

Appeal Decision

Site visit made on 26 June 2017

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 July 2017

Appeal Ref: APP/Q5300/C/16/3149234

Land known as 20 Princes Avenue, Palmers Green, London, N13 6HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Huseyin Cifci against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice was issued on 22 March 2016.
 - The breach of planning control as alleged in the notice is: without planning permission, the unauthorised erection of a rear canopy (outlined in blue on the plan attached to the notice for identification purposes) to the rear of the Premises in excess of the parameters set out within Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) England [sic] Order 2015.
 - The requirements of the notice are to (5.1) demolish the single storey rear canopy (outlined in blue on the plan for identification purposes); and (5.2) remove all resulting materials from the Premises.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) 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. The appeal is dismissed and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

The Alleged Development

2. The appeal concerns a mid-terraced house with a single storey rear extension and back garden. The canopy that is subject to the enforcement notice is attached to and accessed from the extension; both structures span the width of the house.
3. The canopy includes a roof and side walls which are formed of timber and Perspex. It is open to the rear, except for a short stretch of full height timber panelling on the return by the fence to 22 Princes Avenue. The canopy also includes a tiled concrete floor, which is higher than the level of the garden.

The Grounds of Appeal

4. The appeal was originally made on ground (a) alone: that planning permission ought to be granted for the alleged canopy. However, in a letter dated 8 April 2016, the appellant raised issues which related to different grounds of appeal. On advice from the Planning Inspectorate, he introduced grounds (b), (d) and (f) as noted above. The Council and local residents had opportunity to comment.

5. As discussed below, the appellant's case on ground (b) properly relates to ground (c). In the interests of natural justice, and since the Council has always been aware of the points raised by the appellant, I shall consider the appeal as proceeding on ground (c), as well as (b), (d), (a) and (f).
6. Grounds (b), (c) and (d) are legal grounds of appeal. The onus is on the appellant to make his case, to the standard of the balance of probabilities.

The Appeal on Ground (b)

7. Where an appeal proceeds on ground (b), it must be shown that the matters stated in the notice 'have not occurred'. In this case, the appellant has never suggested that the canopy was not erected. There is no dispute that the alleged development occurred, and so the appeal on ground (b) must fail.

The Appeal on Ground (c)

8. Ground (c) is that the matters stated in the notice do not constitute a breach of planning control. An appeal is normally made on ground (c) where it is argued that development has not taken place, or planning permission is not required for the alleged development, or that planning permission is already granted.
9. The appellant suggests that the canopy is permitted by the *Town and Country Planning (General Permitted Development) (England) Order 2015* (the 'GPDO'). The GPDO is a Parliamentary Order which grants planning permission for classes of development – but not on a retrospective basis. Since the GPDO is also subject to revision over time, the appeal on ground (c) could only succeed if the appellant could show that the canopy was permitted by whichever version of the GPDO was in force at the time that the canopy was erected.
10. The appellant has said that the canopy complies with the GPDO 2015 – but his appeal on ground (d) is that the canopy was built more than four years ago, when a version of the GPDO **1995** would have been in force. That said, I find below that there is insufficient evidence for ground (d) to succeed, and I shall therefore consider ground (c) as it has been pleaded, with regard to the GPDO 2015.
11. In respects relevant to this appeal, the GPDO 2015 has not been revised since it came into force on 15 April 2015. Under Article 3 and Schedule 2, Part 1, Class A, the 'enlargement, improvement or other alteration of a dwellinghouse' is permitted subject to limitations and conditions. The appellant has said that the canopy 'does not exceed the parameters set out in...Class A...('30m²)'.
12. From my site visit, I assume that 30m² is a reference to the approximate area of floorspace within the canopy. Whether or not that is right, the appellant has not said how the figure could indicate that the canopy is permitted development. In the GPDO 2015, there is no limitation to Class A development in terms of floorspace *per se*. Paragraph A.1(b) restricts the area of ground which may be covered by buildings within the curtilage of the dwelling, but even the canopy does not breach that limitation, that is not enough for ground (c) to succeed.
13. In the GPDO 2015, paragraph A.1(f) provides that development is not permitted by Class A if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres in the case of a terraced house. The canopy projects by more than 3m from the existing extension, let alone the rear wall of the *original* dwellinghouse.
14. Paragraph A.1(g) in the GPDO 2015 provides that rear extensions to terraced houses which are up to 6m deep may be permitted development, but only where,

in accordance with condition A.4(2), a written description and plans of, plus other information regarding the development are provided to the local planning authority before the development is begun. The appellant did not make a 'prior approval' application and so the development is in conflict with A.1(g).

15. The canopy also conflicts with limitation A.1(k), which provides that development is not permitted if it would 'consist of or include the construction or provision of a verandah'. With its raised and covered floor, the canopy must consist of or include a verandah as defined for the GPDO: '...a platform, usually roofed and often partly enclosed, extending alongside of the outside of the building at ground level'¹.
16. Thus, the appellant has failed to show that the alleged canopy is permitted by Article 3, Schedule 2, Part 1, Class A of the GPDO 2015 – or indeed any previous version of the Order. On the balance of probabilities, the canopy is not permitted by paragraphs A.1(f), A.1(g) and A.1(k). Development has taken place for which planning permission is required and not granted. There has been a breach of planning control and the appeal on ground (c) fails.

The Appeal on Ground (d)

17. The appeal on ground (d) is that, at the date that the enforcement notice was issued, it was too late to take enforcement action. Under s171B(1) of the 1990 Act, where there has been a breach of planning control consisting in the carrying out of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The enforcement notice is dated 22 March 2016.
18. As noted above, the appellant has stated that the rear canopy has been in place for a period exceeding four years – but he has not said when the canopy was actually built. He has failed to provide any evidence in support of his case, such as receipts for building materials or labour, or photographs of the canopy being used over time. He has not demonstrated that the canopy was substantially completed on or before 22 March 2012. The appeal on ground (d) fails.

The Appeal on Ground (a) and the Deemed Planning Application

19. The main planning issue for this appeal is the effect of the appeal canopy on the living conditions of adjoining occupiers.
20. As noted above, the canopy projects at least 3m behind the existing rear extension to the appeal house. It extends to a much greater depth than the small extensions at the neighbouring dwellings, 18 and 22 Princes Avenue. The canopy also stands on the boundaries to those properties, and it is taller than the existing 2m fences.
21. The sides of the canopy are largely translucent Perspex from above the fence lines. Even so, the structure as a whole is sufficiently high, deep, substantial and close by to cast a shadow over 18 Princes Avenue in the morning, and then no. 22 in the afternoon or evening. It will cause a marked loss of sunlight in parts of the back gardens, if not rear-facing rooms at both adjoining properties, so that the occupiers will suffer unacceptable harm to their living conditions.
22. I also agree with the Council that the canopy will cause an unacceptable loss of outlook from the neighbouring properties. Its roof alone is visually conspicuous by reason of its size, height and frame. The structure as a whole will look dominant as and when it darkens the adjoining properties – and that harmful visual impact will be exacerbated by the unsightly appearance of the timber and Perspex materials.

¹ 'Permitted Development Rights for Householders: Technical Guidance'

23. The appellant seems to accept that the canopy is currently harmful to the living conditions of his neighbours, and he has therefore offered to undertake demolition works to the sides of the structure. It is possible in enforcement appeals to permit development subject to a condition that the appellant must submit a scheme to the Council for modification, and the scheme is implemented as approved – but only if the works would clearly overcome the planning objections to the development.
24. I am concerned that the appellant has not described the proposed works with sufficient clarity. He suggested that, after demolition has taken place, the canopy 'will open on at least two sides' – but it is already largely open at the back. The appellant also referred only to 'demolishing the planks of wood' on the sides of the canopy; he did not say whether he would remove the Perspex windows.
25. Even if the appellant is prepared to completely remove both side walls, I consider that such works would not make the canopy acceptable. Its roof on its own would cause an unacceptable loss of outlook and light, as a result of its position, height, size and appearance. It makes no difference if the works would lead to compliance with Building Regulations, because those are set out under separate legislation.
26. I conclude that the canopy causes unacceptable harm to the living conditions of adjoining occupiers, in conflict with Core Policy 30 of the *Enfield Plan Core Strategy 2010-2025*, Policies DMD11 and DMD37 of the *Enfield Development Management Document* and the *National Planning Policy Framework*, which expect development to have regard to its context; promote sustainable neighbourhoods; and not impact on but secure a good standard of amenity for all occupants of land and buildings. The appeal on ground (a) fails and the deemed planning application is refused.

The Appeal on Ground (f)

27. The appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach.
28. This enforcement notice is worded so that it alleges the erection of a canopy and requires that the canopy is demolished. This means that the purpose of the notice is to remedy the breach of planning control. The appeal on ground (f) could only succeed if the appellant proposed 'lesser steps' which would remedy the breach.
29. In support of this ground, however, the appellant has simply repeated his offer to modify the canopy so that it is open on at least two sides. Removing the side walls would not serve to remedy the breach, because a structure would still be in place that requires but does not have planning permission.
30. It also follows from my conclusion on ground (a) that the proposed works would not remedy the harm to amenity. Thus, the appellant has not proposed any lesser steps which would lead me to vary the notice. The appeal on ground (f) fails.

Conclusion

31. For the reasons given and with regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Jean Russell

INSPECTOR