



# Appeal Decision

Site visit made on 16 October 2023

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

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

**Decision date: 10 November 2023**

---

**Appeal Ref: APP/W2465/C/22/3311023**

**63 Pembroke Street, Leicester LE5 0FA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Rujeko Sigauke against an enforcement notice issued by Leicester City Council.
  - The notice was issued on 13 October 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the construction of front porch extension.
  - The requirements of the notice are:
    1. Demolish the porch extension to the front.
    2. Remove all resulting excess material from the site.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
  - **Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.**
- 

## Appeal on ground (a) and the deemed planning application

### Main Issues

1. The main issues are the effect of the development on the character and appearance of the appeal property and the surrounding area and the effect of the development on the living conditions of the occupants and future occupants of the appeal property with particular reference to loss of light and outlook.

### Reasons

#### *Character and appearance*

2. The appeal site is a semi-detached property located at the end of a U-shaped row of properties of similar design. There exists a degree of uniformity between the appeal property and the neighbouring property with mirrored front entrance doors and window locations which contribute to the uniformity of this part of Pembroke Street. Despite the use of matching materials, due to its proportions of depth to width, the porch appears as a dominating feature at the front of the property which does not relate positively to the appeal property or the adjoining property.
3. In that the porch fails to enhance the character of the appeal property and the surrounding area it is contrary to CS Policy 3 of the Leicester City Core Strategy (2014) (CS) and the Framework which state that development is expected to be well designed that contributes positively to the character and appearance of the local and natural built environment.

### *Living Conditions*

4. Both parties agree that the porch does not adversely affect the living conditions of the occupiers of No 61. The porch has been built adjacent to the front window serving the lounge/dining area of the appeal property. Albeit light from the rear window reaching the lounge area is diminished due to the central staircase, the front window together with the rear window give light to the lounge/dining area. Due to its depth and proximity to the south facing front window, the porch reduces the amount of light to the lounge. However, I consider that any loss of light is unlikely to be of a degree which causes material harm to the occupants or future occupants of the appeal property. In any event I have seen no technical evidence to the contrary.
5. I have approached the issue of outlook from the viewpoint of whether there is an overbearing development rather than in the sense of the loss of a view. Albeit the appellant considers that the porch does not have a significant impact in terms of loss of outlook, I find that despite the orientation of the porch and the south facing front window, the outlook from the front window is changed to a harmful degree due to its resultant mass and the extent to which the porch extends beyond the building line.
6. Therefore, I find that the development has an adverse effect on the living conditions of the occupants and the future occupants of the appeal property having regard to outlook. There is conflict with Policy PS10 of the City of Leicester Local Plan Saved policies version (2006) which seeks to provide residents with a quality living environment.

### **Other Considerations**

7. Class D of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the erection or construction of a porch outside any external door of a dwellinghouse<sup>1</sup>.
8. I am informed that the ground area of the porch is approximately 5.9m<sup>2</sup>, it is 1.6m in width and 3.7m in depth.
9. The appellant argues that there is a 'fallback' position, namely the construction of a smaller porch as permitted development (PD). My assessment therefore must have regard to the fallback as a material consideration. In their submissions the appellant indicates that the smaller porch could be achieved by reducing the depth of the porch to 3 metres. However, a porch of this depth with a width of 1.6m would still exceed the size allowance of 3m<sup>2</sup> (measured externally), as permitted by Paragraph D.1 (b) of Class D.
10. Moreover, Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if: (a) in the case of permission granted in connection with an existing building, the building operations involved in the

---

<sup>1</sup> Paragraph D.1 states that development is not permitted by Class D if –  
(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of the Schedule (change of use).  
(b) the ground area (measured externally) of the structure would exceed 3 square metres.  
(c) any part of the structure would be more than 3 metres above ground level: or  
(d) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway.

construction of that building are unlawful. Thus, here, the fallback position would only be available once the unauthorised porch is demolished.

11. The fallback position must be a realistic option and not merely a theoretical prospect of being an alternative. I have no substantive evidence to indicate that there is a real prospect that the appellant would demolish and reconstruct a porch in line with PD. In any event, the fallback position is not a compelling argument given that a porch built under PD would be considerably shorter in depth than the appeal development. In context, this is not a slight difference, but one that reflects notably in terms of visual impact on the character and appearance of the host property and surrounding area and impact on the outlook from the front window of the appeal property. Thus, in comparison to the 'as built' development the fallback position does not offer a similar or worse outcome but one that would not be as harmful as the appeal development. Thus, it would not afford a credible fallback position that would warrant the grant of planning permission on the deemed planning application.
12. The comment regarding the lack of objections is noted but is insufficient to influence my decision.

#### *Conclusion on ground (a) and the deemed planning application*

13. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the notice and refuse to grant planning permission on the application deemed to have been made under s177(5) of the 1990 Act as amended.

#### **Appeal on Ground (f)**

14. 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<sup>2</sup>. As the enforcement notice requires the demolition of the porch, the purpose is clearly to remedy the breach of planning control. No lesser steps would achieve that purpose.
15. The appellant considers it excessive for the notice to require demolition of the porch when a porch could be built as PD. I have considered this matter under ground (a) and for the reasons given above, have discounted a fallback position. I accept that enforcement action is intended to be remedial not punitive and have considered the appeal development on its own individual planning merits.
16. For the reasons given above, I conclude that it is not excessive to require the removal of the porch. No lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

#### **Appeal on ground (g)**

17. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The appellant considers that a

---

<sup>2</sup> S173 of the Act - Those purposes are—

(a)remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or  
(b)remedying any injury to amenity which has been caused by the breach.

compliance period of six months is too short and has suggested a period of twelve months.

18. Having regard to the submissions from both parties including the appellant's difficult personal circumstances, I considered that a compliance period of twelve months is too long. From all I have seen and read I see no reason why the necessary works could not be carried out in six months. If this reasonably proves to not be the case, the appellant can ask the Council to extend the period specified in accordance with s173(9) in the notice using their powers under s173A91 of the 1990 Act as amended. The appeal on ground (g) fails.

### **Conclusion**

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Formal Decision**

20. 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.

*Elizabeth Jones*

INSPECTOR