
Appeal Decision

Site visit made on 16 November 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2021

Appeal Ref: APP/R5510/C/21/3267382

80 Dulverton Road, Ruislip HA4 9AG

- 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 Miss Sally Ryell against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 15 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a single storey rear pergola extension ("the breach").
 - The requirements of the notice are:
 - (i) Demolish the wooden pergola attached to the single storey rear extension shown hatched purple on the accompanying plan; AND
 - (ii) Remove from the land all the debris, items, fixtures and fittings, building materials, plant and machinery resulting from the works listed above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) 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. It is directed that the enforcement notice is:
 - corrected by deleting the words "shown hatched purple on accompanying plan" under section 4.I. of the enforcement notice (what you are required to do) and deleting the site plan attached to the enforcement notice.
2. Subject to this correction, the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The plan attached to the enforcement notice is incorrect in so far as the purple hatched area which attempts to identify the location of the pergola also includes the existing single storey rear extension, which is not the subject of this appeal. However, the appellant appears to have understood the allegation and, in my opinion, the minor error on the site plan does not render the notice unclear. It is necessary however to correct the notice by deleting the incorrect site plan from the enforcement notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.

4. In support of the appeal development, a late letter of representation was received from the appellant's son's key worker. As both parties were made aware of this and have had the opportunity to comment, I am satisfied that neither party are prejudiced by the inclusion of this letter.

The appeal on Ground (c)

5. This ground of appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.
6. The appellant has provided a number of reasons under ground (c), why they consider that the pergola does not constitute a breach of planning control. Firstly, the appellant states that the pergola is not an extension, but a wooden garden feature providing shade, security, and privacy, and also that it does not have a roof or windows or does and therefore is not a permanent structure/extension. However, there is little to indicate that the pergola is temporary. As matter of fact and degree, due to its construction and permanence, this is not clearly a temporary structure. Furthermore, the pergola amounts to a building operation given that it is clearly intended to be permanently in one place, being physically attached to the existing single storey rear extension, and it has resulted in a physical change to the characteristics of the land.
7. The appellant states that the pergola can be painted to protect it from weathering and that plants can be grown on it. However, this is 'planning merits' argument, which will be considered under the ground (a) appeal below.
8. I have also considered whether the pergola complies with Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, Article 3, Schedule 2, Part 1, A.1 (f)(i) of the GPDO requires that the extension should not extend beyond the rear wall of an original terraced dwellinghouse by more than 3 metres. The pergola extension is attached to a pre-existing single storey rear extension, and projects more than 3m from the rear wall of the original dwellinghouse. Therefore, the pergola does not accord to the stipulations of Schedule 2 Part 1 Class A of Town and Country Planning (General Permitted Development) (England) order 2015 (as amended).
9. Therefore, on the balance of probability and based on all the evidence before me, the development does not fall within Article 3, Schedule 2, Part 1, A.1 (f)(i) of the GPDO, for there to be deemed planning permission for the development as built. Therefore, planning permission is required for the development, and there is none in place. There has therefore been a breach of planning control and the appellant has not discharged the onus on them to demonstrate otherwise.
10. Accordingly, the appeal fails on ground (c).

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

Main Issues

11. The main issues are the effect of the development on:

- The character and appearance of the host building and the area; and
- The living conditions for occupiers of the appeal site with particular regard to the provision of amenity space.

Preliminary

12. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

Character and appearance

13. The appeal site is in a residential area characterised predominantly by two storey residential properties. The appeal property has been previously added to with a rear dormer, a single storey rear extension and a single storey outbuilding in the rear garden. More recently, a pergola has been constructed, to the rear of the single storey rear extension, close to the boundary with No 78 Dulverton Road.
14. The pergola when combined with the existing single storey rear extension extends the building considerably. In this regard, the unauthorised pergola introduces an overly dominant and visually discordant feature in the appeal terrace. Furthermore, the pergola currently comprises poor quality materials consisting of an unfinished timber frame, which is at odds with the more traditional materials found in the area. Therefore, despite the structure being largely open, and its position away from any public views, the effect of the development diminishes unacceptably the character and appearance of the host building and the area generally.
15. Whilst there are a number of properties within the area, which benefit from rear extensions, none appear to extend to the same depth as the appeal development before me. As such the existence of these other extensions does not justify the harms identified above. In any event, I have assessed the appeal development on its own merits.
16. The appellant suggests that the appearance of the pergola could be improved by painting or staining it to protect it from weathering and that in future plants can be grown around it. However, I am not convinced that this would overcome the harms identified above, since it is the overall excessive size and scale of the rear additions which is particularly discordant.
17. Therefore, in relation to the first main issue, the development has a harmful effect upon the character and appearance of the host building and the area. The development is therefore contrary to Policy DMHD 1 of the London Borough of Hillingdon Local Plan Part 2 Development Management Policies 2020 (LP). Amongst other things, these state that Planning applications relating to alterations and extensions of dwellings will be required to ensure that: i) there is no adverse cumulative impact of the proposal on the character, appearance

or quality of the existing street or wider area; ii) a satisfactory relationship with adjacent dwellings is achieved; iii) new extensions appear subordinate to the main dwelling in their floor area, width, depth, and height.

Living conditions for the occupiers of the appeal site - private amenity space

18. Policy DMHD 1 Part A of the LP states that Planning applications relating to alterations and extensions of dwellings will be required to ensure that: vi) adequate garden space is retained.
19. The appeal site is a two storey family dwelling, and therefore the quality of the amenity space needs to be assessed accordingly. Whilst the rear extension and outbuilding has reduced the amount of amenity space associated with this property, during my site visit I observed that reasonable sized rear garden space was maintained for occupiers of the dwelling. Furthermore, the pergola, is open at the rear and side and provides an alternative area of outside amenity space, available for occupiers of the site.
20. I therefore conclude that the development has an acceptable effect on the living conditions for occupiers of the appeal site with particular regard to the provision of amenity space, in accordance with Policy DMHD 1 Part A vi), which seek the aforementioned aims.
21. The Council have also referred to Policy DMHB 18 of the LP. However, this refers specifically to new residential development and conversions, and not extension and alterations to existing buildings. I have therefore not assessed the development against this policy which is not relevant to this appeal.

Other Matters

22. The appellant advises that the pergola was constructed for the general well-being of her family and to provide safe place for their son, who suffers from a health condition resulting in extreme anxiety. The appellant also states the pergola allows her son to feel safe and secure whilst being outdoors without being overlooked. Consequently, the provision of the pergola is in the appellant's son's best interests; the best interest of the child is of a primary consideration.
23. In light of the enforcement notice I recognise that the failure of this appeal would result in the removal of the pergola used by the appellant's family and son. This would represent an interference with their rights under Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. I have considerable sympathy with the appellant's personal circumstances and can fully appreciate why they would wish to retain the pergola for their family members. Nevertheless, there is insufficient evidence to justify the size and scale of the development. Furthermore, there are alternative measures which could be explored to provide the same feeling of safety and security for the appellant's sons which do not result in harm to the character and appearance of the host building and area generally.
24. Due to the above factors, there is limited evidence before me to suggest that the removal of the pergola would have a disproportionate effect on the best interests of the appellant's son when weighed against the planning harm set out above. As a result, I can only give the appellant's personal circumstances modest weight in my decision.

Conclusion on Ground (a) and the Deemed Planning Application

25. 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 character and appearance of the host building and area. Lack of harm in respect of living conditions to the occupiers of the appeal site, in regard to the provision of amenity space, does not justify the harm I have identified above under the first main issue.
26. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 (EA). The EA sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the EA. Nevertheless, having regard to the legitimate and well-established planning policy aims to protect the character and appearance of the area, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the appellant's family. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
27. 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.

The appeal on Ground (f)

28. The appeal 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".
29. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
30. The appellant states that they could paint or stain the pergola to protect it from weathering or grow climbing plants around it to blend it in with its surroundings. However, I have already considered these under the ground (a) appeal and have found that they would not overcome the harm to the character and appearance of the area.
31. The appellant also states that they could move the pergola away from the extension wall. However, no drawings/visual materials of these amendments have been submitted, and therefore I am unable to determine what the proposal would look like, or whether it would form part of the development alleged. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.
32. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps

drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.

33. On this basis, the Ground (f) appeal fails.

Conclusion

34. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction 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