



Appeal Decision

Site visit made on 25 January 2023

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2023

Appeal Ref: APP/Z5630/D/22/3304026

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 the Royal Borough of Kingston upon Thames Council.
 - The application Ref: 21/03958/FUL, dated 11 January 2022, was refused by notice dated 26 May 2022
 - 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'.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of rear piggyback roof extension with installation of 2no front rooflights and associated changes to fenestration at 40 Durlston Road, Kingston upon Thames KT2 5RT in accordance with the application Ref 21/03958/FUL dated 11 January 2022 without compliance with condition number 4 previously imposed on planning permission Ref 21/01974/HOU dated 13 August 2021 and subject to the conditions set out below.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of the neighbouring property, No.42 Durlston Road, with specific regards to privacy.

Preliminary Matters

3. When I visited the site, work had commenced on the piggyback extension and the roof was surrounded by scaffolding. I was however able to see the position of the rooflight from inside in relation to the open roof trusses.
4. A previous appeal sought the removal of condition 4 which was dismissed in February 2022 – Appeal Reference APP/Z5630/D/21/3288844. This proposal seeks a variation of the same condition to remove the restrictions in relation to a single rooflight in the northeast facing roof slope to enable it to be openable and have clear glazing.

Reasons

5. The properties in this stretch of Durlston Road are detached and have a regularity with a gable end to the front and limited spacing between them. Several have had piggyback extensions of the form proposed and windows inserted into the roof, both in the extension and the original front gable section. Under the approved scheme rooflights are to be provided to both sides of the appeal property. The restrictions of condition 4 apply to those in the northeast elevation which faces towards No.42 which has a number of rooflights in its piggyback extension.
6. The variation sought only relates to the rooflight closest to the front which would be positioned in the original part of the property and is at a lower level. Due to the limited height and the roof slope, usage of this second-floor loft space will be somewhat compromised and under the approved scheme it is to be utilised as a playroom. From my observations there are many properties along Durlston Road with windows in this part of the roof and they do not appear to be obscurely glazed.
7. I accept, as indicated by the Council, that there have not been any changes to the overall scheme and/or the relevant Local Plan policies since the previous appeal decision was made. It is also noted that the playroom will be served by a rooflight to the other side and a window in the front elevation. Nonetheless, this does not mean the restriction is necessary if there is no harm to mitigate. As set out in paragraph 55 of the National Planning Policy Framework (the Framework) planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. In contrast to the previous appeal, which was for the blanket removal of the condition, the assessment is now specific to one window. Additionally, the previous appeal decision acknowledges the differing relationships of the windows as set out at paragraph 6 – *“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”*.
9. The specific rooflight would not have a direct alignment with any of the existing rooflights to No.42 which does not have any in its front section. Furthermore, having regard to the height differential, the separation and oblique angle, even with the window open there would not be a close enough relationship to enable

any meaningful outlook towards the neighbour's existing rooflights to result in a harmful loss of privacy.

10. Thus, the removal of the condition restrictions to this single rooflight would not conflict with policy DM10 of the Local Development Framework Core Strategy, adopted in 2012, or the Framework which amongst other things, require development of a high-quality design which preserves the living conditions of occupiers of neighbouring property.
11. As this is an application under Section 73 it is necessary to repeat the conditions of the original planning permission. However, as the development has already commenced a time limit condition (condition 2) is no longer required. I have also revised the wording of the window condition (now condition 3) so that it maintains the restrictions to those in the piggyback extension, but in line with my decision, does not apply to the rooflight in the original building.

Conclusion

12. For the reasons set out the appeal is allowed, and the condition is varied.

G Ellis

INSPECTOR

Condition Schedule

1. The approved development shall be carried out in accordance with the following drawings/details:
 - 01 Rev B Existing and Proposed Floor Plans
 - 02 Rev B Existing Elevations
 - 03 Rev B Proposed Elevations
 - 04 Rev B Existing and Proposed Sections
 - Location Plan and Block Plan
2. The development to which this permission relates shall be carried out in accordance with the materials specified on the approved plans and on the application form unless otherwise agreed in writing by the local planning authority.
3. Prior to the occupation of the development to which this permission relates, any windows or rooflights at first floor level or above in the side elevation of the piggyback extension (NE) facing onto No. 42 Durlston Road shall be constructed so that no part of the framework less than 1.7m above finished floor level shall be openable. Any part below that level shall be fitted with and permanently 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.