



Appeal Decision

Site visit made on 7 February 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/A5270/C/21/3286337

Premises known as 62 Cavendish Avenue, West Ealing, London W13 0JQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Baljinder Singh Rehal against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 28 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a rear canopy extension and canopy linking the conservatory and rear outbuilding.
 - The requirements of the notice are:
 - A. Demolish the rear canopy extension, the location of which is shown marked 'X' on the plan attached to the notice;
 - B. Demolish the canopy linking the conservatory and rear outbuilding the location of which is shown marked 'Y' on the plan attached to the notice, and
 - C. Remove all resulting materials from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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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.

The appeal on ground (c)

2. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
3. Although in submissions the appellant refers to the development being temporary or permitted development, no substantive case has been made out under ground (c).
4. By virtue of section 55(1) of the 1990 Act the meaning of 'development' includes the carrying out of building, engineering, mining, or other operations in, on, over or under land and the making of any material change in the use of any buildings or other land. Section 57(1) provides that planning permission is required for development.
5. A 'building' in s.336(1) of the 1990 Act includes 'any structure or erection'. The main characteristics of a building as identified by the courts, as a matter of fact

and degree, are size, permanence and physical attachment. No one test is conclusive.

6. Both canopies were evidently constructed on site and are attached to the ground. Although neither canopy is particularly substantial in size, there is no indication they are to be removed or moved elsewhere. I consider their erection to have been significant enough to constitute a building operation. Consequently, the canopies constitute development which requires planning permission.
7. As a flat the appeal property does not benefit from those permitted development rights granted by Article 3(1) Schedule 2 Part 1 Class A and E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
8. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

9. The main issues are (i) the effect of the canopies on the character and appearance of the property and area generally and (ii) the effect of the canopy between the outbuilding and conservatory on the living conditions of neighbouring occupiers with particular regard to outlook.

Character and appearance

10. The appeal property is a ground floor flat in a semi-detached building, located in a residential area, with a relatively modest garden surrounded by a reasonably tall fence to the rear.
11. Both canopies are constructed from timber, with roofs formed of open timbers covered with a transparent plastic. The canopy between the outbuilding and conservatory is a rudimentary construction which relates poorly to the conservatory and outbuilding in terms of height and appearance and does not represent high quality design.
12. The canopy adjoining the property has a lightweight open design and whilst I have not been directed to any other examples of similar canopies within the area, it is a structure that is often a feature of domestic curtilages. However, it has been built up to and has an awkward relationship with the eaves line and roof of the conservatory.
13. Because of the lack of cohesion between the canopies and existing buildings in terms of siting, form, and materials, together with the extent of building coverage, the canopies appear as incongruous additions which cause the rear of the property to appear overdeveloped and cluttered. Consequently, the canopies have a harmful effect on the character and appearance of the property and area generally.
14. Whilst the canopies are not prominent in wider public views, they will be visible from the upper floor windows of neighbouring dwellings. In such views, the canopies will appear as a discordant feature.

15. I acknowledge that the canopies provide shelter for bikes and both shelter and privacy for the appellant's child whilst playing. However, since there is no evidence before me to demonstrate the appeal development is the only means by which such needs may be met, this is a matter of limited weight.
16. Consequently, whilst localised in its extent, the canopies adversely affect the character and appearance of the host property with consequent harm to the character and appearance of the surrounding area. This is contrary to Policy D3 of The London Plan 2021 and Policies 7.4 and 7B of Ealing's Development Management Development Plan Document Adopted 10 December 2013 (DPD). Together these policies require development to be of high quality and have a positive visual impact.

Living conditions

17. Whilst the canopy between the outbuilding and conservatory projects above the fence, given its lightweight design and open form, it would have no overbearing impact on the outlook from within the neighbouring dwelling or garden. Consequently, there is no conflict with the amenity protection aims of Policy 7B of the DPD.

Conclusion

18. 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.

Felicity Thompson

INSPECTOR