



Appeal Decisions

Site visit made on 17 December 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal A Ref: APP/N5090/C/19/3230810

Appeal B Ref: APP/N5090/C/19/3230811

Land at 53 Osidge Lane, London N14 5JL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Victor Cooney and Appeal B by Mrs Catherine Cooney against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 21 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a raised terrace with undercroft, incorporating a wooden fencing screen and pergola.
 - The requirements of the notice are:
 1. Demolish the raised terrace with undercroft.
 2. Dismantle and remove the wooden fencing screen and pergola.
 3. Permanently remove all constituent materials resulting from the works in 1 and 2 above.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a raised terrace with undercroft, incorporating a wooden fencing screen and pergola on land at 53 Osidge Lane, London, N14 5JL, referred to in the notice, subject to the following condition:
 - 1) A solid wooden fence of a height no less than that existing, located above the wall on the boundary with 55 Osidge Lane, adjacent to the raised terrace, shall be retained in perpetuity.
2. I take no further action in respect of Appeal B.

Appeal A on ground (a) the deemed planning application

3. The main issues are the effect of the development on (i) the character and appearance of the house and the surrounding area and (ii) the living conditions of the occupiers of 55 Osidge Lane.

Character and appearance

4. The appeal site is a two-storey red brick semi-detached house located in a predominantly residential area. The garden at the rear of the house and those of neighbouring houses are of a generous size.
5. The raised terrace is an extension of an existing terrace area accessed directly from doors at the rear of the house. As the garden slopes downwards away from the house an undercroft has been incorporated, constructed of red brick to match materials used in the existing house. An existing boundary wall with the neighbouring No.55 has been extended by around 0.8m further along the boundary and a fence erected on top of the wall. A pergola constructed of timber with open sides and a roof formed of open timbers has been erected over the terrace.
6. The development is visible from the gardens and upper floor windows of the nearest neighbouring houses however, there are no wider public views.
7. The raised terrace is of a straightforward domestic appearance with the fall in ground level providing a logic for the design incorporating an undercroft. As a result of its open roof and sides the pergola has a lightweight, translucent appearance which has no material effect on the character and appearance of the house. In addition, it is a structure that is often a feature of domestic curtilages. Overall, I do not find the development appears incongruous or unsympathetic in this domestic setting.
8. I therefore conclude that the development causes no harm to the character and appearance of the house or the wider area and there is no conflict with the overall design aims of Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document September 2012 (the Core Strategy), Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012 (the Local Plan). There is also no conflict with the Local Plan: Supplementary Planning Document Residential Design Guidance October 2016 (SPD) or with the design aims of the National Planning Policy Framework (the Framework).

Living conditions

9. Because the houses are located on a hill the neighbouring No.55 sits at a lower level than the appeal site. At my site visit I observed that the wall and fencing, as existing at the time of my visit and which although stepped had an overall height of approximately 1.7m, and which now form the common boundary with no.55, prevented me from overlooking into the house at No.55. Consequently, there is no harm as a result of loss of privacy.
10. Should the fence be removed views into No.55 would be possible and this would cause harm as a result of loss of privacy. However, a condition requiring a fence to be retained in perpetuity would safeguard the living conditions of neighbours.
11. There are patio type doors in an extension to No.55 which are located in close proximity to the extended boundary wall. Whilst the wall and fence will appear tall when viewed from No.55, I consider that this is not a materially worse situation than would have existed previously, as prior to the house being extended any ground floor rear windows in the house would have looked onto an existing tall boundary wall. Furthermore, the relatively generous garden

offers an otherwise open aspect. The lightweight and essentially translucent appearance of the pergola means that it has no overbearing impact on outlook. Consequently, I conclude there is no material harm to outlook.

12. No.55 is located broadly south of No.53 consequently, the development does not result in unacceptable overshadowing of the house or garden. In the absence of any explanation and given the otherwise open aspect I find there is no loss of daylight.
13. Third party comments raise concerns about the use of the terrace, in particular loud music being played however, given that this could occur on the previously existing terrace and in the garden, it is a matter of limited weight.
14. For the reasons given above, I conclude that the appeal scheme accords with the overall amenity protection aims of Policy CS5 of the Core Strategy and Policy DM01 of the Local Plan and the SPD. There is also no conflict with the Framework which seeks a high standard of amenity for existing and future users. The appeal on ground (a) therefore succeeds.

Conditions

15. A condition requiring a fence, of a height no less than that existing, to be retained in perpetuity is necessary in the interests of safeguarding the living conditions of neighbouring occupiers.

Conclusion

16. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and planning permission will be granted. I shall grant planning permission for the development as described in the notice. The appeals on ground (f) do not therefore fall to be considered.

Felicity Thompson

INSPECTOR