



Appeal Decision

Site visit made on 25 April 2022

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2022

Appeal Ref: APP/L5810/C/21/3283152

31 Waldegrave Gardens, Twickenham, TW1 4PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Susanne Fischer against an enforcement notice issued by Richmond Upon Thames London Borough Council.
- The notice was issued on 18 August 2021.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last four years the carrying out of unauthorised works on the Land comprising: (i) unauthorised construction of steps down to the base of a larger lightwell; and (ii) unauthorised construction of retaining walls, balustrades around the lightwell and steps; and (iii) unauthorised carrying out of works to the front face of the building at basement/lower-ground floor level including the installation of a door and window and waterproof-rendering exposed wall faces.
- The requirements of the notice are: (i) Remove the unauthorised works; (ii) Carry out remedial works in order that the development fully accords with drawing numbers SE 299/03 R and SE 299/04 B of planning permission Ref: 10/3081/FUL (as shown in Appendix 1 and Appendix 2); and (iii) Remove from the land all surplus materials and debris arising from compliance with the steps (i) and (ii).
- The period for compliance with the requirements is: Three calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f), (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.

Decision

1. The appeal is allowed, the Enforcement Notice (EN) 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 "(i) unauthorised construction of steps down to the base of a larger lightwell; and (ii) unauthorised construction of retaining walls, balustrades around the lightwell and steps; and (iii) unauthorised carrying out of works to the front face of the building at basement/lower-ground floor level including the installation of a door and window and waterproof-rendering exposed wall faces" at 31 Waldegrave Gardens, Twickenham, TW1 4PQ as shown on the plan attached to the notice.

Preliminary Matters

2. Comparing the plans that were approved under planning permission Ref: 10/3081/FUL for "Formation of new window to front bay to basement with associated external lightwell to form habitable room", to the development that has been carried out which comprises a larger excavated area and steps down to a door, instead of a window, that gives access to a basement flat, the two

developments are materially different. The EN therefore correctly attacks operational development carried out without planning permission.

3. Consequently, any reference by the Council to a breach of a condition on the aforementioned planning permission requiring the development to be carried out strictly in accordance with the approved drawings, thus invoking the ten years enforcement time limit, is not appropriate. I see no need to correct any aspects of the notice.
4. In legal grounds of appeal, such as those under s174(2)(b) and (d) of the 1990 Act, the burden of proof rests firmly with the appellant. The test of the evidence is the balance of probability.

The ground (b) appeal

5. Irrespective of the case made that some of the development may be immune from enforcement action, which I shall consider below under the ground (d) appeal, the works alleged to have occurred have, as a matter of fact, taken place which the appellant accepts. Consequently, the ground (b) appeal fails.

The ground (d) appeal

6. Relevant to this ground of appeal is s191(2)(a) of the 1990 Act which sets out that operations are lawful at any time if no enforcement action may be taken against them because the time limit for enforcement action has expired. The time limit relevant to operational development as set out under s171B(1) of the 1990 Act is the end of the period of four years beginning with the date on which the operations were substantially completed. The appellant therefore needs to demonstrate that the development attacked in the notice was substantially completed for at least four years before the EN was issued. The appellant asserts that the original works were undertaken and completed in 2013 and to support this a series of photographs are supplied.
7. A street view image from June 2012 before any works took place is of no assistance to making out the appellant's case. Photographs declared to have been taken in 2013 showing the arrangement in the front garden with a narrow gravel path leading to steps down, retaining walls and a door into the basement flat, are not corroborated by a date on them and so I attach them limited weight. Aerial images from June 2014, April 2017 and June 2019 are from much too far away and too grainy when focussing in to make out the probable existence of retaining walls and the lightwell.
8. Another street view image from July 2015 does, I accept, show a section of balustrade like what is there now, but the glimpsed view does not show whether the lightwell arrangement and steps were then in situ. I accept that a further street view image from March 2018 shows more balustrade and probably walls going into the ground, but for the reasons given the date when those works were substantially completed has not been satisfactorily shown.
9. I note that in 2014 there were visits to the appeal property by the Council to investigate the installation of a vent pipe to the front of the property. However, the notes made by an officer of that visit submitted with this appeal do not refer to the lightwell/steps works in the front garden. A photograph dated 15 May 2014 showing a reduced size vent pipe does show in the foreground what may be a lightwell. However, not enough of it is showing to assess the extent of the basement level space. It appears to be much smaller

than the current arrangement and it may be more in line with the planning permission referred to above. These notes and photographs do not help the appellant's case.

10. There was Building Control approval for works in the front garden based on plans deposited with the Council in August 2013. The Council has supplied plans of what was subsequently approved in 2014 and they show an arrangement similar to the planning permission drawings. I do though agree with the appellant that the notes of Building Control site visits starting on 26 September 2013 refer to excavations completed to a depth of approximately 2800mm, the works hitting the water table, footings being underpinned and discussions about guarding the lightwell area. Such works might reflect a much deeper and more significant arrangement than was approved and thus fit more with the appellant's version of events.
11. Nevertheless, these notes also refer to access to the room via the ground floor flat. There is no mention of a new basement level doorway. Also, the notes do not refer to steps down into the lightwell area. Furthermore, the notes refer to inspections through to mid-2014 when work is likely to still have been in progress. The final building control sign off was not until 28 July 2014. These dates do not tally with the completion date given by the appellant of 2013.
12. In addition, drawings with a retrospective planning application refused in 2021 for retention of the works (Ref: 20/3615/HOT) showed on the 'Existing Plans' the window and lightwell arrangement granted in 2010. In my experience it would be unusual to show anything other than what exists at the time of the planning application, even if the existing position did not have planning permission and was possibly unlawful.
13. I note that some further works to the lightwell area and new reoriented steps to replace wooden ones were undertaken in 2020. However, these works do not go to show that the lightwell and steps originally constructed were substantially in place and there for the necessary time.
14. All in all, there is contradictory evidence that paints a confused timeline of events. As such, the appellant has not discharged the burden on them to show, as a matter of fact and degree, that the works were probably substantially complete at least four years prior to the issue of the EN. As such, it was not too late to take enforcement action. The ground (d) appeal fails.

The ground (a) appeal – planning merits

15. The main issue is whether the development has preserved or enhanced the character or appearance of the Strawberry Hill Road Conservation Area (CA), having further regard to the appeal property being a Building of Townscape Merit (BTM).
16. Having regard to the Council's Strawberry Hill Road CA Character Appraisal and Management Plan, the houses in Waldegrave Gardens "share a similar character as a collection of unspoilt grand two to two-and-a-half storey detached and semi-detached houses in red brick with rich detailing in terracotta and moulded brick, timber windows and some porches and balconies, varied roofscapes in clay tile and tall brick chimneystacks, within a setting of substantial mature gardens presenting brick boundary walls to an attractive curving treed avenue". They form a cohesive architectural group.

17. Bearing in mind that the appeal development is, apart from the balustrades, below ground level it has no direct impact on, or loss of, the built architectural features referred to above that contribute to defining the significance of the CA as a designated heritage asset. Furthermore, there is still a reasonable amount of space in the front garden that allows for planted borders along the two road frontages of this corner plot which, along with the boundary fencing, mean that the lightwell and the steps are generally not noticeable to passers-by. From many angles, the development cannot be seen.
18. I acknowledge that the existing shrubbery could be removed. However, the photographs show that it has been there since 2012, and probably before, to varying forms and heights and it is well established, particularly along the front. It also provides a degree of privacy for the occupiers of the building at the front. Consequently, it seems unlikely that it would be removed just because planning permission has been granted for this scheme. Even if it was, albeit the top parts of the boundary fences are open lattice, they are slightly taller than the balustrades and so they would not necessarily become prominent due to a lack of vegetation. I acknowledge that the balustrades have a standard design. Nevertheless, they are timber which is a traditional material not out of place in the CA.
19. The basement level door generally matches the vertical proportions of the sash windows in the canted bay above. Its colour may not reflect traditional colours prevalent in the area, but this is an unlisted building where there is no control over the use of external paints, and it is reasonably muted. The render finish on the basement bay is also a pastel colour. The subterranean position of the door and render further mean that they are not strident or eye catching.
20. In view of the above, I find that the appeal development is not an incongruous or prominent feature. The street scene is unaffected and the architectural unity of the properties in the road remains intact. The significances of the designated and non-designated heritage assets have not been harmed. The character and appearance of the CA has been preserved. I am aware of concerns over setting a precedent. However, I have found the development acceptable and thus it does not set a harmful precedent. In any event, each development if other schemes did come forward, of which there is no evidence of past similar proposals, would need considering on their individual merits.
21. The development accords with the design and heritage asset conservation aims of policies LP1, LP3 and LP4 from the Richmond Upon Thames Local Plan, the National Planning Policy Framework, and the Council's Supplementary Planning Document Buildings of Townscape Merit. The development accords with the development plan taken as a whole. In its officer report the Council also states that the scheme is not in accordance with its 'House Extensions and External Alterations SPD'. However, this is not referred to in the reasons for issuing the EN and no specific parts of the SPD have been drawn to my attention.
22. The ground (a) appeal succeeds, and I shall grant planning permission for the development set out in the notice. The appeals on grounds (f) and (g) therefore do not fall to be considered.

Gareth Symons

INSPECTOR