



Appeal Decision

Site visit made on 24 May 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/N5090/C/22/3299760
955B Finchley Road, London NW11 7PE

- 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 Miss Deborah Wald against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1238/21, was issued on 19 April 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a pergola set upon a decking area*.
- The requirements of the notice are to (1) demolish the pergola and decking area located in the rear garden; and (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) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Main Issue

1. Although the Council's appeal statement raises matters concerning the impact of the pergola on the character and appearance of the appeal site and the vicinity, the sole reason for issuing the notice related to its effects on the living conditions of neighbouring occupiers. Matters for consideration are whether there is a loss of light, the creation of an overbearing effect, or consequential adverse impacts on the outlook of the adjoining neighbours at no. 957. The effect on the living conditions of neighbours is thus the first main issue in the appeal.
2. Nonetheless, as conceded by the appellant in her Final Comments, matters relating to the effect on the character and appearance of the area have been addressed by both parties to the appeal. These form the second main issue in the appeal.
3. The appellant draws to my attention a permission recently granted by the Council for a slightly different form of development at the site (effectively, a reduction in the size of the pergola). Thus a 'fallback' position is now established, which is relevant to my determination of the planning merits of the development in its existing form. Depending upon the outcome of that, the 'fallback' position may also become relevant to my consideration of whether the steps required by the notice exceed what is necessary to achieve the purpose of the notice to remedy the breach of planning control, under the appeal on ground (f).

4. A further issue for consideration if the notice is upheld, arising on ground (g), is whether the time specified for compliance with its requirements, two months, falls short of what should reasonably be allowed.

Reasons

Policy context

5. Although raising different considerations, the policy context is largely similar for both the main issues in the appeal identified above. Policies relating to the design of new developments and to residential appurtenances are aimed at the protection of neighbouring amenities as well as at securing high standards of design.
6. Policies cited in the Council's notice are those of the development plan for the area, which consists of a suite of documents comprising the Barnet Local Plan of 2012 and the London Plan of 2021. Policy CS5 of the Local Plan Core Strategy DPD refers to protecting and enhancing Barnet's character to create high quality places. The highest standards of urban design are sought, in order to create an accessible, safe and attractive environment. Development in the borough is to respect local context and distinctive local character, creating places and buildings of high quality design. Requirements include protecting and enhancing the gardens of residential properties.
7. Policy CS5 provides that supplementary planning guidance will be provided through a Residential Design Guidance SPD. This was adopted in 2016, and requires that domestic extensions should normally be subordinate to the original house, respect the original building and not be overly dominant. It also makes requirements in relation to garden outbuildings. I should note at this point that there is some difference of opinion between the parties as to whether the pergola and decking are to be considered as an extension or as an outbuilding: the pergola is close to, but not quite attached to, the house. In turn the house is not in use as a single dwellinghouse but as a block of flats, including no. 955B which, including its garden, is the site of the appeal. Given the reasons for issuing the notice, and the absence of any permitted development rights to achieve either extensions or outbuildings, I do not need to determine the precise nature of the structure.
8. The related Development Management Policies document specifically refers at policy DM01 to protecting the borough's character and amenity. All development should represent high quality design, and development proposals should be based on an understanding of local characteristics. Proposals should preserve or enhance local character and respect surrounding buildings and spaces. Proposals should retain outdoor amenity space having regard to character. Development should be designed to allow for adequate outlook, amongst other 'amenity' considerations, for adjoining occupiers. Hard and soft landscaping should achieve a suitable visual setting and contribute positively to the surrounding area.
9. Policy D3 of the London Plan has similar aspirations, requiring a design-led approach to optimise site capacity and requiring high quality developments that respond to existing character.

Living conditions

10. The neighbouring property at no. 957 was, like the appeal property, originally constructed as one of a semi-detached pair. The two properties were not attached to each other, but to dwellings on their far sides. Extensions have taken place such that the properties now appear somewhat terraced, with both of them having side/rear extensions up to the property boundary.
11. Internally at no 957, at the first floor a bedroom looks out over the garden and from which part of the pergola next door is visible. Otherwise, the pergola is not readily apparent from within the house, but part of it can be seen over the garden fence separating the two properties. Because the boundary has extensive tree coverage, not all of the pergola is visible. However, a section of the boundary upon exiting the house at no. 957 to the rear has no planting to speak of but here the properties are separated by a fence. The fence is of a sufficient height to prevent any overlooking between the properties' gardens (said by the appellant to be 1.84m) and the pergola stands some 66cm above that.
12. The street inclines at this point, and no. 957 is set at a lower level than no. 955, with a lower garden ground level. No. 955 lies SSE of no. 957, meaning that the boundary treatment overshadows the garden of no. 957.
13. The particular concerns raised by the Council in respect of the neighbours' living conditions are a 'loss of light and the creation of an overbearing effect, impacting on outlook'. Additional concerns are raised by the neighbours themselves, including overlooking and a loss of privacy, noise and disturbance resulting from the use of the pergola, and criticisms of its design due to its bulk and position. Those latter issues will be considered in relation to the second main issue in the appeal.
14. The pergola and decking structure does not create any undue overlooking. Although the patio level has been slightly raised to accommodate the decking, the properties remain sufficiently divided by the boundary fence to avoid any overlooking or privacy impacts. Whilst accepting it may be possible to see into the neighbour's bedroom, at an oblique angle, at a closer range than previously, the possibility of looking in is itself not created by the construction of the decking. The purpose of the pergola is to be used for trailing plants and in the fullness of time is likely to attenuate if not occlude any such possibility.
15. As to the potential for noise and disturbance resulting from the use of the pergola, I accept that the appellant is likely to have provided the pergola in order to make better use of her outdoor space. However, there is no indication that the decking area underneath the pergola is being used in any way other than as a normal adjunct to a residential property. The decking replaces the previous patio area that is likely to have been used for sitting out, and I do not consider the prospects of increased, and unacceptable, noise or disturbance resulting from the construction of the decking or pergola to be at all likely.
16. Although the Council and the neighbours complain about a loss of light arising from the structure, no detailed analysis of this has been provided. The appellant concedes that a secondary ground floor window at no. 957 would be 'clipped' by a 45 degree line from the top of the pergola, thus requiring a more detailed check to establish the loss of skylight. This is pursuant to the guidance provided by the Building Research Establishment's ('BRE') 'Site Layout for

Daylight and Sunlight 2011" report. The appellant assesses that the Virtual Sky Component will not have been reduced by more than 20% of its previous value, or to less than 27%, by the pergola structure, and thus the appellant assesses the impact on daylight to be 'negligible'.

17. The appellant also makes the point that the pergola is not a solid structure but is open sided and consists of timber beams making up its frame and 'roof'. Thus light can permeate through it. I accept this, but only to a point because the purpose of the pergola is to establish trailing plants upon it. Whilst these are unlikely to completely 'solidify' the effect of the structure, it is the case that over time the currently permeating daylight is likely to reduce.
18. Nonetheless, as it affects only this secondary window and none of the remainder of the house, I do not find the loss of light to the neighbouring property to be unacceptably reduced.
19. As to the garden, whilst the pergola is likely to add to some overshadowing effects of the existing boundary treatment, it is likely to be negligible compared with the current effects, and would not have the effect of reducing the amount of available daylight or sunlight to the fairly large garden at no. 957 to any unacceptable degree.

Overbearing effect and outlook

20. As to whether the structure is overbearing, again it has to be considered in the context of the neighbouring property as a whole. Standing outside the rear extension to no. 957, the pergola looms fairly large overhead, although its effects are presently somewhat minimised due to the open nature of the structure. When covered with plants it will, although less 'open', assume an appearance more consistent with the remaining vegetative boundary treatment. However, no. 957 is a large property with a large garden. Its main internal living areas lie around the corner from the rear extension beyond which there is little if any intervisibility with the pergola. Its main patio seating area is situated further to the far side of the property. The property's boundary treatment to the south, apart from the section of fencing from which the pergola can be seen, contains extensive tree cover of considerable height. In this overall context I do not agree that the pergola is unduly overbearing so as to result in the significant loss of amenity alleged by the Council. Nor, it follows, does it unduly affect the neighbouring outlook.

Conclusions on first main issue

21. For the reasons given above I find no unduly harmful impacts on the neighbouring living conditions resulting from the construction of the pergola or the decking, and no conflicts with the development plan in this respect.

Character and appearance

22. The pergola is not visible from the street frontage, but nonetheless it is necessary to consider whether it is appropriate to the character of the area, as required by the Council's design policies to which I have referred above. It is fair to say that there are no similar structures nearby. It lies very close to the house, and is evidently designed to 'frame' the view from the onlooking window; but it does not give the appearance of extending the main property, because of its very different appearance and function.

23. The Council's residential design guide sets out that the same principles apply to garden outbuildings as to rear extensions. They are that the development should not unduly over-shadow neighbouring properties; should not be too large or significantly reduce the size of a garden to become out of character with the area; should not unduly affect outlook from an adjoining property's habitable rooms or principal garden areas; and their design and materials should be in harmony with the surrounding area. Most of these matters have been considered above.
24. Overall I do not consider the design and materials of the structure to be disharmonious with the surrounding area. The objective of the structure is to bear trailing plants; this can only be commensurate with what is found in a residential garden. Without those plants, the structure is made of natural wooden materials, which again is consistent with usual rear outbuildings such as trellises or garden sheds. The timbers used are of a substantial size, but in the light of the lesser development now approved by the Council I do not find that the additional length or height of the overhead timbers here is detrimental to the character or appearance of the surrounding area.
25. It follows that on this issue too I find that there is overall compliance with the development plan for the area.

Conclusion

26. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. As the deemed application for permission arises retrospectively, I consider that no planning conditions are necessary.
27. As a result of the appeal's success on ground (a) the appeal on grounds (f) and (g) does not therefore need to be considered.

Formal Decision

28. The appeal 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 pergola set upon a decking area on land at 955B Finchley Road, London NW11 7PE referred to in the notice.

Laura Renaudon

INSPECTOR