



Appeal Decisions

Site visit made on 14 November 2023

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal A Ref: APP/H5390/C/22/3305006

Appeal B Ref: APP/H5390/C/22/3305007

22 Upper Mall, London W6 9TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- Appeal A is made by Mr Dominic Warren and Appeal B is made by Ms Heather Alston against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
- The notice was issued on 1 July 2022.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey art studio together with a high level roof and rooflights, and erection of a single storey conservatory attached to the new art studio at the rear of 22 Upper Mall.
- The requirements of the notice are to:
 - (1) Demolish the single storey art studio and single storey conservatory attached to the new art studio at the rear of 22 Upper Mall.
 - (2) Remove from the land all associated materials.
- The period for compliance with the requirements is: 6 months.
- Appeals A and B are proceeding on the grounds set out in sections 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal A also proceeds on the ground set out in section 174(2) (a) 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 Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decisions.

Appeal C Ref: APP/H5390/W/22/3298499

22 Upper Mall, London W6 9TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Dominic Warren against the Council of the London Borough of Hammersmith and Fulham.
- The application Ref: 2021/04085/FUL is dated 17 December 2021.
- The development proposed was described as '*Retention of a single storey art studio together with removal of tall, steep pitched roof and replacement with low pitched roof. Retention of a single storey conservatory attached to the new art studio at the rear of 22 Upper Mall*'.

Summary Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Formal Decisions

Appeals A and B

1. It is directed that the enforcement notice is varied by:

The deletion of the words "*...must be completed within 6 months of the date on which this notice takes effect.*" at section 6. Time for Compliance.

And their replacement with the words “...*must be completed within 9 months of the date on which this notice takes effect.*” at section 6. Time for Compliance.

Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

Appeal C

2. The appeal is allowed and planning permission is granted for retention of a single storey art studio together with removal of tall, steep pitched roof and replacement with low pitched roof. Retention of a single storey conservatory attached to the new art studio at the rear of 22 Upper Mall, London W6 9TA in accordance with the terms of the application Ref 2021/04085/FUL, dated 17 December 2021, subject to the conditions set out in the attached Schedule of Conditions.

Preliminary Matters

3. An application for planning permission for the ‘*formation of an art studio and conservatory*’ on land to the rear of 22 Upper Mall was refused by the Council in December 2021¹, and subsequently dismissed² at appeal (the 2022 appeal). It was noted by the Inspector who dealt with the 2022 appeal that the studio building with conservatory had been erected at the time of the site visit.
4. The development that the notice seeks to attack (hereafter, the original development), and to which Appeals A and B relate, is essentially that previously considered by the Inspector at the 2022 appeal. The appeals were made on the grounds set out in the banner heading above, with the appellant’s ‘*Enforcement Appeal Statement*’ setting out the ground (a) case in full in respect of Appeal A at section 8³ of that statement.
5. However, in the appellants’ subsequent ‘*Final Comments for the Linked Appeals*’⁴ it is explained that Appeals A and B were lodged prior to receiving the Inspector’s decision on the 2022 appeal. Following receipt of that decision, the appellants go on to confirm in the ‘*Final Comments*’⁴ that the ground (a) appeal seeking permission for the original scheme under the deemed planning application (DPA) was no longer relevant to the proceedings in relation to Appeal A. Nor has any specific case been made that the alternative scheme to which Appeal C relates should be considered as ‘part of the matters’ enforced against for the purposes of ground (a) of Appeal A.
6. Thus, taking the appellants’ submissions together, it is clear to me that the appellant does not now seek to make a case in respect of ground (a) of Appeal A, either in respect of the original development or in respect of the alternative scheme as set out in Appeal C. As such, it is not necessary for me to consider whether the Appeal C scheme amounts to ‘any part of those matters’ enforced against and the ground (a) appeal therefore fails. Grounds (f) and (g) in respect of Appeals A and B remain for me to consider, which I turn to below.
7. A third appeal, Appeal C, relates to the Council’s failure to determine within the prescribed period an application for planning permission for retention of the

¹ LPA Ref No: 2020/02475/FUL – refused by notice dated 8 December 2021

² APP/H5390/D/22/3294024 – decision dated 19 August 2022

³ Paragraphs 8.1 to 8.5

⁴ Lewis Silkin LLP – dated 17 October 2022 – Ref: DCW8389/121312/1/4156-8997-9968.2

single storey art studio with the replacement of a tall, steep pitched roof with a low-pitched roof, and the retention of a single storey conservatory attached to the art studio building (hereafter, the alternative scheme).

