



Appeal Decision

Site visit made on 13 July 2026

by **Peter White** BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2026

Appeal Ref: APP/K5600/C/23/3328929

Land at Flat 5, 69 Oxford Gardens, London W10 5UJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Ms Jane McEvoy against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
- The notice was issued on 1 August 2023.
- The breach of planning control as alleged in the notice is: without planning permission, alterations to the rear dormer and construction of a raised balcony.
- The requirements of the notice are:
 1. Remove the door and balcony and reinstate the dormer window to restore the land to its former condition before the unauthorised works were carried out, and
 2. Remove all associated debris from the land.
- The period for compliance with the requirements is: 3 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) ("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.

Summary of decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. In July 2024 the Council adopted the Royal Borough of Kensington and Chelsea New Local Plan Review ("LP 2024"). I have taken into account the comments made by the parties accordingly.
2. A retrospective planning application (reference PP/23/01155) was made to the Council for the works and was refused in May 2023. That matter is not before me.

Main Issues

3. The main issues are the effect of the development on:
 - The character and appearance of the area; and
 - The living conditions of neighbouring residents, with respect to privacy.

Character and appearance

The Conservation Area

4. The Land lies within the Oxford Gardens-St Quintin Conservation area ("CA"), and I have a statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
5. Oxford Gardens is a wide road and a tree-lined avenue. Either side large residential houses from the mid to late 19th century stand behind small front gardens enclosed

by low walls and hedging or other foliage. On this part of Oxford Gardens, the majority of the houses are of similar design, with stucco rendered facades and gault brickwork, slate roofs and large chimneys, with steps up to the front doors on the ground floor and facing brick on the rear elevations.

6. With the information before me, the significance and special interest of the CA, and particularly its Early St. Quintin area, is associated with the residential development of large houses for wealthy families in the mid-Victorian era. Architectural uniformity and classical detailing provide ornate buildings with strong group value.
7. At the rear of properties on this part of Oxford Gardens there has been significant adaption and use of flat roofed areas at first and second floor levels. Most comprise paving of the surface and the installation of railings around existing parapet walls.

The development

8. 69 Oxford Gardens ("No 69") has been converted into flats, and Flat 5 is on the top floor, in the roofspace.
9. With the information before me, the rear-facing dormer window was originally added in the 1990s. Part of the alterations consisted of the replacement of the window within the dormer structure with a balcony door. The Council are concerned that the altered dormer is higher than adjacent dormers, but the appellant disputes that and the evidence before me, including my site visit, suggests that the height of the dormer structure has not changed, although its roof has been replaced with a fibreglass roof covering.
10. The other part of the alterations is the removal of a section of roof tiles and the formation of an external platform at around eaves level, which the Council and the appellant describe as a balcony. A low barrier of composite decking with a lead flashing exterior stands at the roof edge, and although its low height offers only limited protection against falls, no other barrier is before me for consideration. Light coloured composite decking extends across the floor and sides of the platform, and its rearmost parts will be seen over the barrier from the rear of buildings on Cambridge Gardens.

The effect of the development

11. Despite the general uniformity of building design from the street, there is more variation at the rear. There has been less variation at roof level, and those changes made have generally consisted of dormer windows and rooflights with relative consistency in terms of character, but variation in detailed design.
12. Although dormer windows set within slate roofs are a common feature of buildings on Oxford Gardens, and to a lesser extent on Cambridge Gardens, I saw no other example of a balcony inset into the roof.
13. The development is not visible from the street, and narrow gaps between the detached buildings on Oxford Gardens and the semi-detached buildings to the rear on Cambridge Gardens provide no significant views of the rear of No 69 from public areas. There are, nevertheless, clear private views from the rear of buildings on Cambridge Gardens.
14. The photograph provided by the appellant shows the overall visual effect of the development is relatively limited. The low level of the barrier and its external

cladding with dark grey material mean it is not obtrusive, and its colour reflects that of the roof tiles and the dormer roof structure. The lower parts of the patio doors are obscured from view by the barrier, and the metal surrounds provide narrow frames that in some ways reflect those of the traditional timber windows remaining in No 69 and neighbouring buildings.

