



Appeal Decision

Site visit made on 9 September 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/B5480/C/19/3226091

The land known as 30 Berwick Road, Rainham RM13 9QU

- 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 Mr Maurice Crompton against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 25 March 2019.
- The breach of planning control as alleged in the notice is without the benefit of planning permission:
 - i. The erection of mono-pitched canopies each measuring 9 metres in length, 4 metres deep (shown as 'A') on the attached site plan and 4 metres in length, 4 metres deep (shown as 'B') on the attached site plan supported on wheels covering part of the front curtilage of the property which creates an enclosure within the front and side boundaries. The canopies are constructed with polycarbonate sheets (now covered with black plastic sheets) for the roof and metal frame supports and are supported on wheels running along the wall plates along the front of the dwellinghouse and on metal runners mounted on the front boundary wall. The canopies are moved using heavy duty cables on an electric winch; and
 - ii. Within the enclosure on the northern part of the front curtilage a shed/ workshop (shown as 'C') on the attached site plan measuring approximately 6 metres long x 4 metres deep and exceeding 2 metres in height has been built. The shed is secured by two metal double doors which run perpendicular to the front elevation ground floor windows; and
 - iii. The erection of a permanent mono-pitched canopy (shown as 'D') on the attached site plan measuring approximately 1 metre in width and 4m deep using polycarbonate sheets on the roof supported on a wooden frame on the front boundary wall fronting Jordans Way.
- The requirements of the notice are:
 1. Remove the canopy identified as 'A' on the attached site plan supported on wheels; AND
 2. Remove the canopy identified as 'B' on the attached site plan supported on wheels; AND
 3. Remove the shed/garage identified as 'C' on the attached site plan; and supported on wheels all metal and wooden supporting structures in the front enclosure; AND
 4. Remove the canopy identified as 'D' on the attached site plan; AND
 5. Remove all materials and debris accumulated as a result of taking steps 1, 2, 3 and 4 above.
- The period for compliance with the requirements is two months after the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)[a], [c], [f] and [g] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected by the insertion of the words 'supported on wheels' after the words 'site plan' in requirement 4 and varied by the deletion of two months and the substitution of four months as the period for compliance.
2. Subject to the correction and variation, the appeal is dismissed, 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.

Procedural Matter

3. The plan which is attached to the notice identifies three canopies marked 'A', 'B' and 'D' and a shed/garage marked 'C'. The appellant says that canopy D forms part of canopy A, whilst the Council refers to this element as being a 'permanent mono-pitched canopy... supported on the front boundary wall fronting Jordans Way'. The appellant helpfully demonstrated the moving canopies during my site visit, and I was able to confirm that canopy D is attached to canopy A and that both parts move together.
4. The notice is incorrect in so far as it describes canopy D as a fixed canopy, however I do not consider that the parties would be prejudiced by me correcting the notice to take account of this error. Consequently, I shall correct the notice to refer, in the requirements, to canopy D being 'supported on wheels'.

Ground (c)

5. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is also a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
6. The appellants case in respect of this ground is made in relation to canopies A, B and D, but not the shed/garage C. His case is that the canopies do not amount to development, which is defined in section 55 of the Act, as 'the carrying out of building, engineering, mining or other operations...'. He points out that case law has established that in deciding whether operational development has occurred regard should be had to three primary factors; size, degree of permanence and physical attachment.
7. I shall take these primary factors in turn. In terms of size, the appellant says that the canopies measure 9 metres by 4 metres and 4 metres by 4 metres. Given the limited size of the front garden area the canopies are comparatively large. The appellant also says that the canopies could be removed and transported from the site on a flatbed vehicle. Whilst this was not demonstrated to me, the canopies are of such a size that this would be a difficult task, likely to involve several people and further complicated by the presence of high walls around the site.
8. The appellant acknowledges that the canopies have been on the site for nearly three years, however he does not accept that this has established a degree of permanence because the canopies are mobile. As demonstrated to me, canopy A/D and canopy C are capable of being moved independently of one another

and can be placed in various locations within the frame. Consequently, the degree of coverage provided by the canopies can be varied significantly. I have no reason to doubt the appellants account that he has moved the canopies around frequently.

9. However, the canopies are merely placed in different configurations. Hence in terms of their long term presence as a structure they have a degree of permanence which is significant. It follows that they have made a physical change to the land upon which they have been erected. Furthermore, a motor and winding mechanism is used to change the location of the canopies, demonstrating that they cannot be readily moved by hand adding to the notion of permanence.
10. With regard to physical attachment the appellant says that the runners along which the wheeled canopies run are supported by a freestanding metal frame adjacent to the front wall of the dwelling and metal posts immediately behind the boundary wall. I found this to be generally the case during my site visit although there is some evidence of the frame being tied into the front of the bungalow at one end.
11. Drawing all of these strands together, notwithstanding the limited degree of physical attachment, the size of the structure and its degree of permanence render it development, as defined in section 55 of the Act.
12. For the reasons set out above the appeal fails under ground (b).

Ground (a) and the Deemed Planning Application

13. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main issues

14. The main issues are the effect of the development on:
 - The character and appearance of the site and the surrounding area.
 - The living conditions of the occupiers of 32 Berwick Road with particular regard to outlook.

