
Appeal Decision

Site visit made on 17 February 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/N5090/C/21/3274723

Flower Station, 788a Finchley Road, Barnet, London NW11 7TJ

- 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 D Cohen against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0289/21, was issued on 31 March 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the installation of a refrigerator unit in the garden centre.*
- The requirements of the notice are to remove the refrigerator unit from the garden centre.
- 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 (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. The enforcement notice is said in the appellant's appeal form to be dated 30 March 2021; in the Council's statement it is said to have been issued on 1 April 2021. The copy supplied by both parties is dated 31 March 2021, albeit sent under cover of correspondence dated the preceding day.
2. Although stating that the development appeared to have occurred without planning permission, the Council's notice does not expressly specify whether it thinks the "installation" of the refrigerator unit constitutes operational development requiring permission, or if instead it constitutes or facilitates a material change of use of the land. Having observed the unit on site and having had regard to the so-called *Skerritts* factors of size, permanence and degree of physical attachment I consider that the unit constitutes operational development requiring permission. This appears to be the position taken by the parties and hence the notice is sufficiently clear.
3. I received an invitation from a neighbour at Temple Fortune Court to observe the unit from that property in advance of my site visit; however, that invitation was withdrawn when the arrangements for the visit were issued. Therefore I have not viewed the unit from Temple Fortune Court or from its communal garden. I am however satisfied that I have sufficient information before me upon which to reach a decision, including having viewed the unit (albeit through vegetation) from the public footpath known as Farm Walk that lies to the south of Temple Fortune Court linking Temple Fortune Lane with Hampstead Way, and having had regard to a number of photographs including those submitted by residents of Temple Fortune Court.

Main Issues

4. The enforcement notice was issued for two reasons. The first was that the unit is considered to be overbearing and visually intrusive; and consequently detrimental to the residential and visual amenities of residents using the Temple Fortune Court communal garden. Therefore the first main issue concerns the effect of the development on the neighbouring living conditions in these respects, such living conditions encompassing the use and enjoyment of the communal garden by the residents.
5. The second reason was that at that stage the Council had received insufficient information to enable them to assess the effects of noise emanating from the unit, again with regard to the living conditions of the neighbouring residents. Although informing me that a subsequent planning application was refused but not for reasons relating to noise, the Council nonetheless pursue this reason for issuing the notice. This is therefore the second main issue in the appeal.
6. The unit also lies within the Hampstead Garden Suburb Conservation Area. Any adverse effects on the Conservation Area are not raised by the Council as a reason for issuing the notice, but such effects are claimed in third party correspondence on the appeal, including by the Hampstead Garden Suburb Trust. In view of these representations and of my statutory duty to give special consideration to the desirability of preserving or enhancing the Conservation Area, I consider that this is a third main issue in the appeal.
7. The appeal is brought on two grounds: ground (a) which raises a deemed application for planning permission; and ground (f) which raises the question whether the requirements of the notice are excessive to achieve its purpose. If a planning permission is not forthcoming, therefore, the final main issue in the appeal will be to consider whether the requirements of the notice exceed what is necessary to remedy the breach of planning control, or any injury to amenity as the case may be.

Reasons

Living conditions – visual impacts

8. Relevant local planning policy currently comprises the Barnet Local Plan of 2012, although a replacement plan is in its emergent stages. Policy DM01 of the Development Management Policies document and policy CS5 of the Core Strategy are the principal relevant policies to this main issue. They require the protection and enhancement of gardens of residential properties, and require development proposals to allow for adequate outlook for adjoining occupiers. These policy aims are broadly consistent with emerging policy to the effect that proposals significantly harming the amenity of neighbouring occupiers will not be acceptable. They are also consistent with national and Mayoral planning policy. Additionally the appellant draws my attention to Core Strategy policy CS8 which seeks to bring prosperity to the borough by providing opportunities for economic advancement.
9. The residential Temple Fortune Court lies to the south of the Flower Garden, with the refrigerator unit found in the garden centre's south-eastern end thus adjoining the north-eastern end of the Court's communal garden area, with the residential block lying to the west of the communal garden. Tennis courts adjoin both sites to the east, with containment boundary treatment.

