
Appeal Decisions

Site visit made on 27 July 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Appeal A Ref: APP/A5840/C/22/3294554

Land at 17 and 19 Trafalgar Avenue, London SE15 6NP

- 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 Dr Anwar Ansari of East India Estate Ltd against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice, numbered 19/EN/0167, was issued on 28 January 2022.
 - The breach of planning control as alleged in the notice is, without planning permission:
 - the installation of UPVC windows on the front elevation
 - installation of new front doors
 - alteration to the front gardens including the rendering of walls leading to the front doors
 - the erection of the decking and free-standing postbox, and
 - the erection of front boundary walls.
 - The requirements of the notice are:
 - (a) Remove from the property the following:
 - the unauthorised UPVC windows at the front of the 1st and 2nd floor
 - the front doors and the free-standing post box
 - the decking and all the materials associated with those works
 - (b) Demolish the front garden wall and removal of all materials associated with these works
 - (c) Remove and restore the garden walls back to the original condition prior to the unauthorised development
 - (d) To carry out works in accordance the approved plans number 1, 2A and 7 pursuant to the Second Permission
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/A5840/C/22/3294555

Land at 17 and 19 Trafalgar Avenue, London SE15 6NP

- 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 Dr Anwar Ansari against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice, numbered 21/EN/0108, was issued on 28 January 2022.
- The breach of planning control as alleged in the notice is, without planning permission,

the erection of conservatories on the rear lower ground level at basement flats to the property.

- The requirements of the notice are:

Demolish the conservatories at the Property

and

Remove from the Property any material and debris associated with the unauthorised development

or

Carry out works to the conservatories in accordance with the plans approved pursuant to the planning permission granted on 14 March 2007 (03/AP/0924)

- The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
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Summary Decisions: Appeals A and B are both dismissed and the enforcement notices upheld with a correction as set out in the Formal Decision below.

Procedural matters

1. I carried out an unaccompanied site visit on the morning of 27 July 2022. I was clearly able to view the front elevation of the appeal property and the matters alleged in the enforcement notice subject to Appeal A from the public highway on Trafalgar Avenue. The rear of the terrace of which the appeal property forms a part back onto public gardens (Burgess Park). I was able to view the conservatories at the rear of the properties subject to Appeal B from there, albeit the view was in part obstructed by the boundary fencing. I am nevertheless satisfied I could see sufficient of the development subject to the enforcement notice to properly inform my Decision.
2. In his appeal statements in relation to both Appeal A and Appeal B, the appellant states that he considers the requirements to remedy the breach of planning control as set out in Section 5 of the Enforcement Notice exceed what is necessary to remedy any breach of planning control. On the face of it, those statements would appear to constitute appeals under ground (f) as set out section 174(2) of the Town and Country Planning Act (the 1990 Act). But in neither case does the appellant then go on to expand upon the point and provides no evidence to support his claim. I therefore consider that the appellant's brief comments in his Appeal Statements do not constitute valid appeals under ground (f) and I have not considered them further.

The Enforcement Notices

3. Both of the enforcement notices subject these appeals (Council Refs 19/EN/0167 and 21/EN/0108 respectively) were made pursuant to paragraph (b) of Section 171A(1) of the 1990 Act. Paragraph (b) of Section 171A(1) relates to a breach of planning control constituted by failing to comply with any condition or limitation subject to which planning permission has been granted. However, both enforcement notices allege the carrying out of development

without the required planning permission, which falls under paragraph (a) of Section 171A(1) of the 1990 Act.

4. The correction is straightforward in relation to the notice subject to Appeal A: the breach of planning control alleged is clearly stated in the notice as new development installed or erected without the benefit of planning permission.
5. The situation is more complicated in relation to the notice subject to Appeal B. The breach of planning control alleged in paragraph 3 of the notice is, *without planning permission* (emphasis added), the erection of conservatories on the rear lower ground level at basement flats to the property. However, the reasons for issuing the notice state at paragraph 4.2.2 that the unauthorised development fails to comply with condition 2 of the planning permission granted on 14 March 2007 (03/AP/0924), and at paragraph 4.2.3 sets out condition 2 in full. This is clearly reference to a breach of condition.
6. The appellant has framed his case in response to an alleged breach of condition. The Council, on the other hand, approaches the matter in its appeal statement as being development not in accordance with the planning permission 03/AP/0924 and not, on my reading, as being a breach of condition. That approach is more in keeping with the notice being made under paragraph (a) of Section 171A(1) of the 1990 Act and, for reasons that I set out below, is in my view the correct approach. It follows that both notices should properly have been made pursuant to paragraph (a) of Section 171A(1) of the 1990 Act.
7. Section S176(1)(a) of the 1990 Act provides that an enforcement notice may be corrected provided that there is no injustice to the appellant or local planning authority. The appellant has not raised the point above and has fully understood the substance of the breaches of planning control that are alleged in the notice. He has chosen appropriate grounds of appeal and has made his case accordingly. Furthermore, for the reasons that I set out below, the appellant's case in relation to ground (c) on Appeal B could not have succeeded even if I had treated the notice as alleging a breach of condition. I am therefore satisfied that I can correct both notices in this respect without causing injustice.

Appeal A: the appeal on ground (c)

8. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
9. There are several elements to the breach of planning control to which this ground of appeal relates. It is convenient to consider these separately in the first instance before reaching an overall conclusion this ground of appeal.

The UPVC windows

10. As I understand it, this ground of appeal only applies to the windows at No 17 Trafalgar Avenue. The essence of the appellant's ground of appeal in relation to the UPVC windows is that they are replacements for UPVC windows that had been in place. The appellant considers that these replacements were on a 'like for like' basis, such that they do not require planning permission.

11. Several points emerge from the appellant's position. Firstly, the appellant himself describes the replacement windows as being "improved windows". That, right there, implies that the windows were in some way different from those that they replaced, albeit the appellant does not explain in what way they were considered to be an improvement.
12. Further evidence that the replacement windows were different to those that they replaced is to be found in the Inspector's decision dated 22 December 2020 in relation to an appeal under Section 78 of the 1990 Act against the refusal by the Council of a retrospective application for the installation of double glazed upvc sliding sash windows (APP/A5840/W/20/3250382). The windows in question were the very same windows subject to this appeal. Under the heading of 'Preliminary Matters', the Inspector concluded that these windows "are not entirely 'like for like' replacement".
13. Comparison of photographs of the windows subject to the notice with those that they replaced shows that there were indeed some detailed differences. The previous windows were UPVC casement windows opening at the midpoint. The replacement windows are all of the sliding sash type, and are noticeably different in terms of design and the thickness of the material used. I therefore conclude, as a matter of fact and degree, that the windows subject to the notice cannot be considered to be like for like replacements for the previous windows.

The front doors

14. The essence of the appellant's ground of appeal in relation to the front doors is again that they are like for like replacements for the doors that had been in place previously, and as such do not require planning permission. However, comparison with photographs of the doors that were in place previously shows that this is not the case. There are numerous differences.
15. The door to No.17 previously included 2 diamond shaped window panels and the door at No.19 included none. The previous doors both appear to be constructed of timber, and were different to each other. The appellant advises that the new doors are constructed of hardwood timber. Nonetheless, both doors subject to the notice are now of a uniform design with a large light in the middle section of the door. The thickness of the surround around the door is noticeably thicker in relation the doors subject to the notice. The bar between the top of the door and bottom of the fanlight is clearly thicker too, with the result that the fanlight itself is smaller in the new doors. As the Council points out, the latter works would have required additional construction instead of just removing the door hinges and installing a new door.
16. Individually, those relatively subtle changes might not make a material difference to the appearance of the doors. But collectively they make a significant difference. Consequently, as a matter of fact and degree, I conclude that the front doors subject to the notice cannot be considered to be like for like replacements for the previous doors.

Front garden walls

17. Comparison with photographs provided as part of the Council's evidence shows that the front garden walls to Nos 17 & 19 subject to the notice are materially different to those previously existing in terms of height, design, colour and

materials. As a matter of fact and degree, both front garden walls constitute new development.

18. Both walls exceed 1 metre in height and have been constructed adjacent to a highway used by vehicular traffic. Consequently, both front garden exceed the limitations in Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) and therefore do not constitute development permitted by the GPDO.

