The Planning Inspectorate

Appeal Decision

Site visit made on 23 May 2023

By G Robbie BA(Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/G5180/C/22/3291754
Land at 30 Perry Hall Road, Orpington BR6 0HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Sylvia Coyle against an enforcement notice issued by London Borough of Bromley.
- The notice, numbered 20/00021, was issued on 4 January 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a large wooden structure within the rear garden at the above Land. The approximate measurements of the structure is within 2M from both boundary fences and the pitched roof is approximately 2.8M high which exceeds 2.5 metres in height.
- The requirements of the notice are to:
  a) Remove from the above Land the unauthorised structure described in paragraph 3 and;
  b) Remove from the Land any resulting debris.
- The period for compliance with the requirements is:
  2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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 with variations in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

   1) The deletion of the words 'Within 2 months' and their substitution with the words 'Within 6 months' as the period for compliance at section 6 of the notice.

   Subject to this variation, 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 in the name of Mr Marcus Coyle with a second appeal[1] (subsequently closed)[2] made in the name of Ms Margaret Coyle. The appellant has subsequently clarified that the appeal should proceed in the name of Sylvia Coyle, as correctly set out in the banner heading above. Mr Coyle continues to act as the appellant's agent[2].

3. The appeal is proceeding on the grounds of appeal set out in the banner heading above. Upon submission, the appeal was also made under ground (d).

[1] APP/G5180/APP/C/22/3291755
[2] See e-mail dated 31/01/22 from Marcus Coyle

It is apparent from subsequent correspondence with and between the main parties, and notwithstanding the case initially made with regard to ground (d), the appellant no longer wishes to pursue the appeal on this ground. I have determined the appeal accordingly.

The appeal under ground (a)

Main Issues

4. The main issues are the effects of the wooden structure upon:

- The character and appearance of the appeal property and the surrounding area; and
- The living conditions of occupiers of neighbouring dwellings, with particular regard to outlook.

Reasons

Character and appearance

5. The appeal property is in a mid-terraced location with a reasonably long but narrow rear garden plot in common with the prevailing pattern of properties around it. To the rear of the garden lies a gravelled access lane, from which a number of detached garages and outbuildings are accessed. The appeal property has a double gate that leads from the rear lane and is capable of providing vehicular access to a concrete pad and area of hardstanding between the outbuilding and the rear garden boundary.

6. The wooden structure, essentially a detached timber outbuilding, is a large structure. It occupies almost the entire width of the rear garden plot with only a narrow gap between it and a fence to one side and a wider gap, of sufficient width between it and a fence on the other, that allows access between the two portions of rear garden.

7. Detached outbuildings are not uncommon within the rear gardens and yards of surrounding properties. Nor are larger detached outbuildings, or ones that occupy almost the entire width of the garden plots. However, the prevailing pattern of development is for these buildings to be sited towards the rear, or at the far end, of the garden areas. In this instance, situated towards the centre of the garden area, the wooden structure the notice seeks to attack departs from this prevailing pattern.

8. The building is also raised above the paved garden area and its elevations extend a considerable height above that of the fences on either side. Whilst the building's asymmetric dual-pitched roof is of a relatively shallow pitch, the vertical projection of the elevations above fence height and the additional height to ridge level are such that it is a structure of considerable size.

9. That size is compounded by its proximity to the garden fences on either side, creating a cramped feel to the rear garden. Moreover, and unlike the prevailing pattern of outbuildings in the immediately surrounding area where larger outbuildings tend to be located towards the rear garden boundary, its position more centrally is both incongruous and harmfully disruptive to the generally spacious rear garden areas of neighbouring properties.

10. For these reasons, I conclude that the wooden structure is excessively large and inappropriately sited within the rear garden area. As such, it is at odds with the prevailing character and pattern of development within the surrounding area and erodes the openness created at the rear of properties by their long, thin rear garden areas where outbuildings, where present, tend to be located towards the foot of the garden.

11. Policy 37 of the Bromley Local Plan (BLP) expects all development proposals to be of a high standard of design. A range of criteria are set out to this end. Thus, amongst other matters, proposals will be expected to complement the layout of adjacent buildings and areas.

12. To support BLP Policy 37, '*Supplementary Planning Guidance No.1 General Design Principles'* (SPG1) and '*Supplementary Planning Guidance No.2 Residential Design Principles'* (SPG2) set out general principles for consideration in development schemes. SPG1 recognises that garden areas can be under pressure from development and that the spaces provided by garden plots contribute to the spaciousness and character of the garden blocks whilst SPG2 notes the contribution that garden areas make to the character of the areas around them.

13. For the reasons set out above, the wooden structure within the rear garden of the appeal property fails to complement the layout and development pattern of the surrounding area and would erode the spaciousness within rear garden plots that is otherwise facilitated by the prevailing pattern of development. Even if the appellant were receptive to the alteration of the building's roof profile or the lowering of the roof height, both discounted by the appellant in submissions, this would not be sufficient to overcome the harm arising from the incongruous siting of the building within the rear garden area. The structure in question is therefore contrary to BLP Policy 37 and the guidance set out within SPG1 and SPG2.

14. There is no doubting that the appellant has devoted care and attention towards the structure. It is in good physical and visual condition and appears well-cared for externally and well-appointed internally. This marks it out against other, somewhat dilapidated structures elsewhere within the surrounding rear lane setting. As such, and in isolation, it is a clearly better looking building than many of the detached outbuildings located nearby. However, set against the harm arising from the effects of its scale, location within the garden plot and proximity to side boundaries upon the character and appearance of the appeal property and surrounding area, these factors do not persuade me of the acceptability of the structure.

Living conditions

15. Due to the structure's location within the rear garden, there is not the same degree of separation between it and the rear of neighbouring properties as there is where outbuildings are sited at the far end of the garden areas. Further, because of that siting, the 5 metre long flank elevations close to the garden boundaries emphasise its scale and bulk, and its inappropriate siting. As such, I concur with the Council's assessment that it has a dominant and significant enclosing effect on the outlook from the adjoining properties.

16. Furthermore, the structure's elevated internal floor level increases the intervisibility between the structure and 28 Perry Hall Road. Whilst not

sufficient to allow direct overlooking down into the main garden area of that property, the additional height is sufficient to allow a greater awareness of the presence of residents within the neighbouring garden area than is possible from garden level, and vice versa.

17. It is also the case that the additional height provides an elevated vantage point to look back towards the rear windows of No. 28. Whilst this would be at an oblique angle, and there are no windows on the end elevation of the structure, I can understand the Council's concerns in this respect, as I can those of the occupier of the neighbouring property. Although I accept that there is inevitably a degree of intervisibility inherent with and between closely situated terraced properties, the presence of the garden structure, in this location, nevertheless offers a materially and harmfully increased potential for direct overlooking of, and towards, the rear of the neighbouring property at No. 28 and its garden area.

18. I have noted the appellant's offer of increasing the height of the fence adjacent to the structure in order to mitigate this intervisibility and the building's effect on outlook. I have also considered the appellant's suggestion of the building's re-siting to the 'lower' part of the garden. However, in seeking to resolve one issue, further issues arising from an increased fence height or the re-siting of the building may also come to be, however these revisions may be achieved, particularly given the nature of the responses from the neighbour in these respects. In any event, such alternatives would not in my judgement form 'any part' of the matters referred to in the notice and as such do not fall within the remit provided by section 177(1)(a) of the Act.

19. BLP Policy 37 states that the amenities of occupiers of neighbouring properties should be respected and ensure that they are not harmed by the effects of a scheme upon privacy. The scale and siting of the structure is such that it encourages a harmful degree of intervisibility between it and the rear, and rear garden area, of No. 28. This harm is further compounded by its siting towards the middle of the rear garden plot's overall length where its height and long flank elevations close to the garden boundaries has a dominant and enclosing effect. This compounds the harm to living conditions and amenities as identified above and as such, the structure fails to respect or protect the amenities of occupiers of neighbouring properties, contrary to BLP Policy 37.

The appeal under ground (f)

20. An appeal under ground (f) may be brought if the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.

21. In this case, the notice requires the removal of the structure in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with (s173(4)(a)), the breach being comprised of the structure in its entirety, whereas the steps described by the appellant seek to remedy any injury to amenity caused by the breach. I have dealt with those 'lesser steps' as part of the ground (a) considerations.

22. Given that the purpose of the notice is to remedy the breach of planning control, in the absence of planning permission this can only therefore be achieved by the removal of the unauthorised development and consequently the restoration of the land to the condition it was in before the breach took place. To require this does not, therefore, exceed what is necessary and the appeal on this ground must fail.

The appeal under ground (g)

23. The appeal under ground (g) proceeds on the basis that the Council did not advise the appellant of the outcome of an application for planning permission[3] for the retention of the structure. The appellant states that the 6 month period should have started on 4 January 2022, presumably in relation to when the outcome of the planning application was known, but the notice was dated 4 January 2022, with an effective date of 8 February 2022, and the period for compliance being 2 months from the latter.

24. The appellant cites lost mitigation time and risk to health in support of ground (g). Whilst an alternative period for compliance is not expressly stated within the appellant's ground (g) submission, it can reasonably be inferred that the period of 6 months referred to, whilst perhaps made in error in relation to the lodging of an appeal against the refusal of planning permission, could also be equally applied to an alternative period for compliance with the notice's requirements.

25. The structure that the notice seeks to attack is well-maintained and well-appointed internally and externally. I am also conscious from the evidence submitted and from my observations of the structure during my visit, of the role and facilities it provides the appellant's mother. No further justification has been put forward in support of the appeal under ground (g), but the notice's requirement to remove the structure would remove an area used to provide an extension of living accommodation associated with the appeal property. As such, I have considered the appellant's convention rights under Article 8 of the European Convention on Human Rights as the notice's requirements amount to an interference with those rights.

26. Taking these factors into consideration, a period of 2 months strikes me as being a relatively short period for compliance. Whilst the building is of timber rather than masonry construction, it is a sizeable and well-appointed structure, for which the logistics of the decanting of its contents and removal may not be straightforward. Notwithstanding the length of time since the service of the notice, I do not consider it to be unreasonable for the appellant to be able to benefit from a longer period for compliance with the requirement to remove the structure. In my experience, a period of six months would provide a more reasonable period for making such arrangements whilst still ensuring that the harm arising from the structure is not prolonged. The appeal on ground (g) succeeds in these terms.

Other Matters

27. In addition to consideration of the rights set out under Article 8 of the European Convention on Human Rights, I am also mindful of, and have given due consideration to, the provisions of the Equality Act 2010[4] in relation to the

[3] LPA Ref No: 20/00783/FULL1
[4] Section 149 Equality Act 2010

public sector equality duty. However, for the reasons I have set out, the harm that arises in terms of the building's effect on character and appearance, and the living conditions of occupiers of the neighbouring property outweigh the benefits to the appellant, in logistical and physical and mental health terms, of the retention of the building and the appellant's use of it as, amongst other things, a craft room.

28. It is clear that, for whatever reason, there was a breakdown in communications between the Council, the appellant and the supplier of the building during the course of the earlier application for planning permission to retain the structure. Whilst the appellant's submissions refer in places to the matter of timeliness of the Council's actions I am satisfied that these do no not amount to a hidden ground (d) appeal. Nor does the absence, or the timeliness, of communications by and from the Council, in the manner described by the appellant, amount to a hidden ground (e) appeal. Whilst I am also sympathetic to the appellant's frustration regarding communication with the Council this is not a matter that I have considered further within the scope of the stated grounds of appeal.

29. The number of objections or complaints received is not a determinative factor in this appeal, nor are the motives for those objections and complaints. The matter of land ownership is a private matter between the respective parties and is not a matter that I have considered further in relation to this appeal.

Conclusion

30. For the reasons give above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the variation set out in my formal decision 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