
Appeal Decision

Site visit made on 14 June 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal Ref: APP/N5090/C/21/3272204
79 Daneland, Barnet EN4 8PZ

- 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 Teodora Cholakova against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0873/20, was issued on 10 February 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a single storey rear pergola with a retractable roof.*
- The requirements of the notice are to (1) demolish the pergola with retractable roof to the rear of the property; and (2) permanently remove all constituent materials resulting from the works in step (1) from the property.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Main Issues

1. The Council's reasons for issuing the notice give rise to two main issues for consideration: the effect of the development on the character and appearance of the host property and wider area; and its effects on the living conditions of the immediate neighbours at no. 81.

Reasons

Character and appearance

2. The parties dispute whether the pergola amounts to an extension of the dwellinghouse, which is relevant to considering any 'fallback' position that might arise under permitted development rights granted by either Class A or Class E of the relevant schedule to the General Permitted Development Order. From my observations on site, I am satisfied that the pergola amounts to an extension to the dwelling. Although several elements, including the roof, are retractable or can be made open to the elements, the structure as a whole can be made weathertight. It is attached to the rear of the house, contains means of heating and lighting, and provides an extended sitting and dining area.
3. Thus the starting point for comparison would be Class A. The structure itself would not benefit from these rights, for reasons including that its materials do not match the pre-existing house and because its dimensions exceed what is permissible under that Class (at least, without applying for approval before beginning the development).

4. Although there is no specific alternative proposal before me, I have no reason to doubt the appellant's case that the construction of a development pursuant to permitted development rights would, if this appeal were dismissed, be a realistic prospect. However, this is not determinative in this case.
5. The parties also dispute whether the host property is a semi-detached or terraced property: the difference can affect both the application of development plan policies or guidance and of permitted development rights. It was clear from my observations on site that it is an end of terrace property.
6. Relevant development plan policies (particularly CS5 and DM01) require the provision of high quality buildings, developed on an understanding of local characteristics and which should preserve or enhance local character. The Council also refer to other policies, namely D1 and D4 of the London Plan 2021, requiring design that is consistent with local character.
7. The Residential Design Guide SPD ('RDG SPD') provides that the depth of a single storey rear extension normally considered acceptable for terraced properties is 3 metres. However, the design guide goes on to say that one of its objectives is to ensure that any such extension does not look too bulky and prominent compared to the size of the main building and garden to which it relates.
8. Although a terraced property, the host dwelling lies in a suburban residential area where the houses and gardens are generously proportioned. It is in my view therefore quite possible to achieve a rear extension exceeding 3 metres (as this one does, by around a further 1.5m) that does not overwhelm the house or garden in the way the RDG SPD seeks to avoid.
9. The structure is a considerable size, taking up the available width of the property and reaching a maximum height of over 3m where it adjoins the pre-existing dwellinghouse, which itself stands on slightly higher ground than its adjoining neighbour at no. 81. The advantage of the structure in this regard, however, is that it is largely transparent, being glazed to all sides and with a retractable fabric roof. This considerably limits its apparent bulk and thus its impact on the host property, and I consider that the result is a structure that remains subordinate to the host property and which does not appear unduly prominent. There is a substantial garden area remaining available to the occupants, and I do not find that the size of the structure compromises the appearance or use of the available outdoor space.
10. As to the impact on the surrounding area, I observed a number of other properties in the vicinity with substantial rear extensions, inasmuch as views of the properties were available beyond generally high enclosing boundary walls and fences. The structure here is not unduly out of kilter with the pattern of development in the area and I do not find that it disrupts the prevailing character or appearance of the area.
11. Therefore, although the structure is neither permitted development nor compliant with the general aspiration of the RDG SPD to limit rear extensions to 3m in depth, I do not find that it offends the overall policy requirements for development to preserve or enhance existing character or for rear extensions not to appear unduly bulky or prominent. Compliance with the development plan for the area is thus achieved on this issue.

Living conditions

12. At the time of my visit a high garden fence was situated between the host property and its southern neighbour at no. 81. I note the Council's comment that the fence exceeds 2m in height and thus requires planning permission, although I am not informed whether it is deemed expedient to pursue as an enforcement matter.
13. Irrespective of the exact height of the existing (or any future) boundary treatment, I do not find that the structure gives rise to the unacceptable impacts on the neighbouring living conditions for which the Council contends. Again, this results from the particular transparent characteristics of the structure. Although elements of the steel framework will be apparent to the neighbour, the extensive glazing limits the capacity of the structure to result in significant enclosure or to compromise outlook, which the relevant policies and RDG SPD seek to avoid.
14. Thus in this regard also I find no conflict with the development plan for the area resulting from the structure.

Conditions

15. The Council's officer report recommends a condition in the event that the appeal is allowed, requiring the development to be carried out in accordance with a list of plans. However, as the deemed application is retrospective in nature, seeking permission for what is already built, this is unnecessary. Nonetheless, as the particular transparent characteristics of the structure have led to my decision to grant permission, I do find it necessary to impose a condition restricting the ability to make extensions or alterations to it.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted subject to a condition restricting the ability to make alterations to the structure notwithstanding the existence of permitted development rights that might otherwise arise. The condition would not prevent a planning application being made.

Formal Decision

17. 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 1990 Act as amended for the development already carried out, namely the erection of a single storey rear pergola with a retractable roof on land at 79 Daneland, Barnet EN4 8PZ, subject to the following condition:
 - (1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or alterations shall be made to the development hereby permitted.

Laura Renaudon

INSPECTOR