



Appeal Decision

Site visit made on 19 August 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th August 2025

Appeal Ref: APP/H5960/C/23/3319524

86 Clapham Common West Side, London SW4 9LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeal is made by Mr Kevin Bowen against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The notice was issued on 23 February 2023.
- The breach of planning control as alleged in the notice is Without planning permission and within the last 4 years, excavations to create a self-contained basement flat and the erection of a three-storey rear/side extension at the Property.
- The requirements of the notice are: 1. Cease the use of the basement as a self-contained flat and remove any partitioning walls, fittings and fixtures associated with its use as a flat, and remove the unauthorised three storey rear/side extension or 2. Cease the use of the basement as a self-contained flat and carry out remedial works so that the basement and three storey rear/side extension accord with the approved plans and conditions of planning permission issued on 24 September 2021 under reference 2020/1724 or planning permission issued by the Council dated 22 December 2020 under reference 2020/3253; and 3. Remove from the site all debris arising from compliance with step 1 or step 2 above.
- The period for compliance with the requirements is five months after the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), and (g) of the Act. 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.
- This decision supersedes that issued on 4 November 2024. That decision on the appeal was quashed by order of the High Court

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

The appeal on grounds (b) and (c)

1. For the appeal to succeed under these grounds the appellant needs to show that either the alleged excavations to create a self-contained basement flat and the erection of a three storey rear/side extension have not taken place, as a matter of fact; or that the alleged development does not constitute a breach of planning control, on the balance of probabilities. As the arguments presented by the appellant under these grounds are closely linked, I will deal with them together.
2. During my site visit I saw a basement flat and a three-storey rear/side extension at the site. The alleged breach has evidently taken place. Moreover, it is clear that the development carried out is materially different to that authorised by planning permissions¹ previously granted. This is on account of the basement flat being significantly smaller, with a notably different layout compared to that previously approved, and the rear/side extension projecting much higher above the former eaves of the building than that previously approved. The rear/side extension has

¹ The Council's refs: 2020/1724 and 2020/3253

also been constructed to incorporate part of a large opening in the brickwork on the rear elevation at ground floor level, which has subsequently been infilled with timber. As a result, the rear/side extension is also missing a ground floor rear elevation window compared to that approved.

3. In short, the basement flat and rear/side extension constructed do not accord fully with the plans referred to by the relevant conditions of each planning permission. Furthermore, I have not been referred to any other planning permission the development may benefit from. In that light, the excavations to create a self-contained basement flat and the erection of a three-storey rear/side extension have been carried out without the benefit of planning permission and are in breach of planning control.
4. The appeal under grounds (b) and (c) therefore fails.

Ground (a) and the deemed application for planning permission

5. The main issues are whether the basement flat provides acceptable living conditions for its occupiers, with particular regard to daylight, outlook, and private amenity space; and the effect of the rear/side extension on the character and appearance of the area, with particular regard to the Clapham Common Conservation Area (CA).

The basement flat

6. The basement flat is a small studio with access to a patio area within a front lightwell. It has a kitchen area complete with cooking facilities, and a shower room with a toilet and hand basin. A bay window with French doors opens into the front lightwell and offers the only source of daylight into the flat. The flat is a dark and cramped space on account of its narrow layout and significant depth, which offers an extremely poor level of outlook to its occupiers.
7. Plans show that an additional basement lightwell could be provided to the rear of the basement flat and the front boundary brick wall could be reduced to 0.63 metre in height above pavement level. A Daylight Assessment² has been provided based on these plans, which shows that the basement flat could achieve the minimum Target Daylight Factors for London specified by the relevant BRE guidance³, yet 42% of the basement flat would remain beyond no sky lines.
8. The proposed additional lightwell and the lowering of the front boundary wall would improve daylight within the basement flat and ensure the accommodation becomes dual-aspect, but it would remain an unwelcoming space on account of the low level of daylight and severe lack of outlook. Although it would match the minimum Target Daylight Factors set out in the BRE guidance, I find that this would be insufficient in this particular case to ensure the basement flat would provide an acceptable standard of living accommodation. This is because occupiers would remain heavily reliant on electric lighting much of the time throughout the day and would experience extremely poor outlook.
9. Turning to the amenity area, the patio within the front lightwell offers a small private outside space which is said to exceed 10 square metres in area. This accords with

² The appellant's Appendix 8: Daylight & Sunlight Assessment, Revision III, dated June 2023 by EAL Consult

³ Site Layout Planning for Daylight and Sunlight (BR209, 2022) by Building Research Establishment (BRE)

the minimum standard specified by Policy LP27 of the Wandsworth Local Plan 2023-2038 (2023) (WLP).

10. Overall, the basement flat therefore provides adequate private amenity space, but fails to provide acceptable living conditions for occupiers on account of the low levels of daylight the flat receives and the extremely poor outlook it offers. The proposed additional lightwell and the lowering of the front boundary wall would not sufficiently address these issues, and the basement flat would remain contrary to Policies LP2 and LP27 of the WLP. These require, amongst other things, all new residential development to provide dual aspect accommodation unless it can be shown that a single aspect dwelling could provide acceptable levels of daylight, and new development to avoid detrimental effects on the amenity of new occupiers, including through creating a sense of enclosure.

The rear/side extension

11. The site is a three-storey end of terrace building with basement. A flat roofed side extension has been erected at the rear of the building which adjoins the main roof slope. The extension is finished in light coloured stock brickwork which contrasts with the darker stock brickwork of the rest of the building.
12. The site is located within the CA. On the information before me, and from what I saw during my site visit, the significance of the CA relies largely on the wide, open, green space of the western extent of Clapham Common and the mix of grand and terraced historic buildings which surround it. The Victorian design features of the front elevation of the appeal building make a positive contribution to this.
13. The form of the rear elevation of the terrace comprises inconsistent projections at all floor levels. I also noted the stepped flat roofs/balconies of the rear elevation to the neighbouring building to the south. Overall, there is a great deal of variance in the designs of rear elevations within the CA, which have no effect on the historic character of the front elevations of those buildings, which face into the CA.
14. The rear/side extension terminates above the eaves of the main roof slope, but this does not look particularly odd or out of place when considered alongside the varied rear elevations in this part of the CA. It is finished neatly with stone coping and the high-quality brickwork and mortar finishes are somewhat consistent with those of the rest of the building, despite the brickwork having a notably lighter finish. This is not uncommon for recent extensions. The extension therefore integrates well with the rest of the building, does not affect the front elevation of the building, and does not comprise poor design. As such, it is subservient and complementary to, and does not compete with or relate poorly to, the rest of the appeal building or the CA.
15. For these reasons I find that the rear/side extension does not cause any harm to the character or appearance of the area and preserves the character of the CA. It does not cause any harm to the significance of the CA, and complies with Policies LP1, LP3, and LP5 of the WLP. These require, amongst other things, residential extensions to comprise high-quality design which relates positively to the prevailing local character, and to sustain and preserve the significance, appearance and character of heritage assets, while being visually subservient to the host building.

Conclusion on Ground (a) and the deemed application for planning permission

16. I have found that the basement flat conflicts with the development plan as a whole and there are no other considerations which indicate planning permission should be granted for it. I have also found that the rear/side extension accords with the development plan as a whole and there are no other considerations which indicate planning permission should not be granted for it.
17. Section 177(1)(a) of the Act allows for the grant of planning permission in relation to the whole or any part of the matters alleged in the notice. As the two elements are clearly severable both physically and functionally, I am able therefore to consider granting planning permission for the rear/side extension and refusing planning permission in respect of the basement flat by issuing a split decision.
18. Therefore, I will allow the appeal under ground (a) insofar as it relates to the rear/side extension and dismiss the appeal under ground (a) and uphold the notice insofar as it relates to the basement flat. The requirements of the notice relating to the rear/side extension will cease to have effect so far as inconsistent with the planning permission granted under the provisions of section 180(1) of the Act. No conditions are needed to make the rear/side extension acceptable in planning terms.
19. The appeal under ground (a) therefore fails in respect of the basement flat, but succeeds in respect of the rear/side extension and planning permission for that part of the breach of planning control only is granted.

