



Appeal Decision

Site visit made on 28 May 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 19 June 2020

Appeal Ref: APP/N5660/C/19/3229348

Southview Court, Clapham Common South Side, London SW4 9DQ

- 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 Mehar Nawab, on behalf of Amside Limited, against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The enforcement notice was issued on 11 April 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised construction of a brick, glass and metal porch on the front elevation ('the unauthorised front porch') and a green wooden refuse store on the flank elevation ('the unauthorised refuse store').
- The requirements of the notice are:
 - a) Remove the unauthorised front porch from the premises and reinstate the front elevation of the premises as existed prior to the breach of planning control.
 - b) Remove the unauthorised refuse store from the premises.
 - c) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
- The period for compliance with the requirements is Three months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.

Formal Decision

1. The enforcement notice is corrected as follows:

Delete Requirement a) and, in requirement c), delete the word "steps" and replace with the word "step".

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 s177(5) of the 1990 Act as amended, for the erection of a front porch at Southview Court, Clapham Common South Side, London SW4 9DQ, subject to the following condition:
 - 1) The front porch hereby permitted shall be demolished, the front elevation of the building reinstated as existed prior to its erection, and all materials resulting from its demolition shall be removed within 20 weeks of the date of the failure to meet any of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme giving details of the treatment of the red bricks, used in the construction of the front porch, so as to blend in with the main building's brickwork, shall have

been submitted for the written approval of the local planning authority, and the scheme shall include a timetable for its implementation;

- ii) within 11 months of the date of this decision, if the local planning authority refuse to approve the said scheme or fails to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid, 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 or details shall have been approved by the Secretary of State.
 - iv) The approved scheme or details shall have been carried out and completed in accordance with the approved timetable.
3. Otherwise the enforcement notice is upheld, as corrected.

Preliminary Matter

4. In his representations the appellant has said that he does not wish to contend the enforcement notice's requirement that the refuse store be removed. I shall thereby treat this aspect of the appeal as having been withdrawn, and that element of the notice is upheld, accordingly. My assessment will therefore concentrate on the other element at issue; that being the unauthorised erection of the front porch.

Background

5. Planning permission (ref 17/04516/FUL) was granted in 2017 for the erection of an enclosed porch. This showed a flat-roofed structure, with its entrance door to the front comprising two brick-built pillars and a glazed, aluminium frame. The approved plan (drawing no 16194_103 Rev B) has an annotation which indicates that the porch's brickwork is to match the brickwork of the existing building.
6. A subsequent planning permission (ref 18/03439/FUL), granted in January 2019, retrospectively approved the retention of an external water feature and stone fountain to the front of the building, a stone paving surround and also a new pedestrian access gate to Lessar Avenue. I note, though, that the approved plan (drawing no 16194_103 Rev G) shows a flat-roofed front porch, in elevational form (at scales of 1:50 and 1:100), and with its floor layout included, attached to the building. In profile, this design, with different glazed panels to that previously approved, and with a side entrance door, reflects the porch built. However, the said drawing is also annotated, indicating that the new brickwork will match that of the main building. In the event the brickwork used was of a different colour, and in April 2019, the Council saw it expedient to issue the enforcement notice, the subject of this appeal.

The Appeal on ground (a) and the deemed planning application (DPA)

Main Issue

7. This is the effect of the front porch on the character and appearance of the host building and also the surrounding area, with particular regard to its conservation area location.

Reasons

8. Southview Court, is a three-storey block of flats, built post-war. Well kept, but of an unremarkable design, redolent of its time, the building is set significantly back from the footway. The front, and side boundary enclosure comprises a low wall and a hedge which runs the full width of the site and then along the Lessar Avenue return.
9. The new side entrance accessed from Lessar Avenue is paved up to the porch's side door entrance, and this path is itself bounded by low walls built from what is seemingly the same red brick type used for the porch. Additional hedgerows top these walls and, with the front garden containing the water feature and fountain, along with a series of trees, the building's lower level is largely screened from public view.
10. Firstly, my remit is limited to assessing the two elements built without the requisite planning permission, or specifically those matters set out in the enforcement notice. With the appellant choosing not to contend the notice's requirement to remove the refuse store, my assessment is thereby further limited to adjudging only the planning merits and/or impacts of the front porch in its contextual setting.
11. I have a statutory duty under s72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the development's effect on the Conservation Area – in this instance the Clapham Conservation Area – and whether it can be considered to preserve or enhance its character or appearance.
12. The architectural design of the Southview Court building is not typical of the character of the Clapham Conservation Area, which largely comprises period age buildings. Objectively, in its contextual setting, the building is something of an anomaly. The porch itself is a modest addition and, as a feature, occupies roughly the position of the previous such structure. Some representations received from interested parties refer to the replacement porch as having created an imbalance, and that its orientation – this presumably being a reference to a front entrance door rather than the side entrance door installed – is fundamental to the design of the building. It seems to me, however, that any balance would have related, instead, to the original configuration of a centrally placed front gate and an access path leading directly to the porch.
13. This arrangement, as shown on the drawing no 16194_103 Rev B, has been lost with the enclosure now continuing fully along its front boundary, thereby preventing any pedestrian access from Clapham Common South Side. However, the changed arrangement, works and alterations to the front garden are either covered by the 2019 planning permission, or do not constitute development. The only development under s57 of the 1990 Act actually requiring planning permission here are those two elements enforced against.
14. As a structure, the porch, due to the Southview Court building's frontage being considerably set back from Clapham Common South Side, the high hedgerow and vegetative screening beyond is not that readily visible to passers-by; certainly not in full. Its glazing panels are most obvious, as is the fact that the entrance door is to its side rather than centrally placed, but neither of these factors cause visual harm of any material significance. That said, the red

