



Appeal Decision

Site visit made on 12 March 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 April 2024

Appeal Ref: APP/K5600/C/23/3322856

11 Ruston Mews, London W11 1RB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ciaran Flynn against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
 - The notice, numbered ENF/21/04145, was issued on 18 April 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of timber railings and fixed planters to the perimeter of the main flat roof.
 - The requirements of the notice are to: i) Remove from the land all of the timber railings and fixed planters including any associated fixtures and fittings; ii) Remove from the land any resulting debris.
 - The period for compliance with the requirements is: 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the Act). 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.
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Decision

1. 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 appeal on ground (a) and the deemed planning application

Main Issues

2. The main issues are the effect of the development on:
 - i. the character and appearance of the property and terrace; and
 - ii. the living conditions of the occupants of neighbouring properties in terms of privacy.

Reasons

Character and appearance

3. The appeal relates to a two-storey dwelling in a gated mews community comprising two, three and four-storey terraced dwellings along a narrow private no-through road. The appeal property (No. 11) sits towards the end of the mews among properties with similar architectural detailing on the south side. Properties on the north side are of later construction having been built in the 1970s. No. 11 has a mansard roof, similar to other properties along the

south side of the road, with glass doors to the front which provide access to a small terrace with an obscured glass balustrade.

4. The flat roof above provides further outdoor amenity space, albeit with a larger floor area. The outer limits to the flat roof outdoor space are demarked by a low parapet wall on the common boundaries with neighbouring properties. Horizontal rails run above the parapet wall to each side. To the front and rear, rectangular planters are attached to the inside of the rails. The planters are approximately 1m in height and protrude slightly above the height of the top rail. The rails and the planters, of which there are eight (four to the front and four to the rear), are constructed of plain slatted timber and painted grey to match the exterior façade of the house.
5. The timber railings and planters, due to their position on the edge of the flat roof top, are visible from the public domain and will be visible from some of the closest neighbouring properties. When viewed from the street below, they appear as an anomaly, cluttering the otherwise simplistic uniform roofline of the row of attractive mews properties. The planters are cumbersome and together with the timber railings, do not complement the traditional architectural style of the building or its neighbours. This is predominantly due to the design and materials which I consider to be visually unsympathetic to the quality and character of the mews properties.
6. The appellant has provided photographs to show examples of roof terraces in the locality, and during my visit I noted instances where similar development had occurred. It is apparent that some of the terraces have a similar style of perimeter development in the form of planters and others display simpler railings reflecting design elements on the front elevations of the properties. Some are undoubtedly more aesthetically successful than others. Nevertheless, I am not fully aware of the circumstances of these cases, or their planning status, and their presence does not outweigh the harm I have identified through the design and use of materials for the appeal development.
7. I acknowledge that the appellant has expressed their willingness to consider an alternative design however, there is nothing before me to show if a modified scheme might be considered acceptable and whether such a scheme could overcome the harm that I have identified.
8. I conclude that the development is visually harmful to the character and appearance of the host property and the terrace. There is conflict with Policies CL1, CL2, CL6, CL8 and CL11 of the of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (2019) (the LP) which, among other things: seek to ensure that development is of high quality; responds to local context, existing character and appearance; is architecturally sympathetic to the age and characteristics of the building and group of buildings; and protects and enhances views, vistas, gaps and the skyline that contribute to the character and quality of the area.

Living conditions

9. The flat roof has been used for outdoor amenity space since the appellant moved to the property in 2013. The previous 'safety barrier' being a perimeter wire that remains in situ, albeit at a lower level than the railings. Although there is no dispute that the roof has been used for private outdoor amenity space, the Council considers that the railings and planters facilitate the use of

the entirety of the flat roof as a terrace. This is considered to allow for a greater opportunity for overlooking and thus a greater loss of privacy to the occupants of some neighbouring residential properties. This is particularly so given the proximity of neighbouring properties on Lancaster Road to the rear.

10. While there would be an element of overlooking towards properties on the north side of the mews, the recent development of additional floors on some of the properties has elevated the height of the building and I consider there to be no further impact on the living conditions of those occupants.
11. Clearly, the railings and planters provide a more substantial physical perimeter boundary and therefore a safer environment for the appellant and their family. Therefore, it is possible that the development would enable more of the roof space to be used. While the previous lower boundary perimeter wire may have resulted in the user remaining further back from the edge of the roof, I consider that this would still have allowed extensive views across neighbouring properties which would have had an impact upon privacy.
12. The use has subsisted for several years, and it is considered that placing the railings and planters to the edge of the roof would not result in an increased loss of privacy for the occupants of neighbouring properties. The use of the amenity space will probably continue and the opportunity for overlooking neighbouring properties will remain.
13. I am also mindful that the arrangements for access to the open roof space are via a steep pull-down ladder and through a hatch in the ceiling. This, I consider, makes it less immediately accessible and useable than the existing balcony space within the front plane of the mansard roof to the front of the building.
14. Overall, regarding the context of the appeal site and the existing use of the roof space, I consider that the living conditions of the occupiers of neighbouring properties would not be significantly harmed by the development. In this respect there is no conflict with Policy CL5 of the LP which aims to retain reasonable visual privacy for occupants of existing properties.
15. The appeal on ground (a) therefore fails.

S A Hanson

INSPECTOR