



Appeal Decision

Site visit made on 18 May 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal Ref: APP/D5120/C/21/3278498

56 Grosvenor Road, Belvedere, Kent DA17 5JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Ms Evadne Icellia Brown against an enforcement notice issued by the Council of the London Borough of Bexley.
- The notice was issued on 17 June 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear extension shown in the approximate location outlined in blue on the attached plan and as shown on the attached photographs.
- The requirements of the notice are set out in Annex A.
- The period for compliance with the requirements is: Six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

1. Since the enforcement notice was issued a further structure has been constructed. It is attached to the rear of the extension which is the subject of the notice. The further structure consists of a large plastic roof, supported by wooden beams and posts, standing on a raised platform. The appellant describes it as a pergola.
2. By correspondence dated 30 March 2022, the appellant asked that I consider this pergola structure as part of this appeal. But the development which is before me in this appeal is only that which is described in paragraph 3 of the enforcement notice. It is clear from the photographs referred to in that paragraph, and attached to the notice, that the development does not include what the appellant has described as a pergola. I have dealt with the appeal on this basis.

The Notice

3. As I set out below in the ground (f) appeal, the purpose of the notice appears to be to remedy the breach of planning control. But as currently worded, requirement options 1, 2 and 3 in paragraph 5 of the notice do not require compliance with the terms (including conditions and limitations) of any of the relevant permissions. This would appear to be a drafting error.
4. So drawing on my powers under section 176(1) of the 1990 Act, I shall correct the notice in respect of options 1, 2 and 3 to the effect that each of these

options requires that the extension is altered to comply with the terms of the relevant permission, including the conditions subject to which that permission was/is granted. The appellant has confirmed in writing that they are happy for the notice to be amended in this way and I have no reason to think any injustice would occur as a result.

Reasons

Ground (a)

5. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are the effect of the appeal development on the living conditions of Nos 54 and 58 Grosvenor Road, with particular regard to outlook and daylight, and the effect of the appeal development on the character and appearance of the area.

Living Conditions

6. At my site visit I was able to see over the rear garden fence on either side of the appeal property to view the rear of No 54 and the rear of No 58. This enabled me to compare the extension which has been built with the submitted drawings of what was approved. The extension which has been built reaches up to the first floor sill level on the rearmost part of the appeal property. It is significantly higher than approved.
7. No 54 has a ground floor window on its rearmost part, next to the extension which has been built. Because of the combination of the depth, height and proximity to the boundary of the extension which has been built, occupants of the room behind this window look out to see a high solid wall immediately to their left. Based on my observations, I am not satisfied this effect is not overbearing in terms of the outlook from the room behind this window.
8. No 58 has French doors on its main rear elevation and a ground floor kitchen window on its flank elevation, facing the appeal property. Because of the combination of its depth, height and proximity to the boundary, in my judgement, the extension which has been built creates an overbearing tunnel effect and a sense of enclosure for occupants of No 58 when looking out of its French doors or its flank kitchen window. In respect of No 58, the Council also states that the extension results in a reduction in daylight.
9. The appellant states that the patio doors already look out onto the infill extension and that the increase along this boundary will not create any further impacts upon the light received by this room. But the appellant's case is not further substantiated in this regard. It make no difference whether the occupier of this property did not object when consulted on a planning application as this is no indication of future occupiers' views, and, based on the information provided, what has been built is significantly higher than previous applications.
10. In respect of the effect of the extension on daylight for the kitchen of No 58, the appellant states that a kitchen without a seating area is not normally considered a habitable room. But no authority is stated to support this view and no evidence has been provided of precisely how this kitchen is laid out, ie with a seating area or not. In my experience, in Greater London, a habitable room may include any room used for cooking, such that a kitchen may have a reasonable expectation of daylight.

11. I have taken into account that the kitchen in question appears to have two windows, one looking sideways onto the existing infill extension and one overlooking the garden. But from what I could see over the garden fence, I am not satisfied that there is not a significant loss of daylight to No 58 as a result of the combination of the height, depth and proximity to the boundary of the extension which has been built. No technical assessment of the relevant neighbouring windows/rooms has been provided to support the appellant's assessment in this regard or to lead me to a different conclusion.
12. Even if I am wrong in respect of daylight, I do not find the effect of the extension acceptable in terms of outlook and so my finding on daylight makes no difference to my overall conclusion in respect of living conditions.
13. Taking all of the above into account, I conclude that the appeal development harms the living conditions of Nos 54 and 58 Grosvenor Road, with particular regard to outlook and daylight. In this regard it does not comply with saved Bexley Unitary Development Plan 2004 Policy H9 or Policy ENV39 (in respect of the environment of the occupiers of adjacent property) or Design and Development Control Guideline 2, referred to in the notice.

Character and Appearance

14. The area is characterised by terraced houses with long back gardens which slope down away from each house. Some houses, including the appeal property, have a two storey rear outrigger and some have a single storey rear extension. The design of these varies.
15. But standing in the rear garden of the appeal property, no other extension reflecting the combination of the height and depth of the appeal development can be seen in this context. The appeal development is significantly higher than approved and is not a subservient or subordinate addition to the appeal property. In my judgement, it is therefore not compatible with the character of the surrounding area, particularly in respect of its height.
16. Contrary to what is stated by the appellant, the appeal development may be clearly seen from the public realm on Stream Way. This was obvious on my site visit. It is also clearly seen from neighbouring homes and gardens. I conclude the appeal development harms the character and appearance of the area. In this regard it does not comply with saved Bexley Unitary Development Plan 2004 Policy H9 or Policy ENV39 or Design and Development Control Guideline 2, referred to in the notice.

