
Appeal Decision

Site visit made on 6 December 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 10 January 2017

Appeal Ref: APP/N5090/W/16/3158498

62 Abercorn Road, Mill Hill, London NW7 1JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Gene Brady against the Council of the London Borough of Barnet.
 - The application Ref 16/2890/FUL, is dated 3 May 2016.
 - The development proposed is the demolition of existing bungalow and construction of a new building comprising 2 x 1 bedroom flats and 1 x 2 bedroom flat.
-

Decision

1. The appeal is dismissed and planning permission refused.

Procedural Matter

2. The Council's Statement advises that had it been in a position to determine the application it would have been refused. This would have been on grounds that the proposal would be overbearing and visually intrusive from neighbours' properties, that the proposal would not meet the sequential or exception tests necessary as a result of its Flood Zone location, that the flood risk assessment (FRA) submitted fails to demonstrate that the development would be safe for its lifetime and that the proposal fails to demonstrate that parking arrangements would not lead to detrimental effects on the free flow of traffic and highway and pedestrian safety.

Main Issues

3. Therefore, the main issues raised by this appeal are: i) whether the site is appropriate for housing development having regard to local and national policies relating to development in areas at risk of flooding, ii) the effect the development would have on the living conditions of neighbouring occupiers, with particular reference to visual impact and effect on outlook, and iii) the effect the development would have on highway and pedestrian safety.

Reasons

Flood risk

4. The appeal site is currently occupied by a bungalow which is set at a slightly lower level than Abercorn Road which it fronts. The site is located approximately 10m from the Dollis Brook at its nearest point. The proposal is
-

- to replace the bungalow with a two storey building incorporating two ground floor flats and one first floor flat in a similar situation within the site.
5. The appellant's FRA indicates that the appeal site includes land which is situated within all three Flood Zones and the FRA states that Environment Agency (EA) data indicates that the site was inundated in 1947 and 2002/3 floods. Dwelling houses are identified in the national Planning Practice Guidance (PPG)¹ as being development which is More Vulnerable to flooding.
 6. The Council consider that the existing and proposed building would be in Flood Zone 3 although the FRA considers it would be located within Flood Zones 1 and 2. However, on the basis of the evidence before me the proposed development would be located at least in part in Flood Zone 2, which is one that has a medium probability of river flooding, and would extend closer towards that part of the site in flood Zone 3 than the existing building.
 7. In considering whether development is acceptable in areas at risk of flooding the National Planning Policy Framework (the Framework) seeks to steer new development to areas with the lowest probability of flooding and not permit it if there are reasonably available sites with a lower probability of flooding². Barnet's Local Plan (Development Management Policies) Development Plan Document, 2012 (DMP) Policy DM04 requires this approach to be taken.
 8. There is no evidence that such a sequential assessment has been carried out or passed. However the FRA considers that as the proposal would replace an existing dwelling that the sequential test should be passed by default. Whilst there is an existing dwelling the proposal would materially increase the number of dwellings on the site to three. I do not agree that such circumstances would mean that the sequential approach required by national and development plan policies would consequently not apply in this case.
 9. The FRA³ statement that there would be no bedrooms on the ground floor contradicts the plans and other parts of the report. Although the existing bungalow will have ground floor bedrooms the appeal proposal would lead to the occupiers of two dwellings relying on ground floor bedrooms. The FRA also states⁴ that there would be a reduced footprint within the floodplain however the plans show that the proposed scheme would have a larger footprint than the existing bungalow, including extending this footprint (and those ground floor bedrooms) further towards, and potentially into, those parts of the site within higher Flood Zones.
 10. Furthermore, the EA do not consider that the FRA suitably assess the flood risks arising from the development, in particular that the design flood levels the FRA cites do not include an adequate allowance for climate change. Notwithstanding the Sequential Test failure, in any event it has consequently not been adequately demonstrated that the proposed floor levels and flood storage compensation would be sufficient to avoid risk of flooding to both occupiers of the proposed development and elsewhere. The EA also do not consider that alternatives to the proposed approach of using voids beneath the building as floodplain compensation has been investigated.

¹ Table 2: Flood Risk Vulnerability Classification, Paragraph: 066, Reference ID: 7-066-20140306

² Paragraphs 100 and 101.

³ Paragraphs 7.4 Flood Data Design Response and 8.1.

⁴ Paragraph 8.1.

11. All this leads me to conclude that, as well as not passing a Sequential Test, it has not been demonstrated that the future occupiers of the proposed flats would not be at risk of flooding or that the proposal would not increase the risk of flooding elsewhere. The proposal would constitute inappropriate development in an area at risk of flooding, contrary to DMP Policy DM04 and the Framework as supported by the PPG.
12. Although the FRA states that the EA have 'approved' what they term 'similar replacement betterment schemes' very little information has been provided and in light of the EA's specific concerns about the appeal scheme this does not lead me to consider that the scheme would be otherwise acceptable.

Neighbours' living conditions

13. As a result of its single storey configuration and situation within the site, the existing bungalow has a relatively limited effect on the outlook from adjoining properties at 64 Abercorn Road and those dwellings closest to the site in the block comprising 29 to 32 Frith Court. The proposed building would extend further into the site at the rear than the existing bungalow including significant elements at two storey height.
14. Although set back from the boundary the resulting height and mass would create a greater degree of enclosure than currently exists. This would have a significant effect on the outlook from windows close to the boundary at both ground and first floor in the gable and rear elevation of Nos 29 to 32 upon which it would have an overbearing effect. The effect on the occupiers of No 64 would be less intrusive as a result of the proposal's set back from the party boundary and its relative orientation.
15. The occupiers of No 64 and Nos 29 to 32 will already experience a high degree of enclosure along the boundaries of the appeal site as a result of dense, tall conifer planting within the site which will also affect their outlook in rooms served by windows close to the site boundary. However, this is materially different from the effect of a building with its greater solidity and permanence. There can be no certainty that the existing planting would remain. The proximity of the proposed development may, for instance, give rise to a requirement or desire to prune or remove the conifer hedge, if not to enable construction itself then to improve light levels for future occupiers.
16. The proposal would therefore materially harm the living conditions of the occupiers of adjoining residential properties, particularly the nearest occupiers in Frith Court. As such the proposal would be contrary to DMP Policy DM01, supported by Residential Design Guidance⁵ which requires, amongst other criteria, that development should allow for adequate outlook for adjoining occupiers. It would also fail to accord with the Framework's core planning principle⁶ of always seeking to secure a good standard of amenity for all existing occupants.
17. Core Strategy⁷ Policies CS1 and CS5 cited by the Council are concerned with the Borough's character and place shaping strategy and as such are less pertinent to the consideration of this particular issue.

⁵ Local Plan Supplementary Planning Document: Residential Design Guidance, 2013

⁶ Paragraph 17.

⁷ Barnet's Local Plan (Core Strategy) Development Plan Document, 2012.

Highway and pedestrian safety

18. The site is currently served by a short drive leading to a garage. The application form states that access would not be altered and that one car parking space would be retained. On street parking occurs on both sides of Abercorn Road and there is no indication that the site is located within a Controlled Parking Zone (CPZ).
19. In the absence of any evidence to the contrary, there is a reasonable likelihood that the occupiers of three flats may have more than one car between them. Those vehicles, in addition to that which may be parked within the site, would be likely to be parked on the adjoining or surrounding streets. Given the arrangement of Abercorn Road and the site's proximity to the junction with the narrower road serving Frith Court, there is a prospect that should there be insufficient, accessible on street parking that additional vehicles could be parked in less safe locations or in a haphazard way. This in turn could lead to vehicle movements which could have a negative effect on other road users in cars and on foot or pedestrian movements being hampered.
20. In considering whether residential development with limited parking provision may be acceptable outside a CPZ, DMP Policy DM17 requires a survey to demonstrate that there is sufficient on street parking capacity. Whilst the appellant considers that on street parking is widely available this is not backed up by any survey or other evidence. It has not, therefore been satisfactorily demonstrated that existing on street parking conditions are such that any additional parking arising as result of the development could be accommodated in a manner that would avoid harm to the safety of other road users. The proposal would consequently be contrary to DMP Policy DM17 in this respect.

Other Matters

21. I can appreciate that the appellant may have experienced frustration in that he considers that he was unable to get clarity on certain matters from the Council, including issues with the FRA on a previous application and that which is the subject of this appeal. However, such circumstances do not alter my conclusions on the main issues on the basis of the evidence before me.
22. Whilst the appellant considers the existing bungalow unsightly there is no evidence to suggest that its appearance is such that its replacement would bring any advantages that would outweigh the harm set out above. The lack of harm to the character and appearance of the area does not amount to a positive consideration in the context of the main issues.

Conclusion

23. For the above reasons, and having had regard to all other matters raised, the proposal would be contrary to the development plan and the Framework. The appeal is therefore dismissed and planning permission refused.

Geoff Underwood

INSPECTOR