10. The refrigerator unit is some 10.7 metres long as it adjoins the boundary fence and is some 3.1 metres high, thus exceeding the height of the boundary fence by a little over a metre. The Council's statement draws my attention to the pre-existing 'open views' that will have been enjoyed by the occupiers of the communal garden. I consider that such views will have been somewhat limited by the extensive fencing, buildings and vegetation that surround the Temple Fortune Court site but nonetheless the new structure will have added to the sense of enclosure of those gardens. However, I do not find that the new structure will have unacceptably affected the living conditions of the occupants when using the garden merely by reason of its dimensions. Although adding to the sense of enclosure of the communal garden, this is not detrimental in its own right because of the garden's purpose of providing private, albeit communal, amenity space, and because the height of the structure is commensurate with other buildings and vegetation surrounding the garden. Due to its location it also creates no loss of sunlight or daylight to the garden.
11. Although drawing my attention to the loss of open views, however, the Council's real complaint as detailed in the notice is that the unit is 'overbearing and visually obtrusive' to its neighbouring garden users as a result of its size, depth, height, siting and design. For the reasons set out above I do not find it to be inherently overbearing as a result of its size or height, but I do agree that it is visually obtrusive from the neighbours' perspective thus adversely affecting the outlook from the garden. Although the Flower Station appears to be a commercial site of some long standing, Temple Fortune Court was not previously adjoined by any structures of such utilitarian countenance as the refrigeration unit. It consists, on the south-eastern side, of a number of grey panels of industrial appearance. Atop the roof lie three boxed condenser units.
12. The question then is whether this loss of outlook can reasonably be overcome by changes to the appearance of the structure that may be achievable by the imposition of planning conditions. Measures are proposed by the appellant that the Council do not consider overcome their concerns. Such measures are to relocate the fan units onto the north wall of the unit, thus facing into the appeal site, and to provide additional trellising to the structure elevations to enable ivy to grow in order to screen and 'green' its appearance. An image of the unit provided by the appellant to demonstrate its likely appearance also shows the provision of a 'green' roof.
13. The need for such measures appears to me to acknowledge that the design and appearance of the unit is presently out of keeping with its context adjoining a residential garden. The proposed measures introduce some artifice in that they are necessary to cover up the structure's unacceptable appearance. I have no particularly detailed information as to the measures proposed. The 'after' image of the structure includes the provision of a 'green' roof which is not mentioned in the appellant's statement. The structure lies very close to the boundary fence and I have no details of how planting ivy or other vegetation might succeed in such a limited space, or how quickly it would achieve its intended effects.
14. Therefore, although I do not find the dimensions of the structure to be inherently harmful to the neighbouring living conditions, I agree with the Council that its appearance results in unacceptable visual intrusion causing a loss of outlook that is not resolvable by the imposition of planning conditions.

Living conditions – noise impacts

15. The Council report that a subsequent application for permission has been refused, but not for reasons relating to the noise impacts of the condenser units. The proposal included relocating the condenser units to the north wall of the unit from the roof. I am in receipt of a noise assessment report provided by the appellants, proposing that with relocating the condenser units to the north wall and being set to a timer to switch off between the hours of 2300 and 0700, no unacceptable noise impacts would arise. This report does not receive consideration in the Council's appeal statement, which complains that no noise suppression apparatus has been installed to the refrigeration unit as existing. I consider that with the imposition of planning conditions to require the relocation of the condenser units and to prevent night-time use, as proposed, the noise concerns can be overcome. Therefore I would not dismiss the appeal for this reason.

Character and appearance of the Conservation Area

16. Third parties, but not the Council, also raise concerns in respect of the impact of the development on the character and appearance of the Hampstead Garden Suburb Conservation Area. I am enjoined by legislation to give special consideration to the desirability of preserving and enhancing the character or appearance of such areas.
17. The Garden Suburb Trust explain that the appeal site is the subject of a long lease that in turn has been sub-let to various garden centre operators over the years. Although at the cusp of Finchley Road with the residential surroundings of Temple Fortune Lane, it is therefore a commercial site of long-standing. Whilst the provision of the unit may enable the expansion of the business, I do not find that it inherently affects the character of this part of the Conservation Area because of its pre-existing commercial use for similar purposes. The refrigeration unit lies towards the rear of the site, away from the street scene from which it is barely if at all visible. Although there are impacts affecting the neighbouring garden users resulting from its design and appearance, I do not find that it adversely affects the character or appearance of the Conservation Area as such. Therefore I would not dismiss the appeal for this reason.

Other matters

18. I observed on site that a floodlight has been installed to the front of the unit and this appeared to me to have the potential to interfere with neighbouring living conditions. The prohibition of lighting attached to the refrigeration unit could be made the subject of a planning condition. Any scheme to allow lighting could thus be submitted to and considered by the Council in seeking to discharge such a condition.
19. The Garden Suburb Trust report that since taking over the sub-lease, the current occupants have added a wholesale aspect to the business, with the refrigeration unit appearing to enable that aspect. The overall use of the site as a garden centre does not appear to have changed; at least, the Council does not indicate that any material change of use has arisen in planning terms. Neighbours nonetheless complain of increased traffic, hours of operation, and waste associated with the business. From the limited information before me, and in the absence of any support on these matters from the Council, I do not consider that the refrigeration unit has facilitated other activity that is so

harmful to neighbouring living conditions as to found a reason to dismiss the appeal. At the time of my site visit I did not witness the alleged constant traffic jams and obstructed pavements of which residents have complained.

Conclusions on ground (a)

20. For the reasons set out above I agree in part with the Council's first reason for issuing the notice. Although I do not find the dimensions of the structure to be harmful, its visual appearance results, by reason of its design and materials, in unacceptable impacts on the neighbours' living conditions, contrary to the objectives of policy DM01 and the development plan as a whole. Weighed against the economic benefits of the proposal, I do not find them to be overcome because, although the need for a unit of this size may be required for the business, this does not justify its present design and appearance. The lack of objections on other grounds weigh neutrally in the balance and do not overcome the objections that I have found to be merited. Therefore the appeal on ground (a) will be dismissed and I shall refuse to grant planning permission.

Ground (f)

21. The appellant raises no additional matters in relation to the appeal on ground (f): what is proposed is the same trellising and 'greening' treatment as under the appeal on ground (a). For the reasons I have set out above I do not think that such measures could overcome the planning objections to the development. Whilst there may possibly exist other measures to be taken that might improve the unit's appearance and thus the neighbours' outlook, it is not appropriate for me to redesign the scheme in the absence of other suggestions. Therefore I do not consider that the requirements of the notice exceed what is necessary to achieve the purpose of the notice in remedying the breach of planning control, or in remedying the injury to the neighbours' amenity that I have identified. Thus the appeal on ground (f) does not succeed.

Conclusion

22. 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 deemed application.

Formal Decision

23. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR