The Planning Inspectorate

Appeal Decision

Site visit made on 21 February 2022

by Kim Langford Tejrar LLD (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3RD March 2022

Appeal Ref: APP/Z5630/D/21/3288844
40 Durlston Road, Kingston upon Thames KT2 5RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs A Wiseman against the decision of Royal Borough of Kingston upon Thames Council.
- The application Ref 21/03102/FUL, dated 22 September 2021, was refused by notice dated 19 November 2021.
- The application sought planning permission for 'Erection of rear piggyback roof extension with installation of 2no front rooflights and associated changes to fenestration without complying with a condition attached to planning permission Ref 21/01974/HOU, dated 13 August 2021'.
- The condition in dispute is No 4 which states that: *'Prior to the beneficial occupation of the development to which this permission relates, any windows or rooflights at first floor level or above in the side elevation (NE) facing onto no. 42 Durlston Road shall be constructed so that no part of the framework less than 1.7 metres above finished floor level shall be openable. Any part below that level shall be fitted with and permanent retained in obscure glazing to a minimum of level 3 on the standard scale. Any film used to achieve the requisite obscurity level shall be non-perishable, tamper-proof, and shall be replaced immediately in the event that it ceases to result in obscurity to level 3'.*
- The reason given for the condition is: *'To ensure satisfactory living conditions for neighbouring occupiers, in accordance with policy D3 of the London Plan 2021 and policy DM10 of the LDF Core Strategy'*.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of occupiers of neighbouring property, specifically; no. 42 Durlston Road.

Reasons

3. The appeal site is a detached dwelling with a front gabled roof. The roof is in two sections; the front section is slightly lower than the rear section. The existing planning permission was for a roof extension which would increase the height of the roof and convert its internal space into additional living accommodation. The permission includes rooflights in both flanks of the roof slope and a large window in the rear gable end.

4. The adjacent property, no. 42 Durlston Road benefits from a similar extension, with rooflights in its flank roof slopes, although its rooflights do not appear to be obscure glazed and non-opening. The rooflights serve habitable rooms.

5. The appeal proposal seeks to remove a condition which requires the flank rooflights to be obscure glazed and non-opening where below the height of 1.7 metres.

6. The flank roof slopes of the appeal site and no. 42 Durlston Road are in close proximity and as such, there is potential for close overlooking between rooms where facing rooflights are aligned. Where rooflights are not aligned to be facing, overlooking would be limited by the resulting angle. Although the appeal proposal rooflights would not be exactly aligned with the rooflights of no. 42 Durlston Road, they would have a close enough alignment and be large enough in scale to afford some mutual overlooking. Whilst there would be a minor difference in roof heights between the two properties, this would not be sufficient to avoid overlooking alone, given the proximity of the roof slopes and size of the rooflights.

7. As such, the permitted scheme would cause unacceptable loss of privacy to the occupiers of neighbouring properties. A condition requiring the rooflights to be at a minimum height of 1.7 metres or otherwise be non-opening and obscure glazed would effectively mitigate this harm.

8. The Appellant's grounds of appeal highlight that the permitted rooflights would be only marginally below the 1.7 metre level, and therefore contend that the condition is not necessary. However, whilst a rooflight only marginally lower than 1.7 metres may afford less overlooking and thereby result in less harm than one sited much lower, it would nonetheless result in a degree of avoidable harm. What is more, the condition seeks to prevent the circumstances in which rooflights are installed or replaced at a lower height without restriction. The condition is wholly reasonable and proportionate in that it only requires that the portion of rooflights below 1.7 metres in height are obscure glazed and it allows for installation of a film.

9. The potential for overlooking is exponentially heighted upon opening, as it would allow for a wider field of vision. As such, the condition is reasonable and proportionate in requiring the rooflights to either be obscure glazed and non-opening or be above a height of 1.7 metres.

10. Whilst some benefit to the occupiers of the appeal site may arise in the increased outlook and ventilation to be achieved through clear glazed opening rooflights, the outlook would be limited to the roof slopes and private accommodation of neighbouring properties. Furthermore, the approved scheme includes a large gable end window which would afford ventilation and outlook. Moreover, the condition does not prevent such benefits arising from a rooflight sited above 1.7 metres in height. In any case, such benefits to occupiers of the appeal site would not outweigh the harm to the living conditions of occupiers of no. 42 Durlston Road.

11. The grounds of appeal refer to other properties along Durlston Road which have gained planning permission without a similar condition. However, the individual circumstances of the appeal site in respect of the size and alignment of windows clearly indicate that a condition is necessary in this case.

12. For these reasons, the condition is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. The condition is justified in accordance with policy D3 of the London Plan, adopted in 2021, policy DM10 of the Local Development Framework Core Strategy, adopted in 2012, and the National Planning Policy Framework (the Framework). These policies seek, amongst other things, development of a high-quality design which preserves the living conditions of occupiers of neighbouring property.

Conclusion

13. The appeal is dismissed for the reasons given above.

Kim Langford Tejrar

INSPECTOR