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## Appeal Decisions

Inquiry held on 16 - 18 November 2011

Site visit made on 17 November 2011

**by Katie Peerless Dip Arch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 19 January 2012**

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### **3 Appeals at 6 Trafalgar Road, Twickenham TW2 5EJ**

#### **Appeal A: APP/L5810/F/11/2153916**

- The appeal is made under sections 39 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr John Johnson against a conservation area enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
  - The Council's reference is 11/0014/EN/UBW.
  - The notice was issued on 19 April 2011.
  - The contravention of conservation area control alleged in the notice is the demolition of the two storey dwelling house at the Property.
  - The requirements of the notice are: Restore the two storey dwellinghouse to the state it was in prior to its demolition by reconstructing the dwelling. For the avoidance of doubt such restoration shall include, but not be limited to, the steps (a) to (e) as set out in Annex A to this Decision.
  - The period for compliance with the requirements is 10 months.
  - The appeal is made on the grounds set out in section 39(1)(a) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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#### **Appeal B: APP/L5810/A/11/2154500**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 John Johnson against the Council of the London Borough of Richmond-upon-Thames.
  - The application Ref 11/1170/FUL, is dated 7 April 2011.
  - The development proposed is a new semi-detached residential dwelling.
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#### **Appeal C: APP/L5810/A/11/2161604**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr John Johnson against the Council of the London Borough of Richmond-upon-Thames.
  - The application Ref 11/1873/FUL, dated 7 June 2011 was refused by notice dated 9 September 2011.
  - The development proposed is a new semi-detached residential dwelling.
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**This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes that issued on 14 December 2011.**

## Decisions

### Appeal A: APP/L5810/F/11/2153916

1. The conservation area enforcement notice is varied by the inclusion of the words '*the external footprint and elevations of*' between '*reconstructing*' and '*the dwelling*' in paragraph 5 of the notice and the substitution of 18 months as the period for compliance. Subject to these variations the appeal is dismissed and the conservation area enforcement notice is upheld, and conservation area consent is refused for the works of demolition carried out in contravention of section 74(1) of the amended Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

### Appeal B: APP/L5810/A/11/2154500

### Appeal C: APP/L5810/A/11/2161604

2. The appeals are allowed and planning permission is granted for is a new semi-detached residential dwelling at 6 Trafalgar Road, Twickenham TW2 5EJ in accordance with the terms of the applications, Ref: 11/1170/FUL, dated 7 April 2011 and Ref: 11/1873/FUL, dated 7 June 2011 subject to the conditions set out in Annexes B and C respectively to this decision.

## Preliminary matters

3. The appellant originally made an appeal on ground (f), that the conservation area enforcement notice (CAEN) was not correctly served. This ground of appeal was withdrawn before the opening of the Inquiry.
4. Appeal C was conjoined with Appeals A and B with the agreement of the parties after the closure of the Inquiry. The scheme that is the subject of this appeal is the same as that for Appeal B but without the inclusion of the basement.

## Main Issues

5. I consider that the main issues in Appeal A are whether the retention of the building was necessary to preserve or enhance the character or appearance of the conservation area and whether the time for compliance is reasonable. I am also asked to consider whether the CAEN could be amended to substitute the scheme that is the subject of Appeal B for the requirement to rebuild the property as it previously existed.
6. The appellant also suggests that the CAEN is a nullity as it requires him to undertake demolition of an unlisted building in the conservation area without first obtaining conservation area consent.
7. The main issues in Appeal B are the impact of the proposed development on the setting of the adjacent listed buildings and whether it would preserve or enhance the character or appearance of the Trafalgar Road Conservation Area.

## Site and surroundings

8. The site lies within the Trafalgar Road Conservation Area which was designated in 1969. The conservation area is somewhat unusual in comparison to many others as it consists of Trafalgar Road only and all the houses within it are either designated as Buildings of Townscape Merit (BTMs) or are included on the statutory list of buildings of architectural or historic interest. The pair of properties adjacent to the appeal site at Nos. 2 and 4 Trafalgar Road is Grade II listed.

9. All the dwellings were originally semi-detached and most still are, although there is now a short terrace of 4 properties at Nos. 9 – 13. The original houses were constructed in the early to mid 19<sup>th</sup> Century and are shown on a map of 1845. The majority of the houses in the road have been extended to the side and/or rear although, in some cases, this occurred before the conservation area designation. However, there have been at least 8 planning permissions for extensions granted since that date and since the Trafalgar Road Conservation Area Study was published in 1979. I was also told that there is at least one extant, but as yet unimplemented, permission for a side extension.
10. The villa at No. 6 had not had any extensions to the side but a comparison between the older plans seems to indicate that there had previously been alterations at the rear and some of the windows at the back of the property were clearly not original, being casements rather than traditional sashes. The adjacent semi at No. 8 has been extended, under a planning permission granted in 1996.