Walls leading to the front doors

19. The photographic evidence shows that the walls leading to front doors were rendered but unpainted. The appeal property is not statutorily listed. Consequently, the painting of the walls leading up to the front doors would normally constitute permitted development for the purposes of Class C, Part 2, Schedule 2 of the GPDO. In that context, I note that the Article 4 Direction issued by the Council in relation to the Trafalgar Avenue Conservation Area (amongst others), and which came into force on 6 January 2019, removed permitted rights under Classes A and B of Part 2, Schedule 2 of the GPDO, but not permitted development rights under Class C. Those rights therefore remained intact when the development was constructed.
20. The walls leading to front doors are painted in exactly the same colour as the front garden walls. It is therefore more likely than not that the painting of both walls was carried out as part of a single operation: in other words, not necessarily at the same time but as part of a single development that included, amongst other things, the construction/painting of the front garden walls and the painting of the walls leading to front doors. I have no evidence before me to suggest otherwise. It is settled case law that if any limitation in the GPDO is exceeded in any one element of a development, then the whole development is unlawful, not just the element(s) in excess of permitted development rights. I have found that the front boundary wall does not accord with the limitations set out in the GPDO. It follows, then, that the painting of the walls leading to front doors cannot constitute permitted development under Class C, Part 2, Schedule 2 of the GPDO in those circumstances.

The decking

21. The appellant accepts that the decking constitutes development requiring planning permission and that it does not have the benefit of any such planning permission, deemed or otherwise. I see no reason to take a different view.

The freestanding postbox

22. In *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102, the Court of Appeal endorsed earlier court judgments that had identified three primary factors as being decisive of what was a building: (a) size; (b) permanence and (c) physical attachment. The Encyclopaedia of Planning Law and Practice indicates that this last factor may in itself be inconclusive but may tilt the balance when weighed with other factors. It is helpful to assess the freestanding postbox against the three factors identified in *Skerritts*.
23. The postbox is relatively small in size but is physically attached to the ground. The postbox is evidently intended to be a permanent fixture: there is no letter box in either front door, and the postbox is therefore required to serve the flats in Nos 17 & 19. Moreover, the postbox has been in situ since at least February

2021, and therefore nearly a whole year prior to the notice being issued. For these reasons, when assessed against the three factors identified in *Skerritts*, I conclude that as matter of fact and degree the postbox is a building and therefore constitutes development for the purposes of Section 55(1) of the 1990 Act.

Conclusion on the appeal on ground (c)

24. I find that all the matters stated in the notice constitute development for the purposes of Section 55(1) of the 1990 Act. Section 57 of that Act provides that planning permission is required for the carrying out of development. There is no planning permission in place, deemed or otherwise, for the development alleged in the notice. I therefore conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control.
25. Accordingly, the appeal on ground (c) fails.

Appeal B: the appeal on ground (c)

26. Planning permission was granted on 14 March 2007 for the conversion of the existing flats Nos 17 and 19 Trafalgar Avenue to provide a total of 8 flats including, amongst other things, the erection of rear conservatories at basement and second floor level (Council ref: 03/AP/0924). The approved drawings included Drawing No: AA/17-19TRAFALGAR/EXT./FINAL/001; AA/17-19TRAFALGAR/EXT./FINAL/002; AA/17-19TRAFALGAR/EXT./FINAL/007; and AA/17-19TRAFALGAR/EXT./FINAL/008. All of these approved drawings show the side and rear elevations of the conservatories to be fully glazed or, in the case of the side elevations, at least partially glazed.
27. The conservatories as built feature an entirely solid side elevation and rear elevations that contain a solid section. That is a significant, and in my view, a material departure from the approved drawings. It goes beyond a breach of condition 2 imposed upon that permission and is an entirely different development. The conservatories have therefore not been constructed in accordance with planning permission 03/AP/0924 and do not benefit from that planning permission. There is no other planning permission in place for these conservatories and it follows that the conservatories do not have planning permission.
28. The appellant contends that the description of development for planning permission 03/AP/0924 does not specifically reference the conservatories in question, and that the approved plans do not provide any details on the materials to be used for the conservatories, or any other design specification. The appellant also argues that conditions 2 and 4 imposed upon planning permission 03/AP/0924 have been met.
29. I take the appellant's point about the description of the development on the planning permission. However, the planning permission must be read as a whole, including the approved drawings. Looking at planning permission 03/AP/0924 in that way, it is my view clear that the description of development includes the erection of the conservatories. It is equally clear from the approved drawings that the conservatories have not been constructed in accordance with that permission. The corollary is that planning permission 03/AP/0924 has not been implemented, at least not insofar as it relates to the

conservatories, such that conditions 2 and 4 imposed upon that permission do not bite.

