

Appeal Decision

Site visit made on 20 June 2016

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 20 October 2016

Appeal Ref: APP/Q5300/W/16/3145290
57 Brimsdown Avenue, Enfield EN3 5EW

- 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 Mr B Hoffman against the decision of the Council of the London Borough of Enfield.
 - The application Ref 15/02333/FUL, dated 27 May 2015, was refused by notice dated 28 January 2016.
 - The development proposed is demolition of existing rear extension, construction of new extension and change of use to residential.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing rear extension, construction of new extension and change of use to residential at 57 Brimsdown Avenue, Enfield EN3 5EW in accordance with the terms of the application, Ref 15/02333/FUL, dated 27 May 2015, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the proposed residential accommodation would provide acceptable living conditions for future occupiers having regard to outlook, light and privacy;
 - Whether or not the proposal would make adequate provision for affordable housing and education.

Reasons

Character and appearance

3. The appeal site comprises a two storey mid terraced property located centrally within a small parade of five properties. The ground floor of the appeal building together with the buildings either side are in commercial use with the other two buildings in the parade being residential. The appeal building together with the buildings either side are set well back from the road and have large glazed openings at ground floor which front onto a very wide forecourt and pavement area. The residential properties in the parade are set behind a
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front garden area enclosed by low level walling and timber fencing. The residential properties have smaller glazed openings at ground floor than the appeal building and the other commercial properties. The immediate surrounding area is mixed in character and appearance and contains residential and commercial uses.

4. The proposal involves limited changes to the front elevation of the appeal building with the only change proposed being the subdivision of the existing large glazed opening. In addition a small front garden area is proposed and would be enclosed by a 900mm high garden wall. Though I note that the appearance of the front elevation of the proposed ground floor residential accommodation differs from the appearance of the other residential units within the parade, the appeal building is located between two buildings with a similar appearance at ground floor and within an area that is mixed in character. As such I do not consider that the proposed front elevation would be incongruous, harmful to or out of keeping with the character and appearance of the streetscene or that it would need to mimic the appearance of the other nearby residential units.
5. Similarly whilst the proposed front garden area would be smaller and project forwards less than those of the other residential units within the parade, the proposed boundary treatment for the garden is not dissimilar. I do not therefore consider that the difference in size and projection means that the proposed front boundary enclosure would be out of keeping or detrimental to the character and appearance of the streetscene.
6. The Council raised no objection to the proposed replacement of the existing rear extension and I have no reason to disagree with their findings on this part of the proposal.
7. Taking the above matters into consideration, I conclude that the proposal would not adversely affect the character and appearance of the area. It therefore accords with policies 7.1 and 7.4 of the London Plan (LP), Policy CP30 of the Enfield Council Core Strategy (CS) and policies DMD 8 and DMD 37 of Enfield's Development Management Document (DMD). These policies seek, amongst other things, to ensure that development is high quality and design led having special regard to its context.

Living conditions

8. The proposed flat would have an open plan lounge/dining and kitchen area in the front part of the building. The open plan area would have large glazed windows and a door to the front elevation and a rooflight over the kitchen area located to the rear of the open plan area. The two bedrooms at the rear of the flat would be served by glazed doors opening onto the rear garden area of the flat.
9. Though the proposed open plan lounge/dining and kitchen area would be single aspect, it would benefit from a large amount of glazing to the front elevation of the building. The amount of glazing, the orientation of the front elevation and the provision of a rooflight in the rear part of the room means that I am satisfied that a sufficient amount of light would be provided. I note that the appellant states that the amount of light to be provided to the open plan area meets the standards set out within the Mayor of London Housing Supplementary Planning Guidance (SPG).

10. The large windows and door in the front elevation would face out onto a very wide forecourt and pavement area, part of which would be enclosed to form a front garden area for the flat. The bedrooms would have an outlook over the rear garden. Consequently despite the Council's concerns I am satisfied that the flat would also benefit from a sufficient outlook.
11. Though not cited as part of the reasons for refusal, the Council has expressed concern about a potential lack of privacy for occupiers of the proposed flat if the front boundary enclosure was not in place. However, whilst I note the concerns raised by the highway authority regarding the enclosure, it forms part of the proposal and appears to fall within the submitted site edged red. Whilst it may not be possible to form the enclosure without the permission of the highway authority, this is not a reason to withhold planning permission, particularly given that the Council has suggested a condition requiring the enclosure to be in place prior to the occupation of the flat.
12. Taking the above matters into consideration, I conclude that the proposed residential accommodation would provide acceptable living conditions for future occupiers having regard to outlook, light and privacy. It therefore accords with policies 7.1 and 7.4 of the LP, Policy CP30 of the CS, policies DMD 7 and DMD 8 of the DMD and to guidance contained within the SPG.

