



Appeal Decision

Site visit made on 16 August 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th August 2023

Appeal Ref: APP/K5600/C/23/3315261

23 Holland Villas Road, London W14 8DH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Wang Hung against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
- The notice, numbered ENF/21/07896, was issued on 15 December 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a garden gym building in the rear garden.
- The requirements of the notice are:
 - i) carry out works to the garden gym building in full compliance with approved drawings 1216-P-003, 1216-P-004, 1216-P-005, 1216-P-006 and 1216-P-007 of planning permission reference PP/21/01996;
 - ii) demolish the garden gym building in full; and in either instance:
 - iii) remove from the land any resulting debris.
- The period for compliance with the requirements is: four calendar months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a garden gym building in the rear garden at 23 Holland Villas Road, London W14 8DH as shown on the plan attached to the notice and subject to the following conditions:
 - 1) The building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. within 3 months of the date of this decision a scheme for a green roof and a Flood Risk Assessment and Surface Water Drainage Strategy shall have been submitted for the written approval of the local planning authority along with a timetable for their implementation.
 - ii. if within 9 months of the date of this decision the local planning authority refuse to approve the scheme for the green roof or the Flood Risk Assessment and Surface Water Drainage Strategy or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. if an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme for the green roof, and Sustainable Drainage System (SuDS) and Flood Risk measures specified in this condition, they shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Noise emitted by all building services plant and vents shall not exceed a level 10dBA below the existing lowest LA90(10min) background noise level at any time when the plant is operating, and where the source is tonal it shall not exceed a level 15dBA below. The noise emitted shall be measured or predicted at 1.0m from the facade of the nearest residential premises or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The plant shall be serviced regularly in accordance with the manufacturer's instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is determined by the local planning authority to be failing to comply with this condition, it shall be switched off upon written instruction from the local planning authority and not used again until it is able to comply.
- 3) The plant shall not operate unless it is supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.

The appeal on ground (a)

2. The main issue is whether the proposal preserves or enhances the character or appearance of the Holland Park Conservation Area ("the Conservation Area").
3. The appeal property is a detached four storey plus attic dwellinghouse set within spacious verdant grounds on the west side of Holland Villas Road. The dwelling lies within the Conservation Area. The Holland Park Conservation Area Appraisal confirms that Holland Villas Road is one of three streets of large, classically designed detached villas which are stucco fronted with parapet roofs and built from stock brick with hipped roofs. These villas form an important group that are enhanced by their attractive settings of large gardens with mature trees. The group make a positive contribution to historic and architectural character and appearance of the Conservation Area, and they are a key reason for its significance and designation.
4. The detached outbuilding subject of the notice lies towards the rear of the property's rear garden. Measurements taken on site by the main parties and agreed by them confirm that. The width of the as-built building is 9.070 metres, its maximum depth is 7.345 metres, and its maximum height is 3.940 metres (given slight fluctuations in ground level from front to rear).
5. Planning permission was granted in May 2021¹ by the Council ("the 2021 permission") for the erection of garden gym building in rear garden, including changing and shower room facilities. The appellant discharged conditions 3, 4

¹ Ref: PP/21/01996

and 8 attached to the 2021 permission before they started work in July 2022, but the as-built building is 0.493 metres narrower in width and 0.071 metres deeper. The height of the as-built building is 0.155 metres higher at the front and 0.122 metres taller at the rear (the highest measurement used due to a slight difference in ground levels). The as-built building does not include a green roof despite the appellant's intentions, though its siting, design and layout are the same, save for the dimensions. However, the external cladding differs from that stated on the plans approved as part of the 2021 permission. As a result, the as-built building is not in accordance with the 2021 permission.

6. Against that backdrop, within the large garden of the appeal property, the as-built building does not harm the balance of built form to garden. Nor does the marginal increases in the as-built building's depth and height, but these are balanced against the building's narrower width. Although the building is not technically the same size as the 2021 permission, it is very similar in size and design and not overly large. It is also built in the same location.
7. Views of the building are filtered by established built form, planting and trees which severely restrict any potential views of the outbuilding from the public realm. Even from neighbouring properties and gardens, mature trees and shrubs effectively screen the building, and soften views of it particularly when they are in leaf. Regardless, however, I am of the view that the size of the building would not be harmful even when trees and shrubs are not in leaf.
8. The appellant contends that the cladding used for the external walls of the building offers substantial environmental, fire-resistance, maintenance, and aesthetic improvements over wood, yet has the same texture, proportions and appearance to smooth timber cladding. They further explain that as it will not require to be painted or stained it will last for 15 years or more. However, focussing on the appearance of the cladding, it has a dull grey finish that will not weather like cedar cladding would over the passage of time. That said, the building is a standalone feature within the garden's verdant setting and the ground floor of the rear elevation of the appeal property has a grey finish. I therefore consider the cladding used acceptable in this context. The cladding used does not cause a loss of privacy given the verdant garden setting.
9. I note the points made about condition 2 on the 2021 permission which required the development to be carried out in accordance with the plans listed within that condition. The use of cedar cladding was detailed on those plans. However, even if I set aside the fact that the as-built building is not the same as that granted planning permission, the terms of condition 2 would not have controlled any future changes to the external appearance of the building once it had been completed.
10. The as-built building does not have a green roof, though the appellant proposes to install one as per the 2021 permission. Plans submitted as part of the appellant's case on this ground show the green roof. A planning condition could be imposed to ensure that a suitable scheme is submitted, approved and installed as it would help assimilate the building further into its verdant, spacious garden setting.
11. For these reasons, the proposal does not harm the large, attractive verdant rear garden of the appeal property as it continues to make a positive contribution to the important group of villas, and thus the historic and architectural character and appearance of the Conservation Area. As such, the

proposal preserves the character and appearance of the Conservation Area and it accords with Policies CL1, CL2, CL3, CL6 and CL11 of the Local Plan, September 2019. These policies seek, among other things, development of the highest architectural and urban design quality that respects existing context, the character and appearance of the area and the way it functions so that it preserves or enhances the character or appearance of the Conservation Area.

Conditions

12. As I found the deemed planning application to be acceptable in planning terms, and my assessment is based on what is currently on site an approved plans condition would not be necessary. Given the existing trees and shrubs within the rear garden, I do not consider a landscaping scheme to be necessary. I do, however, consider conditions to be necessary and reasonable to control any noise and vibration from any plant and vents in the interests of neighbouring residents living conditions. Given that the as-built building has already been carried out, a condition requiring the submission of a scheme for a green roof and to secure sustainable drainage system and flood risk measures is necessary in the interests of preserving or enhancing the Conservation Area, and to reduce the risk of localised flooding. I have amended the version suggested by the appellant to satisfy the six tests, given that the garden gym building has already been built.

Conclusion

13. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a garden gym building in the rear garden as described in the notice. The appeal on ground (f) and (g) does not therefore fall to be considered.

Andrew McGlone

INSPECTOR