

Appeal Decision

Site visit made on 1 November 2016

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 05 January 2017

Appeal Ref: APP/L5810/C/3144115

82 St Margarets Grove, Twickenham, TW1 1JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Susan Brookes against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The Council's reference is 15/0834/EN/UBW.
 - The notice was issued on 29 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of side/rear ground floor extension on the Land ("the Extension").
 - The requirements of the notice are: Either:
 - (a) Remove the Extension; and (b) make good any damage caused arising from the compliance with step 5(a) above; and (c) remove from the land all associated debris arising for the compliance of steps 5(a) and 5(b) above; or:
 - (d) implement planning permission granted by the Council bearing reference number 13/2601/HOT
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of side/rear ground floor extension on land at 82 St Margaret's Grove, Twickenham, TW1 1JG referred to in the notice.

Application for costs

2. An application for costs was made by Ms Susan Brookes against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

The appeal on ground (e)

3. The appellant argues that the notice should have been served upon those with an interest in the land at No 80 as the party wall that has been constructed to facilitate the development at No 82 has partly been constructed upon land at No 80.
 4. I have some sympathy with the appellant's concerns regarding the fact the party wall has been constructed in part on the land at No 80. However the
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plan attached to the notice is clear and embraces only the land at No 82. S172(2) of the Act provides that a copy of the notice shall be served on the owner and on the occupier of the land to which it relates and; on any other person having an interest in the land, including mortgagees, tenants and sub-tenants. Section 176(5) provides for non-service to be disregarded if no substantial prejudice has arisen.

5. As the appellant has been able to lodge an appeal against the notice, I am unable to identify any substantial prejudice in this instance. Moreover, given there is no dispute that all those parties with an interest in land at No 82 have been correctly served, the appeal on ground (e) must fail.

The appeal on ground (a)

6. I consider there is one main issue in this case; whether the development has led to unacceptable harm to the living conditions of occupiers of No 80.
7. There is no dispute that the development subject of the enforcement notice differs from that previously approved (ref:13/2601/HOT) and has resulted in an increased height of the boundary wall between Nos 80 and 82. That increase being approximately 800mm beyond that previously approved. To that end there has evidently been additional impact upon the living conditions of occupiers of No 80.
8. From my site visit I was able to view the development from within No 80 and from the rear garden. The two windows in No 80 that face the extension serve a bathroom and kitchen. A further window in the rear elevation serves a living room. At the time of my visit, mid-morning, the sky was overcast and I was able to see that the amount of daylight entering into the kitchen and living room was of an acceptable level. In addition the view from the kitchen window was of the side wall and was somewhat oppressive. However, given the size and height of that window, the view would be unaltered even if the wall were to be reduced to the height permitted. That is to say one would have to seek out a view to the skyline in any event.
9. Turning to the outlook from the living room window, I have some sympathy with the Council's view that the wall is oppressive and overbearing. However I am not convinced that the additional 800mm has had an untenable effect given that approved would have an impact in any event. Furthermore, and whilst I must consider any future occupiers of the property, the lack of objection to the extension from the current occupiers weighs in favour of that built.
10. Moreover there is some planning history to the site and this appeal runs at the same time as two others¹. Those appeals have been made against the Council's refusal for permission of a joint application, from the owners of both Nos 80 and 82, for a single storey extension spanning the width of both properties and incorporating that built, and a separate application from the owners of No 80 to build a single storey extension mirroring that at No 82 and using the party wall as built. In addition to this the owners of No 80 have secured a written notice that prior approval is not required for a single storey extension some 6 metres in depth and 2.8 metres in height (ref:16/1175/PDE).
11. Whilst the Council point to there being no assurance that an extension would be built at No 80 and the harm they have identified would subsist. It seems to

¹ APP/L5810/W/15/3141150 & APP/L5810/W/16/3148616

me that the lengths the owners of No 80 have gone to, in seeking permission for such an extension, more than confirms their ambitions in that regard. Therefore given the limited harm I have found, and the likelihood that an extension would be built at No 80 in any event, I find unacceptable harm to the living conditions of occupiers of No 80 has not occurred.

12. Thus the development is not contrary to Policy DM DC5 of the London Borough of Richmond upon Thames Development Management Plan (2011) which seeks, amongst other things, to protect adjoining properties from visual intrusion and overshadowing. That is reflected by Policy CP7 of the London Borough of Richmond upon Thames Core Strategy which seeks developments that maintain appropriate levels of amenity.
13. I have also considered the Local Plan Supplementary Planning Document *House Extensions and External Alterations* (SPD). The Council have not stated how they consider the development conflicts with the advice therein however it does advocate that residential development should not cause any significant loss of daylight or sunlight to habitable rooms. As set out above and given the particular circumstances of this case I have found that significant loss has not occurred.
14. Thus for the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. Given the development has been completed there seems to be no reason to impose a condition concerning matching materials. The appeal on grounds (f) and (g) does not therefore need to be considered.

Richard Perrins

Inspector