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## Appeal Decision

Site visit made on 23 June 2020

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 July 2020**

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**Appeal Ref: APP/T5150/19/3243281**

**21 North Circular Road, London NW10 0PN**

- 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 Mrs Luminita Ciovina against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice was issued on 2 December 2019.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a canopy extension (shown hatched in black on the attached Plan A), linking the existing rear extension and the outbuilding in the rear garden.
  - The requirements of the notice are:  
STEP 1 Demolish the unauthorised canopy extension (shown hatched in black on the attached Plan A) linking the existing rear extension and the outbuilding in the rear garden.  
STEP 2 Remove all debris and items arising from this demolition and remove all materials associated with the unauthorised development from the premises.
  - The period for compliance with the requirements is 3 months.
  - 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. It is directed that the enforcement notice be:
  - varied by deleting the words "3 months" within schedule 5 (Time for Compliance) and its replacement with "4 months".
2. Subject to this variation, the appeal is dismissed, and 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.

### Ground (a) appeal and the Deemed Planning Application

#### Main Issues

3. The main issues are the effect of the development on:
  - the character and appearance of the host building and the surrounding area; and
  - the living conditions for the occupiers of No 19 North Circular Road, with particular regard to light and outlook.

### *Character and appearance*

4. The appeal site is in a residential area characterised by predominantly two storey residential properties. The appeal property has been previously added to with a single storey rear extension and an outbuilding positioned at the rear of the garden in use as an open sunroom. More recently, a canopy extension has been constructed, between the rear extension and the outbuilding (the subject of this appeal), which extends the built form of the development the full length of the rear garden.
5. Given the depth, height and scale of the canopy in combination with the existing rear extension and outbuilding, it forms a long obtrusive and incongruous feature in the garden, along the boundary with the neighbouring property at No 19 North Circular Road. This is at odds with the prevailing residential character of the area.
6. Whilst there are a number of properties within the area, which benefit from rear extensions and outbuildings, none appear to extend the full length of the rear garden. As such the existence of these other extensions and outbuildings are not directly comparable to the current unauthorised development and does not justify the harm identified above. Nor does the fact that the canopy is made of timber and open on the side facing the appellant's garden, as this is not the case on the other side, where it forms a solid enclosed development, located on the boundary with the adjacent property at No 19. I note that the canopy is not widely visible within from the public realm, however, its presence is clearly apparent and in close proximity of surrounding residential properties.
7. Therefore, in relation to the first main issue, the development has a harmful effect upon the character and appearance of the host building and surrounding area. The development is therefore contrary to Policy DMP 1 of the London Borough of Brent Local Plan Development Management Policies, 2016 (LP), and Policy CP17 of the London Borough of Brent's Core Strategy, 2010 (CS). Amongst other things, these state that development will be acceptable provided it is of a siting, layout, scale, type, density, materials, detailing and design that provides high levels of internal and external amenity and complements the locality; and that development of garden space and infilling plots with out-of-scale buildings that do not respect the settings of the existing dwellings will not be acceptable.
8. The development also runs contrary to the advice contained within Brent's Supplementary Planning Document 2: Residential Extensions and Alterations 2018 (SPD), which amongst other things states that rear extensions should be designed to respect the character and size of your house and that the maximum depth normally permitted is 3.0 metres from the wall of the house. Finally, the proposals would not meet the aims of part 12 of the National Planning Policy Framework, 2019 (Framework), which requires development to be sympathetic to local character and history.

### *Living conditions for the occupiers of No 19 North Circular Road – Light and outlook*

9. Owing to the location and orientation of the canopy in relation to the windows of the neighbouring property at No 19 North Circular Road, and its single storey

height, I am satisfied that it does not result in any loss of light to neighbouring occupiers of No 19.

10. However, the canopy in combination with the existing rear extension and outbuilding extends the full length of the garden along the boundary with No 19, resulting in a dominant and continuous form of development when viewed from No 19. During my site visit I observed that outlook from No. 19 would be severely restricted by this development resulting in an increased sense of enclosure to occupiers of this property.
11. The Council's SPD states that "*extensions to extension may be required to be offset from the boundary*", and that "*an extension up to 6 metres in depth may be acceptable providing that for every additional metre beyond 3.0metres in depth, the extension should be set in from the boundary by an additional metre to protect neighbouring residential amenity*". I appreciate that this depth is in the form of guidance and is not therefore a hard and fast rule. However, it provides a useful indication of depths that may be acceptable in accordance with design codes that the Council can use as set out in chapter 12 of the Framework.
12. In this case, the canopy, together with the existing extension and outbuilding, exceeds this 6m rule and the development is also not set in from the boundary as recommended. Whilst it is made of a timber material and open from the appellant's side, it is not open from the side of No. 19 and has a solid permanent appearance which rises above the pre-existing boundary fence. The result is a development which appears unacceptably dominant and overbearing when viewed from the garden of No 19, thereby harming the living conditions of these neighbouring occupiers.
13. Therefore, whilst I find no harm in relation to loss of light, I consider that the development fails to provide acceptable living conditions for occupiers of No 19, with regards to outlook. Accordingly, the development is contrary to Policy DMP 1 of the LP as supported by the SPD, which seek the aforesaid aims. Furthermore, the development is contrary to paragraph 127 of the Framework which states that development should ensure high standards of amenity are created for future as well as existing users.

#### *Other Matters*

14. The appellant states that the pre-existing fence with No 19 which was 2.85m high is not much different than the canopy. However, whilst a photograph has been provided, I have no details regarding whether this was a lawful structure, or if any planning permission exists for this, noting that a fence exceeding 2m in height would usually require planning permission. As such, based on the evidence before me, I can only attach limited weight to the pre-existing fence. Furthermore, I observed during my site visit that the canopy rises above the pre-existing fence, and therefore results in greater harm.
15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to the character and appearance of the host building and area generally and to the living conditions of neighbouring occupiers with regards to outlook. None of the other matters raised by the appellant, including the benefits provided by the canopy for occupiers of the

appeal site outweigh this harm identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

### **Conclusion on Ground (a) and the Deemed Planning Application**

16. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

### **Ground (f)**

17. The appeals on this ground 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 (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
18. The enforcement notice requires the demolition of the unauthorised development, and as such, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity. I have found under ground a) that the unauthorised development is harmful to the character and appearance of the building and the area generally and to the living conditions of neighbouring occupiers with regards to outlook. It is not therefore excessive to require the unauthorised development to be demolished.
19. The appellant considers that the canopy could be modified and reduced in height to comply with permitted development rights. It has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. An extension/building which exceeds the tolerances of the GPDO is entirely outside permitted development rights. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice.
20. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
21. On this basis, the Ground (f) appeals fails.

### **Ground (g)**

22. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 to 12 months, in order to raise the necessary funds and to hire suitable contractors to complete the required works.
23. I have identified under ground (a) that the development results in harm to the character and appearance of the surrounding area and to the living conditions of neighbouring occupiers with regards to outlook. As such, the 12 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice.
24. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 4 months would strike a more reasonable and proportionate balance in light of

Government policy regarding Covid-19 and restriction of social contact. I shall therefore extend the period from 3 to 4 months for compliance with the notice.

25. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

**Conclusion**

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

*R Satheesan*

INSPECTOR