8. In respect of Appeal C, I am mindful of the content of the Council's 'Appeal Statement', with particular regard to paragraphs 5.16 and 5.17, where the Council confirm that the alternative scheme set out is acceptable and conclude that it would not cause harm to the character or appearance of the Mall Conservation Area, or to the settings of listed buildings and Buildings of Merit. It seems to me therefore that, with respect to Appeal C, both main parties are agreed as to the acceptability of the alternative scheme and that, other than the matter of conditions, including timescales, there are no contested areas between them.
9. A new and updated version of the Framework was published by the Government on 19 December 2023. With the exception of paragraph numbering, the parts of the Framework most relevant to this appeal have not changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.

Appeals A and B – the appeals on ground (f)

10. An appeal under ground (f) may be brought if it is felt that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first purpose (s173(4)(a)) is to remedy the breach of planning control which has occurred; the second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
11. The notice requires the removal of the art studio and conservatory building in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a), the breach consisting of the construction of the single storey art studio together with a high level roof and rooflights, and the erection of a single storey conservatory attached to the art studio building.
12. Whilst an alternative scheme is before me as Appeal C, the appellants have not made a specific case as to it being 'part of the matters' enforced against under section 177(1) of the Act in respect of Appeal A. Indeed, the appellants have in any event confirmed that the ground (a) appeal is no longer relevant to these proceedings. As the purpose of the notice is to remedy the breach of planning control, this can only be achieved by the removal of the unauthorised development, and the planning merits of Appeal C's alternative scheme cannot be considered under ground (f). Thus, the appeals on ground (f) fail.

Appeals A and B – the appeals on ground (g)

13. An appeal under ground (g) may be brought if it is felt that the period specified in the notice to comply with its requirements falls short of what should reasonably be allowed. In this instance, the notice sets out a period of 6 months within which to comply with the notice's requirements. The appellants

seek a period of 9 months under the ground (g), also making the same argument in respect of Appeal C, which I consider separately, below, in the conditions section of this decision. However, the longer the original scheme remains in place the longer the harm arising from it to the character and appearance of the CA and the setting of the listed buildings and Buildings of Merit, continues.

14. Nevertheless, I have some sympathy with the appellants' submissions regarding timescales. The factors cited by the appellants in seeking a longer period of time within which to carry out the alternative scheme are well documented and are likely to be significant factors in making arrangements for the undertaking of the required works. As such, I am satisfied that the longer period is both reasonable and justified in these particular circumstances and the ground (g) appeals succeed in this respect and I shall vary the notice accordingly.

Appeal C

Main Issue

15. Appeal C relates to an alternative scheme for the art studio and conservatory that would incorporate a lower roof structure, the planning application for which the Council failed to determine within the prescribed period. The main issue is therefore the effect of the alternative scheme on the character and appearance of the surrounding area, having particular regard to its effect upon the character or appearance of The Mall Conservation Area and the setting of Listed Buildings and Buildings of Merit.

Reasons

16. The appeal property, its extensive gardens and the outbuilding subject to this appeal are located within the Mall Conservation Area (the CA). No. 22 is also a grade II listed building. Additionally, there are further listed buildings on Upper Mall at Nos. 12-14 (Sussex House), No. 24 and No. 26 (Kelmscott House) and the nearby Hammersmith Town Hall on the opposite side of the Great West Road to the appeal property. There are also a number of other properties on Upper Mall⁵ which the Council has identified as Buildings of Merit.
17. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act (the PLBCAA) place statutory duties upon the decision maker with regard to listed buildings and conservation areas. This means that special regard shall be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
18. The studio building is located adjacent to a high boundary wall which backs on to the busy Great West Road (the A4) at the rear of 22 Upper Mall. The area of land to the rear of No. 22 is expansive and comprises of two distinct areas; that around the rear of the No. 22 and the adjoining building to the east and, accessed through a narrow gate in a substantial masonry wall, a distinct walled garden area.

⁵ Nos 16 to 20 (even), 30 & 32, 38 & 40, 42 to 48 (even) and 50 to 58 (even).

19. As with the properties on either side of it, the extensive garden area creates a substantial buffer between Upper Mall houses and the Great West Road. The masonry wall at the rear of the appeal property, and of those either side of it, is of substantial height and runs for a considerable length between the Lower Mall path to the east of the site towards the gable elevation of the property on the corner of Great West Road and Rivercourt Road to the west.
20. The wall itself is broken up by a number of steps along its face, and with pedestrian access doors to the properties beyond. Topped by flat coping stones, it is broadly consistent in height and limits views of the rears of properties on Upper Mall to just their upper-most portions. Trees, shrubs and garden vegetation add to a prevailing sense of spaciousness of the buffer between the Great West Road and the properties, albeit that that spaciousness is moderated, and the wall's line broken, by the appeal building and a neighbouring outbuilding.
21. The alternative scheme would retain the main elevations of the studio building and the glazed conservatory as built. It would, however, replace the existing steeply pitched outbuilding roof with one incorporating a shallower pitch-angle and an area of crown roof. The result would be a building significantly lower in overall height and bulk than the existing building.
22. Much of the CA's significance is derived principally from the historic built form of Upper Mall and its relationship with the river and the views in both directions along it. The extracts of the Mall Conservation Area Character Assessment (CACA) that I have been provided with⁶ helpfully note the role that the creation of the Great West Road has had in creating a distinct riverfront character to Upper Mall (along with Lower Mall and Hammersmith Terrace) but also in dominating the rears of properties along its corridor which turn defensively away from it.
23. However, I concur with the previous Inspector's assessment that there is a sense of openness and separation between the Great West Road corridor and the rear elevations of the listed buildings and Buildings of Merit on Upper Mall, with that openness provided by the rear garden areas. The alternative scheme would incorporate a less intrusive, less bulky and less dominant roof structure than the existing building and as such would allow that relationship to be better appreciated from the Great West Road.
24. Noting that the main parties are agreed as to the suitability of the alternative scheme I am also, for the reasons I have set out, satisfied that the alternative scheme would be an appropriate form of development at the rear of 22 Upper Mall. It would be of a height, scale and bulk appropriate to its context and setting, and would not cause harm to the setting of the various listed buildings at and around No. 22, to the character or appearance of the CA or to the Buildings of Merit. There would therefore be no conflict with the aims and provisions of London Plan (2021) Policy HC1, Local Plan (2018) Policies DC1, DC4, DC8 or RTC3 or Key Principles AH1, AH2 or CAG3 of the 'Planning Guidance' Supplementary Planning Document (2018). Together, these policies and key principles seek to ensure high quality design and development that is compatible in scale and character with the buildings and areas around it, with a presumption in favour of the conservation and enhancement of heritage assets.

⁶ Design and Heritage Statement, January 2022 – p4. Section 5 References

I am satisfied that in achieving the high standard of design set out above, the alternative scheme would have a neutral effect upon, and therefore avoid harm to, the character or appearance of the CA, or to the significance of the setting of the listed buildings or Buildings of Merit. As such, the alternative scheme would also align with the aims and principles of the Framework with regard to the historic environment.

Conditions

25. The Council have provided a list of suggested conditions⁷ in the event that Appeal C should succeed, which I have considered in the context of the advice and guidance set out in the Framework and Planning Practice Guidance. I agree that suggested condition 2 (not to be used as a dwelling, or for trade or business) is reasonable and proportionate to the matter before me given the building's relationship to No.22, and with other properties around it. Suggested conditions 3 (materials), 4 (rooflights) and 5 (external plant and equipment) are necessary due to the building's relationship with listed buildings, Buildings of Merit, the CA and its visibility from the Great West Road.
26. Suggested condition 6 seeks to remove permitted development rights for the future enlargement of the appeal building. Whilst the Framework advises that such a restriction should not be used unless there is a clear justification to do so, I am satisfied that in this instance those circumstances exist. I have also imposed a plans condition as I am satisfied that the submitted plans are satisfactory and their confirmation by way of a condition is necessary and reasonable in the interests of precision, certainty and good planning.
27. I have not however imposed a time limit condition in the manner suggested by the Council, or as suggested by the appellant in response. I am satisfied that to do so would be unnecessary because the development has, in part at least, already been commenced, whilst the notice's time period for compliance sets its own time limit for the implementation of the permission granted by Appeal C.

Appeals A, B and C - Overall Conclusion

28. Although Appeal A was originally submitted on grounds (a), (f) and (g), the appellants effectively withdrew their ground (a) appeal at the Final Comments stage, following receipt of the Inspector's decision and reasoning regarding the 2022 appeal scheme. The appeal on ground (a), and the appeals on ground (f) fail for reasons I have set out above.
29. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. The appeals on ground (g) therefore succeed, and I shall vary the time for compliance set out within the notice from 6 months to 9 months. The notice is otherwise upheld with the variation set out.
30. With regard to Appeal C, the alternative scheme would preserve the setting of the listed buildings and Buildings of Merit, and the setting of the Mall Conservation Area, and is appropriate in terms of its effect on the character

⁷ Any reference to condition numbers relates to the numbering of the Council's suggested conditions at section 7.0 of the Council's 'LPA Appeal Statement' in relation to APP/H5390/W/22/3298499

and appearance of the surrounding area. For the reasons set out above therefore, I conclude that Appeal C should succeed.

31. Section 180(1)(a) of the Act⁸ provides that where planning permission is granted after the service of a notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the permission. This means that the planning permission overrides the notice to the extent that the planning permission authorises what is being enforced against. However, the notice is not quashed, its requirements and time scales remain intact and it does not cease to have effect altogether. Thus, to the extent that parts of the structure enforced against are common to the planning permission and the enforcement notice, s180(1)(a) operates to prevent the notice continuing to bite upon those elements.
32. In this instance therefore, as the footprint and vertical elevations of the art studio building and the conservatory are common to both the planning permission and the notice, in allowing Appeal C the effect of s180(1)(a) is to ensure that the requirements of the notice do not bite on those elements of the alternative scheme approved by the Appeal C decision. Thus, for the avoidance of doubt, this means that the enforcement notice would cease to have effect, so long as the planning permission is extant and is complied with.

G Robbie

INSPECTOR

⁸ Town and Country Planning Act (1990) (as amended)

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location & Block Plan (001:001); Site Plan (001:002); Floor & Roof Plans (101:002); South & East Elevations (101:003); North Elevations (101:004) and West Elevation & Section FF (101:005).
- 2) The development hereby approved shall be carried out and completed in accordance with the materials (including colour and finish) specified on the drawings hereby approved. The development shall be permanently retained in accordance with the approved details. Any works of making good to existing elevations shall be carried out in materials to match the elevation to which the works relate.
- 3) The rooflights hereby approved shall be conservation style, installed flush within the roof plane they are situated in and retained as such permanently thereafter.
- 4) No external air-conditioning units, ventilation fans, extraction equipment, flues or other plant equipment and associated external pipework or ducting shall be fitted to the exterior of the building unless otherwise shown on the approved drawings.
- 5) No part of the art studio or attached conservatory hereby approved shall be used or occupied for purposes other than those that are in connection with, and ancillary to, the residential use of No. 22 Upper Mall, and the building shall not be used as a separate dwelling or for any trade or business purposes.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, alterations or other form of enlargement to the building hereby permitted shall be constructed.

****end of schedule****