
Appeal Decision

Site visit made on 24 May 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/N5090/C/22/3301920

46 The Drive, Edgware HA8 8PT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Dhanji Kerai against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0140/22, was issued on 18 May 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a canopy attached to the rear extension*.
- The requirements of the notice are to (1) demolish the rear canopy; and (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 three months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. The second requirement of the notice appears to carry a superfluous 'of', but its overall meaning is clear and does not require correction.

Main Issues

2. The Council identified two reasons for issuing the notice. First, it is contended to be detrimental to the character and appearance of the host property and surrounding area, contrary to the relevant provisions of the development plan. Considering this question is therefore the first main issue in the appeal.
3. The second reason concerns the alleged impact of the structure on the living conditions of neighbouring occupiers, said by the Council to be adversely affected by reasons of an undue loss of outlook, overbearing impact and an increased sense of enclosure. The effects of the development on the living conditions of neighbouring occupiers therefore give rise to the second main issue for consideration.

Reasons

Character and appearance

4. The development plan for the area consists of a suite of documents comprising the Barnet Local Plan of 2012 and the London Plan of 2021. Policies CS1 and CS5 of the Local Plan Core Strategy DPD refer to the Council's place shaping strategy and to protecting and enhancing Barnet's character to create high

quality places. The highest standards of urban design are sought, in order to create an accessible, safe and attractive environment. Development in the borough is to respect local context and distinctive local character, creating places and buildings of high quality design. Requirements include protecting and enhancing the gardens of residential properties.

5. Policy CS5 provides that supplementary planning guidance will be provided through a Residential Design Guidance SPD. This was adopted in 2016, and requires that domestic extensions should normally be subordinate to the original house, respect the original building and not be overly dominant.
6. The related Development Management Policies document specifically refers at policy DM01 to protecting the borough's character and amenity. All development should represent high quality design, and development proposals should be based on an understanding of local characteristic. Proposals should preserve or enhance local character and respect surrounding buildings and spaces. Proposals should retain outdoor amenity space having regard to character.
7. Policy D3 of the London Plan has similar aspirations, requiring a design-led approach to optimise site capacity and requiring high quality developments that respond to existing character.
8. Here, the Council contend that the canopy structure by reason of its scale, height, excessive cumulative depth, siting, materials and design, constitutes a disproportionate, incongruous and unsympathetic addition that fails to respect the surrounding buildings or the host property. The subject property is a large detached house, extended to the rear, sitting in a generous plot although, like its neighbours, the house extends to most of the width of the curtilage and thus the houses are reasonably close together. The house's rear garden is generously sized, with an outbuilding to the far end that is as wide as the garden. Between that outbuilding and the house, with the canopy that is the subject of the appeal, the garden is mostly laid to grass with some planting to the sides. There is no tree cover.
9. The canopy itself is steel-framed with translucent plastic overhead, thus creating some shade and protection from the sun but not significantly, if at all, reducing the amount of light received by the patio below. Vertical poles supporting the roof are attached to the ground at generous intervals and the canopy is otherwise open-sided and open-ended. Thus, although a roofed structure and technically an extension to the dwelling, the canopy does not have the appearance or feel of enclosing any space. In itself, it is unremarkable but inoffensive, constructed of materials adequate to its purpose and not detrimentally affecting either the dwelling to which it is attached or the surrounding dwellings.
10. It is the case that the canopy extends the built form of the dwelling further back than its neighbours; the Council remind me that it is an extension to an extension, with a combined depth of over seven metres from the original rear wall of the dwellinghouse. This contravenes the Residential Design Guidance which provides for extensions to detached houses not normally to exceed four metres (or potentially deeper if stepped in from the sides). The appellant raises the possibility of utilising permitted development rights to achieve a like result.

11. Prior approval would potentially be required, however, and so I do not give significant weight to the existence of permitted development rights as a fall back position. However, the Design Guidance is advisory rather than prescriptive and points out the need to consider each proposal on its own merits. Here, although exceeding the depth normally acceptable as set out in the Design Guidance, I do not find that it offends the design principle at paragraph 14.22 that it should not look too bulky or prominent compared with the size of the garden or the dwelling to which it relates.
12. Thus I do not find the detriment to the character or appearance of the area for which the Council contend, and no conflict with the development plan arises.

Living conditions

13. The same policy considerations apply in relation to the assessment of the impact of the development on the living conditions of nearby occupiers. Development Management policy DM01 requires proposals to be designed to allow for adequate privacy and outlook for adjoining occupiers. The Residential Design Guidance SPD states that extensions should not be overbearing or unduly obtrusive, and care should be taken to ensure that they do not result in a harmful loss of outlook or an increased sense of enclosure to adjoining properties.
14. Although the canopy extends deeper than the rear walls of either of the adjoining properties, it is said to be of a commensurate depth with a retractable canopy at no. 48. However, like the Council I give the existence of that canopy little weight because there is no evidence of the extent of its use. Whilst the canopy that is the subject of this appeal will be clearly visible to the neighbours on either side, I do not find that it adversely affects their living conditions in the ways the Design Guidance seeks to prevent (or at all).
15. The canopy does not have the usual effect of an extension on neighbouring properties, with its open sides and translucent roof. There is no undue resulting sense of enclosure or loss of outlook for either neighbour because of the way the structure has been designed and constructed. The neighbours do not have to contend with a solid facing wall, but with an open sided structure which is not overbearing. The current owner of no. 44 does not object to the development.
16. Therefore on this issue I again find that there is no harm caused and no conflict with the development plan for the area.

Conditions

17. The Council have suggested a condition in the event that permission is granted, requiring compliance with the submitted plans. However, as the deemed application is made retrospectively with the development already completed, I find this to be unnecessary. No other conditions are suggested and I consider that none are required.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

19. 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 canopy attached to the rear extension on land at 46 The Drive, Edgware HA8 8PT referred to in the notice.

Laura Renaudon

INSPECTOR