
Appeal Decision

Hearing held and site visit made on 5 November 2013

by **V F Ammoun BSc DipTP MRTPI FRGS**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 December 2013

Appeal Ref: APP/X5210/C/13/2198147

7 Coptic Street, London WC1A 1NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr B S Kang against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN12/0780.
- The notice was issued on 19 April 2013.
- The breach of planning control as alleged in the notice is *Without planning permission: Change of roof from valley to flat roof, installation of glazed balustrades to enclose roof terrace, and installation of two items of air conditioning plant to the roof.*
- The requirements of the notice are (1) *Complete removal of flat-roofed area including external flat roof surface and all balustrades* (2) *Removal of all air-conditioning equipment from the roof of the building* (3) *Reinstate original slate butterfly roof to match the form and profile of the original roof.*
- The period for compliance with the requirements is six calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal fails, as set out in the Formal Decision.

The appeal on ground (c) that planning permission was not required

1. The Hearing proceeded on the agreed basis that the appeal on ground (c) turned on whether the appeal works *do not materially affect the external appearance of the building* having regard to Section 55(2) (a) (ii) of the Act. *Burroughs Day v Bristol City Council* JPL 1996 78-96 was recognised as the relevant leading case, and in the light of that judgement it was agreed that a decision on materiality would involve consideration of the extent of the changes, the nature of the building to which they had been made, and the extent to which the changes were visible to an external observer.
2. The terrace/flat roofed area has been provided by removing most of an original butterfly roof set between bounding firewalls to north and south, leaving portions of the roof unchanged to the east (front) and west (rear) elevations. Decking is used to provide a surface, and there are glass balustrades at each open end and around the roof light that provides access. The proportion of change is small when compared to the total external surface area of the building taking into account its front and rear walls, but as a proportion of the roof surface it is substantial.
3. No 7 is part of a terrace of four similar four storey buildings, themselves abutting adjacent buildings of different designs. It has a traditional 18th century

or early 19th century appearance with a brick exterior having regular window openings and it had a low pitched butterfly roof set behind a front parapet. The four properties are divided from each other at roof level by party walls/firewalls. It is described in a townscape appraisal as making a positive contribution, but is not a listed building. In the context of a traditional building forming part of a terrace, however, the alteration to the roof is a significant change.

4. Turning to visibility, the works to the roof cannot be seen from street level, while at roof level the firewalls to north and south provide screening from those directions. To the east the works are close to and clearly visible from the upper two floors of a block of flats on the opposite side of Coptic Street, and to the west at a somewhat greater distance from the upper floors of buildings backing onto or adjoining the Stedham Place mews cul-de-sac. This "upper world" of roof and near roof top occupiers, the nearest being residents in the flats opposite, will be seen by far fewer people than frequent the streets of Central London below. It does however involve a greater degree of overlooking than is referred to in the *Burroughs Day* judgement as having applied in that case.
5. Taking into account the degree of overlooking, the extent of the works and the nature of the building affected I have concluded that the changes have materially affected the external appearance of the building. The appeal works therefore do not benefit from Section 55(2) (a) (ii) of the Act. The appeal on ground (c) fails.

The appeal on ground (a) that planning permission should be given

6. The appeal site is situated in the Bloomsbury Conservation Area in which well established local and national policies reflect the statutory requirement to have special regard to the desirability of preserving or enhancing character or appearance. It was agreed at the Hearing that these policies set out in the representations were consistent with each other and the National Planning Policy Framework. Other policies of the Development Plan seek high quality design, and to protect residential amenity. Relevant supplementary planning guidance includes CPG1 "Design" stated to have been adopted following extensive public consultation, and to which I attach significant weight.
7. From my inspection of the site and area and from consideration of the representations made I consider that the main issues in this case are the effect upon the character and appearance of the Conservation Area, and whether there would be material harm to the residential amenity of neighbouring residents by reason of loss of privacy, disturbance, or noise from the air conditioning units.
8. Turning first to **the effect on residential amenity**, persons on the roof terrace would have clear views towards the windows of flats on the opposite side of Coptic Street. I saw, however, that similar views were already available at closer proximity¹ from existing windows of the appeal dwelling on the floor below. As Coptic Street is relatively narrow I had clear views into the flat opposite, and was able to distinguish objects within the nearest flat. I consider that with this degree of proximity already extant, curtains or blinds will already

¹ Due to the balustrade of the roof terrace being set back from the front main wall of the building, whereas windows on the floors below were set into that wall.

be necessary to secure privacy when it is particularly sought. I have concluded that use of the appeal roof terrace will not significantly worsen this situation.

9. It was suggested that the roof terrace might encourage social gatherings that would involve disturbance, and that in particular with a transient population occupying on short leases such disturbance had already been experienced in the area. The space available on the terrace is divided into two unequal parts by a roof light access to fairly steep stairs below, and I do not consider that the space available would lend itself to a normal party. In any event unneighbourly behaviour is possible in a wide variety of physical circumstances, including within rooms in the main house below. I have concluded that little weight should be given to this particular objection to the proposal.
10. A local resident experiences an intermittent very obvious whining noise on his roof terrace in Stedham Place. While he could not be sure that it came from the appeal air conditioning plant, had a planning application been made before the works and due process thereby been followed this could have been resolved. In considering this matter I noted that the noise was heard on his roof terrace, but not inside his home. The Council advised that its noise disturbance policy standards are designed to regulate noise within a home. If therefore the noise identified was indeed due to the air conditioning plant, it would not have breached the standards set by the Council for housing in this area. It follows that whatever the possible inadequacies in the Appellant's survey², there is no evidence that the units have involved significant noise disturbance to date. A condition³ put forward by the Council would provide control over any future excess noise from the units.
11. For the foregoing reasons it is my conclusion that there need not be material harm to the residential amenity of neighbouring residents by reason of loss of privacy, disturbance, or noise from the air conditioning units.
12. As to **the effect upon the Conservation Area**, though an officer report had referred to views from nearby streets it was common ground at the Hearing that the roof terrace did not have any effect upon the street scene of the Conservation Area, in part by reason of the terrace having been set back from the main walls of the building leaving the outer parts of the roof intact.
13. The effect of the changes is thus experienced in the "upper world" formed by the mutually intervisible roofs and upper floors in this area. This zone has a more varied character than that within the public domain which is largely experienced from street level and reflected in the conservation area appraisal. In particular the different periods and types of construction have resulted in different building heights and types of roof, one feature of which is the presence of roof terraces/patios and balconies, mainly associated with the more recent buildings. Some accommodate planting, and I visited a particularly well developed example on the opposite side of Coptic Street. While there was some dispute as to the extent to which such features were characteristic of the area, I consider that they are sufficiently a part of the roof and upper floor⁴ treatments to be not incongruous in principle⁵ within the upper zone roofscape.

² This survey had, however, been accepted by the Council which had withdrawn a noise reason for taking enforcement action as a result.

³ Document 2 as amended.

⁴ Indeed the elevation of one property onto Stedham Place features full balconies from first floor level.

⁵ Council guidance at CPG! Paragraph 5.23-24 recognises that they can provide valuable amenity space and gives them qualified support, reflecting the Development Plan.

14. The merits of the proposal thus turn on the nature of the changes being made to this particular building. No 7 Coptic Street is part of a traditional and regular terrace of four houses with butterfly pitched slate roofs and intervening brick fire walls. The appeal development alters this form at one of the four houses, and introduces wooden patio flooring, glazed balustrades, and the air conditioning units. The setbacks from front and rear walls are not sufficient for the roof to absorb/accommodate⁶ the change without significant visual effect, and there has been a material change to the external appearance of the building. Both the materials used and more fundamentally the change to the form of the roof are not architecturally sympathetic to the age and character of the building and its traditional pitched roof. The effect on appearance is out of keeping with No 7 and with the terrace as a whole, and even after taking into account the greater variety of character in the upper zone referred to, I consider that it appears incongruous.
15. The Council acknowledged this was not the worst case of change to a roof, due to compliance with certain design features sought in CPG1. That guidance is, however, stated to apply where change is otherwise appropriate, and seeks to avoid roof alteration or addition where there is likely to be an adverse effect on *"...the appearance of the building..."* and where *"...There is an unbroken run of valley roofs; Complete terraces or groups of buildings have a roof line that is largely unimpaired by alterations or extensions..."*⁷. In the present case I consider that the change to the roof has had an adverse effect, and that this is not ameliorated or otherwise rendered acceptable by the presence of earlier changes to the terrace of which it forms part.
16. The Council has approved roof terraces on other properties in the area, but as already stated I do not consider that there is any objection in principle to them within the upper zone of this part of the Conservation Area. None of these approvals appeared so similar to the circumstances of the present appeal as to suggest inconsistency.
17. I have concluded that the appeal development has resulted in harm to the appearance of the Conservation Area. As indicated in my consideration of ground (c) the changes are significantly visible within the upper zone of residential occupation. There is nothing in guidance or policy to suggest that the acknowledged advantages of providing outdoor space should be secured at the cost of an adverse effect upon the character or appearance of a conservation area. I have concluded that the development carried out should not be retained.
18. Turning to whether some modification might allow permission to be granted, the Appellant suggested lesser requirements for the notice under ground (f) which I shall consider here as potential amendments to the present scheme. As clarified at the site inspection it was proposed that instead of complete reinstatement of the butterfly roof it would be sufficient to reform the original roof profile to the rear of the building for some 1.2m, thus reducing the flat roofed area but retaining a flat area centred on the present roof light that would provide access to the two air conditioning units for maintenance, but without the need for a decking surface. The glazed balustrades to the front and rear would be removed, but a centrally located section of balustrade around the roof light would be retained for the safety of persons using it to access the

⁶ Requirements in CPG1 at paragraphs 5.25-26 relate.

⁷ CPG1, parts of paragraph 5.8.

roof and service the units. This modified proposal would, however, leave the central part of the roof in its present form, while views towards it would still include the retained inner balustrading. I have concluded that it does not significantly improve upon the planning merits of the deemed planning application. I shall therefore not treat the ground (f) suggestion as a minor modification to the deemed planning application and grant it planning permission. Having reached this conclusion there is no point in considering separately the merits of the present air conditioning units, having regard to the evidence that they could not be retained in their existing position if the butterfly roof were reinstated⁸.

19. In all the foregoing circumstances I have concluded that the appeal on ground (a) fails.

The appeal on ground (f) seeking a lesser requirement

20. An appeal on ground (f) seeks to establish that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity. In this case the Council seeks to entirely remove the unauthorised development, and reinstate the roof to its original form and profile. I conclude that it is seeking the first objective set out in Section 174(2) (f) of the Act, that of remedying the breach of control. A requirement to reinstate the roof to its former condition does not exceed this. I have already considered suggested reduced requirements as part of the appeal on ground (a). The appeal on ground (f) fails.
21. I have taken into account all the other matters raised in the representations, including concerns that allowing the appeal would act as a precedent for similar developments, but do not find that they alter or are necessary to my conclusion on this appeal.

FORMAL DECISION

22. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V F Ammoun

INSPECTOR

⁸ For completeness I record an observation made for the Council that smaller units might be acceptable but whether this is the case and if so in what location must be a matter for future consideration by the Council and the Appellant. Similarly whether the present or a similar rooflight would be consistent with reinstating the "*form and profile of the original roof*" will be a matter for future consideration by the main parties.

APPEARANCES

FOR THE APPELLANT:

Mr Mark Bachelor BSc (Hons) Appellant's agent
MScTP MRTPI

The Appellant Mr B S Kang was present at the site inspection and for part of the Hearing proceedings.

FOR THE LOCAL PLANNING AUTHORITY:

Mr John Sheehy MSc Regional & Senior Planning Officer, London Borough of
Urban Planning Camden Council.

INTERESTED PERSONS:

Ms Catherine Ward Local resident

Mr Chris Jackson Local resident

Ms Helen McMurray Local resident and Secretary of the South
Bloomsbury Residents Association

DOCUMENTS provided at the Hearing

- 1 Additional copies of Council notification letters.
- 2 Suggested noise abatement condition, as amended at Hearing.