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## Appeal Decisions

Site visit made on 31 January 2022

**by Paul T Hocking BA MSc MRTPI**

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

**Decision date: 21 February 2022**

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### **Appeal A: APP/A5270/C/20/3258722**

#### **Premises known as 15 Blakesley Avenue, Ealing, London W5 2DN**

- 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 Sinan Artar against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice was issued on 16 July 2020.
  - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a single storey rear extension and the unauthorised enlargement of a basement extension.
  - The requirements of the notice are: 1. Demolish the unauthorised single storey rear extension and remove all associated debris, items and materials arising from the demolition and all materials associated with the unauthorised development from the premises and restore the premises back to its original condition before the unauthorised development took place; 2. Demolish and fill in the unauthorised basement extension with earth so that the level of the land is commensurate with adjoining land levels and restored to the condition before the unauthorised development took place, including turfing over the front and rear gardens; and 3. Remove all resultant debris.
  - The period for compliance with the requirements is 9 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) 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: APP/A5270/W/20/3259058**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The application Ref 2001199HH, dated 16 January 2020, was refused by notice dated 23 June 2020.
  - The development proposed is described as: New rear basement extension with new roof lights and ground floor extension with new conservatory light. New openings on ground and second floor.
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### **Appeal C: APP/A5270/W/21/3271435**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The application Ref 205304HH, is dated 23 December 2020.
  - The development proposed is described as: Retention of existing basement and completion of rear single storey extension to the depth approved by permission 161387HH.
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## **Summary of Decisions**

1. The appeals are allowed, the enforcement notice is quashed, and planning permissions are granted in the terms set out below in the Formal Decision.

## **Preliminary Matter**

2. Since the issue of the enforcement notice, the London Plan, 2021, has been adopted. I will therefore consider the policies that have since been brought to my attention as relevant from this development plan for the purposes of my assessment.

## **Application for Costs**

3. An application for costs was made by Mr Sinan Artar against the Council of the London Borough of Ealing. This application is the subject of a separate Decision.

## **Appeal A – The ground (c) appeal**

4. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
5. The appellant contends there is an extant planning permission<sup>1</sup> for a basement and single storey rear extension and that there is uncertainty regarding the meaning and requirements of the notice.
6. The notice however plainly does not attack the basement, rather, it enforces against the enlargement of a basement extension, as it is clearly larger than that previously approved. The single storey rear extension that has been constructed is then materially different to that approved as well.
7. Given the notice only enforces against development that does not have the benefit of planning permission, the appellant has not demonstrated on the balance of probabilities that there has not been a breach of planning control. In my view the notice therefore does not raise uncertainties. Matters concerning the requirements of the notice would then otherwise be addressed under a ground (f) appeal.
8. The appeal on ground (c) therefore fails.

## **Appeals A, B and C – The ground (a) appeal, refusal of planning permission and non-determination appeals**

### **Main Issue**

9. The main issue is the effect of the development on the existing dwelling and whether or not it preserves or enhances the character or appearance of the Mount Park Conservation Area (the CA).

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<sup>1</sup> Council Ref 161387HH

## Reasons

10. The site comprises a large detached Edwardian style dwelling which is broadly consistent with the type of properties in the surrounding area. The developments before me relate to the issue of the enforcement notice (Appeal A) concerning a basement extension and single-story rear extension (since partially demolished); the refusal of planning permission (Appeal B) which concerns the same basement extension, a ground-floor extension and openings on the ground and second floor; and, an appeal against non-determination (Appeal C) for the same basement extension but a different single-storey rear extension, which has been built. The latter is therefore what subsisted during my site visit. For the purposes of my assessment, I shall consider Appeal C first.
11. The site lies within the CA. In determining these appeals, I have duties to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. Conservation Areas are heritage assets and so are irreplaceable. Accordingly, any harm or loss requires clear and convincing justification. The National Planning Policy Framework (the Framework) advises that any harm which is less than substantial must be weighed against the public benefit of the development.
12. The CA was mainly a planned residential estate built on the Wood family estate during the 1870's and 1880's. St Benedict's Church is the most important visual landmark and focus of the north-western part of the CA. The area then has a rather homogenous character owing to the specific ratio of street width, building height and architectural styles<sup>2</sup>. It mainly has a Victorian and Edwardian character, with detached properties of generous proportions which sit on large plots, as is the case with the appeal site.
13. The site therefore derives its significance from its location and resultant character within the CA. It is specifically located within the Marchwood Crescent and Blakesley Avenue Character Area and exhibits the defining qualities of surrounding properties within the street-scene.
14. The Appeal C rear extension terminates in line with the original outrigger and is said to have been built to the same footprint of an extension previously approved at the site. Whilst it uses a range of different finishing materials, it is set to the side of a rear outrigger, which itself is a large three-storey gabled feature, constructed from brick. The extension, including its fenestration and detailed design, therefore appear complementary and coherent and so is not detrimental to the host property. The extension is accordingly high quality and delivers good design and conserves the significance of the heritage asset.
15. During my site visit, I was able to observe the landscaping that has since taken place in front of the lightwells. These planters comprises a robust hard and soft landscaping feature that does not unduly protrude from the frontage of the property. As a consequence of these works, the lightwells can only be glimpsed from the public realm and have very limited impact within the site itself. They therefore do not appear excessive in size. Given the property is otherwise consistent with others in the locality, the lightwells are not prominent or at odds with the rhythm of the street-scene. They are therefore not detrimental to the host dwelling and preserve the character and appearance of the CA.

