sit a short distance behind the parapet walls. Although the Council refer to this change, they do not specify the harm to the CA that has arisen from this element of the work. On my visit, I saw that the widths of the chimney stacks along the terrace vary. Some sit close to the roof edge, others are set further back.
24. The appellant explains that the chimney stack in question had previously become warped due to the loss of lateral support caused by the removal of wooden beams at the neighbouring property. He says that the rebuilding of the chimney was not viable due to the number of leaseholders involved. Furthermore, the repointing of the chimney alone would not have provided enough structural support.
25. According to the structural engineers, it was essential to add brick piers to the front and rear of the existing chimney to support it. The Council do not dispute the need for remedial works to the structure. They do indicate a preference for a more discreet solution, although they do not elaborate on what that might be. On the available evidence, I find that the alterations to the chimney stack do not unacceptably harm the significance of the appeal site or the CA as a whole.
26. Conversely, I find that the mansard roof extension fails to preserve the characteristic roof form of No 1, and in turn, unacceptably harms the character and appearance of the terrace and the significance of the CA as a whole.
27. Accordingly, overall, the mansard element of the development conflicts with the overarching statutory duties as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance

and weight, and with the NPPF. In addition, it fails to comply with LP Policy CL8.

28. Although serious, the harm to the heritage asset in this case is less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the works.
29. The mansard extension has provided additional living accommodation but this is a private benefit which does not count in favour of the appeal scheme. It has generated some economic benefit during its construction, but not enough to attract any great weight.
30. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
31. My attention has been drawn to a terraced building at 25 Collingham Road, which is in a different conservation area. Permission was given for the addition of a small rear roof extension. In the appeal before me, the development attacked by the notice is a mansard roof spanning from the front to the back of the building, and so it is a materially different type of development.
32. The property at 5 Eardley Crescent had permission granted for a mansard extension. It is clear from the aerial photograph that all five visible buildings in the same terrace also had mansard roofs. This appears to be exactly the situation envisaged by LP Policy CL8, whereby the development of a mansard at No 5 would infill a gap and help to reunite the terrace. The same circumstance appears at Denbigh Terrace, where No 25 is the only building of a row of six that does not have a mansard roof in the aerial photograph. These examples are therefore materially different to the case before me, and so have not led me to a different conclusion on the main issue above.

The appeal on ground (f)

33. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
34. The appellant argues that the full demolition of the development is not necessary to fulfil the aims of the notice. He suggests that the mansard could be set further back so as to be less visible from street level. He has submitted a proposed drawing showing this change to the mansard roof at Appendix 8 of his statement of case for consideration. The Council have indicated that they find the rear mansard to be acceptable in principle.
35. However, Appendix 8 is a cross-section drawing only, and I have not been provided with proposed elevational drawings or floorplans. Without these it would be inappropriate to grant permission for the reduced scheme.
36. In any event, the enforcement notice gives six months for the completion of the requirements. As the main parties appear to be agreed on this revision, this is a reasonable time for a new planning permission to be sought and implemented. The stability of the chimney can also be attended to within this

time frame if necessary. Should additional time be justified, the Council have discretionary powers to extend the compliance period.

37. The appeal on ground (f) therefore fails.

Overall conclusion

38. For the reasons given, I conclude that the appeal on ground (a) should succeed in part only, and I will grant planning permission for the extension and enlargement of the chimney stack, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the alteration of the roof to create mansard roof with dormer windows to front and rear, as set out above. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Elaine Gray

INSPECTOR