



Appeal Decision

Site visit made on 5 December 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08th January 2024

Appeal Ref: APP/K5600/C/22/3310763

Land at Basement Flat A and Ground Floor Flat B, 9 Holland Road, LONDON, W14 8HJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Kitty Mason against an enforcement notice issued by the Royal Borough of Kensington and Chelsea.
- The notice, numbered ENF/21/06712, was issued on 20 October 2022.
- The breach of planning control as alleged in the notice is 'Without planning permission, the installation of a balustrade and air conditioning unit on the flat roof of the rear lower ground floor extension'.
- The requirements of the notice are to:
 - i) Remove from the land the timber and plastic balustrade in full, consisting of the plastic panels and timber vertical and horizontal framing.
 - ii) Remove from the land the air conditioning unit in full, including any associated fixtures and equipment.
 - iii) Remove from the land any resulting debris.
- The period for compliance with the requirements is: Four calendar 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.

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 installation of a balustrade and air conditioning unit on the flat roof of the rear lower ground floor extension at basement Flat A and ground floor Flat B, 9 Holland Road, London W14 8HJ as shown on the plan attached to the notice and subject to the following condition:
 - (1) Noise emitted by the air conditioning unit shall be -10dBA below the existing measured lowest LA90(15min) background noise level at any time when in use, where the plant noise source is tonal it shall be -15dBA. The noise emitted shall be measured or predicted at 1.0m from the facade of the nearest residential window or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The equipment shall be serviced regularly in accordance with manufacturer's instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is unable to comply with this Condition, it shall be switched off and not used again until it is able to comply.

Preliminary Matter

2. On 19 December 2023, the Government published a revised National Planning Policy Framework (the Framework). In the interests of natural justice both main parties have had the opportunity to submit comments on the relevance of the Framework to this case. No further comments were received, however, in reaching my decision I have had regard to the revised Framework.

The Deemed Planning Application

Main Issues

3. The main issues are the effect of the development on the character and appearance of the locality and the living conditions of nearby residents.

Reasons

4. The site is part of an extensive Victorian terrace to the western side of Holland Road, close to its junction with Kensington High Street. The terrace is set behind enclosed front gardens or lightwells serving basement level accommodation. Private gardens lie to the rear of the terrace. This section of Holland Road and Russell Road, which backs on to the site, are mainly in residential use.
5. 9 Holland Road provides accommodation over multiple floors. The basement is a children's day nursery. A single storey flat-roofed extension covering about half of the rear part of the plot provides additional floor area in conjunction with that use. The ground and upper floors provide for 3 residential flats.
6. The flat roof of the basement extension has been edged with clear plastic panels supported by a timber framework. A standard air-conditioning unit has been sited on the roof, towards the rear end of the extension.
7. The roof area features a modest garden storage box, decorative iron railings and various planters and pots for vegetation. In the context of the surrounding domestic gardens, such paraphernalia is not uncommon.
8. The clear plastic balustrade and timber framing appear as a lightweight structure which substantially allows views through. Its overall height is similar to lattice screen fencing along the common boundary with 7 Holland Road and on the rear boundary with properties fronting Russell Road. Although visible in its elevated position from the nearest properties, the visual effect is limited – being seen against, or partially screened by, the nearby existing boundary treatments.
9. The enclosure differs from the iron railings along balconies integrated with the main terraces. However, in the context of more varied means of enclosure between and within the rear garden areas, and the contrasting modern design of the rear extension, the muted appearance of the balustrade has a limited effect.
10. The single domestic replacement air-conditioning unit is modest in scale. Although visible through the clear balustrade from the north, it is at some distance from the rear facades of the terraces. Along with some screening by the potted plants, it will not dominate or overbear on views. In the context of other units visible to the rear of the hotel nearby, the more domestic scale and finish of the unit does not appear incongruous in the locality.

11. The enclosure of the site by the terraces fronting Holland Road and Russell Road, and a hotel fronting Kensington High Street to the south, ensure that views into the rear garden of no.9 are significantly limited. The development therefore has no material effect on the street scenes of those bordering roads or the wider townscape.
12. There is no dispute between the main parties that the roof can be accessed and used for incidental purposes. Whilst the balustrade will inevitably enhance safety in doing so, it does not necessarily follow that it would give rise to any increase in the use of the terrace such that a material effect on the living conditions of neighbouring residents would arise. Intervisibility between the roof and surrounding flats and gardens substantially remains unchanged. There is no increase in usable floorspace. Therefore, any degree of overlooking or effect on privacy will be substantially unchanged.
13. For the above reasons, I find that the development aligns with the requirements of Policies CL1, CL2, CL6 and CL11 of The Royal Borough of Kensington and Chelsea Local Plan [2019] (the KCLP) as they seek development to respect its local context, avoid harm to the character or appearance of characteristic types of buildings and the surrounding area, and avoid adverse effects on views. It complies with Policy CL5 of the KCLP in that no greater degree of overlooking will arise on account of the development that has taken place.
14. For similar reasons, it meets the requirements in the National Planning Policy Framework (the Framework).

Other Matters

15. I note the concerns of neighbouring residents in relation to the retrospective nature of the appeal regarding development already carried out. However, the provisions of the TCPA 1990 provide for that circumstance. It does not affect my assessment of the planning merits of the development.

Conditions

16. I have considered the conditions suggested by the Council alongside the advice in the Framework and Planning Practice Guidance. A condition limiting the level of noise generated by the air conditioning unit is reasonable in the context of surrounding residential development. The wording has been altered to clarify that it pertains only to the development subject of the appeal. A condition requiring anti-vibration mounting is unnecessary given the unit's position away from third party properties. Any noise arising from vibration will be captured by the first condition.

Conclusion

17. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the balustrade and air conditioning unit on the flat roof of the rear lower ground floor extension as described in the notice.

R Hitchcock INSPECTOR