



Appeal Decision

Site visit made on 28 February 2023

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 March 2023

Appeal Ref: APP/F5540/C/21/3277844

5 Oaklands Avenue, Isleworth TW7 5PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Kiran Gulati of KG Inc Ltd against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 26 May 2021.
- The breach of planning control as alleged in the notice is without planning permission, (1) the erection of a hip to gable rear roof dormer and the insertion of three roof lights; (2) the installation of UPVC (plastic) windows to the principal elevation of the house and the replacement of roof tiles to the house.
- The requirements of the notice are to:
 - i. Demolish the rear roof dormer extension;
 - ii. Restore the hipped roof of the house;
 - iii. Remove the roof lights on the front roof slope of the house;
 - iv. Restore terracotta clay roof tiling to the house (Note: Details shall be submitted and agreed by the Local Planning Authority prior to their installation).
 - v. Remove the UPVC (plastic) windows and restore with timber sash framed windows (Note: Details shall be submitted and agreed by the Local Planning Authority prior to their installation);
 - vi. Remove all resultant debris from the Land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities, with the onus of proof being on the appellant. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
2. Requirements (iv) and (v) include notes concerning the submission of materials for approval by the Council. This is not appropriate as requirements cannot be imposed to secure future agreement to certain matters, in the same way as planning conditions. In any event, the requirements are sufficiently clear in that the materials sought are specified; terracotta clay roof tiles and timber sash framed windows. The recipient of the notice would know what is required and the notes are unnecessary. I shall correct the notice to delete them. I am satisfied that a minor correction of this nature would not cause injustice.

The ground (e) appeal

3. The main issue to consider is whether the appellant has shown, on the balance of probabilities, that the notice was not served as required by Section 172 of the 1990 Act and, as a result, there has been substantial prejudice. Section 172(2) requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the local planning authority, is materially affected by the notice.
4. It is stated that the Council failed to serve notice on the registered owner of the property, as shown on the relevant title held by HM Land Register. However, the Council has provided evidence that a letter was sent to the registered owner at the correct address. I am satisfied that the notice was served as required.
5. Moreover, the property owner was clearly aware of the notice as the appeal was made within the relevant timescales. Therefore, there has been no substantial prejudice. The appeal on ground (e) fails.

The ground (c) appeal

6. The ground (c) appeal is that the matters alleged do not constitute a breach of planning control. Section 55(1) to the 1990 Act says that the word 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Development that has taken place without planning permission constitutes a breach of planning control.
7. The appellant obtained a lawful development certificate (LDC) for the erection of a rear roof extension with 'Juliette' balcony incorporating a hip to gable conversion and three front roof windows, a single storey rear extension, a front porch and a garage to the rear of the house¹. The LDC contained several informative notes including "(2) In order for this development to be lawful, the side faces of the enlargement of the rear roof space must be clad in roof tiles or slates to match those used on the roof slopes of the existing house. If this is not so, then the works are not covered by this Certificate and are not lawful" and (3) "In order for this development to be lawful the materials used in the exterior work must be of a similar appearance to those used in the construction of the exterior of the existing house. If this is not so, then the works are not covered by this Certificate and are not lawful".
8. Article 3(1) and Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants 'deemed' planning permission for development within the curtilage of a dwellinghouse, subject to conditions and limitations. Class B concerns additions to the roof of a dwellinghouse. Development is 'permitted' subject to the condition B.2.(a) that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The appellant's drawing 'front and rear elevations (Ref 0473_00_101)' includes notes stating "plain, tiled roof to match existing".

¹ Ref 00826/5/LAW1 dated 12 June 2018.

