



Appeal Decisions

Site visit made on 5 October 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023

Appeal Ref: APP/D5120/C/22/3298895 (Appeal A)

21 The Oval, Sidcup DA15 9ER

- 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 Ivo Rodrigues against an enforcement notice issued by the Council of the London Borough of Bexley.
- The enforcement notice was issued on 27 April 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a canopy and roof terrace with raised parapet walls and pillars.
- The requirements of the notice are to remove the canopy, parapet walls and pillars shown in Photographs A and as shown on drawing number DPL.06 under planning reference 21/03719/FUL.
- 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 ('the 1990 Act').

Summary Decision: the appeal is dismissed and the notice is upheld (but, pursuant to Appeal B, is subject to the provisions of section 180 of the 1990 Act).

Appeal Ref: APP/D5120/W/22/3297408 (Appeal B)

21 The Oval, Sidcup DA15 9ER

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr Ivo Rodrigues against the decision of the Council of the London Borough of Bexley.
- The application Ref 21/03719/FUL, dated 10 December 2021, was refused by notice dated 24 March 2022.
- The development proposed is described as retention of canopy and roof terrace with raised parapet walls and pillars.

Summary Decision: the appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and permission for that part is refused.

Main Issues

1. The two appeals each concern the same development, with the Council's reasons for issuing the notice in Appeal A and for refusing planning permission in Appeal B expressed similarly. The first main issue arising from those reasons concerns the effects of the development on the character and appearance of the area, specifically the Oval Conservation Area within which it is situated. The second main issue concerns the effects of the development on the living conditions of the adjoining neighbours, specifically with regard to the questions of whether it is overbearing or overshadowing, causes a loss of outlook to those neighbours or allows for unacceptable overlooking giving rise to a loss of privacy.

Reasons

Character and appearance

2. The development has taken place to the rear of the first floor flat at 21 The Oval, a property whose ground floor is in use as a commercial restaurant, *E/ Iberico*. The development has taken place above the rear of the restaurant.
3. The Oval is a small Conservation Area within the borough. The relevant Conservation Area appraisal has not been supplied, but is referenced in the appellant's statement as deriving its significance from an unusual oval street pattern with open landscaped area, in an otherwise uniform suburban street pattern; local architectural detailing and features giving the buildings a distinctive style and identity, such as the herringbone brickwork on upper floors, the uniform roof line and the white render and timber finish.
4. As its name implies, the Oval Conservation Area consists of an oval-shaped green space, bound on the eastern side by a road and on the western side by a curvilinear row of commercial premises with some residential uses above. The appeal premises lie towards the middle of this row. The Conservation Area itself extends to the rear of the properties, to the western side of the rear service lane and including an additional small triangle of properties to Burnt Oak Lane to the north.
5. Many of the properties have been extended to the rear, largely consisting of flat-roofed single storey extensions some of which, as in this case, extend as far out as the service lane. Upper floor rear extensions of more than around 2m depth are not a feature of the area. Those upper floor rear extensions are of a generally uniform depth and height, consisting of short flat-roofed outriggers sitting just above the rear eaves. There are examples of steps and railings leading to the upper rear entrances to the residences, and the flat roof over the ground floor rear extension here is not alone in its use as a roof terrace. Other appurtenances commensurate with the commercial uses of the ground floor premises are evident, including extractor fans and ducts.
6. The canopy that has been constructed here occupies a significant portion over the rear flat roof of the property. Although to the rear of the properties, which do not benefit from the same pleasant architectural features as the front, the canopy strikes a discordant note by significantly exceeding the depth and height of other rear developments along the parade, disrupting and obstructing the general upper floor building line and preventing views across. Its materials, consisting of wooden frames and translucent plastic, are untypical of the area and do not compliment the building to which they are attached, which is otherwise of conventional construction of a significantly more robust appearance.
7. Policy SP6 of the Bexley Local Plan, adopted in April 2023, requires the application of London Plan and National Planning Policy Framework ('the Framework') requirements for development proposals affecting heritage assets to conserve and enhance the significance of heritage assets, their settings, and the wider historic environment, and the requirements to protect assets from development that is likely to adversely impact on those assets' protected characteristics.

8. The Framework and the London Plan in turn require great weight to be given to the conservation of heritage assets. Any harm to the significance of a heritage assets should require clear and convincing justification. Here, the appellant denies that any harm is caused to the Conservation Area, noting that the development faces a service road which has a range of industrial style and large extensions serving the ground floor commercial units. I accept that this is so, but those other industrial style extensions are commensurate with the commercial uses they are designed to serve. The development here appears unconnected with any such uses and does not benefit from the same design, being described by the appellant as 'lightweight'.
9. The canopy gives rise to harm that, in terms of the Framework, is 'less than substantial'. It could potentially be justified when weighed against the public benefits of the proposal, but none are here identified. It is suggested by the appellant that a planning condition be applied to the effect that the canopy may be used only by the occupants of the first floor flat. Thus it constitutes a private benefit to those occupants.
10. The other element of the development comprises the erection of parapet walls and pillars to surround the roof terrace. Here, the erection of the walls reflects the use of the roof as a terrace, which is not itself exceptional. The height of the walls and pillars is broadly commensurate with some of the elements found atop other flat roofs in the street, such as air vents, solar panels and railings. The walls and pillars, comprising a discrete and severable element of the development that has occurred, do not fail to preserve or enhance the character or appearance of the Conservation Area.
11. Nonetheless the harm to the Conservation Area caused by the canopy is neither justified nor outweighed by any identified public benefits. The development is therefore contrary to the development plan for the area.

