

Appeal Decision

Site visit made on 12 June 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 13th June 2023

Appeal Ref: APP/Z5630/C/22/3310767

3 Avebury Park, Lovelace Gardens, Surbiton KT6 6SQ

- 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 Ms Asha Khagram against an enforcement notice issued by the Council of the Royal Borough of Kingston-upon-Thames.
 - The enforcement notice was issued on 28 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of decking and guard rails on the flat roof of a single storey rear extension on the Land.
 - The requirements of the notice are to:
 - 1 Remove the guard rails erected to the perimeter of the flat roof.
 - 2 Remove the decking erected above the surface of the flat roof.
 - 3 Remove all resultant waste and debris from the Land.
 - The period for compliance with the requirements is 2 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. Accordingly, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Main Issues

3. The main issues in the appeal are the effect of the development upon:
 - the character and appearance of the host property and the surrounding area; and
 - the living conditions of the occupants of adjoining properties.

Reasons

Character and appearance

4. The appeal property is a three-storey mid terrace town house. To its rear is an existing single storey extension with a flat roof. This flat roof is being used as an external terrace which has been decked and enclosed with timber railings.
5. There is close boarded timber fencing of various heights to the rear of Avebury Park at the back edge of the pavement along the Upper Brighton Road and mature landscaping in the rear gardens of the houses. Despite these features,

I observed that the timber rails are visible from the opposite side of Upper Brighton Road and the corner of Lovelace Gardens and also would be very visible from the rear gardens of neighbouring houses. Notwithstanding the aforementioned timber boundary fencing, the design and siting of the timber decking and rails on the back of the building itself represents an unacceptably incongruous addition to an otherwise largely uniform terrace of houses.

6. I therefore find that the development causes significant harm to the character and appearance of the host property and the surrounding area. Accordingly, it is in conflict with policies CS8 and DM10 of the Royal Kingston Core Strategy (2012) (CS) which together seek to ensure that development incorporates principles of good design and contributes to the character of an area.

Living conditions

7. On the rear elevations of the adjoining properties at 2 and 4 Avebury Park are first-floor windows, including a full height window to the latter property. The timber railings of the appeal development extend the full depth of the roof terrace (around 3m) very close to these windows, causing an overbearing sense of enclosure to the occupants of those properties.
8. Consequently, the development causes significant harm to the living conditions of adjoining current and future occupants by reason of loss of outlook. Accordingly, it is in conflict with Policies CS8 and DM10 of the CS and Policy 7.6 of the London Plan 2016 which together seek to protect living conditions.

Other Matters

9. The planning appeal decision¹ raised by the appellant has no bearing on this appeal as, unlike I have found in the case before me, the Inspector did not consider that the development caused any harm in that particular context.
10. While I accept that the appeal scheme provides health and safety benefits, and that its removal may cause damage to the pre-existing flat roof to which it has become attached, these considerations do not outweigh the harm I have identified and the conflict with the development plan as a whole. Accordingly, I will not grant planning permission for the development in whole or in part (retention of the decking without the railings would still cause significant harm to the living conditions of adjoining current and future occupants, as there would be unacceptable overlooking by persons standing upon the raised structure into the closely situated neighbouring windows and gardens).
11. There are no conditions I could reasonably apply which would make the development acceptable.

Conclusion

12. 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 deemed application.

Andrew Walker

INSPECTOR

¹ APP/G5180/D/20/3249711