Affordable housing and education

13. Policy CP3 of the CS and Policy DMD 2 of the DMD state that some form of contribution towards affordable housing will be expected on all new housing sites. Policy CP46 of the CS relates to infrastructure contributions and states that development will normally be required to make financial and in kind contributions towards infrastructure and community facilities.
14. No such contributions were proposed prior to the application being determined by the Council but a signed unilateral undertaking has been submitted by the appellant during the course of the appeal. The undertaking provides for financial contributions to affordable housing and education as set out in the Council's S106 Supplementary Planning Document.
15. On 28 November 2014 a Written Ministerial Statement (WMS) was published which sets out Government policy on Section 106 obligations and included setting a threshold beneath which affordable housing and tariff style contributions should not be sought. The WMS was however subject to a High Court judgement on 31 July 2015 upholding a joint application by West Berkshire District Council and Reading Borough Council challenging the WMS, after which the WMS was no longer a material consideration.
16. However the Court of Appeal judgement on 11 May 2016 has now upheld the Secretary of State's appeal on all grounds and overturned the High Court judgement. Consequently the WMS is again a significant material consideration and sets out the circumstances when affordable housing and tariff style contributions should not be sought. These circumstances include developments of 10 units or less which is the case with the proposal. New and updated paragraphs have been added to the Planning Practice Guidance (PPG) section on planning obligations to reflect this.
17. The approach set out within the WMS, which is reiterated in the PPG, provides clarification on national policy and is to be read alongside the Framework. The

WMS is therefore a significant material consideration in the determination of this appeal. The proposal conflicts with Policies CP3 and CP46 of the CS and Policy DMD 2 of the DMD in that it makes no contribution towards local affordable housing or education provision. However, the conflict is outweighed by the change in Government policy on affordable housing and tariff style contributions, as set out in the WMS. On that basis, I consider that a contribution towards affordable housing and education is no longer required.

Conditions

18. I have had regard to the conditions suggested by the Council. I have imposed a condition specifying the approved plans as this provides certainty. I have also imposed a condition requiring the use of matching materials and requiring details of the front boundary enclosure. These are necessary in order to protect the character and appearance of the area. Conditions have been imposed preventing the use of the flat roofed extension for amenity purposes and also requiring the proposed front boundary enclosure to be provided prior to the occupation of the flat. These conditions are necessary in order to protect the living conditions of the occupiers of nearby properties and future occupiers of the flat. Finally I have imposed a condition requiring further details of the proposed cycle store. This is necessary having regard to the limited information provided regarding the cycle store.
19. I do not consider that conditions are necessary regarding refuse storage and recycling having regard to the size of the rear garden area which appears more than adequate to accommodate such facilities. Nor do I consider that a condition restricting additional fenestration is necessary having regard to the fact that the appeal site adjoins commercial premises and to the fact that conditions removing permitted development rights should only be used in exceptional circumstances.
20. I have not imposed conditions requiring an energy statement to be submitted or requiring evidence of BREEAM compliance. This is having regard to the Written Ministerial Statement published on 25 March 2015 and to the new national technical standards which mean that these conditions are not reasonable or necessary.

Conclusion

21. For the above reasons and having regard to all matters raised, I conclude that the appeal should be allowed.

Beverley Wilders

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan, 15-1167-01 and 15-1167-02.
- 3) The flat shall not be occupied until space has been laid out within the site for bicycles to be parked in accordance with details to be first submitted to and approved by the local planning authority and the space shall thereafter be kept available for the parking of bicycles.
- 4) The flat shall not be occupied until the front garden area has been enclosed in accordance with details to be submitted to and approved by the local planning authority and the front garden area and means of enclosure shall thereafter be retained.
- 5) The materials to be used in the construction of the external surfaces of the extension and alterations hereby permitted shall match those of the existing building.
- 6) The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area.