

Appeal Decision

Site visit made on 8 November 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 4th January 2017

Appeal Ref: APP/M5450/W/16/3155031

42 Moat Drive, Harrow HA1 4RX

- 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 Ron Moore against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/0872/16, dated 24 February 2016, was refused by notice dated 25 April 2016.
 - The development proposed is change of use of existing outbuilding from an annex to a separate residential unit.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be acceptable having regard to development plan policies in relation to the location of new housing.
 - Whether the proposal would provide satisfactory living conditions for future occupiers with particular regard to outlook, privacy, amenity space, waste storage and access for people with disabilities.
 - The effect of the proposal on the living conditions of the occupiers of 42 Moat Drive with regard to privacy and waste storage.
 - The effect of the proposal on the character and appearance of the area.

Reasons

Location

3. The appeal property, 42 Moat Drive, is a two-storey dwelling. There is a single storey detached building within the rear garden of the property. The building was previously used as a residential annex having been granted planning permission on appeal in 2012¹. In that decision, the Inspector considered it was necessary to ensure the building was used for ancillary purposes only, as a separate residential unit would be contrary to the development plan in relation to the provision and location of new housing.

¹ APP/M5450/A/12/2177533

4. It is proposed to convert the building to a separate dwelling. At the time of my site visit, it was fitted out in a manner suitable for residential use.
5. Policy CS1(A) of the Harrow Core Strategy 2012 (CS) states that growth will be managed in accordance with the spatial strategy contained therein. The Harrow and Wealdstone Intensification Area will be the focus for regeneration, providing for a significant portion of new development. Growth throughout the rest of the Borough will be directed to town centres and strategic previously developed sites. That strategy seeks to meet and exceed the Borough's housing and economic development objectives in order to achieve sustainable growth.
6. Paragraph 53 of the National Planning Policy Framework (the Framework) states that local planning authorities should consider the case for policies to resist inappropriate development of residential gardens. Policy 3.5 of the London Plan² states that a presumption against development on private residential gardens may be introduced where locally justified. Policy CS1(B) of the CS states that proposals for garden development will be resisted.
7. I note that the building is in situ within an established, sustainable urban area and that the appellant considers that this would be a unique situation that would not set a precedent. However, the proposal would result in the development of a new dwelling within the rear garden of an existing property.
8. Whilst I note that the Framework definition of previously developed land does not automatically preclude the re-use of garden land, the Harrow Garden Land Development Supplementary Planning Document 2013 (GLSPD) states at paragraph 2.3 that the presumption against garden land development in Policy CS1(B) exists to ensure that the Borough's housing growth is delivered in accordance with the spatial strategy set out in the CS.
9. The appellant indicates that the property would not be occupied independently or considered as a separate dwelling. However, the proposal before me is to change the use of an ancillary annex to a separate residential unit which would, by definition, be occupied independently. I agree with the Council that a condition to link what would be an independent dwelling to the existing property would not be necessary or reasonable. As a result, the proposal would lead to unmanaged, incremental growth that would contribute towards undermining the spatial strategy for the location of new housing.
10. I conclude, therefore, that the proposal would not be acceptable having regard to development plan policies in relation to the location of new housing. The proposal would conflict with Policies CS1(A) and CS1(B) of the CS, Policy 3.5 of the London Plan, the Council's GLSPD and the Framework.

Future Occupiers

11. The proposed property would have an open plan kitchen, living and dining room, along with a single bedroom and bathroom. The kitchen, living and dining room would be served by a solitary window on the front elevation facing the rear of 42 Moat Drive. The bedroom would similarly be served by a single window on that elevation. The bathroom would have no windows.

² The London Plan: The Spatial Development Strategy for London Consolidated with Alterations since 2011, 2016

12. I note the proposed accommodation would accord with the internal space standards set out in Policy 3.5 of the London Plan and that the dwelling would likely receive acceptable levels of daylight given its orientation.
13. Nevertheless, the single window to the front of the building would be relatively small for the size of the open plan living area it would serve. Moreover, the window would face directly onto the rear garden of No 42 and would be sited below ground level of the garden. No delineation between the two properties is proposed. Furthermore, the lack of a window in the bathroom would result in a somewhat oppressive space. As a result, the proposal would result in a stark and poor quality of outlook for future residents.
14. The main windows of the property would face windows which serve habitable living accommodation in the rear of No 42. There would be a separation distance of around 15m between the two and the windows would abut the rear garden of No 42. The lack of delineation between the properties would result in a considerable level of mutual overlooking. Subsequently, there would be a harmful loss of privacy for future residents of the appeal property.
15. No dedicated external amenity space is proposed for the property. The appellant indicates that the existing garden would be shared. Policy DM27 of the Harrow Development Management Policies Local Plan 2013 (LP) states that residential development proposals that fail to provide appropriate amenity space will be refused. In this instance, I consider it is reasonable for future occupants to require access to some form of dedicated external space, particularly given the proximity to the existing garden area of No 42. As a result, in the absence of any details as to how the existing space would be shared between the properties, I find the proposal would fail to make sufficient provision of amenity space for the future occupiers of the proposed dwelling.
16. Policy DM45 of the LP states that all proposals will be required to make on-site provision for general waste, the separation of recyclable materials and the collection of organic materials. The appellant indicates that refuse would be collected through the existing arrangements for No 42. However, no details have been provided as to how or where the additional storage facilities that would be required as a result of the proposal would be accommodated. The proposed development would fail, therefore, to provide suitable waste storage for future occupiers in line with the aims of DMP Policy DM45.
17. Policy 3.8 of the London Plan states that 90% of new housing should meet the Building Regulations requirement M4 (2) for accessible and adaptable dwellings and 10% should meet the requirement M4 (3) for wheelchair user dwellings. The Council indicates that proposal would result in a bungalow which could be capable of providing a new wheelchair user dwelling the area, however, the narrow access to the side of No 42 and the lack of off-street parking would mean the property would not be wheelchair accessible.
18. Whilst I note the Council's concerns, Policy 3.8 of the London Plan notes that Part M of the Building Regulations does not apply to dwellings resulting from a conversion or a change of use. That would be the case here. Furthermore, Planning Practice Guidance is clear that policies for wheelchair accessible homes should be applied only to those dwellings where the local authority is responsible for allocating or nominating a person to live in that dwelling.

19. As a result, in the absence of any substantive evidence to the contrary, I am satisfied that the proposal would be sufficiently accessible and inclusive, and would not marginalise those with disabilities, in line with Policies 3.8 and 7.1 of the London Plan, as well as Policy CS1(K) of the CS and Policies DM1 and DM2 in so far as they require inclusive access and the provision of accessible homes.
20. Nevertheless, I conclude that the proposal would not provide satisfactory living conditions for future occupiers with particular regard to outlook, privacy, amenity space and waste storage. It would, as a consequence, conflict with Policy 7.6 of the London Plan which states that buildings should be of the highest quality. It would also conflict with Policy DM45 and DM27 of the LP as well as Policies DM1 and DM26 of the LP which seek to achieve satisfactory privacy and amenity for future occupiers and ensure that all habitable rooms have a satisfactory environment in terms of privacy and outlook.

Living Conditions

21. There are windows in the rear of No 42 which serve habitable rooms and which would be in close proximity to the main windows of the proposed dwelling. There would be no boundary treatment between the properties and they would share a garden area. To that end, occupiers of the appeal property would have direct views into the habitable rooms of No 42 at close quarters. As a result, the proposal would result in a harmful loss of privacy for the occupiers of No 42.
22. Policy DM45 of the LP states that the on-site provision of waste storage facilities must be located and screened to avoid nuisance to occupiers. As set out earlier, the proposed development would fail to provide suitable refuse storage. Given the garden of No 42 would be shared between the two properties, there would be the potential for refuse to be stored in close proximity to the garden and habitable rooms of No 42. Consequently, waste storage resulting from the proposal would likely result in nuisance to occupiers through odours, as well as appearing visually intrusive for neighbouring residents.
23. Indeed, the Inspector in the 2012 appeal noted that the physical limitations of the narrow passageway to the side of No 42 and the shared use of the garden would discourage the establishment of a separate dwelling. In the absence of any details as to how the limitations of the passageway for independent access or the shared use of the rear garden would be overcome, the proposal would, in my view, result in compromised living conditions for the occupiers of No 42.
24. I conclude, therefore, that the proposal would have a harmful effect on the living conditions of the occupiers of 42 Moat Drive with particular regard to privacy and waste storage. To that end, the proposal would conflict with Policy DM45 of the LP, as well as Policy 7.6(B) of the London Plan which states that development should not cause unacceptable harm to the amenity of surrounding land and buildings. It would also conflict with Policies DM1, DM26 and DM27 of the LP which state that regard will be had to the impact on neighbouring occupiers.

Character and Appearance

25. Moat Drive is predominately characterised by two-storey dwellings. Spatially, the surrounding area is largely linear in pattern, with wide streets of continuous

- built frontages. The generous back-to-back rear gardens and low density housing result in a distinct spacious and suburban character.
26. The Harrow Residential Design Guide SPD 2010 (RDG) states that the design and layout of new development should be informed by the pattern of development of the area in which it is situated. The RDG highlights how the continuity of building lines, space around a building and rear gardens are important components.
27. The proposal would result in a single-storey dwelling, sited to the rear of the continuous front of built form on Moat Drive. It would not have any street frontage, in stark contrast to the prevailing character of the surrounding area. As a result, the proposal would fail to respect the scale, form and pattern of development in the area. However, a lack of conformity to established character does not necessarily amount to harm.
28. Views of the building would be significantly restricted from public vantage points. Whilst it would be apparent in views from several of the surrounding properties and gardens, the proposal relates to an existing structure and no external alterations are proposed. Physically, there would little to discern between the use of the building as an annexe or as a separate dwelling. Consequently, I consider the proposed change of use to a self contained dwelling would not materially affect the character or appearance of the area.
29. I conclude, therefore, that the proposal would not have a harmful effect on the character and appearance of the area. In that regard, it would accord with Policies 7.4 and 7.6 of the London Plan in so far as they require buildings to provide a high quality design and architectural quality. It would also accord with Policy CS1(B) of the CS in so far as it states proposals that would harm the character of the area will be resisted, and Policy DM1 of the LP insofar as it state that development must achieve a high standard of design. Finally, it would accord with the RDG.

Other Matters

30. I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant indicates that the proposed accommodation is for an immediate relative who suffers from a debilitating illness. Whilst I have limited detail of the circumstances, the accommodation would be provided for a person with a protected characteristic for the purposes of the PSED.
31. Whilst the proposal would satisfy a specific and individual requirement, in this instance, the development proposed is permanent and would remain indefinitely regardless of the needs of the occupiers of the dwelling. As a result, the requirement to provide accommodation to meet the appellant's circumstances would not outweigh the harm in respect of the location of new housing, the living conditions of future occupiers and of neighbouring residents.
32. I have also considered the rights of the appellant under Article 8 of the Human Rights Act 1998. Article 8 affords the right to respect for private and family life. Dismissal of the appeal would interfere with the appellant's rights under

Article 8. However, this is a qualified right and any interference may be justified where it is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality.

33. I acknowledge that the consequence of dismissing the appeal would be that the family does not have an independent dwelling for an immediate relative that suffers from a debilitating illness. However, the harm I have identified in respect of the location of new housing, the living conditions of future occupiers and of neighbouring residents means that dismissal of the appeal would be a proportionate and necessary response that would not violate the appellant's rights under Article 8.
34. I note the relatively sustainable location of the appeal site, as well as the contribution the proposal would make to the housing supply within the area. However, the provision of 1 additional dwelling would amount to a relatively modest contribution and any economic or social benefits of such would be outweighed by the harm arising in respect of the main issues above.
35. The appellant indicates that two properties in the immediate vicinity have substantial outbuildings. However, I have been provided with limited detail of those buildings and therefore cannot be sure they represent a reasonable comparison to the appeal proposal. In any event, I have considered this appeal on its own merits and therefore afford those examples little weight.

Conclusions

36. Whilst I have found that the proposal would not have a harmful effect on the character and appearance of the area, I have found the proposal would not be acceptable having regard to development plan policies in relation to the location of new housing, would not provide satisfactory living conditions for future occupiers with particular regard to outlook, privacy, amenity space and waste storage and would have a harmful effect on the living conditions of neighbouring residents. They are the prevailing considerations. Thus, the proposal would conflict with the development plan when taken as a whole.
37. For the reasons given above, and having considered all other matters, I conclude that the appeal should be dismissed.

Jason Whitfield

INSPECTOR