30. Moreover, even if condition 2 did bite, the appellant's case on this ground of appeal could not have succeeded. Condition 2 states that the facing materials used in the carrying out of this permission shall match the original facing materials in type, colour, dimensions, and in the case of brickwork, bond and coursing and pointing." Clearly, the materials used in the conservatories do not match the original facing materials in type or colour. It follows that the conservatories could not be said to comply with condition 2, even if that condition had been in play.
31. I therefore conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal A: the appeal on ground (d)

32. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the development was substantially complete on the date four years before the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellant.
33. As I understand it, this ground of appeal is made only in respect of the UPVC windows at No 17 Trafalgar Avenue. It is the appellant's case that the UPVC sash windows at No 17 were installed prior to 2008 and as such are immune from prosecution¹ (and would have been immune from 2012) in terms of section 171B of the 1990 Act.
34. I have already found that the UPVC windows at No 17 cannot be considered to be like for like replacements for the previous windows that were installed prior to 2008. The latter may well have become immune from enforcement action in 2012. But that misses the point. Those windows have been replaced by the new and different windows now subject to the enforcement notice. It therefore matters not that the previous windows gained immunity from enforcement action: the 'clock' was reset and started again when the new windows were installed. The appellant therefore has to show that the new windows that are subject to the enforcement notice were fully installed (substantially complete) on the date four years before the notice was issued. The appellant has provided no evidence to that effect and has failed to discharge the burden that falls upon him on this ground of appeal.
35. Accordingly, the appeal on ground (d) fails.

Appeal A: the appeal on ground (a) and the deemed planning application

36. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. In that context, the deemed planning application is for all the matters stated in the notice.

¹ The appellant's wording. I have taken this to mean immune from enforcement proceedings.

37. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:

- the effect of the development on the appearance of the host building
- whether the development preserves or enhances the character or appearance of the Trafalgar Avenue Conservation Area, and
- the effect of the development on the setting of nearby listed buildings.

The appearance of the host building

38. I note firstly that the reasons for the issuing the notice only allege harm to the appearance of the host building and not to its character. I will approach this ground of appeal on that basis. I also note that the host building is neither statutorily listed nor does it carry any local designation of historic or architectural value. The host property is therefore not a heritage asset in its own right, but does of course fall within the Trafalgar Avenue Conservation Area and does form part of that heritage asset.

39. The UPVC windows are of a sliding sash design which, as a design type, is in keeping with the original appearance of the host property. However, by reason of their modern appearance and the width of the framing, the UPVC windows are wholly inappropriate for a building of this period and significantly harm its appearance.

40. My own views in this respect are reinforced by the findings of the Inspector in dismissing the appeal under section 78 of the 1990 Act to retain those windows (APP/A5840/W/20/3250382). I note, and echo, the Inspector's finding that the use of UPVC as a modern material is very rarely acceptable within such a setting where the original dwellings would have had painted timber sliding sash windows. I also concur with the Inspector in that this is not one of those very rare occasions when the use of UPVC is appropriate in a building of this period.

41. Similarly, the design of the new doors is wholly inappropriate for a building of this period. In particular, the thickness of the surround around the door is inconsistent with original appearance of the host building, as is the reduced size of the fanlight. Details such as that are important to the overall appearance of a building of this vintage even if, as in this case, the building is not statutorily listed or does not carry any local designation.

42. I conclude that the development harms the appearance of the host building. I therefore conclude that the breach of planning control alleged in the notice is contrary to Strategic Policy 12 of the Council's Core Strategy 2011 which requires, amongst other things, that development will achieve the highest possible standards of design.

43. For the same reasons, the development also fails to accord with the importance attached to good design in the National Planning Policy Framework (NPPF).

Whether the development preserves or enhances the character or appearance of the Trafalgar Avenue Conservation Area

44. In my assessment, the significance of the Trafalgar Avenue Conservation Area derives, in part, from the terraces of large townhouses on either side of the road. These terraced properties, several of which are statutorily listed, are good examples of early to mid-19th century suburban development. The

Trafalgar Road Conservation Area therefore has some historic significance as being one of the earliest residential suburbs to be developed along the Old Kent Road. The historic buildings within the conservation area remain largely intact with many historic features still in place. The uniformity of the design and detailing of the townhouses is a defining characteristic of this conservation area.

45. The installation of the UPVC windows is not consistent the original features of the host property. The installation of those features therefore detracts from the uniformity of the design and detailing of the town houses. It follows that the installation of the UPVC windows and doors neither preserves nor enhances the character or appearance of the Trafalgar Avenue Conservation Area, but rather is harmful to its significance.
46. In that context, my own views are again reinforced by the findings of the Inspector in dismissing the appeal to retain the UPVC windows (APP/A5840/W/20/3250382), who concluded that they had a harmful effect on the conservation area. It is a fundamental principle of planning that each case must be considered on its own merits. Nevertheless, consistency is an important aspect of decision making and in this case I find no reason to depart from the views of the Inspector in that case.
47. The appellant has referred to examples of UPVC windows and doors on other properties within the Trafalgar Avenue Conservation Area and in particular Scott's Terrace, of which the appeal properties form a part. The appellant considers the UPVC windows have had a positive and improved effect on the appearance of the buildings and the conservation area. I cannot agree with the appellant in this respect. If anything, in my view these UPVC windows illustrate just how harmful the use of this modern material is to the character and appearance of the conservation area and only serve to demonstrate the importance of resisting the use of this inappropriate modern material in windows on the appeal properties.
48. This harm is exacerbated by the front garden walls, the walls leading up to the doors, the decking and the postbox. The majority of front gardens are bounded by original brick walls with gate piers leading to the steps. By reason of its height, design, rendered finish and colour, the front garden wall to the appeal properties is visually obtrusive and not in keeping with the character and appearance of the conservation. The same is true of the walls leading up to the doors which, by reason of their yellow colour and elevated position, are unduly prominent within the conservation area. The decking is an incongruous feature which obscures original tiled paths and which has no historical foundation within the conservation area. The postbox is a modern feature wholly out of keeping with the period properties in the conservation area. The presence of the bus shelter immediately in front of the appeal properties provides no justification for the harmful effect of these developments.
49. I have a duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of at least preserving the character and appearance of the conservation area. For the reasons given above, I consider that the development to which the deemed planning permission relates fails to achieve that objective. In terms of paragraph 202 of the NPPF, the harm to the character and appearance of the conservation area as a whole can be described as "less than substantial" harm

to the significance of the heritage asset. Nevertheless, given the statutory duty, that harm carries considerable importance and weight.

50. The appellant considers that the UPVC windows have maintenance and environmental benefits over timber windows, particularly single glazed windows, as demonstrated due to their durability, ease of maintenance and environmental performance. The appellant further considers that they are more energy efficient than the previous windows, which will improve the living conditions of the residents of the properties and reduce CO2 emissions through improved energy efficiency.
51. I accept that these are public benefits that must be weighed against the harm to the significance of the Trafalgar Avenue Conservation Area, a designated heritage asset. However, those benefits have not been quantified by the appellant. In the absence of that evidence, I am not persuaded that those public benefits outweigh the harm caused by the breach of planning control to the significance of this designated heritage asset. That harm is sufficient reason by itself to refuse planning permission on the deemed application.
52. I conclude that the development subject to the notice harms the character and appearance of the Trafalgar Avenue Conservation Area, which accordingly are not preserved. The development therefore conflicts with Policy HC1 of the London Plan 2021, policies 3.15 and 3.16 of the Southwark Plan 2007, as well as Policies P20 of Southwark Plan 2020. These policies require, amongst other things, that developments conserve or enhance the significance of heritage assets.

The effect of the development on the setting of nearby listed buildings

53. The terrace on west side of Trafalgar Avenue, and directly opposite to the appeal properties, are all Grade II listed buildings. A terrace of townhouses just to the south of the appeal properties (Nos 25-43 Trafalgar Avenue) are also Grade II listed buildings. The significance of these heritage assets is that they are fine examples of early to mid-19th century townhouses, retaining many of the original features.
54. The front elevations of the appeal properties are viewed in conjunction with these listed buildings, particularly so the terrace just to the south. The appeal properties therefore form part of the wider setting for those listed buildings. By reason of their appearance and inappropriateness to the period of the host property, the UPVC windows, the front doors, the front garden walls, the walls leading up to doors and the postbox are all features that harm the setting of the listed buildings on both sides of Trafalgar Avenue. This is particularly the case with the UPVC windows which, because of their position on the upper floors of the host building, are generally viewed in conjunction with listed buildings. For that reason, the breach of planning control competes with and detracts from the authenticity of the front elevation of the listed buildings, which forms an important part of their significance. The breach of planning control thereby harms the setting of those heritage assets.
55. I have a duty under section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving a listed building or its setting. For the reasons given above, I consider that the development to which the deemed planning permission relates fails to achieve that objective. The harm to the setting of the listed

buildings as a whole can be described as “less than substantial” harm to the significance of the heritage assets. Nevertheless, I have no evidence to suggest that any benefit to the public in terms of, for example, energy conservation outweighs the harm to the heritage assets.

