



Appeal Decision

Site visit made on 12 December 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2025

Appeal Ref: APP/X5210/W/24/3350002

38 Belsize Avenue, Camden, London NW3 4AH

- 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 c/o Planning Potential against the decision of the Council of the London Borough of Camden.
 - The application Ref is 2023/4698/P.
 - The development proposed is a retrospective application for a pergola in the rear garden.
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Decision

1. The appeal is allowed and planning permission is granted for a pergola in the rear garden at 38 Belsize Avenue, Camden, London NW3 4AH in accordance with the terms of the application, Ref 2023/4698/P, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the drawings: Proposed site plan; Proposed elevation; Proposed site plan; Location plan; Pergola roof plan details.
 - 2) Within 3 months of the date of this decision, a scheme detailing any artificial lighting within the pergola and/or attached to the inside or outside of the pergola shall be submitted in writing to the Local Planning Authority for approval, and the approved scheme shall be implemented within 3 months of the Local Planning Authority's approval.

If no scheme is submitted within 3 months, or the approved scheme is not subsequently implemented within 3 months of approval, the use of the pergola shall cease until such time as a lighting scheme is approved and implemented.

The lighting scheme shall include details of the position, height, design, intensity and directional aspects of the lighting.

Upon implementation of the approved lighting scheme specified in this condition, that lighting scheme shall thereafter be maintained and no other artificial lighting shall be erected, installed, used or retained either within and/or attached to the pergola.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. The structure the subject of the appeal is described as a pergola. It has been constructed and is a detached structure within the rear garden of 38 Belsize Avenue. It has a metal frame, glass sides and with a solid but openable roof. At the time of my visit, the structure accommodated a large hot tub-like/pool installation.
3. Objectors to the development have raised issue with the description of the structure as a pergola. However, the details of the structure are clear, and the effect of it is apparent because it is already in place. Nothing turns, therefore, on the description of the structure in itself and, therefore, for the purposes of this decision I shall refer to the structure as a pergola.
4. The appellant argues that the pergola would have been permitted development had the property been a single dwelling at the time of the construction. However, there is no dispute that planning permission was required when the pergola was installed because the building, at that time, consisted of the main house and a separate basement flat. I saw at my site visit that the permitted works to combine the basement flat into the main house were well advanced. The Council, in any case, dispute that the pergola would, or could be in the future were the present structure to be removed, be considered as permitted development as it argues that the permitted development right limitations would be exceeded.
5. It is not the role of a s78 appeal to determine the lawfulness of works or uses. Given the difference of opinion on this matter, I attach very little weight to any fallback position in relation to what could or could not be constructed under permitted development rights.

Main Issues

6. The main issues are:
 - the effect of the development on the character and appearance of the host building and area, having regard to whether the development would preserve or enhance the character or appearance of the Belsize Park Conservation Area, and
 - whether or not any artificial lighting of the structure would result in any light spill that would unacceptably harm the living conditions of the occupants of adjoining properties.

Reasons

Character and appearance

7. The Conservation Area Statement – Belsize explains the history and distinctive character and significance of the Belsize Park Conservation Area (the Conservation Area). The heritage significance of the section including Belsize Avenue comes from the distinct and substantial area of mid-19th century villa development. The buildings have a strong consistency in their heights, which are mostly three storeys with lower ground and sometimes an attic level, and their heritage significance is enhanced with their relationship to the streets with front gardens set behind boundary walls, and their Italianate styling.

8. The appeal property is one of the large scale properties set well back from Belsize Avenue with an avenue of trees along its length. It is a paired villa which is gabled fronted, three storeys with set backs to give the impression of being semi-detached.
9. While these are substantial properties, the rear gardens are quite modest in size and are set down on a level below the ground floor of the building. This lower level, combined with the height of this row of buildings, in conjunction with the fenced boundaries dividing the gardens and the mix of planting within the gardens and the trees to the rear, results in these garden spaces being fairly inconspicuous from any public location. As a consequence of this, and their ancillary domestic nature, these garden spaces make only a very limited contribution to the significance of the Conservation Area.
10. More apparent are the mix of single storey extensions which have been added to the rear of the properties in this terrace, including the appeal property. These are a variety of mainly flat roofed additions of varying styles and design, including at least one more contemporary addition. These additions which are raised up from the level of the gardens can be experienced to some extent in angled views from a short section of Glenilla Road where it is possible to look along the back of the terrace.
11. In terms of the appeal property, the ground floor of 38 Belsize Avenue leads onto the rear area from either the side door of the extension or from the patio doors of a modest addition along the rear wall of the original building. These openings access a raised terrace with steps leading down to the noticeably lower garden level.
12. The pergola has been constructed within this rear garden of No 38. It is quite a sizeable building compared with the modest garden space. However, it is not especially visible from the adjoining lower level gardens, or from any public location, with the vast majority of this flat roofed structure obscured by the adjoining fencing, and partially screened by the trees and other planting in the vicinity.
13. The building has elements of a contemporary appearance with the dark frame, and the flat roof and the glazing help to reduce some of the feeling of bulk. There are some very broadly similar design approaches to at least one extension to the rear of the terrace which also has a more contemporary feel, with its large area of glazing and mainly flat roof. The pergola generally does not seek to mimic other buildings or traditional design forms within the Conservation Area, and reads as a separate outbuilding and of its time.
14. The pergola would be visible from the windows, and from some external terraces and extensions, of the adjoining properties. However, with the pergola being on a lower level and with some intervening vegetation from some locations, it does not interrupt any significant views or have an overly imposing presence despite its footprint within this part of the Conservation Area. Also of importance is that the pergola is not disproportionate or out of scale with the sizeable and tall host property and the bulk of the terrace as a whole.
15. Drawing these matters together, the pergola is not especially visible from any public location and, while it is a reasonably sizeable addition when viewed from adjoining properties, it is modest in relation to the host property and the

surrounding buildings. Because of the position, form and appearance of the pergola within this garden area, and the particular aspects of this location, it has no undue or adverse effect on the character and appearance of the host building or area.

16. I am mindful of the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of any land or buildings in a conservation area. I have also taken into account the National Planning Policy Framework 2024 requirement that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. However, for the reasons I have explained, the pergola preserves the character and appearance of the Conservation Area and its heritage significance. There is, therefore, no heritage harm.
17. Accordingly, I conclude that there is no conflict with Policies D1 and D2 of the London Borough of Camden Local Plan 2017 (the Local Plan) which, amongst other things, sets the design approach for new development within Camden.

Lighting

18. The rear garden of No 38 is similar to many others and where it would not be uncommon for some lighting of that space to take place to facilitate ancillary uses. However, the provision of a building, and with one of the size of the pergola, could allow use of that building in association with the garden on a more regular and potentially more intensive basis, including after dark.
19. All of the sides of the pergola are glass, although two sides abut fencing. The sides that open to the garden have full height, sliding glass panels. The roof is also openable. There is, therefore, considerable potential for light spillage from any artificial lighting associated with the pergola and its use.
20. As part of this appeal, I do not have comprehensive details of the lighting that has been installed or could be installed in due course to assist with the use of the pergola. The appellant considers that any light spill will be no worse than the existing garden lighting, but would be prepared to agree a condition which limits the light lux levels.
21. I consider that lighting could likely be to an extent that was greater and more harmful compared with the normal use of this part of the garden without the pergola. Any light spillage in association with the pergola, if not suitably controlled, could create a substantial glow from within and/or around the pergola. This would, in all likelihood, be unduly distracting and harmful to the living conditions of the occupants of nearby properties in this terrace.
22. Nevertheless, I am satisfied that any adverse impact could be reduced to a satisfactory level by a sensitively designed lighting scheme. Such a scheme could be submitted and agreed as part of a suitably worded condition in any approval. It would be necessary for the condition to address lighting details, directions and levels both within the structure and in respect of lighting attached to its outside. This is important because it would be possible to illuminate the inside of the building from lighting fixtures attached to the outside frame because of its glass sides, which are also able to slide open.
23. With the inclusion of a suitably worded condition in any approval, I conclude that any spillage of artificial lighting in association with the pergola could be

satisfactorily controlled so as to not result in any unacceptable harm to the living conditions of the occupants of adjoining properties. Subject to this provision, the scheme would comply with Policy A1 of the Local Plan which includes that artificial lighting levels are a factor that will be considered in terms of the impact of development on amenity.

Other Matters

24. I have had regard to all the objections to the development including from local residents, the Belsize Conservation Area Advisory Committee and the Belsize Society. I have considered, in the section above, the effect of the proposal on the character and appearance of the area and the potential for light spillage in association with the pergola.
25. The outbuilding is clearly visible from parts of the adjoining properties. Nevertheless, when seen from the nearby garden areas it extends only to a minor extent above the height of the adjoining fences and it is detached from nearby terraces and the living accommodation of other residential buildings. The proposal was not refused because of its physical impact on the living conditions of neighbours and I have found no reason to disagree with the Council's conclusions on this matter. I have also taken into account the two letters of support from local residents.

Conditions

26. The pergola is in place and, therefore, there is no need for a condition related to the commencement of development. A condition is required that lists the approved plans in the interests of certainty.
27. The Council has, without prejudice, suggested a condition that would seek details of light pollution mitigation. However, the condition is not sufficiently precise and does not set a timetable for the submission and subsequent implementation of agreed details. This is especially important as the pergola is already in place. A condition is necessary to protect the amenities of local residents from light spillage and I have, therefore, worded this condition to ensure that its requirements are precise, reasonable and enforceable.

Conclusion

28. The pergola does not harm the character and appearance of the area, including the Conservation Area. With a suitably worded condition in any approval the potential adverse impacts from light spillage can be addressed.
29. Accordingly, the retention of the pergola is acceptable and there is compliance with the relevant planning policies and with the development plan as a whole. There are no material planning considerations of such weight that lead to a decision other than in accordance with the development plan. It follows that I conclude that the appeal should succeed.

David Wyborn

INSPECTOR