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## Appeal Decisions

Site visit made on 14 November 2017

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 15<sup>th</sup> January 2018.**

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### **Appeal A Ref: APP/Q5300/W/17/3179906**

#### **Garages at rear of 7 Bycullah Road, Enfield EN2 8EG**

- 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 Sanjiv Shah against the decision of the Council of the London Borough of Enfield.
  - The application Ref 17/01483/FUL, dated 31 March 2017, was refused by notice dated 19 May 2017.
  - The development proposed is 3 new single family dwellings on 2 floors, on land to rear of 7, 7a and 7b Bycullah Road and 3 car parking spaces.
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### **Appeal B Ref: APP/Q5300/W/17/3179918**

#### **7 Bycullah Road, Enfield EN2 8EG**

- 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 Ms Siwan Jones against the decision of the Council of the London Borough of Enfield.
  - The application Ref 17/01481/FUL, dated 31 March 2017, was refused by notice dated 19 May 2017.
  - The development proposed is 2 new single family dwellings on 2 floors, on land to rear of 7, 7a and 7b Bycullah Road, and 2 parking spaces.
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## **Decisions**

1. Appeal A is allowed and planning permission is granted for 3 new single family dwellings on 2 floors, on land to rear of 7, 7a and 7b Bycullah Road and 3 car parking spaces at Garages at rear of 7 Bycullah Road, Enfield EN2 8EG, in terms with the terms of the application, Ref 17/01483/FUL, dated 31 March 2017, subject to the conditions set out in the attached schedule.
2. Appeal B is allowed and planning permission is granted for 2 new single family dwellings on 2 floors, on land to rear of 7, 7a and 7b Bycullah Road, and 2 parking spaces at 7 Bycullah Road, Enfield EN2 8EG in accordance with the terms of the application, Ref 17/01481/FUL, dated 31 March 2017, subject to the conditions set out in the attached schedule.

## **Background and Main Issues**

3. As set out above, there are two appeals relating to adjacent sites separated by a narrow strip of land approximately 300mm wide. The sites are in different ownership but the appeals were submitted by a single agent. Although I have considered each appeal on its own individual merits, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated. In

both Appeal A and Appeal B, the main issues are the effect of the proposal on the character and appearance of the surrounding area, and on highway and pedestrian safety. In the case of Appeal A there is an additional main issue of the effect of the proposal on the living conditions of neighbouring occupiers.

## **Reasons**

### *Character and Appearance*

4. The site subject of Appeal A is a former garage court which has been cleared. It abuts the rear gardens of two storey terraced properties on Elizabeth Avenue, and No 16a Bycullah Avenue, a large detached bungalow to the west. The Appeal B site lies adjacent to two and three storey residential properties on Bycullah Road, and has a ground level about half a metre higher than the Appeal A site. Both sites have a frontage to a vehicular and pedestrian access via Bycullah Road, and there is a separate pedestrian only access to Elizabeth Avenue.
5. Notwithstanding the narrow strip of land between the two sites, the appeal schemes have been designed by the same architect to appear as a single development of five dwellings positioned broadly within the centre of the plots. A large mature tree within the frontage of Appeal Site A would be retained, and the dwellings would be set well back from the public right of way behind landscaped front gardens and a parking area. The units would exceed the Council's minimum requirement for private amenity space, which would be located to the rear and sides of the dwellings. The development would not therefore appear unduly cramped within the plot or in relation to its surroundings.
6. Policy CP5 of the Core Strategy (CS)(2010) requires the density of new development to balance the need to make the most efficient use of land, while respecting the quality and character of existing neighbourhoods. Due to the former use of the site as a garage court and parking area, the neighbouring properties all back onto the site and the proposed houses would be oriented at right angles to the properties on Bycullah Road and Elizabeth Avenue. As a consequence there is no immediate design context in which the development would sit.
7. The dwellings, whilst having a basement level, would appear as two storey buildings at street level. The front building line would be stepped back to each side of the central dwelling, and there also would be a gradual stepping down in roof height across the site towards Elizabeth Avenue, reflecting the change in ground level. As a result the development would not be significantly out of scale with prevailing building heights in the locality, which are a mix of single, two and three storey buildings.
8. The dwellings would have a contemporary appearance, with brick elevations, glazed bay windows to the front gables, and timber privacy/shading louvres, but would not be incongruous with the character and appearance of properties in the surrounding area due to the building forms and design evident within the vicinity. Furthermore, the new dwellings would only be seen at street level from the rear of neighbouring properties and from the site access.
9. Whilst each proposal falls to be determined on its own merits, and other developments referred to by the appellant are located in other parts of the local

authority area, they share similar characteristics with the appeal site as infill developments, and thus provide an indication that densities similar to that proposed here have been considered acceptable within established residential areas by the Council.

