



Appeal Decision

Site visit made on 29 November 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/N5090/C/22/3290761

112 Kings Drive, Edgware HA8 8EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Ms Sarah Smus against an enforcement notice issued by London Borough of Barnet.
 - The notice, numbered ENF/0856/21, was issued on 14 December 2021.
 - The breach of planning control as alleged in the notice is the erection of a single storey extension, the creation of a swimming pool and the erection of an outbuilding and new front porch.
 - The requirements of the notice are:
 1. Demolish the single storey rear extension, the swimming pool to the middle of the rear garden, the outbuilding to the rear boundary, and the front porch.
 2. Permanently remove from the property; of all constituent materials resulting from the works in 1. above.
 - The period for compliance with the requirements is 6 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. 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 extension, the creation of a swimming pool and the erection of an outbuilding and new front porch at 112 Kings Drive, Edgware HA8 8EG as shown on the plan attached to the notice.

Ground (c)

2. Ground (c) is concerned with whether or not the matters stated in the enforcement notice constitute a breach of planning control. The burden of proof falls on the appellant and the standard of proof is the balance of probability.
3. The ground (c) appeal relates to the outbuilding/veranda and the swimming pool only. It is argued that both benefit from permitted development provisions, which appears to be a reference to Class E of Part 1 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015*. Class E permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. However, that general provision is subject to certain limitations set out at paragraph E.1. Paragraph E.1(b) excludes development when the total area of

ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

4. In this case the various items targeted by the enforcement notice cover a substantial area of the garden. The Council has provided an analysis that suggests that the 50% figure is exceeded. The appellant has provided an alternative set of calculations. However, they are not fully explained and it is not clear from the diagrams provided how the porch has been built into the calculations. Accordingly, I prefer the Council's analysis and conclude, on the information available, that the requirement at E.1(b) is not met. Moreover, the outbuilding, which was measured during my site visit, marginally exceeds the maximum height of 2.5m permitted by Class E for a building within 2m of the boundary. It follows from this that neither the pool nor the outbuilding/veranda is development permitted by Class E.
5. It is common ground that the porch slightly exceeds the maximum height of 3m specified by Class D. The extension exceeds the length permitted by Class A. Accordingly, none of the elements benefit from permitted development rights and all required planning permission. The appeal on ground (c) therefore fails.

Ground (a)

Main issue

6. The main issue is the effect of the development on the character and appearance of the house and the area.

The porch

7. The porch exceeds the maximum height permitted by Class D by just 0.1m. This is not discernible in practice and the porch does not appear excessive in height. The porch is asymmetrical, with a pronounced overhang to one side. This may be an unusual design, but it appears to be a deliberate device to produce a characterful addition to the property. While the Council's *Residential Design Guidance* Supplementary Planning Document (SPD) suggests that a porch roof should reflect the roof style of the existing house, I do not see that such general guidance should rule out this small element of individuality. The porch may not match other porches in the area, but it is constructed in complementary materials, does not look out of place on this house and is not visually harmful in my judgement.

The rear extension

8. The extension is a substantial addition to the property. Nevertheless, its scale does not appear excessive in its setting in my judgement, partly helped by being seen in the context of a large rear extension to the neighbouring No 114. The whole house, including the extension, has been finished in white render, allowing the extension to integrate with the building as a whole. The extension can only be glimpsed from the road, limiting its overall visual effect.
9. The Council's SPD suggests a maximum depth of 3.5m for a single storey extension on a semi-detached house. However, it must be borne in mind that 6m extensions are now often permitted development. Indeed, prior approval

was granted for a 6m long extension to the appeal property in 2021¹. Permitted development rights cannot be claimed retrospectively and, in any event, do not apply to this slightly larger building. Nevertheless, given the previously permitted scheme, I do not see that an extension in excess of 3.5m must be ruled out as a simple matter of policy in this instance.

10. The Council says that the extension is about 3.6m high, but this figure appears to include the rooflights. However, being set well in from the edges of the structure, the rooflights are not very noticeable in most views. Moreover, because of their glazed construction, they do not add to the impression of solidity or bulk. Thus, the actual impact of the scheme would not be significantly greater than that of the permitted scheme due to its height.
11. At 6.8m the extension is 0.8m longer than the approved extension. However, the additional length is accounted for by the roof overhang at the rear of the extension, which does not add significantly to the overall bulk of the building and adds a degree of interest to the rear elevation. Overall, while the development carried out is different to the permitted scheme, the visual impact would be similar in my view.
12. For these reasons I conclude that the extension has not harmed the character or appearance of the building or the area.

The swimming pool

13. The swimming pool is a simple construction without any significant adornments other than a cover. Consequently, it has very little effect on the character and appearance of the area. The Council is concerned about overdevelopment of the plot, taking account of the various other additions to the property. However, the pool does not lead to an impression of overdevelopment in my view, being virtually flush with the ground and open in character. In that regard, its effect in terms of development of the site is no greater than that of a garden pond of the same size. When covered, as when I saw it, the effect is little different to that of a slightly raised area of decking. Consequently, and given its modest scale, I do not regard it as harmful to the character or appearance of the area.

The outbuilding and veranda

14. The outbuilding is a flat-roofed building, finished in white with grey detailing. The roof extends beyond the walls of the building to form a covered area around the building. The structure as a whole is large and extends to the full width of the garden.
15. The building was measured at 2.55m at its highest point during my site visit. It protrudes significantly above the boundary fencing to either side of the garden. However, it is located at the bottom end of the garden away from the neighbouring dwellings. Although the Council do not regard large outbuildings as a feature of the area, this building is aligned with a fairly large outbuilding at the neighbouring No10. While the roof extends to the side boundaries, the walls of the building are set well in. As a result, it does not appear excessively large or intrusive. The building has been finished to a good standard to complement the house and its appearance is satisfactory. Consequently, it does not harm the character or appearance of the area.

¹ Ref 19/2962/PNH

Conclusion – character and appearance

16. While a lot of development has been carried out at the appeal property, each element has been designed and finished to result in a combined scheme which has a co-ordinated overall finish and appearance. I have found each individual element to be satisfactory in appearance and the scheme as a whole is satisfactory too. While the Council is concerned about overdevelopment of the plot, a significant grassed area remains. Moreover, the impact of the pool is very limited and does not create the impression of overdevelopment. Consequently, I conclude that the development has not harmed the character or appearance of the house or the area and find no conflict with the aims for design and local character within policies DM01 and CS5 of Barnet's Local Plan, policies D4 and D5 of the London Plan 2021 and the National Planning Policy Framework. While the scheme does not accord with all aspects of the Council's SPD, that is justified in this instance, for the reasons I have given. The Council has made brief references to various other policies but those referred to above appear to me to be the key ones in this instance.

Other Matters

17. In its statement the Council makes some general references to the effect of the rooflights on the amenity of the neighbouring 110 Kings Drive and I have noted also the comments made by an occupier of that property. I viewed the appeal site from the garden of No 110 during my site visit. While the extension is prominent from the rear garden of No 110, it is not unduly overbearing in my judgment and the visual impact of the rooflights is very limited. The outbuilding and veranda can also be seen above the boundary fence but are not intrusive. I have noted concerns regarding the construction process and the fact that development took place without planning permission, but these considerations do not alter my view that the development that has now been completed is satisfactory.

Conclusion

18. For the reasons given above, the appeal on ground (a) succeeds and I shall grant planning permission for the development as described in the notice. The appeal on ground (f) does not therefore fall to be considered. I do not consider that any planning conditions are necessary in this instance.

Peter Willows

INSPECTOR