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## Appeal Decision

Site visit made on 4 November 2019

**by D Fleming BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 December 2019**

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**Appeal Ref: APP/F5540/C/18/3219428**

**8 Vincent Road, Isleworth, London TW7 4LT**

- 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 Lakhbir Sandhu against an enforcement notice issued by the Council of the London Borough of Hounslow.
  - The enforcement notice was issued on 30 November 2018.
  - The breach of planning control as alleged in the notice is without planning permission, the use of a side extension as a separate self-contained flat and the erection of a front porch and a front boundary wall.
  - The requirements of the notice are
    - i. Cease the use of the side extension as a separate self-contained residential unit.
    - ii. Remove the kitchen and associated kitchen facilities (ie cooker, kitchen cupboards, kitchen sink, kitchen work top surfaces and associated water and electric piping and connection installed for the premises).
    - iii. Remove the bathroom and associated bathroom facilities (ie shower/bathing facilities, wash basin and pedestal. In addition to the above items, all water piping and all waste connections.)
    - iv. Remove all of the sub-dividing doors separating the main house from the side extension.
    - v. Remove the front porch.
    - vi. Remove the front boundary wall.
    - vii. Remove all resultant debris from the land.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is allowed and the enforcement notice is quashed in respect of the residential use.
2. The appeal is allowed insofar as it relates to the erection of a front porch 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 erection of a front porch subject to the condition set out in the schedule attached to this decision.
3. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the erection of a front boundary wall and planning permission is refused in respect of the erection of a front boundary wall on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

### **The ground (d) appeal in relation to the residential use**

4. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. He needs to show, on the balance of probabilities, that the use of the former garage as a self-contained residential unit, took place more than four years before the notice was issued and continued without material interruption for a period of four years thereafter. The notice was issued on the 30 November 2018 so the appellant needs to show that use as a self-contained residential unit began before the 30 November 2014.

#### **Reasons**

##### *The appellant's case*

5. The appeal concerns an extended semi-detached house. The appellant bought the property in January 2012 and states it was already divided into two residential units. The second smaller unit was contained within the two storey side extension. He employed a builder to create a new self-contained unit in the attached garage and it is the use of this space which is the subject of the notice. The staircase was removed from the two storey side extension and the space was integrated into the main dwelling.
6. The following evidence has been submitted to demonstrate that the use started in June 2013 and that it has continued ever since:
  - statutory declarations from the appellant, his wife, the builder, the estate agent, surrounding neighbours at Nos 6, 10 and 19, the first tenant and the existing tenant;
  - tenancy agreements dating back to when the use began, to date;
  - bank statements showing the receipt of rent from when the use began, to date;
  - Council tax bills from a previous tenant and the current tenant.

##### *The Council's case*

7. The Council state that the flat has not been registered for Council tax and question whether the tenancy agreements demonstrate that the use of the space has actually been for a self-contained flat. They also point out that during their investigations they saw that the flat was being advertised for rent on Zoopla on 21 March 2018.

##### *Assessment*

8. The information contained in the statutory declarations is consistent. The appellant states he created a self-contained flat and this is corroborated by the builder, who carried out the work, and the estate agent, who rented it out to three different sets of tenants starting on the 8 June 2013. The first tenant also states that she lived in a self-contained flat from the 8 June 2013 to the 16 January 2016. The current tenant states he moved in on the 1 June 2018 and that the property is a self-contained flat.

