
Appeal Decision

Site visit made on 12 April 2017

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/F5540/W/17/3167520

2a Myrtle Road, Hounslow TW3 1QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Khan against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00782/2A/P3, dated 27 January 2016, was approved on 2 August 2016 and planning permission was granted subject to conditions.
 - The development permitted is the erection of a first floor side extension, a rear roof dormer, and the installation of one roof light to the front-facing roof slope and one roof light to the rear-facing roof slope.
 - The conditions in dispute are Nos 4, 6 and 7 which state that 4. *The extensions hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 2A Myrtle Road, Hounslow, TW3 1QD;* 6. *Within one month of the date of this permission, and prior to the commencement of any works consisting of the erection of the hereby approved first floor side extension and rear roof extension, the existing canopy on the front elevation shall be demolished in its entirety and all resultant debris shall be removed from the site;* and 7. *Within three months of the date of this permission, and prior to the commencement of any works consisting of the erection of the hereby approved first floor side extension and rear roof extension, the existing single storey rear extension shall be demolished in its entirety and all resultant debris shall be removed from the site unless proven a lawful structure.*
 - The reasons given for the conditions are: 4. *The accommodation is considered unsuitable for occupation by a separate person or household not related to the occupiers of the single family dwelling to which it is attached, and such use would have a detrimental effect upon the character of the neighbourhood. To accord with policies CC1, CC2 and SC6 of the Local Plan;* 6. *In the interests of visual amenity, in accordance with Local Plan policies CC1 and CC2;* and 7. *In the interests of visual amenity and to ensure the provision of high quality accommodation for future occupiers, in accordance with Local Plan policies CC1, CC2 and SC5.*
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Decision

1. The appeal is allowed and the planning permission Ref 00782/2A/P3 for the erection of a first floor side extension, a rear roof dormer, and the installation of one roof light to the front-facing roof slope and one roof light to the rear-facing roof slope at 2a Myrtle Road, Hounslow TW3 1QD, granted on 2 August 2016 by the Council of the London Borough of Hounslow, is varied by deleting conditions 4, 6 and 7 and substituting for them the conditions set out below:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
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- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2AM-RD/PLAN/REV/01, 2AM-RD/PLAN/REV/02, 2AM-RD/PLAN/REV/04, 2AM-RD/PLAN/REV/05 and 2AM-RD/PLAN/REV/06 except in respect of the detail showing the single storey rear extension on plans 2AM-RD/PLAN/REV/01, 2AM-RD/PLAN/REV/02 and 2AM-RD/PLAN/REV/06.
- 3) The materials to be used in the construction of the external surfaces of the extensions hereby permitted shall match those used in the existing building.
- 4) 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 windows or dormer windows, other than those expressly authorised by this permission, shall be inserted in the flank elevations of the extensions hereby permitted.

Application for costs

2. An application for costs was made by Mr Khan against the Council of the London Borough of Hounslow. This application is the subject of a separate Decision.

Main Issues

3. There are two main issues, these are whether or not the conditions are reasonable and necessary in respect of a) ensuring an appropriate standard of living conditions for future occupiers; and b) that the development does not cause harm to visual amenity.

Reasons

4. The case before me is in respect of three separate conditions that have been imposed on a planning permission. For clarity, I shall address each condition in turn.

Condition 4

5. This condition seeks to restrict the occupation of the extensions to the dwelling that were approved. Namely, the dormer in the rear roof slope and the extension to the side. The restriction sets out that, in effect, they cannot be occupied independently of the host dwelling given their provision of floor space. The roof extension (dormer) would accommodate an additional bedroom, as would the side extension. There would be a bathroom serving the new roof space bedroom, in the roof space above the side extension's bedroom.
6. All of these rooms rely on access from the host dwelling and there is no compelling evidence before me that they are intended to be used independently of it. Planning permission was granted for extensions which would be part of the host dwelling by association and definition. In addition, should the extensions be occupied independently of the host dwelling, this would be development for which express planning permission would be required in any event.
7. For these reasons, condition 4 seems to serve no clear planning purpose with regard to the permission that was granted. In the absence of the condition the

development would not be harmful to the living conditions of future occupiers and as such would not conflict with Policies SC5, SC6 or SC7 of the Local Plan¹. These Policies seeks to ensure, amongst other things and along with the Framework², that new housing development and residential extensions specifically do not cause harm to the amenities of existing or future residents.