Reasons

Character and appearance

15. Berwick Road is characterised by houses and bungalows of individual designs generally set back from the road edge opposite short terraces of two storey houses with front gardens or hard standings used for car parking. The setback nature of the building line on both sides gives this established residential area a spacious feel and makes a positive contribution to the character and appearance of the area.
16. 30 Berwick Road (No. 30) is a typical example of one of the bespoke bungalows and it occupies a prominent location at the junction with Jordans Way. In comparison with its neighbours No. 30 has a wide frontage to Berwick Road, in the order of twice as wide as the adjacent bungalow (No. 32) and almost four times the width of the terraced houses opposite. The footprint of No. 30 is also

considerably larger than neighbouring houses, incorporating a garage running alongside the pavement on Jordans Way. As such No. 30 is a dominant presence in the street scene.

17. An intrinsic part of the character of Berwick Road are the setbacks of buildings from the road frontage. Whilst the cars parked on the hardstandings detract somewhat from its appearance they are not permanent structures. The high walls and gates which surrounding the frontage of No. 30 are significantly at odds with the character of the streetscene. Nevertheless, as the Council confirms these boundary features are immune from enforcement action. Whilst I agree with the Council that the boundary walls and gates are an unattractive feature in the street, they must be regarded as an integral part of its character.
18. The walls and gates, including the railings and panels which sit behind them, screen the shed/garage C. Consequently, the roof of this part of the structure and the contribution which it makes to the enclosure of the frontage has a very limited impact on the street scene. By contrast, the canopies A/D and B which slide over the top of the shed/garage roof and each other are visible above the walls/gates as is the rail upon which they are mounted which extends over shed/garage C. The visibility of these parts of the structure, and particularly element D which abuts the wall at the junction with Jordans Way, results in the frontage appearing completely enclosed when the canopies are fully in place and significantly at odds with other elements of the street scene when partially in place.
19. Although No. 30 is a dominant feature in the area of itself, the enclosure of its frontage above the level of the wall and gates adds considerably to its bulk and mass as it presents to the street. This is at odds with the spacious character and appearance of the road and has a harmful visual impact.
20. I conclude that the structure comprising canopies B and A/D and the rails which extend over shed/garage C have a harmful effect on the character and appearance of the site and the surrounding area. The development is therefore contrary to Policies 7.4 and 7.6 of the London Plan (2016) and Policies CP17 and DC61 of the Core Strategy and Development Control Policies Development Plan Document (2008) (the Core Strategy and DC Policies) DPD). These policies jointly require new development to provide a high quality design response which allows buildings to make a positive contribution to the character of a place and maintains or improves the character and appearance of the local area.

Living conditions

21. No. 32 is a detached bungalow which shares its boundary with the appeal site. It has two windows facing Berwick Road, one of which is very close to the wall which forms the side boundary to No.30. The frontage to No. 32 is laid to hardstanding which at the time of my site visit was in use for storage.
22. The side boundary wall to No. 30 extends between the front building line of the bungalow and the edge of the pavement. The appellant says that this wall would remain, and that shed/garage 3 is below the level of it. The Council does not dispute this. Whilst the canopies roll over the shed/garage 3 they would not be as significant feature in views from the window closest to the boundary given the angle of view which is primarily towards the road.

23. Having regard to the use of the hardstanding in front of No. 32, the presence of the boundary wall and the limited additional impact arising from the canopies I do not consider that the development has a significantly harmful impact on the outlook from the road facing windows in No. 32.
24. I conclude that the structure comprising canopies A/D and B and the shed/garage C do not have a harmful effect on the living conditions of the occupier of No. 32 by reason of loss of outlook. The development is therefore in accordance with Policy DC61 of the Core Strategy and DC Policies which require development to respect the scale, massing and height of the surrounding physical context.

Conclusion in respect of ground (a) and the DPA

25. Notwithstanding the lack of harm which I have found in regard to the impact on the living conditions of the occupier of No. 32, the harm which I have identified to the character and appearance of the appeal site and the surrounding area is sufficient to warrant refusing planning permission.
26. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

27. An appeal under ground (f) is on the basis 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
28. The appellant argues that his case on ground (f) is intrinsically linked to the case presented on grounds (a) and (c). He then sets out a series of outcomes in relation to grounds (a) and (c) which could lead to the steps of the notice being excessive. However, I have dismissed the appeal on grounds (a) and (c) and consequently none of the scenarios referred to by the appellant are applicable in this case.
29. It has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons the appeal fails on ground (f).

Ground (g)

30. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of 2 months is too short because he has limited means and will have to undertake the removal of the structures himself. As he is an elderly gentleman, he also asks for consideration to be given to the fact that the work will take longer than if carried out by a more able-bodied person. The Council considers that the compliance period is reasonable, and an extended period of 4 months would be excessive.
31. This case has taken some time to resolve as a result of the appellants health and the pandemic. However, throughout that time the appellant is entitled to assume success and that there will be a reasonable period for compliance with the notice. In view of the fact that through no fault of his own we are now

approaching the winter months during which inclement weather is more likely and given the age of the appellant I consider that an extension of the period of compliance with the notice to four months is appropriate.

32. For these reasons, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

33. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application

Sarah Dyer

Inspector