



Appeal Decision

Site visit made on 6 October 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2022

Appeal Ref: APP/N5090/C/22/3295784

Land at 69 Engel Park, Mill Hill, London NW7 2HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Mehdi Soleimanzadeh against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/1218/21, was issued on 17 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a front porch and associated canopy.
- The requirements of the notice are:
 - 1) Demolish the front porch and associated canopy.
 - 2) Permanently remove from the site all the constituent parts resulting from the works in 1.
- The period for compliance with the requirements is:
2 months.
- The appeal is made 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 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 in the terms set out below in the formal Decision.

Decision

1. 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.

Preliminary Matters

2. The appeal was initially made on the ground set out in section 174(2)(b) (hereafter 'ground (b)') of the Act but subsequent correspondence with the appellant confirmed that the appeal should also proceed on ground (a) as set out in section 174(2)(a). These grounds are set out in the banner heading above and the appeal has been determined on this basis.
3. In response to the appellant's grounds of appeal in relation to ground (b), the Council also question whether the appellant meant to submit the appeal under ground (c). Although the appellant's submissions neither confirm nor challenge this suggestion, I nevertheless consider this matter below.
4. Both parties have referred to a previously refused application¹ for planning permission for the conversion of the current appeal property into 2no self-contained flats and the erection of a first floor extension. That application was refused and an appeal² was subsequently lodged, but the latter was turned

¹ LPA Ref No: 17/6060/FUL

² APP/N5090/W/17/3191168

away due to the absence of required documents. References to that scheme are not therefore matters before me in the current instance.

The appeal on Ground (b)

5. The ground (b) appeal is that the breach of planning control alleged in the notice has not occurred as a matter of fact.
6. It is not disputed that the porch and canopy has been constructed. It has however been pointed out to me that the extent of the canopy has been reduced since the service of the notice by the removal of that part of it above the ground floor bay window. Nevertheless, what remains in situ is clearly still a porch and canopy as per the notice's description. Moreover, as the wording of section 174(2)(b) of the Act refers to the point at which the notice was issued, its reduction in scale and extent does not alter the fact that the operations alleged in the notice have, as a matter of fact, occurred. For these reasons, an appeal under ground (b) fails.

The appeal on Ground (c)

7. An appeal under ground (c) is made on the basis that it is contended that there has not been a breach of planning control. Examples under ground (c) include, for example, that the works carried out already benefit from planning permission or from the permission granted as 'permitted development' by, in this instance, Part 1, Class D of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order).
8. It is not a point of dispute between the main parties that a porch and canopy has been constructed or that planning permission has not been granted for the works set out in the notice. Nor has the appellant challenged the stated dimensions of the porch and canopy, or the calculation of the resulting floor area, as submitted by the Council.
9. I have not been presented with any further or compelling evidence that would lead me to doubt the dimensions or calculations provided by the Council. Thus, I am satisfied that the porch and canopy, be it as it existed at the point at which the notice was served or in its current reduced form, would not benefit from the permission conferred by Part 1, Class D of the Order and cannot therefore be permitted development. Even if there were no canopy, I am in no doubt that the ground area of the porch would still exceed the 'permitted development' limitations set out in the Order. Furthermore, whilst I note that the appellant states that he was advised by the Council that planning permission was not required for a wheelchair accessible porch, any such advice, if it was made, does not overcome my conclusions. Thus, an appeal on ground (c) therefore fails for the reasons set out.

The appeal on Ground (a)

Main Issue

10. The main issue in respect of the appeal under ground (a) is the effect of the development upon the character and appearance of the appeal property and the surrounding area.

Reasons

11. The ground (a) appeal is that planning permission should be granted for the porch and canopy. Although the appellant acknowledges that it is 'a bit big' it is stated that the structure has been designed to facilitate wheelchair access into the appeal property.
12. The appeal property itself is a modest semi-detached dwelling within a street of similar such properties. Although most dwellings are outwardly similar in terms of their scale, proportions and general appearance, there are subtle differences between them so as to effectively establish two main house types. Of these, the appeal property's design is replicated widely along the street and features a distinctive two storey bay, which carries across to the other half of the building, with curved corners leading to a heavily recessed two storey corner elevation under a substantial overhanging roof.
13. Since the Council served the notice, the appellant has reduced the extent of the structure by removing the part of the canopy roof element which extended across the bay. Whilst the porch remains with overhanging eaves sufficient to maintain a canopy element over the entrance, I turn first to the matter which the notice seeks to attack and in so doing I have given careful consideration to the photographic evidence provided by the Council.
14. The porch and canopy as originally built extended across almost the entire width of the appeal property's front elevation. The porch is bulky and angular and of a sizeable projection from the front of the property. The continuation of the canopy roof from this point across the remaining width of the front elevation resulted in a deeply disruptive, incongruous and unsympathetic form of extension in a prominent position on the front of the appeal property. It also lacked any sense of the subtlety and character displayed by the appeal property's façade and largely subsumed the ground floor element of the distinctive curved 2-storey bay. In a prominent location the porch and canopy as originally built was a jarring and intrusive element within the Engel Park streetscene and detrimental to the character and appearance of the host building and the surrounding area.
15. Despite the subsequent reduction in the extent of the porch and canopy by the partial removal of the canopy roof, the retained overhanging roof structure nevertheless creates a distinct canopy-like element above the reduced porch's front elevation, adding to the harmfully excessive proportions of the porch itself. Moreover, the main body of the porch remains as angular, bulky and blocky as it did in its originally built form, whilst its scale and relationship with the distinctive curved bay, which is a characteristic feature within the street and is repeated widely is unsympathetic, incongruous and intrusive.
16. As a consequence, the porch and canopy dominates the appeal property's front elevation, and is a jarring and disruptive feature within the streetscene which compromises the rhythm and consistency of frontages otherwise largely present and intact along Engel Park. It is, as the Council, correctly in my judgement, state in their reason for issuing the notice, detrimental and harmful to the character and appearance of the appeal property and to the wider Engel Park locality.
17. For these reasons, I conclude that the porch and canopy as initially attacked by the notice, and also subsequently as-built, fails to provide high quality design

reflective of local character or respectful of the appearance, scale, mass and character of its host. The appellant's subsequent suggestion to further alter the roof design does not overcome the harm that arises from the porch and canopy. As such, it is contrary to the aims and provisions of policy DM01 of 'Barnet's Local Plan (Development Management Policies) Development Plan Document' (2012), policies CS1 and CS5 of 'Barnet's Local Plan (Core Strategy) Development Plan Document (2012) and policy D3 of the London Plan (2021)(LP), and as guided by the 'Residential Design Guidance' Supplementary Planning Document (2016).

Other Matters

18. It is stated that the purpose of the porch and canopy is to facilitate accessible wheelchair access to the appeal property. As such, I have given due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and its three aims of the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic and those who do not. Protected characteristics include disability.
19. The porch and canopy would allow the creation of a wheelchair accessible access at the front of the appeal property. The structure's double doors would provide a wide point of entrance whilst the depth of the porch would provide generous space internally for such access. However, for the reasons I have set out above, it would cause significant harm to the character and appearance of the appeal property and to the surrounding area. It has not been demonstrated that alternatives less harmful to character and appearance do not exist, nor from the evidence before me does it appear that it would achieve its stated aims of improving access given the stepped access and differences between external and internal levels. There are no matters which outweigh the significant harm that is caused to the character and appearance of the appeal property and the surrounding area.
20. The appeal was made only on grounds (a) and (b), with a hidden ground (c) and not on grounds (f) that the requirements of the notice are excessive or (g) that the time given to comply with the requirements of the notice is too short. Nevertheless, the porch provides access to the appeal property and is part of the appellant's home. As such, the notice's requirement to demolish the front porch and associated canopy amounts to interference with the appellant's convention rights under Article 8 of the European Convention on Human Rights³.
21. However, given the harm identified in the reasons for issuing the notice and my conclusions in respect of the appeal under ground (a), I am satisfied that the requirement set out pursues the legitimate aim of regulating the use of land in the public interest. The action is both necessary and proportionate. I am also satisfied that, in the absence of a specific (or hidden) appeal under ground (g) that the period of 2 months within which to comply with the notice is both reasonable and proportionate to the situation.
22. I acknowledge the appellant's frustration regarding dealings with the Council but this is not a matter which has any bearing upon my decision.

³ as set out within the Human Rights Act 1998

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. 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.

G Robbie

INSPECTOR