



Appeal Decisions

Site visit made on 6 December 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal A Ref: APP/L5810/C/21/3287358

Flat 6, 172 Kew Road, Kew, Richmond, Surrey TW9 2AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Ms Elitza Bonina against an enforcement notice issued by the Council of the London Borough of Richmond Upon Thames.
 - The notice, numbered 21/0263/EN/UBW, was issued on 18 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, and within the past four years the unauthorised erection of a soft net and associated poles above the boundary fence between Flat 6 and Flat 3 of 172 Kew Road, as shown in photograph at Appendix 1.
 - The requirements of the notice are to:
 - 5.1 Remove the soft net and associated poles above boundary fence
 - 5.2 Remove from the Land all surplus materials and debris arising from compliance with step 5.1 above.
 - The period for compliance with the requirement is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.
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Appeal B Ref: APP/L5810/W/21/3281383

Flat 6, 172 Kew Road, Kew, TW9 2AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Elitza Bonina against the decision of the Council of the London Borough of Richmond Upon Thames.
 - The application Ref 21/0776/FUL, dated 3 March 2021, was refused by notice dated 9 June 2021.
 - The development proposed is described as 'I want to put a soft net on top of the existing wooden fence between my property and that of my neighbor. The reason is to prevent my cats from leaving the garden for safety reasons. My cats are of a Burmese breed which have very low life expectancy if let outside on their own. A quote from the breeder's instructions "Similarly, with outdoor cats, be aware of the Burmese propensity to jump in the back of delivery vans or strangers' cars! Please also note the average life-span of male Burmese allowed to roam free is only 4 years. Think hard before making the decision to allow them outside unsupervised! " In addition, the current rise in stealing of cats and dogs makes me concerned especially that they are very friendly with strangers. I know there have been several cases in Wimbledon where men have been attacked and their dogs stolen, I apologise I installed some temporary net in autumn because the tenants in the adjacent flat have a dog. Their dog is a Terrier breed which are known to injure or kill other small pets. I was not aware that planning permission was required for a net until a friend raised this to my attention. Hence, I'm submitting it now. Lastly, as a benefit to the neighbors, the net will prevent my cats from leaving unwelcome excrements in neighbors' gardens'.
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Decisions

Appeal A

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.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. As the development is in a conservation area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. In response to a request, I also carried out a site visit to the garden serving the adjacent flat. As the appellant was not in attendance, I followed the 'access required' format and did not discuss the appeal with the parties who were present.

Appeal B – the planning application

5. The description of development which the appellant set out on the application form contains superfluous information. The Council amended the description of development to read 'Installation of soft net above boundary fence' and determined the application on that basis. This description relates to an act of development, and I shall determine the appeal on the basis of the amended description. This will not result in injustice to the appellant or any interested party.

Appeal A ground (a) and Appeal B

Main Issue

6. The main issue is the effect of the development on the character and appearance of the local area bearing in mind the extent to which it would preserve or enhance the character or appearance of the Kew Road Conservation Area and the setting of 172 Kew Road and adjacent buildings which are Buildings of Townscape Merit.

Reasons

7. Flat 6, 172 Kew Road is one of a number of flats within a detached building fronting the road. Along with a number of other buildings facing Kew Road, No. 172 falls within Kew Road Conservation Area 55 (the Conservation Area). The description of the Conservation Area submitted by the Council highlights the importance of Kew Road as providing a built edge to the Royal Botanic Gardens, the quality of the Victorian villas and its suburban character.
8. No. 172 and its neighbours are also Buildings of Townscape Merit (BTM). The Council says that BTM are designated either because they were constructed before 1840 or they meet other criteria set out in its Supplementary Planning Document - Buildings of Townscape Merit (May 2015). The appellant says that No. 172 was likely to have been built in the 19 century and that it was

