



Date: 02/03/2022  
Your Ref: APP/X5210/W/21/3287006  
Our Refs: 2021/0540/P & 2021/0828/L  
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The Planning Inspectorate  
Room 3/23  
Temple Quay House  
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Temple Quay  
Bristol BS1 6PN

Dear Planning Inspectorate,

**Apothecary House 47 Highgate West Hill, London, N6 6DB**

**Appeal on behalf of Ms Vicki Lee for the refusal of planning permission and listed building consent**

The Council refused planning permission and listed building consent under delegated powers on 17/09/2021, under Ref. 2021/0540/P & 2021/0828/L

The description of development for both planning and listed building consent applications were as follows:

*Erection of a single storey outbuilding.*

2020/5960/P - Reason for refusal:

- 1. The proposed outbuilding, by reason of its location, size and design would appear as an incongruous structure which would encroach upon the open and verdant character of the host property causing harm to the setting of the Grade II\* Listed building and to the character and appearance of the wider Highgate Conservation Area, contrary to policies A2 (Open Space), D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017 and policies DH2 (Development Proposals in Highgate's Conservation Areas) and DH10 (Garden land and backland development) of the Highgate Neighbourhood Plan 2017.*

2021/0828/L – Reason for refusal:

- 1. The proposed outbuilding, by reason of its location, size and design would appear as an incongruous structure which would encroach upon the open and verdant character of the host property causing harm to the*

*setting of the Grade II\* Listed building contrary to policy D2 (Heritage) of the London Borough of Camden Local Plan 2017.*

## **1. COMMENTS ON APPELLANT'S GROUNDS OF APPEAL**

- 1.1. The council's full assessment is set out in the Officer report. This appeal statement responds point by point to the appellant's statement of case, so might be most easily read side by side with it. It then proceeds to respond to the heritage statement, although this largely repeats points in the statement of case.
- 1.2. At 1.4, the appellant states that listed building consent should not be a requirement for this proposal. Nonetheless, it is the council's position that the development is within the setting and the curtilage of a listed building, and is in close proximity to a wall, also listed by virtue of curtilage, whose visibility it substantially blocks.
- 1.3. At 2.5, the appellant refers to the screening offered by vegetation. However, the presence of vegetation cannot be guaranteed or enforced by the planning system. It is therefore vital that structures be acceptable in their own right. The scheme drawings make it clear that, without the presence of ivy and trees in full leaf, the structure will be more than half as tall again as the boundary wall. Winter photographs do not form part of the statement of case, let alone visuals showing what would happen if some future occupant removed the ivy and bushes.

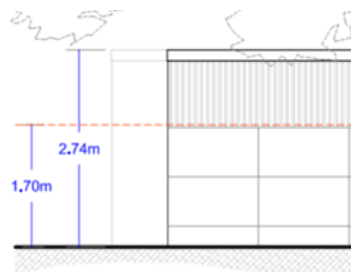


Figure 1. Elevation of outbuilding over boundary wall shown in red

- 1.4. At 4.3, it is pointed out that the pre-existing play structure is, in parts, taller than 2.74m. This is beside the point, because the play structure, also described as a climbing frame, did not take the form of a solid cube, being, rather, a lightweight arrangement.
- 1.5. At 4.8, the appellant notes that the structure will not be visible from the public road. Again, as stated above, this is entirely dependent on the continued existence of the non-protectable vegetation. It also affects the setting of the listed building, which currently sits in a large and verdant garden mostly surrounded by a traditional brick wall.

- 1.6. At 5.7, it is noted that the CAAC shared Camden's concern that only the presence of ivy mitigates the appearance of the structure looming over the wall.
- 1.7. At 5.8, the appellant asserts that, because she has lived in the house for 18 years, the ivy will always be present. This is not a material planning consideration and as stated above the presence of vegetation is not protectable. It is not sensible planning to base the acceptability of buildings on the presence of foliage.
- 1.8. At 5.9, it is claimed that case law states that conservation areas have to be taken "as they are found". Here, Charles Mynors' meaning has been misrepresented. He is saying that officers aren't allowed to hold development to as high a standard as they would if the surrounding area was nicer. The text in question states "it is the existing character and appearance of the conservation area that must be considered, not its character and appearance as the decision maker might like it to be". In this context, the quote is not relevant. There is no question of the council wishing that the ivy might be removed and the trees might shed their leaves. Quite the opposite. What there is, is the inevitability of the trees shedding their leaves annually and the impossibility of safeguarding the continuing existence of the ivy, and therefore the folly of granting consents based thereupon. Patently transient factors, such as the difference in trees' leaf cover between the seasons, are routinely considered when assessing the visual impact of buildings.
- 1.9. At 5.10, mention is made of the efforts the appellant has made to mitigate the impact of the proposal. These compromises included a height reduction of 10cm, and no reduction in area. Consequently the proposal was considered to remain oversized for the setting of the listed building and the character and appearance of the conservation area.
- 1.10. Comments at 5.11 regarding the delegated report may be taken as read, but do not detract from the council's overall belief that the proposal is unacceptable within the context.
- 1.11. At 7.8, the appellant states that the building has been sited in the "most appropriate" part of the garden. It is the council's opinion that there is no part of the garden that can appropriately accommodate so substantial a building.
- 1.12. At 7.9, the appellant states that the building is "at the rear of a separate part of the garden". This is a strange way of describing a site that directly abuts the footway at the front of the building. It is hard to see how the proposed site can be said to be "at the rear" of anything. It looms over the public realm, in the front garden of a listed building. The appellant here alludes to the existing very large side extension from which the house already benefits, which, in conjunction with the

proposal, would cumulatively harm the character of the garden and setting of the listed building.

- 1.13. At 7.11, the appellant describes the building as low key and sensitive. This is not the view of the council. She states that the proposal covers 5 per cent of the remaining space, but does not note how much of the garden has already been consumed by the existing side extension. Considering simple area does not give a true account of the impact of a three-dimensional structure. The impact on the visual horizon as a whole should be considered. An attempt will be made to quantify this later in this document.
- 1.14. As noted above, in the garden context, a play area and climbing frame do not have the same visual impact as a building.
- 1.15. At 7.12, it is stated that the building is lower than a normal garden building. But it should be noted here that garden buildings are not normally envisaged at the roadside in front gardens, let alone the front gardens of listed buildings.
- 1.16. The statement goes on to refer to the heritage statement, which will be assessed separately.
- 1.17. At 7.21, however, the appellant requests that the structure be given temporary permission for 15 years. If the view is taken that the council is correct in its opinion about the harmfulness of the structure, clearly allowing 15 years of harm would be unacceptable. Temporary permissions are only used in exceptional circumstances.
- 1.18. In conclusion, the appellant repeats her claims that the proposed building is not harmful because:
  - a) It is "low key"; it is in fact 2.74m tall and almost 10m wide.
  - b) It is not visible from the public realm; it is 1m taller than the adjacent wall. The surrounding vegetation can be removed at the whim of the owner at any time or could simply die. It would also constitute a substantial visual presence in the context of the grade-II\*-listed house.
  - c) It would not harm the conservation area; whereas it would be a visible and incongruous addition to a front garden, prominently visible over the boundary wall.
  - d) It would not harm the setting of the listed building; on the contrary, it would erode the verdant character of the garden and would be a substantial and bulky presence within the context of the historic building.
  - e) It does not trigger considerations of harm vs public benefit; the council is of the opinion that the proposal, by reason of its location, size and design would appear as an incongruous structure which would encroach upon the open and verdant character of the host property causing harm to the setting of the

grade-II\*-listed building and to the character and appearance of the wider Highgate Conservation Area, contrary to policies A2 (Open Space), D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017 and policies DH2 (Development Proposals in Highgate's Conservation Areas) and DH10 (Garden land and backland development) of the Highgate Neighbourhood Plan 2017.

- 1.19. Moving on to the heritage statement, the appellant notes at 1.4 that the proposal does not need listed building consent. The document quoted, by Historic England, is quoted selectively. Advice Note 16 goes on to say "*the requirement is for the local planning authority to pay special regard to the preservation of the listed building or its setting or any features of special architectural or historic interest which it possesses*". This has been carried out and the assessment was that the proposal was harmful to the setting of the grade-II\*-listed building. Whether or not this assessment needed to be carried out under the auspices of a listed building application is debatable, but the appellant applied and was accordingly refused.
- 1.20. At 1.13, the appellant again misinterprets Mynors, as explained above at 5.9, reversing his intended meaning.
- 1.21. At 1.17, the appellant states that the site, "*in terms of its relationship to the street and the public realm, fulfils the role of a 'back garden'*". This is not the case. In terms of its relationship to the house, it might or might not fulfil the role of a back garden, despite its being in front of it. But in terms of its relationship to the public realm, it is a front garden. It is in front of the house and abuts the highway. This is beyond dispute. The degree of enclosure has already been discussed and is dependent upon horticultural elements that cannot be controlled by the planning system.
- 1.22. At 1.23, the appellant states that the garden is not mentioned in the conservation area statement. This device is commonly used in such instances, as though every inch of a conservation area that isn't explicitly mentioned is a neutral or negative contributor. Yet the statement is only 68 pages long and covers a vast area. It is unreasonable to expect that every house's garden should be mentioned, or to deduce from a non-mention that a site does not contribute positively.
- 1.23. It might be added that building large structures in front gardens is sufficiently transgressive for it probably to have been felt unnecessary to proscribe it. And since this particular garden is attached to a highly graded listed building, it might have been presumed that no further protection was required, especially against so striking a proposal as a large building up against its front boundary.

- 1.24. At 2.4, the paltriness of the proposed revisions has been described above. They did not overcome the harms of the scheme as a whole.
- 1.25. At 2.5, it is not conceded that the building is diminutive. It would be 2.74m tall and almost 10m wide. Taken in conjunction with the existing very large side extension, it would cumulatively harm the character of the garden and so the setting of the listed building.
- 1.26. At 2.6, the appellant attempts to quantify how much development is overdevelopment by stating that 5 per cent of an area is not a large proportion. This is not necessarily true; looking at the house below, it is only twice the size of the proposal, so presumably fills 10 per cent of the area. Yet it would not be argued that increasing the size of the house by half was insignificant. Five per cent might sound like a small amount, but it is a meaningless figure in this context.
- 1.27. In any case, it is not simply area that creates impact. If it were a flat element that was under discussion, like a pond or a pavement, then talk of percentage area might make sense. But it is a tall, bulky, three-dimensional element that is under discussion; a building. It makes more sense to consider this in degrees of a circle than it does square metres. Looking at the plan, it is clear that a large percentage of the visible horizon would contain this structure. That is the true measure of its impact, not its floorplate.



Figure 2. View from the garden that will be filled by this structure

- 1.28. Standing roughly in the centre of the garden, it can be seen that 54 degrees of the view will be filled by this structure, or 15 per cent of the horizon. The structure will of course be visible in a considerably greater percentage of the overall view from that point, perhaps 40 per cent. These percentages will naturally change as one moves around the garden, but it is clear that its visual impact will be far greater than its mere area would suggest. Fifteen per cent is already three times greater than the 5 per cent owned to by the appellant, and that is before this exercise is repeated in the vertical plane.
- 1.29. From 2.8 to 2.14, the appellant argues that the structure is designed in such a way that it is not harmful. The council's opinion about this has already been given above and there is no point in discussing this again, in detail, other than to say, despite the "revisions" it is still considered that the proposal is unsuitable. Despite being made of wood, there is no chance of mistaking it for a shed, or other appropriate small-scale domestic garden structure.
- 1.30. There follows a history of the site and a reiteration of the merits of the scheme as it relates to the conservation area. Again, the council's case has already been given above. From 2.24, the appellant quotes policy D2 and then other sections of policy which were not reasons for refusal, such as effects on tree roots, and explains how in her opinion the proposal conforms to them.
- 1.31. The entire argument is set out again in section 3, so no further comments need be made here.
- 1.32. While this is a large garden, it is in front of a highly graded listed building. Were the structure behind the house, and not set against the highway, matters would be different. Were the structure securely screened from that highway by a listed wall that could never be removed, rather than by a screen of vegetation that enjoys no protection at all, that element of concern would be reduced. But these are the facts. The house already enjoys a very substantial extension that runs across the whole of its northern boundary. The addition of another large structure, in front of its building line, would be contrary to the traditional arrangement of such a house. It simply cannot be argued that replacing the view of the ivy-covered brick wall with a view of a large, timber-slatted gym will not reduce and therefore "encroach upon" the open and verdant character of the garden.
- 1.33. For these reasons, the council remains of the opinion that the proposal, by reason of its location, size and design would appear as an incongruous structure which would encroach upon the open and verdant character of the host property causing harm to the setting of the grade-II\*-listed building and to the character and appearance of the wider Highgate Conservation Area.

## **2. Conclusion**

- 2.1. Based on the above the Council respectfully request the Inspector to dismiss this appeal.
- 2.2. Should the Inspector be minded to allow the appeal the Council suggest the following conditions set out below:

### **Conditions:**

1. The development hereby permitted shall be carried out in accordance with the following approved plans [2080.P.01-A, 2080.P.03-A, 2080.P.04-A, 2080.P.05-A, 2080.P.06-A.]

Reason: For the avoidance of doubt and in the interest of proper planning.

2. The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

If any further clarification of the appeal submissions is required please do not hesitate to contact Josh Lawlor on the above direct dial number or email address.

Yours sincerely,

Josh Lawlor  
Planning Officer