9. I saw that the hip to gable roof extension has been constructed using concrete, grey pantiles that bear no resemblance to the clay 'rosemary' roof tiles that existed previously, as evidenced by those that remain on the other half of the semi-detached property and the photographs supplied by the parties. The rear dormer is clad in grey hanging tiles which, again, are not of a similar appearance to the previously existing roof tiles. Consequently, the conditions relevant to the deemed planning permission under Class B have not been met. The additions to the roof cannot have been lawful, irrespective of when the development was begun.
10. The notice also targets the installation of windows and the replacement of the roof tiles across the entire roof. As set out above, the definition of development is provided by Section 55(1) of the 1990 Act. Section 55(2)(a) excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which (ii) do not materially affect the external appearance of the building. The Courts have held that, for works to 'materially affect' the external appearance, the changes must be visible from a number of vantage points and be material to the appearance of the building as a whole. The building in this case being No 5, which comprises one half of a pair of semi-detached houses. In addition, materially affecting the external appearance means an impact capable of having some effect in planning terms.
11. The UPVC windows have a very different appearance from those that previously existed in terms of the colour, texture and thickness of the frames. The windows to the principal (front) elevation, as targeted, are visible from several points along Oaklands Avenue and they stand out in the street scene. The effect of the windows on the character and appearance of the area is a valid planning consideration. The roof tiles are also very different in colour, material, thickness, profile and size from those that were replaced. The roof is visible from the road, the alleyway at the rear and from surrounding properties. The altered appearance of the roof has planning consequences. As such, the replacement front windows and the alterations to the roof materially affect the external appearance of the building as a whole, as a matter of fact and degree. Therefore, the works would not have benefitted from the exemption under s55(2)(a).
12. I have considered whether the replacement roof and windows would have benefitted from permitted development rights under Part 1, Class A of the GPDO which concerns the enlargement, improvement or other alteration of a dwellinghouse. However, this class is also subject to a condition in A.3.(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The material used in the replacement windows and roof are not of a similar appearance and so the condition has not been met.
13. The LDC was granted on the basis that the conditions and limitations of the deemed planning permission would be complied with. The result of the failure to comply with relevant conditions is that the development carried out is not lawful. I conclude on this issue that the matters alleged are development for which express planning permission would be required. In the absence of any such permission, the matters alleged constitute a breach of planning control and the appeal on ground (c) fails.

The ground (d) appeal

14. The time limits for taking enforcement action are provided by Section 171B of the 1990 Act. Under Section 171B(1), where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Hence, in order to succeed on ground (d), the appellant must show on the balance of probabilities, that the matters alleged in the enforcement notice were substantially completed four or more years prior to the issue of the notice, such that it is too late for the Council to take enforcement action.
15. The appellant explains that the works commenced soon after the LDC was granted in June 2018. Consequently, with works could not have been substantially completed four or more years prior to the issue of the notice on 26 May 2021. The appeal on ground (d) fails, therefore.

The ground (a) appeal and the deemed planning application

Background and Main Issue

16. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning permission are derived from the allegation and so planning permission is sought for (1) the erection of a hip to gable rear roof dormer and the insertion of three roof lights; and (2) the installation of UPVC (plastic) windows to the principal elevation of the house and the replacement of roof tiles to the house.
17. The main issue is the effect of the development on the character and appearance of the host dwelling and the surrounding area, in particular, the Osterley Park Conservation Area.

Reasons

18. The appeal relates to a semi-detached house, situated on an avenue of similar properties within a residential area. The house has been extended through a hip to gable roof extension which includes a rear, flat roofed dormer. Three rooflights have been inserted into the front facing roof plane. There is also a single storey rear extension, which does not form part of the notice.
19. The property lies within the Oaklands Avenue and Syon Lane character area of the Osterley Park Conservation Area. The Council's appraisal (October 2019) describes its character as an estate of late interwar and early postwar two storey, semi-detached houses with some short terraces on and off Syon Lane. The significance of this part of the Conservation Area can be attributed to the suburban character of the residential development, and the architectural details of the houses which reflect the style of the era in which they were built.
20. I saw that many of the houses within the immediate vicinity had roof extensions of a similar size and scale to the extension at the appeal property. The use of multiple front rooflights is common. The rear dormer extensions are generally visible in the street scene due to the development layout, which includes rear access roads and relatively long gardens. Roof extensions now form part of the character of the area. The extensions show the evolution of this suburban area as the houses have been enlarged to meet changing social

needs. However, with a few exceptions, most the works have sought to respect the architectural details of the front elevations. The complete replacement of the roof with contrasting materials is not widely evident, nor is the use of dark grey, plastic windows.

21. The alterations to the house have had a significant impact on the appearance of the host dwelling and the local area. The hip to gable extension and the rear dormer are large and dominant features which I note the Council seeks to resist through its Residential Extension Guidelines. In this case, the form and scale of the roof extensions, plus the number and position of the rooflights, is comparable with many other extended houses in the area and could be considered appropriate within the Conservation Area's evolved context.
22. The issue lies in the choice of roof materials and the UPVC front windows. The roof tiles are large, profiled concrete tiles, which are wholly inappropriate, and are in stark contrast to the red clay roof of the adjoining semi-detached house and others in the immediate vicinity. The effect is exacerbated by the dark grey, plastic windows with wide glazing bars which stand out against the retained barge boards, eaves, verges and porch canopy. The mismatch of materials results in a form of development that is incongruous in the street scene and erodes the character of the host property. Moreover, the removal of the pre-existing roof tiles and windows has led to the loss of architectural features which contributed to the significance of the Conservation Area. As a result, the development has adversely affected the significance of the designated heritage asset and consequently, adversely impacted the Conservation Area, the conservation of which should be afforded considerable importance and weight. While I judge the harm to be "less than substantial" in this case, due to its relatively localised impact, there are no substantiated public benefits that would outweigh the harm identified.
23. The appellant draws my attention to a planning permission at No 57 Oaklands Avenue, which was for a similar development with dark plastic windows and profiled concrete roof tiles. The Council concluded the development would preserve the character and appearance of the Conservation Area, largely because of previous extensions to the adjoining semi-detached property. The site-specific circumstances in that case were different and I am satisfied that it is appropriate to reach a different conclusion in this appeal.
24. I have considered whether I could grant planning permission for part (1) of the development, that being the roof extensions and roof lights, imposing a planning condition to require replacement roof tiles, tile hangings to the dormer and front windows. However, there is no guarantee that materials could simply be swapped given the nature of the construction, or that the parties could reach agreement. Moreover, I am not satisfied that any such condition would be appropriate as the deemed planning application specifically seeks approval for the retention of the windows and the roof tiles across the whole roof. I would be effectively granting permission, then removing it by means of a condition, which would be unreasonable.
25. To conclude, I find that the development has an adverse effect on the appearance of the host dwelling and fails to preserve the character and appearance of the Osterley Park Conservation Area. It is thus contrary to Local Plan (2015-2030) Policies CC1, CC2, CC4 and SC7 which seek, among other things, to respect the area's character and special interest through promoting

high quality design and architecture and resisting harm to the significance of designated heritage assets. In addition, the development does not take account of the Council's Residential Extension Guidelines which seek to ensure development in Conservation Areas is of a high standard of design.

Conclusion

26. The development is contrary to the development plan as a whole and planning permission should be refused. There are no other considerations that would indicate otherwise. The appeal on ground (a) must fail, therefore.

The ground (f) appeal

27. The Section 173(4) of the 1990 Act sets out the two purposes of an enforcement notice – (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury caused by the breach. The notice requires the removal of the unauthorised development and the reinstatement of what existed previously. Its purpose is to remedy the breach of planning control. What must be considered is whether the steps required exceeds what is necessary to achieve that purpose.
28. The appellant has offered a lesser step, which would involve removing the plastic windows and reinstating timber windows. While this would remedy the breach in respect of the windows, it would not remedy the remainder of the matters alleged and thus would not achieve the statutory purpose behind the notice. The ground (f) appeal must fail, therefore.
29. I have, however, considered this matter as an alternative scheme as part of the ground (a) appeal above.

The ground (g) appeal

30. The ground (g) appeal is that the period for compliance with the notice falls short of what should reasonably be allowed. The appellant is seeking further time to raise funds and hire contractors.
31. The harm resulting from the development is considerable and I note the concerns of neighbouring residents about this matter. However, I appreciate it may longer than six months to carry out the required works due to ongoing issues with sourcing suitable materials and contractors. In addition, it may be that further discussions with the Council would be appropriate. On this basis, I will extend the compliance period to nine months. I find this to be reasonable and proportionate in the circumstances. The ground (g) appeal succeeds to this extent.

Conclusion

32. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

33. It is directed that the enforcement notice is:

(1) corrected by the deletion of the words (Note: Details shall be submitted and agreed by the Local Planning Authority prior to their installation) in requirements (iv) and (v) of the notice; and

(2) varied by the deletion of the compliance period of six months in paragraph 5 of the notice and its replacement with a compliance period of nine months.

34. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Debbie Moore

Inspector