



Appeal Decision

Site visit made on 8 August 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2023

Appeal Ref: APP/R5510/C/22/3300537

63 Warwick Crescent, Hayes UB4 8RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Asif Ali against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The notice was issued on 28 April 2022.
- The breach of planning control as alleged in the notice is without planning permission, the development of an additional ground floor rear extension.
- The requirements of the notice are:
 - (i) Demolish and remove the unauthorised additional ground floor rear extension.
 - (ii) Remove from the land all debris, waste building materials, plant equipment and machinery resulting from the demolition works listed 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.

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 Matter

2. Although in submissions the appellant referred to the development being temporary, such comments are more pertinent to an appeal on ground (c) albeit no substantive case has been made out under ground (c). Nevertheless, since the Council have had the opportunity to comment, I will address this matter as though that ground had been pleaded.

Background

3. A retrospective planning application was submitted and subsequently refused and dismissed on appeal¹ for the extension subject of the enforcement notice. It appears that there has been no material change in circumstances since the previous Inspector's decision and consequently, it is against this background that I have considered this appeal.

The 'hidden' appeal on ground (c)

4. 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.

¹ APP/R5510/D/19/3236482

5. 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.
6. 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.
7. The extension was evidently constructed on site and there is no indication that it is to be removed or moved elsewhere, apparent from the fact that it has remained in place since around April 2019. I consider its erection to have been significant enough to constitute a building operation. Consequently, the extension constitutes development which requires planning permission.
8. Since 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 issue is the effect of the extension on the living conditions of neighbouring occupiers with particular regard to outlook.
10. The extension is a pergola type structure located in close proximity to the shared boundary with 61 Warwick Crescent. Although relatively lightweight in nature, the pergola extension will be clearly visible above the boundary fence from No.61. Given its height, depth, and proximity to the shared boundary, the extension will result in a harmful sense of enclosure and an unacceptable overbearing impact on the outlook from within No.61.
11. This harmful sense of enclosure is exacerbated by the fact that the plot and garden to the rear of No.61 is relatively narrow and the outlook from the house is already limited to some extent by the outbuildings to the rear, the existing extension to the rear of No.63, and the boundary fence.
12. I acknowledge that the extension provides additional space for the appellant's children to play. 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.
13. That there is no identified harm as a result of loss of daylight is a neutral matter which cannot outweigh my above findings.
14. For the reasons given, the extension is contrary to Policies DMHD1, and DMHB11 of the Hillingdon Local Plan Part 2². Together these seek to ensure a good standard of residential amenity is maintained.

Conclusion

15. 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

² London Borough of Hillingdon Local Plan Part 2 Development Management Policies Adopted Version 16 January 2020

the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR