



Appeal Decisions

Site visit made on 14 May 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2024

Appeal A Ref: APP/N5090/C/22/3312824

91 The Greenway, London NW9 5AR

- 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 K Nakrani against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 16 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of the canopy on the rear side of the property.
 - The requirements of the notice are:
 1. Demolish the canopy.
 2. Restore the side/rear of the building to the state in which it was prior to the breach of planning control, as shown in plan numbers PA 05 and PA 06 in application ref:2214192IRCU
 3. Permanently remove all constituent materials resulting from the works in 3. and 4. above from the property
 - The period for compliance with the requirements is 2 months.
 - 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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Appeal B Ref: APP/N5090/W/22/3311779

91 The Greenway, Colindale, Barnet, London NW9 5AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Kishor Nakrani against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/4192/RCU, dated 9 September 2022, was refused by notice dated 2 November 2022.
 - The development proposed is described as: "Retention of external canopy on the rear side of the property (Retrospective Application).
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 24 May 2024.

Decisions

1. **Appeal A:** The appeal is dismissed, and 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.
2. **Appeal B:** The appeal is dismissed.

Procedural Matters

3. Appeal A has been lodged under ground (a) only. However, it is clear from the substance of the appeal submissions that the appellant is also seeking to appeal under ground (c), in so far as he considers that the canopy is not built as a permanent structure and can be removed by unbolting the timber screwed on the wall. As the Council has provided comments on the appellant's statement, I am satisfied that neither party would be prejudiced by consideration of the ground (c) appeal. I have therefore determined the appeal on this basis.
4. As set out above there are two appeals on this site. The appeal on Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal (Appeal B) is against the refusal of permission for the same development, the considerations in that appeal are the same, and I have treated both cases together to avoid duplication, except where otherwise indicated.

Appeal A: The appeal on Ground (c)

5. This ground of appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.
6. The appellant states that the canopy is not a permanent structure and can be removed by unbolting the timber screwed on the walls. However, there is little to indicate that the canopy is temporary. As matter of fact and degree, due to its construction and permanence, this is not clearly a temporary structure. The appellant also states that he built the structure, in part to alleviate flooding problems at the site. Furthermore, the canopy amounts to a building operation given that it is clearly intended to be permanently in one place, being physically attached to the existing single storey rear and side extension and the ground. These works materially affect the external appearance of the building as a whole, and therefore are not exempt from the definition of 'development' under s55(2)(a) of the 1990 Act.
7. In addition, there is no evidence to demonstrate that the canopy constitutes permitted development. Therefore, on the balance of probability and based on all the evidence before me, planning permission is required for the development, and there is none in place. There has therefore been a breach of planning control and the appellant has not discharged the onus on them to demonstrate otherwise.
8. Accordingly, the appeal fails on ground (c).

Ground (a) appeal, the Deemed Planning Application (DPA), and Appeal B

Main Issues

9. The main issues are the effect of the development upon:
 - the character and appearance of the host building and area; and
 - the living conditions for the neighbouring occupiers of Nos 89 and 93 The Greenway, with particular regard to outlook.

Reasons

Character and appearance

10. The appeal property is a semi-detached property, which has been previously extended with a hip-to-gable roof extension, a rear dormer, a front porch and a ground floor side/rear extension. There is also an outbuilding towards the end of the rear garden. A canopy extension has been attached to the side and rear extension (the subject of this appeal).
11. Barnet's Local Plan Supplementary Planning Document Residential Design Guidance, 2016 (Design SPD) states that for semi-detached properties, single storey extensions are normally considered acceptable up to a depth of 3.5m, and that rear extensions also need to ensure that they do not look bulky and prominent compared to the size of the main and garden. However, contrary to the above, the unauthorised canopy extension, in combination with the pre-existing single storey rear extension far exceeds this maximum depth.
12. The canopy extension when combined with the existing single storey rear extension extends the building considerably. Furthermore, the extension comprises poor quality materials consisting of a timber frame and a polycarbonate roof, which lacks any architectural merit and is at odds with the prevailing character of the area. Therefore, despite the structure being largely open on two sides, the effect of the development diminishes unacceptably the character and appearance of the host building and the area generally.
13. I note that the canopy extension is not widely visible within the wider public realm, however, its presence is clearly apparent and in close proximity of neighbouring residential properties.
14. Whilst there are a number of properties within the area, which benefit from rear extensions, none appear to extend to the same depth as the development before me. As such the existence of these other extensions are not directly comparable to the current unauthorised development and does not justify the harm identified above.
15. Therefore, in relation to the first main issue, the development has a harmful effect upon the character and appearance of the host building and the area. The development is therefore contrary to Policy DM01 of the Barnet Local Plan Development Management Policies DPD, 2012 (DPD) and the Design SPD. Amongst other things, these seek to ensure that developments respect, preserve or enhance local context and character.

Living conditions for the occupiers of Nos 89 and 93 The Greenway, with regard to outlook

16. The Design SPD advises that "single storey rear extensions to the original house, need to ensure that the depth and/or height of the extension does not cause a significant sense of enclosure, or loss of outlook from, or light to, principal windows of habitable rooms of neighbouring properties."
17. With regard to outlook, prior to current unauthorised development, occupiers of Nos 89 and 93 The Greenway would have had a relatively open outlook across their rear gardens. In contrast, the excessive size and depth of the canopy extension, together with its poor-quality design and materials, results in a visually intrusive and unneighbourly form of development, built near to the

boundary with both neighbouring properties at Nos 89 and 93. This results in harm to the living conditions for the occupiers of these neighbouring properties, with regard to outlook.

18. Therefore, the development fails to provide acceptable living conditions for occupiers of Nos 89 and 93 The Greenway, with regard to outlook. Accordingly, the development is contrary to Policy DM01 of the DPD, Policy CS5 of the Barnet's Local Plan Core Strategy DPD, 2012, and the Design SPD. Amongst other things, these state that development proposals should be designed to allow for adequate outlook for adjoining and potential occupiers and users and should protect and enhance the gardens of residential properties.

Conclusion on Ground (a) and the DPA and Appeal B

19. 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. The development harms the character and appearance of the area and the living conditions for neighbouring occupiers, in conflict with the development plan taken as a whole. None of the other matters raised by the appellant, including the benefits of providing the canopy for the appellant's family, and the improvements this has made to reducing the flood risk for the property, outweighs the harms identified. Indeed, there are other measures which could be explored to achieve the same benefits without causing the harms identified above. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Conclusions

20. **Appeal A:** 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.
21. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

R Satheesan

INSPECTOR