9. At the site visit I saw that the former garage space has mainly an open-plan layout but it is self-contained with a kitchen area, containing a cooker, sink and fridge. There is also a sitting area and a sleeping area. In addition, there is a bathroom and independent access to the flat from a door within the side elevation. There is an internal door between the flat and the host property but this was locked at the time of my visit.
10. It may be that it is the presence of this door that causes the Council to question whether the flat is self-contained. Neither party comment on it but it seems to me that the appellant may just be keeping his options open. This is because the plan accompanying the ground (f) appeal labels the flat as a 'granny annex'.
11. There is no definition of a dwelling house in the Act but the courts have held that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. Based on what I saw at the site visit, I find that the layout of the property is as a self-contained flat and in the absence of any other information to the contrary, that it was created as the appellant described. In addition to the evidence from the tenants, the appellant's neighbour from No 6 states 'I have seen the self-contained one bedroom flat for myself'.
12. I now consider whether the flat has been continuously occupied for residential purposes. The appellant has supplied copies of all his tenancy agreements. These show that the first tenant occupied the property from the 8 June 2013 to when she vacated it on the 16 January 2016. Her first agreement is signed and witnessed and is for six months from the 8 June 2013. Rent is to be paid monthly and the address of the property is stated as being 8A Vincent Road. The next agreement is dated the 8 December 2013 and is for 12 months and is also signed and witnessed. When this ended, the tenant signed a further agreement on the 8 December 2014 but this was only for six months. It is followed by her final agreement signed on the 8 June 2015 which was for a period of 12 months. All the agreements specify that rent is to be paid on the 8th day of each month. The bank statements show that the first tenant made her first payment on the 7 June 2013 and thereafter there are monthly payments that vary around the 8th payment due date all the way through to the last payment on the 18 January 2016. There are no Council tax bills or utility bills as these costs were included in the rent. In addition, there are no separate gas or electric meters.
13. The second tenants occupied the property from the 30 January 2016 to the 13 May 2018. Again, there is a complete set of signed and witnessed tenancy agreements referencing the address of the property as 8A Vincent Rd. The rent has been increased and is now due on the 30th day of each month. After the initial tenancy agreement ended, these tenants signed further agreements dated the 30 July 2016, 30 December 2016 and the 30 December 2017. The bank statements showed the receipt of their rent beginning on the 1 March 2016 and continuing thereafter until the last payment was made on the 2 March 2018.
14. The current tenant and his family began the occupation of the flat with a tenancy agreement dated the 1 June 2018 which lasted six months. He then signed another agreement for the term of 12 months commencing the

- 1 December 2018. The bank statements show he has paid his rent every month since.
15. Further evidence of residential use is provided by the neighbour at No 10 who has a flank window within his property overlooking the entrance into the flat and is able to see the tenants come and go. The neighbour who lives directly opposite the site also sees tenants come and go.
16. Contrary to the Council's assertion, there is also some Council tax evidence from the appellant in the form of some bills and a letter sent to the second set of tenants. Not much turns on this other than it is further confirmation that the second tenants lived in the flat. As to when the flat became self-contained and the need for further corroboration for the tenancy agreements, it is my view that it is most unlikely that tenants would be paying between £925-£1000 a month, inclusive of bills, for a one-bedroom flat if it was not self-contained. There is also the evidence from the builder and the neighbour which corroborate the statements made by the tenants. Furthermore, whilst landlords sometimes provide copies of passports or driving licences to demonstrate that the person who has signed the tenancy agreement existed, in this case the numerous bank statements demonstrate that the tenants existed. Each monthly payment is referenced with the name of the person.
17. Amongst all the evidence of continuous residential use, there is a two month gap in April and May 2018. However, the builder confirmed that before the current tenants moved in, he painted the flat and laid a new floor. Notwithstanding this, it is considered that the appellant has demonstrated, on the balance of probabilities, that he had already achieved four years continuous use by the 8 June 2017.
18. The Planning Practice Guidance advises that if a local planning authority has no evidence itself or from any others to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probabilities.
19. In this case there is no evidence to contradict the appellant's statutory declarations and documentary evidence. These are sufficiently precise and unambiguous and as such he has discharged the onus of proof that the former garage has been in use as a self-contained residential flat for a continuous period of four years before the issue of the notice. The appeal on ground (d) therefore succeeds. It follows that the appeals on ground (a), (f) and (g) in respect of the flat therefore do not fall to be considered.

### **The ground (a) appeal in relation to the operational development**

#### **Main Issue**

20. The main issue is the effect of the development on the character and appearance of the host property and the surrounding area.

#### **Reasons**

21. The property is situated in a small cul-de-sac which includes a number of semi-detached houses with off street parking and front and rear gardens. The houses have been altered over the years with the addition of extensions and double glazing but the pleasant appearance of the road has been maintained.

22. The appellant has constructed a large porch around the front door of his property and erected a front boundary wall, which includes piers. The porch roof has a hipped shape and is tiled with grey roof tiles which match the grey panel of applied stonework behind it at first floor level but not the main roof tiles, which are red. The porch is unfinished; there is no guttering and wires protrude from the roof overhang, where presumably the plan is to install down lighting. It appears the porch is constructed from breeze blocks which have been rendered externally. There are window and door openings but none have been fitted.
23. The wall has been built across the front of the property leaving gaps for pedestrian and vehicle access. It is stated that it is 0.96m high in the main but the six piers are 1.8m high. This means it falls outside the permitted development (PD) allowance of one metre. Whilst ground (c), that there has not been a breach of planning control, has not been pleaded, the appellant nevertheless makes submissions on the matter.
24. It is my view that the wall and piers are one structure, as can be seen from the brickwork. It appears that they have been built in one operation and together they form a means of enclosure adjacent to the highway used by vehicular traffic. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states where such a means of enclosure exceeds one metre in height, it is not permitted development. The appellant appears to have accepted this as he submitted a planning application in order to seek permission for the development in June 2018. This application was refused before the notice was issued. For these reasons if ground (c) had been pleaded, it would have failed.
25. The design of the porch results in a rather bulky addition to the front elevation of the property. This is due to a combination of design elements including the roof shape which makes use of large ridge tiles, a deep fascia and a pronounced roof overhang. Porches can be a positive focal point and add to the aesthetics of a property, such as those as built as part of the 'Arts and Crafts' houses near the head of the cul-de-sac. These decorated doorways reflect some of the details of the host buildings, such as the quoins treatment, and, together with the catslide roof shape, form the principle architectural element on the front elevation.
26. The appellant's porch though is unduly prominent due to the design of the roof and detracts from the two storey bay window feature, which is the principal architectural feature on the front elevation. Policies CC1, CC2 and SC7 of the Council's Local Plan 2015-2030 (LP) adopted 15 September 2015, require that development should maintain the character of the general street scene and complement the original building. I find the development at the appeal site is at odds with the design of the front elevation and as such harms not only the host property but the street scene as well. The development does not therefore accord with the LP.
27. The appellant submits that if the porch extension were found to be unacceptable, he has a fall back position of being able to exercise his PD rights to replace it. This is because the height and floor area only marginally exceed PD allowances, which are 3m for height and 3sqm for floor area. The parties disagree over the dimensions of the porch stating the height is either 3.15m or 3.4m and that the floor area is either 3.28sqm or 3.36sqm. Either way, the

appellant submits the fall back position is a material consideration that carries significant weight.

28. I consider there is a real prospect that the fall back position would be implemented given the planning history of the property and the investment in it that the appellant has made. It is therefore a material consideration in the determination of this ground (a) appeal to which I attach substantial weight.
29. The fall back porch would have the same effect on the character and appearance of the host property and on the surrounding area as the unauthorised development. In the circumstances of this appeal I consider the fall back position is a strong justification for making a decision in respect of the unauthorised porch which is not in accordance with the development plan and for the ground (a) appeal to succeed in this respect. No conditions have been suggested by the Council in the event of planning permission being granted for the porch. As it was not substantially complete when the notice was issued, it is necessary to impose a condition requiring the submission of finishing materials and the window and door details.
30. The purpose of the condition is to require the appellant to comply with a strict timetable for dealing with the completion of the porch which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the erection of the porch authorised by the grant of planning permission may only remain if the appellant complies with each one of a series of requirements.
31. Given my findings on ground (a) in respect of the porch, the appeal on ground (f) does not fall to be considered.
32. I turn now to my consideration of the front boundary treatment. This development is also incomplete in that the piers have not been topped off and there are no gates. However, even with these details, it is my view that the design of the enclosure is at odds with the street scene. This is because where there are enclosures along Vincent Road they comprise, in the main, either hedging, low walls or low fencing. The appeal site has one of the widest frontages in the road, on a par with the 'Arts and Crafts' houses, and the length of walling with six square piers therefore has a greater impact. It results in an overly dominant feature that detracts from the appearance of the host property as well as the wider street scene. This is especially the case as the colour of the brickwork, yellow with some red detailing, does not match the materials of the house or nearby boundary treatments in the road and the front garden has been entirely hard surfaced resulting in rather a stark appearance for the wall and piers.
33. The appellant explains that two of the piers are necessary as they need to be strong and high to hang the entrance gates. This would improve his security and the piers would not look out of place in a suburban area. He would be prepared to remove the three (sic) remaining piers.

34. However, two piers in isolation would also look out of place and improvements to security can be achieved in a number of ways. At the site visit I viewed the surrounding area and a similar development at No 2 Burlington Road. This only served to confirm that such boundary treatment results in significant changes for the worse to the character and appearance of this residential area.
35. For these reasons it is concluded that the erection of the front boundary wall causes harm to the character and appearance of the host property and the surrounding area. It therefore does not accord with Policies CC1, CC2 and SC7 of the LP. The appeal on ground (a) in respect of the front boundary wall therefore fails.

### **The ground (f) appeal**

36. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council required the removal of the wall and piers. The purpose of the notice is therefore to remedy the breach of planning control.
37. The appellant submits that the steps required are excessive when the notice could have required that the operational development be reduced so that it accords with the limitations set out in the GPDO.
38. These steps do not necessarily remedy the breach of planning control, which is the initial action of construction. It appears that the appellant is trying to make the point that it would serve no useful purpose to require the removal of the development when he could subsequently exercise his PD rights to replace it in part.

Whilst it is open to the Council to state alternative requirements in the notice, such as to bring the development within the limits of PD, they are not bound to do so. Although this is a potential fall back position for the appellant, he has not provided any indication that it is a realistic fall back which he would implement. This is because part of his grounds of appeal was that the new wall and piers improve the security around his property. To require that the height of the piers be reduced would be to diminish the alleged improvements to security. For all these reasons the appeal on ground (f) fails. There is no ground (g) appeal to consider as this was made only in respect of the material change of use.

### **Conclusions**

#### **The residential use**

39. For the reasons given above I conclude that the appeal in respect of the residential use should succeed on ground (d). Accordingly, the enforcement notice in respect of this matter will be quashed. In these circumstances the appeal on the various grounds set out in section 174(2) to the 1990 Act, as amended, and the application for planning permission deemed to have been made under section 17(5) of the 1990 Act, as amended, does not need to be considered.

### The operational development

40. For the reasons given above I conclude that the appeal should succeed in respect of the porch and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the wall. The requirements of the upheld notice will cease to have effect insofar as they are inconsistent with the permission which I will grant by virtue of section 180 of the 1990 Act, as amended.

*D Fleming*

INSPECTOR

### **Condition schedule in respect of the porch**

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- 1) Unless within three months of the date of this decision, finishing materials, window and door details are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the porch shall be removed and all resultant debris shall be removed until such time as a scheme is approved and implemented.
  - a. If no scheme in accordance with this condition is approved within six months of the date of this decision, the porch shall be removed and all resultant debris shall be removed until such time as a scheme approved by the local planning authority is implemented.
  - b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained as approved.
  - c. 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.