The Planning Inspectorate

Appeal Decision

Site visit made on 18 April 2023

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 26th April 2023

Appeal ref: APP/T5150/D/22/3307401
43 Leighton Gardens, London NW10 3PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission.
- The appeal is made by Ms Sally Jackson against the decision of the London Borough of Brent Council.
- The application, ref. 22/1329, dated 11 April 2022, was refused by a notice dated 30 June 2022.
- The development proposed is the erection of a new rear garden outbuilding to dwellinghouse.

Decision

1. The appeal is allowed and planning permission is granted for the rear garden outbuilding at No. 43 Leighton Gardens, London NW10 3PX in accordance with the terms of the application, ref. 22/1329, dated 11 April 2022, subject to the following conditions:

    1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: DWG01 - Location Plan; DWG01 – Existing Block Plan; DWG01 - Proposed Block Plan; DWG01 – Proposed Floor and Roof Plan Drawing Number DWG02 – Proposed Elevations/Specification.

Main issue

2. The main issues in this appeal are whether or not the proposed rear garden outbuilding would be too prominent, have an overbearing impact or cause undue overshadowing on neighbouring occupiers' gardens.

Reasons

3. Relevant Council guidance is contained in their SPD2 document following General Policy 1 of the Brent Local Plan 2019-2041 Policies Document. SPD2 says only one outbuilding will normally be permitted in the rear garden of a dwelling. The maximum size is to be 20m^2 floor area where the garden cover is less than 100m^2. The outbuilding should be located within the final fifth of the garden, be single storey, with a maximum height of 2.5m. Matters to be taken into account are the effect of the outbuilding on the character of the host dwelling and street scene and on the residential amenity of neighbouring properties.

4. The Council said the proposed outbuilding's ground cover area of 14.57m^2 was acceptable. Construction materials were suitable. Their main concern was that the outbuilding's height of 2.85m would make it unduly bulky. It would not comply with SPD2 guidance. Ms Jackson's outbuilding would be overly dominant and prominent when seen from neighbouring property. There would be a harmful sense of enclosure on next doors' gardens.

5. The Council's policy that domestic outbuildings should have a maximum height of 2.5m recognises the limitations in The Town and Country Planning (General Permitted Development) (England) Order 2015 at Class E. That deals with buildings incidental to the enjoyment of a dwellinghouse. The Order permits provision within the curtilage of the dwellinghouse of - (a) any building … required for a purpose incidental to the enjoyment of the dwellinghouse as such. E.1 says development is not permitted by Class E if — (e) the height of the building, enclosure or container would exceed - (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse. There is a 'fallback position', in that the extent of Order rights is a material consideration in dealing with applications as here, although development in excess of Order limits is, as a whole, development without planning permission. The case of *Brentwood DC v SSE & Gray* [1996] JPL 939 determined it is necessary to address the realistic likelihood of 'fallback' permitted development rights being exercised. It is relevant in this instance, where a similar outbuilding to that proposed could, if limited to a height alongside the garden boundaries of no more than 2.5m, and otherwise comply with Order limitations, be built without the need for planning permission.

6. In my view, whilst the proposed outbuilding, although tight alongside the rear garden boundaries of neighbouring properties at Nos. 41 and 45 Leighton Gardens to the side and Nos. 45 and 47 Liddell Gardens at the rear, would not cause the level of enclosure or overshadowing that the Council fear in those next door gardens. The ends of the rear gardens in the immediate vicinity, including that at the appeal property, are covered by small trees to a considerable extent and are enclosed by high fences and screening boundaries. The proposed outbuilding would be only 0.35m higher than might be built under permitted development rights, the excess not likely in my opinion to produce such harm on neighbouring amenity as to justify a refusal of planning permission.

Conclusion

7. In concluding that planning permission should be granted for the appeal extension, I note that no objections in relation to possible adverse effects on neighbouring houses' garden amenities were identified. For the reasons given above, the appeal succeeds. The general condition limiting the duration of the permission is applied, (s.91 of the Act), as is a condition relating to the submitted plans defining the project.

John Whalley

INSPECTOR