Ground (f)

20. To succeed under this ground of appeal the appellant needs to show that the steps required to be taken, or the activities required to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
21. The notice offers two routes to compliance. Step 1 requires the use of the basement flat to cease and the rear/side extension to be removed, without requiring the basement to be demolished/infilled. In the alternative, Step 2 requires the use of the basement flat to cease and remedial works to be carried out to ensure the basement flat and the rear/side extension accord with the plans and conditions of one of two planning permissions. It is clear that Step 2 only intends to require the cessation of the use of the existing basement flat, as the planning permissions referred to permit a different, larger basement flat with rear courtyard. I shall therefore vary Step 2, in the interests of clarity, to ensure it requires the cessation of the use of the existing basement flat as a self-contained flat. Step 3 requires debris resulting from compliance with Step 1 or Step 2 to be removed.
22. Compliance with Steps 2 and 3 would remedy the breach. Compliance with Steps 1 and 3 would not, because the breach includes the excavation and creation of the basement flat, and compliance would leave that operational development in place. Therefore, although the purpose of Step 2 is to remedy the breach, the purpose of Step 1 is to remedy the injury caused to amenity by the basement flat.
23. The appellant has suggested that the purpose of the notice could be achieved with less cost and disruption if it did not require the removal of the partition walls, fixtures and fittings from the basement flat. This is because the basement space

could be used for ancillary domestic purposes in conjunction with one of the flats within the appeal building following compliance with Steps 1 and 3. Those partition walls create the shower room and the fixtures and fittings include a shower cubicle, toilet, hand basin, and a kitchen area with worktop, kitchen cupboards, kitchen sink, cooker, four-ring hob, and extractor hood.

24. Compliance with Steps 1 and 3 would not restore the land to its former condition, and the basement area created would remain capable of being used for domestic purposes ancillary to another flat within the appeal building. Requiring the removal of the shower room would be futile if another shower room could be re-installed following compliance with the notice. The kitchen facilities, on the other hand, would not ordinarily be found in such ancillary domestic space, especially with the degree of separation from any associated dwelling which would be present in this case.
25. It is therefore excessive in this particular case for Step 1 to require the removal of the shower room to achieve its purpose. It is not, however, excessive to require the removal of all other fixtures and fittings associated with the use of the basement as a self-contained flat, including its kitchen area with worktop, kitchen cupboards, kitchen sink, cooker, four-ring hob, and extractor hood. This is because these are an intrinsic part of the breach which need to be removed to prevent the retained basement area from being a self-contained flat. Their removal is necessary to ensure the injury to amenity is remedied, as sought by Step 1.
26. Therefore, the appeal under ground (f) succeeds in part, to the extent that I shall vary Steps 1 and 2 as outlined above.

Ground (g)

27. To succeed under this ground of appeal the appellant needs to show that five months falls short of what should reasonably be allowed for the notice to be complied with. The appellant has not suggested an alternative period, but has instead claimed that no period should be specified for works approved by the above planning permissions to be completed.
28. The notice must specify a period or periods for compliance to accord with section 173(9) of the Act. Furthermore, the notice does not require the completion of works approved by the above planning permissions, but Step 2 merely requires remedial works to be carried out as an alternative to Step 1.
29. I see no reasons why five months would not be reasonable for the notice to be complied with.
30. The appeal under ground (g) therefore fails.

Conclusion

31. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the rear/side extension, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the basement flat. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180(1) of the Act

Formal Decision

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

- The deletion of the text ‘any partitioning walls, fittings and fixtures associated with its use as a flat’ at Step 1 of Paragraph 5 of the enforcement notice and the substitution of the text ‘all fittings and fixtures associated with its use as a flat, other than the shower room and the shower cubicle, toilet, and hand basin within the shower room’; and
- The insertion of the text ‘existing’ immediately before the text ‘basement’ within the first line of Step 2 of Paragraph 5 of the enforcement notice.

33. Subject to the variations, the appeal is allowed insofar as it relates to the rear/side extension and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the erection of a three-storey rear/side extension at 86 Clapham Common West Side, London SW4 9LY.

34. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the basement flat and planning permission is refused in respect of excavations to create a self-contained basement flat at 86 Clapham Common West Side, London SW4 9LY on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR