The Planning Inspectorate

Appeal Decision

Site visit made on 7 July 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17th August 2021

Appeal Ref: APP/N5090/C/20/3261804
Land at 71 Cat Hill, Barnet EN4 8HP

- 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 Jahandar Afkham Ebrahimi against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 9 September 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an aluminium canopy to the rear of the property
- The requirements of the notice are
  1. Remove the aluminium canopy and revert the property to its original form.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal 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 Act as amended for the development already carried out namely the erection of an aluminium canopy to the rear at 71 Cat Hill, Barnet EN4 8HP referred to in the notice.

Procedural Matter

2. Revisions to the National Planning Policy Framework were published on the 20 July 2021. The parties were given the opportunity to comment upon those revisions but chose not to do so.

The appeal under ground (b)

3. An appeal under ground (b) is that the breach of planning control has not occurred as a matter of fact. In this instance, it would mean that the appellant disputes that the canopy, the subject of the notice, has been erected. The canopy has been erected and is clearly visible at the appeal site. The appellant who is unrepresented has not addressed ground (b) specifically in his appeal but is of the view that some of the policies referred to by the Council do not relate to the development. However, consideration of policies is not a matter to be addressed under ground (b). As the development exists, the appeal under ground (b) fails.

The appeal under ground (a) and the deemed planning application

Main Issues

4. The main issues are the effect of the development on (i) the character and appearance of the dwelling and the surrounding area and (ii) the living conditions of nearby occupiers particularly 73 Cat Hill.

Reasons

Character and appearance

5. The appeal property is a detached dwelling with a garden to the rear in a largely residential area. The garden is of a generous size and neighbouring gardens are of a similar size. The appeal property sits between No 73 and No 69 Cat Hill with boundary fences to either side and the addition of trellising to the boundary fence with No 69. No 73 is set back as compared to the appeal dwelling and No 69.

6. The canopy, the subject of the notice, consists of a flat roof of glass panels which extends out from the rear extension of the dwelling and is supported on the furthest side from the dwelling by three posts. The canopy is open on three sides and is of style commonly found in domestic gardens and is the same width as the rear extension but slightly lower in height.

7. The open nature and extent of the development mean that any views of it from the neighbouring dwellings and gardens to either side are not significant. Given the position of the canopy to the rear and the length of the garden, there are unlikely to be any wider views beyond the dwellings to either side.

8. The Local Plan Supplementary Planning Document Residential Design Guidance (Adopted April 2016) (the Guidance) is referred to by the Council within its delegated report. Paragraph 14.21 of the Guidance refers to 4 metres deep extensions normally being acceptable for a detached property. The development itself is around 3.15 metres and if considered together with the existing rear extension would exceed 4 metres. However, there is no assessment before me of the more detailed criteria set out in paragraph 14.22 which apply to single storey extensions to the original house.

9. Some of the criteria are clearly not applicable as the appeal dwelling is detached and the Council has not alleged loss of garden space. The criteria includes that ”Extensions should not look too bulky and prominent compared to the size of the main building and garden to which they relate” and even considering the existing extension and the development together, I do not find that to be the case given the design and extent of the development. The remaining criteria relates to living conditions.

10. The Council has referred to the canopy as being an extension to the existing approved rear extension (Ref 17/4675/PNH) and has assessed the overall length of both to be excessive. However, there is a clear visual distinction to be drawn between the solid mass of a brick built extension and a largely open canopy. I do not consider that the development and the original extension subsume the character of the dwelling or find that the development is disproportionate or incongruous. Whilst each development has to be considered on its own merits, no details are provided as to why the Council considers that

the canopy is not in keeping with the suburban residential characteristics of the area.

11. I therefore conclude that the development does not cause harm to the character and appearance to either the dwelling itself or the wider area. There is therefore no conflict with Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document September 2012 which, amongst other things, refers to respecting local context. There is also no conflict with Policy DM01 of Barnet's Local Plan (Development Plan Document) September 2012 (the Local Plan) which, amongst other things, refers to preserving local character. I also find no conflict with the Guidance as paragraph 14.21 has to be considered together with the relevant criteria as set out in paragraph 14.22.

Living conditions

12. The Council's second reason for issuing the notice is similar to the first reason but adds that the development affects the residential amenities of the adjoining neighbouring occupiers particularly No 73. No further details are provided by the Council as to how amenities are affected although the reason refers to a dominant and visually obtrusive form of the development which may imply that outlook is affected. Both neighbouring occupiers have provided comments. The current occupier of No 73 has written in support of the development and considers that there is no obstruction to light or views from his property. Whilst, I have to consider that any grant of planning permission would run with the land and there may be different occupiers of No 73 in the future, given the extent of the development, I do not find that the development does adversely impact the living conditions of occupiers of No 73.

13. The current occupiers of No 69 do object to the development. The issue of how safe the structure is has not been raised by the Council and any concerns would, in any event, be dealt with under different legislation. The occupiers refer to deterioration of light especially during inclement weather when the glass becomes completely opaque. However, it is not clear how the presence of snow, ice, or rain on the flat roof element of the canopy results in a deterioration of light for occupiers of No 69. Although reference is made to the previous extension, from the information provided by the Council, the previous extension has the appropriate planning consent. The original extension already exists and I have previously found a distinction between any visual impact from a solid extension and the canopy. I therefore do not find that the development given its nature, extent and location does adversely impact the living conditions of occupiers of No 69 with regard to outlook or light.

14. For the reasons given above, I conclude that the development does accord with the aims of protecting amenity contained in Policy CS5 of the Core Strategy and Policy DM01 of the Local Plan. Although the Council has referred to the Guidance with regard to this second reason for issuing the notice, I have not been directed to any specific part of it. However, the remaining criteria contained in Paragraph 14.22 relates to an extension not causing a significant sense of enclosure, or loss of outlook from or light to principal windows of habitable rooms of neighbouring properties. On the evidence before me, I find no conflict with that part of the Guidance.

Conditions

15. The Council has not suggested any conditions and the development already exists. The occupiers of No 69 have asked for a condition that no glass be added to the structure in the future so as not to create a further extension to the dwelling. However, any condition would need to meet the tests set out in the Planning Practice Guidance and I am not satisfied on the information before me that such a condition would meet the relevant tests. In any event, the grant of planning permission relates only to the existing structure.

Conclusion

16. For the reasons given, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development that exists as described in the notice.

E. Griffin

INSPECTOR