Living conditions

12. Complaints are made of the effects of the canopy structure itself, including that it produces overshadowing and overbearing effects to neighbouring occupiers. I observed on site that these complaints are justified, with the canopy overshadowing its neighbour to the north and appearing overbearing to the south, being constructed along that rear side boundary for several metres immediately adjacent to that property's rear windows. It appears to diminish the outlook from within the host property itself, as well as from the neighbouring properties. Although the translucent nature of its roof and sides would allow for some light penetration, nonetheless the depth and height of the wood-framed structure at such close quarters to the neighbouring dwellings give rise to unacceptable impacts on their living conditions.
13. Again I do not find such harm to arise from the construction of the parapet walls and pillars, which are situated below the height of the adjoining windows and thus do not give rise to any overbearing effects, or to any overshadowing or loss of outlook to neighbouring residential occupiers. The issue here is whether, by facilitating the use of the roof as a terrace area, those walls give rise to unacceptable overlooking or loss of privacy.
14. I saw that other roofs in the terrace were being used for domestic purposes without equivalent built security (which is to say, the containing walls provided by those here) and thus there appears some possibility of some domestic use

of the roof terrace even if those elements were to be removed, although it would be most unsafe without any means of enclosure. The principal concern expressed by the Council and by a neighbour is to prevent use of the terrace by customers of the restaurant. I agree that any privacy or overlooking concerns would be exacerbated significantly if this were to be the case, and that such a use would be wholly unacceptable, giving rise to noise concerns too. However, the proposal before me consists of the appellant's suggestion of a planning condition securing that the use of the roof terrace be limited to the occupants of the associated residential flat onto which it faces. This would significantly ameliorate any such concerns.

15. The roof terrace is west facing, and on the south side of the terrace lies a substantial ventilation duct, lying horizontally above the flat roof to the restaurant and turning at 90° around halfway along, leading to the centre. This physical constraint means that use of the roof terrace would be to the north side, away from the windows of the adjoining flat at number 19. As to the adjoining neighbour on the north side, no. 23A, the nearest windows there are frosted, suggestive of a bathroom use.
16. Overall, therefore, the domestic use of the terrace is unlikely to give rise to any unacceptably close overlooking to the habitable rooms of either neighbour. With a domestic use only of the terrace I do not consider that its use would result in undue interference with the privacy of the adjoining neighbours, and therefore that the development would comply with the relevant development plan policy, DP11 of the Bexley Local Plan 2023, to ensure that appropriate levels of privacy and existing amenity are secured.

Conclusion

17. It follows from my reasoning above that the walls and pillars are acceptable, but the canopy structure is not. Therefore I will issue a 'split' decision, granting permission for the elements I have found to be acceptable but otherwise dismissing the appeals.
18. The two appeals here seek permission in equivalent terms, and both retrospectively. To give effect to my conclusions I shall grant retrospective permission in part on Appeal B for the parapet walls and pillars. Although the ground (a) appeal on Appeal A would have succeeded to the same extent, I see no reason to duplicate the permission I am granting on Appeal B. Therefore Appeal A should not succeed, I shall refuse to grant planning permission on the deemed application, and the enforcement notice will be upheld.
19. To the extent that the notice's requirements conflict with the permission I am granting on Appeal B (in other words, the requirements to remove the parapet walls and pillars), those requirements will be overridden by the permission I am granting on Appeal B. This is because section 180 of the 1990 Act provides that where, after the service of an enforcement notice, retrospective planning permission is granted for any development, then the notice ceases to have effect so far as inconsistent with the permission.
20. Overall, then, the effect of the notice will be to require the removal of the canopy within the three months stipulated for compliance. However it will not be effective so as to require the removal of the parapet walls and pillars, because I am granting permission for those on Appeal B.

Formal Decisions

Appeal B

21. The appeal is dismissed in part and planning permission is refused in respect of the erection of a roof canopy structure. The appeal is allowed in part and retrospective planning permission is granted in respect of the construction of a roof terrace with parapet walls and pillars to the rear of 21 The Oval, Sidcup, in accordance with application Ref 21/03719/FUL, dated 10 December 2021, subject to the condition that the roof terrace hereby permitted shall not be used by any persons other than the occupant(s) of the first floor flat at 21 The Oval Sidcup for purposes incidental to the residential use of this property, and for no commercial or business purposes.

Appeal A

22. The appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR