

**Location** **52 Greenfield Gardens London NW2 1HX**

**Reference:** **21/5555/FUL** Received: 19th October 2021  
Accepted: 20th October 2021

Ward: Childs Hill Expiry 15th December 2021

**Case Officer:** **Andrew Turner**

Applicant: Mr Mehdi Jafarifar

Proposal: Alterations to rear garden layout. Retention of existing garden boundary treatments. New foot path to be used for maintenance purposes. Reduction in garden gate height. Erection of cycle storage. Use of rear outbuilding for ancillary purposes to the first floor flat

### **OFFICER'S RECOMMENDATION**

Approve subject to conditions

AND the Committee grants delegated authority to the Service Director – Planning and Building Control to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chair (or in their absence the Vice-Chair) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

GREGA-L001  
GREGA-S001  
GREGA-S002  
GREGA-S003  
GREGA-S101 Rev B  
GREGA-S102 Rev B  
GREGA-S103 Rev B  
GREGA-S104 Rev B  
GREGA-S105 Rev B  
GREGA-S301 Rev B

GREGA-S302 Rev B  
GREGA-S303 Rev B  
GREGA-S304 Rev A  
GREGA-S305 Rev B  
GREGA-L101  
GREGA-L301 Rev B  
GREGA-P301 Rev B  
Planning Statement dated March 2021 Resubmission Oct 2021

Reason: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).

- 2 The works the subject of this permission shall be completed strictly in accordance with the hereby approved plans within six month of the date of this decision.

Reason: To safeguard the visual amenities of the building and surrounding area and the amenities of neighbouring residents in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012) and Policies CS NPPF and CS1 of the Local Plan Core Strategy (adopted September 2012).

- 3 The use of the outbuilding hereby permitted shall at all times be ancillary to and occupied in conjunction with the first floor flat of the main building and shall not at any time be occupied as a separate unit or dwelling.

Reason: To ensure that the development does not prejudice the character of the locality and the amenities of occupiers of adjoining residential properties in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012).

- 4 The materials to be used in the external surfaces of the building(s) shall match those used in the existing building(s).

Reason: To safeguard the visual amenities of the building and surrounding area in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012) and Policies CS NPPF and CS1 of the Local Plan Core Strategy (adopted September 2012).

- 5 The pathway leading to the outbuilding labelled "Path to be only used for repairs to the outbuilding" on the proposed ground floor plan (ref GREGA-P301) hereby permitted shall only be used in connection with the repair and maintenance of the outbuilding building and shall at no time be converted to or used for the enjoyment of the property as private outdoor amenity space or sitting out area.

Reason: To ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).

- 6 Should the proposed internal fencing running parallel with the boundary fence neighbouring no. 50 Greenfield Gardens be removed at any point, the requirements of the enforcement notice referenced ENF/0129/18 should be strictly and fully complied with as follows:

(1) Restore the land to the state in which it was prior to the breach of planning control by:

- Reducing ground levels aligned along the northern boundary of the rear garden to match those below the boundary fence with number 50;

and,

Restoring the remainder of the garden to an even gradient sloping between the revised levels of the northern boundary and the existing levels on the southern boundary."

(2) Permanently remove all constituent materials resulting from the works in 1. above from the property

Reason: To ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).

### **Informative(s):**

- 1 In accordance with paragraphs 38-57 of the NPPF, the Local Planning Authority (LPA) takes a positive and proactive approach to development proposals, focused on solutions. The LPA has produced planning policies and written guidance to assist applicants when submitting applications. These are all available on the Council's website. The LPA has negotiated with the applicant/agent where necessary during the application process to ensure that the proposed development is in accordance with the Development Plan.
- 2 The applicant is advised that failure to implement the development in accordance with condition 2 will result in further instigation of enforcement action.

### **OFFICER'S ASSESSMENT**

## 1. Site Description

The site comprises of a two-storey detached property with a converted garage, located to the eastern side of Greenfield Gardens, adjacent to a public footpath which leads through to the A41 Hendon Way at the rear. The property is currently vacant, although had previously been converted into 5 flats without the benefit of planning permission.

At present, the front curtilage provides off-street parking for 3 cars whilst the rear garden has a shared storage outbuilding to the rear of the plot.

The application site is located to the eastern side of Greenfield Gardens, adjacent to a public footpath which leads through to the A41 Hendon Way at the rear. To the rear there are residential dwellings which front Hendon Way. The site is not located within a Conservation Area and is not listed building.

Greenfield Gardens is a wide, tree lined residential street. The surrounding area is predominantly characterised by residential development.

It is noted that according to the inspector's report against the serving of an Enforcement Notice (ref APP/N5090/C/18/3205780) the height of the fence has been raised. According to the consultees, the fence has apparently been raised from 5 ft to 7 ft. This is the equivalent of 2.1 metres. Photos were provided by no 50 Greenfield Gardens which shows that the pre-existing fencing panels were somewhat lower than the pillars supporting the panels.

On a site visit to the neighbour's property on 17/02/2022, the height of the fence at various points along the garden were taken on both the neighbour's side and the applicant's side. The measurements were as follows:

At a point approximately 1 metres in front of the neighbour's rear elevation of their single storey rear extension (point A), the fence measured 1.79 metres on the side of no. 50 Greenfield Gardens. Whereas the fence measured 1.68 metres at the same point on the side of no. 52 Greenfield Gardens. Therefore the ground level difference was 11cm in this location. This is shown to be the case in section AA.

At a point at the end of the garden next to no. 50 Greenfield Garden's shed (point C), the fence measured 2.075 metres on the side of no. 50 Greenfield Gardens. Whereas the fence measured 1.71 metres at the same point on the side of no. 52 Greenfield Gardens. Therefore the ground level difference was 36.5cm in this location. This is shown to be the case in section CC.

At the point where the overhang of the outbuilding at the rear of no. 52 Greenfield Gardens finished where it faced the main dwelling (point E), the fence measured 2.05 metres on the side of no. 50 Greenfield Gardens. Whereas the fence measured 1.815 metres at the same point on the side of no. 52 Greenfield Gardens. Therefore the ground level difference was 23.5cm in this location. This is shown to be the case in section EE.

At a point in the middle of the garden when viewed from no. 50 Greenfield Garden (point B), the fence measured 2.12 metres on the side of no. 50 Greenfield Gardens. Whereas,

the fence measured 1.815 metres at the same point on the side of no. 52 Greenfield Gardens. Therefore the ground level difference was 30.5cm in this location. This is shown to be the case in section BB.

## 2. Site History

Development Management:

Reference: 17/3277/192

Address: 52 Greenfield Gardens, London, NW2 1HX

Decision: Withdrawn

Decision Date: 13 June 2017

Description: Conversion of existing property into HMO to provide 5no self-contained flats

Reference: 17/4137/FUL

Address: 52 Greenfield Gardens, London, NW2 1HX

Decision: Application Returned

Decision Date: No Decision Made.

Description: Change of use from C3 residential to C4 HMO

Reference: 17/5916/RCU

Address: 52 Greenfield Gardens, London, NW2 1HX

Decision: Refused. Appeal dismissed

Decision Date: 14 November 2017

Description: Change of use from C3 (Residential) to Sui Generis Use (HMO) for up to 10 people

Reference: 18/4027/FUL

Address: 52 Greenfield Gardens, London, NW2 1HX

Decision: Refused. Appeal allowed

Decision Date: 31 August 2018

Description: Conversion of existing dwelling into 2no self-contained flats including conversion of existing garage

Reference: 19/3943/FUL

Address: 52 Greenfield Gardens, London, NW2 1HX

Decision: Refused

Decision Date: 12 July 2021

Description: Conversion of existing property into three self contained flats. (AMENDED DESCRIPTION)

Reference: 20/0222/FUL

Address: 52 Greenfield Gardens, London, NW2 1HX

Decision: Application Returned

Decision Date: No Decision Made.