10. I have also had regard to the previous appeal decision at 7 Bycullah Road for 2 dwellings<sup>1</sup>. However those dwellings were set much closer to the public footpath, would abut most of the side boundary and would occupy a greater proportion of the site. As such the design and layout of the earlier scheme is materially different to the proposals before me.
11. For the reasons set out above, I conclude that in respect of both appeals, there would be no harm to the character and appearance of the surrounding area. Accordingly there would be no conflict with CS policies CP30 and CP5, and DMD policies DMD6, DMD8 and DMD37. These require development to be high quality and design led, and to have appropriate regard to their surroundings and densities in the locality.

#### *Effect on Highway and Pedestrian Safety*

12. The vehicular access from Bycullah Road is shared by both appeal sites and a garage at the rear of Elizabeth Avenue. It is also a public right of way with pedestrian access from Elizabeth Avenue.
13. The Inspector in the earlier appeal found that access for cars would be satisfactory but was unlikely that service or emergency vehicles would be able to enter and exit the junction with Bycullah Road in forward gear. Information has since been provided to demonstrate that such access would be possible, and this has been accepted by the Fire Service and the Council as refuse collection agency, subject to improvements being secured, including clearing the access, providing a dual surface for vehicles and pedestrians and cyclists and agreeing a maintenance strategy. As the access and turning area is shown within the red line boundaries for both appeals, this could be dealt with by means of a Grampian condition to ensure that the dwellings are not occupied until the specified works are complete.
14. I therefore conclude on this main issue that there would be no harm to pedestrian or highway safety in respect of either appeal, and that the proposal would accord with CS policies CP25 and CP46, DMD policies 37, 45, 47 and 48 and London Plan policy 6.13. These policies require developments to meet all manoeuvring requirements, including for service and emergency vehicles, and to make adequate provision for pedestrian and cycle access.

#### *Living conditions of neighbouring occupiers*

15. In relation to Appeal A only, the Council is concerned with the proximity of the dwellings to 16a Bycullah Avenue, a detached bungalow set well back from the road frontage. The bedrooms and bathrooms of the proposed dwellings are shown at ground and basement level, with the kitchen and living areas at first floor level. The external amenity spaces could be accessed via the first floor by spiral staircases that would face out onto No 16a.
16. The Council has stated that it requires a separation distance of 25 metres between a single storey property and a three storey property, but this relates

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<sup>1</sup> Appeal Ref. APP/Q5300/W/16/3150823

to the minimum distance between rear facing windows. However, there would be no windows in the first floor rear elevations of the proposed dwellings and there are none within the rear elevation of No 16a. Moreover as the development would exceed the 11 metre minimum distance between windows and side boundaries set out in policy DMD10, measured from the main elevation of No 16a, the dwellings would not appear excessively dominant when viewed from that property.

17. In respect of privacy, the windows in the flank elevations of the dwellings are high level and due to their orientation would offer only oblique views across the rear gardens of surrounding properties. Policy DMD10 also notes that consideration may be given to these type of windows in new development. Whilst the development would allow elevated views across the rear gardens of properties on Bycullah Avenue, the extent of overlooking from these vantage points would be no greater than that from first floor bedroom windows within a rear garden environment and potentially less as views would only be momentary as residents travel up and down the staircases. The planting of semi-mature trees along the northern boundary of the Appeal B site could be secured by condition and would provide additional screening between the existing and proposed dwellings. Consequently, there would be no unacceptable loss of privacy from actual or perceived overlooking of No 16.
18. Taking all of the above into account, I conclude that there would be no harm to the living conditions of neighbouring occupiers with regard to privacy or outlook. The development would accord with CS Policy CP30, DMD Policies DMD8, DMD10 and DMD37, and policies 7.1, 7.4 and 7.6 of the London Plan, which require developments to preserve amenity in terms of outlook and privacy.

### **Conditions**

19. I have found that both appeal schemes would be acceptable subject to the imposition of certain conditions, framed with regard to advice in the Planning Practice Guidance (the Guidance). I have specified the approved plans for each proposal, for certainty. In addition I have imposed the following conditions in relation to both appeals, for the reasons set out below.
20. I shall require details of the external materials to be used in the construction of the dwellings and details of proposed planting to safeguard the character and appearance of the area. Details of proposed biodiversity enhancements and restrictions on clearance of site vegetation outside bird-nesting season are necessary to safeguard and enhance the biodiversity resource of the sites.
21. Details of existing and proposed ground levels are required to safeguard residential amenity and to ensure adequate surface water drainage. Details of a sustainable drainage strategy are also required to be approved in order to minimise surface water discharge beyond the sites and minimise flood risk.
22. The developers are required to provide details of water and energy efficiency measures in order to accord with CS policies CP20 and CP21 to promote water conservation and energy efficiency. Details of refuse storage facilities are required to safeguard the amenity of existing and future occupiers.
23. The Guidance states that householder permitted development rights should only be restricted in exceptional circumstances. In this instance, due to the

particular circumstances of the site, surrounded by the rear gardens of nearby dwellings, I shall impose restrictions on the use of the roofs of the dwellings for amenity purposes to safeguard residential amenity. A restriction on extensions and outbuildings is also necessary to ensure sufficient private amenity space for the dwellings and to safeguard the character and appearance of the surrounding area.

24. I have imposed conditions requiring details of the surfacing materials to be used in the footpath, access road and parking areas, and details of siting, levels and construction of any access road, parking, turning and servicing area, in the interests of highway safety. As referred to above, I shall also require a scheme for the improvement and maintenance of the site access for vehicles and pedestrians to be implemented prior to the first occupation of the dwellings, also in the interests of highway safety.

### **Conclusion**

25. For the reasons set out above, I conclude that the appeals should succeed.

*Claire Victory*

INSPECTOR

## **Schedule of Conditions – Appeal A**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan 1211-A-SP-51; block plan 1211-A-SP-52; proposed basement floor plan 1211-A-GA-PL-50; proposed ground floor plan 1211-A-GA-PL-51; proposed first floor plan 1211-A-GA-PL-52; proposed roof plan 1211-A-GA-PL-53; proposed section 1:1 and south elevation in context 1211-A-GA-SC-50; proposed south and north elevations 1211-A-GA-EL-50; proposed east and west elevations 1211-A-GA-EL-51.
- 3) The development shall not commence until details of the external appearance of the development have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details before it is occupied.
- 4) The development shall not commence until details of the surfacing materials to be used within the development including footpaths, access roads and parking areas and road markings have been submitted to and approved in writing by the local planning authority. The surfacing shall be carried out in accordance with the approved detail before the development is occupied or use commences.
- 5) The development shall not commence until plans detailing the existing and proposed ground levels including the levels of any proposed buildings, roads and/or hard surfaced areas have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 6) The development shall not commence until details of refuse storage facilities including facilities for the recycling of waste to be provided within the development, in accordance with the London Borough of Enfield – Waste and Recycling Planning Storage Guidance, have been submitted to and approved in writing by the local planning authority. The facilities shall be provided in accordance with the approved details before the development is occupied or use commences.
- 7) The development shall not commence until detailed drawings showing the means of access to the development including the siting, levels and construction of any access roads, junctions, parking, turning and servicing areas and street lighting have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before it is occupied.
- 8) The development shall not commence until a Sustainable Drainage Strategy has been submitted and approved in writing by the local planning authority. The details shall include: a plan of the existing site; a topographical plan of the area; plans and drawings of the proposed site layout identifying the footprint of the area being drained (including all buildings, access roads and car parks); the controlled discharge rate for a 1 in 1 year event and a 1 in 100 year event (with an allowance for climate change), this should be based on the estimated greenfield runoff rate; the proposed storage volume; information on proposed SuDS measures with a design statement describing

how the proposed measures manage surface water as close to its source as possible and follow the drainage hierarchy in the London Plan (DMD 61-10.5.12) including cross-sections and specifications; geological information including borehole logs, depth to water table and/or infiltration test results; details of overland flow routes for exceedance events; and a management plan for future maintenance. The development shall be carried out in accordance with the details so approved and maintained as such thereafter.

- 9) The development shall not commence until details of trees, shrubs and grass to be planted on the site have been submitted to and approved in writing by the local planning authority. The planting scheme shall be carried out in accordance with the approved details in the first planting season after completion or occupation of the development whichever is the sooner. Any planting which dies, becomes severely damaged or diseased within five years of planting shall be replaced with new planting in accordance with the approved details.
- 10) All areas of hedges, scrub or similar vegetation where birds may nest which are to be removed as part of the development, are to be cleared outside the bird nesting season (March - August inclusive) or if clearance during the bird-nesting season cannot reasonably be avoided, a suitably qualified ecologist will check the areas to be removed immediately prior to clearance and advise whether nesting birds are present. If active nests are recorded, no vegetation clearance or other works that may disturb active nests shall proceed until all young have fledged the nest.
- 11) No development hereby permitted shall commence until details of biodiversity enhancements, to include details of (specification and proposed location) 3no. bat tiles/tubes/bricks and 3no. bird boxes built into the new buildings (following guidance from a qualified ecologist) have been submitted and approved in writing by the council.
- 12) Prior to occupation details of the internal consumption of potable water shall have been submitted to and approved in writing by the local planning authority. Submitted details will demonstrate reduced water consumption through the use of water efficient fittings, appliances and recycling systems to show consumption equal to or less than 105 litres per person per day. The development shall be carried out in accordance with the details so approved and maintained as such thereafter.
- 13) The development shall not commence until an 'Energy Statement' has been submitted and approved in writing by the local planning authority. Submitted details will demonstrate the energy efficiency of the development and shall provide for no less than a 35% improvement in total CO2 emissions arising from the operation of a development and its services over Part L of Building Regulations 2013 utilising gas as the primary heating fuel. Should Low or Zero Carbon Technologies be specified as part of the build the location of the plant along with the maintenance and management strategy for their continued operation shall also be submitted. The Energy Statement should outline how the reductions are achieved through the use of Fabric Energy Efficiency performance, energy efficient fittings, and the use of renewable technologies. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

- 14) Following practical completion of works a final Energy Performance Certificate shall be submitted to an approved in writing by the local planning authority. Where applicable, a Display Energy Certificate shall be submitted within 18 months following first occupation.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any amending Order, no balustrades or other means of enclosure shall be erected on the roof of the dwellings. No roof of any part of the extension(s) shall be used for any recreational purpose and access shall only be for the purposes of the maintenance of the property or means of emergency escape.
- 16) Notwithstanding the provisions of Class A, B, C, D and E of the Town and Country Planning (General Permitted Development) Order 2015 or any amending Order, no buildings or extensions to buildings shall be erected without the prior approval in writing of the local planning authority.
- 17) No dwelling shall be occupied until a scheme has been submitted to secure: the clearing of the access road and pedestrian path between Bycullah Road and Elizabeth Avenue; the provision of a dual surface for pedestrians, vehicles and cyclists; and an appropriate maintenance strategy, the details of which are to be approved by the local planning authority. These works shall be carried out in accordance with the approved details prior to first occupation of the dwellings hereby approved.

## **Schedule of Conditions – Appeal B**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan 1210-A-SP-51 A; block plan 1210-A-SP-52; existing conditions plan 121—A-GA-PL-49; proposed basement floor plan 1210-A-GA-PL-50; proposed ground floor plan 1210-A-GA-PL-51; proposed first floor plan 1210-A- GA-PL-52; proposed roof plan 1210-A-GA-PL-53; proposed section 1:1 and south elevation in context 1210-A-GA-SC-50; proposed south and north elevations 1210-A-GA-EL-50; proposed east and west elevations 1210-A-GA-EL-51.
- 3) The development shall not commence until details of the external appearance of the development have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details before it is occupied.
- 4) The development shall not commence until details of the surfacing materials to be used within the development including footpaths, access roads and parking areas and road markings have been submitted to and approved in writing by the local planning authority. The surfacing shall be carried out in accordance with the approved detail before the development is occupied or use commences.
- 5) The development shall not commence until plans detailing the existing and proposed ground levels including the levels of any proposed buildings, roads and/or hard surfaced areas have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 6) The development shall not commence until details of refuse storage facilities including facilities for the recycling of waste to be provided within the development, in accordance with the London Borough of Enfield – Waste and Recycling Planning Storage Guidance, have been submitted to and approved in writing by the local planning authority. The facilities shall be provided in accordance with the approved details before the development is occupied or use commences.
- 7) The development shall not commence until detailed drawings showing the means of access to the development including the siting, levels and construction of any access roads, junctions, parking, turning and servicing areas and street lighting have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before it is occupied.
- 8) The development shall not commence until a Sustainable Drainage Strategy has been submitted and approved in writing by the local planning authority. The details shall include: a plan of the existing site; a topographical plan of the area; plans and drawings of the proposed site layout identifying the footprint of the area being drained (including all buildings, access roads and car parks); the controlled discharge rate for a 1 in 1 year event and a 1 in 100 year event (with an allowance for climate change), this should be based on the estimated greenfield runoff rate; the proposed storage volume;

information on proposed SuDS measures with a design statement describing how the proposed measures manage surface water as close to its source as possible and follow the drainage hierarchy in the London Plan (DMD 61-10.5.12) including cross-sections and specifications; geological information including borehole logs, depth to water table and/or infiltration test results; details of overland flow routes for exceedance events; and a management plan for future maintenance. The development shall be carried out in accordance with the details so approved and maintained as such thereafter.

- 9) The development shall not commence until details of trees, shrubs and grass to be planted on the site, to include the planting of semi-mature trees along the northern boundary of the site have been submitted to and approved in writing by the local planning authority. The planting scheme shall be carried out in accordance with the approved details in the first planting season after completion or occupation of the development whichever is the sooner. Any planting which dies, becomes severely damaged or diseased within five years of planting shall be replaced with new planting in accordance with the approved details.
- 10) All areas of hedges, scrub or similar vegetation where birds may nest which are to be removed as part of the development, are to be cleared outside the bird nesting season (March - August inclusive) or if clearance during the bird-nesting season cannot reasonably be avoided, a suitably qualified ecologist will check the areas to be removed immediately prior to clearance and advise whether nesting birds are present. If active nests are recorded, no vegetation clearance or other works that may disturb active nests shall proceed until all young have fledged the nest.
- 11) No development hereby permitted shall commence until details of biodiversity enhancements, to include details of (specification and proposed location) 3no. bat tiles/tubes/bricks and 3no. bird boxes built into the new buildings (following guidance from a qualified ecologist) have been submitted and approved in writing by the council.
- 12) Prior to occupation details of the internal consumption of potable water shall have been submitted to and approved in writing by the local planning authority. Submitted details will demonstrate reduced water consumption through the use of water efficient fittings, appliances and recycling systems to show consumption equal to or less than 105 litres per person per day. The development shall be carried out in accordance with the details so approved and maintained as such thereafter.
- 13) The development shall not commence until an 'Energy Statement' has been submitted and approved in writing by the local planning authority. Submitted details will demonstrate the energy efficiency of the development and shall provide for no less than a 35% improvement in total CO2 emissions arising from the operation of a development and its services over Part L of Building Regulations 2013 utilising gas as the primary heating fuel. Should Low or Zero Carbon Technologies be specified as part of the build the location of the plant along with the maintenance and management strategy for their continued operation shall also be submitted. The Energy Statement should outline how the reductions are achieved through the use of Fabric Energy Efficiency performance, energy efficient fittings, and the use of renewable

technologies. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

- 14) Following practical completion of works a final Energy Performance Certificate shall be submitted to an approved in writing by the local planning authority. Where applicable, a Display Energy Certificate shall be submitted within 18 months following first occupation.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any amending Order, no balustrades or other means of enclosure shall be erected on the roof of the dwellings. No roof of any part of the extension(s) shall be used for any recreational purpose and access shall only be for the purposes of the maintenance of the property or means of emergency escape.
- 16) Notwithstanding the provisions of Class A, B, C, D and E of the Town and Country Planning (General Permitted Development) Order 2015 or any amending Order, no buildings or extensions to buildings shall be erected without the prior approval in writing of the local planning authority.
- 17) No dwelling shall be occupied until a scheme has been submitted to secure: the clearing of the access road and pedestrian path between Bycullah Road and Elizabeth Avenue; the provision of a dual surface for pedestrians, vehicles and cyclists; and an appropriate maintenance strategy, the details of which are to be approved by the local planning authority. These works shall be carried out in accordance with the approved details prior to first occupation of the dwellings hereby approved.