



Appeal Decision

Site visit made on 7 December 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2022

Appeal Ref: APP/L5810/C/21/3274156

Land at 169/169a Whitton Road, Twickenham TW2 7QZ

- 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 Emma Katherine Wilcox against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The enforcement notice was issued on 30 March 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years
 - (i) the material change of use of the Land from use as 2 x self-contained flats to use as a single-family dwellinghouse, and
 - (ii) the erection of a hip to gable roof extension and rear dormer extension, and
 - (iii) the erection of a raised rear garden platform with high-sided timber fence panels.
 - The requirements of the notice are:
 - (i) Cease the unauthorised use of the Land as a single-family dwellinghouse and carryout the necessary alterations to return it to its former use and layout as two self-contained flats
 - (ii) Remove the unauthorised hip to gable and rear dormer extensions remove the roof of the Land to its former condition
 - (iii) Remove the unauthorised raised rear garden platform from the Land and return the garden levels to their height prior to the breach of planning control
 - (iv) After complying with step 5(iii) reduce the height of the timber fence panels that have flanked the raised rear garden platform to a maximum of 2m in height
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the word "remove" after the word extensions in paragraph 5(ii) and substituting it with "restore".
2. Subject to the correction above, the appeal is allowed insofar as it relates to the hip to gable roof extension and rear dormer extension, and the erection of a raised rear garden platform with high-sided timber fence panels, 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 hip to gable roof extension and rear dormer extension, and the erection of a raised rear garden platform with high-sided timber fence panels on Land at 169/169a Whitton Road, Twickenham.

3. The appeal is dismissed and the enforcement notice is upheld as corrected, and planning permission is refused in respect of the material change of use of the Land from use as 2 x self-contained flats to use as a single-family dwellinghouse on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Enforcement Notice

4. There is a typographical error in paragraph 5(ii) of the notice. The word "remove" after extension should say "restore". I am able to correct the notice without causing prejudice to either of the parties as the intent and purpose of the notice would not change and the correction is required only for purposes of clarity.

Appeal on ground (b)

5. The main issue is whether as a matter of fact the Land was in use as a single-family dwellinghouse and a hip to gable roof and rear dormer extensions, raised rear garden platform and high-sided timber fence panels have been constructed. The burden of proof falls on the appellant to make out her case.
6. The appellant accepts that the hip to gable and rear dormer extensions, raised garden platform and high-sided timber fence panels have been constructed. However, she maintains that the property is in use as two self-contained flats and is not a single-family home.
7. S174(2)(b) of the Town and Country Planning Act, 1990 advises that an appeal may be brought against an enforcement notice if those matters have not occurred. It is worded in the past tense, and question is therefore whether the breach had occurred by the date of issue of the notice.
8. I appreciate that the property is now laid out as two self-contained flats, and two separate front doors have always remained. However, I noted on my site visit new plasterwork and skirting boards within the party wall that separates the entrance halls of the two flats which indicates that there may have been a previous internal link between the upstairs and downstairs of the property. Moreover, in email communications contained within Appendix 3 of the appellant's statement of case, the appellant advises that she bought the property as a single dwelling. She states that it was on that basis that she carried out the extensions which she believed would be permitted development. Furthermore, when asked by the Council about the use of the property in March 2021, and just before the notice was issued, the appellant stated that the property was in use as a single dwelling.
9. Whilst I appreciate that the Council did not undertake an internal inspection of the property prior to issuing the notice, from the evidence before me, I am satisfied that on the balance of probability, the change of use of the property from two self-contained flats to a single dwellinghouse occurred as a matter of fact at 169/169a Whitton Road.
10. For the reasons set out above, the appeal on ground (b) fails.

Appeal on ground (a), deemed planning application

Main Issues

11. The main issues in this case are the effect on:

- housing stock, having regard to local planning policy;
- the character and appearance of the host property and surrounding area; and
- the living conditions of neighbouring residents, with particular regard to outlook.

Reasons

Housing stock

12. Since the 1960s the lawful use of the property has been two self-contained flats. To safeguard the existing housing stock within the borough due to the constraints of limited land supply and high land values, the Council values their housing stock and seeks to retain existing units. To that end, Policy LP38 of the Richmond Upon Thames Local Plan, adopted 2018 (LP) states that redevelopment of existing housing should normally only take place where: (a) it has first been demonstrated that the existing housing is incapable of improvement or conversion to a satisfactory standard to provide an equivalent scheme; and if this is the case (b) the proposal does not have an adverse impact on local character, and (c) the proposal provides a reasonable standard of accommodation, including accessible design, as set out in LP Housing Mix and Standards.
13. The appellant has not provided any evidence that would demonstrate that the layout, design and use of the property as two self-contained flats was unsatisfactory in terms of housing quality or had an adverse impact on local character, including street scene, transport and parking. The loss of a unit and reversion to a single dwelling is not therefore outweighed by any tangible benefits which would justify an exception to the Council's policy to retain existing housing.
14. I conclude that the change of use of the property to a single dwellinghouse has a harmful impact on housing stock. It is contrary to the development plan, and in particular to Policy LP38 of the LP, the aims of which are set out above.

Character and appearance

15. Whitton Road and the surrounding residential area is characterised by modest semi-detached and detached two-storey dwellings. Although those properties were originally designed with hipped roofs, I noted on my site visit that many now have hip to gable extensions as well as other roof additions. The appeal property is semi-detached and the unauthorised development includes a hip to gable and rear dormer extensions.
16. The Council consider that the unauthorised roof extensions are unsympathetic in their scale, siting and design to the host property and have a harmful effect on the character and appearance of the surrounding area. The Council's Supplementary Planning Document – House extensions and External

Alterations, May 2015 (SPD) advises that roof extensions should not dominate the original roof.

17. There is no doubt that the rear dormer extension is a dominant addition to the roof of the dwelling. Its substantial box form subsumes the rear roof slope of the appeal property. However, considering the significant number of other very similar rear dormer extensions in the locality, including those at 163 and 165 Whitton Road, and which are equally visible from Chudleigh Road, the dormer does not appear incongruous in this location. Its overall impact on the prevailing character of the area is not therefore significantly harmful. I appreciate that many of those other extensions would have been permitted development and benefit from lawful development certificates, and that is not the case with the roof extensions in this appeal. However, that consideration does not alter the fact that the surrounding area is now characterised by large roof additions. Thus, the rear dormer in this case is not an uncharacteristic form of development in this area.
18. Similarly, many of the properties in the area have converted their hipped roofs to gable roofs. In certain circumstances a hip to gable extension can have a harmful effect on the appearance of a semi-detached property, as it unbalances their original symmetrical design. However, in this case the adjoining semi has been previously extended to the side. Whilst I appreciate that the extension to No 167 incorporates a hipped roof, its overall scale and width is substantial. Consequently, any symmetry that previously existed in the original design of the semi-detached pair has been significantly diminished.
19. Policy L1 of the LP seeks to ensure that development is compatible with local character. The surrounding area has a mixed character derived from the range of extensions and alterations that have taken place over recent years, particularly to the roof. Whilst I accept that there is some conflict with the Council's guidance for roof extensions as set out in the SPD, the extensions that have taken place to the roof of the dwelling in this case, are not out of keeping with the existing form of residential development in the area.
20. I conclude that the hip to gable and rear dormer extension do not have a harmful effect on the host property or the surrounding area. There is no conflict with the development plan, and in particular with Policy L1, the aims of which are set out above.

Living conditions

21. The raised platform has been constructed to form a patio area in the rear garden with step free access from the property via its patio doors. To alleviate privacy concerns, a 2.4m high fence has been constructed on either side of the patio along its common boundaries with No 167 and No 171 Whitton Road. From my observations on my site visit, with the fencing in place there are no views from the raised platform into neighbouring gardens and the privacy of the occupiers of those properties has been safeguarded.
22. However, the Council are also concerned that due to the height of the fencing, it has an overbearing effect on neighbouring garden areas. From the evidence before me, 171 Whitton Road also has a raised platform at the rear of their property and substantial soft planting adjacent to the fence. The property has a generous south facing garden area and considering the height and position of

the fence, together with the existing planting, I do not consider that it has a harmful effect on outlook for the occupiers of No 171, and nor is it overbearing.

23. No 167 also has a raised platform which is accessed by steps from the patio doors of their rear ground floor extension. Although the raised platform at No 167 is not as high as the patio area created at the appeal property, without the unauthorised fence panels that have been erected there would have been clear views from the windows of No 167's kitchen and patio area into the garden area of the appeal property. The kitchen/dining area of No 167 are south facing and well-lit by the large areas of glazing in its rear wall and two roof lights. Considering the height of the internal floor level within the kitchen/dining area and expansive outlook and light available to this room, I do not consider that the fence has a harmful effect on the outlook from this room or the amount of day or sunlight available to it, nor is it overbearing.
24. The fence may cause a small amount of overshadowing to a very limited part of No 167's patio in the late afternoon. However, considering the overall size of the patio and garden area which benefits from a south facing aspect, that limited overshadowing for a very small part of the day is not significantly harmful to the living conditions of the occupiers of No 167.
25. I appreciate that the occupiers of No 167 have views of the dormer extension through their skylight. However, occupiers of the bedroom within the dormer are not able to see into the kitchen through the skylight due to the obscure angle of view. I am therefore satisfied that the dormer extension has not resulted in direct overlooking of No 167's living accommodation.
26. I conclude that the development does not have a significantly harmful effect on the living conditions of the occupiers of neighbouring residents, with particular regard to privacy and outlook. There is no conflict with the development plan, including Policy LP8 of the LP which seeks to ensure that the living conditions of new, existing, adjoining and neighbouring occupants are protected.

Conclusion

27. The breach of planning control alleged in the notice is the material change of use of the Land from use as a 2 x self-contained flats to use as a single-family dwellinghouse, and the erection of a hip to gable roof extension and rear dormer extension and the erection of a raised rear garden platform with high-sided timber fence panels. I have found that the roof extensions and raised garden platform with high-sided timber fence panels are acceptable and would not have a harmful effect on the character or appearance of the host property, surrounding area or the living conditions of neighbouring residents. I shall therefore issue a split decision in relation to this appeal on ground (a) and grant planning permission for the erection of a hip to gable roof extension and rear dormer extension and the erection of a raised rear garden platform with high-sided timber fence panels.
28. Although a split decision will be issued, the notice will not be amended regarding the requirement to remove the hip to gable and rear dormer extensions and raised platform or to reduce the height of the timber fence panels to a maximum height of 2m. Section 180 (1) of the Act provides that: 'Where, after service of a copy of any enforcement notice, planning permission is granted for any development carried out before the grant of planning

permission, the notice shall cease to have effect so far as inconsistent with that permission.'

29. Thus, the notice will cease to have effect with regard to the removal of the hip to gable and rear dormer extension and raised platform, and the requirement to reduce the height of the timber fence panels to a maximum height of 2m.

Overall Conclusion

30. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the hip to gable roof extension, rear dormer extension and the erection of a raised rear garden platform with high-sided timber fence panels. Otherwise, I shall uphold the notice with a correction and refuse to grant planning permission for the material change of use of the Land from use as a 2 x self-contained flats to use as a single-family dwellinghouse. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Elizabeth Pleasant

INSPECTOR