15. The composite boarding is not reflective of the greys and whites found elsewhere on the roofs of buildings on Oxford Gardens and Cambridge Gardens, and its bright colour is an alien feature in this location. Although only the top rail along the barrier and the rearmost vertical parts will be visible in most views, there will also be some views from the dormer window of the adjoining property.
16. Overall, some elements of the development are relatively discreet and respect the overall character and appearance of the area, but the light coloured composite boarding does not reflect the original materials of the roof or its original form. It contrasts and conflicts with the appearance of the roof and the building, and the character of the area generally.
17. The development therefore results in less than substantial harm, in the terms of the National Planning Policy Framework (“the Framework”), fails to preserve the character and appearance of the CA and its significance, and harms the special architectural and historic interest of the area. Consequently, it conflicts with the relevant parts of The London Plan (2021) (“TLP”) Policy HC1 and LP 2024 Policies CD1, CD2, CD3, CD4, CD10, CD13 and CD15. Together these policies require development to respect the quality and character of buildings, to preserve or enhance the character or appearance and significance of conservation areas, require roof alterations to be sympathetic to the form and character of the building or group of buildings and requires all development to protect and enhance views that contribute to the character of the area.
18. The Framework requires me to give great weight to the conservation of the heritage asset, and states that any harm to or loss of significance should require clear and convincing justification. It also requires that less than substantial harm to the significance of a designated heritage asset be weighed against the public benefits of the development.
19. The external area makes a significance difference to the living conditions of the occupier of the flat. But without safety measures to prevent falls, the consequent improvement of the housing stock for the benefit of the public is limited. The public benefit attracts only limited weight and does not outweigh the harm identified.
20. In the alternative, the appellant is willing to change the colour of the balcony to a darker colour and considers that could be required by planning condition. Replacement of the composite decking with materials similar in colour to the slate roof or lead flashing would allow the balcony to blend into the roof. Alternatively, it may or may not be possible to colour the existing composite decking sufficiently permanently that its colour would not fade and that no part of the original colour would re-emerge over time; if so, it would be for the appellant to demonstrate that to the Council in details to be submitted in compliance with any such condition.
21. A permanent change of the composite cladding to a suitable colour would preserve the character and appearance and significance of the conservation area and the special architectural and historic interest of the area. The development would then

accord with the relevant parts of TLP Policy HC1 and LP 2024 Policies CD1, CD2, CD3, CD4, CD10, CD13 and CD15.

Living conditions

22. At my site visit I saw a number of roof terraces at first and second floor level at the rear of buildings on Oxford Gardens, including some either side of the building.
23. Although the balcony stands further forward of the adjacent neighbouring dormer window, the angle of viewing means there would be no material overlooking from the balcony into the neighbouring property. Neither would there be any overlooking of other properties at roof level on Oxford Gardens.
24. Either side, the balcony allows some intervisibility between its users and roof terraces at second floor level on Oxford Gardens. However, the railings surrounding those terraces make them open to public view from other terraces, and even where walls provide an element of privacy, they are relatively low and provide little privacy for persons standing.
25. In one case, overlooking may occur of persons occupying a first floor terrace, but only where persons are standing at the edge of the balcony, and only in relation to a terrace already overlooked by another terrace.
26. The balcony also provides panoramic views of the rear of buildings on Cambridge Gardens. But the separation distance between the buildings means the intervisibility between them is not intrusive, and similar views will be obtained from the several roof terraces on the rear of buildings on Oxford Gardens.
27. The development therefore does not harm the living conditions of neighbouring residents and accords with the relevant parts of LP 2024 Policy CD9, which requires reasonable visual privacy for occupants of existing properties.

Conditions

28. A condition is imposed to ensure that the required details are submitted, approved and implemented to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the change of the composite boarding or their colour before the development takes place.
29. The condition will ensure that the development can be enforced against the balcony if the required details are not submitted for approval within the period given by the condition, if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
30. Such a condition is necessary and reasonable in the circumstances before me. It allows the appellant to address the harm to the conservation area and to retain the development with modifications within a reasonable timescale. Without it, planning permission would be refused and the Notice would be upheld.

Conclusion

31. Subject to a planning condition, the development preserves the character and appearance of the conservation area and accords with development plan policies.

There are no other material considerations that require a decision to be made other than in accordance with the development plan.

32. For the reasons given above, I therefore conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development described in the notice. The enforcement notice will be quashed.

Formal Decision

33. 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 alterations to the rear dormer and construction of a raised balcony at Flat 5 69 Oxford Gardens W10 5UJ as shown on the plan attached to the notice and subject to the following condition:

- 1) The alterations to the rear dormer and the construction of the raised balcony hereby permitted shall be removed, and the roof and dormer window shall be restored to their former condition before the works were carried out, within three months 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 the replacement or permanent colouring of the composite decking shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme 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 specified in this condition, that scheme shall thereafter be 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.

Peter White

INSPECTOR