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<sup>2</sup> Mount Park Conservation Area Character Appraisal, April 2009

16. I appreciate the basement is large, and extends beyond the footprint of the dwelling, to the rear. It however does not do so significantly and neither is it multi-storey. I then have very limited evidence that there are individual, cumulative or negative impacts arising from a concentration of subterranean developments in the area. On-balance, the size of the basement preserves the wider appearance of the CA and is otherwise not detrimental to the host dwelling. Whilst it may not be entirely characteristic of the CA, the property benefitted from permission for a basement and one other example in the road has been brought to my attention, albeit I accept these schemes differ.
17. The Appeal A and B ground-floor extensions then only differ insofar as the projection of the rear extension and its detailed design, including fenestration. No objections have been raised by the Council to the other openings that have been created. I am however not persuaded that the comparatively modest single-storey projection beyond the rear outrigger or design of the extension gives rise to undue bulk or dominance in harmful contravention of the Conservation Area Management Plan, given my aforementioned findings.
18. The developments therefore do not harm the defining qualities of the host property and preserve the significance of the heritage asset, namely the CA, and do not represent overdevelopment.
19. I conclude the developments are not harmful to the existing dwelling and preserve or enhance the character or appearance of the CA. The developments therefore accord with Policies 7.4, 7B and 7C of the adopted Ealing Development Management Development Plan Document, 2013, Policies D3, D4, D6, D10 and HC1 of the adopted London Plan, 2021, and the Conserving and enhancing the historic environment objectives of the Framework. These policies, amongst other things, require development to be complementary in its materials, coherent, conserve the significance of the asset in question, be of high quality, deliver good design, avoid the negative impacts of large-scale basements, and be sympathetic to an assets' significance. As I have not identified any harms, I need not undertake a balancing exercise for the purposes of the Framework.

## **Other Matters**

20. There is very limited evidence before me that the developments harm the visual amenities of neighbouring occupiers, living conditions, the integrity of neighbouring properties arising from the basement, trees or the local highway network. Whilst I appreciate that works have been undertaken without the benefit of planning permission, this does not set a precedent and the appellant has sought to regularise the situation. There is also no evidence before me that the developments give rise to the creation of flats or other units of accommodation at the site.
21. A neighbouring planning application<sup>3</sup> has been brought to my attention, however as this is yet to be formally determined, I afford it only limited weight.

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<sup>3</sup> Council Ref: 204232FUL

## **Planning Conditions**

22. The Council has provided suggested conditions in the event I were minded to allow the appeals.
23. A condition to list the plans is necessary for Appeals B and C in the interests of proper planning. A condition to retain the planters in front of the lightwells is then appropriate for all the Appeals, in the interests of the character and appearance of the area.
24. Aside from the comparatively modest variation to that constructed in respect of the single-storey rear extension, the developments at the site are substantially complete. It is therefore not necessary to have conditions in respect of details of materials, or demolition and construction management or tree protection measures.
25. I then have very limited evidence to persuade me that permitted development rights should be removed from the dwelling, or that a flood risk assessment is now necessary. Given the works have already commenced, there is then no need for the standard time commencement condition.

## **Conclusion**

26. For these reasons and having regard to all other relevant matters raised, I conclude that the appeals on ground (a), against the refusal of planning permission and in respect of non-determination should succeed.

## **Overall Conclusion**

27. For the reasons given above I conclude that the appeals should succeed and planning permissions will be granted. The appeals on grounds (f) and (g) therefore do not need to be considered.

## **Formal Decisions**

### **Appeal A**

28. 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 the construction of a single storey rear extension and enlargement of a basement extension at Premises known as 15 Blakesley Avenue, Ealing, London W5 2DN referred to in the notice, subject to the Schedule of Conditions (1) attached to this decision.

### **Appeal B**

29. The appeal is allowed and planning permission is granted for new rear basement extension with new roof lights and ground floor extension with new conservatory light, new openings on ground and second floor at Premises known as 15 Blakesley Avenue, Ealing, London W5 2DN in accordance with the terms of the application, Ref 2001199HH, dated 16 January 2020, subject to the Schedule of Conditions (2) attached to this decision.

## **Appeal C**

30. The appeal is allowed and planning permission is granted for existing basement and completion of rear single storey extension to the depth approved by permission 161387HH at Premises known as 15 Blakesley Avenue, Ealing, London W5 2DN in accordance with the terms of the application, Ref 205304HH, dated 23 December 2020, subject to the Schedule of Conditions (3) attached to this decision.

*Paul T Hocking*

INSPECTOR

### **SCHEDULE OF CONDITIONS (1)**

1. The planters provided around the lightwells within the front forecourt of the site shall be retained for the life of the development hereby approved.

### **SCHEDULE OF CONDITIONS (2)**

1. The development hereby approved shall be constructed in accordance with the drawing title numbers:- 7528\_011; 7528\_012; 7528\_013; 7528\_014; 7528\_015; 7528\_016; 7528\_017; 7528\_018; 7528\_019; 7528\_020; 7528\_021.
2. The planters provided around the lightwells within the front forecourt of the site shall be retained for the life of the development hereby approved.

### **SCHEDULE OF CONDITIONS (3)**

1. The development hereby approved shall be constructed in accordance with the drawing title numbers:- 7528\_101; 7528\_102; 7528\_103; 7528\_104; 7528\_105; 7528\_106; 7528\_107; 7528\_108; 7528\_109; 7528\_110; 7528\_111; 7528\_112; 7528\_113.
2. The planters provided around the lightwells within the front forecourt of the site shall be retained for the life of the development hereby approved.