



Appeal Decisions

Site visit made on 31 August 2022

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2022

Appeal A Ref: APP/L5810/C/21/3279885

Appeal B Ref: APP/L5810/C/21/3279886

91 Winchester Road, Twickenham TW1 1LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Anthony D'Amico and Appeal B is made by Mrs Charlotte D'Amico against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The enforcement notice was issued on 28 June 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the past four years the construction on the Land of:
 - (i) a ground-floor rear extension; and
 - (ii) a 'L'-shaped rear dormer roof extension and associated alterations to the main roof, including raising of the ridge
 - The requirements of the notice, set out in its paragraph 5, are:
 - 1 In respect of the unauthorised ground-floor rear extension either:
 - (i) remove the unauthorised ground-floor rear extension from the Land and return the Land to its last lawful condition prior to the breach of planning control; or
 - (ii) alter the ground-floor rear extension so that it accords with planning permission ref: 20/3684/HOT (single storey rear extension);
 - 2 In respect of the unauthorised 'L'-shaped rear dormer roof extension and associated alterations to the main roof, including raising of the ridge either:
 - (i) remove the unauthorised 'L'-shaped rear dormer roof extension from the Land and return the Property to its last lawful condition prior to the breach of planning control; or
 - (ii) alter the 'L'-shaped rear dormer roof extension and associated alterations to the main roof, including raising of the ridge, so that it accords with Schedule 2, Part 1, Class B (additions etc to the roof of a dwellinghouse) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The period for compliance with the requirements is three calendar months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) 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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/L5810/W/21/3280010

91 Winchester Road, Twickenham TW1 1LA

- 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 Anthony D'Amico against the decision of the Council of the London Borough of Richmond-upon-Thames.

- The application Ref 21/1257/HOT, dated 17 March 2021, was refused by notice dated 10 June 2021
 - The development proposed is: Single storey rear extension.
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Decisions

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a ground-floor rear extension; and a 'L'-shaped rear dormer roof extension and associated alterations to the main roof, including raising of the ridge, at 91 Winchester Road, Twickenham TW1 1LA, as shown on the plan attached to the notice and subject to the following condition:
 - 1) The roof of the ground-floor rear extension hereby permitted shall not be used for any purpose other than as a means of escape in emergency or for maintenance of the building.
2. I take no further action in respect of Appeal B.
3. Appeal C is allowed and planning permission is granted for a single storey rear extension, at 91 Winchester Road, Twickenham TW1 1LA, in accordance with the terms of the application, Ref 21/1257/HOT, dated 17 March 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: L01A, L02A, E01A, E02A, P01B and P02B.
 - 3) The roof of the ground-floor rear extension hereby permitted shall not be used for any purpose other than as a means of escape in emergency or for maintenance of the building.
 - 4) Other than as shown on the plans hereby approved, no new external finishes (including fenestration), including works of making good, shall be carried out other than in materials to match the existing.

Preliminary Matters

4. For Appeal C, one of the reasons for refusal of the planning application was fire safety. The Council states that a fire safety statement has been provided with this appeal to accord with Policy D12 of the London Plan 2021 and that the fire detail is considered sufficient to meet the requirements of policy. As such, I have no reason to consider this issue any further.

Reasons

Appeal A

5. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are the effect of the appeal development on:
 - the character and appearance of the area; and

- the living conditions of occupiers of No 89, with particular regard to outlook.

Character and Appearance

6. The area is generally characterised by two storey semi-detached houses, each with a two storey rear outrigger. Many of the houses have rear roof extensions and some have ground floor extensions at the rear. The design of these vary.
7. The Council has granted planning permission on the appeal property for a single storey rear extension, Ref: 20/3684/HOT, dated 19 February 2021. That permission remains extant and, in my view, in broad terms, is not dissimilar to that which has been constructed. From the drawings provided¹, the principal differences are that what has been constructed is higher and is set further back from the side boundary with No 89.
8. Viewed from the rear garden of the appeal site, the extension which has been constructed is comparable to the maximum height of the adjacent rear extension at No 93. It sits beneath the first floor windows and is faced in a brick finish which matches the main house. The setback from the side boundary with No 89 shifts the bulk of the extension further away from this neighbouring property, notwithstanding that it is higher than approved.
9. In the particular circumstances of this case, particularly what has been previously approved and taking into account the differences, I do not accept the Council's characterisation of the built extension as bulky, dominant, incongruous, intrusive or out of keeping. Nor do I accept that the extension fails to remain proportionate or subservient to the main dwelling, in light of the above.
10. Viewed from the rear garden of the appeal site, the 'L'-shaped rear dormer roof extension which has been constructed on the appeal property is not appreciably different to what exists on the roof next door at No 93. I have no reason to believe that what is next door is unlawful and so it is an established feature of the character and appearance of the area. On my site visit I saw other similar examples in the immediate vicinity, including one at No 99.
11. I appreciate that the dormer in this appeal may not be permitted, under The Town and Country Planning (General Permitted Development) (England) Order 2015. But this is not a reason why planning permission should be refused. In the context of the dormer established on the next door property, I do not accept the Council's characterisation of the appeal dormer as bulky, dominant or visually harmful. In my view, it merely reflects what exists next door.
12. Whilst not true in all circumstances, it is clearly possible to construct a substantial dormer extension on a house in a position like this without the need for planning permission from the Council. This is clear from the planning history of the appeal site, notably application Ref: 20/3685/PS192, and in this case, I give this material consideration significant weight.
13. I sympathise with the Council's view that the appeal dormer relates poorly to the design of the main dwelling and that it is not subordinate to it. But sited as it is, immediately next to a comparable extension next door, I am not satisfied in this case that it should be resisted.

¹ Particularly Document 3, ie drawing number 21/328/300-Consented

14. In respect of the roof ridge, the appeal property sits within a group of 6 pairs of semi-detached houses. Based on my observations at my site visit, there is variation between the roof ridge heights of the houses in this group. No 83 is higher than No 85, No 89 is higher than No 87 and No 95 is higher than No 97. I have no reason to believe that any of these differences are unlawful. In this context, I do not find the raised roof ridge height on the appeal property objectionable, notwithstanding that the House Extensions and External Alterations Supplementary Planning Document 2015 (the SPD) indicates that raising the ridge of a building is normally unacceptable.
15. Taking all of the above into account, I conclude that the appeal development does not harm the character or appearance of the area. As such, in this regard, I find no conflict with Policy LP 1 of the Richmond Local Plan 2018 (the Local Plan) or the SPD I have been referred to. For the same reason, I also find no conflict with the design policies of the National Planning Policy Framework, that has been referred to in representations received.

Living Conditions

16. The house next door at No 89 has a ground-floor window facing towards the ground-floor rear extension on the appeal property and a ground-floor window facing towards the rear. The Council considers that the scale of the ground-floor rear extension results in a tunnelling effect on these two windows and the Council describes the ground-floor rear extension as overbearing and as causing significant harm to neighbour amenity.
17. Stood in the back garden of the appeal property, the relationship between the appeal extension and these windows on the house next door can be clearly appreciated. Also, photographs have been provided which show the effect of the extension from these viewpoints. The top of the ground-floor extension on the appeal site is set back from the boundary with No 89, more so than the scheme approved by the Council, notwithstanding that it is higher than approved.
18. Having seen the above relationship on site and in the photographs provided, I do not accept in the particular circumstances of this case that the extension is overbearing, resulting in a tunnelling effect, a sense of enclosure or causing significant harm to amenity, particularly taking into account that these houses are semi-detached rather than terraced. A reasonable gap between the extension and the relevant windows on the neighbouring property can be clearly appreciated.
19. I conclude the appeal development does not harm the living conditions of occupiers of No 89, with particular regard to outlook. Nothing has been provided to lead me to a different conclusion on this main issue and nor have my site visit observations given me cause for concern in this regard either. As such, in this regard, I do not find conflict with Policy LP 8 of the Local Plan or the SPD.

Other Matters

20. Many representations received identify that the appeal development does not comply with the relevant planning permission and/or permitted development regulations. I fully appreciate that where planning permission has been granted

- there is an expectation that it should be followed and where this is not the case that it can be upsetting.
21. But planning law allows for planning permission to be granted for development that is being enforced against² and the planning enforcement process is remedial rather than punitive. Moreover, in circumstances such as these, it is not an offence to develop land in breach of planning control.
 22. It simply is not the case that planning permission is granted retrospectively because a development has already been built or that the situation is a *fait accompli* as has been suggested in representations received. Carrying out development without the requisite planning permission carries with it a significant risk if the development is found to be harmful in planning terms. But I have not found harm in this case, as set out in my assessment above.
 23. Moreover, it is not necessarily the case that what has been granted planning permission is the only acceptable form of development on a site. Nor is it the case that a development which does not comply with permitted development regulations is not acceptable. It simply means that it must be assessed against the relevant material planning considerations rather than against the statute which sets out what may be built without an express grant of planning permission from the local planning authority.
 24. Representations received raise concern that allowing the development to remain will set a precedent and a new minimum height and form of development which will potentially spread. But this simply is not the case as each planning application must be decided on its own merits, given the particular circumstances of the case.
 25. My attention has been drawn to what is described as a lack of consultation. But interested parties have been able to express their views about the appeal development, as part of this appeal process. Indeed many have done so and I have taken those views into account before reaching my decision.
 26. Representations received raise concerns about noise, materials, drainage, style and a loss of privacy, sunlight and daylight. But the Council did not identify any of these as reasons for issuing the enforcement notice (or refusing planning permission, in Appeal C) and having seen the appeal site and its relationship with neighbouring properties I see no reason why the Council should have done so either.
 27. The appeal development includes a high level window at ground-floor level on the flank elevation of the extension. But as I saw on my site visit, this does not afford clear views into the neighbouring property, its opposite window on No 89 at first-floor level being obscure glazed in any event.
 28. My attention has also been drawn to works of demolition and development said not to be shown on the drawings submitted. But no further details have been provided. In any event, this is a matter for the Council to consider under section 172 of the 1990 Act, where it is expedient to do so and assuming relevant evidence to support such an allegation exists.
 29. It is said that the Council has validated applications despite non-compliance with its validation checklist. But I am satisfied sufficient information has been

² Sections 174 and 177 of the 1990 Act

provided for me to assess the appeal development in this case and the validation of an application is a matter for the Council rather than a matter for me to deal with in this appeal under section 174 of the 1990 Act.

30. It has been said that the extension is shoddy and structurally unsound. But there is no evidence this is the case and this is a Building Regulations matter in any event.

Appeal A Conditions and Conclusion

31. Consistent with the Council's case on Appeal C and in the interests of the living conditions of neighbouring occupiers, a condition is necessary to prevent the flat roof of the ground-floor rear extension being used. As the development has already been built, there is no evidence any other conditions are necessary. Subject to this condition and for the reasons given above I conclude that Appeal A should succeed.

Appeal B

32. The granting of planning permission for the development in Appeal A means that Appeal B, which concerns the period for compliance with the notice, does not need to be considered.

Appeal C

33. Based on the reasons for refusing planning permission that the Council seeks to continue to defend, the main issues in Appeal C are the same as those in Appeal A.
34. In respect of both main issues, I have carefully compared all of the drawings provided. The single storey rear extension in Appeal C is not dissimilar to that in Appeal A, the principal differences being that the Appeal A extension is slightly taller and slightly narrower than the Appeal C extension.
35. Based on my observations at my site visit and the limited nature of the difference in measurements between the two schemes, in this case I do not find the differences lead me to any different conclusions in Appeal C than to my conclusions in Appeal A.
36. Accordingly, I conclude that the appeal development would not harm the character or appearance of the area. As such, in this regard, I find no conflict with Policy LP 1 of the Local Plan or the SPD. For the same reason, I also find no conflict with the design policies of the National Planning Policy Framework, that has been referred to.
37. In respect of living conditions, the extension would be slightly closer to No 89 but lower in height. It seems to me that there is a trade-off between these two dimensions, such that there would be no material difference between the effect of the two schemes in respect of living conditions.
38. I conclude the appeal development would not harm the living conditions of occupiers of No 89, with particular regard to outlook. For this proposal, nothing has been provided to lead me to a different conclusion on this main issue. As such, in this regard, I do not find conflict with Policy LP 8 of the Local Plan or the SPD.

39. Other matters raised in respect of Appeal C reflect other matters raised in Appeal A, which I have addressed above. Given the similarities between the appeal development in Appeal A and Appeal C, there is no need for me to consider these matters any further, as my assessment in respect of them remains the same for Appeal C as it does for Appeal A.
40. The Council has suggested conditions which I have considered taking account of advice in the National Planning Policy Framework and Planning Practice Guidance. As a result I have amended some of them for consistency, enforceability, clarity and reasonableness.
41. Condition 1 is necessary in the interests of certainty, as is Condition 2 which is also necessary in the interests of proper planning. Condition 3 is necessary in the interests of the living conditions of neighbouring occupiers and Condition 4 is necessary in the interests of the character and appearance of the area. Subject to these conditions the appeal should succeed.

Conclusions

42. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the construction of a ground-floor rear extension; and a 'L'-shaped rear dormer roof extension and associated alterations to the main roof, including raising of the ridge, as described in the notice. The enforcement notice will be quashed, and it follows that the Appeal A ground (g) appeal and the Appeal B ground (g) appeal do not fall to be considered.
43. For the reasons given above I conclude that Appeal C should be allowed.

L Perkins

INSPECTOR