

Appeal Decision

Site visit made on 25 April 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 03 May 2017

Appeal Ref: APP/T5150/W/17/3166876
65 Conduit Way, London NW10 0SD

- 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 Sunil Nanji against the decision of the Council of the London Borough of Brent.
 - The application Ref 14/3479, dated 3 September 2014, was refused by notice dated 5 December 2016.
 - The development proposed is described as 1) Patio works to the rear of the house, flatten out ground before rear entrance to the house, level off with concrete; 2) Create steps to go down to grass area and 3) Install a new fence.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The development has already been constructed.

Main Issue

3. The main issue is the effect of the development upon the living conditions of the occupiers of neighbouring residential properties in respect of outlook and privacy.

Reasons

4. The appeal property is semi-detached and falls within a predominantly residential area. The appeal proposal is for the erection of a boundary fence along the common boundary with No 63 Conduit Way measuring consistently about 1.8 metres in height above the respective land level. The appellant has submitted some historic photographs which show land levels before the appeal development was constructed. This indicates a relatively low fence along the boundary with No 63 Conduit Way and shows a relatively flat area of land at the upper section of garden (i.e outside of the single storey rear extension) which then slopes downwards towards the lower section of the garden. Given the land levels, and the relatively low height of the boundary fences (including the fence along the boundary with No 67 Conduit Way), there was historically only limited levels of privacy afforded to the occupiers of neighbouring residential properties.
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5. The proposal includes the creation of a concrete patio area to the upper section of the garden. It spans the full width of the rear garden. Based on the evidence that is before me (including the submitted plans and photographs), I do not consider that the land levels have been changed significantly. The land is no longer uneven, but overall the land level remains largely the same as previously. Whilst the surface material (i.e. concrete) is different from the previous grassed area, I do not consider that its appearance is particularly unacceptable in design terms taking into account the fact that this is a rear garden and so it is not particularly conspicuous from public views. The concrete steps broadly follow the historic fall in land levels between the upper and the lower garden areas. I do not consider that the steps look materially out of place.

No 63 Conduit Way

6. Notwithstanding the above, the proposal also includes the erection of a boundary fence between the host property and No 63 Conduit Way. I note the objection from the occupiers of No 63 Conduit Way about loss of light. Given the height and position of the fence, I do not consider that it results in a material loss of light to such a dwelling or its garden area. However, the fence is considerably higher than the one that it has replaced and taking into account its considerable length and its close proximity to the rear windows/garden area of No 63 Conduit Way, I find that the upper garden section of the fence has an unacceptably dominating and enclosing impact leading to a material loss of outlook.
7. I acknowledge that the fence provides an effective privacy screen between the two dwellings. However, I consider that it is reasonable to take into account the fact that before the appeal development was constructed there was an almost level grassed area immediately to the rear of the host property and with a low boundary fence. Hence, before the appeal development took place it was possible to overlook both the garden and the rear windows of No 63 Conduit Way. In other words, the boundary fencing that pre-existed before the appeal fence was erected did not have an overbearing impact and the residents would have been used to a degree of overlooking.
8. For the collective reasons outlined above, I conclude that when considered as a whole the appeal proposal causes significant harm to the occupiers of No 63 Conduit Way in respect of loss of outlook. It therefore fails to accord with the amenity aims of Policy DMP1 of the adopted London Borough of Brent Local Plan: Brent Development Management Policies 2016 (DMP) and SPG 5 "Altering and Extending Your Home" 2002 (SPG 5). In respect of this issue, I do not consider that Policy CP17 of the London Borough of Brent Local Development Framework Core Strategy is particularly relevant as this relates more to matters of design.

No 67 Conduit Way

9. The Council contends that the proposal has caused harm to the occupiers of No 67 Conduit Way as a result of "exacerbating" the potential for overlooking. I accept that land levels have been altered to a limited extent. However, the alterations to land levels have not resulted in a land form which is materially different to pre-existing levels. Furthermore, there appears to be no changes to the fencing along the boundary with No 67 Conduit Way. Therefore, I conclude that the appeal development has not led to a significant change in

terms of the overlooking of No 67 Conduit Way. In this regard, I therefore conclude that the proposal would accord with the amenity aims of Policy DMP1 of the DMP and SPG 5.

Other Matters

10. I note that the Council has suggested an alternative proposal that might be acceptable and that an enforcement case still remains open. Any alternative proposal(s) needs to be considered by the Council and is not relevant to the determination of this appeal. I am required to determine the appeal proposal that is before me.

11. None of the other matters raised outweigh my conclusion on the main issue.

Conclusion

12. Whilst the proposal would not cause material harm to the occupiers of No 67 Conduit Road in terms of overlooking, significant harm would be caused to the occupiers of No 63 Conduit Road in respect of the dominating impact of part of the fence. This is a matter that is of overriding concern. For this reason, and taking into account all other matters raised, I conclude that the proposal as a whole would not accord with the development plan for the area. Therefore, the appeal should be dismissed.

Daniel Hartley

INSPECTOR