
Appeal Decision

Site visit made on 22 June 2018

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2018

Appeal Ref: APP/Z5630/C/17/3181525

Land and property at 269 Richmond Road, Kingston upon Thames, KT2 5DJ

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs B Yazdi [hereafter "the appellant"] against an enforcement notice issued by the Council of the Royal Borough of Kingston upon Thames [hereafter "the Council"].
 - The notice was issued on 5th July 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a roof extension on the Property.
 - The requirements of the notice are:
 - 5.1 Demolish the hip to gable roof extension
 - 5.2 Demolish the rear dormer roof extension
 - 5.3 Reinstate the hipped roof in accordance with the planning permission granted by the Council bearing reference number 881551
 - 5.4 Remove from the Property all building materials and debris arising from compliance Steps 5.1, 5.2 and 5.3 above.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in s174(2)(a), (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 s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected, in paragraph 3, by the deletion of the word "unauthorised". Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under s177(5) of the Act for the development already carried out, namely the erection of a roof extension on the land at 269 Richmond Road, Kingston upon Thames, KT2 5DJ.

Preliminary matters

2. The description of the allegation (at paragraph 3 of the notice) should focus upon the act of development concerned. The use of the word "unauthorised" (which simply adds unnecessary description) is superfluous. As a general rule the word should be avoided in a notice as the development may or may not be "unauthorised" depending on the outcome of any appeal on its various grounds. I shall, therefore, correct the notice under the powers of s176(1)(a) of the Act by deleting "unauthorised". I am satisfied that no injustice will arise to either of the main parties in me so doing.

3. Since the enforcement notice was served the Council has granted planning permission for the roof extension with modifications. Under s180 of the Act where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission the notice shall cease to have effect so far as inconsistent with that permission.
4. I shall cover the modifications in more detail below. Suffice to say, the notice no longer has effect in respect of the parts of the development that are now comprised in the permission. My consideration of the appeal is made from that starting point.
5. On 24 July 2018 Government published its revised National Planning Policy Framework [hereafter "the Framework"]. Each party has been given an opportunity to comment on the implications for their case.

The appeal on ground (a) and the deemed application

Planning policies

6. I have been referred to policies CS8 and DM10 of the Royal Borough of Kingston-upon-Thames Core Strategy. Taken together these policies seek to deliver development of high quality design that recognises distinctive local features and character, relates well to its surroundings and has regard to the amenity of neighbours including in terms of privacy and sunlight/daylight (amongst other things).
7. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise¹.
8. National planning policy as set out in section 12 of the Framework seeks to ensure that the design of development is sympathetic to local character and delivers a good standard of amenity for existing and future users. Policies CS8 and DM10 are in general conformity with the Framework.
9. Design guidance for roof extensions is set out in Kingston-upon-Thames Residential Design Supplementary Planning Document. This is a further material consideration that I shall take into account.

The planning permission

10. The permission which has been granted provides for the retention of the hip to gable enlargement and the retention of substantial parts of the fabric of the dormer. The main differences between the approved dormer and that "as built" are that the approved dormer has a larger set back from the eaves, a smaller re-positioned window (replacing the full height window and Juliette balcony) and a stepped-in section.
11. I have no reason to doubt that, if this current enforcement appeal fails, the appellant would implement the planning permission. Thus the permission represents a realistic fallback position and is a consideration to which I afford substantial weight.

¹ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

Main issue

12. When having regard to the policy background, the submissions made by the parties and the planning permission that has been granted I consider the main issue for the appeal on ground (a) and the deemed application to be the effect of the "as built" roof extension, when compared to the approved scheme, upon the character and appearance of the area.

Effect upon the character and appearance of the area

13. The area is of residential, suburban character comprised mainly of semi-detached properties having varied architectural detailing and form but also displaying a sense of uniformity. Whilst many properties have been altered and/or extended over the years the original architectural characteristics of the dwellings remain evident in views from the street.
14. However, there is no difference in effect in views from the street when comparing the "as built" and approved dormers, the only view of the dormer (in either case) being its side cheek which can just be glimpsed through the gap between numbers 269 and 271. The modifications of the approved dormer would not be seen from the street.
15. To the rear a number of properties have an assortment of extensions and roof dormers. The appellant has drawn attention to other hip to gable extensions having full width dormers within the proximity of the appeal site. Sizable rear dormers are characteristic of the area.
16. The rear elevation of the appeal property, which has undergone recent alterations and enlargement, is of contemporary character and appearance having a full width single storey extension with a wide expanse of glazing opening onto a patio area with steps leading to the garden. The elevation is rendered below a tiled roof within which the dormer sits.
17. As well as from within the garden of the property, the appeal dormer is seen to an extent, obliquely and between the foliage, from the neighbouring gardens to either side. It is barely seen from the rear facing windows of properties on Lower Ham Road. In the winter months, when there is less foliage, the extension may be seen a little more clearly although would still be viewed through the framework of the surrounding trees, at a distance and in the context of other surrounding properties having rear enlargements and dormers.
18. The set back from the eaves of the "as built" dormer does not quite accord with that indicated by the Council's design guidance whereas the approved scheme would result in the face being set back a little further. However, I cannot see that this modification would be discernible when taking into account the limited views of the dormer, the distances from which the dormer is viewed, the angles of view, the intervening trees and vegetation and the context of other rear dormers in the surroundings.
19. The re-positioned window, replacing the full height window with Juliette balcony, would align with the existing first floor window opening below². However, the planning permission scheme would not result in alignment of the

² The Council's design guidance says that dormers should be designed so that they match or line-up with any original windows below.

other window opening in the dormer or the alignment of other openings within the elevation generally. In any event I do not consider the vertical alignment of the window openings, in the current circumstances, to be a decisive factor. The single storey extension with its flat roof and wide expanse of glazing, together with the width of the dormer as now approved, gives the elevation a horizontal emphasis. The first floor face of the dwelling and the dormer step back, with the predominant feature and main focus of the elevation being the ground floor extension and its wide glazed opening.

20. The dormer's full height window with Juliette balcony can be seen to an extent from neighbouring gardens, obliquely and when looking back at a distance. It is most visible from the garden of the appeal property itself. In these views, and in the context of the contemporary appearance of the rear elevation with its wide expanse of glazing, I do not find the full height window of the dormer to be out of place. Neither does its alignment, offset from the window below, offend the eye when seen in the context of the elevation overall and the positions and size of its various openings. Whilst the window arrangement of the approved scheme would be discernibly different I cannot conclude that the window modification is necessary to make the dormer acceptable in these overall circumstances.
21. With regard to the bulk and scale of the dormer, the proposed "stepped-in" section would provide some articulation and shadowing in its elevation. However, I cannot see that this modification would go so far as to create the effect of two separate dormers or that it would be particularly detectable when viewed from neighbouring gardens and properties. The overall perception, in these views, would remain simply that of a tile clad dormer.
22. The modification would be most evident from within the garden of the appeal property. From here the dormer is seen set back from the single storey extension and, in this context, does not appear overly dominant. Its simple clean lines and form, in my view, conform to the minimalist and contemporary character and appearance of the rear elevation. Notwithstanding the dormer's bulk and scale, I cannot see that the introduction of a "stepped in" section on its elevation is necessary to make the dormer acceptable in the particular circumstances of this case.
23. I find, on balance, that the overall difference in effect upon the character and appearance of the area is neutral when comparing the "as built" dormer to that approved. I cannot see that the planning permission scheme is preferable or that there is any other reason to find against the appeal development on this main issue.

Other matters

24. A previous Inspector had considered the roof extension in 2015 following the refusal of planning permission and had come to the conclusion, at that time, that the appeal should be dismissed. Whilst I have had regard to that earlier decision, my decision must be made in the prevailing planning circumstances taking into account the planning permission which has now been granted for the retention of the development with modifications, the measurements for the "set-ins" as shown on later plans (not before the previous Inspector) and the property with its contemporary ground floor extension and surroundings as they appeared to me at the time of my visit. I also bear in mind that some of the

other dormers in the area may not have been evident at the time of the previous decision.

25. I have been referred to another appeal decision relating to a site elsewhere in the district. However, I do not know the full details of that case which, in any event, is of only limited relevance now that the Council has granted permission for a hip to gable element. I have, therefore, decided this appeal on its own merits.
26. There is no material difference upon the living conditions of neighbours in terms of privacy and daylight/sunlight when comparing the "as built" development to the planning permission scheme.

Conditions

27. The planning permission was granted subject to a condition that relates to facing materials. The walls of the dormer are hung with tiles of a neutral colour such that they match those of the existing roof. There is no need (in my view) for the matter of materials to be considered further.
28. There are no conditions that have been suggested by either party and none that I consider necessary.

Conclusions on ground (a) and the deemed application

29. On ground (a) I find that there is no adverse effect upon the character and appearance of the area arising from the "as built" development when compared to the approved scheme. The development does not offend the policies of the development plan in these circumstances. The deemed application should, therefore, be granted.

Conclusion

30. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under s177(5) of the Act, which will now relate to the corrected allegation.
31. There is no need for me to consider the appeal on grounds (f) and (g).

Susan Wraith

Inspector