



Appeal Decision

Site visit made on 20 October 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/L5810/C/19/3239136

30 Broad Street, Teddington TW11 8RF

- 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 Mrs U Patel against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The enforcement notice, numbered 19/0132/EN/BCN, was issued on 13 September 2019 ('the notice').
 - The breach of planning control as alleged in the notice is without planning permission and within the past 4 years, the unauthorised erection of a three-storey rear extension with rear dormer extension to main building and conversion into six studio flats and one x two-bed flat with bicycle parking.
 - The requirements of the notice are (a) Carry out remedial works to the rear extension in order to reduce its height and amend the design and appearance of its roof in order to comply with the detailed design approved under planning permission dated 19/06/2012 reference bearing 09/0382/FUL (attached hereto); and (b) Remove the UPVC framed casement windows installed in the rear extension and replace them with timber framed sash windows in order to comply with the detailed design approved under planning permission dated 19/06/2012 bearing reference 09/0382/FUL and the condition U27614 (Materials to match) of that permission, in so far as it relates to the provision of windows.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by removing requirement (b) of Section 5 of the notice, 'What you are required to do'.
2. Subject to the variation, 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.

Ground (d)

3. This ground reads that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus resides with the appellant to prove her case on the balance of probability.
4. As the subject of the notice is operational development, it is for the appellant to show that this work was substantially complete more than four years prior to the issuing of the enforcement notice. Therefore, she has to show that the

operations had reached this stage prior to the 13 September 2015, ('the relevant date').

5. Planning permission was granted for a 'Loft conversion with dormer, two storey rear extension and conversion into 6 studios and 1no. two bedroom flat with bicycle parking' by virtue of a decision made by the Council on 19 June 2012. The Council's reference for the application was 09/0382/FUL.
6. There is some suggestion that the description of development was altered by the Council to include reference to the bicycle parking, without agreement with the applicant. However, this is not critical to the issues raised in this appeal. It is accepted by both parties, however, that the works that were carried out after the grant of planning permission were not undertaken in accordance with the scheme that was approved.
7. The appellant's position is that the building was substantially completed by June 2015, that is to say prior to the relevant date. In support of her statement, she has provided evidence in the form of Witness Statements-Statements of Truth, (I will refer to these as WS), from Balwinder Singh and Thomas Starowiyeski, both of whom worked on the build. Mr Starowiyeski also provided a further WS clarifying certain points. In addition, WSs were submitted from: Himanshu Patel, who works in the shop at No 30 and, it would seem, co-owns the property; Vikash Patel, the appellant's son who states that he was assisting in a civil dispute between the appellant and a neighbour; and Rosely Bittencourt, who worked in a nearby shop and lived at No 30.
8. This body of evidence states that the structural work for the extension was substantially completed by December 2014. Mr Starowiyeski, who was employed as the 'Primary Building Contractor', states that by this time the extension was complete up to roof level, with bricklaying and roof tiling complete, and internal walls in place. This is corroborated in the submission of Balwinder Singh, who was employed as a builder on the site and was, by this time, undertaking internal plastering work. Himanshu Patel and Rosely Bittencourt are also able to confirm that this was the position in December 2014.
9. This is compelling evidence and, as I have not been provided with substantive evidence to counter what is claimed, I find that by December 2014 the external work to the extension was largely complete and works were underway on the interior. This does not, however, equate to it being substantially complete at this time. If for no other reason, this is because there were no windows in the extension at that time. Further, a photograph submitted with Mr Starowiyeski's WS shows that there were still significant works being undertaken to the interior towards the end of 2014.
10. Mr Starowiyeski states that the window openings were covered in plywood in or around November 2014 for security purposes. The evidence that has been put forward demonstrates that plastering and internal fitting out was on-going from December 2014 into 2015.
11. Mr Starowiyeski states that windows were installed by June 2015. From what he says, the plywood was removed to allow for this work to be undertaken and then re-fitted to keep the windows clean and to ensure privacy; the latter point seemingly related to the alleged actions of the landlord of a neighbouring property. The appellant agrees with the timing of these works, and states that

this was done for security reasons. Mr Starowiyeski's initial WS contains a photograph dated 15 May 2015 showing what is reported to be a window in one of the flats. The window in question lacks handles. This might be the window without handles that Himanshu Patel can recall complaining about in his WS.

