



Officer Report

Application Number:	HGY/2024/0195
Application Type:	Householder planning permission
Address:	Flat A, 1 The Avenue, Hornsey, London, N10 2QE
Proposal:	Erection of a rear pergola and (retrospective) works for rear garden landscaping and paving works.
Case Officer:	Nathan Keyte
Valid Date:	08/03/2024
Applicant:	Ms Siobhan McMillan
Agent:	Mr Mauro Persic

1. Proposed development

This is an application for works in the rear garden of No. 1A The Avenue. It is proposed to erect a pergola and seeks retrospective consent for changes to the landscaping and paving in the rear garden.

The proposed pergola will be aluminium framed and self-supported, measuring 2.5m in height from ground level, 3.0m in width, and 3.0m in depth. It is noted that there is currently no pergola present on the site, though it is understood that one had been present in the past as noted on the 'Original Rear Elevation'.

The changes to the rear garden involve work around three large trees, including changes to location, area, and type of paving, and removal of small vegetation. Amended plans provided with the application indicate that the area of soft standing/lawn will be reconfigured within the rear garden, providing a green area around two large trees to the rear of the property, a strip of permeable area along the northern boundary maintained, and other smaller areas of landscaping on the site.

For purposes of clarity, the application does not seek any work regarding the boundary fencing.

2. Site and Surroundings

The application property is a two-storey end of terrace building in use as flats. The application relates to the ground floor flat.

Three large trees are contained within the rear garden, being a Copper Beech Tree in the southern corner of the garden ('T1'), a Common Pear Tree in the western corner of the garden ('T2'), and a Common Laburnum in the northern section of the garden ('T3').

The site lies in the Muswell Hill conservation area. The site is also within a Critical Drainage Area as designated in the Haringey Local Plan 2017. For the purposes of clarification, the site is not subject to any Tree Protection Orders as shown on the Council database, however the larger trees on the site are afforded a degree of protection by being within a Conservation Area.

A visit was carried out on 11.04.2024.

3. Relevant Planning history

The following is the relevant recent planning history of the site:

HGY/2023/0468,

Address: Flat A, 1 The Avenue, Hornsey, London, N10 2QE

Proposal: Demolition and rebuilding of two brick piers on the property's side boundary in order to widen the existing vehicular access.,

Decision Date: 14 April 2023

Decision: Approve with Conditions

HGY/2003/1327,

Address: 1, The Avenue, London, N10 2QE, London

Proposal: Alteration to roof to change hip end to gable end with dormer to rear and rooflights to front, to facilitate additional accommodation to Flats B and C.,

Decision Date: 16 September 2003

Decision: Refuse

CON/2020/0471,

Address: Flat A, 1, The Avenue, London, N10 2QE

Proposal: Beech (T1) - Reduce crown back to previous most recent cuts. To allow more light into the gardens. Pear (T2) - Reduce crown back to previous most recent cuts. To allow more light into the gardens.,

Received Date: 25 September 2020

Valid Date: 19 October 2020

Decision Date:

Decision: No Objection

CON/2022/0332,

Address: Flat A, 1, The Avenue, London, N10 2QE

Proposal: Copper Beech - Reduce by upto 2-2.5m on all aspects. Reason for work is to let more light into garden and restrict root growth affecting adjacent wall.,

Decision Date:

Decision: No Objection

CON/2022/0444,

Address: Flat A, 1, The Avenue, London, N10 2QE

Proposal: T2 Beech of MWA Arboricultural Report Works: Remove (fell) to near ground level and treat stump to inhibit regrowth. T4 Pear of MWA Arboricultural Report Works: Re-prune to previous points at approx. 5.0m and thereafter re-prune on a triennial cycle to maintain at reduced dimensions. Reason: Clay shrinkage subsidence damage at neighbouring property 135 Dukes Avenue, N10 2QD,

Decision Date: 21 November 2022

Decision: Object

2. Consultation

Alexandra Palace & Park CAAC: No comment

Muswell Hill CAAC: Advises of care to be taken to ensure the development is not unduly prominent and will not have a negative impact on the character and appearance of the Conservation Area.

