

Appeal Decision

Site visit made on 24 October 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 4th November 2016

Appeal Ref: APP/N5090/W/16/3155808

Garages at the rear of 1-12 Gloucester Court, Gloucester Gardens, London NW11 9AA

- 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 Zevy Shainfeld against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/00078/FUL, dated 5 January 2016, was refused by notice dated 10 February 2016.
 - The development proposed is conversion of 11 lock-up garages into 3 self-contained studio flats.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Both the Residential Design Guide Supplementary Planning Document (Design SPD) (2013) and the Sustainable Design and Construction Supplementary Planning Document (SDC SPD) (2013) have been superseded by updated versions of those documents which were adopted on 5 October 2016. However, the overall thrust of both documents is the same and the open space standards have not altered. I have, therefore, taken them into account in my reasoning below.

Main Issues

3. The main issues in this case are:
 - Whether the proposal would provide acceptable living conditions for future occupiers with specific reference to amenity space; and
 - Whether the proposal would provide acceptable living conditions for existing and future occupiers with specific reference to privacy.

Reasons

Living conditions-amenity space

4. The appeal site is a block of 11 domestic garages, situated at the rear of a three storey block of flats in a predominately residential area. The garage block is situated opposite the rear elevation of Gloucester Court and backs onto an adjacent residential development. The proposed development would involve the partial demolition and reconstruction of the garages to accommodate 2
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- garages on the same plot. External alterations will include the insertion of windows and doors to the front elevation and a new roof.
5. The proposed dwellings would not have any external, private amenity space. Policy DM02 of Barnet's Local Plan Development Management Policies (DMP) (2012) states that standards for outdoor amenity space will be set out in the SDC SPD. As noted above the SDC SPD has been updated since the determination of the application, however, the outdoor amenity space requirement set out in table 2.3 remains the same. A requirement of 5m² of space per habitable room is set for flats.
 6. The DMP explains at paragraph 3.8 that in town centres and for some higher density schemes it may not be possible to provide individual garden space, provided that the scheme contributes to public open space. The SDC SPD makes a similar point, referring to higher density development such as flats which may not be able to provide amenity space to the standards set out in Table 2.3. Where standards cannot be met the Council will seek a contribution to local parks and spaces which have been provided by developer contributions.
 7. The appeal site is accessible to public transport and not far from Golders Green town centre, but it is not within it. I also noted the presence of parks and open spaces within the wider Golders Green area however with the exception of the small Prince's Park; they are all a significant walk from the appeal site.
 8. No provision has been made for the scheme to contribute to open space, although the appellant confirms that he is willing to make such a contribution. However, Planning Practice Guidance confirms that it is not possible to require a financial contribution by condition. Taking these factors in combination I do not consider that the appeal proposal meets the criteria to enable an exception to be made to the requirements of the DMP and the SDC SPD.
 9. The Council has raised concerns that the absence of private amenity space in the context of the design of the proposed dwellings and their location in relation to Gloucester Court. The dwellings would have a single, north facing aspect across a narrow hard surfaced access space to the rear of the block of flats. The Inspector who considered a previous appeal¹ for a similar proposal involving the conversion of the garages to two flats noted the enjoyment of this outlook, and of the space itself, would be restricted by the block's external fire escapes, the comings and goings of residents and the occasional vehicles. The Inspector considered that the poor quality of the external environment would add to the harm arising from an absence of private amenity space. The current appeal proposal has not altered sufficiently to reach a different conclusion to my colleague.
 10. The appellant refers to a number of developments, approved by the Council, where no amenity space has been provided. I am not aware of the full circumstances of these cases, but from the limited information which I have, it appears that the development at 20-31 Gloucester Court involved development of flats. The case at 77 Golders Green Road is in the town centre. The development at 2 and 4 Garrick Avenue included a contribution towards open space provision. The proposal at 19 Highfield Road is in close proximity to Princes Park and it would appear that a contribution was made towards open

¹ Appeal decision: APP/N5090/A/12/2178280

space provision. These decisions were made within a different policy context which limits the weight which I can attach to them in my Decision.

