



## Appeal Decision

Site visit made on 18 April 2023

**by G Robbie BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> July 2023**

**Appeal Ref: APP/X5210/C/22/3295507**

**Land at: 45 Belsize Park Gardens (Flat E), London, NW3 4JL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Barry McGinlay against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice, numbered EN21/0360, was issued on 14 February 2022.
- The breach of planning control as alleged in the notice is Without planning permission: Unauthorised erection of large outbuilding in rear garden.
- The requirements of the notice are to:
  - 1 Totally remove the timber outbuilding in the rear garden; and
  - 2 Remove any resulting debris and make good any damage caused as a result of the above works.
- The period for compliance with the requirements is:  
One (1) month.
- The appeal is proceeding on the ground 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.

**Summary of 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.**

### Formal Decision

1. It is directed that the enforcement notice be corrected by omitting the word 'large' in the details of the alleged breach of planning control.
2. Subject to the correction, 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 an outbuilding in rear garden on land at 45 Belsize Park Gardens (Flat E), London NW3 4JL as shown on the plan attached to the notice and subject to the following condition:
  - 1) The development hereby permitted shall be retained in accordance with the following approved plan: drawing number 2866/1 'Garden Shelter'.

### Preliminary Matters

3. The breach of planning control alleged in the notice includes descriptive reference to the outbuilding as being 'large'. As this is unnecessarily descriptive I have corrected the notice accordingly. I am satisfied that the correction is minor and can be made without prejudice.
4. A copy of a drawing entitled 'Garden Shelter'<sup>1</sup> was submitted with this appeal which, the appellant advises, is a duplicate of the same submitted with an

<sup>1</sup> Drawing No: 2866/1

application for planning permission in February 2022 for the outbuilding. I am satisfied from my observations of the building and site during my visit that what has been built is sufficiently accurately shown on this drawing. I have taken it into consideration in reaching my decision on this appeal.

### **Main Issues**

5. The main issues are the effects of the garden outbuilding upon:

- The character and appearance of the appeal property and the surrounding area; and
- Biodiversity.

### **Reasons**

#### *Character and appearance*

6. The outbuilding is something of a mish-mash in terms of its construction and appearance. Constructed largely of timber framing, the outbuilding is open fronted, open to one side and partially open to the rear. The other side, and remaining portion of the rear elevation, are solid walls with a render finish. The roof is partly open in the style of a timber-framed pergola, whilst the remainder is covered with clear corrugated plastic sheeting panels.
7. The Council describe it as being 'a relatively crude structure' by virtue of its mix of materials and multi-coloured timbers. Photographs included within the Council's delegated officer report reinforce the basis for this assessment, with various items of domestic paraphernalia stored within the building.
8. However, at the time of my visit the outbuilding was in good visual order, appeared to be sturdy and robust and was well presented with a somewhat bohemian décor of rugs, throws, cushions and a collection of boardgames. Whilst substantial in scale and extending across the entire width of the rear garden area, it is situated at the foot of a modestly sized and well-stocked garden. Set amongst a mix of relatively dense shrubbery and large trees with well-developed canopies and verdant foliage the outbuilding is relatively discretely positioned. Nevertheless, whilst it is reasonably discretely located at the foot of the garden behind and beneath the shrubs, vegetation and trees, it remains a large structure.
9. I do not doubt that it can be seen from surrounding properties, most notably in elevated views from the buildings themselves, given that I saw the same to be true of neighbouring outbuildings and nearby garage blocks from the appellant's flat. However, that visibility is tempered by the verdant nature of the area's rear gardens.
10. The Council's Belsize Conservation Area Statement<sup>2</sup> (BCAS) divides the Conservation Area (CA) into a number of sub-areas, of which the appeal site lies within the Belsize Park sub area. This area is noted as being characterised by, amongst other things, large paired villas, closely spaced with a continuous building line and repeated forms giving a uniform rhythm to the street and providing glimpsed views between the villas.

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<sup>2</sup> April 2003

11. The appeal scheme does not compromise these characteristics as it is not visible from the street. Nor is it particularly obtrusive in terms of its scale or positioning when viewed from the rear, given its discrete siting amongst garden vegetation and under large and spreading tree canopies. The mix of vegetation types and species provide a mix of screening throughout the year and soften its appearance to varying, seasonal, degrees. Although not cited specifically within the BCAS, the verdant rear gardens also contribute in a positive manner to the character and appearance of the CA, adding depth of vegetation to the street trees glimpsed in views between and behind the villas.
12. Although a large structure, I am satisfied that it is discretely located relative to existing garden boundaries and well-screened by shrubs and trees. Although it extends across almost the whole width of the garden plot, it is not excessively large in context, nor does it dominate the communal garden area or the garden boundaries to which it is closely positioned. Whilst I accept that its use for storage of garden and domestic paraphernalia may well render its character and appearance different to the somewhat bohemian character and décor that I saw at the time of my visit, the same could be said of many a garden outbuilding.
13. Nevertheless, the nature of the use of such a large, and largely open-sided, structure in visual terms can greatly affect how it is perceived. Whilst I did not find it to be objectionable in the guise in which I saw it during my visit, the photographs included in submissions show domestic paraphernalia and bicycles piled on top of each other within the building. Such storage, in a largely open-sided building, can easily affect the visual impact of a structure, altering its character and how it is perceived. Together with the use of some inappropriate materials, most notably the translucent corrugated plastic sheeting, the building lacks the high-quality design, details and materials that would complement the CA's character and appearance. Thus, whilst I find the structure's size and position within the garden to be acceptable, the nature of its construction, materials and its overall appearance would fall short of the high-quality design sought by Camden Local Plan (2017) (CLP) Policy D1. As such, it would fail to preserve the character or appearance of the CA, contrary to CLP Policy D2 and the aims and provisions of the National Planning Policy Framework (the Framework).
14. In failing to preserve or enhance the character or appearance of the CA, the garden building causes harm, albeit less than substantial, to the significance of the CA. In such instances, that harm should be weighed against the public benefits of the scheme.
15. Although the Council set out in their delegated officer report that it can see no public benefit from the proposal, I disagree. Planning Practice Guidance advises that public benefits do not always need to be accessible or visible to the public at large. Whilst the garden building may not be open to the wider public, there are benefits for residents of the various constituent apartments within 45 Belsize Park Gardens which is more than just a private benefit to the appellant.
16. Thus, the garden building, and garden itself, provide a communal facility for all the occupiers of flats within the building, which includes younger children. The benefits of access to the building, for a range of activities, as part of access to the wider garden area is therefore more than just a private benefit for the appellant. Whilst the garden building may not be open to the wider public, the

benefits it provides in terms of a covered space for relaxation and leisure in connection with the modest, but well-stocked garden are a public benefit which weighs in support of the outbuilding.

17. The somewhat eclectic mix of materials and the appearance and form of the building give it something of a bohemian appearance not fully conversant with the high quality of the surrounding built environment and with the character and appearance of the CA. Whilst the building's discrete rear garden location, set amongst trees and shrubs limits wider visual impact, it nevertheless fails to preserve or enhance the character or appearance of the CA, thereby causing harm, albeit that harm is less than substantial. However, the benefits provided to residents of the building as a whole in terms of providing leisure and recreational use, as well as shelter, within the garden, particularly for those without direct ground floor access to the garden, amounts to more than a private benefit for the appellant. This benefit, I conclude, weighs sufficiently in support of the outbuilding so as to outweigh the less than substantial harm that I have identified.

### *Biodiversity*

18. CLP Policy A3 sets out the Council's approach to protecting and enhancing sites of nature conservation and biodiversity, which includes features of conservation value such as gardens. The communal garden within the appeal site, like many of those around it, provides a pleasant residential mix of lawn, shrubbery and trees and contributes to a verdant rear garden block between Belsize Park Gardens and Lambolle Road.
19. The Council's '*Home Improvements*' Camden Planning Guidance (2021) (CPG) recognises that whilst providing householders with a low-cost alternative to an extension, outbuildings occupy space within gardens and so can have an effect on the biodiversity that would otherwise be offered. The CPG provides a range of advice to mitigate these impacts, including that consideration be given to the installation of a green roof.
20. The outbuilding as built is only partially roofed. Whilst it seems that its construction has been iterative, I have no reason to believe that its current half-roofed / half open roof design is unintentional given its otherwise largely open-sided / fronted nature. Nor do I have any information before me as to the ground surface in this location prior to the construction of the building. There is, therefore, no baseline for a comparison as to the extent of garden 'lost' as a consequence of the garden building.
21. The provisions of the CPG and CLP Policy A3 seek only that consideration be given to, for example, green roof or other mitigation measures. The garden is already verdant with a mix of shrubs, hedges and trees, whilst the building itself is heavily overshadowed by existing substantial tree cover. As I have no evidence upon which to draw in relation to the need for incorporation of a grass roof, the lack of such within the structure as built is not fatal to the appellant's wish to retain the building. Thus, for these reasons, there would be no direct conflict with the aims and provisions of the CPG or CLP Policy A3.

### **Other Matters**

22. An objection to the garden building has been made on a number of grounds beyond those cited in the Council's reasons for issuing the notice by a

neighbour. However, given the extent of vegetation and overhanging tree canopies, I am not persuaded that the outbuilding results in material harm in terms of daylight or sunlight.

23. The open sided nature of the building is such that, should it be used by residents to congregate or socialise, it is unlikely to be able to provide much in the way of noise attenuation. However, the very nature of the building's construction is such that whilst providing some shelter from inclement weather, it has limited scope for providing an all-weather shelter. The effect of the building on the living conditions of neighbouring residents from noise and disturbance was not a reason for issuing the notice, whilst the building's siting at the foot of the garden means that it is well separated from neighbouring properties. There would be no material harm to living conditions in respect of noise and disturbance.
24. It is not clear from the submissions what was present on the footprint of the building in question prior to its construction. The objection cites a decrease in the amount of outdoor amenity space as a consequence of the building, but I am uncertain as to the extent to which the space was previously usable. Nevertheless, the building provides a mix of open and covered outdoor space which could function in a variety of ways and provide outdoor amenity in various forms. Furthermore, a pleasant and well-stocked, landscaped garden remains in place between the rear of the main residential building and the outbuilding in question. I give this matter limited weight as a consequence.
25. The absence of freeholder or leaseholder consent for the outbuilding is referred to a number of times by an interested party. However, that is a matter between the appellant and the freeholder / leaseholders and is not a material consideration to which I give any significant weight. Although concerns have been raised regarding external access to the garden area I have no compelling reasons before me to dispute the appellant's account regarding the secure access arrangements to the garden.
26. Finally, whether or not the outbuilding has, or requires, approval under the Building Regulations does not alter my conclusions as set out above and is a matter for the relevant authorities to follow up with the appellant if necessary.

### **Conditions**

27. The Council has not suggested any conditions in the event that the application deemed to have been made under ground (a) should succeed. However, I am satisfied that other than a plans condition no further conditions are necessary.

### **Conclusion**

28. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of outbuilding in rear garden as described in the notice.

*G Robbie*

INSPECTOR