



Appeal Decision

Site visit made on 8 June 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/L5810/C/20/3244142

6 Pointers Cottages, Wiggins Lane, Ham TW10 7HQ

- 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 Victoria Wicks against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The enforcement notice, numbered 19/0430/EN/NAD, was issued on 18 December 2019.
 - The breach of planning control alleged in the notice is failure to comply with condition No U51151 of a planning permission Ref 18/2895/HOT granted on 19 October 2018.
 - The development to which the permission relates is the demolition of existing outrigger and erection of single-storey extension, rear dormer roof extension and front porch. The condition in question is No U51151 which states that: No new external finishes (including fenestration), including works and making good, shall be carried out other than in materials to match the existing, except where indicated otherwise on the submitted application form and drawings. The notice alleges that the condition has not been complied with in that the finishing of the rear dormer roof extension in lead cladding rather than in slate to match the materials in the host building.
 - The requirements of the notice are:
 - (i) Remove the lead cladding from the rear dormer extension; and
 - (ii) Finish the rear dormer by using slate tiles to match those on the main roof.
 - (iii) Make good any damage caused to the property when executing steps 5(i) and 5(ii) above.
 - The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by substituting the plan 'APP/L5810/C/20/3244142 amended plan'.
2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

3. Following the Covid-19 outbreak the development was viewed from the footpath adjacent to No7.

4. I note that the plan referred to in paragraph 2 of the enforcement notice is incorrect as the red line encompasses both No 6 and the next door property at No7. However, whilst defective, the enforcement notice correctly identifies the site, where the alleged breach has occurred, as No 6. Pointers Cottages at paragraph 2 of the notice. The Council have since provided a corrected plan. The appellants have not commented on this amended plan, but it now corresponds to the comments made in their evidence. Accordingly, I consider that this corrected plan can be substituted without causing injustice to the parties.

Ground (c)

5. The appeal has been lodged on ground (c), that the matters stated in the notice do not constitute a breach of planning control. This is a legal ground where the burden of proof is on the appellants to make out the case that there has not been a breach of planning control. Nevertheless, case law has established that the evidence of the appellant should not be rejected simply because it's not corroborated. If there is no evidence to contradict or make the appellants version of events, less than probable and their evidence is sufficiently precise and unambiguous, there is no good reason to dismiss an appeal on any legal ground. The merits of the development are not a determining factor for an appeal under ground (c).
6. An application for the demolition of an existing outrigger and the erection of a single-storey extension, a rear dormer roof extension and a front porch, was submitted and approved by the Council on 19 October 2019. This permission was subject to a number of conditions, including No U51151 which states that 'No new external finishes (including fenestration), including works and making good, shall be carried out other than in materials to match the existing, except where indicated otherwise on the submitted application form and drawings.'
7. The permission has been implemented and the rear dormer roof extension built. However, it has been finished in lead cladding rather than slate tiles. It is the appellant's case that the Heritage Statement that they submitted as part of their planning application clearly listed that the materials to be used for the roof, cheeks and front of the rear roof dormer were to be lead sheet cladding. The associated application form listed the Heritage Statement as one of the submitted documents. The appellant submits that the use of the lead cladding therefore does not represent breach of that condition, given the wording of that condition 'except where indicated otherwise on the submitted application form and drawings'.
8. When planning permission is granted the development must be carried out in accordance with all of the imposed conditions. The permission in this case was granted subject to three conditions; AT01 that the development must be begun not later than three years from the date of the permission; U51150, that the development shall be carried out in accordance with the following approved plans and documents, where applicable: Location Plan, 01,02B and 03 received on 30 August 2018; and U51151 that the external materials match the existing.
9. From the evidence it is clear that the Heritage Statement is not included in the list of approved plans and documents, and none of the approved plans listed include any reference to the use of lead cladding.

10. The lead cladding does not match the materials used on the existing building and for the above reasons have not been approved as part of the planning permission. The appeal on ground (c) therefore fails.

Ground (a) – the deemed application

Main Issue

11. The main issue is the effect of the development on the character and appearance of the host property and the Ham House Conservation Area (HHCA).

Reasons

12. The site lies within a terrace of seven modest two storey cottages, that are located down a pedestrian path to the west of Ham Street. The cottages have white painted frontages under slate roofs and are generally similar in scale and design. The appeal site is located within the Ham House Conservation Area and is a Building of Townscape Merit. The wider area is mixed with both modern and traditional buildings.
13. Buildings of Townscape Merit are buildings, groups of buildings or structures of historic or architectural interest, which are locally listed due to their considerable local importance. The Council's adopted Supplementary Planning Document Buildings of Townscape Merit (2015) sets out more information about why buildings are chosen. The Council will seek to preserve, and where possible enhance, the significance, character and setting of non-designated heritage assets, including Buildings of Townscape Merit.
14. The significance of the HHCA lies with the surviving form of buildings, including a number of 18th century listed mansions and modest terraced cottages. Pointers Cottages form a group of simple Victorian cottages built at right angles to the street. Their value within the HHCA results from their secluded distinctive and largely unspoiled nature. They contribute towards the mix of styles and traditional materials giving interest to the street.
15. The appeal site fits coherently with the general pattern of development in the terrace. The permission granted planning permission for, amongst other things, a rear flat roof dormer. I was able to view the dormer from the footpath to the west of the site. It was possible to view the dormer and the two dormers on the neighbouring properties. The subject dormer is smaller in scale to the other two but there is a consistency in general design. The materials used on the other two dormers are slate tiling which matches the existing roof. In contrast the subject dormer has been finished with lead cladding to the roof and cheeks.
16. Whilst the lead is of similar colour to the tiles, it has an untextured finish which is at odds with the use of tiles on the main roof and the adjacent dormers. This disrupts the uniformity of the terrace and gives the development an unsympathetic appearance when considered in the context of the rest of the terrace and the wider HHCA. I acknowledge that the lead will, in time, oxidise and lose its rather polished harsh appearance. However, as part of this weathering process it is also likely to change colour, and this will further highlight the inconsistent appearance of the dormer.
17. Overall, the introduction of unrelated and incompatible materials has failed to allow the dormer to successfully integrate with the original house.

Consequently, the development is detrimental to the visual quality of the building, the terrace and erodes the character and interest of the HHCA where external materials should be kept to a minimum and match those already found on the house.

18. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires Local Planning Authorities to pay special attention to the desirability of preserving and enhancing the character or appearance of conservation areas.
19. The National Planning Policy Framework (NPPF) states that harm to a heritage asset might be defined as 'substantial' or 'less than substantial.' However, Planning Practice Guidance (PPG) advises that in general terms, substantial harm is a high test and that works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. In finding harm to the Conservation Area, due to the small-scale nature of the proposal when taken in the context of the Conservation Area as a whole, I would quantify its extent to be less than substantial.
20. Nonetheless, I attach considerable importance and weight to that harm, and in applying the test set out in the NPPF, I note that the main benefits are to the owner due to the longevity of the material and no additional public benefits for the scheme have been identified. Accordingly, I find that there are no public benefit to offset the identified harm.
24. Drawing the above points together I find that the development harms the host property and the character and appearance HHCA. It is therefore in conflict with Policy LP 1, LP3 and LP4 of the London Borough of Richmond upon Thames Local Plan (2018). In summary these policies in combination require all development to be of high architectural and design quality that makes a positive contribution to the historic environment, preserving and, where possible, enhancing the character or the appearance of the Conservation Area.

Other matters

25. My attention has been drawn to other properties in the area that have used lead cladding on dormer windows. I have little evidence about the age of these dormers, the planning history or policy position at the time that they were constructed. Moreover, they appear to be some distance from the site and therefore have to be assessed in the context of the area where they are located. I have no evidence to suggest that there are examples of similar materials used on any of the other dwellings that make up this terrace.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR