



Appeal Decisions

Site Visit made on 23 February 2021

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 25 May 2021

Appeal A

Ref: APP/L5810/W/19/3241564

73A High Street, Hampton TW12 2SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr T Pohnetal against Richmond Upon Thames London Borough Council.
- The application Ref 19/2442/HOT, is dated 6 August 2019.
- The development proposed is described as "modification and extension to an existing single story detached house with a new front and rear extension, first floor extension and a habitable attic, associated car parking and bin and bike storage".

Appeal B

Ref: APP/L5810/W/19/3245006

73A High Street, Hampton TW12 2SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr T Pohnetal against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref 19/2660/FUL, dated 28 August 2019, was refused by notice dated 1 November 2019.
 - The development proposed is described as "replacement of the existing single-storey dwelling house to provide 2 x two storey 5 bedroom semi-detached dwelling houses with accommodation in the roof and associated hard and soft landscaping and cycle and refuse stores. Reinstatement of footpath to existing dropped kerbs and creation of 1 x dropped kerb".
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Decisions

Appeal A

1. The appeal is dismissed and planning permission for erection of single dwelling following demolition of existing dwelling is refused.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

Both appeals

3. I undertook the site visit for these two appeals together. In respect of some of the issues similar considerations apply to them both. I have therefore written a single decision but differentiated where necessary.

4. In its Statement of Case the Council has referred to a planning permission granted following the lodging of this appeal for "replacement of existing single storey dwelling house to provide two double storey semi-detached dwelling houses with habitable roofs, each dwelling with 5 bedrooms and associated hard and soft landscaping and cycle and refuse stores" (Council Ref: 19/3568/FUL). However, beyond that description and a copy of the decision notice I have not been provided with any information as to the design. I have therefore dealt with these appeals on their own individual merits and the information in front of me.
5. The Mayor of London published the London Plan on 2 March 2021. In light of this change in the development plan I asked the parties for their comments. Only the Council responded, and I have taken its comments into account in making this decision.
6. As the appeal site is within the Hampton Village Conservation Area 12 (the Conservation Area) and lies opposite a Grade II* listed building, Grove House including Moorish Room (Grove House), and is within its setting I have had special regard to Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

Appeal A

7. On this appeal form the appellant indicated that this appeal was against the failure of the Council to give notice of its decision within the prescribed period. At the same time, he provided correspondence with the Council regarding a dispute as to whether he had filled in the correct application forms.
8. The applicant had used the form entitled "Householder Application for Planning Permission for works or extension to a dwelling and for relevant demolition of an unlisted building in a conservation area", while the Council considered that he should have used that for "Full planning permission and for relevant demolition of an unlisted building in a conservation area". The dispute revolves around whether the existing house is to be 'demolished' or 'altered', and thus whether the resultant property would be a new house or an altered (and extended) existing house. I will discuss this below as this relates to the main issue of whether this proposal makes appropriate provision for affordable housing.
9. I have not been provided with any correspondence between the parties to indicate that the dispute was considered by them as a dispute as to whether or not the then applicant had provided the correct information pursuant to the requirements of documents to accompany an application (a validation dispute). It is also the case that in their putative reasons for refusal the Council does not allege that it had insufficient information on any matter, and the Council has also not asserted that the appeal form has been incorrectly completed. I therefore intend to deal with this appeal as one against a failure to give notice within the prescribed period of a decision on an application for planning permission.
10. In its Statement of Case the Council indicated that had it been in a position to determine the application it would have refused it due to its effects on the Conservation Area and as the proposal did not make adequate provision for affordable housing.

11. In light of my finding below as to the nature of the proposal it should better be described as “erection of single dwelling following demolition of existing dwelling”. I have therefore used that in the formal decision.
12. In Appeal B the Council refused the proposal, among other matters, on the loss of a dwelling without justification. As I conclude in Appeal A that the proposal would involve the demolition of the existing dwelling it is logical that consideration should also be given to whether that demolition is justified. As the appellant has addressed this issue in connection with Appeal B, and in light of my conclusions on this issue below, I did not consider it necessary to revert to the appellant on this.

