



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: 18 October 2024

Appeal Ref: APP/L5810/C/23/3326405

Land at 21 Ellerker Gardens, Richmond TW10 6AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Alistair Bigos against an enforcement notice issued by The Council of the London Borough of Richmond Upon Thames.
- The enforcement notice was issued on 22 June 2023.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 20/1630/HOT granted on 4 September 2020.
- The development to which the permission relates is: Replacement single storey rear extension. Alteration of an existing first floor rear window opening and the addition of one window at first floor level. 7 no. rooflights to front and rear roof slopes. Replacement like for like of the fascia and soffits to the front elevation and front entrance door.
- The condition in question is No U0087112 which states that: No new external finishes (including fenestration), including works of making good, shall be carried out other than in materials to match the existing, except where indicated otherwise on the submitted application form and drawings.
- The notice alleges that the condition has not been complied with in that: Due to the use of Forticrete masonry and a tile-backer fascia-board as external finishes to the ground floor rear extension which do not match the materials of the main building.
- The requirements of the notice are to:
 - (a) Remove the Forticrete masonry bricks and tile-backer fascia panel from the rear ground floor extension on the Land and replace them with London Stock brick to match those on the main building.
 - (b) Remove from the Land all material and debris resulting from compliance with (a) above.
- The period for compliance with the requirements is: Within two (2) months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Procedural matter

1. The enforcement notice ("the Notice") alleges the breach of a condition relating to external facing materials. The appellant's statement of case comments that some of the materials, namely tiles for the fascia, are shown on approved plans and that these will cover the tile-backer board which is not the final material. This suggests that there might not be a breach of planning control in that respect, which is a matter for an appeal on ground (c). All

parties have had opportunity to comment on those submissions and therefore, no injustice will arise if I consider the appeal on this ground.

Ground (c)

2. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. On this ground, the onus is for the appellant to prove their case to the standard of the balance of probabilities. The condition in dispute ("the materials condition") requires external finishes to match the existing dwelling except where indicated otherwise on the submitted application form and drawings.
3. The existing rear elevation of the dwelling is constructed of brick. The existing and proposed drawings show no detail for this area or the face of the new extension. The drawings do not, therefore, indicate a different material for the existing dwelling and proposed extension. The application form clarifies the existing material as solid original brickwork with light coloured mortar joints with period stone banding and detailing to the front. It details the proposed material to be facing brick to the new rear elevation for the new extension. There is no dispute that the Forticrete masonry blocks that have been installed are not facing brick and do not match the rear elevation.
4. The existing eaves and fascia details appear to be a traditional timber finish. The drawings of the extension show a patterned area in a vertically orientated brick pattern detail. The application form describes that the proposed fascia detailing and trims will match the roof and proposed rear elevation aesthetic. Tile-backer fascia board has been installed in this location.
5. The appellant suggests that the fascia detail clearly shows tiles and that these will be fixed to the tile-backer board that is currently at the site to provide a final finished detail. However, in the absence of any annotation or reference to tiles on the application form, there is no obvious indication that tiles were proposed or have been permitted in this location.
6. While the application forms indicate that the fascia will be finished 'to match the roof and proposed rear elevation aesthetic', there is nothing on the plans or forms to indicate that this would include tiles. The drawing could, for example, equally indicate matching brickwork, being the only material detailed on the application forms for the rear elevation, laid in a contrasting pattern. The supposed tile detail was also shown on plans connected with a later permission, referenced 20/3304/HOT, but again without annotation and, in any event, that permission related only to rear windows at first floor level.
7. Nevertheless, the appellant is clear that the tile-backer board is not the finished material and that he intends to cover it in another facing material. Given the appearance of the tile-backer board, I find it more likely than not that this is the case. As the tile-backer board is not an external finish, this part of the matters alleged is not, on the balance of probabilities, a breach of planning control. Whether or not a future covering, whatever that may be, results in a breach of planning control is not a matter before me in this appeal.
8. I, therefore, find that the appeal on ground (c) should succeed in part, in that the reference to the tile-backer fascia-board should be deleted from the alleged breach of planning control.

Ground (a)

9. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. As corrected, the Notice alleges a breach of the materials condition in that 'due to the use of Forticrete masonry as an external finish to the ground floor rear extension which does not match the materials of the main building, it appears to the Council that the [materials] condition has not been complied with'.
10. My consideration of the ground (a) appeal is limited solely to the matters that have happened and are alleged in the Notice (as corrected). Therefore, even though the appellant may intend to install tiles on the fascia, this potential future scenario is not a matter that is before me.
11. The main issue on this ground is the effect of the Forticrete masonry finish on No 21 Ellerker Gardens as a non-designated heritage asset, and whether the development, as constructed, would preserve or enhance the character and appearance of the St Mattheus Conservation Area (CA) and avoid harm to its significance.
12. The CA is a high-quality residential area, designated for its cohesive form and varied architectural styles. The area was mainly constructed in a relatively short period and has notable unity in its use of materials. Thus, there are pressures on the area from the loss of historic fabric and detailing, and inappropriate additions.
13. In the streets surrounding Ellerker Gardens, most of the dwellings are terraced or sited close to one another such that there are only glimpsed views between them. Many of the semi-detached dwellings also have low level structures in the gaps between them, restricting views into the garden areas. Thus, while the rear gardens of Montague Road are noted by the Council as making a contribution to the street scene and providing greenery, it is the mature trees visible through any gaps and exposed ends of the streets that can be seen.
14. The rear elevations of dwellings themselves are not widely visible and, as such, make a very limited contribution to the special interest and significance of the CA as a whole. Accordingly, from my observations, in the streets around the site, it is predominantly the built form, arrangement of dwellings and front elevation treatment that contribute to an understanding of the significance of the area.
15. A notable exception is the exposed rear of the terrace on Ellerker Gardens, roughly between the appeal site and Onslow Road. Here, there are no buildings facing Montague Road, behind, and unity in the use of London stock brick and the architecture of the rear elevations can be appreciated. However, a boundary wall along Montague Road and intervening low-level structures mean that only the upper floors and roofline are visible.
16. While the CA designation covers the entire area, including the rear elevations of the buildings and their gardens, the ground floor additions to the rear of Ellerker Gardens can only be appreciated from within the private gardens and indoor spaces of the nearby dwellings. From here, it can also be seen that there is widespread variety in the form, shape and appearance of the many