Other Matters

17. The appellant states that the extension to the rear of the two storey outrigger would fall within the remit of permitted development and that it is only the element projecting from the infill extension that would require planning permission. But there is no evidence that what is alleged in the notice is permitted development, and, it is not right to subdivide the appeal development up into different components to rely on permitted development rights given that no evidence has been provided that the appeal development was not constructed as a single building operation.
18. Other developments in the area have been referred to by the appellant, including those at No 52 and No 62. But based on the information provided, I cannot be certain that the circumstances in the cases referred to were the

same as in the case before me. I am not satisfied the cases referred to provide justification for the harm, identified above, caused by the appeal development in this case.

19. My attention has been drawn to benefits of the scheme and the National Planning Policy Framework and its economic, social and environmental objectives. I have had regard to these as material considerations for the ground (a) appeal.
20. Benefits of the scheme include the provision of additional living space for existing and future occupiers, making an effective use of land, the creation of work for local builders and tradesmen and a potential rise in Council Tax to assist with future service provision. But I am not satisfied any of these separately or cumulatively are of sufficient weight to outweigh the harm identified above.
21. The appellant states that the proposal has been built to comply with all the necessary carbon efficiency requirements. But mere compliance with necessary requirements is a neutral point and not a benefit of the scheme. The lack of any loss of privacy as a result of the appeal development is also not a benefit.

Conclusion on Ground (a)

22. Taking all of the above into account, I conclude that the appeal on ground (a) fails.

Ground (f)

23. An appeal on ground (f) 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 the 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.
24. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
25. Based on the requirements of the notice, I am of the view that the purpose of the notice is to remedy the breach. I say this as options 1, 2 and 3 seek compliance with drawings approved in previous applications and option 4 requires removal of the appeal development. Remedying the breach appears to be what was intended by the Council when drafting the notice and what has been understood by the appellant in their appeal statement. I have no reason to think otherwise.
26. The appellant states that the Council has confirmed that the original permission granted did not allow enough internal head room, and, that as none of the subsequent amendments to that permission included increasing the height of the original permission it is unreasonable to insist that the proposal is either amended in line with those permissions or removed in its entirety.

27. But it is not the responsibility of the local planning authority to ensure that what has been submitted to it for planning purposes can actually be built. A planning permission does not afford a right to build whatever may be required to achieve enough internal head room, if that was not properly considered when the development was designed.
28. If it transpires that what has been approved is not fit for purpose, planning permission should be obtained for an alternative scheme: it does not necessarily justify a larger development which does not have planning permission.
29. I conclude no lesser steps have been suggested which would achieve the purpose of the notice, nor is there any obvious alternative which would achieve that purpose. As such, the appeal on ground (f) fails.

Ground (g)

30. An appeal on ground (g) is that the period for compliance specified in the notice falls short of what should reasonably be allowed.
31. The appellant states that the building trade has had a large uptake in work due to the pandemic and people deciding to have work done on their homes rather than go on holidays and that therefore it is difficult to get hold of a builder or tradesperson without having to go on a waiting list. But the appellant's case is not further substantiated in this regard.
32. The requirements of the notice include 4 different options for compliance. I see no reason why the notice cannot be complied with by any of these 4 options in the period specified in the notice, or why in the same time period planning permission could not be obtained for an alternative scheme that addresses the shortcomings of the approved scheme and that which has been built. I conclude that the appeal on ground (g) fails.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

34. It is directed that the enforcement notice is corrected by:

- the deletion of requirement 1(a) in paragraph 5 of the notice and its substitution with:

"Alter the single storey rear extension to comply with the terms of planning permission reference 20/00648/FUL dated 7 May 2020 or 20/00648/FUL inclusive of non-material amendments under reference 20/00648/FULMIN dated 21 September 2020, including the conditions subject to which the permission was granted; and"
- the deletion of requirement 2(a) in paragraph 5 of the notice and its substitution with:

"Alter the single storey rear extension to comply with the terms of the decision dated 21 August 2020 for application reference 19/02070/LDCP, including the conditions and limitations that permission is subject to; and"

- the deletion of requirement 3(a) in paragraph 5 of the notice and its substitution with:

"Alter the single storey rear extension to comply with the terms of the decision dated 20 February 2020 for application reference 19/02715/LDCP, including the conditions and limitations that permission is subject to; and"

35. Subject to these corrections, 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.

L Perkins

INSPECTOR

Annex A: The Requirements of the Notice (as drafted)

In order to comply with this Notice you are required to:

Either:

- 1(a) Construct the single storey rear extension to comply with the drawings approved under application references 20/00648/FUL or 20/00648/FUL inclusive of non-material amendments under 20/00648/FULMIN; and
- 1(b) Remove all materials, debris, waste and equipment resulting from compliance with the requirement above.

OR

- 2(a) Construct the single storey [*sic*] rear extension to comply with the drawings approved under application referenced 19/02070/LDCP; and
- 2(b) Remove all materials, debris, waste and equipment resulting from compliance with the requirement above.

OR

- 3(a) Construct the single storey rear extension to comply with the drawings approved under application referenced 19/02715/LDCP; and
- 3(b) Remove all materials, debris, waste and equipment resulting from compliance with the requirement above.

OR

- 4(a) Remove the single storey rear extension shown in the approximate location outlined in blue on the attached plan and as shown on the photographs attached; and
- 4(b) Remove all materials, debris, waste and equipment resulting from compliance with the requirement above.