### **Planning history**

11. The site has an extensive planning history, but the previous applications most relevant to these cases are a planning permission for the extension of the building on the site granted in 2008<sup>1</sup> and an amendment to that application permitted in 2010<sup>2</sup> that included the addition of a basement. The appellant began work on this scheme but instead of extending the existing house, he demolished it in the belief that he could re-build it to the permitted design. He was subsequently prosecuted for demolishing an unlisted building in a conservation area and the court hearing was held in July 2011.
12. Following the unauthorised demolition, the appellant entered into a dialogue with the local planning authority in an attempt to agree a mutually acceptable way to replace the demolished dwelling and he submitted the application that is now the subject of Appeal B on 7 April 2011. The CAEN was issued on 19 April 2011.
13. Although the appellant and the court had been told that the Council's planning officer would recommend approval of the scheme that is the subject of Appeal B, when the report to committee was prepared it was with an 'open' recommendation. The members of the Development Control Committee subsequently decided that they would have refused the application had the Council still been able to determine it.

### **Reasons**

#### **Appeal A**

##### *Nullity*

14. There is a small section of the original house remaining adjacent to its pair at No. 8, consisting of about 1m of the front and rear walls and an overhanging section of roof. When the house was demolished these portions obviously needed to be retained to allow weather proofing of the party wall with No. 8, which contains a chimney stack common to both properties. The appellant's architect gave unchallenged evidence that these sections would need to be replaced for structural reasons during any rebuild of the house at No. 6.

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<sup>1</sup> Ref: 08/4310/HOT

<sup>2</sup> Ref: 10/0496/HOT

15. The appellant submits that the CAEN, which, even if complied with, would not give conservation area consent for the demolition of these sections, would therefore require him to carry out works that amount to a criminal offence. For this reason he considers the CAEN to be a nullity.
16. I do not accept the logic of this argument however. The main house has already been substantially demolished, the appellant has pleaded guilty to this offence and he has been convicted and fined for it. The section that would now need to be demolished can no longer be considered as a building in its own right; it is more akin to a small addition to No. 8. Conservation area consent is only needed for the substantial demolition of a building and the removal of the remaining part of No. 6 would be *de minimis*. The CAEN does not therefore require the appellant to undertake a criminal activity and is consequently not a nullity.

*Ground (a)*

17. The possible grounds of appeal against the CAEN are set out in S39(1)(a) of the Conservation Area Code [included as an appendix to the Town and Country Planning (Listed Buildings and Conservation areas) Act 1990 (as amended)(LBCA)]. Ground (a) is intended for use when an appellant considers that '*retention of the building is not necessary*' to preserve or enhance the character or appearance of the conservation area. The appellant argues that the '*retention*' of No. 6 as referred to in S39(1)(a) is no longer possible as the building to which the CAEN relates has been demolished.
18. He submits that the requirements of the CAEN (that is to reconstruct a replica of what was demolished) are not necessary to preserve or enhance the character or appearance of the conservation area as this could be achieved through the construction of an acceptable replacement building. He maintains that the Appeal B scheme, which is in essence the same as the previously approved planning permission 10/0496/HOT, would achieve this end and would, in fact, be preferable to a straightforward rebuild of the original.
19. In order to ensure that this scheme would be built, the appellant has submitted an agreement under S106 of the Town and Country Planning Act 1990 (as amended) (TCPA), obliging him to complete the Appeal B scheme within a fixed time scale. He therefore asks me to grant planning permission for it and quash the CAEN under ground (a). He goes on to submit that, even if it was considered necessary to keep the CAEN in place, it would be possible, in any event, to amend the CAEN under S38(2)(b) of the Conservation Area Code, if it were shown that the restoration called for in the notice was not reasonably practical or desirable.
20. However, I consider that the use of the words '*retention of the building*' in the Code is clear and specific and they do not have the same meaning as '*restoration of the building*' which the appellant suggests would be the logical interpretation of S39(1)(a). Enforcement action can only be taken if '*retention*' of the building is necessary and it is common ground in this case that conservation area consent would not (and indeed should not) have been granted for the demolition of No. 6, had it been applied for. There is also no suggestion that the site should be allowed to remain in its present condition.

