



Appeal Decisions

Site visit made on 5 February 2025

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 06 March 2025

Appeal A Ref: APP/L5810/C/23/3335108

6 Cumberland Road, Barnes, London SW13 9LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Oliver Milton against an enforcement notice issued by Richmond Upon Thames London Borough Council.
 - The enforcement notice was issued on 1 November 2023.
 - The breach of planning control as alleged in the notice is: The erection of a semi-detached dwelling in breach of condition 'U0094834 - Approved Plans' of planning permission 20/0714/FUL (varied by planning permission 20/3454/VRC) owing to the insertion of an additional bay window and centrally located window at first floor level instead of two first floor bow window and ground floor bay window as shown in the approved drawings 027_PL_203 (approved front elevation); 027_PL_200 Rev B (approved ground floor plan); 027_PL_201 (approved first floor plan). The unauthorised 'as-built' development is shown in the attached photograph 'Fig 1' and the approved front elevation and ground and first floor drawings are attached as 'Fig 2', 'Fig 3' and 'Fig 4'.
 - The requirements of the notice are: 5.1 Remove the additional two storey bay windows and central window located at first floor level on the front elevation; and 5.2 Build-out the two first floor bow window and ground floor bay window as shown in drawings nos. 027_PL_203 (approved front elevation); 027_PL_200 Rev B (approved ground floor plan); 027_PL_201 (approved first floor plan); and 5.3 Permanently remove from the Land any waste associated with complying with steps 5.1 and 5.2 above.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/L5810/W/24/3341684

6 Cumberland Road, Barnes, London SW13 9LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Oliver Milton against the decision of Richmond Upon Thames London Borough Council.
- The application Ref: 23/3283/VRC, dated 8 December 2023, was refused by notice dated 26 March 2024.
- The application sought planning permission for: Variation of condition 'U0094834 Approved Plans' of planning permission 20/3454/VRC to vary the front elevation via amendment to first floor central window and first floor bay, addition of pitched roof over ground floor bay and front door and amendment to front door design.
- The condition in dispute is No' U0094834 Approved Plans' which states that: The development hereby permitted shall be carried out in accordance with the following approved plans and documents, where applicable: Approved Plans: From application 20/0714/FUL: Drawing showing Location Plan dated 27/02/2020 received 10.03.2020; Drawing: MB-SURB-CR_RP_001 Rev 01 showing Existing Roof Plan dated 29/09/2019 received 10.03.2020; Drawing: MB-SURV-CR-FE-001 Rev 01 showing Existing Front Elevation dated 27/09/2019 received 10.03.2020; Drawing: MB-SURV-CR-FF-001 Rev 1 showing Existing First Floor dated 27/09/2019 received 10.03.2020; Drawing: MB-SURV-CR-GF-001 Rev 01 showing Existing Ground Floor dated 27/09/2019 received 10.03.2020; Drawing: MB-SURV-CR-LP-001 Rev 01 showing Existing Loft Plan dated 27/09/2019

