
Appeal Decision

Site visit made on 22 August 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/Q5300/C/23/3318108
45 Melbourne Way, Enfield EN1 1XG

- 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 Ms Selma Akguc against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice was issued on 17 February 2023.
 - The breach of planning control as alleged in the notice is: without planning permission, the unauthorised erection of a partially enclosed canopy (outlined in blue on the attached plan for identification purposes) to the rear of the premises.
 - The requirements of the notice are:
 - 5.1 Remove the rear, partially enclosed canopy (outlined in blue on the plan for identification purposes)
 - 5.2 Remove all resulting materials from the premises.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Main Issues

2. The main issues are the effect of the development upon the living conditions for the neighbouring occupiers of Nos 43 and 47 Melbourne Way, with particular regard to outlook, daylight and sunlight.

Reasons

3. The appeal property is a two storey mid-terraced property, which has been previously extended with a rear dormer roof extension and a single storey flat roof rear extension. A partially enclosed canopy flat roof canopy extension has been attached to the rear extension.
4. Part 2.a of Policy DMD 11 of Enfield Council's Development Management Document, 2014 (DMD) states that single storey extensions must not exceed 3 metres in depth beyond the original rear wall in the case of terraced and semi-detached properties. However, contrary to the above policy the unauthorised

canopy extension, in combination with the pre-existing single storey rear extension far exceeds this maximum depth.

5. With regard to the effect of the canopy extension on the occupiers of No 47 Melbourne Way, the existing canopy structure is largely open on this side (above the existing boundary treatment). Furthermore, No 47 is positioned broadly south of the canopy extension and therefore the development does not result in any overshadowing of this neighbouring property or garden. As such, I am satisfied that the design and single storey height, does not result in any demonstrable loss of daylight, sunlight nor outlook to neighbouring occupiers of No 47.
6. Turning to No 43 Melbourne Way, the 'enclosed' part of the canopy is located close to the shared boundary with this neighbouring property. The canopy appears as a dominant feature in the outlook from windows in the rear elevation of this neighbouring property at ground floor level and from the garden itself. Furthermore, the canopy extension rises well above the existing boundary treatment, and therefore results in greater harm. In this respect the unauthorised canopy extension creates an increased sense of enclosure, and loss of outlook to neighbouring occupiers of No 43, which harms their living conditions.
7. In terms of loss of daylight and sunlight, the canopy extension is positioned broadly south of No 43, and therefore has the potential to result in loss of sunlight to the windows of No 43 and overshadow their garden. The nearest adjacent window and door at No 43 appears to serve a galley kitchen, which is likely to be used to prepare, cook, have meals and converse. To my mind good levels of natural light would be important for carrying out these day-to-day activities. However, no further daylight and sunlight assessments have been submitted to illustrate that the development does not result in any demonstrable loss of daylight, sunlight or overshadowing to this neighbouring property and garden.
8. Consequently, whilst I find no harm to the living conditions for occupiers of No 47, in the absence of any substantive evidence, I am unable to conclude that the development does not result in any demonstrable loss of daylight and sunlight for occupiers of No 43. Furthermore, the canopy fails to provide acceptable living conditions for occupiers of Nos 43, with regards to outlook. Accordingly, the development is contrary to Policies DMD 8, DMD 11 and DMD 37 of the DMD, which amongst other things states that extensions will only be permitted if there is no impact on the amenities of the original building and its neighbouring properties; and that development which fails to have appropriate regard to its surroundings, will be refused.
9. The development is also contrary to paragraph 130 of the National Planning Policy Framework (2023) which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Other Matters

10. The Council have also referred to Policy CP30 of the Enfield Plan, Core Strategy 2010-2025 (2010). However, this policy refers to high quality design and development in the public realm, which does not appear to be relevant to the case advanced by the Council.

11. The appellant argues that the extension and the canopy are within the 6m depth that may have been applied for under the larger householder extension prior approval scheme. However, the Council have confirmed that the canopy was not included, and thus did not form part of the application submitted for prior approval. As such, the canopy does not benefit from prior approval and prior approval cannot be granted for development that has already begun. I therefore attach no weight to this.
12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to the living conditions to neighbouring occupiers. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Conclusion

13. 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.

R Satheesan

INSPECTOR