- originally a family villa. These buildings are within and contribute to the character and appearance of the Conservation Area.
9. The development which has been carried out comprises the addition of metal poles and netting on top of one of the fences which subdivide the rear garden area. Views of this space from the street are constrained by the existing buildings, including No. 172 which extends across the full frontage to Kew Road and planting.
 10. The garden serving Flat 6 is lush and green and contains plants which have grown up to effectively obscure the poles and netting. At the site visit I was able to view one part of the boundary where climbing plants have been removed and even in this space the poles were not prominent features. The netting is of a fine mesh design and is barely visible.
 11. By contrast, from the garden of the neighbouring flat the poles are much more prominent. In part this is because of the more limited planting on this side of the fence but also because they are attached to the fence such that the fixings are visible, and the poles extend below the top of the fence. The netting is not visually prominent.
 12. The boundary fences and planting which separate the gardens are typical of the suburban character of the area which is recognised by the conservation area designation. However, the metal poles as a result of their height and materials, appear alien to the natural appearance of the rear garden scene.
 13. The appellant argues that the metal poles could be replaced by wooden ones. However, there are no details of the height, design or number of such features before me to demonstrate that they would significantly reduce the harmful impact which I have identified.
 14. I find that the development would be detrimental to the character and appearance of the Conservation Area. This is because the changes to the appearance of the Conservation Area, although not visible from the public domain, would be prominent in the private domain.
 15. Unlike listed buildings, the significance of a conservation area is dependent upon how it is experienced. Under such circumstances case law has established that proposals must be judged according to their effect on a conservation area as a whole and must therefore have a moderate degree of prominence. In this case, I find that the development would have a high degree of prominence and that it would be detrimental to the Conservation Area.
 16. Given the above, I find that the development would fail to preserve the significance of the Conservation Area. Consequently, I give this harm considerable importance and weight in the planning balance of these appeals.
 17. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Given that there is no evidence before me to suggest that poles and netting would have a direct effect on the BTM, I find the harm to

be less than substantial in this instance but nevertheless of considerable importance and weight.

18. Under such circumstances, paragraph 202 of the Framework advises that the harm should be weighed against the public benefits of the proposal. The appellant is of the opinion that the development is beneficial because it safeguards the health and safety of her cats which supports her own wellbeing and ensures that the cats do not cause a nuisance to her neighbours.
19. However, these are private benefits and not sufficient to outweigh the harm that I have identified. There is no evidence before me to suggest that the continued status of the building as a BTM and the contribution which it makes to the character and appearance of the Conservation Area is dependent on the retention of the poles and netting. In the absence of any substantiated evidence to the contrary neither would any public benefits accrue in relation to the Conservation Area.
20. Given the above and in the absence of any defined public benefit, I conclude that, on balance, the proposal would fail to preserve the character or appearance of the Kew Road Conservation Area. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with policies LP1, LP2 and LP4 of the London Borough of Richmond Upon Thames Local Plan (2018) (the Local Plan) which seek, among other things, to ensure that development respects, contributes to and enhances local environment and character, resist changes which could harm heritage assets and preserve and where possible enhance the setting of Buildings of Townscape Merit. As a result, the development is not in accordance with the development plan.

Other Matters

21. The interested party has also raised concerns about loss of light resulting from the development, visual intrusion and safety. As I have found the development to be contrary to the Local Plan for other reasons it is unnecessary for me to consider these issues in detail. The interested party has also raised the issue of trespass in connection with the installation of the metal poles. This is a matter between the appellant and her neighbours.
22. In the light of information provided by the appellant it has been shown that the retention of the poles and netting would ensure the safety of her animals. However, it has not been demonstrated that the current design of the poles to support the netting is the only solution nor that an alternative, less visually intrusive way of containing her cats could not be found. On this basis the safety of animals and the associated impact on the wellbeing of the appellant attracts very limited weight in favour of the appeals.
23. The development does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise.

Conclusion

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

Appeal A Ground (g)

25. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of one month is too short because it provides insufficient time to engage contractors to carry out the works. However, there is no evidence to substantiate this point or to show why the preferred compliance period of 6 months is necessary.
26. For the reason set out above I find that the one month period afforded by the notice does not fall short of what is reasonable. I conclude that the appeal on ground (g) should fail.

Sarah Dyer

Inspector