8. The condition is unnecessary and as such I allow its removal.

Condition 6

9. The canopy to the front of the dwelling that spans the door and ground floor living room window is not shown on the proposed plans listed on the Councils decision notice. These are the same plans that are before me as part of this appeal. In essence therefore, the existing canopy does not benefit from planning permission as part of this appeal.
10. Nonetheless, the granting of a planning permission is not the appropriate vehicle to address, or indeed seek remedial action, in respect of unlawful development except perhaps in some circumstances where an appeal is against an enforcement notice. The appropriate way to deal with unlawful development therefore would be through the Council's planning enforcement function. The Council have confirmed that a standalone planning application is currently under consideration for a canopy over the front of the dwelling although I have not been provided with any further detail of it. Whilst they state they are likely to support it which may in any event render this condition superfluous, I can attribute it limited weight since it is yet to be granted planning permission.
11. Notwithstanding this, my findings in respect of the reasonableness and relevance of this condition stand I therefore allow its removal. In the absence of condition 6 the proposed development would not be unacceptable in terms of visual amenity nor consequently fail accord with Policies CC1, CC2 and SC7 of the Local Plan. These Policies seek to ensure, amongst other things and along with the Framework, a high quality and contextually appropriate design and appearance in new development; respecting local character.

Condition 7

12. In the same manner as the use of condition 6, the Council require the removal of a single storey extension to the rear of the dwelling, which they consider unlawful, within a prescribed fixed timescale. The Council have also confirmed that they have granted a Lawful Development Certificate (LDC) for a single storey rear extension that is smaller in size than the one deemed to be unlawful.
13. I accept the Council's argument that the single storey rear extension which is the subject of the granted LDC would only be lawful in respect of its size should the canopy referred to above be removed. Be this as it may, the LDC, the lawfulness of the development to which it relates and the aforementioned canopy (addressed above) are embroiled in matters that are both outside the scope of the original planning permission that was granted and indeed the remit of this appeal.

¹ London Borough of Hounslow Local Plan 2015-2030: Volume One

² The National Planning Policy Framework 2012

14. For the same reasons I have given in respect of condition 6, I am of the view that whatever action is deemed necessary to resolve the unlawfulness of the existing single storey rear extension is a matter for the Council's planning enforcement function. As indeed would the implementation of the LDC. It remains the case however, for these reasons, that its imposition on the original planning permission is unnecessary and it is hereby removed.
15. The approved development would not be harmful to the living conditions of future occupiers or visual amenity which consequently means it would not fail to comply with Policies CC1, CC2, SC5, SC6 or SC7 of the Local Plan without the condition. These Policies seek to ensure, amongst other things and along with the Framework, that new housing development and residential extensions specifically do not cause harm to the amenities of existing or future residents. They also seek high quality and contextually appropriate design and appearance in new development; ensuring that it respects local character.

Other Matters

16. I note the Council's comments in respect of the planning permission that was granted for the dwelling, prior to the application coming forward for extensions to it which is the subject of this appeal. The Council state that planning permission was granted, in the first instance, for a one bedroom dwelling. Including the extensions they have now granted, the dwelling would become a multi bedroom family residence and thus require, under the London Plan, a private and usable garden space. The existing unlawful single storey rear extension all but takes up that space.
17. Whilst I acknowledge this, the Council is able to pursue its removal and enforce the lawfulness of the LDC they have granted for a smaller extension as I have set out above. It is unrealistic to expect the dwelling to provide private and usable garden space in accordance with the London Plan in light of both this LDC and the retrospective nature of the requirements being applied. This matter does little therefore to change my conclusions on the conditions which are the subject of this appeal.

Conditions

18. I have regard to the conditions attached to the original planning permission. I have re imposed the following conditions for the reasons I have set out, making some changes to the wording in the interests of clarity and enforceability.
19. As well as the standard time condition, I have imposed a revised approved plans condition. It has been amended to reflect the fact that the unlawful extension to the rear of the dwelling, which was not part of the description of development but is shown on the proposed plans, does not form part of the planning permission granted.
20. In order to secure an appropriate external appearance for the extensions, I have set out that the materials to be used shall match the existing dwelling. In the interests of the living conditions of the occupiers of neighbouring dwellings, I have imposed a condition restricting additional windows in the flank walls of the extensions approved. I have however omitted the Council's original detail in respect of restricting additional doors in the building since there is no clear evidence before me as to why this is necessary or indeed why the development

would be unacceptable without it. Moreover, this element seeks to place restrictions on the existing building and only the extensions to it are the subject of the planning permission granted.

Conclusion

21. For the reasons set out above I have found that conditions 4, 6 and 7 of the original planning permission are unnecessary and are hereby removed. Subject to the conditions set out in the schedule, the appeal is allowed.

John Morrison

INSPECTOR