brickwork columns towards its sides are discernible, although they do match that of the recently built low walling, close to the main building. Although the Council mentions that the porch is not attractively designed, nor "heavy duty", the former is subjective whilst I have not had sight of any compelling evidence to suggest that the latter is the case. The approved porch would have had identical brick columns to that, as built.

15. The porch as a single entity, and also the positional change for the building's pedestrian access (which some objectors have highlighted) have not caused incongruity. Nonetheless, as the contrast with the main building's brick type is still visibly apparent from certain points, this could potentially be tempered by staining its brickwork. In this regard the appellant would be required to provide comprehensive details of the necessary process involved and the materials to bring this about. He has indicated a willingness to carry out works to this effect, although has withdrawn an additional offer to replace the glass screening with aluminium glazed screening. I see no necessity for the screening to be replaced, and the Council has not suggested any conditions should be imposed in the event that the appeal is allowed.
16. Subject to such treatment I consider that the porch would have only a neutral effect on either the character or appearance of the Conservation Area, and it has been held in case law that such a limited degree of impact is sufficient to preserve the character of a conservation area. A suitably worded planning condition can therefore be imposed to make the development acceptable in planning terms.
17. I have had regard to the representations of interested parties, most of which I have already addressed. Some concern has been raised regarding loss of privacy, but that was not mentioned by the Council in its reasons for issuing the enforcement notice, and I agree with the Council in this respect. However, one letter received refers to the residents at Southview Court now being unable to use the front garden space due to the hedgerow blocking access to this area. This, though, is a separate issue and does not relate directly to the current appeal.
18. Nonetheless, I note that, on 29 March 2019, the Council issued a separate enforcement notice against the alleged material change of use at the property, with its front garden being used, no longer by the occupiers of Southview Court, but instead by residents at the neighbouring hotel (nos 79-81). It appears that this enforcement notice was not appealed and, if this is the case, then it has seemingly taken effect and compliance with its requirements was to have been secured during August 2019.
19. As, at my site visit, I was not able to enter the property, but was still able to observe the porch from the both Clapham Common South Side and Lessar Avenue, as is the case with the general public, I could not be sure whether hotel residents are still able to access the garden. This, though, relating to a different decision made by the Council, must remain a matter between the two main parties.
20. Neighbouring occupiers have also raised concerns as to the owner of the property ignoring his obligations under planning legislation and carrying out development requiring permission, regardless. It is not an offence to undertake development without the requisite approval but, in such circumstances, the requirement is that retrospective permission is sought. If

- granted, then this secures the development's lawful retention. If refused, then the Council may use its enforcement powers.
21. In the face of development carried out without planning permission this should obviously not be advantageous to the applicant when determining any retrospective application for such. However, neither should it be a disadvantage to the applicant in attempts to regularise the planning position. I, therefore, afford this matter little weight and it has not affected my conclusions.
22. I conclude that the front porch, subject to its brickwork being treated, would not be harmful to the character and appearance of the host building, would preserve the character of the Clapham Conservation Area, and would not be in material conflict with policy 7.8 of the London Plan, nor policies Q2, Q5, and Q11 of the Lambeth Local Plan (LLP), nor the Council's Supplementary Planning Document concerned with alterations and extensions.
23. Although the enforcement notice, in its 'Reasons for Issuing this Notice' refers also to LLP policies Q14 and Q22, neither are applicable in this instance; the former being in respect of development in gardens and on backland sites, whilst the latter serves to protect statutorily listed buildings.
24. Given the above reasons, the appellant's decision not to contend the notice's requirement that the refuse store should be removed, and having had regard to all other matters raised, I shall therefore make a split decision, allowing one element of the development, dismissing the other and correcting the enforcement notice, accordingly. The appeal is, therefore, successful in part.
25. As mentioned, I am imposing a condition, retrospectively worded, which will require the appellant to submit appropriate details to the Council for subsequent written approval. Its requirements are self-explanatory, and the implementation of the approved works will be subject to a strict timetable, as agreed between the main parties. Should the appellant fail to observe the requirements of the condition then the Council may use its remedial powers as it sees fit.

The Appeal on ground (f)

26. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach.
27. It is necessary to first establish what the Council is seeking to achieve by the notice. In requiring for the removal of the porch and refuse store the enforcement notice's purpose, with reference to the reasons for issue, was to remedy the breach occurring. Under ground (a) I have, however, found that planning permission should be granted for the porch and so it is not necessary for me to consider the appeal on ground (f) further.

Conclusion

28. For the reasons given I conclude that the appeal should succeed in part only, and I will grant a conditional planning permission for the retention of the front porch, but otherwise I will uphold the notice with a correction and refuse to grant planning permission for the retention of the refuse store.
29. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Timothy C King

INSPECTOR