



Appeal Decision

Site visit made on 8 August 2024

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 5 November 2024

Appeal Ref: APP/T5150/W/23/3332404

44A Dyne Road, Brent, London NW6 7XE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Yvette Kubica against the decision of the Council of the London Borough of Brent.
 - The application Ref is 23/2477.
 - The development is described as replacing an existing shed with a temporary shed/garden room just under 15m².
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal is in a conservation area, I have had regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Accordingly, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the North Kilburn Conservation Area (the 'CA').
3. During my site visit, I observed that the structure has already been built and that the previous shed has been removed. I have determined the appeal on this basis.

Main Issues

4. The main issues are:
 - whether the development preserves or enhances the character or appearance of the CA; and
 - the effect of the development on the living conditions of neighbouring occupiers at 91A Torbey Road, with regard to outlook.

Reasons

Character and appearance of the Conservation Area

5. The appeal site includes a three-storey mid-terrace property and rear garden space, which is located within the CA. The building has been subdivided into flats and the appellant occupies the flat located on the ground floor. This flat has been extended towards the rear of the site.
6. The buildings within the CA are predominantly Victorian and although there is a mixture of decorative styles, they are generally classically proportioned. These

dwellings typically feature large rear gardens, which help to balance the built environment along the front of the terraces. They contribute to an overall sense of amenity, openness and permeability in the rear gardens of the properties. Given such, I find that the significance of the CA, insofar as it relates to this appeal, to be primarily associated with the harmonious and spacious arrangement of spaces and buildings.

7. The development is a substantially complete outbuilding structure located to the rear garden of the subject property. It has a modern appearance, featuring wooden exterior panels and a relatively high proportion of glazing compared to the overall size of the building. The plans indicate that it is larger than the previous shed, increasing the density of development by occupying the smaller shed's former location along the shared rear boundary. Although the appellant has referred to the structure as a temporary building, the increase in massing and modern design characteristics gives the development the appearance of a permanent and modern residential outbuilding. This disrupts the more open, historic character of the surrounding gardens. Furthermore, due to the existing extension of the ground-floor flat, the rear amenity space has already been greatly reduced. Accordingly, although the development remains a single-story structure, it is visually obtrusive and jarring within the CA. The location of the structure at the edge of the boundary also limits opportunities for soft landscaping, which could have helped to screen it from neighbouring properties.
8. The parties disagree on whether the development complies with the guidance set out in SPG20¹. However, the submitted plans do not provide enough information to assess the overall size of the garden in relation to the development, making compliance unclear. In any event, since I have already found that the development has harmed the CA, further assessment under SPG20 is unnecessary, as it is not determinative in my decision.
9. The appellant has made broad references to other garden structures within the CA, on the basis that several other flats have garden structures without planning permission. However, there is limited evidence before me regarding these other cases, specifically their location, size or similarity to the development. As I am not aware of the circumstances of those cases, I can only give them limited weight. In any event, I must consider the appeal scheme on its own merits and in the context of the current policy regime.
10. Given such, the proposal fails to preserve or enhance the character and appearance of the CA. The level of harm is less than substantial. The National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Harm should have a clear and convincing justification.
11. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal. I acknowledge that the previous shed was old, dated and in need of repair, making it unlikely to contribute positively to the CA. This consideration attracts a moderate level of importance as a public benefit. However, it does not outweigh the harm identified above to the heritage asset.

¹ Supplementary Planning Guidance 20: Buildings in Gardens within Conservation Areas

12. Drawing my findings together, I conclude that the development fails to preserve or enhance the character or appearance of the CA. This fails to satisfy the requirements of the Act and the Framework. It does not conserve the significance of heritage assets and their settings, contrary to Policies DMP1 and BHC1 of the BLP². It similarly conflicts with Policy HC1 of the LP³.

Living Conditions – 91A Torbay Road

13. The plans indicate that the development closely follows the boundary of the appeal site and 91A Torbay Road, leaving only a small gap between them. This contrasts with the previous shed, which was placed laterally and therefore maintained a larger border gap. The new structure also exceeds the height of the boundary fencing between the properties.
14. In terms of outlook, the increased height, size and siting of the development in this location has had a significant visual impact from the garden of no.91A. Due to the close proximity, no screening or vegetation exists along this boundary that lessens this effect. Notwithstanding that the edge of the roof closest to the boundary fence has been angled to reduce its prominence, the structure still appears to be imposing, prominent and overbearing, due in part to its appearance as a residential outbuilding. This is harmful to the living conditions of the neighbouring residents.
15. For these reasons, I therefore conclude that the proposed development harms the living conditions of neighbouring occupiers at 91A Torbay Road, with regard to outlook. It does not provide high levels of external amenity, contrary to Policy DMP1 of the LP.
16. The Council also cites conflict with Policy BCH1 of the LP and SPG20. However, these documents are not determinative for this main issue as they relate to Brent's Heritage Assets. Moreover, I have not been drawn to any wording in these policies that relate to this main issue. Accordingly, they have not been referred to in my conclusion

Other Matters

17. The addition of a work and leisure area to the garden provides some benefits for the occupiers of the appeal site. However, this benefit is relatively modest and only attracts limited weight. Accordingly, this matter does not outweigh or overcome my conclusion on the main issues.
18. I have considered representations regarding the use of permitted development rights, but they do not apply in this case, as the property is a flat so does not have permitted development rights for the erection of buildings. Accordingly, this is not a matter which affects my findings on the main issues.
19. The appellant has raised concerns about potential discrimination against flat owners, compared to those owning entire properties, in the way that the Council has determined applications for garden structures. The Public Sector Equality Duty (PSED) requires that I have had due regard to section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and

² Brent Local Plan 2022

³ London Plan 2021

people who do not share it. As there is no evidence that the appellant has a protected characteristic under the PSED, I consider its requirements to be fulfilled.

Conclusion

20. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR