



Appeal Decisions

Site visit made on 1 June 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Appeal A Ref: APP/H5390/C/22/3303462

58 Rigault Road, London SW6 4JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Sasha Birksted against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The notice was issued on 22 June 2022.
 - The breach of planning control as alleged in the notice is the enlargement of the established timber pergola and insertion of wire meshing to its roof located on the first floor terrace to the rear elevation.
 - The requirements of the notice are:
 - A. Remove the extension to the established timber pergola, as marked red in exhibit 1 attached within this document
 - B. Remove the timber struts and wire meshing to the roof of the pergola.
 - The period for compliance with the requirements is: Three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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/H5390/D/23/3318112

58 Rigault Road, London SW6 4JP

- 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 Ms Sasha Birksted against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref 2022/03704/FUL, dated 22 December 2022, was refused by notice dated 9 February 2023.
 - The development proposed is the limited extension to pre-existing wooden pergola over existing terrace to the rear of the property and removal as built mesh.
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Decisions

Appeal B

1. The appeal is allowed and planning permission is granted for the limited extension to pre-existing wooden pergola over existing terrace to the rear of the property and removal as built mesh at 58 Rigault Road, London SW6 4JP in accordance with the terms of the application, Ref 2022/03704/FUL, dated 22 December 2022.

Appeal A

2. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Despite the slight differences between the breach of planning control alleged in Appeal A and the description of development in Appeal B, both appeals relate to the same development which has already taken place on site. The difference between the two appeals is that whilst Appeal A seeks the retention of the entire development as built on site, Appeal B seeks only the retention of the enlarged timber pergola and not the timber struts and wire meshing.

Appeal B

Main Issue

4. The main issue is the effect of the development on the living conditions of occupiers of 41 Burlington Road, having particular regard to loss of daylight and whether the development is overbearing.

Reasons

5. The appeal property is a two-storey dwelling located on the southern side of Rigault Road. At the rear of the property is a first floor terrace which faces across the rear gardens of several houses that are located on both Buer Road and Burlington Road.
6. The extension to the existing timber pergola has been completed, with the pergola now extending the full length of the first-floor terrace at No. 58. The terrace itself has not been extended, and therefore there is no change with regards to potential overlooking or loss of privacy. Although a timber pergola has existed on the first-floor terrace for a number of years, the enlarged pergola now extends closer to the rear elevation of 41 Burlington Road. In particular, the timber pergola is now closer to a ground floor single storey rear extension at No. 41 which comprises a kitchen and dining area.
7. Although both the Council and the occupier of No. 41 have raised concerns regarding a loss of light arising from the development, no detailed analysis of this has been provided. The pergola is not a solid structure but is open sided and consists of timber beams which make up its frame, thus light can pass through it. The concerns raised relate primarily to the loss of daylight provided to the kitchen and dining area of No. 41 by two rooflights. Though the pergola is visible through these rooflights, its open nature and slight frame result in any loss of daylight being minimal. Light is also provided to the kitchen and dining area by a window and glazed patio doors on the rear elevation. As a result, I do not find that the development results in the level of daylight received by No.41 being unduly affected.
8. As to whether the structure is overbearing, it has to be considered in the context of the neighbouring property as a whole. When standing in the rear garden of No. 41 the enlarged pergola looms fairly large overhead, although its effects are significantly reduced due to the open nature of the structure. In addition, the extended section of the pergola represents less than half of its overall width and has, in my view, not resulted in the structure appearing as an unduly overbearing feature. I acknowledge that the extended section of the pergola is visible through the roof lights located in the kitchen and dining area of No 41, however it does not result in any significant visual intrusion. Views of the pergola are also set partially against a backdrop of the rear elevations of adjacent properties, further reducing its impact. In this overall context I do not

agree that the pergola is unduly overbearing so as to result in a significant loss of amenity.

9. Accordingly, I find that the development does not materially harm the living conditions of occupiers of No 41, having particular regard to the loss of daylight and whether the development is overbearing. As such it accords with Policies HO11 and DC4 of the Hammersmith & Fulham Local Plan (adopted February 2018) (LP) and key principle HS7 of the Hammersmith & Fulham Planning Guidance Supplementary Planning Document (adopted February 2018) (SPD).

Conditions

10. I have considered the imposition of appropriate planning conditions, having regard to the six tests set out in the National Planning Policy Framework (the Framework). Given that the works have already been undertaken on site, conditions concerning the standard three-year time limit for commencement and compliance with the submitted plans are not necessary.
11. The Council also suggested that a condition should be imposed requiring that the wire meshing attached to the roof of the pergola is removed within a specific timeframe. However, in the event that I conclude under Appeal A that planning permission should not be granted for the pergola with the timber struts and wire meshing attached, and therefore the enforcement notice is upheld, then its removal would continue to be a requirement of the notice. The imposition therefore of such a condition is not necessary.

Conclusion on Appeal B

12. For the reasons given above, having considered the development plan as a whole and all material considerations, the appeal is allowed and planning permission is granted as set out in the formal decision.

Appeal A – ground (a) and the deemed planning application

13. The breach of planning control has two distinct elements, the enlargement of the established timber pergola, and the insertion of wire meshing to its roof. Planning permission has been granted, in Appeal B, for the enlargement of the timber pergola and therefore, given section 180(1) of the 1990 Act, the enforcement notice ceases to have effect insofar as it relates to the enlargement of the timber pergola.
14. As such, the enforcement notice only has effect in relation to the insertion of wire meshing to its roof, and the works set out in the notice under requirement B. Therefore, Appeal A and the deemed planning application will consider whether planning permission should be granted for the wire meshing attached to the roof of the timber pergola.

Main Issue

15. The main issue is the effect of the development on the host dwelling, having particular regard to whether or not it preserves the character or appearance of the Fulham Park Gardens Conservation Area.

Reasons

16. The appeal site is situated within the Fulham Park Gardens Conservation Area (CA). According to the Fulham Park Gardens Conservation Area Character

Appraisal the CA draws its significance from its organic plot development and its better than average exuberant late-Victorian estate architecture. The CA is split into four sub-areas with the appeal site located within the 'Burlington Road Group', which has largely retained its intimate character. The appeal property itself is highlighted as an old prison building, and it remains an attractive building that makes a positive contribution to the character and appearance of the CA.

17. The development comprises the erection of wire meshing to the roof of the extended timber pergola, located on the first-floor terrace on the rear elevation of No. 58. The wire meshing is held in place by timber struts which extend above the roof of the pergola. The timber pergola itself is very simple and traditional and is very much subservient to the host dwelling, in terms of both its size and design.
18. Whilst it is acknowledged that the rear elevation of No.58 and other rear elevations of neighbouring properties are not of the same architectural quality as their frontages and lack any consistent character, the materials used in any additions or alterations are generally in keeping with the overall traditional appearance of the properties and wider area. The wire meshing however appears as an incongruous and harsh addition, that detracts from the simple and traditional form of both the timber pergola and the host dwelling itself.
19. The appellant contends that as the timber pergola and wire meshing is not visible from the street it does not impact upon the character or appearance of the CA. I accept that the development is not visible from the street and the wider area, however it is nevertheless still visible from the rear gardens and rear facing windows of properties on Buer Road and Burlington Road. Although the development does not impinge on any key views within the CA, the development still detracts from the building's traditional architecture and attractive appearance which contributes to the character and appearance of the CA.
20. Consequently, I find that the development fails to preserve the character and appearance of the CA. Whilst this harm would be less than substantial, paragraph 202 of the Framework makes clear that this harm should be weighed against the public benefits of the proposal. In this case there are none. The wire meshing has been attached to the timber pergola to serve a purely private purpose, namely to prevent nuisance from pigeons. As a matter of national policy, this cannot weigh against the harm caused.
21. I therefore conclude that the proposed development fails to preserve the character and appearance of the CA. As a result, the development is contrary to Policies DC4 and HO11 of the LP and key principles AH2 and CAG3 of the SPD.

Conclusion on Appeal A

22. I therefore conclude that the appeal on ground (a) must fail. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Other Matters

23. Third party concerns have also been expressed with regard to a loss of property value that may be experienced. However, planning is concerned with

land use in the public interest and so the protection of private interests, such as property values, is not a material consideration.

Conclusion

24. For the reasons given above, having considered the development plan as a whole and all other material considerations, Appeal B is allowed and planning permission is granted.
25. Having considered all of the matters raised, I conclude that Appeal A does not succeed. I have upheld the enforcement notice and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR