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# Appeal Decision

Site visit made on 13 June 2023

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

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

**Decision date: 31 July 2023**

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**Appeal Ref: APP/X5210/C/22/3308835**

**282 Finchley Road, London NW3 7AD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Ronald Hofbauer (Trumros Limited) against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice, numbered EN21/1029, was issued on 16 September 2022.
- The breach of planning control as alleged in the notice is Without planning permission: Erection of outbuilding in rear garden.
- The requirement of the notice is to:  
Permanently remove the outbuilding including its foundations; make good any resulting damage and restore the garden to its previous condition.
- The period for compliance with the requirement is:  
ONE (1) month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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 Decision: The appeal is dismissed and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.**

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## Formal Decision

1. It is directed that the enforcement notice is varied by:
  - 1) The deletion of the words 'ONE (1) month' and their substitution with the words 'THREE (3) months' as the period for compliance at section 5 of the notice.
2. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Preliminary Matters

3. The appellant has identified six issues arising from the Council's reasons for issuing the notice. These correspond with the reasons set out in section 4 of the notice at (b) to (g). Included with the appeal submission was an Arboricultural Impact Assessment<sup>1</sup> (AIA) which concluded that the construction of the outbuilding will have had a negligible effect on the trees around it. As a consequence, the Council subsequently confirmed, at the Final Comments stage, that with regard to the allegation that the outbuilding caused unacceptable harm to trees<sup>2</sup>, this reason for issuing the notice was no longer valid. The Council offer no further case in this respect, nor have I been presented with any compelling evidence that would lead me to consider this matter further.

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<sup>1</sup> Trevor Heaps Arboricultural Consultancy Ltd 1 November 2022 Ref: TH 3652

<sup>2</sup> Issue 3 – 4(d)

4. Furthermore, and also at the Final Comments stage, the Council confirmed that if the air handling plant had been removed from the outbuilding the reasons for issuing the notice with regard to noise and vibration<sup>3</sup> and active cooling<sup>4</sup> would be conceded. There was no air handling unit present at the time of my visit to the site and no further case has been put by the Council in either respect. I have determined the appeal accordingly.

## **The appeal on ground (a)**

### **Main Issues**

5. With regard to the matters set out above, the main issues are the effects of the development upon:
- The living conditions of occupiers of neighbouring properties, with particular regard to privacy and outlook; and
  - The character and appearance of the appeal site and the surrounding area, including the setting of the Redington Frogna Conservation Area (CA); and
  - Biodiversity.

### **Reasons**

#### *Living conditions*

6. As a consequence of the surrounding street layout, the appeal site's long and narrow garden extends a considerable distance to the rear along the rear garden boundaries of properties at Albemarle Mansions and 1 to 5 Heath Drive. Given the height of these adjacent properties the appeal site is heavily overlooked from a number of elevated vantage points.
7. Ground levels within the appeal site lie considerably above those of the garden flats of properties on Heath Drive and at Albemarle Mansions. Positioned on a concrete slab, the outbuilding sits slightly above the prevailing garden level within the appeal site, meaning that outward views from within the building are taken from a point of further elevation above the gardens and yards of these adjacent properties.
8. Notwithstanding the generally high levels of intervisibility present in the area, the side-facing window is nevertheless very close to the side garden boundary. Although the current internal layout of the building means that views out towards the closest outdoor areas of neighbouring properties, and particularly to an elevated patio area at an adjacent property, are somewhat awkward the building and its side-facing window provide an internal location where prolonged views are possible.
9. Indeed, the window is a large and obvious feature in a prominent position and acts as a reminder to those who can see it of the potential for overlooking, as well as providing a close and largely unobstructed view of an elevated patio area at the rear of a neighbouring property. As such, the appeal building is responsible for a harmful degree of intrusion, arising from overlooking, in the living conditions of occupiers of the adjacent property and terrace and to users of the appeal building.

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<sup>3</sup> Issue 4 – 4(e)

<sup>4</sup> Issue 6 – 4(g)

10. Views across the appeal site and the outbuilding from neighbouring properties are varied depending on where those views are taken from. Undoubtedly, the presence of the building will have changed the outlook enjoyed by those properties. Whilst the outbuilding is clearly visible within the site, these adjacent properties either look down upon or across the top of it if from upper floors of adjacent properties, or up towards it from the lower ground level.
11. For the former, I do not consider this to be particularly harmful. The building is of a modest scale whilst the appeal site's verdant sylvan backdrop and the retained areas of garden on either side of the building are such that it does not dominate those views.
12. For the latter, however, the appeal building is experienced in a different manner. Set above ground level within the appeal property and, in turn, further above the ground levels of the garden flats of Albemarle Mansions and Heath Drive, the appeal building is altogether more dominant. The wall and fence / trellis panels intercept views to varying degrees from the lower neighbouring properties, but this only serves to ensure that those parts of the building seen above are its upper portions and this highlights the dominant nature and siting of the appeal building.
13. This would, I conclude, be overpowering in the context of small yards and garden areas, the relatively narrow nature of the appeal site and the proximity of the building to the side boundary. The result is a large and harmfully overbearing and dominant structure sited insensitively within the garden plot in an area where the appeal property's garden depth is something of an outlier. However, the garden's restricted width is more in keeping with the smaller garden and outdoor spaces around it and together these factors are sufficient to persuade me as to the harmful effect of the building on the outlook of occupiers of neighbouring properties.
14. Camden Local Plan (CLP) (2017) Policy A1 seeks to manage the impact of development. Visual privacy and outlook are two factors that will be taken into account in seeking to protect the quality of life and amenity of occupiers and neighbours. For the reasons I have set out, the appeal building fails to protect the quality of life and amenity of neighbours in the manner sought by CLP Policy A1.
15. The reason for issuing the notice that makes reference to outlook and privacy and the effect on living conditions also cites CLP Policy A4 and Redington Froggnal Neighbourhood Plan<sup>5</sup> (2021) (RFNP) Policies SD4 and SD5. None of these policies make specific reference to outlook or privacy and so these policies have not been determinative in my consideration of this matter.
16. The appellant has suggested the erection of a 2 metre high close-boarded timber fence to negate the effect of the building on privacy and overlooking. Whilst having the potential to reduce overlooking from some aspects and thus the building's effect on privacy, such an approach would, in places, be significantly higher than the existing boundary treatment. As such, while mitigating one impact, the impact upon outlook from adjoining flats at lower ground levels may be exacerbated. I am not therefore persuaded that this approach would be without harm or would otherwise sufficiently address the

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<sup>5</sup> Made on 13 September 2021 – as per the Redington Froggnal Neighbourhood Development Plan Adoption Statement

harmful effect on living conditions of occupiers of neighbouring properties that arises from the appeal building.

*Character and appearance*

17. The outbuilding is a modestly sized structure and is positioned so as to leave gaps on either side of it, with access possible along one side, linking larger areas of garden in front of, and behind, the outbuilding. However, given the restricted width of the garden plot and the limited space on either side of it, the building is a dominant feature within the garden and is a substantial visual barrier between the front and rear portions of the garden. Nevertheless, these remaining areas of garden space are reasonably sized and are perfectly usable and practical in a residential context, in addition to the area immediately to the rear of the appeal building which is enclosed by a panel fence. The Council calculate that the proposal would result in the loss of usable garden space by 53%, although it seems to me that this assumes that the land to the rear of the outbuilding would no longer be used. However, I am not persuaded that this is the case.
18. It was clear at the time of my visit that this area had recently been cleared of undergrowth and may therefore have been neglected previously. Nevertheless, the area to the rear remains a sizeable and usable space and the retention of the outbuilding in its current location would merely reinforce this area as being a distinct area with a specific and distinct character, and thus potential use.
19. An outbuilding of this scale is not uncommon or unexpected within a residential garden context and it does not unduly or harmfully compromise the garden character of the appeal property, or the prevailing character of the residential area in which it lies. As the Council has conceded the grounds in relation to the effect of the outbuilding upon trees within the garden, I am satisfied that it has not, and would not, cause material harm to the trees around it. As these trees are visible from Finchley Road and provide a verdant backdrop to the appeal property, there would be no harm to the wider character or appearance of the surrounding area arising from the outbuilding.
20. The timber-clad structure is well-presented, neat and tidy, the overhanging flat roof design gives it a 'pavilion-like' appearance and its timber cladding is typical consistent with a garden shed. The Council refer to the area as having garden suburb characteristics, and that the appeal scheme does not preserve or enhance those characteristics. However, for the reasons I have set out, the outbuilding does not erode the verdant nature of the appeal site or its surroundings, or alter the contribution that the appeal site makes to the surrounding area. The Council have not contested the appellant's AIA and I have not been presented with compelling or persuasive evidence that the building has, or would be likely to, affect the site's verdant setting or its contribution to the character and appearance of the surrounding area.
21. CLP Policy D1 states that the Council will seek to secure high quality design in development. Amongst other things, schemes must respect local character and context and comprise of high-quality details and materials. RFNP Policy SD4 sets out the RFNP's general approach to development whilst Policy SD5 sets out the approach to outbuildings and garden development. For the reasons set out, I am satisfied that the outbuilding would not be an incongruous feature within the residential garden context in which it is found. Nor would it compromise the verdant character of the tight pocket of small rear gardens

formed by 282 and 284 Finchley Road and their neighbouring properties on Studholme Court, or the yards and patios of Heath Drive and Albemarle Mansions.

22. Together, these form a foreground to the CA, beyond. The site is not within the CA, but instead adjoins it with the main body of the CA to the north. The verdant backdrop to the appeal property when viewed from Finchley Road and across the open corner of Studholme Court provides a foreground view of the CA beyond. The outbuilding is, in the context of the buildings around it, a modest structure and would not compromise the garden setting of the site or the CA beyond. There is no breach of CLP Policy D2 or RFNP Policy SD4.

### *Biodiversity*

23. 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 appeal site garden is generous compared to many around it, particularly the mansion blocks and villas adjacent along Heath Drive. Although the appeal building occupies a modest portion of the middle part of the garden, and extends almost the whole width of the garden plot, two distinct garden areas remain and are accessible via a path alongside the building.
24. It was noted at the time of my visit to the site that the 'front' portion of garden, closest to No. 282 itself, was surfaced with artificial turf. It was not clear to me at my site visit, nor do I have any evidence before me to suggest, what the ground surface was prior to the construction of the appeal building. As such, I cannot therefore be certain as to a 'baseline' for comparison as to the extent of biodiverse garden 'lost' as a consequence of the appeal building.
25. There remain two distinct garden areas of reasonable and usable size, despite the presence of the appeal building. Whilst the biodiversity and ecological credentials of the area of artificial turf may be questionable, neither they nor the turf itself are matters before me as they are not cited within the notice. Incorporation of a green roof may improve, or at least maintain, ecological and biodiversity interest in the area occupied by the building, but the building's retention would, should the appeal succeed, retain usable and ecologically beneficial areas of garden.
26. However, 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 CLP Policy A3.

### **Other Matters**

27. The appellant has suggested that the building would provide additional living accommodation in connection with the residential occupation of flat 2 within the principal building. This would, it is stated, allow the habitable floorspace of that flat to meet the minimum floorspace requirements of the relevant London Plan<sup>6</sup> (2021) policy.
28. However, as these residential units were derived from the permission granted by Class O, Part 3, Schedule 2 of the Town and Country Planning (General

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<sup>6</sup> Policy D6 London Plan 2021

Permitted Development)(England) Order 2015 (as amended) as confirmed by the Council's approval of an application for a lawful development certificate (proposed development)<sup>7</sup> of lawfulness there is no development plan imperative for ensuring a minimum internal floor area and the development of those flats was not contingent upon the creation of further additional living accommodation. Rather, as the Council state, the quantum and size of units provided within the principal building was a conscious choice made by the then applicant. I agree, and as such, this is not a material consideration to which I give any significant weight.

29. I have also carefully considered the appellant's response to other matters raised during the course of this appeal. I have no reason to believe that the appeal building causes a particular hazard to health, or that it is, or could be, occupied as a separate dwelling and these matters have not been material to my conclusions in respect of the appeal under ground (a). Whether or not a building of these dimensions and location would have been permitted development had the appeal property not been occupied as flats is of little relevance as those are not the circumstances applicable in this instance.

### **Conclusion on ground (a)**

30. The appeal building's failure to provide a green roof is not critical to the matter before me, whilst there would be no harm to the character and appearance of the appeal property, the surrounding area or the setting of the CA. However, these factors do not outweigh the harm that I have identified in relation to the building's effect upon the living conditions of occupiers of neighbouring properties with regard to outlook and privacy and do not therefore overcome my conclusion in respect of the application deemed to have been made.

### **The appeal on ground (g)**

31. The notice requires the removal of the outbuilding and its foundations, the making good of any resulting damage and the restoration of the garden to its previous condition within a period of one month. This, the appellant argues, is an unreasonably short period for works which would necessitate the employment of both a builder for the demolition and removal and a landscaper to reinstate the garden. No alternative compliance period has been suggested by the appellant under ground (g), however.
32. In the initial delegated officer report for the planning application which sought permission for the '*erection of outbuilding in rear garden (retrospective)*'<sup>8</sup> the Council initially set out a compliance period of 3 months. The subsequent delegated enforcement report<sup>9</sup> and the notice itself set out a period of 1 month. I have no evidence before me however to justify the 1 month compliance period, to counter the appellant's appeal on ground (g) or to explain the Council's apparent change of mind regarding compliance period's length.
33. The appellant's argument is persuasive despite the absence of an alternative compliance period. I have no doubt that the tendering process for either of these areas of work could be a lengthy process, particularly where the notice's requirements require the two to be coordinated to ensure timely compliance. A

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<sup>7</sup> LPA Ref No: 2018/6295/P

<sup>8</sup> LPA Ref No: 2021/6220/P

<sup>9</sup> LPA Ref No: EN21/1029 dated 15 September 2022

period of one month is thus, it seems to me, an unreasonably short period of time notwithstanding the relatively modest scale and nature of the building.

34. Whilst I agree with the Council that the outbuilding as built causes harm to the living conditions of occupiers of neighbouring properties, a period of one month is unduly penal to the appellant and a longer period is reasonable. Taking the above factors into account, I conclude that the appeal under ground (g) should succeed and a period of 3 months for compliance with the notice is reasonable and proportionate to the appellant, the Council and occupiers of neighbouring properties.

### **Conclusion**

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations set out in my formal decision and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*G Robbie*

INSPECTOR