56. I conclude that the development subject to the notice unacceptably harms the setting of nearby listed buildings. The development therefore conflicts with Policy HC1 of the London Plan 2021 and Policy 3.18 of the Southwark Plan 2007, as well as Policy P21 of Southwark Plan 2020. These policies require, amongst other things, that developments conserve or enhance the immediate or wider setting of a listed building.

Conclusion on ground (a)

57. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

Appeal B: the appeal on ground (a) and the deemed planning application

58. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:

- the effect of the development on the appearance of the host building, and
- whether the development preserves or enhances the character or appearance of the Trafalgar Avenue Conservation Area

The appearance of the host building

59. I note again that the reasons for the issuing the notice refer only to the appearance of the host building and not on its character.
60. In the context of the rear elevation of the building as a whole (Nos 17 & 19 respectively), the conservatories are a modest addition. The principle of the scale and massing of the conservatories has been established by the granting of planning permission 03/AP/0924. The primary difference, then, is the materials from which the conservatories are constructed. In that respect, I consider that the materials are inappropriate and not in keeping with the appearance of the original building.
61. I am mindful that the conservatories are not easily visible from the public domain in Burgess Park: indeed, as I discovered at my site visit, it is necessary to make a concerted effort even to obtain any glimpses of the conservatories from there. Nonetheless, the harm is to the appearance of the host property itself. Moreover, the occupier of an adjoining dwelling describes the side of the conservatory as “unsightly” when viewed from his property. Although a private view, this is further evidence of the harm caused by the conservatories to the appearance of the host property.
62. Moreover, the harm to the appearance of the building could not be mitigated by the imposition of conditions: for example, requiring that the solid side

elevation is rendered and/or painted would not address the inappropriate use of UPVC for the remainder of the structure of the conservatories.

63. I conclude that the conservatories harm the appearance of the host building. I therefore conclude that the breach of planning control alleged in the notice is contrary to Strategic Policy 12 of the Council's Core Strategy 2011.
64. For the same reasons, the development also fails to accord with the importance attached to good design in the NPPF.

Whether the development preserves or enhances the character or appearance of the Trafalgar Avenue Conservation Area

65. As indicated above, the significance of the Trafalgar Avenue Conservation Area derives, in part, from the terraces of large townhouses on either side of the road. The conservatories are on the rear elevation of the appeal property. The uniformity of the design and detailing of the town houses forming the terrace fronting onto Trafalgar Avenue, and which is a defining characteristic of this conservation area, is not affected by the conservatories at the rear of the building. Furthermore, by reason of their size and location, the conservatories are not visible from the public domain.
66. For the above reasons, I conclude that the conservatories do not harm the character or appearance of the Trafalgar Avenue Conservation Area, which are therefore preserved. I therefore find no conflict with Policy HC1 of the London Plan 2021, policies 3.15 or 3.16 of the Southwark Plan 2007, or Policy P20 of Southwark Plan 2020.

Other considerations

67. The appellant draws a comparison with the conservatory that has been erected at No 13A Trafalgar Avenue. As the appellant points out, unlike the conservatories subject to the notice, that conservatory is visible from Burgess Park. Indeed, I was able to view that conservatory as part of my site visit. However, the conservatory at No 13A is of a different design and appearance to the conservatories on the appeal properties. Consequently, irrespective of the views the appellant may hold about the relative visual impacts of the conservatories, it is not a direct comparison. The conservatories subject to this appeal must be considered, as I have done, on their own planning merits.
68. The occupier of an adjoining dwelling considers that, because of the solid side wall, the conservatory adjoining his dwelling severely restricts light to his property and creates moss and dampness to what was in his view an already enclosed space. The Council has not identified the impact of the development on the living conditions of the occupiers of adjoining properties in the reasons for issuing the enforcement notice, and for that reason I have not treated this as a main issue under this ground of appeal. Nevertheless, it is a material consideration that I must take into account.
69. The Council has made no comment on this matter. The appellant considers that the changes to the materials from which the conservatories are constructed would not have any material effect on sunlight and daylight to the objector's property. I do not agree. In my judgment, the solid side wall does reduce the light to the neighbour's dwelling and garden area to some extent, and does harm the outlook from his property. That is a matter to which I attach significant weight.

Conclusion on ground (a)

70. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

Conclusion

71. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices with corrections and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

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72. It is directed that the enforcement notice is corrected by:
- In paragraph 1 of the notice, delete the words 'paragraph (b)' and substitute there the words 'paragraph (a)'
73. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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74. It is directed that the enforcement notice is corrected by:
- In paragraph 1 of the notice, delete the words 'paragraph (b)' and substitute there the words 'paragraph (a)'
75. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR