
Appeal Decision

Site visit made on 6 June 2017

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: 27 June 2017

Appeal Ref: APP/N5090/W/17/3171247

Fairlawn, 11 Capel Road, East Barnet, Barnet EN4 8JD

- 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 Ray Gabriele, Choiceplace Properties Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/0955/RCU, dated 14 February 2016, was refused by notice dated 14 February 2017.
 - The development proposed is a two storey detached building with rooms in roof space containing 5 self-contained flats, associated car parking, amenity space, cycling storage, refuse & recycle storage area.
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Decision

1. The appeal is allowed and planning permission is granted for a two storey detached building with rooms in roof space containing 5 self-contained flats, associated car parking, amenity space, cycling storage, refuse & recycle storage area at Fairlawn, 11 Capel Road, East Barnet, Barnet EN4 8JD in accordance with the terms of the application, Ref 16/0955/RCU, dated 14 February 2016, subject to the conditions in the attached schedule.

Main Issues

2. The main issues raised by this appeal are the effect the development has on the living conditions of occupiers of neighbouring residential properties, with particular regard to the privacy of the occupiers of 1-7 Rosslyn Avenue, and on the character and appearance of the area.

Reasons

Neighbours' living conditions

3. The development is similar in design, scale and configuration to that which has the benefit of planning permission. However the development has been constructed 1.2m (according to the Council's figures) closer to Rosslyn Avenue than that approved scheme. The development is a three storey block of flats, albeit that the top floor is contained within a pitched roof and served by roof lights and two dormers to the front.
 4. The development faces a short terrace of houses at 1-7 (odd) Rosslyn Avenue in relation to which it occupies a slightly elevated situation. The boundary with Rosslyn Avenue is bounded by a tall hedge and a row of pollarded trees.
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5. When I inspected the site I was able to view the site's surroundings from within the building itself and view the development from within rooms on all three floors of 5 Rosslyn Avenue which also provided me with a reasonable impression of the effect the development has on Nos 1, 3 and 7. The front windows of Nos 1-7 are situated relatively close to the street such that they occupy a fairly public aspect. Windows serving habitable rooms in the respective properties are visible from one another. However, notwithstanding its slightly elevated position relative to Nos 1-7, the windows of flats in the building, including those in projecting bays, are situated far enough from one another to prevent an occupier in any of the flats being able to have an intrusive or invasive view into windows of the houses opposite (or vice versa).
6. The combined effect of the hedge and the dense canopies of the trees largely screen the building from properties opposite, allowing little more than glimpses when the trees are in leaf. This would further ensure that at certain times of the year no significant overlooking between the properties would occur. However, photographs provided by interested parties confirm that when not in leaf the screening effect of the trees is considerably reduced. A similar situation would also arise after the trees are newly pollarded from time to time, as recommended in the appellant's Maintenance Programme. Nevertheless, although the windows in upper floors of the development would be visible from Nos 1-7, their degree of separation would be such that harmful overlooking would be avoided even at times of reduced natural screening.
7. Although interested parties have raised concerns over the effect of the closer position of the development to these trees along Rosslyn Avenue, I note that both the Council's trees officer (reported in the Council's report) and the appellant's Maintenance Programme consider they would endure and their retention could be controlled by way of a planning condition.
8. The Council's committee report indicates that distances between windows in the building and Nos 1-7 vary but that at their closest would be just over 19m between projecting bay windows. This would be less than the 21m minimum separation distance between windows to habitable rooms recommended in the Council's guidance¹. However, for the reasons set out above, despite this non-compliance with guidance, the separation distances would be sufficient to avoid materially harmful overlooking occurring between the public facing frontages of the appeal building and those of its neighbours opposite.
9. As a result, a harmful loss of privacy to the occupiers of Nos 1-7 has not resulted, nor would it when the building is occupied, and their living conditions have and would not been materially harmed. Given the development's position relative to properties on Capel Road, its effects on living conditions of occupiers of properties opposite the end elevation would be very similar to that of the scheme which has the benefit of planning permission on the site.
10. As such the proposal would comply with Development Management Policies² (DMP) Policy DM01 which requires that development is designed to allow for adequate privacy for adjoining and potential occupiers, amongst other criteria. It would also accord with the National Planning Policy Framework's (the Framework) core planning principle of always seeking to ensure a good standard of amenity for all existing and future occupants of land and buildings

¹ Local Plan Supplementary planning Document: residential Design Guidance, 2016.

² Barnet's Local Plan (Development Management Policies) Development Plan Document, 2012.

and consequently with Core Strategy³ Policy CS NPPF. The place shaping and character protection requirements of Core Strategy Policies CS1 and CS5 are less pertinent to this issue of neighbours' living conditions.

Character and appearance

11. The area is residential in character with Capel Road consisting of terraces of houses and large semi-detached properties in the vicinity of the appeal site. Rosslyn Avenue has more variation in building sizes and types. The appeal site has a degree of prominence arising from its corner location and the aforementioned boundary planting sets it apart from the predominantly more open frontages of nearby properties.
12. The building sits appreciably forward of the adjoining pair of semi-detached flats to the south, Rosslyn Court. However this in turn sits forward of the bungalow next door and its neighbour in turn such that the buildings on the south west side of Rosslyn Avenue in the vicinity of the site do not form a consistent building line but rather follow the curve of the street. In this context the position of the building does not appear at odds within the streetscene and it adheres to the more consistent building line which exists on Capel Road. Its proximity to Nos 1-7 is not so close as to unacceptably narrow the built form at the corner of Rosslyn Avenue. The effect of the height and mass of the development when viewed from the surrounding streets is further alleviated by the boundary hedge and trees, recognising the temporal nature of such effects.
13. The resulting effect is one of a building which sits comfortably within its existing built context and is not so close to the site's boundaries with the street as to appear overbearing or intrusive. As such the development does not harm the character and appearance of the area. The proposal complies with the design and character requirements of Core Strategy Policies CS NPPF, CS1 and CS5 and DMP Policy DM01. By taking the existing pattern of building line and setbacks into account, the development accords with the Council's guidance in this respect. The proposal accords with the Framework's approach the development should respond to local character and avoid poor design.

Other Matters

14. I can appreciate the concerns of interested parties in light of the building being constructed closer to their properties than they expected and not in accordance with the planning permission. However, irrespective of the circumstances which led to the scheme before me, I have considered the development on its own individual merits and I have found it acceptable in respect of its effects on character and appearance and neighbours' living conditions. In doing so in light of the particular scheme before me I can see no reason why it would set a precedent for other schemes to be deliberately constructed which are not in accordance with the approved plans.
15. In light of the previous planning permission on the site for a scheme of a very similar scale and configuration, but different position, there are no substantive reasons why the principle of the development, its parking arrangements, amount of outdoor space or other aspects would not be acceptable and I note that the Council did not have objections to the scheme in these respects.

³ Barnet's Local Plan (Core Strategy) Development Plan Document, 2012.

Conditions

16. The Council have suggested (without prejudice) a number of conditions in the event the appeal was to be allowed. I have considered these in light of the Planning Practice Guidance (PPG), amending them where appropriate. It is necessary to specify the approved plans as this provides certainty. I have not included reference to Drawing PL A 13 as this does not show the level access indicated on the front elevations shown on Drawing 3011-48/P003 and I have included Drawing PL A 11 as the only drawing showing the north elevation. It is necessary to require that the landscaping scheme is implemented and existing trees and hedges appropriately managed to maintain the character and appearance of the area and to retain their screening benefits.
17. It is necessary to require that the proposed parking arrangements are implemented and retained to ensure adequate on site provision. In order to avoid any harmful overlooking of 11 Capel Road it is necessary to require the windows in the rear elevation to be obscure glazed. Requiring enclosures and bin store screening to be provided and retained will maintain the character and appearance of the area. It is necessary to require carbon saving levels and the application of optional building regulations requirements relating to water use to promote water and energy efficiency.
18. Although it would appear that the majority of building work is complete, in order to avoid unnecessary disturbance to neighbours from any remaining work and prevent harm to highway safety it is necessary to restrict construction hours and require construction vehicles to have any mud removed.
19. Bearing in mind the PPG's approach that conditions restricting the future use of permitted development rights or changes of use should only be used in exceptional circumstances, I have been presented with little substantive reason why it would be necessary to restrict the use of flats as suggested by the Council and have therefore not attached a condition in this respect.

Conclusion

20. For the above reasons, and having had regard to all other matters raised, the development does not harm the living conditions of neighbouring occupiers nor the character and appearance of the area, and complies with the development plan and the Framework. The appeal is therefore allowed.

Geoff Underwood

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 3011-48/P001 RevA; 3011-48/P002; 3011-48/P003; 3011-48/P004 RevA; 3011-48/P005 RevA; 3011-48/P006 RevA; PL A 1; PL A 3; PL A 5; PL A 6; PL A 7; PL A 9; PL A 11; PL A 15; PL A 17; and; Maintenance Programme Ref: TH 1322.
2. All planting, seeding or turfing comprised in the approved details of landscaping on drawing 3011-48/P001 RevA shall be carried out in the first planting and seeding seasons following the first occupation of the first flat to be occupied or the completion of the development, whichever is the sooner. Any existing tree

- or plants shown to be retained or trees or plants to be planted which die, are removed or become seriously damaged or diseased within five years of the completion of development shall be replaced in the next planting season with others of similar size and species. The completed scheme shall thereafter be managed and maintained in accordance with an approved scheme of management in the Maintenance Programme Ref: TH 1322.
3. No dwelling shall be first occupied until space has been laid out within the site in accordance with drawing no. 3011-48/P001 RevA to provide for the parking of vehicles and bicycles and that space shall thereafter be kept available at all times for the parking of vehicles and bicycles in connection with the approved development.
 4. The building hereby permitted shall not be occupied until the windows in the elevation facing number 11 Capel Road have been fitted with obscured glazing, and no part of those windows that are less than 1.7 metres above the floor of the room in which they are installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
 5. Construction works shall take place only between 0800 and 1800 on Mondays to Fridays and 0800 to 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
 6. Provisions shall be made within the site to ensure that all vehicles associated with the construction of the development hereby approved are properly washed and cleaned to prevent the passage of mud and dirt onto the adjoining highway.
 7. No dwelling shall be first occupied until the Building Regulations Optional requirement G2. 36 (2)(b) (requiring the potential consumption of wholesome water by persons occupying a new dwelling not to exceed 110 litres per person per day) has been complied with.
 8. No dwelling shall be first occupied until the enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins as shown on the approved plans have been provided. The enclosures and facilities shall be retained as such thereafter.
 9. Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellings permitted under this consent, the ground floor units shall both have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be maintained as such in perpetuity thereafter.
 10. No dwelling shall be first occupied until the relevant requirements of level of energy performance equivalent to ENE1 level 4 of the Code for Sustainable Home have been met and the details of compliance provided to the local planning authority.
 11. No dwelling shall be first occupied until the means of enclosure, including boundary treatments, have been implemented in accordance with details which have been submitted to and approved in writing by the local planning authority beforehand. The means of enclosure shall be retained as such thereafter.