

Appeal Decision

Site visit made on 12 October 2016

by H Butcher BSc (Hons) MSc MRTPI

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

Decision date: 26 October 2016

Appeal Ref: APP/L5810/D/16/3155410

5 Lorne Road, Richmond, TW10 6DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Susan Randall against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/1405/VRC, dated 8 April 2016, was refused by notice dated 15 June 2016.
 - The application sought planning permission for a single storey side extension without complying with a condition attached to planning permission Ref 14/0774/HOT, dated 9 April 2014.
 - The condition in dispute is DV11 which states that: The roof of the building shall not be used for any purpose other than as a means of escape in emergency or for maintenance of the building.
 - The reason given for the condition is: To safeguard the amenities of the adjoining premises and the area generally.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Permission was granted under ref 14/0774/HOT to enlarge an existing single storey rear extension at the appeal property, and this permission has been implemented on site. Condition DV11 attached to this permission restricts the use of the roof for any purposes other than as a means of escape in an emergency or for maintenance of the building. The appellant submits that the roof of the original single storey rear extension had been used as a terrace for many years and is therefore seeking to vary condition DV11 to allow this area to continue to be used as such.
3. The main issue is therefore the effect that varying condition DV11 would have on the living conditions of neighbouring properties, having particular regard to matters of privacy.

Reasons

4. 5 Lorne Road is a two storey, mid-terrace property. The flat roof of the single storey rear extension is accessed from a first floor landing. At the time of my site visit the whole of the roof was clearly in use as a roof terrace. The roof itself had been covered with artificial grass and there were chairs and a table
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in-situ. The rear amenity spaces to properties in Lorne Road are not very deep, and in the case of the appeal property, the single storey rear extension takes up the majority of this. Similarly properties in York Road, which the appeal property backs onto, also have shallow rear gardens. This means that the back to back distance between properties in Lorne Road and York Road is relatively modest.

5. Given the close proximity of the properties in York Road, standing on the flat roof of the rear extension at the appeal property allows a person to face directly onto first floor rear windows at 6 York Road; which serve a bedroom and dressing room, and down to ground floor patio doors and the rear garden area of this property. The appellant makes reference to screening provided by vegetation and boundary fencing, but this is not substantial enough to mitigate elevated and intrusive overlooking from the terrace. Views into the rear garden spaces of 1, 3 and 7 Lorne Road are also possible. Furthermore, the terrace is directly adjacent to what appeared to be a first floor bathroom window at the attached property 7 Lorne Road and a first floor rear window at the attached property on the other side; 3 Lorne Road.
6. In light of the above, any use of the terrace, other than as an emergency escape or for maintenance, results in an unacceptable intrusion on the privacy of occupiers of neighbouring properties, to areas which reasonably ought to be afforded a relatively high degree of privacy. Accordingly, I consider condition DV11 is necessary, and to allow this appeal would clearly be contrary to the aims of DM DC5 and DM DC6 of the Development Management Plan (2011) which seek to protect adjoining properties from an unreasonable loss of privacy.
7. During my site visit I noted that there was a similar terrace at 1 Lorne Road. A terrace at 7 Lorne Road was not so much a terrace as a narrow access area to the side of a first floor extension at this property, and was not large enough for someone to sit out on or spend prolonged periods of time with any regularity. I was not able to clearly see a terrace at 9 Lorne Road, referred to by the appellant. Photos of a terrace at 11 Lorne Road, also not visible on my site visit, show what appears to be a terrace area enclosed by high planting. I have only been provided with limited information in respect of these therefore I cannot be sure what the exact circumstances surrounding them are. In any event, they do not justify allowing the appeal given the harm I have found, and I have to consider the appeal before me on its own planning merits.

Other Matters

8. I note the appellant's argument that the flat roof of the original single storey rear extension had been used as a terrace for in excess of 14 years, and a number of supporting statements with respect to this have been submitted. Any existing lawful use of the roof is not a matter for me to determine in the context of this appeal. I do note, however, that an application for a Certificate of Lawful Use in respect of this was refused due to insufficient information (ref 15/4792/ES191). Consequently this matter can only be afforded limited weight.
9. That there was only one letter of objection is not a determining factor. This appeal has been determined on whether there would be unacceptable harm to the living conditions of occupiers of neighbouring properties. For the reasons

outlined above the variation of condition DV11 would give rise to such adverse effects.

10. Neither party expresses a view regarding any effect of the removal of condition DV11 on the character or appearance of the St Mathias Conservation Area. Nonetheless, I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. On the evidence before me I am satisfied that varying condition DV11 would preserve those interests. This matter does not, however, override the harm I have found above.

Conclusion

11. The variation of condition DV11 would result in unacceptable harm to the living conditions of occupiers of neighbouring properties by way of a loss of privacy. For this reason, and having had regard to all matters raised, the appeal is dismissed.

Hayley Butcher

INSPECTOR