Description: Conversion of existing property into three self-contained flats

Reference: 21/1373/RCU

Address: 52 Greenfield Gardens, London, NW2 1HX

Decision: Refused

Decision Date: 10 May 2021

Description: Raising of the ground levels to the rear (Retrospective Application)

Reason for refusal: The proposed raised rear garden levels, including but not limited to the raised concrete level, in conjunction with the raised fencing levels, by reason of their height, siting and close proximity to the neighbouring boundary of 50 Greenfield Gardens, would result in overlooking and loss of privacy detrimental to the amenities of the adjoining occupiers at 50 Greenfield Gardens, contrary to Policy CS5 of the Local Plan Core Strategy (adopted 2012), Policy DM01 of the Development Management Policies DPD (Adopted 2012) and the Residential Design Guidance SPD (adopted 2016).

It is important to acknowledge the reason for the refusal of the planning application ref. 21/1373/RCU. It was not fundamentally because it did not comply with the precise requirements of the planning enforcement notice (see below) or the subsequent inspector's decision (see below). Nor was it refused fundamentally because of the accuracy of the plans at certain points in the history of the site. The planning application was refused fundamentally because of the detrimental impact on the overlooking and loss of visual amenities caused to the adjoining occupiers at 50 Greenfield Gardens as a result of the works as they were at that point in time. This was contrary to planning policy and guidance as set out above.

Planning Enforcement (relevant):

An enforcement investigation is ongoing regarding the raising of the garden levels. An enforcement notice (ref ENF/0129/18) was issued on 23 May 2018. The enforcement notice required:

"Restore the land to the state in which it was prior to the breach of planning control by:

Reducing ground levels aligned along the northern boundary of the rear garden to match those below the boundary fence with number 50;

and,

Restoring the remainder of the garden to an even gradient sloping between the revised levels of the northern boundary and the existing levels on the southern boundary."

Reason for serving notice:

The proposed raised rear garden levels, including but not limited to the raised concrete level, in conjunction with the raised fencing levels, by reason of their height, siting and close proximity to the neighbouring boundary of 50 Greenfield Gardens, would result in overlooking and loss of privacy detrimental to the amenities of the adjoining occupiers at 50 Greenfield Gardens, contrary to Policy CS5 of the Local Plan Core Strategy (adopted 2012), Policy DM01 of the Development Management Policies DPD (Adopted 2012) and the Residential Design Guidance SPD (adopted 2016).

An appeal was lodged (ref APP/N5090/C/18/3205780). The grounds of appeal challenged and assessed were grounds B and C. This was quashed and the notice upheld on 2 April 2021.

Paragraph 11 of the Inspector's report read:

"There is certainly now a marked "step" in levels between the rear parts of these gardens. Check measurements during my inspection showed that the level of the adjacent garden at 50 Greenfield Gardens is about 0.6 metre below the level of the shingle surface at the

appeal site, so the fence height is correspondingly different when measured from ground level on each side. The wooden fence panels are about 1.5 metres in height and the total fence height above the shingle on the appeal site is about 1.6 metres. The fence height (including the "gravel boards" below the wooden panels) is about 2.1 metres from the garden of Number 50."

Paragraph 13 of the Inspector's report read:

"In my judgment there is clear evidence that the level of the rear garden at the appeal property has been raised, and that the extent of this operation was more than minimal. The appellant himself has stated: "We have not done anything to the garden other than layering the top with gravel. The ground levels remain as they were below". This statement conflicts with other evidence indicating that earth-moving has occurred, but in any event it does not deny - indeed it confirms - that much of the rear part of the site has been covered with material (which I describe as shingle), raising the surface above the original level."

Paragraph 15 of the Inspector's report read:

"The council's case is supported by other evidence about what has happened to the fence along the boundary between Numbers 50 and 52. Before the development was carried out the wooden fence panels were below the tops of the posts, as shown in photographs. Now, the fence panels protrude above the posts. The increased height of the panels evidently resulted from the insertion of additional gravel boards so that there are now two gravel boards below the wooden panels. On the side facing Number 50, the upper and lower gravel boards are exposed above the land level. On the side facing the appeal site, only the topmost part of the upper gravel board is exposed. It is difficult to see why Mr Jafarifar or his contractors would have gone to the trouble and expense of installing a line of additional gravel boards in Mr Smith's fence (apparently without his consent) unless this was to cater for an increase in the ground level at Number 52, at least in the part of the site near the boundary fence."