11. Attention is also drawn to more recent decisions by the Council where no amenity space has been provided. In relation to the proposal at 41 Sinclair Grove I note that two of the three flats would have private amenity space. I have no detailed evidence before me regarding the case and so I am unable to determine other influential factors such as the quality of the surrounding environment. In relation to the conversion of a property to 5 flats at 237a Golders Green Road I note that the proposal is closer to the town centre and also to Princes Park and Hendon Park. The case at 100-102 Hamilton Road is close to Brent Cross centre and a contribution was provided towards open space. None of these cases are directly comparable to the appeal proposal which limits the weight which I can attach to them in my Decision.
12. The appellant contends that the Inspector who considered the previous appeal proposal indicated that a financial contribution would be sufficient to satisfy concerns regarding the lack of private amenity space. However, I note that he states that *'given all of these factors, I am not persuaded that the appeal scheme meets the criteria to enable an exception to be made to the requirements of the DMP and the SPD'*. The Inspector notes that the proposal is not in the town centre and is a significant distance from public open space. Moreover, he goes on to raise concerns that the poor quality of this external environment would add to the harm arising from the absence of private amenity space. Consequently, even if a contribution towards off-site amenity space provision was forthcoming, I am not persuaded that it would overcome concerns relating to the poor quality of the external environment.
13. I, therefore, conclude that the absence of amenity space would give rise to unsatisfactory living conditions for future occupiers. Consequently, the proposal would conflict with Policy CS1 of the Barnet's Local Plan Core Strategy (CS) Development Plan Document (2012) which seeks, amongst other things, to create an accessible, safe and attractive environment for people who live in, work in or visit Barnet. Conflict also arises with Policy DM01 of the DMP which seeks to protect Barnet's character and amenity. Furthermore, there is conflict with Policy DM02 of the DMP and the SDC SPD and Design SPD.

Living conditions-privacy

14. The Council is concerned that there would be a perception of mutual overlooking to the detriment of both existing and future occupiers. There is a very limited distance between the proposed windows and existing ground floor windows some although not all of these windows have obscure glazing.
15. Attention is drawn to a previous appeal decision in relation to a similar proposal involving the conversion of the garages to two flats. The Inspector accepted that the use of a film, applied as an integral part of the manufacture of the windows, so as to allow visibility outwards whilst restricting visibility inwards would overcome the Council's concerns regarding overlooking of future occupiers. He considered that this could be secured by imposition of a condition. The Inspector considered that a risk of overlooking currently existed in that the rear of the flats is currently a communal space where residents and, potentially, visitors may pass. He concluded that the risk of overlooking, leading to loss of privacy of existing neighbours would be limited and consequently, not harmful.

16. Whilst there would be an increase in the number of units, I note that there would not be an increase in the overall number of windows on the front elevation when compared to this previous scheme, although there would be two additional doors. Furthermore, the aforementioned film could be secured by way of a condition. Consequently, I consider that the degree of overlooking would be no greater than that which would have occurred as a result of the previous appeal proposal.
17. I, therefore, conclude that the risk of overlooking, leading to loss of privacy of existing neighbours and future occupiers, would be limited, and consequently not harmful. The proposal does not, therefore, conflict with criterion D of Policy DM01 of the DMD which states that development proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users.
18. Moreover, the proposal would not be contrary to paragraph 2.4, design principle C of the SDC SPD which states that new development should afford a reasonable degree of privacy for future and neighbouring occupiers using minimum distances between habitable rooms. In addition no conflict arises with section 7 of the Design SPD which seeks to protect the privacy of existing and future occupiers.

Conclusion

19. The proposal would have some benefit by way of a contribution, albeit limited, to housing land supply. However, I have concluded that the proposal would cause significant harm to the living conditions of future occupiers in terms of the lack of amenity space. This harm would not be outweighed by my findings that the proposal would not harm the living conditions of existing and future occupiers in terms of privacy. The proposal would, therefore, be contrary to the development plan as a whole.
20. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

INSPECTOR