ground-floor projections to the rear of the terrace. Thus, even though they are predominantly finished in London stock brick or render, the ground floor rear projections do not contribute to the apparent unity of development within the CA or its high-quality street-facing appearance.

17. No 21 has been identified as a building of townscape merit. Given this, and that it is clearly contemporary with the wider development of much of the CA, it should be regarded as a non-designated heritage asset. Its significance appears to lie in its high-quality finish, historic detailing of the front elevation and its group value with the rest of the terrace. The present appeal relates to the narrow matter of the external finishes of a newly-built extension. Whatever materials are used, there would be no loss of historic fabric or detailing from any change to this aspect of the new addition.
18. The shape and detailing of the extension does not reflect that of the original house, having a partly flat, partly pitched roof and extensive glazing. While the House Extensions and External Alterations Supplementary Planning Document 2015 indicates that the use of unrelated materials should be avoided, and the limited wall areas could equally be finished in matching London stock brick as originally envisaged, such a finish would not deliver architectural unity and, either way, the extension would appear as a modern addition to the house.
19. In this context, a change from brick to the contrasting, albeit somewhat alien, larger Forticrete blocks that relate only to the form of the extension rather than the main house, does not harm the significance of the building. As it can only be appreciated in private views and, from there, amongst the array of, already contrasting, ground floor rear projections, the character and appearance of the CA would be preserved, and its significance would not be harmed.
20. Therefore, I find that the disputed condition can be discharged and that no conflict from doing so would arise with those aims of Policies LP1, LP3 and LP4 of the London Borough of Richmond upon Thames Local Plan 2018 that seek to ensure that development is of a high design quality, preserves or enhances the character or appearance of conservation areas, and prevents harm to the significance of designated and non-designated heritage assets.
21. There is evidence that the elevation facing the neighbour at No 22 has been completed in a mix of materials, with some stock bricks placed randomly within the block work. This looks awkward, untidy and undermines the general quality of the extension. Accordingly, it would be appropriate to impose a new condition, as suggested by the appellant, that the extension is finished in Forticrete Block. Should this have not been complied with once construction works have been completed, the Council could consider the expediency of further enforcement action.
22. In imposing a replacement condition, it is necessary to make some changes to the appellant's suggested condition to ensure that distinction is made between the finish of the new build element and other works of repair and alteration covered by the planning permission. Retaining the elements of the original condition will mean that, in terms of the fascia, the appellant will be able to choose whether to finish it in a material that matches the existing dwelling or as set out on the forms, a material to match the roof. Given the remit of the ground (a) appeal, this requirement remains unaltered by my decision.

23. Planning permission should, therefore, be granted for the matters alleged in the Notice, as amended. I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed.
24. In allowing the appeal, I shall exercise my two parallel powers under Section 177 of the 1990 Act to discharge the condition which is subject to the Notice and substitute it for a new one, and to grant planning permission on the application deemed to have been made for the operations previously permitted without complying with the condition enforced against but subject to a new condition as described above. As this appeal results in the grant of an entirely new planning permission for the rear extension, I will also re-impose the other conditions, insofar as they remain relevant.

Formal Decision

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

In section 3 'The breach of planning control alleged', delete the following text:

"Due to the use of Forticrete masonry and a tile-backer fascia-board as external finishes to the ground floor rear extension which do not match the materials of the main building"

and replace with the following text:

"Due to the use of Forticrete masonry as an external finish to the ground floor rear extension which does not match the materials of the main building".

26. Subject to the above correction, the appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act (as amended), the condition No U0087112 attached to the planning permission dated 4 September 2020, ref 20/1630/HOT is discharged and is substituted by condition No 1 in the attached schedule.
27. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for: Replacement single storey rear extension. Alteration of an existing first floor rear window opening and the addition of one window at first floor level. 7 no. rooflights to front and rear roof slopes. Replacement like for like of the fascia and soffits to the front elevation and front entrance door without complying with condition No U0087112 attached to the planning permission dated 4 September 2020, ref 20/1630/HOT but subject to the conditions in the attached schedule.

M Bale

INSPECTOR

Schedule

1. The external finishes of the walls of the extension shall be finished with Forticrete fair-faced architectural masonry with a light coloured mortar. Otherwise, no new material finishes (including fenestration), including works of making good shall be carried out other than in materials to match the existing, except where indicated otherwise on the submitted application form and drawings.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no parts(s) of the roof of the building(s) hereby approved shall be used as a balcony or terrace nor shall any access be formed thereto.
3. The development hereby permitted shall be carried out in accordance with the following approved plans and documents, where applicable.

Email 1 received on 04/09/20

011E; 012E; 013E; 014E; 015C; 018E; received on 06/08/20

001; 002; 003; 004; 005; 006; 007; 008; 009; 016 received on 16/06/20.