12. It is at this point in June 2015, when the windows were installed, that the appellant, Balwinder Singh and Mr Starowiyeski agree the extension was substantially complete. Balwinder Singh left the site in June 2015 by which time, he says, kitchens and boilers were in place and floorboards were fitted. Rosely Bittencourt states that she saw windows "in place" by June 2015, as the appellant allowed her to store her bike in one of the flats.
13. Mr Starowiyeski states, in his second WS, that the boards were not removed until around the end of 2015. Some of the windows had been fitted in such a way that they had small internal cills and commensurately large external cills. This looked odd as they appeared too deeply embedded. Therefore, when the plywood was removed, some of the windows had to be adjusted and pushed outwards. He goes on to say that some of the external cills were added later than this. These works caused damage to the plaster work that had to be resealed and repainted.
14. The Council states that, due to a photograph showing that there were no windows in the extension, the appellant's initial evidence did not show substantial completion of the extension by late 2014. I, too, have found this to be the case.
15. The Council says that there were no windows in the extension until June 2016. In support of this, its Officer report contains three images that appear to have been taken from Google Street View. These are dated July 2015, October 2015 and June 2016. The former two show the window openings fitted with plywood screens, whilst the latter shows windows and doors fitted. It says that its position is corroborated by the person that made the complaint about non-compliance with the approved scheme.
16. On the basis of the tests in *Sage v Secretary of State for the Environment, Transport and the Regions and Others* [2003] UKHL 22, the Council says that the extension was not complete for its intended use of creating habitable residential accommodation.
17. Mr Ian Stenner, the landlord of 32 and 34 Broad Street, has submitted evidence. He says that he submitted Google Street View photographs to the Council. I have not been given copies of these but, as he says "very clearly that the windows were not installed earlier than October 2015 and in fact not until at least June 2016" I am inclined to find that these are the same photographs submitted by the Council.
18. As a point of fact, I cannot agree with the assertions of the Council and Mr Stenner with regards to the timing of the windows' installation based on these photographs. The most that might be said, based on these alone, is that the windows were installed sometime between October 2015 and June 2016 not that it happened in June 2016.
19. Mr Sneller further states that as a 'Final Certificate' under the Building Regulations was not issued until 8 May 2019, it could not have been

- substantially complete as claimed. I have not seen the certificate referred to but, in any event, this might have merely reflected when it was applied for rather than when the works were complete.
20. Mr Sneller suggests that there had been a “detailed and sophisticated attempt to hide evidence” on the part of the appellant, relating to the creation of a fourth floor in the roof space. I have not been provided with substantive evidence that this was the case, and I note that the Council, which investigated the matter, has not made this allegation.
21. The nub of the appeal is, therefore, at what time was the extension substantially complete. This is a matter of fact and degree and, in this regard, a holistic approach has to be taken.
22. What was being undertaken at the rear of No 30 was a single operation for the erection of an extension to accommodate residential accommodation in the form of flats. To my mind, the substantial completion of the operations to provide the flats would have involved the provision of windows in a finished manner. On a fact and degree basis, I accept what has been put forward by the appellants with regards to the initial installation of the windows.
23. However, Mr Starowiyeski’s evidence shows that the substantial completion did not occur until late 2015, following the removal of the plywood screening. The works of removal revealed that multiple windows had to be re-positioned. It seems that either this issue could not have been foreseen before the removal of the screens or could not have been undertaken before this happened. Whether this was for reasons of aesthetics rather than building practicalities is unclear. However, whichever it is does not alter my finding that the building was not substantially complete until the windows had been finally fitted into place.
24. Although the later attachment of external cills might be relatively minor when taken in isolation, I find this to be further evidence that the windows were not finished in June 2015. Furthermore, the evidence does not show on the balance of probability that internal works were also substantially complete. Balwinder Singh says that he was called back to the site at times between June 2015 and December 2016 for ‘handy man’ jobs, such as fitting laminated flooring and skirting boards. Although Rosely Bittencourt states that the work on the site around June 2015 was mainly related to fitting out kitchens and bathrooms, she also says that “By December 2016...” (on the date she gives, I feel that there is a genuine error and I have taken this to mean 2015) “...the flats looked ready to live in”. This comment is made by a person that regularly used the extension and suggests to me that they might not have become substantially complete until late 2015, possibly December of that year. However, given my findings on the windows, my decision does not rely on this matter.
25. Therefore, for the reasons given above, the appeal under ground (d) fails.

Ground (a)

Main Issues

26. The main issues are: whether the development would preserve or enhance the character or appearance of the Broad Street Conservation Area (BSCA); and the effect of the development on the living conditions of the occupants of

residential properties above 32 Broad Street having particular regard to outlook.

Effect on the BSCA

27. Broad Street in the vicinity of the appeal site is a thriving commercial thoroughfare. 30 Broad Street, together with 32 and 34 Broad Street, form a group of properties that present a similar frontage to this road. They have commercial units at ground floor level with what appears to be residential accommodation on the upper floors. On its other side, No 30 adjoins a supermarket that, in terms of its size, scale and massing, is far greater than Nos 30-34.
28. No 34 lies at the corner with North Lane. Running from the rear of this property along North Lane is a 3-storey element. This then decreases, as one travels up North Lane, to 2-storeys, with a shop unit on the ground floor.
29. To the rear of No 30 is the extension that forms the subject of the notice. This appears to extend outwards for much the same distance as the elements to the rears of Nos 32 and 34. However, it has 3-storeys of accommodation over its entire length, and it is topped by roof with something of a mansard style. The end wall rises above the roof to an asymmetric parapet gable end that screens the upper, more gently sloping part of the roof.
30. To the rears of Nos 32 and 34 is a parking/service area. Beyond this, and to the rear of No 30 is the service and delivery area for the supermarket with its large car park further on.
31. Beyond the car park, and along the opposite side of North Lane, the character and appearance of the area is overwhelmingly residential.
32. No 30 lies at the very western end of the Broad Street Conservation Area (BSCA). The BSCA is a linear area, that takes in parts of the frontage of Broad Street and the immediate parts of a few roads that join it. Many of the properties in the BSCA have commercial units on the ground floor with two floors of accommodation above. Its character and appearance is defined by the busy street scene and the scale and form of the mixed use buildings within it.
33. Although the BSCA was designated in February 2019, that is to say after the extension was substantially complete, it is nonetheless a material consideration that I have to take into account in my decision. The BSCA is a designated heritage asset. Section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
34. The scheme granted planning permission under 09/0382/FUL allowed for a large rear extension with three floors of residential accommodation that was capped with a low-pitched ridged roof that presented a symmetrical gable to the rear. Thus, what has been built is markedly different.
35. The roof that has been constructed has something of a mansard form. Initially, it has a steeply pitched slope running from the top of the wall before its pitch changes to what appears to be a very gentle slope. This very low pitch element then runs back to the wall of the supermarket behind. The extension is readily seen from both the busy supermarket car park and North Lane.

36. I did not see another roof of this form in the area, and my attention was not drawn to any examples of such roofs. The majority of roofs on the projections and extensions to the rear of properties on Broad Street have symmetrical dual-pitched forms. Included in this are those to the rears of Nos 32 and 34. This roof form adds greatly to the appearance of the area.
37. The roof that has been built significantly increases the mass and bulk of the extension, when compared to the approved scheme. The result is an extension that dominates the rear elevation to No 30, rather than appearing subservient to it. Whilst the approved roof would have had a lower-pitch than others nearby, and would have appeared slightly out-of-keeping in this regard, it would nonetheless have respected the general form of symmetrical dual-pitched roofs in the area.
38. The shortcomings in what has been built are further exacerbated by its end elevation. The end gable wall has been extended upwards, past the eaves level on the side elevation, terminating in an asymmetrical gable end. This asymmetric form is at odds with the general form of gable ends to the rears of properties along Broad Street. Further, it has a very awkward juxtaposition with the mansard-style roof of the extension, as its two roof slopes have markedly different pitches to those on the gable wall.
39. The supermarket has a monolithic form and is the dominant element of this part of the streetscape behind Broad Street. Although of great utility to those that use it, its built form adds little to the area and I have no doubt this is why it is not within the BSCA. As it rises above the extension, and projects rearwards beyond it, the supermarket provides some mitigation for the size and form of the extension. However, the extension is faced in a yellow brick that contrasts with the far darker brick of the supermarket. Whilst this yellow brick is appropriate to No 30, its contrast with that of the supermarket draws attention to the extension and, consequently, the shortcomings in its form that I have identified above.
40. The approved scheme was subject to a condition that required the provision of painted timber windows to match those that it says were on the property at the time permission was granted. What has been installed are uPVC framed side hung casement windows. There are uPVC windows to the rears of Nos 32 and 34 and I saw many others within the BSCA. There are also many, of a variety of forms and opening mechanisms, in houses along North Lane; albeit they lie outside the BSCA they nonetheless contribute to the contextual setting of the site.
41. That the site now lies within the BSCA is a consideration of prime importance. The Conservation Area Statement highlights the Council's aim to preserve or enhance the BSCA. Amongst the 'Problems and Pressures' that it highlights are the "use of poor quality products in building works such as UPVC" and listed as an 'Opportunity for Enhancement' is the encouragement of the "use of better quality materials".
42. Given the extensive use of uPVC on neighbouring properties and elsewhere in the BSCA, its use here would preserve the character of the BSCA, both holistically and in terms of the more immediate environs of the extension.
43. The side hung casement form of the windows differs from that on neighbouring properties. Those at Nos 32 and 34, with which they are more closely

associated, are either top hung casements or sash windows with panes divided horizontally rather than vertically. Notwithstanding this, the previously approved large extension would differ markedly from the rear projections at Nos 32 and 34 due to its high eaves line, less articulation and a far shallower pitch to its roof. As such, it reads as a modern addition to No 30 and the use of the different window types there would not have an adverse effect on the character or appearance of either the BSCA or No 30.

44. On this main issue, though I find the proposed windows to be acceptable, I conclude that the proposal, by reason of its roof form, would neither preserve nor enhance the character or appearance of the BSCA. It would, therefore, fail the statutory test, and be contrary to Policies LP1 and LP3 of the London Borough of Richmond Upon Thames Local Plan, adopted 3 July 2018 (LP). The scheme does not represent high architectural and urban design quality, as required by the former policy where, amongst other things, effect on townscape, proportions, detailing, scale, height, massing and materials are taken into account. The latter policy reflects the statutory test and the guidance in the National Planning Policy Framework (the Framework).
45. The proposal would have a negative effect on the significance of a designated heritage asset but would only affect its immediate surroundings and as such would result in "less than substantial" harm in the words of the Framework. Nevertheless, such harm needs to be given considerable importance and weight.
46. The Framework sets out that this harm has to be weighed against the public benefits of the proposal. None has been put forward, although I am aware that the creation of residential units in an eminently sustainable location would have a wider public benefit. However, as the requirements of the notice would not preclude their provision, this does not outweigh the harm that I have identified.

Living Conditions

47. Although I did not enter them, the evidence before me shows that windows to the rear of No 32, looking towards the extension at the rear of No 30, serve residential properties. The approved scheme allowed for an eaves line that was significantly higher than that of the elements to the rear of No 32 and would have had an effect on the outlook from that property. The additional height of the built extension, by reason of its roof, has an increased effect on the outlook from there. However, I do not find that this has a significantly overbearing effect to warrant refusal of planning permission. My reason for this is that, although the first section of the roof is steeply pitched, it is angled away from No 32 thus reducing its impact. Therefore, I find that its effect on outlook from No 32 is acceptable.
48. On this main issue, I find that the living conditions of the occupants of residential properties above 32 Broad Street, with particular regard to outlook, would not be adversely affected to the point where planning permission could be reasonably withheld. As such, I find that the scheme accords with LP Policy LP8 that, amongst other things, seeks to protect the amenity and living conditions of the occupants of neighbouring properties.

Other Matters

49. The dispute between the appellant and her neighbour is a civil matter. Whilst I have taken account of this, in the reason given for the appellant applying plywood screens to the window openings, it has not played a determinative role in my decision. The provision of cycle and rubbish facilities has been mentioned by both parties and in a third party representation. However, as these are not included within the requirements of the notice, I have not addressed these matters further.
50. Insufficient evidence has been submitted to show there was an attempt to deliberately hide a 'fourth floor'. The manner of notification of the original application by the Council is not a matter for this appeal.
51. Lastly, I have taken account of third party representations in support of the appellant's position that relate to the planning merits of what has been built. For reasons given in my decision, I have reached a conclusion contrary to these representations.

Conclusion on Ground (a)

52. Whilst I find that the windows that are proposed to be used to be acceptable, and that the extension does not have such adverse effect on the living conditions of the occupants of neighbouring properties that would justify refusing permission, for the reasons given above the development has an unacceptable effect on the character and appearance of the BSCA and the host dwelling. Therefore, the appeal under ground (a) should not succeed.

Ground (f)

53. An appeal under this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
54. The case put forward here by the appellant relates to the windows. She says that the step to install sash windows is excessive as they do not match any other in close vicinity in order to be overtly modern in context, and sash was not shown on the approved plans, or specified in the condition referred to. Therefore, this is an excessive requirement.
55. The notice requires the removal of the existing windows and their replacement with timber sash windows of the design approved by 09/0382/FUL using matching materials and its condition relating to the use of matching materials. Although I have not been given any specific details as to what the appellant proposes by way of alternatives, it is readily apparent that the retention of what has been installed would be amongst these.
56. Given my findings on the acceptability of the windows in the ground (a) appeal, I find that requirement (b) is excessive and I shall vary the notice by removing this. Therefore, the appeal under ground (f) is allowed.

Conclusion

57. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning

permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

INSPECTOR