



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: 20 February 2020

Appeal A Ref: APP/N5090/C/19/3231130

Land at 55 Albert Road, London NW4 2SH

- 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 Mrs Debbie Jacobs against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 14 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a single storey rear pergola.
 - The requirements of the notice are: 1. Demolish the single storey rear pergola as shown circled in yellow on the photo attached to the enforcement notice.
2. Permanently remove all constituent materials resulting from the works in 1 above from the property.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/N5090/W/19/3231144

55 Albert Road, London, Hendon NW4 2SH

- 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 Mrs Debbie Jacobs against the decision by the Council of the London Borough of Barnet.
 - The application Ref 19/2010/RCU, dated 3 April 2019, was refused by notice dated 8 May 2019.
 - The development proposed is described as 'pergola in rear garden attached to house with timber clad sides.'
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Decisions

1. Appeal A 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.
2. Appeal B is dismissed.

Procedural Matter

3. The Council referred to harm to the living conditions of the occupiers of 53 and 55 Albert Road in their reasons for refusal and for issuing the enforcement notice. No.55 is the appeal site and it appears that they should have referred to 53 and 57 Albert Road. This is clearly an error which the appellant has noted

and addressed in their evidence, as such I have considered the appeal on this basis and consider no party is prejudiced by my so doing.

Appeal A on ground (a) the deemed planning application and Appeal B

4. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of planning permission for an identical development, the considerations in Appeal B are the same as for Appeal A and I have considered the appeals together.

Main Issues

5. The main issues are the effect of the pergola on (i) the character and appearance of the house and area generally and (ii) the living conditions of the occupiers of 53 and 57 Albert Road with particular regard to outlook, privacy and daylight/sunlight matters.

Reasons

Character and appearance

6. 55 Albert Road is a traditional mid-terrace house located in a predominantly residential area. The rear garden of No.55 is bordered by the gardens of neighbouring and surrounding houses and is of a reasonable size being relatively long and narrow in form.
7. The pergola is constructed on top of an existing patio area, adjoining a single storey extension to the rear of the house and is enclosed on two sides, with a balustrade and steps leading down to the garden. It is constructed from timber with a roof formed of open timbers however, due to its enclosed sides has a solid and bulky appearance, not the typical lightweight appearance associated with traditional pergolas. Further, whilst pergolas are a relatively common feature of domestic curtilages, due to its appearance and size, occupying a significant part of the width and projecting around 4m into the garden, it appears unduly large and dominant in this context.
8. Whilst I had regard to the structure at No.53, I noted this consists of an open sided structure with a polycarbonate roof of lightweight appearance, it is not comparable to the appeal development. Further, whilst I observed extensions and typical domestic outbuildings to the rear of surrounding houses, I saw no structures similar to the pergola at the appeal site in the vicinity.
9. There are no wider public views of the pergola however, it is clearly visible from a number of neighbouring houses and their gardens. As such whilst reasonably localised in its extent, the effect is to unacceptably harm the character and appearance of the house and the surrounding area. The development is therefore contrary to Policies CS1 and 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) and Policies 7.4 and 7.6 of The London Plan (2016). Together these seek development of the highest architectural quality which preserves or enhances local character. It also conflicts with the design aims of the National Planning Policy Framework (the Framework).

Living conditions

10. The existing structure at the rear of No.53 covers an external seating area and this and the existing single storey projection at the rear of No.55 already limits the outlook from within No.53 to some extent. However, whilst the pergola is visible from the house, I find that it causes no material harm to the outlook from within the house or garden at No.53 due to the otherwise open aspect to the east.
11. The boundary between No.55 and No.57 consists of a relatively tall fence. Consequently, the outlook from the ground floor windows of No.57 is already towards the tall fence and although the pergola projects above that fence, it has no material overbearing impact on the outlook from within the house or garden at No.57.
12. As the appellant pointed out the existing raised patio area was previously used as a seating area and views would have been afforded over neighbouring gardens. The pergola is enclosed on both sides and whilst views from the end of the pergola, furthest away from the house, over neighbouring gardens are possible, neither garden was entirely private prior to the erection of the pergola and the current situation is not materially worse than that which previously existed. Therefore, there is no harm as a result of loss of privacy.
13. In terms of daylight/sunlight matters, the rear of the houses faces broadly south, given this and that the pergola is single storey and of flat roof form there is no harm as a result of loss of daylight or overshadowing.
14. For the reasons given above, I conclude that there is no conflict with the overall amenity protection aims of Policy CS5 of the Core Strategy, Policy DM01 of the Local Plan and Policy 7.6 of The London Plan (2016). There is also no conflict with the Framework which seeks a high standard of amenity for existing and future users.

Other matters

15. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and to the evidence regarding the appellant's family circumstances and the reasons for requiring the pergola. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed, and in this instance the appellant's circumstances do not outweigh the harm I have found. Dismissing the appeal would mean that the appellant may have to consider other options for meeting her family's living needs. However, there is no evidence before me to demonstrate the appeal development is the only means by which such needs may be met. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.
16. The Framework states that there are three overarching objectives to achieving sustainable development which are mutually dependent; these are economic, social and environmental. The harm to the character and appearance of the house and area means that the environmental objective of sustainable development would not be achieved. As such the proposal does not represent sustainable development when considered against the policies in the Framework taken as a whole.

17. Whilst I have noted comments about difficult and frequently changing tenants at neighbouring properties, this is a matter of limited weight.
18. I acknowledge that the appellant was advised by a builder that permission was not needed for the pergola however, this has no bearing on my assessment of the planning merits of the scheme.
19. Notwithstanding that I have identified no harm in respect of the living conditions of neighbouring occupiers, this does not outweigh the identified harm in respect of character and appearance. For this reason, the appeal on ground (a) fails.

The appeal on Ground (g)

20. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the two months given in the notice is too short and suggests that 12 months would be more appropriate to enable sufficient funds to be raised and for a contractor to be secured to undertake the works.
21. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submission largely relates to the time before the works can commence - when funds can be raised, and a contractor can be appointed. Whilst the appellant's concerns are understandable in the absence of substantive explanation, given the relatively straightforward nature of the construction, the removal of which would have no effect on the internal living accommodation, I consider the period of two months for the demolition of the pergola and removal of constituent materials from the land, as specified in the notice, is proportionate to the breach of planning control that has occurred.
22. Accordingly, the appeal on ground (g) therefore fails.

Conclusion

23. For the reasons given above, I conclude that the appeals 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