



Appeal Decision

Site visit made on 13 November 2023

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 January 2024

Appeal Ref: APP/H5390/C/22/3306657

839 Fulham Road, London SW6 5HQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Ms Kristina Kumi against an enforcement notice issued by London Borough of Hammersmith and Fulham.
- The enforcement notice, numbered 2021/00636/CONDS, was issued on 12 August 2022.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 2020/02938/FUL granted on 18 January 2021.
- The development to which the permission relates is:
Erection of a single storey rear conservatory extension at upper ground floor level to the side of the existing back addition; and repositioning of 2no existing air conditioning units on the side elevation at upper ground floor level.
- The conditions in question are Nos 2 and 4 which state that:
Condition 2
The development shall not be erected otherwise than in accordance with the detailed drawings which have been hereby approved.

And

Condition 4

The remaining portion of the flat roof of the ground floor addition, shall not be converted into or used as a terrace or other open amenity space. No alterations shall be carried out; nor planters or other chattels placed on the roof, in connection with its use as a roof terrace or other form of open amenity space. No railings or other means of enclosure shall be erected around the roof and no alterations shall be carried out to the rear elevation of the application property, including the rear extension hereby approved to form an access onto the roof.

- The notice alleges that condition 2 has not been complied with in that:
The depth of the as-built conservatory is deeper than shown on the approved drawings.

And

- The notice alleges that the condition 4 has not been complied with in that:
Patio doors have been inserted into the rear wall of the conservatory.
- The requirements of the notice are:
A. Rebuild and reduce depth of the conservatory in accordance with the approved drawings of planning permission ref. 2020/02938/FUL

AND

B. Remove the patio doors on the rear wall of the rear conservatory and replace with fixed glazing.

OR

C. Install a Juliette balcony [*sic*] to the patio doors on the rear wall of the rear conservatory to prevent access onto the flat roof of the existing lower ground floor rear extension.

- The period for compliance with the requirements is:
Four (4) 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. 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations and correction in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

i) At Section 5 of the notice, delete the following words:

A. 'Rebuild and reduce depth of the conservatory in accordance with the approved drawings of planning permission ref: 2020/02938/FUL'.

And replace with the following words:

A. 'Rebuild and reduce depth of the existing single storey rear conservatory extension and rebuild it in accordance with the approved drawings of planning permission ref: 2020/02938/FUL'.

ii) At Section 5 of the notice, delete the following words:

'AND

B. Remove the patio doors on the rear wall of the rear conservatory and replace with fixed glazing.

OR

C. Install a Juliette balcony [sic] to the patio doors on the rear wall of the rear conservatory to prevent access onto the flat roof of the existing lower ground floor rear extension.'

And replace with the following words:

'OR

B. Rebuild and reduce depth of the existing single storey rear conservatory extension and rebuild it in accordance with the approved drawings of planning permission ref: 2020/029389/FUL with additionally the installation of a Juliette balcony to the patio doors on the rear wall of the rear conservatory to prevent access onto the flat roof of the existing lower ground floor extension.'

2. It is directed that the enforcement notice is corrected by:

i) At Section 6 of the notice after *'The steps specified in...'* delete the words *'paragraph 4'* and replace with the words *'Section 5'*.

3. Subject to the variations and correction, the appeal is dismissed, 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.

The enforcement notice

4. The notice stems from the appellant deviating from plans previously approved¹ (the 2020 scheme) for the erection of a single storey rear conservatory extension at upper ground floor level at 839 Fulham Road. As built, the

¹ LPA Ref No: 2020/02938/FUL

conservatory is larger than that shown on the approved plans and incorporates a triple-panel bi-fold door on its rear elevation which is capable of providing access to the remaining area of flat roof beyond the extension. Internally, the layout as-built differs from the approved 2020 scheme with changes to the point of access to the conservatory extension.

5. The notice alleges a breach of conditions 2 and 4 of the 2020 scheme in constructing the extension other than in accordance with the approved plans (condition 2), and by altering the rear elevation of the approved rear extension to form an access onto the roof (condition 4). The latter condition seeks to prevent the use of the remaining portion of flat roof beyond the extension as a roof terrace or 'open amenity space' and to also restrict alterations to the rear elevation of the appeal property, including the (approved) rear extension, that would otherwise allow access to that area of flat roof. I have been provided with copies of the approved plans and elevations from the 2020 scheme² and the 'as-built' plans and elevations³.
6. The notice's requirements are set out in three parts, as described in the banner heading, above. The first requirement (A.) is reasonably straightforward in requiring the conservatory to be reduced in depth and rebuilt in accordance with the approved drawings of the 2020 scheme. I have however set out revised wording so that it more accurately reflects the development description given to the permitted 2020 scheme.
7. The notice as written requires the steps set out in A. (and as varied herein) to be taken **AND** those set out at B. to '*remove the patio doors on the rear wall of the rear conservatory and replace with fixed glazing*', **OR** at C. to install a Juliette balcony '*to the patio doors on the rear wall of the rear conservatory to prevent access onto the flat roof of the existing lower ground floor rear extension*'. As condition 4 seeks to prohibit alterations to the building's rear elevation, including 'the rear extension', to form an access to the flat roof, it would be logical to assume that this means its end elevation where the bi-fold patio doors have been installed. Access to the flat roof would be possible from this point, albeit not so at the time of my site visit, where tables and furniture were laid out for patrons. Nevertheless, compliance with requirement A. would negate the need for requirement B. as the 2020 scheme's approved plans indicate fixed glazing panels in this location. Thus, requirement B. is superfluous in the context of requirement A.
8. The notice's third requirement (C.) refers to a 'Juliette balcony', albeit clearly this is intended to read as the installation of a 'Juliette balcony'. No balcony was shown on the approved plans from the 2020 scheme but was offered by the Council in the notice as an alternative treatment of the conservatory's end elevation. To strike out this element of the notice's requirement at the appeal stage would result in a more onerous notice. I therefore propose to vary the notice and delete requirements B. and C. as written in their entirety and replace with a reworded requirement B. As this would still prevent access to the flat roof it is consistent with the purposes of condition 4 of the permitted 2020 scheme.

² Drawing Nos: 1107.01.03 Rev C and 1107.01.04 Rev C as set out on the decision notice for the 2020 scheme

³ Drawing Nos: 1107.01.07 Rev A and 1107.01.08 Rev A

9. Finally, the notice's requirements as originally set out, and subject to the variations set out above, are detailed within section 5 of the notice whilst section 6 of the notice sets out the time for compliance with those requirements. However, section 6 incorrectly refers to the required steps being set out in paragraph 4., rather than 5., of the notice. I shall correct the notice accordingly.

Background and Main Issue

10. Planning permission was granted in January 2021 (the 2020 scheme) for the construction of a ground floor extension at the rear of the appeal property. The extension, essentially a glazed conservatory, was intended to enclose the lightwell in the angle of the property's rear elevation and flank elevation of a taller rear outrigger, and the outrigger of the neighbouring building. The Council's officer report from that application made clear on a number of occasions that the extension was an infill extension and that it would not project beyond the return of the existing outrigger (at this point, flat roofed and single storey) at the adjoining property (841 Fulham Road).
11. The extension as built extends further than the approved scheme, and beyond the outrigger at No. 841, returning just within the rear corner of the host property's outrigger. As well as internal changes to the layout of the conservatory and the point of access to it from the main building, the extension's rear elevation has been fitted with a rear door. Whilst the as-built plans show only a single, centrally positioned, door, I noted at the time of my visit to the site that this rear door is in fact a triple-panel bi-fold door.
12. The 2020 scheme also included the relocation of two air-conditioning units. Neither the reasons for issuing the notice nor the notice's requirements make reference to the air-conditioning units and I have no reason before me to conclude that they have not been relocated other than in accordance with the permission granted for the 2020 scheme. It is not therefore necessary for me to consider this element of the 2020 scheme in any more detail.
13. The appeal property is located in a mid-terrace location adjoining a corner property (No. 841) which turns the corner from Fulham Road to Dancer Road. The adjoining property at No. 841 is formed of a number of residential flats, of which one, Flat 6, is a basement flat. A dental practice also appears to occupy part of the ground floor of the adjoining building. The basement flat has a small courtyard set below, but immediately adjacent to, the appeal property and the extension the subject of this appeal. Windows to two bedrooms, and fully glazed sliding patio doors to the main living area, face out to the basement courtyard area.
14. The deemed planning application contained within the ground (a) appeal is a retrospective one, to carry out the original development as described in the banner heading above, without complying with the particular conditions enforced against. Thus, having regard to the above and taking into account the reasons for issuing the notice, the main issue is the effect of the single storey rear conservatory extension on the living conditions of occupiers of the neighbouring residential flats, and particularly the lower ground floor (basement) flat at 841 Fulham Road (hereafter, Flat 6), with particular regard to outlook, privacy, daylight and noise and disturbance.

Reasons

Outlook

15. Flat 6 is a basement flat set at a lower level relative to the conservatory extension at No. 839. The basement courtyard area that serves Flat 6 is heavily constrained on all sides, with multi-floor buildings on two sides and above its rear elevation. The elevation of No. 839 that it faces towards is, with the exception of the conservatory extension, single storey and flat roofed and (presumably) forms a lower ground floor or basement area below No. 839.
16. The conservatory extension projects across a sizeable portion of the gap between the two elevations that flank the basement courtyard and frame the outlook from that flat. I accept that it does not project further rearwards than the existing outrigger at No. 839, but it does so in relation to that of No. 841 and it brings the vertical face of an additional storey much closer to the rear, and courtyard, of Flat 6.
17. I accept too, that the existing arrangement of outriggers around the rear of Flat 6 combine to compromise the extent of that property's outlook. However, it is as a result of a combination of all these factors that the additional effects of the conservatory extension upon the outlook from the rear of Flat 6 are materially harmful to the outlook, and thus the living conditions, enjoyed by occupiers of Flat 6. Whilst I have noted the appellant's application of the tests set out in the Council's 'Planning Guidance' Supplementary Planning Document (2018) (SPD) key principles HS4, HS6 and HS7, I am not persuaded that the particular circumstances of the appeal site and Flat 6, and the physical relationship between them, are particularly comparable to the tests set out therein.

Privacy

18. The effects of the installation of the patio doors on the privacy enjoyed by occupiers of neighbouring properties is cited by the Council in the context of those doors being capable of providing access to the flat roofed area. Given the close relationship between the flat roofed area accessible via the bi-fold doors and, especially, the windows and basement courtyard area of Flat 6, I share the Council's concern in this respect, should those doors be used to access the flat roofed area, and for it to indeed be used in such a manner.
19. However, at the time of my visit to the site, the conservatory's internal area was laid out in such a manner that access to, or through, the doors was prevented by tables and seating. Externally, the flat roof area appeared to be being used for storage purposes, including pieces of extract and ventilation ducting, and a number of air-conditioning units (both wall and roof mounted). Nor was the flat roof surfaced in a material that would suggest wider access for patrons and diners. In this condition, it does not strike me as particularly likely that it would be used extensively, if at all, for patrons and dining. However, that access nevertheless remains possible and is seemingly used for storage purposes indicates to me that access to the roof is intended in some manner. In so doing, it is inevitable that the privacy of occupiers of Flat 6, both in terms of the basement courtyard and the habitable rooms off it, would be harmfully compromised as people, whether staff or patrons, walk past at such close quarters.

20. As it extends beyond the return of the flank elevation of the outrigger at No. 841, the conservatory's flank elevation is fitted with a heavily obscured glazing panel such that it prevents overlooking between the conservatory's interior and Flat 6. However, the greater projection of the conservatory brings its rear elevation closer to one of the bedroom windows at Flat 6. Direct overlooking, at very close quarters and from an elevated position, between the end elevation windows of the conservatory and this bedroom window would be both inevitable and unavoidable and would be harmful to the living conditions of occupants of Flat 6.
21. Additionally, whilst the side-facing window is heavily obscured it was clear to me that the shadows and impressions of patrons sat close to the window would still be evident from within Flat 6. After dark, this conservatory is also likely to be a significant source of illumination with shadows remaining a visible reminder of activity to those residents neighbouring the site. Whilst not resulting in actual overlooking, the use of the additional area of the conservatory and the presence of patrons within it is nevertheless keenly felt from, and by occupiers of, Flat 6. This serves as a direct reminder to those occupiers of the conservatory's presence and use, to an extent that would not have arisen from the approved scheme, thereby leading to a further sense of a loss of privacy. Whilst I have noted the appellant's application of the tests set out in SPD key principle HS7, this does not overcome the findings of harm described above from my observation of the site and the particular context of its surroundings.

Daylight

22. The existing upper floor elements of No. 841 surrounding Flat 6 are already significant factors in the levels of natural daylight received by that property at its rear. So too, the lower ground floor element of No. 839 and the rear outrigger to that property. Nevertheless, the additional projection of the conservatory, so close to and above Flat 6, further adds to the sense of enclosure experience from within, and from its basement courtyard.
23. Whilst the additional sense of enclosure described above is unlikely, in the context set out, to result in direct overshadowing or impact upon sunlight received at the rear of Flat 6, its height and proximity to the rear of the basement flat would nevertheless compound the shaded and recessed nature of this area. The harmful effects of the extension upon natural daylight received at Flat 6 adds weight to my conclusions in respect of its effect upon good neighbourliness and the living conditions of occupiers of this neighbouring property.

Noise and disturbance

24. The Council's concern, and reason for issuing the notice, in relation to the impact of noise and disturbance upon the living conditions of neighbours appears to stem from the potential use of external area of the roof. The conservatory as built, by virtue of the inclusion of the bi-fold doors on its rear elevation, means that this area is accessible from the conservatory where under the approved 2020 scheme it was not readily so.
25. Whilst the roof material of the flat roof suggests that it has not been used, regularly at least, in such a manner, the proximity of this area to the adjacent basement flat is such that its use would inevitably lead to additional noise and

disturbance experienced by occupiers of that property should it be so. Rather, this space appears to be used for miscellaneous storage, with ventilation and extract ducting and air conditioning units which suggests occasional staff, rather than patron, access is more likely.

26. Nevertheless, use of, and access, to this area by staff would inevitably result in a degree of overlooking of the rear windows and courtyard of Flat 6. Whilst the appellant states that access is necessary for the purposes of maintenance and fire safety, no further explanation of either matter has been provided. I am not persuaded that sufficient justification has been demonstrated for occasional access to this area via the conservatory extension to justify the harm that would arise to the living conditions of occupiers of Flat 6 arising from noise and disturbance.

Conclusion on the appeal under ground (a)

27. Thus, taking these particular matters together, the conservatory as-built fails to respect the principles of good neighbourliness collectively set out within Local Plan (2018) Policies HO11, DC4, CC11 and SPD key principle HS8. Whilst I have noted that the appellant has assessed the appeal scheme against the provisions of SPD key principles HS4, HS6 and HS7, these were not policies or principles cited within the notice. Nevertheless, elements of these key principles inform those of good neighbourliness.
28. I accept that the conservatory extension as-built does not project beyond the building line of the rear of the outrigger at the appeal property. I note too, that a significant proportion of the existing flat roof remains open. Furthermore, as a small and largely infill extension, it is visually subservient to the scale of the main building. However, the absence of conflict with elements of these policies and principles is not sufficient to overcome the harm that I have identified above and the appeal on ground (a) should therefore fail.

Conclusion

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

G Robbie

INSPECTOR