21. The villa at No. 6 was making a positive contribution to its surroundings and the loss of its original fabric has harmed the character of the conservation area. Whatever scheme is eventually built to replace the original, this intrinsic character has been irrevocably lost and the retention of the building was therefore necessary to preserve this attribute. The fact that the Council had previously accepted that the original building could be extended does not detract from the contribution that it made to the conservation area.
22. Consequently, it would not be correct to quash the CAEN for the reasons put forward by the appellant under the appeal on ground (a). To do so would be to accept that the building at No. 6 was not making a positive contribution to the conservation area and this is not what is claimed by the appellant. The house was a BTM and one half of a pair of semis and its retention in its original form, or with the proposed extension, was required to maintain the character and appearance of the conservation area.
23. I therefore turn to the question of whether, should I consider the Appeal B proposals to be preferable to the reconstruction of the original villa, I could vary the CAEN to include this scheme to be built instead, using S38(2)(b) of the Conservation Area Code as the basis for doing so.
24. This section of the Code gives the local planning authority the alternative of requiring works other than the restoration of the building to its former state (which can be required by S39(2)(a)) if it considers that restoration would be undesirable or not reasonably practical. It appears from the wording of the Code that the choice between these alternatives is a matter for the local planning authority to consider when it decides to issue the CAEN. There seems to be no provision in S39(1) of the Code to make an appeal against whichever route the local planning authority decides to take, only that the required steps under 39(1)(a) exceed what is necessary for restoration of the building to its previous state.
25. In any event, although the appellant considers that it would not be practical to reconstruct the house as an exact replica of the previous dwelling, citing difficulties in meeting current building regulations and an inconvenient internal layout that does not make the best use of space, it has been made clear that it is only the original external shell of the house that the Council wants to see rebuilt. It does not object to internal changes, provided the exterior is reconstructed to match the previous building.
26. There is no requirement to reproduce the original wall thicknesses or the levels of insulation and the internal layout can be adjusted to suit current standards. I accept that such a layout might not suit the aspirations of the appellant and his family but this personal preference does not change the fact that it would still be reasonably practical to construct a replica that meets building regulation requirements and current levels of domestic space standards.
27. Similarly, although it can be argued that the Appeal B scheme may have advantages over the original layout, this does not mean that it would be '*undesirable*' to recreate the original building. It was a BTM that was agreed to contribute positively to the character and appearance of the conservation area and, in these circumstances, an appeal on ground (a) is not the correct forum for a comparison between the merits of alternative proposals, given that the existing building, as it stood, was not unacceptable.

28. I am also concerned that altering the CAEN to the extent of requiring a completely different scheme to that specified by the Council would go beyond the powers of variation given in S41(1) of the Code; this could not be classed as a correction of a defect, error or mis-description; it would also go further than a variation of the terms of the notice. It would be tantamount to the issue of a new notice with substantially different requirements. This adds weight to my conclusion that I cannot vary the CAEN as suggested by the appellant.
29. The Council has criticised the proposed use of a S106 undertaking to secure the implementation of the alternative restoration scheme. In the event that the CAEN was quashed, I too would have some concerns that the S106 alone could deliver a speedy and satisfactory restoration of the building. The legal processes for taking action, should the scheme fail to come forward, would be less direct than those available under the CAEN procedure.
30. However, although there would be more security if the scheme had to be implemented as a requirement of the CAEN, in this case the appellant has urgent and compelling reasons for wanting to construct the new dwelling and these give me more confidence that he would complete the work according to the terms of the undertaking.
31. The appellant also asks me, if the CAEN is upheld, to amend the wording to make it clear that it is only the external shell of the building that is required to be rebuilt under the terms of the CAEN. I agree that this intention is not immediately obvious from the wording of the CAEN and I will vary it accordingly. The appellant also asks that I take out the requirement to replace the casement windows at the rear of the property, to allow traditional sashes to be used instead.
32. The Council did not appear to object to the principle of changing these windows but, once again, this would go beyond the requirement to re-instate the building as it previously existed. I consider that it would be more acceptable, and straightforward, for the parties to agree in writing during the re-building process which windows could be changed, including the details of those replacements (some of which are already available) in respect of section profiles and whether they would be double or single glazed.

*Ground (h)*

33. The appellant asks for a longer period than the 10 months given in the CAEN to complete the restoration of the building. He cites the need to obtain planning permission for the scheme, which he considers would not be automatically granted through the requirements of the notice, the need to work up a scheme that complied with building regulations and the time needed to obtain tenders and appoint a contractor.
34. The Council's advocate and one of its witnesses took different views on whether planning permission would be required for the CAEN restoration scheme but, having reviewed the parties' submissions, I consider that it would be. The rebuilding work is development as defined by S55(1A)(b) of the TCPA for which planning permission is required and there is no indication that deemed planning permission is granted for any requirements of a CAEN. However, there is no reason why the majority of the building regulations requirements could not be approved during the planning application consultation procedure.

35. The appellant's architect tells me that such approval has already been obtained for the Appeal B scheme and I see no reason why this should not be the case for most of the CAEN scheme details. Also, given that the planning department want to see a replacement building as soon as possible, there is little reason to suppose that it would unduly delay the grant of planning permission.
36. The external appearance of the restoration scheme is already fixed and there are already drawings of the building as it existed prior to demolition. It is the case, however, that the internal layout would need to be finalised in order to comply with building regulations and there are other matters that would need to be discussed with the Council, such as which windows could be double glazed and the discharge of any conditions attached to the planning permission.
37. I can understand the appellant's concern that the verbal assurances of the Council that it would not raise difficulties over these matters do not provide him with any guarantees, given the sudden change of mind over the officer's recommendation on the Appeal B application. It is also the case that negotiations would involve other Council departments who were not present at the Inquiry and there is consequently no means of knowing the views they might take on the suitability of the proposals.
38. As noted above, I recognise the appellant has financial reasons for wishing to bring this matter to a satisfactory conclusion as soon as possible and his desire to move his family back into their home. I am therefore minded to allow him a longer period to complete the work, to take account of any potential delays not of his making. Although the Council has discretion to extend the compliance period in the future, whether or not the CAEN has come into force, it would give the appellant more security if the compliance period was extended at this stage.
39. I therefore propose to vary the CAEN to allow 18 months for completion. Although the appellant asks for 2 – 2½ years, 18 months is in line with the timescale that the appellant has agreed to for the Appeal B scheme in the S106 undertaking. It will also give sufficient leeway for approval to be obtained for any outstanding matters or conditions.

### **Appeals B & C**

40. At the Inquiry, the Council suggested that there would be no point in granting planning permission for the scheme that is the subject of Appeal B in the event that the CAEN is upheld, as it could not be implemented. The CAEN would require the restoration of the original house and the Appeal B scheme is for a new dwelling on the site. This would then require conservation area consent for the demolition of the rebuilt dwelling which would not be forthcoming.
41. However, there is the possibility that the Council could, even at this stage, decide to withdraw the CAEN, allowing the possibility of the construction of either the Appeal B or C scheme if they had planning permission. Both applications have been validly made and the appellant is entitled to a consideration of the schemes on their merits.
42. I am also mindful that, as planning permission ref: 08/4310/HOT, as amended by permission ref: 10/0496/HOT, has not yet been validly implemented, there may still be an extant permission for an extension to No. 6. This could be implemented, if time constraints allow, once the reinstatement of the demolished building has taken place as required by the CAEN.

43. Although this would be a convoluted, expensive and unsustainable way of achieving the outcome that the appellant desires, it may be that he would consider this to be worthwhile in order to achieve the extended home that he was originally granted permission for. I consider that this may be a valid fall back position and I will take it into account when considering the merits of the Appeal B & C schemes.
44. The Council notes that current planning policy has changed to some degree 10/0496/HOT was determined in 2010, in that policy DM HD 1 of the recently adopted London Borough of Richmond upon Thames Local Development Framework Development Management Plan now requires development in conservation areas to both preserve **and** enhance the character **and** appearance. This is more slightly more stringent than the previous requirement to preserve **or** enhance the character **or** appearance of the area. I must also consider the impact on the setting of the adjacent listed buildings at Nos. 2 and 4 Trafalgar Road.
45. The Council also submits that it now considers that the previous decisions by planning officers to grant permission for proposals that are virtually the same as the appeal schemes were ill-founded. It considers that there is little evidence that the officers considered the setting of the adjacent listed buildings or took the advice in the Trafalgar Road Conservation Area Study into account. However, the Council has repeatedly granted planning permissions for 2 storey side extensions to houses in Trafalgar Road over the 30 or so years since the Conservation Area Study was published. I find nothing in the officers' reports for the previous permissions at No. 6 that suggests they were unaware of the relevant policy framework that was operative at that time or that they failed to take it into account. It also seems that they took a view that the scheme would be appropriate as recently as July 2011, at the time of the court case.
46. Turning now to my assessment of the merits of the proposal, in comparison with the demolished house the Appeal B and C schemes would have a 2 storey extension to the flank wall, adding about 1.8m to the width of the property and would include an additional floor above the single storey rear projection that previously housed the kitchen and utility room. A bay window at the rear would be replaced by a single storey conservatory similar to that at No. 8. The general form and ground floor footprint of the house at No. 6 would then be the same as its pair at No. 8.
47. It seems to me that, although the Council now considers that balancing the pair of semi-detached houses is no longer a factor that would weigh in favour of the proposal, contrary to the view taken in previous decisions, this change would not cause the new house to appear overly large or dominant. The house at No. 8 is attractive, does not appear cramped on its plot and does not cause harm to the conservation area. To replicate it at No. 6 would create a house with the same attributes.
48. There are many other examples of houses of a similar size in the road and, again, while they may not now be in their original state, they do not stand out in harmful contrast to their remaining smaller neighbours or appear out of place in the street scene. Contrary to the view of the Council, I find that the extensions that have already been permitted have not caused harm to the overall appearance of the conservation area. They fit comfortably with the pleasant, consistent domestic style of the dwellings and their quiet leafy settings.



49. Although the Conservation Area Study recommends that side extensions should have a roof form that is subservient to the original building, the proposals would have a ridge line that followed that of the remainder of the building, including the matching pair. The side addition would, however, follow the guidance in that it would be set back from the main front elevation, as at No. 8. On balance, I find that the minor departure from the guidance would not cause harm that would be sufficient to refuse planning permission for the proposal, particularly as it reflects the form of the attached house.
50. Trafalgar Road is planted with a significant number of mature trees, both deciduous and coniferous, and these give the area a sylvan character through which the buildings are generally seen obliquely, rather than in head-on views. Whilst recreating the symmetry of the pair may not, therefore, be essential to maintain the appearance of the conservation area, I consider that it would nevertheless mean that the pair of houses would reflect the overall character of the majority of properties in the road. The spacing between the buildings would be similar to many others on this side of the road and in any event, the presence of the trees, which are protected by the conservation area status, prevents clear, unimpeded views of many of the gaps between the properties.
51. For all these reasons, I find that the proposals would conserve the character and appearance of the conservation area. In terms of enhancement, it seems to me that the improvements to the rear of the building would be beneficial. Although these changes would not be readily seen from the public realm, they could be seen in other private views within and into the conservation area and this is a relevant consideration in conservation area terms.
52. The new building would be closer to the listed building at No. 4 Trafalgar Road but this proximity would not, in my view, harm its setting. Nos. 2 & 4 are seen as a separate pair within their own plots and the minimum distance of over 3 m that would remain between the closest point of No. 6 and No. 4 would be sufficient to ensure that a suitable degree of separation was maintained. Although the occupier of No. 4 has raised concerns about the proximity of the building to his flank wall, there would be no loss of privacy as the only windows in this wall would be obscure glazed and to bathrooms. This would, in fact be an improvement over the previous situation as the demolished building contained a bedroom window in this wall.
53. The occupier is also concerned about loss of light to windows on the north west elevation of his property. 2 of these windows are to the hallway and stairwell, one is to a cloakroom and another is an obscure glazed window to a breakfast area attached to the kitchen. However, the Council raises no objections on these grounds and I consider that there would be little difference between the CAEN and the Appeal B and C schemes in terms of the amount of light reaching these windows. Concerns about the impact that the basement that is included in the Appeal B scheme would have on the stability of the adjoining properties have also been expressed. However, this is a matter for the parties to settle between them through party wall awards and will also be addressed through a condition attached to the relevant planning permission.
54. As I have found that Appeal B is acceptable, there is no reason to refuse planning permission for Appeal C which, as it does not contain the basement, is for a building with a smaller internal area. The Council has raised no objection to the additional 3 low level windows that would light the basement and I, too, find no harm arising from this aspect of the proposal.

## Conditions

55. The Council and the appellant have agreed in principle a number of conditions that they consider should be imposed if planning permission was granted for the proposals. In respect of the time for commencement, there was disagreement between the parties at the Inquiry, with the Council suggesting 3 months and the appellant asking for 9 months.
56. This is based on the premise that the scheme would be substituted for the requirements of the CAEN and should therefore be commenced as soon as possible. However, in the suggested conditions for the Appeal C scheme, a period of 6 months is suggested by the Council. Having considered the other conditions that would need to be discharged before the development could commence, I accept that some would need to have the input of the building contractor and that 6 months would be a reasonable time to invite tenders and submit the remaining outstanding details for the approval of the Council.
57. I shall require the building to be erected in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning. I shall removed permitted development rights from the new dwelling to protect the amenities of adjacent occupiers and in line with the Article 4 Direction that already covers the conservation area.
58. I shall require submission of a landscaping scheme for approval and the subsequent implementation of the scheme. I understand a scheme has already been agreed with the Council but the formal submission of the scheme is necessary for the avoidance of doubt and to ensure the satisfactory appearance of the surroundings. A condition is also necessary to secure the implementation of the scheme. Following on from this, I shall impose conditions relating to the protection of trees during the construction process and to ensure the maintenance of the planting proposals.
59. A condition requiring the submission of a Construction Method Statement prior to the commencement of the works on site will be imposed to ensure that the site works are carried out in a manner that does not affect the amenities of the neighbouring occupiers and road users. In order to ensure that the scheme is a sustainable form of development, I shall impose a condition requiring the Post Construction Review Report within 1 month of completion.
60. Materials used on the external surfaces of the building will be required to match those of the demolished building and sample panels and materials will need to be submitted for approval to ensure a satisfactory appearance for the new dwelling. For the same reason, the details shown on the approved drawings in respect of various parts of the building will be required to be used in the construction.
61. To protect the privacy of neighbouring occupiers, the flank wall first floor windows will be obscure glazed. The development subject of Appeal B will be required to be constructed in accordance with the Basement Method Statement already submitted in the interests of flood prevention and to ensure the stability of adjacent buildings. It will also be necessary to ensure the provision of refuse/waste and cycle storage through the imposition of conditions.