received 10.03.2020; Drawing: MB-SURV-CR-RE-001 Rev 01 showing Existing Rear Elevation dated 28/09/2019 received 10.03.2020; Drawing: MB-SURV-CR-RSE-001 Rev 01 showing Existing Right Side Elevation dated 28/09/2019 received 10.03.2020; Drawing: MB-SURV-CR-TS-001 Rev 01 showing Existing Topographical Survey dated 29/09/2019 received 10.03.2020; Appendix A Collection of Figures and Appendix C Proposed Surface Runoff Improvement Measures (SUDS) received 10.03.2020; Sustainability Report Lifecycle CO2 Analysis by Dynamic Energy Assessors dated 04.02.2020 received 10.03.2020; Drawing: MB-SURV-CA-SA-001 Rev 01 showing Existing Section A-A dated 29/09/2019 received 10.03.2020; Development Viability Assessment by Are3ray Development Consultancy dated March 2020 received 10.03.2020; Energy Statement Ref: PR_027 by Dynamic Energy Assessors dated 04.03.2020 received 10.03.2020; Flood Risk Assessment and Sustainable Urban Drainage Systems by UK Flood Risk Consultants Ref: QFRA 1626 Rev a dated 28.02.2020 received 10.03.2020; SAP Design Stage Assumptions by Dynamic Energy Assessors received 10.03.2020; Sustainable Construction Checklist received 17.03.2020; Transport Statement dated March 2020 received 17.03.2020; Water Efficiency Calculator for New Dwellings dated 16/03/2020 received 17.03.2020; Method Statement for Construction of Retaining Wall Ref: 20178 received 10.06.2020; Letter from Structural Engineer dated 08.06.2020 received 10.06.2020; Drawing: 027_PL_110 showing Refuse and Cycle Details dated Feb 2020 received 10.07.2020; Report: Retaining Wall Analysis received 10.06.2020; Drawing: 20178.101 showing Temporary Works dated May 2020 received 10.06.2020; Drawing: 20178/102 showing basement foundation layout dated June 2020 received 10.06.2020; From application: 20/3454/VRC: Drawing: 027_PL_200 Rev B showing Proposed Basement and Ground Floor Plan dated Nov 2020; Drawing: 027_PL_201 Rev B showing Proposed First and Second Floor Plan dated Nov 2020; Drawing: 027_PL_202 Rev B showing Proposed Roof Plan dated Nov 2020; Drawing: 027_PL_203 showing Proposed North and South Elevation dated Nov 2020; Drawing: 027_PL_204 Rev A showing Proposed West Elevation and Section dated Nov 2020; Drawing: 027_PL_205 Rev A showing Proposed East Elevation dated Nov 2020; All received: 04.02.2021.

- The reasons given for the condition are: To accord with the terms of the application, for the avoidance of doubt and in the interests of proper planning.

Appeal A: Decision

1. It is hereby directed that the Enforcement Notice (EN) is corrected by deleting that part of the postcode '9LJ' at section 2 and replacing that with '9LY'. It is also directed that the EN is varied by deleting "*within three (3) months after this notice is served on you*" from paragraph 5 and replacing that with "*within nine (9) months after this notice takes effect*". Subject to this correction and variation, the appeal is dismissed and the EN is upheld.

Appeal B: Decision

2. The appeal is dismissed.

Preliminary Matters

3. The postcode given in the EN is incorrect. This is a very minor matter because it is clear to all parties that the appeal property is 6 Cumberland Road as identified on the plan attached to the EN. I can therefore make this correction without causing any injustice.
4. The description of the development used in the banner heading for Appeal B is an agreed changed description that the Council suggested, is the one that is on the Council's decision notice and has been used by the appellant on their appeal form.
5. An objector has raised concern about the two appeals being linked and therefore considered at the same time. However, it is not unusual for the Planning Inspectorate to link appeals on the same or adjoining sites. It makes for an efficient use of public resources. Furthermore, even though there is no appeal under s174(2)(a) of the 1990 Act under Appeal A, it is not uncommon for EN appeals to

run alongside freestanding, but related, s78 appeals for the same, or modified development, at the same property. There is no reason in this case why the two appeals should not be conjoined and determined together.

Background

6. There is a relatively lengthy planning history to the appeal site. However, of most relevance for this appeal, and the starting point for the most significant events at the site is planning permission Ref: 20/0714/FUL, granted on 20 July 2020, for 'Demolition of existing semi-detached dwelling and replacement with a 2-storey semi-detached dwelling with basement and accommodation in the roof and associated parking, hard and soft landscaping, cycle and refuse stores' (PP1).
7. Application Ref: 20/3379/VRC, for 'Variation of Condition U0085062 (Approved Plans) of planning approval 20/0714/FUL to allow for alterations to the fenestration on ground floor side and rear elevations, change of external materials of ground floor side elevation from brick to render, alteration to concrete banding to rear elevation and alterations to first floor front bay and first floor fenestration and alterations to roof of dormer/PV panels arrangement', was refused on 21 January 2021 (PP2). An appeal against that refusal (Ref: APP/L5810/W/21/3268678) was dismissed on 12 November 2021.
8. On 4 February 2021, planning permission (LPA Ref: 20/3454/VRC) was granted for 'Variation of condition U0085062 Approved Plans of application Reference Number: 20/0714/FUL to allow for enlargement of single storey rear extension' (PP3). The current application (Ref: 23/3283/VRC) sought to vary condition U0094834 of planning permission ref: 20/3454/VRC by again altering the approved plans (PP4).
9. Despite how PP2 – PP4 are described, applications under s73 and s73A of the 1990 Act to carry out development of land without compliance with conditions subject to which a previous permission was granted, means that if the application is granted a new permission is created and the original permission remains extant and unaltered (along with the conditions attached to it). Therefore, PP2 – PP4 were applications for the demolition of the former house and its replacement with a 2-storey semi-detached dwelling.
10. Focussing in, the front elevation of the house that has been built, is not in accordance with the approved plans. The front of the house has the appearance of the scheme considered by the previous Inspector. The current scheme shows a different front fenestration for consideration.

Appeal A – ground (g)

11. In their statement under Appeal B, the appellant refers to the current scheme may allow for lesser steps to be taken than reverting the front elevation back to the approved scheme. Reference is also made to those lesser steps being taken under ground (f). I do not though have an appeal under Appeal A under s174(2)(f) of the 1990 Act to consider.
12. Nevertheless, I will be considering whether the scheme under Appeal B should be granted planning permission. If it does, s180 of the 1990 Act would mean that where, after the service of a breach of condition notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. So, if

planning permission is granted under Appeal B, the appellant could carry out the suggested alternative lesser steps/scheme. If that is not the case, the appellant would only be left with the option to comply with the requirements of the EN.

13. Due to the passage of time since the appeal against the EN was submitted, many of the dates and timescales referred to by the appellant have expired. Nevertheless, it does seem to me that the remodelling of the front elevation, that would require lead in times for ordering new windows and lining up the builder, would take longer than three months. To be fair as well, whilst there may be other builders who could undertake the works, it is not unreasonable to reengage the builder who carried out the works in the first place. I also note that in their final comments, the appellant states that the works could be reasonably completed in 9 – 10 months.
14. Taken in the round, the timescale allowed in the EN falls short of what should be reasonably allowed. I shall extend the compliance period to 9 months. The ground (g) appeal therefore succeeds. I shall vary the EN accordingly.

Appeal B

Main Issue

15. The main issue is the effect of the development on the character and appearance of the host building and the area.

Reasons

16. I have read carefully the appellants comments about what they consider is no regular detailed pattern identifiable between the adjoining houses other than the broader brushed character of semi-detached properties with similar plot widths and spacing between properties, aligning eaves and ridge heights, principle of bay windows and commonality of external materials. I also note what is said about there being no common pattern between properties. I had these views in my mind when I visited the road to look at the appeal house and assess for myself the character and appearance of the area.
17. Whilst there is some variation to the street scene arising from various alterations and additions to the properties, a strong defining characteristic to the design of the houses on this side of Cumberland Road is the presence of only one bay window at first floor level with smaller one or two oriel bow first floor windows alongside. This regularity of features gives the appearance of the houses a pleasing rhythm and uniformity. I agree with the previous Inspector that this gives a harmonious and ordered character to the area. In contrast, the introduction of the second first floor bay window and not having the smaller bow windows, which the approved scheme would have had, means that the current front fenestration looks out of place and the uniformity of the street scene has been diluted.
18. Reducing the size of the side windows and narrowing the second-floor right hand bay would make it visually narrower than the ground floor bay below. It is further proposed to mask much of the middle solid section of the bay between the first and ground floor windows by introducing a lean-to tiled roof straddling across and over the front door, thus creating a visual separation between the first and ground floor windows of the existing bay.

