



# 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: 15 September 2023**

**Appeal Ref: APP/K5600/C/22/3312364**

**10 Rutland Mews South, London SW7 1NZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Claud Cecil Gurney of De Gournay LTD against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
- The notice, numbered ENF/20/07069, was issued on 26 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, the installation of solar panels at roof level.
- The requirements of the notice are to:
  - I. remove the solar panels and all associated structures, screening, fixtures and fittings from the roof and make good.
  - II. remove from the land any debris associated with the above requirement.
- The period for compliance with the requirements is nine calendar months from the date on which the notice becomes effective.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

## Decision

1. It is directed that the enforcement notice is varied by:
  - deleting the words from paragraph 5 I of the notice and substitute them for "removal of 3no solar panels and setting back of 3no solar panels on the western side of the roof slope, lower the remaining solar panels and associated structures, screening, fixtures and fittings so that the overall height of the solar panels are no higher than 0.2m from the slope of the roof, notwithstanding the roof lantern, as shown on plan Refs: A3-01, dated 02.08.2022; A3-02; and A3-03, dated 18.01.2023."
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Application for costs

3. An application for costs was made by Mr Claud Cecil Gurney of De Gournay LTD against the Council of the Royal Borough of Kensington and Chelsea. This application is the subject of a separate decision.

## Preliminary Matter

4. Ground (c) relates to the development present when the notice was issued. The appellant confirms that the solar panels currently on the roof are not permitted development, and no planning permission has been considered or granted in respect of them. Therefore, I do not consider that there is a ground (c) to consider in this case.

### **The appeal on ground (a) / the deemed planning application**

5. The main issue in respect of the appeal under ground (a) is whether the proposal preserves or enhances the character or appearance of the Brompton Conservation Area ("the Conservation Area").
6. 10 Rutland Mews South is a three-storey mews property identified as a 'positive' building in the Brompton Conservation Area Appraisal. The property forms part of the mews which were built hard up to the rear elevations of cottages lining Rutland Street. This means that neither row of properties have a garden or yard. Buildings in the mews have been altered through render, paint, changes to their fenestrations and by being extended upwards so that they appear as houses rather than the stabling they were originally. However, some historic features remain, and they help retain the historic character of the group, which changes direction part way along the street, causing some buildings to be stepped back, some buildings to be angled or have corners projecting. This creates a tight packed urban grain.
7. The mews collectively have a charming, informal back street feel to them compared to busier parts of the Conservation Area, which contains a range of building styles, scales and designs from different periods. The significance of the Conservation Area derives from the traditional techniques and materials used to create architectural detail and historic roof forms that remain today. The appeal property positively contributes to the historic and architectural character and appearance of Conservation Area.
8. The 18 solar panels on the roof of the appeal property cover most of its flat roof. They are arranged into rows and positioned at the optimum angle and height to provide maximum solar gain. However, as a result, they angle visibly upwards from the property's flat roof and their modern form of development jars with the historic and straightforward architecture of the flat roofs of the mews. The solar panels are particularly evident when viewed from various vantage points on Rutland Street and around its junction with Fairholt Street.
9. The multiple tall aeries attached to the cottages lining Rutland Street and the properties on Rutland Mews South have a slim profile. They also appear to have been present for some time and I do not know how they came to be. They do not reduce the harm that the solar panels cause to the Conservation Area, regardless of whether I consider private views or not.
10. Irrespective of whether I consider private views or not, the harm to the significance of the Conservation Area would be less than substantial. I afford great weight and importance to its conservation as it is an irreplaceable resource. The less than substantial harm should be weighed against the public benefits of the proposal. However, before doing so, a fallback scheme is advanced by the appellant.
11. The appellant's fallback scheme was granted planning permission by the Council in April 2023 ("the planning permission"). This scheme involves removing three solar panels, repositioning the remaining solar panels and lowering the solar panels so that they are no higher than 20cm above the flat roof of the appeal property. Given the planning permission and the development already carried out, there is a real prospect of that scheme taking place. However, the fallback scheme would be less harmful to the Conservation Area than the solar panels in situ. This is because there would be fewer solar

panels, those closest to Rutland Street would be removed, and the remaining panels would all be lower in height and at a lower angle. As such, they would be less evident from Rutland Street and its junction with Fairholt Street and not at all from Rutland Mews South or the vista from Ennismore Street. Hence, the fallback scheme does not justify the harm caused by the 18 solar panels.

12. The 18 solar panels provide a renewable energy resource to help meet the appeal property's energy demand. They accord with the objectives of the Council's Greening Supplementary Planning Document (SPD) which is broadly supportive of solar panels in Conservation Areas, subject to the visual effects being limited. However, the energy created by the solar panels for the appeal property is a private benefit, and while some energy may be exported to the National Grid for public use, this has not been quantified. Therefore, in these circumstances, I give this public benefit modest weight. Further points about the solar panels being of robust design and not increasing the risk of crime are not public benefits as they are general expectations of development.
13. The public benefit does not outweigh the less than substantial harm that the 18 solar panels cause to the significance of the Conservation Area. Accordingly, I conclude that the proposal does not preserve or enhance the character and appearance of the Conservation Area. The fallback scheme advanced does not outweigh that harm nor does the public benefit. As such, the proposal is contrary to Policies CL1, CL2, CL3, CL5, CL6, CL8 and CL11 of the Local Plan, September 2019, London Plan Policies HC1 and CG6 and paragraph 202 of the National Planning Policy Framework. Collectively, these policies seek development to preserve and to take opportunities to enhance the character and appearance of the Conservation Area and protect the special architectural or historic interest of the area and its setting. Roof alterations are required to be architecturally sympathetic to the age and character of the building and group of buildings. Where less than substantial harm is caused, this is to be weighed against the public benefits of the proposal.

### **The appeal on ground (f)**

14. In this case, the notice requires the removal of the 18 solar panels in their entirety together with all associated structures, screening, fixtures and fittings. This is consistent with the purpose of remedying the breach of planning control in accordance with section 173(4)(a) of the Act, the breach being comprised of the 18 solar panels in their entirety.
15. The appellant says that the requirements of the notice are onerous and disproportionate to the level of harm created. Planning permission now exists for 15 solar panels, at a reduced height and angle to the solar panels subject of the notice. I am mindful that enforcement action is intended to be remedial rather than punitive. While the appellant cannot claim permitted development rights retrospectively in respect of any part of the development already carried out, s173(4)(a) sets out that the breach can be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land.
16. The planning permission represents a realistic alternative scheme for the appellant given that they form part of the same matters which are subject of the notice. In these circumstances, allowing the appellant to reduce the number of solar panels, their height, position and angle is an obvious alternative, which would essentially achieve the same outcome as the appellant

carrying out the planning permission after having removed the solar panels in situ, but with less cost and disruption. Therefore, I consider the requirements of the notice to be excessive.

17. Details of the planning permission granted by the Council are before me. I have also had regard to the appellant's suggested wording, which I have modified to reflect the plans approved as part of the planning permission. I will therefore correct/vary the enforcement notice to this effect. For these reasons, the appeal on ground (f) succeeds.

### **Conclusion**

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Andrew McGlone*

INSPECTOR