



Appeal Decisions

Site visit made on 4 August 2020

by Chris Hoults BA(Hons) BPhil MRTPI

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

Decision date: 27 August 2020

Appeal Refs: APP/T5150/C/19/3238016, 3238017 44 Randall Avenue, London NW2 7ST

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
 - The appeals are made by Mrs Germin Mohamed and Mrs Hayat Mohamed against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0211, was issued on 19 August 2019.
 - The breach of planning control as alleged in the notice is the erection of decking and canopy structures to the rear of the premises.
 - The requirements of the notice are: (1) demolish the unauthorised canopy structure to the rear of the premises; (2) alter the decking and reduce the width so that it is in line with the approved plans of pp 16/0813 (only in so far as it relates to the decking); (3) remove all debris and items arising from this demolition and remove all materials associated with the unauthorised demolition from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (b) of the 1990 Act.
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Decision

1. The appeals are allowed insofar as they relate to the erection of decking and planning permission is granted on the applications deemed to have been made under s177(5) of the 1990 Act for the erection of decking, to include balustrade fencing subject to the following condition:

- 1) Unless within 1 month of the date of this decision details of screening to prevent overlooking from the decking hereby approved into neighbouring properties are submitted in writing to the local planning authority for approval, and unless the approved details are implemented within 1 month of the local planning authority's approval, the decking and fencing hereby approved shall be removed from the land and all equipment and materials brought onto the land for the purposes of such removal shall be removed until such time as a scheme is approved and implemented.

If no details in accordance with this condition are approved within 4 months of the date of this decision, the decking and fencing hereby approved shall be removed and all equipment and materials brought onto the land for the purposes of removal shall be removed until such time as the details approved by the local planning authority are implemented.

Upon implementation of the approved details specified in this condition, the screening shall thereafter be maintained so as to fulfil its purpose.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2. The appeals are dismissed and the enforcement notice is upheld insofar as it relates to the canopy structure and planning permission is refused in respect of the structure together with its associated fixings and plastic sheeting on the application deemed to have been made under s177(5) of the 1990 Act.

Ground (b) Appeals

3. An appeal on this ground is on the basis that the breach of planning control alleged did not occur as a matter of fact. The onus is upon the appellants to demonstrate their case, on the balance of probabilities. In 2016, planning permission was granted in respect of the property for side and rear extensions including the erection of decking. The appellants refer to the decking having been erected in 2016, with some remedial work in lowering its height carried out following an inspection by the Council. Three photographs are attached which appear to show the works in progress but they are unclear and undated.
4. They are contradicted by the Council's evidence which refers to a complaint having been received in 2019 about the erection of decking and a canopy. The evidence includes dated photographs which appear to show the decking and canopy in the later stages of completion, which supports a finding that it was erected in 2019 as opposed to 2016. No mention is made of a site inspection in 2016. The approved plans show decking to a depth of 2m extending to 3m in front of the recessed part of the rear elevation. No fencing is shown nor is there a canopy. The decking which has been erected, to include fencing and in particular a canopy, is a significant departure from the approved plans, which is a breach of planning control.
5. The notice was issued in August 2019 so the appellants' references to a date of erection in 2016 can hardly be in support of an appeal under ground (d) of s174(2) of the 1990 Act, that it is too late to take enforcement action against the breach. My reading of their case under this ground is that whatever was erected was with the Council's knowledge and acquiescence, so a breach of planning control cannot have occurred. However, the evidence in support of such a claim is scant and what there is lacks any clarity. The Council's photographs allied to a complaint about the works having been received in 2019, indicates that it is more probable that the decking was erected in that year. Nor can it be disputed that the development enforced against departs from the approved plans therefore a breach of planning control has occurred as a matter of fact. Accordingly, the ground (b) appeals must fail.

Ground (a) Appeals

Main Issues

The main issues are the effect of the development on: (a) the character and appearance of the area; and (b) the living conditions of neighbouring residents, with reference to outlook and loss of privacy.

Character and appearance

6. I deal with the decking and the canopy structure separately. They are separable, given that the canopy has been built on to the decking. I begin by considering the decking.

7. The appeal property is on the western side of Randall Avenue, in an area with a strongly suburban character and a consistent pattern of pairs of semi-detached houses set back along long winding roads. Ground levels generally fall away from front to back leading to open views across the converging gardens at the rear, although the plot boundary with no. 42 is demarcated by trees and bushes lending the rear garden to the appeal property more of a secluded feel. Such is the fall in ground levels that there are steps down from the house to the decking and further steps down into the garden itself.
8. It is a sizeable garden and, in spite of its increased depth relative to the approved plans, the decking is not dominant within it nor by itself does it give an impression of a mass of built development extending unduly into the garden space. The decorative balustrade fencing matches the design of the decking in terms of colour and materials and appears a sensible addition from a safety perspective given the presence of young children.
9. I noted on my visit that, while the decking projects forward of raised patios to the neighbouring properties, it is no more prominent relative to the main dwelling than either of these examples, while the patio to no. 42 also has decorative stone or concrete balustrade. I accept that the decking exceeds the guidance criteria for such structures in the Council's Supplementary Planning Document (SPD2). In terms of depth, the increase seems to me marginal in the circumstances. With regard to width, the approved plans show decking extending to the plot boundary on one side with a narrow gap to the plot boundary (the width of the access path running alongside the main house) on the other. Any increase in width beyond that which is shown on the approved plans likewise appears marginal.
10. Saved Policy DMP1¹ is a general criteria policy relating to all development in the Borough. Criterion (a) is relevant to this development. The materials, detailing and design of the decking complements the locality and complies with this policy. Accordingly, I conclude that no harm arises from the decking to the character and appearance of the area.
11. I now turn to the canopy structure. It is of robust construction, with plastic sheeting mounted on a lattice of timber frames, and is a substantial structure. With regard to the timber frame, I do not necessarily share the Council's criticisms of the quality of the materials used. I noted on my visit however that above a sitting-out area, outside a pair of French windows, the plastic sheeting has been overlaid by sheeting of more solid appearance (presumably to provide shade) which has caused the frame to sag. The plastic sheeting used is corrugated, giving it a somewhat makeshift appearance but also an impression of solidity, which makes it look unduly prominent in its intimate garden setting.
12. It appears as a mass of built development projecting intrusively from the main dwelling and the use of corrugated plastic jars visually in a wider suburban rear-garden setting, even taking account of the presence of a substantial outhouse building (currently unroofed) in the garden of no. 42. There appear to be no other similar structures in the wider locality, which exacerbates the extent to which it appears out of place. I accept that there may be pressing health reasons why members of the appellants' family need to be protected from direct sunlight but that could be achieved through awnings, sunshades etc. or through a more lightweight structure to that which has been erected.

¹ Policy DMP1 of the Council's Development Management Policies Development Plan Document (2016)

13. The materials and design fail to complement the locality and conflict arises with Policy DPM1 in that regard. I agree with the Council that, if permitted, it would create an undesirable precedent and make it harder for the Council to resist similar such developments in the future. Accordingly, and for these reasons, I conclude that this aspect of the development enforced against causes harm to the character and appearance of the area.

Living conditions

14. Under the approved plans, the decking would be raised up from the level of the garden by 0.6m. I saw nothing in the Council's evidence to indicate that, as constructed, this height has been exceeded. On this issue, I can deal with the decking and the canopy together.
15. I noted on my visit that views of the garden to no. 46 can be obtained above the close-boarded fencing demarcating the plot boundary from along the narrow path to the side of the appeal property and that, in conjunction with the step down to, firstly, the decking and, secondly, the level of the garden, the boundary fencing steps down in height also. The fencing to the other plot boundary steps down in broadly similar fashion.
16. I agree with the Council that, as things stand, it would be possible from the decking to look into the windows of habitable rooms to the rear of no. 42, as well as the patio, while views are also afforded of the patio and rear garden to no. 46. This would lead to harm to the living conditions of occupiers of those properties by virtue of being overlooked and a feeling of a loss of privacy. The appellants argue that, conversely, it would be possible for occupiers of the occupier of no. 46 to overlook the appeal property, hence, the justification for the side panels to the canopy.
17. I have concluded that the canopy structure, as a substantial item of construction, would appear out of place in the rear-garden setting of the appeal property and its neighbours. It follows that the side panels to the canopy would, as a feature of solid appearance projecting forward from the raised patios to both the neighbouring dwellings, be an unwarranted dominant presence in the outlook of occupiers. It would intrude significantly into the sense of openness that is typically to be expected in rear-garden views. For these reasons, harm arises to their living conditions. The panels are capable of providing privacy to the appellants and to their neighbours but this is at the expense of harming the outlook of their neighbours.
18. Accordingly, I conclude that, taken as a whole, and while it could mitigate harm by virtue of a loss of privacy, the canopy structure can only achieve that by causing harm to neighbouring residents' outlook and thereby to their living conditions. The Council cites conflict with Policy DMP1 in support of this reason for issuing the notice. I saw no specific reference to residential amenity in the wording of this policy, although criterion (a) refers more generally to high levels of "external amenity" and the canopy fails to provide that. I saw no relevant guidance in SPD2 in relation to structures such as this.
19. As for the decking, there remains, without the screening provided by the canopy, the clear potential for harm to be caused to the privacy of neighbouring residents. However, such harm can in my view be satisfactorily addressed through the provision of screening, by virtue of an increase in the height of the existing boundary fencing to prevent overlooking from the

decking into neighbouring gardens and patio areas. Accordingly, with such screening in place, which can be required by means of a suitably-worded condition (which I deal with below), I conclude that the privacy of neighbouring residents can be safeguarded and that no harm should arise on that account. Compliance with the general aims of Policy DMP1 can be achieved.

Conclusions

20. Accordingly, and for the reasons given above, I conclude that the appeals should succeed in part only. I shall grant planning permission for one part of the matter the subject of the enforcement notice, namely, the decking and its associated fencing. Otherwise I shall uphold the notice and refuse to grant planning permission on the other part, namely, the canopy structure and its associated plastic sheeting and fixings. The requirements of the upheld notice in relation to the decking will cease to have effect so far as they inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act.

Conditions

21. It is necessary and reasonable in the interests of safeguarding the living conditions of neighbouring residents to impose a planning condition providing for suitable screening in the event that I grant planning permission for the decking. The condition is imposed so as to ensure that the required details of screening are submitted, approved and implemented to make the development acceptable in planning terms. This is a straightforward requirement and my expectation is that the parties will deal with the approval of any submitted details and their implementation as approved in a timely manner.
22. There is a strict timetable for compliance as permission is being granted retrospectively and it is not possible to use a negatively-worded condition to secure these requirements before the development takes place. The condition will ensure that the development hereby permitted can be enforced against if the requirements are not met.

C M Hoult

INSPECTOR