19. However, it has been correctly pointed out, in my view, by an objector that the cut into the sloped roof of the lean-to by the front face of the wall to the bay, could not work as shown on the proposed front elevation plan. Unless the projection of the bay out from the main front wall is reduced, which is not shown on the submitted plans, the front face of the bay wall between the upper and ground floor windows would inevitably come to the outer/eaves line edge of the lean-to roof. That would mean a significant part of the wide bay wall would still be visible, which would create an awkward visual juxtaposition with the narrower window above. Alternatively, the lean-to roof would need to project out much further to allow for the wrap around effect of the bay as envisaged by the proposed front elevation plan. That is not shown either.
20. With the above in mind, cutting the reduced size first-floor window into the lean-to roof would not create the impression of a hanging oriel bow window as envisaged. Also, even after reducing the width of the first-floor window, it appears to me that it would still be broader than the other oriel windows on this side of the road. The proposal would, therefore, not correspond with the lean-to roof arrangement that is present under an oriel window next door at No. 4. Next door the oriel window is probably an original window that does not project out from the main wall as much as the two-storey bay at the appeal house. Consequently, the cut into the lean-to roof was achievable by only clipping the bottom edge of the underside wall to the bow window and leaving the oriel feature largely intact.
21. In terms of other alterations, the proposed thinner roof profile to the right-hand bay on the appeal house would also create a visual imbalance with the greater thickness of the roof profile on the left-hand bay.
22. Regarding the middle first floor window, which as approved would have been an oriel design, the previous Inspector found that its position and size would not be harmful. Nevertheless, the Inspector did find that *"its design including lack of detailing would be in stark contrast to the more decorative first floor bow windows prevalent along this side of the road. I therefore find that the proposed central first floor window and the loss of the bow windows would also be harmful to the cohesiveness of the semi-detached pair and the street scene and would further dilute the quality of the scheme"*. I agree and this part of the current proposal remains the same as the previous appeal scheme.
23. Cumberland Road may not be specifically referenced in the Barnes Village Planning Guidance (VPD) and the proposal may not include development that is one of the threats to the character of the area identified in the VPD. Furthermore, the site is not in a designated Conservation Area wherein there is a requirement to preserve or enhance the character or appearance of the area. Nevertheless, that does not mean development should not add to the overall quality of the area, be visually attractive as a result of good architecture, and be sympathetic to local character as required by the NPPF.
24. I note that there was support for the appeal scheme. Much of the points raised cover design and matters already considered. None of this support persuades me away from my earlier findings. I accept that by taking account of other houses, including in other roads, there may be a greater variety of designs. Nevertheless, in this street scene, the appeal scheme would look out of place. No other matters raised lead to any different conclusions.

25. I have considered the proposal on its merits, and I carried out another Inspector site visit to see for myself the street scene. For the reasons given, the design proposed would harm the character and appearance of the host building and the area. However, the previous Inspector's decision is a material consideration which has been referred to by the Council and the appellant. All in all, whilst I have also had regard to the submitted design justification for the scheme and the evolution of the ideas that led to the preferred design solution, the scheme does not successfully address the previous Inspector's concerns either.
26. The appellant suggests that policy LP39 "Infill, Backland and Backgarden Development" from the Richmond Local Plan (LP) may not be relevant because this was not an infill plot. However, it seems to me that demolition of the existing dwelling meant that there was a plot left then to fill. Moreover, I note in the explanation to the policy that it "*could apply to a separate unit or units or an extension to an existing unit or outbuildings*". Clearly, in this case, following the demolition of the former house, the replacement dwelling was an extension to an existing unit. I consider that policy LP39 is relevant.
27. The proposed development would not accord with the aims of policies LP1 and LP 39 from the LP and policies 15 and 28 from the Consultation Draft Richmond LP insofar as they relate to requiring development to take account of local character and be of a high architectural and urban design quality. The proposal conflicts with the development plan taken as a whole. No material considerations indicate a decision other than in accordance with the development plan.

Conclusion – Appeals A and B

28. For the reasons given above, I conclude that the appeals should not succeed.

Gareth Symons

INSPECTOR