



Appeal Decisions

Site visit made on 4 October 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal A Ref: APP/L5810/W/21/3285987

40A Milton Road, Hampton, TW12 2LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Stanimir Vasilev against the decision of the Council of the London Borough of Richmond upon Thames.
 - The application Ref 21/2301/FUL, dated 25 June 2021, was refused by notice dated 16 September 2021.
 - The development proposed is erection of a pergola and a garden room - part office/playroom/storage.
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Appeal B Ref: APP/L5810/C/22/3292628

40 and 40A Milton Road, Hampton, TW12 2LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stanimir Vasilev against an enforcement notice issued by the Council of the London Borough of Richmond upon Thames
 - The notice, numbered 21/0161/EN/UBW, was issued on 31 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years, the unauthorised erection of a pergola affixed to the rear of the building at ground floor level of the Land.
 - The requirements of the notice are to:
 - (i) Remove the rear pergola from the Land; and
 - (ii) Remove from the Land any materials, rubble and debris arising from compliance with step 5(i) above.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.
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Decisions

Appeal A

1. Appeal A is dismissed.

Appeal B

2. It is directed that the enforcement notice is varied by the deletion of one month and the substitution of three months as the period for compliance. Subject to this 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.
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Preliminary Matters

3. In respect of Appeal A, the Council has confirmed that it has no objection to the proposed garden room and the planning history set out in its Enforcement Delegated Report states that planning permission has been granted for this development. The same report also established that the planning application which is the subject of Appeal A related to the retention of the pergola. Consequently, the pergola which is the subject of Appeal A and Appeal B is the same structure. Based on my observations and the information available, I was able to also confirm this at the site visit.

Appeal A, Appeal B ground (a) and the Deemed Planning Application (DPA)

Main Issues

4. Whilst the Council's reasons for refusal of the planning application do not include concerns regarding the effect of the development on the character and appearance of the site and the surrounding area this is included in the Council's reasons for issuing the notice. As this is a material consideration, I have determined both appeals on this basis. Therefore, the main issues in Appeal A and Appeal B ground (a) are the effect of the pergola on:
 - the living conditions of the occupiers of 40 Milton Road; and
 - the character and appearance of the site and the surrounding area.

Reasons

Living conditions

5. 40 Milton Road is a two storey detached building in an established residential area. The building is divided into two flats on the ground and first floors respectively. The rear garden has been subdivided to provide two separate gardens one serving each of the flats. Number 40 is the ground floor flat (No.40) which is in separate occupation to the first floor flat (No.40a) that is lived in by the appellant and his family.
6. Entry to the first floor flat is via a pathway between the building and the site boundary. There is no access from the front of the building. In order to access the entrance to the first floor flat it is necessary to walk beside the rear wall of the building. There is one window in the side elevation and two windows in the rear elevation of the ground floor flat, all of these windows are passed to access the first floor flat.
7. The pergola which is the subject of the appeal has been erected adjacent to the rear of the building and encloses the rear wall containing the two rear facing windows in the ground floor flat. The windows are obscure glazed, and the top part of the window can be opened. These windows serve a bathroom.
8. The bathroom windows are the only windows from which the occupiers of No.40 can view the pergola. The first floor windows serve the appellant's flat and a single storey extension screens views of the pergola from the garden associated with No.40. The view from the bathroom windows is very limited by the type of glazing and the extent of the openings. In this respect in terms of the outlook from No.40 the living conditions enjoyed by the occupiers of that flat are not significantly harmed by the development.

9. The juxtaposition of the rear windows and the entrance to No.40a would result in comings and goings past the windows causing a degree of disturbance to the occupiers of No.40. However, the pergola is of a scale to accommodate a table and chairs which it is reasonable to conclude would lead to users of the space spending considerable periods of time there. Anyone using the bathroom during those times would be aware of the presence of people who are not part of their household.
10. Whilst the same issues would arise from use of the patio on which the pergola is situated, the pergola provides some protection from the weather. As a consequence, the pergola is likely to be in use more frequently and for longer periods than the patio. This would give rise to a greater degree of noise and disturbance than arises in relation to the use of the patio.
11. The appellant argues that the use of parasols, with or without heating facilities, on the patio would have the same effect on the living conditions of the neighbours as the pergola. Although that would be the case, it is reasonable to assume that the more permanent nature of the pergola would lead to its more extensive use.
12. The occupiers of No.40 would experience noise and disturbance arising from their neighbours using the pergola and would be deterred from using their bathroom windows for ventilation. The impact on the occupiers of No.40 is significantly greater than that associated with the comings and goings to access the entrance to No.40a and amounts to harm to living conditions.
13. Reference has been made to a pergola having been on site for many years prior to the replacement pergola which has been erected. However, the previous pergola was in place when the property was in use as a single dwelling house such that its use would not have had the same impact on living conditions. The replacement pergola required planning permission and the material circumstances of the case have changed since the previous pergola was erected. For those reasons the previous pergola on the site does not establish a precedent for its replacement.
14. In conclusion, the pergola has a harmful effect on the living conditions of the occupiers of 40 Milton Road. The development is contrary to Policy LP 8 of the London Borough of Richmond Upon Thames Local Plan (2018) (the Local Plan), which requires that all development protects the amenity and living conditions for occupants of new, existing, adjoining and neighbouring properties.

Character and appearance

15. The pergola which is the subject of the appeal has been constructed to the rear of the building. Such is the close proximity of the neighbouring building only a very small part of the pergola is visible from the street, and it makes no significant contribution to the street scene.
16. At the rear of the building the garden has been divided lengthwise and as a consequence of its limited width and high fences the garden has a secluded character. There is a single storey flat roof projection to the building which falls within the neighbouring garden and its flank wall provides a boundary between the two gardens.
17. There are extensions at the rear of many of the houses on this part of Milton Road of varying design including flat and pitched roofs. White painted render is

- a typical material in close vicinity to the site at both ground and upper levels. As is common in urban areas a high degree of inter-looking between dwellings and gardens is afforded to their occupiers.
18. The pergola is constructed of timber with a corrugated plastic roof. It is a lightweight construction in comparison with the extensions on other houses and poor quality paintwork contributes to its temporary, insubstantial appearance. The appellant likens the pergola to a garden structure, but it is attached to the building and as such forms a visual part of it.
19. The plastic roof gives the pergola a lightweight appearance but, in this case, this is at odds with the bulk and mass of the building to which it is attached. The contrast between its appearance and the rest of the building results in it having an adverse effect on the appearance of the building as a whole and the character of the rear garden environment.
20. Policy LP 1 of the Local Plan requires all development to be of a high architectural and urban design quality irrespective of whether the building is a heritage asset. Similarly, the policy requirement for development to be compatible with local character is not limited to that which is visible in the public realm.
21. Drawing all of these points together, I conclude that the pergola has a harmful effect on the character and appearance of the site and the surrounding area. The development is contrary to Policy LP 1 of the Local Plan which requires that development is of a high architectural quality and respects local character.

Conclusion

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

Appeal B ground (g)

23. 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 one month is too short because it provides insufficient time for him to raise funds, find a contractor and complete the works.
24. The requirements of the notice are to remove the pergola and remove any materials, rubble and debris associated with the removal. The pergola is a lightweight structure and on the basis of the information before me its removal would be a straightforward operation without the need to employ a specialist contractor.
25. As I have found harm to the living conditions of the neighbours and that harm would continue while the pergola remains in situ, the nine month compliance period suggested by the appellant would be excessive. There is also no substantive evidence to demonstrate that it will take that amount of time to raise funds, employ a contractor and complete the works.
26. There is also no substantive evidence to show that the appellant would not be able to carry out the requirements of the notice within one month. However,

given that he needs to raise funds as well as arrange the works, in my view a one month compliance period falls short of what is reasonable. Therefore, I shall extend the compliance period to three months.

27. For the reasons given above the ground (g) appeal succeeds and I will vary the notice accordingly.

Sarah Dyer

Inspector