



Appeal Decisions

Site visit made on 23 March 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th JULY 2022

Appeal A Ref: APP/H5960/C/21/3267271

Land at 11 Beemans Row, Garratt Lane, London SW18 4SR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Beth McDonald against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 14 December 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years, the unauthorised erection of timber trellis affixed to the existing brick wall in the rear garden of the property.
 - The requirements of the notice are to:
 1. remove the unauthorised timber trellis affixed to the existing brick wall; and
 2. Remove from the property all debris arising from compliance with step one above.
 - The period for compliance with the requirements is three months after the date on which the notice takes effect.
 - 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. 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/H5960/W/21/3267249

Land at 9-11 Beemans Row, Garratt Lane, London SW18 4SR

- 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 Beth McDonald against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2020/2093, dated 31 July 2020, was refused by notice dated 26 November 2020.
 - The development proposed is described in the application form as: the erection of a wooden trellis onto and above an existing brick wall across the boundary of 3 gardens at 9, 10, 11 Beemans Row, SW18 4SR.
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Summary Decisions: Both Appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

1. The parties agree that the development subject of Appeal B has been carried out. Having visited the site, I can agree with this, although I note that a section of the trellis fence to the rear of 11 Beemans Row has been removed and was in the garden of that property.
2. Part of the Appeal B development is also the subject of the linked Appeal A (i.e. the section of trellis fence along the rear boundary of No 11), as well as being

the subject of three other appeals relating to 9 and 10 Beemans Row¹. These are the subject of separate decisions.

3. The site visit was undertaken in the company of representatives of the Council and appellant. The development was viewed from the three gardens of the Appeal B site and from rooms in the rear of each of the three properties. It was also viewed from outside the site, including from the adjoining external communal area serving 19 to 21 St Andrews Court.

The ground (a) appeal, the deemed application for planning permission and the appeal against the refusal of planning permission

Main Issues

4. The appeal site for Appeal A is smaller than, but part of the Appeal B site. As noted above, the development subject of Appeal A is part of the Appeal B development. Furthermore, the reasons for refusal of the Appeal B planning application and the reasons for issuing the enforcement notice are broadly similar. I have, therefore, considered the two together, but have acknowledged that there is a difference between the extent of development subject of each appeal.
5. From the substantive reasons for issuing the enforcement notice and the reasons for refusal of the application subject of Appeal B, I have identified the main issues as follows:
 - The effect of the development on the character and appearance of the appeals sites and the surrounding area; and
 - The effect of the development on the living conditions of the occupiers of neighbouring properties.

Reasons

Character and Appearance

6. Although Beemans Row is to the rear of a row of commercial properties along Garratt Lane, the appeals sites are within a primarily residential setting with a mix of development types. These include blocks of flats, rows of terrace properties, a detached property and a school to the north east. The residential development in the area is very close knit and the garden space for most properties is small. The gardens serving Nos 9 to 11 Beemans Row are no exception to this.
7. The development subject of the appeals is along the boundary of the appeals sites shared with the gardens to the rear of 19 to 21 St Andrews Court. There appear to be three gardens serving that block of flats. Two of these serve the two ground floor flats to the rear of the building and these are either side of a shared communal garden serving the remainder of the flats within the building.
8. The enclosure along this shared boundary is a brick wall that measures some 2.6 metres high. The development subject of these appeals is a section of trellis fencing that adds around 1.8 metres to the height of this enclosure. The trellis is formed by timber panels held in position by vertical timber supports attached to the brick wall. In the case of the trellis fencing subject of Appeal B,

¹ Appeals reference APP/H5960/C/21/3267315, APP/H5960/C/21/3267316, and APP/H5960/C/21/3267455.

it extends along most of the length of the boundary to the rear of Nos 9 to 11, whereas the Appeal A trellis fencing is only the section along part of the boundary to the rear of No 11.

9. The trellis has a uniform and clean finish, and it appears to have been constructed to a high standard. Indeed, trellis fencing is common place within a residential setting. The development does, however, appear awkward as it only spans part of the brick wall enclosure to the Appeal B site and ends abruptly part way along the rear boundary of Nos 9 and 11.
10. In addition, the development has resulted in a means of enclosure that has a height of around 4.4 metres, which I consider to be excessive in this context. I can see that garden enclosures in the area are generally tall, but none compare to the height of the enclosure subject of these appeals. I acknowledge that from some vantage points the enclosure is viewed against the block of flats at St Andrews Court, which comprises a basement and four stories, including the roof accommodation. I also acknowledge that the development is not highly visible when viewed from public areas. Nevertheless, as a means of enclosure it is a prominent form of development within its setting, which includes both St Andrews Court and Townsend Mews. The existing planting does little to mitigate its prominence.
11. I acknowledge that the trellis does not form a solid means of enclosure, but this does little to mitigate its impact. The excessive height of the enclosure also dominates the setting of the buildings on the appeals sites and on the adjoining land.
12. Having regard to the above, I find the trellis to be poorly designed and conclude that it has a harmful effect on the character and appearance of the appeals sites and the surrounding area. I can only conclude the same with regard to the development subject of Appeal A, despite it being a shorter section of trellis fencing. The development is, therefore, in conflict with Policy DMS1 (General development principles - Sustainable urban design and the quality of the environment) of the Wandsworth Local Plan Development Management Policies Document Adopted March 2016 (WLP). This requires, amongst other matters, that the scale, massing and appearance of the development provides a high quality, sustainable design and layout that contributes positively to local spatial character.
13. I note that both the enforcement notice and the decision notice refer to Policy DMH5 (Alterations and extensions) of the WLP, as well as the Supplementary Planning Document on Housing Adopted November 2016 (SPD). Whilst Policy DMH5 informs that development must be well designed and sympathetic to the style of the building, as referred to by the Council, these requirements relate to extensions (criterion i) and alterations to a roof (criterion ii). Each requirement of the Policy is specific to a type of development on existing residential properties, and none relate to the type of development that is the subject of these appeals. As such, this policy has little relevance to the case before me. Similarly, my attention has not been drawn to any particular advice within the SPD that would be relevant to the development in this case, and none is obvious to me.

Living Conditions

14. As noted above, the trellis results in a means of enclosure of around 4.4 metres in height along the shared boundary. The rear boundary of the Appeal B site is shared with the gardens serving the ground floor flats at 19 to 21 St Andrews Court, and the communal garden serving the remainder of the flats within the building. The depth of these gardens is very small and is already dominated by the building accommodating the flats, as well as the brick wall of some 2.6 metre high along the shared boundary.
15. The trellis has the effect of further enclosing the garden space for the flats, and so has an oppressive effect on this external space. Whilst I acknowledge that the trellis is only partly opaque, it is nevertheless a substantial structure that has an overbearing effect on the occupiers of the flats when using their rear garden space.
16. As the enclosure is so close to the rear elevation of the flats, the trellis is a dominant feature in views from the rear ground floor windows of the flats, and so has a detrimental effect on the outlook from these flats.
17. As the rear elevation of the flats is broadly north facing, it is likely that the building itself, rather than the trellis, overshadows the gardens serving the flats. Nevertheless, I note the representations from occupiers of the flats with regard to the effect the development has on light to their gardens. Such an effect is likely, particularly having regard to the overall height of the enclosure, and the short distance between it and the rear elevation of 19 to 21 St Andrews Court. I also note the representations of occupiers of Townsend Mews with regard to the effect of development on their living conditions, in particular its effect on the afternoon sunlight in the garden of the property at No 1.
18. Whilst I acknowledge that the trellis subject of Appeal A effects a shorter length of the boundary, it still causes an unacceptable degree of harm to the living conditions of the occupiers of the ground floor flat facing the rear boundary of No 11. This section of trellis has an overbearing effect on the garden serving that flat and it dominates the outlook from the flat's rear ground floor windows.
19. For the reasons set out above, I conclude that the trellis subject of Appeal B, which includes the shorter section of trellis subject of Appeal A, has a harmful effect on the living conditions of the occupiers of neighbouring properties. The development is, therefore, contrary to WLP Policy DMS1. This informs that permission will not be granted for development that harms the amenity of nearby properties by reason of it being overbearing, resulting in an unsatisfactory outlook, or having an unacceptable effect on sunlight/daylight.

Material Considerations

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
21. Weighing against the harm I have identified above, are the benefits of the development, which in this case stem from the appellant's reasons for erecting the trellis. I acknowledge the events that have led to the decision to erect the trellis enclosure, including the construction of the flats at 19 to 21 St Andrews Court and the removal of established planting to the rear of the flats. However,

my determination of these appeals is only with regard to the trellis fencing, subject of the planning application and the enforcement notice. I am unable to consider such matters as the Council's determination of the planning application for the flats, or the landscaping of that adjoining site.

22. Notwithstanding the above, I can see that the trellis has been erected with the intention of screening views between the flats at 19 to 21 St Andrews Court and the properties occupying the appeals sites. In this regard, I acknowledge that there is a close relationship between the dwellings on the appeals sites and the flats, and that the orientation of the buildings is such that views between the two are direct. There are also close views between the gardens of the appeals properties and the upper floors of 19 to 21 St Andrews Court. The development subject of these appeals screens only some of the views between the two. Even so, I do not underestimate the value of this to the appellant and the occupiers of the properties at Nos 9 to 11. The perception of the privacy the trellis provides is a benefit of the development that adds weight in favour of the appeals.
23. I have had regard to the representations of interested parties in respect of the safety of the occupiers of the appeals sites, including children. I do not, however, have any evidence to substantiate the claim that the trellis mitigates any matters of safeguarding or the safety of the occupiers of the appeals sites. Indeed, this is a matter which relates more to the acceptability or otherwise of the development at 19 to 21 St Andrews Court, which is not a matter that is before me to consider.
24. There may be limited benefits to wildlife as a result of plants growing on the trellis. I have insufficient evidence before me to substantiate the claim that the development reduces noise levels either side of the enclosure.
25. I have noted the suggestion for a reduction in the height of the trellis, the growing of plants on the trellis and the painting of the enclosure. The trellis is, however, above a wall of some 2.6 metres in height. The retention of trellis of a lower height would still, in my judgement, result in a means of enclosure that is excessive in height, particularly in view of the depth of the adjoining gardens serving the flats. Lowering the height of the trellis would not only fail to sufficiently mitigate the harm it causes, but would reduce the benefits I have identified.
26. In my judgement, additional planting would do little to mitigate the prominence of the trellis, and would only increase its overbearing nature. Painting would also have a minimal effect on the prominence of the trellis and the effect it has on the adjoining occupiers.

Planning Balance and Conclusion

27. I have found the development subject of these appeals to be harmful in respect of the main issues identified in this case. In particular, I find the development significantly harmful with regard to its effect on the living conditions of the occupiers of the adjoining flats. There is, therefore, conflict with the development plan. Whilst I have identified certain benefits of the development, the harm I have also identified tips the balance against the grant of planning permission in this case. I have considered whether conditions would overcome the harm caused, but conclude that they would not.

28. To conclude, having regard to all matters before me, there are no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, planning permission ought not to be granted and the ground (a) appeal and Appeal B should fail.

Ground (f)

29. Having regard to the requirements of the notice, its purpose must be to remedy the breach of planning control that has occurred. As such, for the ground (f) appeal to succeed, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control.
30. As noted above, a reduction in the height of the trellis, the encouragement of planting to grow on the trellis, and the painting of the trellis are suggested as alternatives to the requirements of the notice. However, all of these would result in the retention of all or part of the development. They are not, therefore, alternatives that would achieve the purpose of remedying the breach of planning control in this case. Notwithstanding this, I have concluded above that such alternatives would not mitigate the harm caused by the development.
31. I note the suggestion for additional tree planting. If I were to add a requirement for tree planting, in addition to the requirement to remove the trellis fencing, this would make the notice more onerous and would exceed what is necessary to remedy the breach of planning control in this case. Furthermore, it is for the recipients of the notice to comply with its requirements. I cannot vary the notice to require other parties to carry out works, or to require works outside of the appeal site.
32. Having regard to both the nature of the breach of planning control in this case and the requirements of the notice, no other steps that would achieve the purpose of remedying the breach are obvious to me. On this basis I can only conclude that the steps required in the notice are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Overall Conclusions

33. For the reasons given above, I conclude that both Appeal A and Appeal B should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made on Appeal A under section 177(5) of the Town and Country Planning Act 1990 as amended.

Formal Decision Appeal A

34. 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 Town and Country Planning Act 1990 as amended.

Formal Decision Appeal B

35. The appeal is dismissed.

J Moss

INSPECTOR