Paragraph 16 of the Inspector's report read:

"Various contentions have been put forward about a figure of 30 centimetres. The appellant has stated that "even if the shingles is (sic) causing a slight raise, it is well below the 30 cm limit", and part of the appellant's case is that the level could be raised by 30 centimetres as "permitted development". The council say that the ground level where the site adjoins Number 50 has been raised by about 55 centimetres; and the council quote 30 centimetres as "the permitted development mark", referring to a definition relating to raised platforms in the Town and Country Planning (General Permitted Development) Order 2015 as amended (abbreviated below to "GPDO")."

Paragraph 21 of the Inspector's report read:

"I conclude that the council's case supported by other evidence is more convincing than the appellant's case and its supporting evidence. The dispute about the precise amount of change in ground level, in particular whether the surface of the land at the appeal site was raised by the neighbour's figure of 2 feet, or the council's 55 centimetres, or more or less than 30 centimetres, is largely irrelevant - I find as a matter of fact that operational development was carried out which involved raising the ground level in the rear of the appeal site. Therefore what is alleged in the enforcement notice has occurred, so the appeal on ground (b) fails. To avoid any possible doubt, I also confirm that if ground (c) had not been withdrawn it would have failed, since the matters alleged in the enforcement

notice constituted a breach of planning control."

### **3. Proposal**

The proposal seeks planning permission for alterations to rear garden layout. The retention of existing garden boundary treatments. A new foot path to be used for maintenance purposes. The reduction in garden gate height. The erection of cycle storage. And finally, the use of rear outbuilding for ancillary purposes to the first floor flat.

The new footpath to be used for maintenance purposes only will be created by the erection of new internal fences with a height of 1.87 metres. The existing timber fence running along the boundary fence with no. 50 Greenfield Gardens will be lowered by 80mm from 188cm to 180cm at a point close to the rear elevation of the main dwelling and 1.815 metres at the point where it meets the front elevation of the outbuilding (point E of section EE). These fences will be erected parallel to the existing boundary fences neighbouring no. 50 Greenfield Gardens; another running parallel to the outbuilding and another two to be retained along the boundary of the ground floor flat's private outdoor amenity space. A detailed description of the fence heights and level changes can be found in section no1 of this report.

The cycle storage is to be erected to the rear of the property. There are proposed changes to what appears to be the neighbour's property's ground level, raising it by 10cm at section AA. However, given that this is outside of the boundary of the site, these changes have been excluded from the assessment of the proposal.

Following the previous planning application on the site, all internal fences have been taken down and the concrete path alongside the fence on no. 50 Greenfield Garden's side has been removed. Although there is some disagreement between the applicant and third parties, this assessment has, following a number of site visits to both the applicant's property and no. 50 Greenfield Garden's property, taken the view that the earth has been reduced in height by 20cm.

### **4. Public Consultation**

Consultation letters were sent to 26 neighbouring properties, with 5 responses received all in objection to the application.

The matters raised are summarised as follows:

- Not clear what the ancillary use is in the outbuilding. It could be habitable accommodate.
- Unclear how the outbuilding will be accessed
- The current application claims to be a resubmission of the previous retrospective planning application (21/1373/RCU)
- Claimed there are alleged engineering operations which is untrue
- Agent has claimed that the remedy for complying with the notice is unclear and as such has failed to comply with the enforcement notice requirements.
- The applicant claims to have addressed the amenity issued caused by the raising of the ground levels in the current applicant.
- Concern over the actions of the developer since the enforcement notice was served and subsequently expired.
- No enforcement officer has visited no. 50's property since 2017 to discuss their concerns.
- The second gravel board is still there on site.
- The ground level today remains well over 1ft too high in many places with no. 50



Greenfield Avenue's original gravel board submerged below gravel and concrete.

- The outbuilding sits on a raised ground level which shouldn't be allowed as a raised platform.
- The planning application ignores the raised ground level around the outbuilding which are 2 ft higher than they were before.
- There is no sloping running across the site.
- The previous application was not refused on design grounds, rather on a number of grounds.
- The application does not address the raising of the ground levels on which the ground level sits. Privacy and overlooking is one small problem.
- The pre-existing ground levels were taken after the levels of ground level had taken place.
- Many measurements of the existing ground level were wrong.
- Enforcement action should be taken against the works for not complying with the enforcement notice.
- How confident can Barnet Council be that this undertaking could ever be enforced given this developer's past actions and the fact he is not the freeholder?
- How does anyone know who the occupant of the first-floor flat is?
- What does ancillary purposes actually mean?
- No mention is made of the extended / heightened patio and never any mention of the water which drains into Mr Smith's garden
- Given that the Enforcement Notice decision was upheld by the Planning Inspectorate in 2019 why are Barnet Council permitting this developer and his solicitor to constantly challenge that decision?
- Having lost his appeal and then failed to comply with any of the earlier deadlines this developer and his solicitor now appear to challenge the decision itself
- The whole procedure now taking place regarding this Enforcement Notice is questionable.
- Question over what process Barnet Council are following in order to achieve compliance with the Enforcement Notice
- The complainant has a good case to take the case to the Local Government Ombudsman.
- This application is not substantially different to the one that I and other residents had previously objected to and which the Council itself had ruled against in 2019
- Barnet Council should take enforcement against the freeholder.

## **5. Planning Considerations**

### **5.1 Policy Context**

#### National Planning Policy Framework and National Planning Practice Guidance

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The National Planning Policy Framework (NPPF) was amended in July 2021. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for

people'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

### The Mayor's London Plan 2021

The new London Plan which sets out the Mayor's overarching strategic planning framework for the next 20 to 25 years was adopted on the 2nd March 2021 and supersedes the previous Plan. The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

### Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

- Relevant Core Strategy Policies: CS NPPF, CS1, CS5.
- Relevant Development Management Policies: DM01, DM02.

The Council's approach to extensions as set out in Policy DM01 is to minimise their impact on the local environment and to ensure that occupiers of new developments as well as neighbouring occupiers enjoy a high standard of amenity. Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

### Barnet's Local Plan (Reg 22) 2021

Barnet's Draft Local Plan on 26th November 2021 was submitted to the Planning Inspectorate for independent examination which will be carried out on behalf of the Secretary of State for the Department of Levelling Up, Housing and Communities. This is in accordance with Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2021 (as amended).

The Regulation 22 Local Plan sets out the Council's draft planning policy framework together with draft development proposals for 65 sites. The Local Plan 2012 remains the statutory development plan for Barnet until such stage as the replacement plan is adopted and as such applications should continue to be determined in accordance with the 2012 Local Plan, while noting that account needs to be taken of the policies and site proposals in the draft Local Plan and the stage that it has reached.

### Supplementary Planning Documents

Residential Design Guidance SPD (adopted October 2016)

- Sets out information for applicants to help them design an extension to their property which would receive favourable consideration by the Local Planning Authority and was the subject of separate public consultation. The SPD states that large areas of Barnet are characterised by relatively low density suburban housing with an attractive mixture of terrace, semi detached and detached houses. The Council is committed to protecting, and where possible enhancing the character of the borough's residential areas and retaining

an attractive street scene.

- In respect of amenity, states that extensions should not be overbearing or unduly obtrusive and care should be taken to ensure that they do not result in harmful loss of outlook, appear overbearing, or cause an increased sense of enclosure to adjoining properties. They should not reduce light to neighbouring windows to habitable rooms or cause significant overshadowing, and should not look out of place, overbearing or intrusive when viewed from surrounding areas.

Sustainable Design and Construction SPD (adopted October 2016)

- Provides detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet.

## **5.2 Main issues for consideration**

The main issues for consideration in this case are:

- Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality;
- Whether harm would be caused to the living conditions of neighbouring residents.

## **5.3 Assessment of proposals**

Impact of the proposal on the character and appearance of the building, the street scene and the wider area

DM01 states that development proposals should be based on an understanding of local characteristics. Proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.

Owing to its overall height and the positioning of the fence relative to the raised ground levels, the raising of the garden levels cannot be seen from any other properties and therefore does not impact on character of the local area. Therefore, it is not in conflict with DM01 in this regard.

The fence is proposed to be reduced to a maximum height of 2.12 metres on the side of no. 50 Greenfield Gardens at point B shown on section BB (the original ground level according to the requirements of enforcement notice). This is 12cm above the permitted development height. However, given the difference in height from the permitted development height (the applicant's fallback) and the proposed, the additional height is not considered to make any meaningful difference on the character of the area. It is therefore compliant with DM01.

It is also noted there is an additional fence with a height of 1.8 metres being erected. Given its setting off of the boundary and its proposed height of 1.87 metres, it is considered that it will have minimal impact on the character of the area, complying with DM01.

It is noted that in the proposed plans, there has been the insertion of the outbuilding from the pre-existing to the existing and proposed. Regarding its size, height and overall bulk, the outbuilding is not considered to be unduly dominant on the character of the overall area and is therefore considered acceptable in this regard, complying with DM01.

Regarding the impact of the use of the outbuilding, there had been concerns in the past raised regarding it being used for commercial storage. However, the proposal seeks to

regularise the use of the outbuilding. Moving forward, the outbuilding would be used for ancillary purposes to the first floor flat. This would include limiting its change of use, preventing it being used for commercial storage or any other non-residential C3 use, if the intensity and frequency of the operation materially changed its use. It would also limit its use to exclude primary living accommodation including bedrooms and kitchens. It also prevents the owner/ occupier creating a new self-contained residential dwelling house. Therefore, there is not considered to be any undue impact on the character of the area from the use of the outbuilding and movement of people to and from it.

The erection of the cycle storage will not be visible from outside the boundary of the property when viewed at ground level. Given its size and setting, it is not considered to have any detrimental impact on the character of the area, complying with DM01.

### Impact of the proposal on the amenities of neighbours

Following the assessment of the wider character and amenity of the area, any potential adverse effects on neighbouring properties must be assessed. Policy DM01 notes that any proposed development must protect the amenity of neighbouring properties. As such, any potential impact on light, outlook, privacy and dominance towards the adjoining property, principally no. 50.

It should be noted that there have been concerns raised by neighbours regarding the ground levels not being returned back to the state they were in prior to any changes to the level changes as required by the enforcement notice (ref. ENF/0129/18). Whilst this is a material planning consideration, it is not the fundamental determinant of the acceptability of the scheme as part of this planning application. This includes the assessment of the development of the impact on the amenity of neighbouring properties. The fundamental issue and question to be assessed is whether the current planning proposal has a detrimental impact on the amenity of neighbouring properties.

The retention of existing garden boundary treatments.

As noted above, according to the inspectorate's report (ref APP/N5090/C/18/3205780) the height of the fence has been raised. According to the consultees, the fence has apparently been raised from 5 ft to 7 ft. This is the equivalent of 2.1 metres. Photos were provided by no. 50 Greenfield Gardens which shows that the pre-existing fencing panels were somewhat lower than the pillars supporting the panels. Whereas, on site the fence panels were above the pillars, hence strongly indicating that they had been raised. This was corroborated on the site visit.

Although the fence is 12cm taller than permitted development limits on the side with 50 Greenfield Gardens, this additional height is it is not considered enough to have an undue impact on the amenity of the neighbouring property. Therefore, it is not in conflict with DM01 from an amenity perspective in this regard.

A new foot path adjoining no. 50 Greenfield Gardens is to be used for maintenance purposes only. As noted above, the earth has also deemed to have been reduced by 20cm in height which has further reduced the impact on the neighbouring property. A condition will ensure this is that it is used for this purpose only and not for lingering and other purposes linked with patio areas or private outdoor amenity spaces. Therefore, there is considered to be no undue overlooking or loss of privacy as a result of this footpath. The creation of a new footpath would be facilitated through the erection of fencing running parallel with the boundary with no. 50 Greenfield Gardens. This proposed fencing would

have a height of 1.8 metres. Given the proposed height, it is considered that the fencing would prevent overlooking for no. 50 Greenfield Gardens', preventing any undue loss of privacy from the main usable section of the private amenity space of no. 52 Greenfield Gardens. As a result, there would be an acceptable impact on the visual amenity of no. 50 Greenfield Gardens in this regard, comply with DM01.

Since the original works done to the property which raised the garden levels, significant works have been undertaken to reduce the garden level. Whilst there is some dispute over whether this has resulted in the exact compliance with the enforcement notice, there is evidence of at least some works having been undertaken. Whether there has been strict compliance with the enforcement notice is largely irrelevant if what is proposed overcomes the primary reason for the enforcement notice being issued: largely the unacceptable impact on the privacy for no. 50 Greenfield Gardens. These changes would further reduce the level of overlooking into the rear garden of no. 50 Greenfield Gardens, thus complying with DM01.

The erection of the cycle storage facility will not be visible from the surrounding area and will not therefore negatively impact the amenity of neighbouring properties, complying with DM01.

As already discussed, in the proposed plans, there has been the insertion of the outbuilding from the pre-existing to the existing and proposed. Regarding its size, height, overall bulk and sitting at the rear of the garden, the outbuilding is not considered to be overbearing, cause a loss of outlook, a loss of light or create a sense of enclosure and is therefore considered acceptable in this regard, complying with DM01.

As discussed, regarding the impact of the use of the outbuilding, there had been concerns in the past raised regarding it being used for commercial storage. However, the proposal seeks to regularise the use of the outbuilding. Moving forward, the outbuilding would be used for ancillary purposes to the first floor flat. This would include limiting its change of use, preventing it being used for commercial storage or any other non-residential C3 use, if the intensity and frequency of the operation materially changed its use. It would also limit its use to exclude primary living accommodation including bedrooms and kitchens. It also prevents the owner/ occupier creating a new self-contained residential dwelling house. Therefore, there is not considered to be any undue impact on the amenity of neighbouring properties from the use of the outbuilding and movement of people to and from it.

There was no perceived loss of outlook, sense of enclosure, overbearing appearance or loss of privacy for no 54 Greenfield Gardens owing to the boundary treatment and relationship of the topography and levels between the two properties.

Overall, the proposed development is not considered to result in any adverse effects on the residential amenity of no 50 Greenfield Gardens and are thus not in accordance with the relevant matters of Policy DM01.

#### **5.4 Response to Public Consultation**

A response to the public consultations are as follows:

(1) Not clear what the ancillary use is in the outbuilding. It could be habitable accommodate.

Response: this has been explicitly expressed in the body of the report.

(2) Unclear how the outbuilding will be accessed

Response: it will be used for ancillary purposes only.

(3) The current application claims to be a resubmission of the previous retrospective planning application (21/1373/RCU)

Response: although the last application has informed some of the design issues from the last application, this is not a retrospective application. New design solutions in the proposed development would be introduced to overcome the shortcomings of the last retrospective application.

(4) Claimed there are alleged engineering operations which is untrue

Response: whether or not there are technical engineering operations which have been carried out does not change the nature of the application at hand and the impact on the character or amenity of neighbouring properties.

(5) Agent has claimed that the remedy for complying with the notice is unclear and as such has failed to comply with the enforcement notice requirements.

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect.

(6) The applicant claims to have addressed the amenity issued caused by the raising of the ground levels in the current applicant.

Response: this point is true, owing mainly to the lowering of the path levels on site, the fence and the gate it sits on and the introduction of the 1.88 metre high fence.

(7) Concern over the actions of the developer since the enforcement notice was served and subsequently expired.

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect.

(8) No enforcement officer has visited no. 50's property since 2017 to discuss their concerns.

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect. It should be noted that a site visit was carried out by the development management planning officer as part of the previous planning application where the concerns of the neighbour were discussed.

(9) The second gravel board is still there on site.

Response: this point does not impact the assessment of the current planning application.

(10) The ground level today remains well over 1ft too high in many places with no. 50 Greenfield Avenue's original gravel board submerged below gravel and concrete.

Response: the issues of overlooking have been overcome through the introduction of the walkway and new fencing which will overcome the ground level despite whether or not the ground level has or has not been lowered. Therefore, this point is largely irrelevant in the assessment of this planning application.

(11) The outbuilding sits on a raised ground level which shouldn't be allowed as a raised platform.

Response: The raised ground level is included in the section which will be restricted as being a path to be only used for repairs to the outbuilding by means of a condition. As such, it is considered that the raised ground level itself will not result in undue levels of overlooking and loss of privacy. The outbuilding itself being on a raised platform is not an

issue because the design, size, height and sitting of the outbuilding itself does not cause any undue impact on the amenity of neighbouring properties or the character of the area.

(12) The planning application ignores the raised ground level around the outbuilding which are 2 ft higher than they were before.

Response: this has been covered in response to point 11.

(13) There is no sloping running across the site.

Response: this is largely irrelevant because the proposal does not have any detrimental impact on the character of the are or the amenity of neighbouring properties as discussed above.

(14) The previous application was not refused on design grounds, rather on a number of grounds.

Response: As per the decision notice, the application was refused because of the impact on the amenity of the neighbouring property, not because it did not strictly comply with the requirements of the enforcement notice.

(15) The application does not address the raising of the ground levels on which the ground level sits. Privacy and overlooking is one small problem.

Response: This has been covered in response to point 11.

(16) The pre-existing ground levels were taken after the levels of ground level had taken place.

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect.

(17) Many measurements of the existing ground level were wrong.

Response: this point does not impact the assessment of the current planning application. The proposed ground level and introduction of the pathway to the outbuilding prevents any undue loss of privacy or overlooking.

(18) Enforcement action should be taken against the works for not complying with the enforcement notice.

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect.

(19) How confident can Barnet Council be that this undertaking could ever be enforced given this developer's past actions and the fact he is not the freeholder?

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect.

(20) How does anyone know who the occupant of the first-floor flat is?

Response: is there are concerns with the compliance of a planning permission, this can be raised with (and investigated by) the planning enforcement team.

(21) What does ancillary purposes actually mean?

Response: some of the restriction relevant to this planning application of what is not covered as ancillary are covered in the body of this report. Further details are found in case law from court decisions.

(22) No mention is made of the extended / heightened patio and never any mention of the water which drains into Mr Smith's garden

Response: the heightened patio will not cause any undue loss of privacy owing to the introduction of the 1.88 metre high fencing. The water drainage into Mr Smith's garden is a civil issue and lies outside of planning legislation and policy to take action against.

(23) Given that the Enforcement Notice decision was upheld by the Planning Inspectorate in 2019 why are Barnet Council permitting this developer and his solicitor to constantly challenge that decision?

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect.

(24) Having lost his appeal and then failed to comply with any of the earlier deadlines this developer and his solicitor now appear to challenge the decision itself

Response: the current planning application is seeking a solution to overcome the reasons for the planning enforcement notice being served. That is, the detrimental impact of the raising of the ground levels on the overlooking and loss of privacy for no. 50 Greenfield Gardens.

(25) The whole procedure now taking place regarding this Enforcement Notice is questionable.

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect. If councillor would prefer, there could be a shorter than usual time limit put on the life of this permission before the permission expires.

(26) Question over what process Barnet Council are following in order to achieve compliance with the Enforcement Notice

Response: Please see response to point 25 in response to this comment..

(27) The complainant has a good case to take the case to the Local Government Ombudsman.

Response: this point does not impact the assessment of the current planning application. Through the approval of the current planning application, there can be a course of action which would be implemented which resolves the arguments over the original and current ground levels in a way which takes away any uncertainty. This would once and for all put an end to the issue for all parties.

(28) This application is not substantially different to the one that I and other residents had previously objected to and which the Council itself had ruled against in 2019

Response: please see the response to point 3 in response to this comment.

(29) Barnet Council should take enforcement against the freeholder.

Response: this point does not impact the assessment of the current planning application. The two issues are in this sense separate in this respect.

## **6. Equality and Diversity Issues**

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and supports the Council in meeting its statutory equality responsibilities.

## **7. Conclusion**

Having taken all material considerations into account, it is considered that subject to



compliance with the attached conditions, the proposed development would have an acceptable impact on the character and appearance of the application site, the street scene and the locality. The development is not considered to have an adverse impact on the amenities of neighbouring occupiers. This application is therefore recommended for APPROVAL.



OS Map

