



Appeal Decision

Site visit made on 30 September 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2024

Appeal Ref: APP/L5810/C/23/3314287
109 Nelson Road, Twickenham TW2 7AZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mohammad Nazir Behbood against an enforcement notice issued by the Council of the London Borough of Richmond Upon Thames.
 - The notice was issued on 6 December 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the past 4 years, the erection of a single-storey timber extension located at ground floor level to the rear of the Land.
 - The requirements of the notice are to:
 - (i) Remove the single-storey rear extension from the Land and restore this part of the property to its former condition.
 - (ii) Ensure that all materials and debris resulting from compliance with (i) above are removed from the Land.
 - The period for compliance with the requirements is: Within 2 months of the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.
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Decision

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. The breach of planning control alleged in this enforcement notice (the Notice) includes that the development happened within the last 4 years. This may be relevant to the reasons for issuing the Notice, but it does not describe the breach of planning control. It is, therefore, prudent to delete these words in the interests of clarity. As they are inconsequential to the breach of planning control and grounds of appeal, then no injustice will occur to either party.
3. The first requirement refers to the restoration of 'this part of the property' to its former condition. The term 'property' has not been previously used in the Notice, so it would be clearer to refer to the 'Land' which has been defined at Section 2, with reference to the plan attached to the Notice.

4. The second requirement is a slightly vague requirement to 'ensure' that materials and debris have been removed. The use of more directive language to simply remove the materials and debris would result in greater clarity. As neither of these changes to the requirements would result in any material difference to the operation of the Notice or its requirements, no injustice would arise to either party from such correction.

Ground (a)

5. Ground (a) is that planning permission should be granted for the matters alleged in the Notice. The main issues on this ground are the effect of the development on the character and appearance of the area, and the effect on access and bin storage arrangements.

Character and appearance

6. The extension is a small addition to the rear of a terrace of buildings. The rear of No 109 has a different form to the remainder of the terrace, projecting further back at first floor level, but nevertheless presents a unified appearance in respect of the use of materials. The use of timber sheets as an external finish might be an environmentally friendly choice, but is at odds with the more conventional brick walls, as is the felt roof, lapped over and nailed to the outside of the walls. Both materials have a poor-quality appearance that do not relate well to the robust appearance of the host building.
7. While the extension is sited to the rear of the terrace, No 109 is at the end and the extension is visible along the rear access road to the side of the building. Seen from here, the poor-quality finish jars with the more traditional brick host building and is detrimental to the appearance of the area. I, therefore, find that the development conflicts with Policy LP1 of the London Borough of Richmond Upon Thames Local Plan 2018 (LP) that requires all development to be of a high architectural and urban design quality that enhances the local environment.

Access and bin storage

8. The rear access road wraps around the corner of No 109 where it runs between the back of the terrace and a row of garages. The extension appears to project into the access road, making the corner tighter.
9. However, the appellant has explained how the extension does not protrude beyond the original plot. Indeed, I saw that there is a pedestrian access walkway, accessed by intermittent steps, at a lower level than the access road immediately behind the terrace. While the level difference is least pronounced behind No 109, there is still evidence of a former kerb line beneath the new walls inside the building.
10. Thus, it seems likely that the area on which the extension has been built was not part of the access road, such that vehicular access will not have been hampered by its construction. Moreover, the level change, narrow width, and kerbing would have made the area impractical for storing commercial waste bins and, therefore, the Council's suggestion that the extension has adversely affected bin storage arrangements or impeded access has not been substantiated.

11. I find that no harm has arisen in respect of access and bin storage and there is no conflict with LP Policy LP45 that seeks to ensure adequate provision for access and servicing.

Other matters

12. The appellant has indicated that the extension is required to provide facilities necessary to comply with health, safety and food hygiene guidelines. It houses a sink and I saw no such provision within the main kitchen area. However, I have no detailed information as to why the facility could not be accommodated within the main kitchen area, so the appellant's claim that it is required for the functioning of the business has not been substantiated by robust evidence. Accordingly, I give this matter limited weight.
13. An alternative scheme for a brick-built extension has been proposed. In considering an alternative scheme, I may only grant planning permission in respect of the matters stated in the Notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters.
14. To build the alternative, it appears that the entire extension already at the site would need to be demolished and rebuilt. Furthermore, the matters alleged in the Notice are specifically a 'timber extension'. As the alternative would be a complete rebuild, and would be constructed of a different material to that described in the Notice, the alternative scheme could not be construed as the whole or part of the matters. It would be an entirely new development. Therefore, I am unable to permit the amended scheme through this appeal.

Conclusion on ground (a)

15. While I find no harm has arisen in respect of access and servicing arrangements, there is harm to the character and appearance of the area. This results in a conflict with the development plan read as a whole. Material considerations have not been shown to warrant a decision otherwise than in accordance with the development plan and, therefore, planning permission should not be granted for the matters alleged. Accordingly, the appeal on ground (a) should fail.

Ground (f)

16. Ground (f) is that the steps required by the Notice to be taken, or the activities required by the Notice to cease exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused.
17. The purpose of the Notice is to remedy the breach of planning control. That is clear because the requirements are to remove the single-storey rear extension from the land. The appeal on ground (f) is, therefore, confined to whether the steps exceed what is necessary to remedy any breach of planning control. I am unable to consider whether alternative steps, such as a change in external appearance or materials might remedy any injury to amenity as that is not the purpose of the Notice.
18. In this case, the steps are straight forward and would remedy the breach of planning control. It has not been shown that the breach could be remedied with lesser steps. Therefore, the appeal on ground (f) must fail.

Ground (g)

19. Ground (g) is that the period specified in the Notice to comply with the requirements falls short of what should reasonably be allowed. There is no particular evidence as to why more time would be required to remove the extension from the land. As noted above, the potential adverse effects on the business have not been substantiated by detailed evidence.
20. The appellant suggests that more time would allow consideration of an application for an amended scheme. However, given that there are plans already drawn for such an alternative, it should not take long for these to be submitted to the Council, if that is an avenue that the appellant wishes to pursue. If permitted, the Council could consider using its powers under Section 173A of the 1990 Act to extend the time period for compliance.
21. I, therefore, find that the appeal on ground (g) should fail.

Conclusion

22. It is directed that the enforcement notice is corrected by:

In Section 3 'The Breach of Planning Control Alleged':

- Delete the words "and within the last 4 years".

In Section 5 'What You Are Required To Do'

- In paragraph (i) delete the word "property" and replace with the word "Land";
- In paragraph (ii), delete the text in its entirety and replace with the words "Remove from the Land all materials and debris resulting from compliance with (i) above."

23. Subject to the corrections, 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 as amended.

M Bale

INSPECTOR