## **Conclusions**

### **Appeal A**

62. For the reasons given above I conclude that the appeal should fail.

### **Appeals B & C**

63. For the reasons given above I conclude that the schemes that are the subject of Appeals B & C comply with national and local planning policy in respect of their impact on the conservation area and the appeals should therefore be allowed.

*Katie Peerless*

**Inspector**

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Mary Cook	Of Counsel, instructed by Chris Warner, Acting Head of Legal Services, London Borough of Richmond upon Thames
She called	
Philip Davies DipTP MRTPI IHBC FRHistS FRAS FSA	Phillip Davies (Heritage and Planning ) Ltd
Sukie Tamplin DipTP Pg Dip Arch Cons MRTPI IHBC	Team Leader, Appeals and Enforcement, London Borough of Richmond upon Thames

### FOR THE APPELLANT:

Richard Ground	Of Counsel, instructed by Marrons Solicitors
He called	
Edward Kitchen BA MA	Director and Head of Historic Buildings, CgMs Ltd.
Simon Merrony BA (Hons) D. Arch ARB RIBA	Simon Merrony Architects
George Vasdekys MRTPI	Salisbury Jones Planning

### INTERESTED PERSONS:

David Allen	Neighbouring resident
Lucy Grothier	Neighbouring resident
Sally Taylor	Friend of appellant
Jane Barlow-Kearsley	Friend of appellant
Damian Bradley	Friend of appellant
Moira Bostock	Neighbouring resident
Ellen O'Carroll	Friend of appellant
Louise Johnson	Wife of appellant

## DOCUMENTS

- 1 Notes of Ms Cook's opening remarks
- 2 Notes of Mr Allen's statement
- 3 Notes of Ms Grothier's statement
- 4 Notes of Mr Bradley's statement
- 5 Notes of Ms Barlow-Kearsley's statement
- 6 Notes of Ms Taylor's statement
- 7 Notification letter and circulation list
- 8 Council's Basis of Plea to Crown Court
- 9 London Borough of Richmond upon Thames Adopted Development Management Plan
- 10 Extract from Building Regulations Approved Documents and illustrative wall details submitted by the Council
- 11 Letter dated 29/9/11 to PINS from Merton & Richmond Legal Services
- 12 Notes of Ms O'Carroll's statement
- 13 Appeal Decisions APP/D3640/A/10/2136193 & APP/D3640/E/10/2136196
- 14 Signed S106 undertaking
- 15 Notes of Mrs Johnson's statement

- 16 e-mail from Graham House to Mr Vasdekys
- 17 e-mails between Mr Vasdekys and Robert Angus of LBRT
- 18 e-mails between Mr Vasdekys and Chris Tankard of LBRT
- 19 List of revisions to application drawings
- 20 Notes of Ms Cook's closing statement
- 21 Extract on unauthorised works in a conservation area from a book by Charles Mynors
- 22 Judicial authority – *McKay v SSE 1993*
- 23 Notes of Mr Ground's closing statement

## **Annex A**

### **Steps required to be taken in the reconstruction of the dwelling:**

- (a) retain all building materials produced during the demolition of the building as remain on site at the date of this notice so that they may be incorporated into the new structure wherever possible;
- (b) where possible use any remaining segments of original building materials to incorporate in the new structure or where such incorporation is not possible, use such segments for moulding purposes so that the new structure matches the original;
- (c) implement construction works (including laying of foundations, entraining of pipes and utility conduits) as are required in order to reinstate the building to its former dimensions, style, layout details and embellishments as a semi-detached property forming part of a pair of dwellings known as 6 and 8 Trafalgar Road. For the avoidance of doubt, the dimensions, style, layout details and embellishments are described generally by drawings 2011/02/P01a-f (excluding garage) annexed to the enforcement notice and are further depicted in photographs marked 'A' to 'S' annexed to the enforcement notice.
- (d) reconstruct the building using materials to match those used in the original structure, incorporating wherever possible materials retained from the demolition works:
  - (i) walls: mixed stock bricks (photograph 'I')
  - (ii) consoles, architraves, entablature, string course, plinth: render (photographs 'N, Q, P and R')
  - (iii) sills: sandstone
  - (iv) windows and doors: timber (photograph 'K')
- (e) Finish the built structure in the same manner in which the building was finished prior to its demolition having particular regard to the following:
  - (i) Finishes:
    - Front elevation: painted render (photograph 'B')
    - Rear elevation: part fair faced brickwork, part rendered with an ashlar finish (photographs 'C' and 'J')
  - (ii) Roofing Materials:
    - Principal roof: natural slate in the manner and pitch of no. 8 Trafalgar Road (photographs 'B', 'F' and 'G')
    - Other Roofs: natural slate (photographs 'C' and 'G')
    - Flashings: lead (photo 'F')
  - (iii) Colour:
    - Paints, brickwork and other materials to match the colours of the building prior to its demolition (photographs 'B' and 'C')
  - (iv) Other:
    - Rainwater goods: plastic (photograph 'H')
    - Soffits: timber (photograph 'H')
    - Fascia boards: timber (photograph 'H')
    - Ridge tiles to main roof: concrete (photograph 'F')
    - Entrance steps and walls to front door: rendered brickwork with stone treads (photograph 'A')
    - Threshold to front door: stone (photograph 'L')
    - Chimney at rear: mixed stock bricks (photograph 'S')

## **Annex B**

### **Conditions to be attached to planning permission ref: 11/1170/FUL**

- 1) The development hereby permitted shall begin not later than six months from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2011/02/P01, P02, P03, P04, P05 rev A, P06 rev A, P07 rev A, P08 rev A, P09 rev A, P10 rev A, P11 rev A and P13 rev A.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargement, addition or other alteration permitted by Classes A, B, C, D or E of Part 1 of the Second Schedule of the 1995 Order shall be carried out without prior planning permission.
- 4) No development, including site clearance, shall commence until a detailed scheme for the protection of existing trees, hedgerows and other landscaping details to be retained, in accordance with British Standard 5837:2005 Trees in Relation to Construction Recommendations (or any subsequent revision), has been submitted to and approved in writing by the local planning authority. This scheme shall include phasing measures; accurate trunk positions, canopy spreads and root protection areas; positions and spreads of hedgerows and other landscaping; all proposed tree, hedge and shrub removal; locations and details of protective barriers; root protection measures and construction exclusion zones; protective fencing details; and a programme for supervision/monitoring for all arboricultural protection measures. The development shall be carried out in full accordance with the approved scheme.
- 5) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) below shall have effect until the expiration of 5 years from the date of the occupation of the building for its permitted use.
  - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)].
  - ii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The statement shall provide for:

- (i) the parking of vehicles of site operatives and visitors;
- (ii) the loading and unloading of plant and materials;
- (iii) the storage of plant and materials used in constructing the development;
- (iv) the erection and maintenance of security hoardings;
- (v) measures to control the emission of dust and dirt during construction, including wheel washing facilities;
- (vi) a scheme for recycling and disposing of waste resulting from further demolition and construction work;
- (vii) vehicle cleaning measures;
- (viii) limited delivery times of materials;
- (ix) delivery vehicles – restrictions on size;
- (x) size and routing of construction vehicles and holding areas for these on/off site.

The approved Statement shall be adhered to throughout the construction process.

- 7) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; permeable hard surfacing materials; minor artefacts and structures; proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); other landscape features.
- 8) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 9) If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, (or becomes, in the opinion of the local planning authority, seriously damaged or defective) another tree of the same species and size as that originally planted shall be planted at the same place, in the next planting season/within 1 year of the original tree's demise unless the local planning authority gives its written approval to any variation. All tree planting shall be carried out in accordance with the details so approved and in any event prior to occupation of any part of the development unless otherwise agreed in writing by the local planning authority.
- 10) Within 1 month of the development hereby permitted being completed, a Post Construction Review Report shall be carried out by an independent assessor licensed by the Building Research Establishment and a Final Code Certificate, which demonstrates that the development has been constructed to meet a minimum standard of level 3 of the Code for Sustainable Homes, shall be submitted to the local planning authority.
- 11) The brickwork on the flank wall shall match salvaged bricks and the following shall be provided on site and approved by the local planning authority before the relevant parts of the works are commenced:



- (i) Sample panels of facing brickwork and external render including ashlar to rear showing the proposed colour, texture, mortar mix, face bond of brickwork and pointing and the sample panels shall be retained on site until the work is completed and has been approved.
- (ii) Samples of the roof coverings and ridge tiles.

Development shall be carried out in accordance with the approved details.

- 12) The development hereby permitted shall be constructed in accordance with the details specified in Approved Drawing Nos. P10 Rev A, P11 Rev A and P13 Rev A in respect of the following matters:

The design and finish of timber soffits and fascia boards, lead flashings, gutters and rainwater pipes, external doors, rooflight, windows, window architraves, window cills, corbels, entablatures, door architraves, brick headers to windows/doors, string course, detailing surrounding front door and fanlight, entrance steps and walls to front door, plinth.

- 13) The proposed first floor windows in the side elevations of the building hereby approved shall at no time be openable or glazed otherwise than in obscured glass below a minimum height of 1.75m (5'7") above the relevant floor level.
- 14) The dwelling hereby approved shall not be occupied until arrangements for the storage and disposal of waste/refuse have been made in accordance with details to be submitted to and approved in writing by the local planning authority.
- 15) The dwelling hereby approved shall not be occupied until cycle parking facilities have been provided in accordance with detailed drawings to be submitted to and approved in writing by the local planning authority; such drawings to show the position, design, materials and finishes thereof.
- 16) The development shall be constructed in accordance with the details specified in the Basement Method Statement accompanying the application.

## **Annex C**

### **Conditions to be attached to planning permission ref: 11/1873/FUL**

- 1) The development hereby permitted shall begin not later than six months from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2011/24/P01, P02, P03, P04, P05 rev A, P06 rev A, P07 rev A, P08 rev A, P10 rev A, P12 rev B and P13 rev A.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargement, addition or other alteration permitted by Classes A, B, C, D or E of Part 1 of the Second Schedule of the 1995 Order shall be carried out without prior planning permission.
- 4) No development, including site clearance, shall commence until a detailed scheme for the protection of existing trees, hedgerows and other landscaping details to be retained, in accordance with British Standard 5837:2005 Trees in Relation to Construction Recommendations (or any subsequent revision), has been submitted to and approved in writing by the local planning authority. This scheme shall include phasing measures; accurate trunk positions, canopy spreads and root protection areas; positions and spreads of hedgerows and other landscaping; all proposed tree, hedge and shrub removal; locations and details of protective barriers; root protection measures and construction exclusion zones; protective fencing details; and a programme for supervision/monitoring for all arboricultural protection measures. The development shall be carried out in full accordance with the approved scheme.
- 5) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) below shall have effect until the expiration of 5 years from the date of the occupation of the building for its permitted use.
  - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)].
  - ii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The statement shall provide for:
  - (i) the parking of vehicles of site operatives and visitors;

- (ii) the loading and unloading of plant and materials;
- (iii) the storage of plant and materials used in constructing the development;
- (iv) the erection and maintenance of security hoardings;
- (v) measures to control the emission of dust and dirt during construction, including wheel washing facilities;
- (vi) a scheme for recycling and disposing of waste resulting from further demolition and construction work;
- (vii) vehicle cleaning measures;
- (viii) limited delivery times of materials;
- (ix) delivery vehicles – restrictions on size;
- (x) size and routing of construction vehicles and holding areas for these on/off site.

The approved Statement shall be adhered to throughout the construction process.

- 7) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; permeable hard surfacing materials; minor artefacts and structures; proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); other landscape features.
- 8) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 9) If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, (or becomes, in the opinion of the local planning authority, seriously damaged or defective) another tree of the same species and size as that originally planted shall be planted at the same place, in the next planting season/within 1 year of the original tree's demise unless the local planning authority gives its written approval to any variation. All tree planting shall be carried out in accordance with the details so approved and in any event prior to occupation of any part of the development unless otherwise agreed in writing by the local planning authority.
- 10) Within 1 month of the development hereby permitted being completed, a Post Construction Review Report shall be carried out by an independent assessor licensed by the Building Research Establishment and a Final Code Certificate which demonstrates that the development has been constructed to meet a minimum standard of level 3 of the Code for Sustainable Homes shall be submitted to the local planning authority.
- 11) The brickwork on the flank wall shall match salvaged bricks and the following shall be provided on site and approved by the local planning authority before the relevant parts of the works are commenced:

- (i) Sample panels of facing brickwork and external render including ashlar to rear showing the proposed colour, texture, mortar mix, face bond of brickwork and pointing and the sample panels shall be retained on site until the work is completed and has been approved.
  - (ii) Samples of the roof coverings and ridge tiles. Development shall be carried out in accordance with the approved details.
- 12) The development hereby permitted shall be constructed in accordance with the details specified in Approved Drawing Nos. P10 Rev A and P13 Rev A in respect of the following matters: The design and finish of timber soffits and fascia boards, lead flashings, gutters and rainwater pipes, external doors, rooflight, windows, window architraves, window cills, corbels, entablatures, door architraves, brick headers to windows/doors, string course, detailing surrounding front door and fanlight, entrance steps and walls to front door, plinth.
- 13) The proposed first floor windows in the side elevations of the building hereby approved shall at no time be openable or glazed otherwise than in obscured glass below a minimum height of 1.75m (5'7") above the relevant floor level.
- 14) The dwelling hereby approved shall not be occupied until arrangements for the storage and disposal of waste/refuse have been made in accordance with details to be submitted to and approved in writing by the local planning authority.
- 15) The dwelling hereby approved shall not be occupied until cycle parking facilities have been provided in accordance with detailed drawings to be submitted to and approved in writing by the local planning authority; such drawings to show the position, design, materials and finishes thereof.

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