



Appeal Decision

Site visit made on 8 January 2013

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2013

Appeal Ref: APP/N5090/A/12/2180645

55 Wykeham Road, London, NW4 2SS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Jacqueline Benjamin against the decision of the Council of the London Borough of Barnet.
 - The application Ref H/04827/11, dated 30 November 2011, was refused by notice dated 11 July 2012.
 - The development proposed is retention of brick piers and partial glazed balustrade.
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Decision

1. The appeal is dismissed.

Main Issue

2. There is one main issue which is the effect of the brick piers and balustrade on the living conditions of occupiers of 41 Brampton Grove with respect to outlook taking account of the trees that have been planted.

Background

3. The brick piers and glazed balustrade were the subject of earlier enforcement appeals (APP/N5090/C/10/2120338 & 9). The appeals, one of which proceeded on, amongst others, ground (a) that planning permission should be granted, were dismissed on 22 November 2010. The Inspector found that, from picture windows looking across the rear garden of 41 Brampton Grove to the side of the appeal dwelling, the brick piers and associated horizontal beams, which are prominent, extending well above most of the length of the shared boundary fence, "strike a discordant note which spoils the outlook from this well established and pleasant residential property". This, he concluded, had an adverse effect, particularly in terms of loss of outlook, on the living conditions of occupiers. From the evidence, including my site visit, I have no reason to disagree with this view.
 4. Since that decision, the appellant has planted trees close to the shared boundary in an attempt to screen the brick piers and balustrade from No 41. The crux of this appeal is whether the trees overcome the harm that has previously been identified.
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Reasons

5. The trees, which are evergreen, are about 5-6m in height and understood to be of the species *Thuja plicata*. They are planted into a narrow bed, close to the shared boundary with No 41 and raised above the level of the adjacent path which runs along the side of No 55. They are of a narrow, conical shape. At present they provide partial screening of the brick piers but these are still clearly visible above and between the vegetation. As the trees grow it may be expected that additional screening will be achieved. However, hiding an unacceptable development with trees is rarely a satisfactory solution because the development remains but in time the trees may die or be removed.
6. The appellant suggests that planning conditions could be used to secure the long term retention and maintenance of the trees. However, although *Circular 11/95: The Use of Conditions in Planning Permissions* makes clear that conditions may be used to protect existing trees during a period of development, for example by the erection of protective fencing, and that the planting of new trees may be required, including provision for their maintenance and/or replacement should they die, it is clear from paragraph 52 that any such maintenance requirement should be limited to the time necessary to establish the trees. Thus maintenance and management of the trees in perpetuity would fall outside the scope of planning conditions since it would be unduly onerous and hence unreasonable and may also be unenforceable if the trees became too large or unsafe. I am not therefore persuaded that planning conditions could secure the long term retention and maintenance of the trees.
7. It is also suggested that a S106 undertaking could be used to secure the retention of the trees and a signed and dated unilateral undertaking has been submitted. A copy of the quotation for the planting of the trees is attached as Schedule 2. However, this is not referred to in the body of the undertaking which neither identifies the location of the trees to which it is supposed to relate nor provides for their retention, maintenance, replacement should they die or for any other works. Its only provision appears to be the payment of a sum of £500 to the Council. However, this sum appears to be to enable the Council to monitor the implementation of the undertaking but, as the undertaking does not place any obligations on the appellant, it is unclear what the money would be used for. The S106 undertaking would not therefore secure the retention of the trees or overcome the harm caused by the retention of the brick piers.
8. Even if the trees were retained, *Thuja plicata* is a fast growing species that can achieve a height of some 12m. The trees will also spread. This raises two issues. Firstly, as the trees grow they could fail to thrive in the narrow bed in which they have been planted. It is clear from the evidence that the first trees planted died as a result of drought and although an irrigation system has been installed to water the replacement trees this may not be adequate to secure their long term health and survival. Secondly, in time the trees may become too large for their constrained site between the house and the boundary fence, resulting in inconvenience, loss of light or fear of falling to occupiers of No 55. Under these circumstances they may be removed.

9. Furthermore, the trees are on the northern boundary of No 55 and to the south of No 41. Therefore, as they grow they would be expected to take light from the garden of No 41. In time this could be as harmful to the living conditions of occupiers of that property as the brick piers.
10. Overall I find that the trees do not overcome the harm to the living conditions of occupiers at No 41: firstly, because their long term retention is not secured; and secondly, because in the future they may in themselves cause harm to the living conditions of occupiers of the appeal dwelling which could lead to their removal, or materially harm the living conditions at No 41 which would negate their original purpose.
11. It is therefore concluded on the main issue that the brick piers and balustrade would have a materially harmful effect on the living conditions of occupiers of 41 Brampton Grove with respect to outlook, notwithstanding the trees that have been planted. In consequence they would conflict with the requirements of Policies D5 and H27 of the Barnet Unitary Development Plan, 2006, and with Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document, adopted in 2012, which, taken together, expect extensions to residential property to have no significant adverse effect on the amenity of neighbouring or potential occupiers through provision for adequate daylight, sunlight, privacy and outlook.
12. For the reasons set out above and having regard to all other matters raised, including the support for the development from some neighbours, I conclude that the appeal should be dismissed.

KE Down
INSPECTOR