



Appeal Decision

Site visit made on 23 May 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/G5180/C/22/3298147

Land at 35 Ravensbourne Road, Bromley BR1 1HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Marius Sorica against an enforcement notice issued by London Borough of Bromley.
- The notice was issued on 25 April 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a structure forming a timber seating area within the rear garden of the Property. The Structure measures approximately 3.20m in width, 3.70m in length and 2.5m in height. It is located 0.63m from the north-western flank boundary and 2.98m from the rear of the Property.
- The requirements of the notice are to:
 - (1) Permanently remove the structure from the land.
 - (2) Permanently removed from the land, and in a lawful, climate change and environmentally friendly manner, all material associated with (1) above.
- The period for compliance with the requirements is:
3 months
- 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out in the Formal Decision.

Formal 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 made on grounds (a); that planning permission should be granted for what is alleged in the notice - and (g); that the time given to comply is too short. The appellant's case in both respects is set out solely on the appeal form and, in both grounds, very briefly.
3. With regard to the ground (a) appeal no case is made other than that planning permission ought to be granted, essentially repeating the wording of the relevant section of the Act. With regard to the ground (g) appeal, the appellant's case is set out in an equally short manner, namely that a longer period of 6-12 months should be allowed as the appellant was not aware planning permission was required and that the Council had not previously advised that that was the case. I have determined the appeal accordingly.
4. The reasons for issuing the notice refer to Policies 6 and 37 of the Bromley Local Plan (2019) (BLP) and Policy 7.6 of the London Plan. I have been supplied

with copies of the cited BLP Policies but not the London Plan policy. However, from other appeals I am determining elsewhere within London I am familiar with the content, provisions and policy numbering protocol of the London Plan 2021. Thus, Policy 7.6 appears to refer to a policy within the previous (2016) iteration of the London Plan. Whilst cited within the notice, the Council make no further reference to the London Plan in its Statement of Case and nor does the appellant. I have therefore determined the appeal on the basis of the BLP policies provided to me.

The appeal under ground (a)

Main Issues

5. The main issues are the effects of the structure forming a timber seating area upon:
 - The living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance, and outlook; and
 - The character and appearance of the appeal property.

Reasons

Living conditions

6. The structure in question is essentially a pergola; timber framed and open-sided, to which clear plastic sheets have been attached on three sides. The lower portion of each of the side panels are fitted with overlapping timber lattice panels to approximately waist height. Set on a raised timber platform accessed directly from a patio at the rear of the house, the structure is positioned close to the garden fence separating the appeal property's garden area from that of its neighbour.
7. The structure is of a modest size and, at the time of my visit, had various items of furniture within it such as a table and chairs, a fridge and floor-cupboards. Although clearly capable of accommodating groups of people and of providing accommodation in the form of a table and seating, and seating for relaxation, I am not entirely persuaded of its ability to host 'quite large gatherings' as feared by the Council given its size and the amount and arrangement of furniture within it.
8. Nevertheless, it is clear to me from my observations that the structure is intended to provide outdoor accommodation for occupiers in a manner that would allow congregation in a range of weather conditions. Its limited size would also mean that its use for congregation would inevitably result in an intensive and focused use of the structure and immediately surrounding garden close to the neighbouring property.
9. The structure itself is relatively lightweight and provides little, if anything, in terms of noise attenuation between it and the neighbouring property. Furthermore, its position close to the garden fence between the appeal property and its neighbour affords little in the way of distance between source of noise and receptors within the garden and at rear windows of the adjoining property. Taken together, these factors are sufficient to persuade me that the structure's presence would facilitate noise and disturbance that would be harmful to the living conditions of occupiers of the neighbouring property.

10. The plastic sheeting on the side elevation of the structure facing towards the neighbouring garden is opaque and as such direct overlooking between them is restricted as a result. However, the seating area structure's position is such that its elevation closest to the rear of the appeal property affords a degree of intervisibility over, and towards, the area immediately to the rear of the ground floor of No. 37. The proximity of this relationship, where gardens otherwise tend to be relatively secluded by vegetation, is harmful to both privacy and outlook from the rear of No. 37, next door, to the detriment of living conditions of occupiers of that ground floor accommodation.
11. For the reasons set out above therefore, the seating area structure does not respect the amenity of occupiers of neighbouring buildings by virtue of noise, disturbance and outlook and privacy. As such, it fails to secure the high-quality development and design sought by Policies 6 and 37 of the Bromley Local Plan (2019) (LP).

Character and appearance

12. The garden area at the rear of the appeal property is modestly sized. In addition to the appeal structure, there are two further sheds located at the rear of the garden area which occupy much of the garden plot's available width. Together, these three structures occupy a sizeable element of the available garden space between patio and shrubs and vegetation.
13. The garden is, however, relatively secluded from wider public view and limited to oblique views from the closest neighbouring properties on either side. The garden seating area structure's wider visual impact is therefore limited.
14. However, the Council is nevertheless correct to be concerned about the cumulative appearance of the structure, along with other structures in the rear garden of the appeal property. To have three structures sited within a modestly sized garden close to each other and property boundaries creates a somewhat ad-hoc and piecemeal appearance, exacerbated by the plastic sheets fixed externally to each of the structure's elevations.
15. The result is a crude and unattractive structure that fails to respect or complement the character of the host building and adds a further garden structure to those already present in a modestly sized garden. This leads to a piecemeal, ad-hoc and cluttered appearance within the rear garden in an area not notable for a prevalence of garden outbuildings. As a consequence, the appeal scheme is contrary to LP Policies 6 and 37 and the appeal under ground (a) fails.

The appeal under ground (g)

16. A longer period of 6 to 12 months is sought to allow the appellant a chance to apply for planning permission. However, it is clear from the planning history set out in the Council's Statement of Case that planning permission was indeed sought retrospectively for the timber seating structure, and refused, in 2020¹.
17. Nevertheless, an appellant may enter the enforcement notice appeal process entitled to assume success on any ground, even if that success may not ultimately be forthcoming. However, given the structure's timber construction

¹ LPA Ref No: DC/2-0/00986/FULL6 – refused 16 June 2020

and modest physical size, the period of 3 months is not an unreasonable length of time within which to dismantle it and remove the arising materials.

18. No other justification for a longer period for compliance has been put forward. Nevertheless, I am conscious that the notice's requirement to remove the timber seating area would remove an area used to provide an extension of living accommodation associated with the appellant's home. As such, I have considered the appellant's convention rights under Article 8 of the European Convention on Human Rights² as the notice's requirements amount to an interference with those rights.
19. The timber seating area structure provides covered, if somewhat rudimentary, weather-proof seating for the appellant and other occupants to sit and socialise outdoors in connection with the primary occupation of the ground floor flat. A period of 3 months is not an unreasonable period of time for the removal of the seating and other effects within the seating area given its use and role relative to the appellant's flat. Nor is it an unreasonable period of time given the nature of the structure and the materials involved in its construction. Thus, the appeal on ground (g) does not succeed.

Conclusion

20. 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

² As set out within the Human Rights Act 1998