



Appeal Decision

Hearing Held on 7 April 2021

Site visit made on 9 June 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/L5810/C/19/3233965

13 Grasmere Avenue, Whitton, Hounslow TW3 2JG

- 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 Mr Ali Kharn (LD Care) against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
- The enforcement notice was issued on 26 June 2019.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years the erection of a single-storey rear and side extension and two rear first floor dormer extensions.
- The requirements of the notice are:
 - Single-storey ground floor rear and side extension
 - (i) Remove the unauthorised single-storey ground floor rear and side extension from the Property and restore this part of the property to its former condition; or
 - (ii) Modify the single-storey ground floor rear and side extension in order to comply with that which has been approved under planning permission granted by the Council on 6th July 2017 bearing reference number 17/1589/HOT.
 - Rear dormer extensions
 - (iii) Remove the two (2) unauthorised rear dormer extensions from the Property and restore this part of the Property to its former condition; or
 - (iv) Modify the two (2) unauthorised rear dormer extensions in order that they comply with the criteria and conditions of Class B, of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single-storey rear and side extension and two rear first floor dormer extensions on land at 13 Grasmere Avenue, Whitton, Hounslow TW3 2JG referred to in the notice, subject to the following condition:
 - 1) The roof areas of the extensions hereby permitted shall not be used as a balcony, roof garden or similar amenity area.

Procedural Matters

2. The appellant confirmed that there was a typographical error on the appeal form in that his name is Mr Ali Khan.

3. At the hearing, the Council clarified and confirmed that amongst its reasons for opposing the development was that it was allegedly harmful to the outlook from 11 Grasmere Avenue.

Ground (a) and the deemed planning application

Main Issues

4. The main issues in this appeal are the effect of the development on:
 - the character and appearance of the area; and
 - the living conditions of the residents of 11 Grasmere Avenue (No 11), as regards outlook.

Reasons

5. A retrospective planning application (17/3870/HOT) was made for the same development subject to the enforcement appeal before me. It was refused by the Council and the appeal was dismissed on 5 June 2018¹. The Inspector in that appeal (the dismissed appeal) concluded that the development had a harmful effect on the character and appearance of the area since it was excessive, over-dominant and out of proportion with the original dwelling.
6. However, the letter setting out the Inspector's reasons for dismissing the appeal was silent in respect of the prevailing character and appearance of the area. Further, that decision is now several years old and in determining the appeal before me I must fully consider the current character and appearance of the area which may have changed due to the contributing effects of developments in the intervening years. This includes the subdivision of the plot at No 11 to create an additional dwelling (No 11B) near the boundary with the appeal property, with planning permission for that development having been granted by the Council on 3 July 2019².
7. The appeal property is located within a predominantly residential built-up area, characterised by reasonably large dwellings on fairly substantial plots. Many dwellings have been enlarged, producing buildings of considerable mass and scale, and there is quite a number of properties with dormer extensions evident. Some of these are substantial and some are significantly visible on the streetscene. There is no obvious degree of architectural consistency, with significant variation created by such enlargements and extensions outside any recognisable pattern or theme of built development. Many dwellings also possess significantly sized outbuildings to their rear.
8. Within this context the appeal development does not appear incongruous within its setting, particularly as the extensions are to the rear of the property and have no material effect on the streetscene or the appreciation of the property from the front. There are limited views of the extensions from the rear from other dwellings but these are tempered by the large intervening gardens. Further, the extensions appear unremarkable from the rear when seen in the context of local built development including substantial dormer windows on the run of properties nearby to the north and the 2 double-pitched roofs of the new dwelling at No 11B. Indeed, the single storey extension of the appeal development is not as high as these nearby double-pitched and solar-panelled

¹ L5810/D/18/3197900

² 19/0092/FUL

roofs and its more modest height and flat roof provides the appearance of a rear garage or outbuilding of lesser visual impact than the neighbouring development. While I note that the Inspector in the dismissed appeal was concerned that the appeal extensions were out-of-proportion with the original dwelling, I consider that they currently marginally improve the character and appearance of the dwelling by adding built-form of acceptable design which now balances against the close built-form of the more recently-developed plot at No 11. Within the recent setting created by the development next door, the appeal developments do not appear particularly substantial or dominant and therefore do appear subservient to their host dwelling.

9. The new dwelling at No 11B does not have windows directly facing the appeal development and the original dwelling on that plot (No 11A) is separated from it by reasonable distance and in part by the new dwelling on the subdivided land. Accordingly, the appeal development does not harm the outlook of residents at No 11 and does not create a sense of enclosure.
10. For the above reasons, the appeal development does not harm character and appearance or the living conditions of neighbouring occupiers. As such, it is not in conflict with Policies LP1 and LP8 of the London Borough of Richmond upon Thames Local Plan (2018) which seek to ensure design quality and protect residential amenity.
11. The Council's supplementary planning document (SPD) "House Extensions and External Alterations" (2015) advises that *"Roof extensions should not dominate the original roof. Normally a significant area of the existing roof should be left beneath a new dormer and on either side of the dormer, thus setting the extension well in from either side of the roof. It may be more successful to incorporate two smaller dormers than one large dormer."* The development is in accord with this advice as 2 smaller dormer windows have been provided instead of a larger single dormer and, unlike several local examples, the original roof has not been dominated as a significant area of existing roof slope remains. While 'normally' it is advised an area should be left beneath the dormers, I find that in this particular case the area of remaining roof overall meets the objective of the guidance in creating sympathetic development.

Other Matters and Conditions

12. I have considered comments made by interested third persons, including but not limited to the raising of concerns about noise from the property's use by residents and the perceived loss of street parking. Very limited evidence has been submitted to substantiate such concerns, which do not outweigh the development's compliance with the development plan. The operational development of the appeal scheme is not a material change of use which might generate greater noise impacts. Further, I note that the site has 4 dedicated parking spaces and the Council has not indicated that this is insufficient provision.
13. The appellant has made arguments in favour of the development in respect of benefits created by the provision of specialist housing, and as regards human rights and the public sector equality duty. However, it is not necessary for me to address those arguments as I have found that the development accords with the development plan and there are no other considerations which outweigh this finding.

14. As there is a risk of harm to neighbouring living conditions from overlooking from the extensions' roofs were they to be used as amenity areas, I am imposing a necessary condition (which was agreed in principle by the main parties) to prohibit such use.
15. It was suggested by the Council that I should impose a condition to restrict the use of permitted development (PD) rights as regards future extensions and alterations. Paragraph 53 of the National Planning Policy Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. Planning Practice Guidance also advises that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity. The Council has not provided a clear justification to remove PD rights, and I find that in any case it is neither reasonable or necessary to do so in the context of my findings on the appeal.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ali Khan (Appellant, Director of LD Care and Lessee of 13 Grasmere Avenue)
Zack Simons QC (Barrister, Landmark Chambers)
Paul Burley (Town Planner, Montagu Evans)
Graham Allison (Town Planner, Montagu Evans)
Nadine James (Town Planner, Montagu Evans)

FOR THE LOCAL PLANNING AUTHORITY (LPA):

Craig Raybould BSc MA (Planning Enforcement Team Manager)
Parag Dhanani BA(Hons) MA MArch PGDip RIBA (Planning Enforcement Officer)

INTERESTED PERSONS: None

DOCUMENTS

- 1 Suggested conditions from the LPA

AERIAL PHOTOGRAPHS shared on screen by the main parties and not previously submitted:

- 1 "MAP REF TQ137743" (StatMap Earth, taken 2019) shared by LPA
- 2 "13 Grasmere Avenue" (Google Maps, taken 2021) shared by Appellant