LBH Arboricultural Officer: Works proposed are considered acceptable, considering the details provided in the amended arboricultural report and the additional permeable area with the removal of tiles shown.

LBH Conservation Officer: The proposed pergola as revised would have a neutral impact on the Conservation Area, by way of its size. For the avoidance of doubt this is without regard to the historic pergola on the site. Subject to Council's tree officer being satisfied that the trees would not be harmed by the proposed works then conservation supports this proposal.

The following representation/ objection was received from Cllr Rossetti including comment on amended plans submitted:

- Pergola does not match the surrounding areas in terms of size and materials; proposed modern metal structure contrasts with previous wood trellis seen on Google Maps;
- Impact on the permeability with extent of paving;
- Extensive paving is also not in keeping with the local character, examples of unsuitable developments used to validate the project;
- Grey state of the side wall and modern wood pattern frequently criticized by locals;
- Need to preserve the local character and the possible future impact as seen in similar cases in terms of permeability and damage to nearby properties;
- Emphasis on using 'like to like' approach in conservation areas, importance of matching materials, construction details, dimensions, decorative finish, and appearance to original proportions and patterns;
- Unclear about the application process, updated drawings not accompanying by notes, target decision date postponed, new submissions allowed;
- Concerns about setting a precedent for heritage areas;
- Request for officers to clarify the planning process, formal regulations, and transparency for potential Internal Review or Local Government Ombudsman referral.

[Officer comment: Concerns raised in respect of materials, design, impact on the conservation area and impact on drainage etc are addressed below.

The points raised regarding process are noted and Officers would point out that the application here has been assessed accordingly, namely within the framework of the planning act concerning what constitutes 'development', the application being determined in accordance with the local plan, the statutory test in respect of heritage assets and Council's Statement of Community Involvement (SCI) which advises on when re-consultation on amended plans is carried, all of which are available to view on-line.

Equally the National Planning Policy Framework 2023 which sets out requirements in respect of decision-making and determining applications was followed here, including the requirement to "work proactively".

Revisions to the works were sought following consultation on this application with this a common feature of the planning process. The nature and scale of the revisions represent a reduction in size to the proposed pergola and a decrease in paving area from what was originally consulted on and as such formal re-consultation was not deemed necessary in line with SCI, however those who made representations on the application were made aware informally by way of an e-mail).]

3. Local representations

The application has been publicised by way of 1 site notice displayed in the vicinity of the site, letters and public notices.

The number of representations received from neighbours, local groups, etc in response to notification and publicity within the formal consultation period of the application were as follows:

No of individual responses: 12

Objecting: 6

Supporting: 3

Representations: 3

Objections material to planning:

- The proposed grey paving stones (stated to have occurred by August 2023) are out of character, noting the previous 'existing' paving is of red brick.
- Impacts of proposed size and materials of pergola on character of the area.
- Impacts on trees, ecology and sustainability resulting from changes to the garden.
- Statement that there is a Tree Protection Order that applies to the site.
- Drainage problems raised due to paving introduced and subsidence impact.
- Proposed pergola raise issues for cleaning of the upper floor windows, security, and fire escape.
- Queries in relation to validity of information submitted with the application: i.e. the plans showing the 'existing' garden do not show the historic pond on site.
- Impact of the pergola on neighbour amenity due to overshadowing.

Objections not material to planning:

- Comment on the design of the garden wall/ fence being out of character. [Officer comment: this is outside the scope of the current application].
- Development contravenes the leasehold agreement. [Officer comment: this is a civil matter and outside the scope of planning control with the granting of planning consent not overriding any restrictive covenants, easements etc. An informative is imposed in respect of this matter].

[Officer comment: Since the consultation period closed, the applicant has provided a revised design, reducing the scale of the proposed pergola, and increasing the amount of permeable landscaping within the rear garden. Considering the nature of the changes in relation to the originally submitted proposed development, being a reduction in size of the pergola and an increase in permeable area in the rear garden,

formal re-consultation was not deemed to be required, although previous objectors were provided the opportunity to comment informally on the revisions. Two further objections from members of the public were received following the receipt of revised documents, points of which are summarised as follows:

- Confusion as to revised plans, and size of proposed pergola, and requesting a new planning statement.
- Query how impacts on trees will be managed if paving is to be removed.
- Query size of pergola in relation to patterned tiled on the site.
- Re-statement that a TPO applies to the site.]

4. MATERIAL PLANNING CONSIDERATIONS

The main planning considerations raised by the proposed development are:

1. Background;
2. Design and heritage;
3. Impact on neighbouring amenity;
4. Impact on Trees;
5. Other.

Background

It is understood that the original works to re-landscape the rear garden were begun in mid to late 2023.

Noting the part retrospective nature of this application, it is difficult to determine the exact nature and layout of the rear garden prior to the works having been undertaken. The Applicant has provided a plan detailing the initial garden plan prior to works occurring. Responses received from the public have however pointed out discrepancies in this, with photographs taken prior to June 2023 in support of such arguments. These include additional vegetation within a rectangular area of stone chippings in the eastern section of the garden, and what appears to be more vegetation around the Pear Tree to the rear.

While these points are noted it is important to point out that when a local authority assesses a planning application, their primary focus is on evaluating the proposed works as shown in the application, not arbitrating on pre-existing conditions of the site as the garden here will have changed over the years, namely as routine garden maintenance activities, such as planting or removing vegetation etc do not require planning permission and fall outside the control of planning; excluding works of removing trees with a trunk diameter of 75mm or more when measured at 1.5m above ground level, which are subject to the Section 211 notice process.

On the issue of a pergola, it is understood that one was present on site previously but when this was removed is not central to determining this application, rather the introduction of a new pergola is the matter for consideration here. The assessment below therefore considers this pergola structure and the other aspects of the works in so far as they fall within the scope of planning control in terms of 'development' as defined in Section 55 of the Town and Country Planning Act 1990.

It is noted that an Objector has stated that there is a Tree Preservation Order that relates to the site. It is understood that this is on the basis of an email from the LBH Tree Officer relating to a previous case for the site – HGY/2022/0987, which is publicly available. While the email of the Tree Officer notes certain trees as worthy of retention on the site, and *'When using a methodology to rate their worthiness for a Tree Preservation Order, the Beech scored well within the group of trees'*, this does not constitute a TPO. To date no formal assessment to recommend a TPO be imposed on the site has taken place nor in turn has the legal process required for this to take effect been executed.

Design and heritage

This application is being considered against DPD Policy DM12 'Housing Design and Quality' and DPD Policy DM1 'Delivering High Quality Design' which requires buildings/ structures to be of a high, site specific, and sensitive design quality, sensitive to landscaped areas and tree provision and to safeguard neighbouring amenity. With regards to landscaping DPD Policy DM1(C) states that development proposals shall demonstrate how landscaping and planting are integrated into the development as a whole, including how these respond to landform, levels, trees on and close to the site.

As this application is within a conservation area Local Plan Policy SP12 and DPD Policy DM9 which sets out the Council's approach to the management, conservation and enhancement of the Borough's historic environment apply. DPD Policy DM9 states that proposals affecting a designated or non-designated heritage asset will be assessed against the significance of the asset and its setting, and the impact of the proposals on that significance; setting out a range of issues which will be taken into account.

The Muswell Hill Character Appraisal notes the front boundary and facades of this building groups in which No 1 The Avenue is located contributes positively to the conservation area, however no comments are made in respect of the back of this property or its rear garden.

The works to the rear garden, altering its layout and introducing paving are by their nature not openly visible changes given these are contained within the site behind boundary fences, with the presence of trees and shrubs also in part limiting visibility.

The larger trees on the site are retained with an arboricultural report submitted to plot their position and provide the necessary technical assessment to understand the impact of such works.

Specifically, as per the amended plans the works have given more consideration to trees in question, retaining unpaved areas around the two larger trees to the rear of the site and a similar sized landscape strip next to the tree on the eastern boundary.

It is acknowledged that the landscape/ paving works subject to the retrospective consent has removed a number of grass/ permeable areas and low vegetation. The size of the rear garden space, from the principal rear most elevation of the building to the rear boundary, is approximately 106 sq.m. As per the amended plans the amount of unpaved / lawn area proposed is approximately 51 s.q.m, or 48%. While accepting that such works do change the appearance to this rear garden it is difficult to argue in planning terms that this equates to harm to the appearance of this property or to that of the conservation area.

Within the conservation area as a whole adaption and changes to gardens do occur with the majority not subject to planning control i.e. those in context of a single-family dwelling where 'permitted development rights' allows for works to rear gardens, with even some minor works to a garden to a flat being 'de minimis' and not requiring planning permission.

As per the amended plans the balance of landscaped/ unpaved to paved areas and their design with the retention of large trees is viewed to be acceptable and does not result in harm to the character and appearance of the conservation area.

With regards to the proposed pergola, considering the size and location of the revised structure, this is equally not considered to result in harm to the character and appearance of this property or the conservation area.

It is also pointed out that when assessing the impact on the character and appearance of a conservation area, the evaluation has to focus on how the proposed changes affect the overall integrity and significance of the entire conservation area, not just one part of it as such meaning that this is a high test.

Overall taking account of the points above the works are considered acceptable in design and heritage terms in compliance with the above stated policies.

Impact on neighbouring amenity

DPD Policy DM1 'Delivering High Quality Design' states that development proposals must ensure a high standard of privacy and amenity for a development's users and

neighbours. Specifically, proposals are required to provide appropriate sunlight, daylight and aspects to adjacent buildings and land, and to provide an appropriate amount of privacy to neighbouring properties to avoid overlooking and loss of privacy and detriment to amenity of neighbouring resident.

The proposed paving to the rear garden retains the larger trees and vegetation along the shared boundary with No. 3 The Avenue. Regarding the proposed pergola, this will be 2.5m in height and extend 3.0m from the rear face of the building. The pergola will be setback from the shared boundary with No. 3 The Avenue by 1.2m. Considering the size, setback, and the open nature of the pergola structure proposed, there would be no impact on neighbouring amenity in terms of conditions of light, outlook or overshadowing.

With regards to impact on the amenity to the neighbour in the first-floor flat above the application property, the proposed pergola will be set below their window and balcony level and will not result in shading or be dominant to affect their amenity.

In terms of impacts on amenity from the changes to the rear garden and taking account of photographs of the site from before, it is not disputed that the appearance to this rear garden in terms of the visibility of greenery etc has changed, however it is important to note that the planning system cannot intervene to protect a specific view nor can it control the extent of greenery there exists within a rear garden.

As per the amended plans which have introduced more generous areas of greenery/ unpaved area around the trees and within this site from what was originally submitted, an acceptable garden setting is viewed to be retained for this dwelling and in turn outlook and aspect for the occupiers of this first-floor flat and adjoining/ neighbouring properties are also viewed to be acceptable.

Considering these points, the proposal complies with the above stated policies relating to neighbour amenity.

Impact on trees

London Plan Policy G7 requires existing trees of value to be retained, and any removal to be compensated by adequate replacement. This policy further sets out that planting of new trees, especially those with large canopies, should be included within development proposals. DM Policy (2017) DM1 'Delivering High Quality Design' states that the Council will expect development proposals to respond to trees on and close to the site.

The proposed works will result in changes to the rear garden, which contain the root protection area of three large trees. While it is noted that works have been carried out

on the site, an arboricultural report has been provided by the Applicant, and which has been amended to take into consideration additional information relating to what the previously existing environment contained in terms of permeable area in the rear garden.

The report concludes that the impacts upon the trees as a result of non-permeable paving will be acceptable, and outlines measures by which any impact as a result of the construction of the proposed pergola will be mitigated and avoided. While there are some minor discrepancies in the 'initial' rear garden plan, noting the location and area of the soft standing proposed around trees T1 and T2, and this area having been increased further following the revised arboricultural report being received, these are not considered to materially impact on the conclusions of the arboricultural report. Furthermore, recommendations are set out within the revised arborist report relating to the trees, including monitoring of trees for when additional water may be required and providing additional watering if necessary.

With regards to the area of paving to be removed a condition is to be imposed to ensure this is undertaken so as to avoid impacts on the trees and any light tillage/ raking/ making good to the soil beneath the paving removed also carried out.

In terms of the proposed pergola, this is not located within the protected root zone of any of the three trees. Notwithstanding this, the revised arboricultural report outlines how any potential impacts on the trees may be mitigated.

The revised information has been reviewed by Council's Arboricultural Officer who has confirmed that impacts on the large trees will be acceptable, subject to the provision of permeable landscaping as shown on the proposed plans.

Other matters

Objections received have commented on the impacts on drainage that has resulted from the paving works being carried out (and to which this application relates). This includes stated damage to the building and to the wider environment. The plans submitted with the application indicate the surface drainage from the rear garden will largely be directed to the unpaved areas. Furthermore, additional permeable area is now proposed within the rear garden, such as along the side and rear boundaries.

Considering these points, and the overall modest size of the rear garden, impacts relating to a change in drainage from the proposal will be acceptable from a planning perspective.

In terms of issues of subsidence there is no evidence base to indicate that paving works leads to subsidence or impact ground conditions within a rear garden to lead to such impacts.

Conclusion

As per the amended plans the works are considered acceptable in terms of design, heritage and amenity considerations with works here also not viewed to affect the health and vitality of mature trees on this site.

All other relevant policies and considerations, including equalities, have been considered. Planning permission should be granted for the reasons set out above. The details of the decision are set out in the RECOMMENDATION.

CIL

N/A – No floorspace created.

5. Recommendation

GRANT PERMISSION -Subject to conditions

Conditions:	
1	The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to the conditions of this planning permission. Reason: For the avoidance of doubt and in the interests of proper planning.
2	Within 3 months of the consent hereby approved unless otherwise agreed in writing with the local planning authority, the remedial works of removing some of the paving slabs within the rear garden shall be carried out, specifically in accordance with the approved plans and with care/ best arboricultural practice and the soil beneath the removed paving slabs made good by way of a light tillage/ raking to the same area of ground. Reason: To protect the amenity value of the trees consistent with Local Plan 2017 Policy SP13.
Informatives:	
INFORMATIVE: Hours of Construction Work	

	The applicant is advised that under the Control of Pollution Act 1974, construction work which will be audible at the site boundary will be restricted to the following hours:- 8.00am - 6.00pm Monday to Friday 8.00am - 1.00pm Saturday and not at all on Sundays and Bank Holidays.
	INFORMATIVE: Land Ownership The applicant is advised that this planning permission does not convey the right to enter onto or build on land not within his ownership.
	INFORMATIVE: Party Wall Act The applicant's attention is drawn to the Party Wall Act 1996 which sets out requirements for notice to be given to relevant adjoining owners of intended works on a shared wall, on a boundary or if excavations are to be carried out near a neighbouring building.
	INFORMATIVE: The grant of a permission does not relieve the applicant/developer of the necessity of complying with any local Acts, Regulations, Building By-laws, private legislation, and general statutory provisions in force in the area or modify or affect any personal or restrictive covenants, easements etc., applying to or affecting either the land to which the permission relates or any other land or the rights or any person(s) or authority(s) entitled to benefit thereof or holding an interest in the property.