



Appeal Decision

Site visit made on 24 July 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2024

Appeal Ref: APP/Z5060/C/23/3324584

Land and premises at 77 East Road, Chadwell Heath, Romford RM6 6YS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Amrik Singh Nagpal against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The notice was issued on 15 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a rear canopy extension.
 - The requirements of the notice are to:
 - Alter the rear extension so that is in accordance with approved planning application 23/00348/HSE; or remove entirely.
 - Remove all subsequent waste material from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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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 Matters

2. The appellant stated that the canopy was completed on 30 March 2019 and that makes it permitted development. In other words, it is claimed that the canopy is immune from enforcement action, having subsisted for more than four years as laid down by section 171B(1). This is an argument pertinent to an appeal on ground (d) that, at the date the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters.
3. The onus of proof in an appeal on ground (d) is on the appellant. To succeed on this ground the appellant would need to demonstrate, on the balance of probabilities, the canopy was substantially completed not less than four years before the material date, being the date of the issue of the notice 15 June 2023.
4. It was stated on the planning application form in respect of planning permission reference 23/00348/HSE, in the section headed 'when are the building works expected to be complete' - March 2019. However, no substantive evidence has been provided which demonstrates, on the balance of probabilities, the canopy was substantially completed before 15 June 2019. Accordingly, an appeal on ground (d) could not have succeeded.

The appeal on ground (b)

5. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact.
6. To succeed on this ground the appellant would need to demonstrate that the rear canopy extension had not been erected. It evidently has, and the appeal on ground (b) therefore fails.

The appeal on ground (c)

7. In an appeal on this ground 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.
8. The appellant's case is essentially that they could have erected an extension of up to 4m in height with a pitched roof and with a depth of 3m as permitted development, therefore the only parts of the development which require express planning permission are those in excess of this allowance.
9. It appears that the appellant is referring to Article 3 Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse subject to certain conditions and limitations.
10. However, limitations to the size of development are expressed precisely in the Order. If any limitation is exceeded, the whole development is unlawful, not just the element in excess of permitted development rights.
11. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. 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) the deemed planning application

12. The main issue is the effect of the canopy extension on the living conditions of neighbouring occupiers with particular regard to outlook.

Reasons

13. The canopy spans the width of the house and is built up to the boundaries with the neighbouring houses at 75 and 79 East Road. There are French windows in the rear of No.75 in close proximity to the boundary with No.77, which I assume, in the absence of contrary evidence, serve a habitable room.
14. Whilst there is a tall fence on the boundary between the houses, the canopy projects above that by a fairly significant amount and runs along the boundary for a reasonably significant distance. Because of the height, depth, and proximity to the windows, the canopy will have a dominant and overbearing effect upon the outlook from within the house at No.75. The effect is such that the living conditions of the occupiers of that property are harmed.

15. In my estimation given the height and depth of the canopy, the approved scheme would represent a material improvement.
16. There is a garage between No.77 and No.79, so it seems, in the absence of contrary evidence, that the windows to habitable rooms would be set away from the boundary. Accordingly, given the separation distance, there will be no materially harmful overbearing impact on the outlook from within the house at No.79. Whilst the canopy will be visible from the garden of No.79, given that it does not extend along the entire boundary, there will be no materially harmful overbearing impact on the outlook from the garden.
17. Nevertheless, the canopy has an unacceptably harmful impact on the outlook from No.75, contrary to policies BP8 and BP11 of the Borough Wide Development Policies Development Plan Document (March 2011) in so far as they aim to protect outlook and residential amenity. It also conflicts with the National Planning Policy Framework which seeks to ensure a high standard of amenity for existing and future users of buildings.

Other matters

18. I note that the surrounding area features extensions of varying design however, the Council identified no harm in respect of the appearance of the canopy. Moreover, I do not know the circumstances of how those extensions came to be and whether they have the same harmful overbearing impact on the outlook of neighbouring occupiers. Their existence is therefore a matter of limited weight.

Conclusion on ground (a)

19. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
21. The notice requires that the canopy be either altered in accordance with planning permission reference 23/00348/HSE or removed. Accordingly, its purpose is to remedy the breach of planning control.
22. The appellant has not suggested any lesser steps. Since it is not excessive, in order to remedy the breach of planning control, to require the canopy to be either altered or removed, the appeal on ground (f) fails.

The appeal on ground (g)

23. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of three years so that they can implement the alternative should they so wish without pressure from the Council.
24. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be altered or removed. In the

absence of substantive explanation, given the relatively straightforward nature of the construction, the alteration or removal of which would have no effect on the internal living accommodation, I consider the period of six months, as specified in the notice, is proportionate to the breach of planning control that has occurred.

25. Accordingly, the appeal on ground (g) fails.

Conclusion

26. 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).

Felicity Thompson

INSPECTOR