



Appeal Decision

Site visit made on 14 April 2026

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18th May 2026

Appeal Ref: APP/N5090/C/24/3349176

8 Flower Lane, London NW7 2JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Dr Samir Jagsi against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 20 June 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey rear conservatory and a rear outbuilding (edged in red on the attached Photo 1).
 - The requirements of the notice are to:
 1. Demolish the single storey rear conservatory and the rear outbuilding (edged in red on the attached Photo 1).
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 4 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.

Applications for costs

2. An application for costs was made by Dr Samir Jagsi against the Council of the London Borough of Barnet. This application is the subject of a separate decision.

The Appeal on Ground (b)

3. An appeal on ground (b) is that the matters alleged in the notice, which appear to the Council to constitute the breach of planning control, have not occurred as a matter of fact. To succeed on this ground, the appellant must demonstrate that, on the balance of probability, the matters stated in the notice have not occurred.
4. The Notice alleges the construction of a single storey rear conservatory and a rear outbuilding (edged in red on the attached Photo 1). The appellant, however, makes the case that the structures highlighted on the attached photo and described as a conservatory and outbuilding in the allegation are, in fact, a garden pergola and an awning with fabric side cheeks, attached to the existing rear outbuilding on the site.
5. From my observations on site, 'the property' subject of the Notice relates to a two storey semi-detached property being used as a dental practice on the ground floor and residential flat above. The rear yard includes a conservatory extension at the rear, together with a lean-to covered area that wraps around the side. A metal framed garden pergola structure with open sides is attached to the decking and positioned between the lean to covered area and a detached outbuilding at the back

of the site. An awning was attached to the outbuilding, but at the time of my visit the awning fabric had been removed, leaving the metal support arms and hinged framework in place.

6. Based on the appellant's evidence, the Council accept that the development targeted by the Notice is the garden pergola and awning and not the conservatory and outbuilding described. The Council indicates that this is a misdescription in the wording of the allegation in the Notice but contends that the attached photo clearly highlights these structures on site targeted by the Notice. It is suggested that the pergola and awning also constitute development¹, and a correction can be made to the allegation to describe these structures without causing injustice.
7. It is clear from the evidence submitted to the appeal by both parties, as well as my observations on site, that the erection of a conservatory and outbuilding as alleged in the Notice has not occurred as a matter of fact. Although the photograph identifies the pergola and awning, the wording of the allegation clearly describes a different development. This discrepancy is not resolved by the photograph, particularly given that an existing conservatory and outbuilding are present elsewhere on the site. The Notice must be read as a whole, and the photograph with the red lines identifying the structures does not resolve the inconsistency in the wording of the allegation.
8. Accordingly, I find that the matters alleged in the Notice have not occurred as a matter of fact. I have had regard to my powers under section 176(1)(a) of The Town and Country Planning Act 1990, as amended (the 1990 Act), as suggested by the Council. This includes the power to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
9. However, this is not a simple misdescription in the wording of the allegation. Such a correction would amount to alleging a completely different breach of planning control to that described. A conservatory and an outbuilding are different structures from a pergola and an awning in terms of design, functionality, and potential impact. These distinctions are crucial, as the differences can significantly affect how they impact on the character of the site and wider area, which is central to the rationale for the Notice's issuance. In this regard, the allegation cannot be corrected in this manner as it cannot be assumed that a pergola and an awning would have the same impacts as those of the alleged outbuilding and conservatory.
10. Accordingly, correcting the Notice to target a different type of development than that alleged would unfairly prejudice the appellant's position and cause injustice to his case. The appellant has had to respond to the allegation as set out in the Notice and despite making a case on ground (c) as to why the pergola and awning are not a breach of planning control, I cannot discount the possibility that the appellant could have appealed on ground (a), if the allegation was correct in the first instance. Furthermore, there is also the potential for procedural unfairness to the third parties who have made representations on the erection of a conservatory and outbuilding alleged. These responses might have differed had they been aware that a pergola and awning were the target of the Notice.
11. In view of the above, the ground (b) appeal succeeds, and the Notice is quashed as it cannot be corrected without causing injustice.

¹ As defined in Section 55 of the Town & Country Planning Act 1990.

Other Matters

12. I note the third-party representations, which indicate that the development alleged is harmful to the character and appearance of the area. However, as indicated, a conservatory and outbuilding have not been erected on site. Furthermore, the issues raised would be material considerations in a ground (a) appeal, but this has not been pleaded in this case. As such, these matters are not before me for consideration.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed on ground (b), and the Notice cannot be corrected without causing injustice. Therefore, the Notice will be quashed, and in these circumstances, the appeal on grounds (c) and (f) does not fall to be considered.

M. P. Howell

INSPECTOR