Appeal B

13. The Council refused the appeal application for four reasons with the fourth relating to the provision of affordable housing. Following the lodging of the appeal the Council withdrew this reason for refusal on the basis that the appellant had justified the non-provision on economic viability grounds. In light of the withdrawal of this reason I will say no more about it in relation to this appeal.
14. During consideration of the application by the Council amended plans were submitted varying the proposal including the removal of a front gate. As these were the plans considered by the Council in making its decision, I will also use them. Later proposed amendments were not considered by the Council nor were they consulted upon and consequently I have not taken them into account.

Main Issues

Appeal A

15. The main issues are:

- whether the proposal makes appropriate provision for affordable housing;
- the effect on the Conservation Area and the setting of Grove House as a Grade II* listed building, and 73 High Street, a Building of Townscape Merit;
- whether the loss of the existing dwelling is justified; and
- the effect on the living conditions of the occupiers of 75 High Street in terms of loss of light and overbearing effect.

Appeal B

16. The main issues are:

- the effect on the Conservation Area and the setting of Grove House as a Grade II* listed building, and 73 High Street, a Building of Townscape Merit;
- whether the loss of the existing dwelling is justified;
- the effect on ecology and biodiversity; and

- the effect on the living conditions of the occupiers of 75 High Street in terms of loss of light and overbearing effect.

Reasons

Affordable Housing – Appeal A

17. Policy LP36 of the London Borough of Richmond upon Thames Local Plan (the Local Plan) indicates that 50% of all housing units will be affordable and sets out a regime whereby on sites of less than ten units this is secured through a financial contribution. This contribution can be reduced, even to a nil contribution, on economic viability grounds. The explanatory text makes it clear that this applies to all new housing development. Consequently, absent a viability assessment, and none has been submitted, if the proposal represents a new house then to comply with this policy the proposal should make a financial contribution towards affordable housing.
18. In this appeal the dispute between the parties relates to whether the proposal would represent a new house or whether it would represent an alteration and extension to the existing property. The Council maintains that the existing property would be demolished and thus the proposal would be for a new dwelling; the appellant that sufficient of the existing property would remain that this would not be the case.
19. The Courts have indicated that whether a proposal represents demolition is a matter of fact and degree. In this case the proposal is for the removal of the roof and its structure, part of the front wall and a short section of a return wall, and all the internal walls with the exception of one lateral wall across approximately half of the width of the existing property, and part of another. The forward part, approximately half, of the existing southern side wall currently forms part of a party wall with the adjoining property (No 73) and this would remain, but would be separated so that it would effectively only form part of No 73.
20. In making a judgement as to whether the proposal would represent demolition as well as the physical amount of the building which would remain/be removed, I also take into account that I have not been provided with any information as to the structural integrity of the existing building or the suitability of what would be remain to satisfactorily support the resultant building. I also note that notwithstanding whether the applicant had completed the correct form, the form that was completed included an application “for relevant demolition of an unlisted building in a conservation area”.
21. Taking all these factors into account, I conclude that the existing building would be demolished, even if some sections would remain and be incorporated within the proposed resultant structure. Consequently, the proposal would represent a new house.
22. While paragraph 63 of the National Planning Policy Framework (the Framework) does indicate that affordable housing should not be sought for residential developments that are not major developments, as so defined, I am satisfied on what I have seen that there is a continuing and substantial need for affordable housing in the area. The Local Plan post-dates the original Written Ministerial Statement bringing in this national policy (albeit on a slightly different threshold) and this Written Ministerial Statement would have been

taken into account in finding this policy sound. While the Framework is a material consideration of great weight, it is not sufficient here to outweigh the presumption in favour of determining proposals in accordance with the provisions of the development plan.

23. That being the situation, as no case has been made that this proposal would not be economically viable, the proposal should make a contribution towards affordable housing. Consequently, as a contribution is not provided for the proposal would be contrary to Policy LP36 of the Local Plan as set out above.

Heritage matters

Both Appeals

24. The Framework defines the significance of a heritage asset as the value of a heritage asset to this and future generations because of its heritage interest. The national Planning Practice Guidance also notes¹ that 'significance' derives not only from a heritage asset's physical presence, but also from its setting.
25. Paragraph 193 of the Framework indicates that great weight should be given to the conservation of a heritage asset and this is irrespective of the level of harm that may occur. It is also emphasised that the more important the asset, the greater the weight should be. Paragraph 194 of the Framework indicates that any harm to the significance of a heritage asset, or from development within its setting, should require clear and convincing justification.
26. The site lies in the northern section of the Conservation Area. I have been provided with a copy of the Hampton Village Study which dates from 1991. This deals also with the separate Hampton Court Green Conservation Area and concentrates on the buildings around Hampton Court Palace some short distance away. Most of the issues relate to the problem of traffic.
27. I have also been provided with a document entitled "Hampton Village Conservation Area 12", but I have not been provided with any information as to this document's status. This document indicates that the Conservation Area is very much defined by its position on the River Thames and the boundaries formed by the waterworks and Bushy Park. It does note that High Street forms part of the early development of Hampton.
28. The appeal site lies a short distance away from the centre of Hampton. Buildings vary in size and style including a few very grand buildings, such as Grove House. On this western side of High Street the buildings generally front the street and are a mixture of styles, although most are two storeys in height. Generally, they have pitched roofs running to a ridge or peak which ensure that the buildings, when considered in views along the street, do not intrude into the street scene.
29. Taken together I consider that the character and appearance of the Conservation Area, and thus its significance for the purposes of these appeals, relates to the general form of frontage development and the predominantly residential character set back a short distance from the road, but with some grander buildings. There is more dense development around the junction of High Street, Church Street and Thames Street.

¹ Reference ID: 18a-006-20190723

30. Grove House is a striking building and dominates this section of the High Street. It is an eighteenth century building based on a seventeenth century core which was remodelled in the early parts of the nineteenth and twentieth centuries. The front, which faces the High Street, is constructed from red-brown brick with red brick dressings and rendered quoins. It is set behind a court, behind a scalloped brick wall. The significance of the building for this appeal relates to its formal design and how it acts as a focal building in the street scene due to its size and configuration.
31. The adjoining dwelling to the south, No 73, is identified by the Council as a Building of Townscape Merit. It is not clear from the documentation in front of me why it has been identified as such. The Council's Supplementary Planning Document entitled "Buildings of Townscape Merit", which was adopted in 2015, does indicate that such buildings are identified elsewhere as 'locally listed buildings'. Consequently, this building should, within the terms of the Framework, be considered to represent a non-designated heritage asset. It is a small and understated bungalow and adds in that understated way to the character and appearance of the Conservation Area. However, I am unable to give it any greater significance because I have no information as to why it has been so identified and it is not clear which of the criteria for designation it meets.

Appeal A

32. The proposal would be for a two storey building with rooms in the roof lit by rooflights. From the front, the building would have a symmetrical central gable, with a hipped side roof planes leading to an effectively flat roof. This type of roof is often referred to as a "crown roof". The first floor and roof would be set in from the existing building width with two single storey elements beyond. There would be two single storey bay windows under tiled roofs. The building would be set in from both sides, as existing from the boundary with No 75 and a similar distance from No 73. There would be an arched entrance to the front to two doors, but only one would be to the main house, as the other would be to a bicycle store. To the rear of the existing footprint would be a single storey element which would extend the whole width of the dwelling.
33. The overall size and scale of the front elevation in two-dimensional form would be in keeping with the scale and pattern of development in the Conservation Area. However, due to the crown roof the proposed building would appear as a bulky addition to the street scene when viewed along the street in three dimensions and would be out of keeping with the less imposing pitched roofs elsewhere. The crown roof would be readily seen from the south over No 73.
34. In relation to the effect on the Conservation Area, which must be considered in relation to the area as a whole, the built form of the proposal would be harmful to both character and appearance thereby harming its significance. This harm to the Conservation Area would represent, in the terms of the Framework, less than substantial harm, although should still be given considerable importance and weight.
35. As noted above the significance of Grove House for this appeal relates to how it acts as a focal building in the street scene. The appeal site lies directly opposite a busy highway and forms part of its setting. The proposals would significantly increase the prominence of the building on the appeal site in the High Street, and thereby would alter the hierarchy of buildings in the immediate vicinity.

The resultant building would be harmful to the setting of Grove House as it would reduce the importance of Grove House as a focal building and thus harmfully affect the significance of that building. This would also represent less than substantial harm, but again should be given significant importance and weight. Paragraph 193 of the Framework makes clear the more important the heritage asset the greater the weight should be given to the asset's conservation; a Grade II* building lies towards the upper end of importance for designated heritage assets.

36. I have found the significance of No 73 as a non-designated heritage asset for this appeal relates to its contribution to the Conservation Area. In that regard the proposal would be harmful to the setting of No 73, and thus its significance, and would represent less than substantial harm and should be given significant importance and weight. However, this would be of lesser weight when compared to the effects on the other designated heritage assets.
37. Where less than substantial harm is identified, paragraph 196 of the Framework indicates that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. In this regard the appellant has not put forward any such benefits and it is not asserted that the existing house is not viable as a dwelling, and in any event I have noted above that there is a planning permission in existence for two dwellings on this site.

Appeal B

38. The proposal is for the demolition of the existing dwelling and the construction of a two storey building with roofs in the roof. From the front the proposal would have a neo-Georgian façade with central gable and with a portico and columned porch. The roof would have hipped side planes leading to a crown roof. The front elevation would have flat roofed dormer windows in the roof plane. The front elevation would be further forward than the existing building, to approximately the same level as the porch on No 73, but would be stepped between No 75 and No 73. To the rear would be a single story element which would tie into to single storey elements on either side of the proposed property.
39. With the exception of Grove House, in the immediate vicinity the properties are generally understated. This means that they do not compete with Grove House either in relation to its setting or to the character and appearance of the Conservation Area. However, the formal design of the proposal would completely alter the hierarchy of buildings in the area. This would harmfully detract from the importance of Grove House and thus its setting and to its contribution to the character and appearance of the Conservation Area. Furthermore, the crown roof would appear as a bulky addition to the street scene when viewed along the street and would be out of keeping with the less imposing pitched roofs elsewhere
40. In respect of the effect on No 73, the scale of the building, and its slightly forward location, would be overbearing, harmful to the setting of the building as a non-designated heritage asset
41. In each case, in the terms of the Framework, this would represent less than substantial harm and should be given significant importance and weight, particularly in respect of Grove House as a Grade II* building.

42. As set out above where less than substantial harm is identified this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The appellant has not set out any specific public benefits from the proposal. However, it is clear that the provision of an additional dwelling when compared to the current situation would be a public benefit in social and economic terms. This is a relatively limited benefit and is insufficient to outweigh the heritage harms identified.

Both appeals

43. Therefore, the proposals would both be harmful to the character and appearance of the Conservation Area and harmful to the setting of Grove House and therefore harmful to the significance of both these designated heritage assets. There would also be harm to the significance of No 73 as a non-designated heritage asset. As such the proposals would be contrary to Policies LP1 and LP3 of the Local Plan which require development to be compatible with local character and conserve the historic environment of the Borough.

Loss of dwelling – Both appeals

44. Policy LP38 of the Local Plan indicates that existing housing should be retained, and proposals for redevelopment of existing housing should normally only take place where it has been shown that the existing house is incapable of improvement or conversion to a satisfactory standard to provide an equivalent scheme, and if that is the case, then the proposal should not have an adverse impact on local character and provide a reasonable standard of accommodation.
45. The explanatory text opens with a paragraph to indicate that existing housing is valued due to a limited land supply and high land values. Thus, any loss of units exacerbates this. It is indicated that this policy is aimed at individual smaller sites, and that there is a presumption against the loss of housing units but exceptions may be considered if other priorities are met, such as an increase in employment uses, affordable housing or housing to meet identified community needs, provision of health facilities, or infrastructure.
46. It must be remembered that this is not a heritage policy and the fact that the site lies in a Conservation Area is not material for this issue. It is also the case that I have found that the proposals would have an adverse effect on local character, and it is not in dispute that the proposals would provide a reasonable standard of accommodation.
47. The Council's specific objection is that the loss of the existing dwelling has not been justified. While no specific information has been submitted, I consider that the Council's consideration of this issue does not take sufficient cognisance of the economic and social benefits of development and, in Appeal B, the benefits of an additional dwelling on the site, particularly in the context of the newly published London Plan. It seems to me that if housing land is at such a premium as the Council asserts, then appropriate opportunities need to be taken for redevelopment to allow for additional and improved dwellings where possible. Paragraph 122 of the Framework emphasizes that planning decisions should support development that makes efficient use of land and paragraph 68 states that small and medium sized sites, which this is, can make an important contribution to meeting the housing requirement of an area.

48. I can understand an objection in sustainability terms to the loss of an adequate or good dwelling. However, not taking into account the social and economic benefits of development seems to me to be placing unnecessary obstacles in the way of development.
49. While the proposals are contrary to Policy LP38 in that the replacement dwelling would be out of keeping with local character, I consider that other material considerations would indicate a different conclusion in respect of the principle of redeveloping this site.

Living conditions – both appeals

50. The occupier of No 75, to the north, has raised concerns about loss of light and overbearing effect on their living conditions. In the south wall of this property facing the appeal site are two windows at ground floor level. Although these are to a single room, with another window in the west elevation, the room is sub-divided with an internal wall so that the more easterly of the two windows is the principal light source for the rear section of this room.
51. At present, the amount of light to the room is restricted not only by the single storey flat roofed element of the appeal property and the low roof of the existing building, but by an open loggia structure in the area outside the two windows. This is planted and would filter more light in the summer when in leaf than when I saw it in winter.
52. The appellant has submitted a drawing relating to each proposal showing that a 45° line from the centre of this window would not be intersected by the proposal. Although not explicit, this implies to me that the appellant considers that the “45° rule” (which is not a “rule” but guidance) would be met therefore ensuring adequate light.
53. While the proposed building would be located no closer than the existing building the additional height and mass and the narrow elongated space formed by the increased depth of the proposals would result in a harmful loss of light and overbearing effect for anyone either in the rear of the identified room or utilising the area under the loggia.
54. Consequently, the proposals would be harmful to the living conditions of the occupiers of No 75 in terms of loss of light and overbearing effect. Therefore, they would be contrary to Policy LP8 of the Local Plan which indicates that the occupiers of adjoining properties will be protected in respect of, among other matters, light and overshadowing. They would also be contrary to paragraph 127 of the Framework which states that planning decisions should create places with a high standard of amenity for existing users.

Ecology and Biodiversity – Appeal B

55. The dispute between the parties in respect of this issue is whether securing appropriate planting and drainage could be left to a condition. The Council’s concern relates to two trees in the rear garden, which are protected from being within the Conservation Area, and the proximity of soakaways to their root protection areas. It is also concerned whether there is sufficient room in the front garden for planting a small tree.
56. In respect of the rear garden, the Council indicates that this could be resolved by relocating the soakaways 3m to the south; in my view this could be dealt

with by condition. While a small tree in the front garden would be beneficial, I consider that such a tree is not necessary so as that any landscaping scheme would be in keeping with the character and appearance of the Conservation Area; some properties have trees in front gardens, others do not. Given the overall size of the site I consider that ensuring that appropriate landscaping and other ecology benefits, including providing net gains for biodiversity, would be able to be achieved by planning condition.

57. Therefore, subject to planning conditions, the proposal would have a satisfactory effect on ecology and biodiversity and comply with Policies LP15, LP16 and LP39 of the Local Plan which indicate proposals should support enhancements to biodiversity, protect trees, and enhance the street frontage. It would also comply with paragraph 170 of the Framework which indicates planning decisions should provide net gains for biodiversity.

Conclusions

58. In respect of Appeal B I have concluded that the proposal would have a satisfactory effect in terms of ecology and biodiversity.
59. While in both appeals I have found that in non-heritage terms the loss of the dwelling would be acceptable, the proposals would each be harmful to the setting, and thus significance, of a Grade II* listed building and the character and appearance, and thus significance, of the Conservation Area, and the setting and significance of a non-designated heritage asset. The public benefits of each proposal would not outweigh these harms. Both proposals would adversely affect the living conditions of the occupiers of No 75 in terms of overbearing effect and light. Additionally, in respect of Appeal A, the proposal would not make adequate provision for affordable housing.
60. I therefore conclude that the benefits of each proposal do not outweigh the harms, and the proposals would each be contrary to the terms of the development plan taken as a whole, and there are insufficient material considerations to come to a different decision.
61. For the reasons given above I conclude that the appeals should both be dismissed.

RJ Jackson

INSPECTOR