



Appeal Decision

Site visit made on 5 December 2023

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th January 2024

Appeal Ref: APP/Z5630/D/23/3326878

66 Kings Road, Kingston Upon Thames, KT2 5HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Mat and Catherine Lown and Coyne against the decision of The Royal Borough of Kingston Upon Thames Council.
 - The application Ref. 23/00554/HOU, dated 28 February 2023, was refused by notice dated 10 May 2023.
 - The development proposed is rear dormer roof extension.
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Decision

1. The appeal is allowed and planning permission is granted for rear dormer roof extension at 66 Kings Road, Kingston Upon Thames, KT2 5HS, in accordance with the terms of the application Ref. 23/00554/HOU dated 28 February 2023, and the plans submitted with it and subject to the conditions listed below.
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: KNG 002 Rev.P2; KNG 100 Rev.P3; KNG 200 Rev.P3; KNG 300 Rev.P3; KNG 600 Rev.P1; KNG 601 Rev.P1.
 - 2) The two windows on the side (western) elevation to the second floor of the roof extension hereby permitted, as shown on approved drawing No. KNG 300 Rev.P3, shall be obscure glazed over the whole extent of the glazing to each window, and no part of the windows that are less than 1.7 metres above the floor of the room in which they are installed shall be capable of being opened. The windows shall be retained as such thereafter.
 - 3) The flat roof planter area on the rear elevation to the second floor of the roof extension hereby permitted, as shown on drawings No. KNG 600 Rev.P1 and KNG 601 Rev.P1, shall not at any time be altered or adapted to form a balcony, terrace, seating area or similar amenity area without the grant of planning permission, and shall not be accessed except for purposes of maintenance or in the case emergency.

Application for Costs

2. An application for costs was made by the appellant against The Royal Borough of Kingston Upon Thames Council. This application is the subject of a separate decision.

Preliminary Matters

3. Whilst the Council determined the application on the basis of a revised description of development, section E of the appeal form confirms that this was not agreed to by the appellant. There is no written confirmation before me that a revised description of development has been agreed and accordingly I have used the one given in the original application. In doing so, I have not included any reference to 'retrospective' as this was also not included in the original application and is superfluous in that it is not an act of development.
4. The Council's second reason for refusal refers to the National Planning Policy Framework (July 2021) (Framework) which was revised in September 2023. However, the relevant design and amenity policies of the Framework remain unchanged in the September 2023 version.

Main Issues

5. The main issues are the effect of the proposed development on: (a) the character and appearance of the host property and surrounding area; and (b) the living conditions of neighbouring occupiers.

Reasons

Character and appearance

6. The Council's first reason for refusal refers to policy D3 of The London Plan (March 2021) (TLP) and policy DM10 of the Kingston Core Strategy (April 2012) (KCS). These policies seek, amongst other requirements, to ensure that new development makes best use of land, is of a good design, preserves and where possible enhances its local context, and contributes to and responds to local character and distinctiveness through consideration of a development's scale, layout, height, form (including roof form) and massing.
7. A broadly similar approach is set out in paragraph 130 of the Framework, but it also states that being sympathetic to local character should not prevent or discourage appropriate innovation or change. Similarly, paragraph 134 b) of the Framework states that significant weight should be given to innovative designs that help raise the standard of design more generally in an area provided the proposal fits in with the overall form and layout of their surroundings. The National Design Guide (NDG) (January 2021) reinforces the Framework, for example, at paragraph 44 by emphasising that well designed places do not need to copy their surroundings and that it is appropriate for new development to include innovation and change to reflect how we live today.
8. The Council have also referred to Policy Guidance 39 (PG39) of the Residential Design Supplementary Planning Document (July 2013) (Design SPD). PG39 relates to dormer windows, albeit the proposal before me could also be described as a roof extension that is not dissimilar to the concept of 'Piggyback Extensions' that are covered by Policy Guidance 40 (PG40). The latter option involves increasing the ridge height at the rear, whereas with the current proposal the development is marginally higher than the existing ridge. Even so, paragraphs 4.27 - 4.28 state that this form of extension will only be supported on detached properties, where the extension would not be highly visible within the street and would not result in any adverse impact on the amenity of neighbours. Moreover, whilst the Design SPD predates both the Framework and the NDG, paragraphs 4.24 - 4.25 also state that roof

extensions come in many shapes and sizes, that the appropriate form of roof extension will depend on the style and character of the host property and that such works can have a significant impact on the character of the streetscene particularly *"where they are visually prominent within the street"*.

9. The appeal proposal involves a rear roof dormer extension, effectively an extension to the existing roof of the outrigger. The proposed extension has vertical sides and a flat roof and links to an existing flat roof dormer on the main roof to the host. As the roof dormer extension is already in place, planning permission for the proposal is sought retrospectively.
10. Whilst the proposed extension results in an increase in the bulk and massing of the upper part of the rear outrigger, I am satisfied that this is not significant or harmful to the host or to the streetscene. As I observed on site, a number of properties in the area have been extended at roof level and there are various examples of large rear and side roof dormers, as well as other forms of extensions that include flat roofs and vertical sides, either tile hung or faced in zinc or lead. Those additions have not impacted on the character and appearance of their hosts or the surrounding area.
11. The zinc metal clad roof extension to the host property includes an aluminium framed window to match that on the ground floor to the outrigger. Combined with the muted colour of the cladding and the cream colour of the render to the lower part of the outrigger, the proposal does not appear out of keeping with the rear of the host or surrounding properties. I accept that there is a material change to the scale and design of the host, but, even so, the modern and contemporary design and pallet of materials results in a development that sits comfortably on the rear elevation and is in keeping with similar extensions on surrounding properties. Although it is a large extension, I disagree with the Council and consider that it represents an innovative design that integrates well with the appearance of the rear to the host property.
12. The Appellant's Grounds of Appeal (GOA) and Design & Access Statement include photographs taken from the rear of the host and from Kings Road, Thorpe Road and Richmond Park Road, which show that only glimpsed views of the proposal are possible and that it is mainly the original flat roof dormer to the main roof that is, in fact, visible from Kings Road and Thorpe Road. This reaffirms my observations on site and I am satisfied that the impact of the appeal proposal on the streetscene is limited. The proposed rear extension does not appear incongruous or visually dominant, and in view of the limited views of the proposal from public vantage points it does not appear out of character or result in any material harm to the streetscene.
13. The Appellant has referred to the existence of a fallback option, which I accept can be a material consideration. In this case, the evidence appears to suggest that the Appellant's intention was to construct the extension under permitted development rights, but that changes to the design during construction led to the built extension having a greater volume, ridge height and extent than allowed under permitted development. In this respect, the Appellants GOA include comparisons between the appeal proposal and the extension that could be constructed under permitted development, showing that the differences between the two would be modest. I note that the Council's Delegated Report (CDR) does not address the issue of permitted development and whilst I have found the appeal proposal to be acceptable without having regard to any

fallback option, the above are all considerations that I have had regard to in reaching a finding on this issue.

14. Accordingly, whilst there would be some conflict with the advice in the Design SPD, as I have found, this predates the Framework and NDG, it is guidance that should be applied flexibly and both PG39 and PG40 support a variety of roof extensions where they are not visually prominent in the streetscene. As such, I am satisfied that the appeal proposal does not conflict with the overall aims of the Design SPD. I also find that the appeal proposal would be compliant with policy D3 of TLP, policy DM10 of the KCS and the corresponding paragraphs of the Framework and NDG.

Neighbours living conditions

15. The Council's second reason for refusal refers to policy D3 of TLP and policy DM10 of the KCS. These seek to ensure, as well as other requirements, that development delivers appropriate outlook, privacy and amenity and has regard to the amenities of the occupants of adjoining properties in terms of privacy, outlook, sunlight/daylight and visual intrusion. A similar approach is set out in paragraph 130 of the Framework. The Council have also referred to policies CS8 and DM12, but my reading of these is that they relate to local character and the impact of development on heritage assets. The impact of the proposal on local character has already been addressed above and my attention has not been drawn to any relevant heritage assets.
16. The CDR also refers to the Design SPD, even though this is not mentioned in the reason for refusal, albeit no paragraph reference is given and the only reference I have is that in paragraph 4.28 (on 'Piggyback Extensions') that I referred to earlier. Even so, having observed on site the proposed building relationships and viewed adjoining properties from the rear window to the proposed roof extension, I am satisfied that the proposal is not overbearing or visually intrusive, and that it does not result in any harmful level of overlooking or loss of privacy.
17. Whilst the proposed extension is visible from neighbouring properties, the impact on the living conditions of the occupiers of those properties is not significant. I accept that there would be some impact, but given that the proposal has been created by extending vertically from the eaves to the existing outrigger and mindful of the orientation of the adjoining properties including their own outriggers, and the fact that the new extension only marginally extends above the ridge and beyond the walls to the outrigger, the level of impact is modest and is not sufficient to justify the refusal of planning permission.
18. Turning to the issue of overlooking and loss of privacy, the side (west) elevation windows are shown on the submitted plans to be obscure glazed and fixed shut. That is a matter that can be controlled by a condition, which would be enforceable and would preclude any issues of overlooking from these windows. In relation to the main rear windows, as I observed on site, views from this location are partly screened by the planter to the extension and existing tress and planting within the rear garden to the host and adjoining gardens. The views are also long distance. Moreover, the relationships that arise reflect those commonly found in built up suburban areas such as this, where some overlooking of adjoining gardens is an inherent characteristic.

19. Overall, therefore, whilst the proposed windows do result in some overlooking of the gardens to neighbouring properties, the level of overlooking is limited and does not result in any significant harm to the living conditions of those occupiers. In relation to the separation distances recommended in the Design SPD, I note there is some disagreement between the parties over the precise separation that exists, but, even so, in both cases the distance measured is marginally less than that recommended. Based on this and my observations on site, the proposed building relationships are, in my view, acceptable and do not have any adverse impact on the living conditions of neighbours.
20. In relation to the CDR's reference to the impact from a Juliet balcony, there was no reference to a balcony on the submitted plans and as I observed on site it is used as a planter. Behind this is a window that does not provide access in the same way as you would expect with a traditional Juliet balcony. I am, therefore, satisfied that the retention of this area as a planter that would also preclude its use as a terrace or balcony can be controlled by a condition.
21. Accordingly, I find that the appeal proposal would not lead to any significant harm to the living conditions of neighbouring occupiers and would, therefore, be compliant, in this respect, with policy D3 of TLP, policy DM12 of the KCS, the overall aims of the Design SPD and paragraph 130 f) of the Framework.

Conditions

22. The Council has suggested various conditions which I have considered against the advice in the Framework and the Planning Practice Guidance chapter on the use of planning conditions. A condition requiring compliance with the approved plans is necessary and reasonable to secure a high-quality development. However, as permission is being sought retrospectively and as I understand the development has been completed, I am not convinced that a materials condition is necessary or reasonable.
23. As I confirmed earlier, I do consider that conditions seeking to retain and prevent any other use of the planter and which requires the second floor side (west) windows to be obscure glazed and fixed shut above a certain height, are reasonable and necessary in the interests of protecting the living conditions of the neighbouring occupiers.
24. The Council have also suggested a condition that requires the submission and approval of a Fire Safety Strategy with reference to policy D12 of TLP. I have not been provided with a copy of this policy and there is also no substantive evidence before me to support such a requirement. I am also mindful that fire safety compliance is a matter covered by Part B of the Building Regulations and that the proposal is not for a new build or major development. For all these reasons, I find that this condition is neither necessary nor reasonable.

Conclusion

25. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR