
Appeal Decision

Site visit made on 14 January 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2020.

Appeal Ref: APP/N5090/W/19/3232441

790 High Road, North Finchley, London N12 9QR

- 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 Danish Hanif of Jermyn Street Properties Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/0704/FUL, dated 5 February 2019, was refused by notice dated 4 April 2019.
 - The development proposed is to erect a new 1 bed, two-storey detached dwelling house on the vacant plot of land at land to rear of 790 High Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application and this accurately describes the development before me.
3. The appellant has provided an additional plan that was not before the Council when it made its decision. The details provided relate to obscure glazed glass panelling inserted into internal doors. In considering whether to accept this information, I have had regard to the Wheatcroft Principles¹. It is my view that the changes are modest and relate to the internal part of the proposed development not to its exterior. In accepting this information, I do not consider that any party has been prejudiced, by not having an opportunity to comment on it. Therefore, I have assessed the appeal on the basis of the additional information.

Main Issues

4. The main issues of this appeal are;
 - The effect of the proposed development on the living conditions of existing neighbouring occupiers, with particular regard to privacy and noise and disturbance;

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]. This decision has since been confirmed in Wessex Regional Health Authority v SSE [1984] and Wadehurst Properties v SSE & Wychavon DC [1990] and Breckland DC v SSE and T. Hill [1992].

- Whether the proposed development would provide adequate living conditions for future occupiers, with particular regard to their outlook; and
- The effect of the proposed development on the character and appearance of the surrounding area.

Reasons

Effect on living conditions of existing neighbours

5. The appeal site comprises a yard area to the rear of properties fronting Finchley Road and Torrington Park in a densely built town centre location. During my site visit I observed that part of the appeal site was in use for car parking. It is proposed to construct a two-storey dwelling on the site that would include a roof terrace, and an external amenity area.
6. The rear elevation of the two-storey residential dwelling at No 790 Finchley Road (No 790) abuts the site's western boundary. Windows relating to this neighbouring dwelling face and are in close proximity to the appeal site. To the south the site backs onto the flank wall of a large flat roof extension at the rear elevation of No 788 Finchley Road (No 788). A high brick wall encloses the site's eastern boundary and immediately beyond this on neighbouring land are a large mature tree and utilitarian outbuilding. Another high brick wall encloses the site's northern boundary with the flats at Michelle Court and No 1 Torrington Park (No 1) located beyond this.
7. I note that there is disagreement between the parties as to the use of No 1, but at the time of my visit I observed that the floors of the building, when viewed from the rear, were in use by open plan offices, whilst company signage was present on the front of the building. There was also no amenity space or communal area that would suggest an associated residential use. Furthermore, there is no evidence before me to suggest that there are permissions in place for residential uses. Therefore, I have assessed the appeal on the basis that No 1 is not in residential use.
8. The proposed roof terrace would be elevated above the first-floor window in the flank wall of No 790. Whilst positioned at an oblique angle, those using the roof terrace would easily be able to look into the room served by the window given the short distance that would be maintained. The effect of this would result in a significant and unacceptable invasion of privacy of the occupiers of the room.
9. The appellant has indicated that a planning obligation can be entered into to ensure that No 790's flank wall window is obscure glazed, however, I have not been presented with a mechanism that would secure this. Moreover, I have also considered imposing a condition given that the appellant has indicated they own the building. But the submitted location plan does not suggest this, therefore I cannot be sure the condition can be complied with. I acknowledge that the proposed roof terrace could be surrounded by higher obscure glazed balustrading to mitigate the overlooking. Yet, this would have to be secured by a condition and given that this physical appendage would alter the design and height of the building, I consider that it would be unreasonable to impose.
10. There would be views from the proposed roof terrace into the car parking area associated with No 1, while it would face the rear windows of this four-storey building. Whilst I note the Council's concerns that the proposed terrace would fall short of the required 21m separation distance from neighbouring habitable

rooms as advised by their guidance ², this relates to the protection of residential amenity rather than non-residential uses. Moreover, the overlooking of the car park would not harm the amenities of occupiers of the building as this is not being used as a private amenity space, rather a functional space for parking. On this basis I do not consider that the amenities of the occupiers of No 1 would be harmed by the proposal.

11. In terms of the effect from noise and disturbance, the immediacy of first floor windows in the rear and flank wall of No 790 to the proposed roof terrace and rear garden would result in an inevitable transfer of noise generated by the activity of future residents upon the occupiers of No 790. This would result in neighbouring occupiers experiencing unacceptable levels of noise and disturbance from these areas. Whilst it is acknowledged that dwellings in urban locations would have private spaces close to one another, and where there would be some mutual experience of noise, in the case of the appeal site I consider that this would exceed what would be tolerable. The fact that noise could be controlled by the Council's environmental health department or the police, is not sufficient reason to justify that the proposal would be acceptable.
12. Whilst I found that the proposal would not result in any harm to the living conditions of existing occupiers at No 1, the proposed development would have a harmful effect on the living conditions of the occupiers of No 790, with particular regard to privacy and noise and disturbance. The proposal is therefore contrary to Policies CS1 and CS5 of Barnet's Local Plan, Core Strategy, Development Plan Document, September 2012 (the Core Strategy), and Policy DM01 of Barnet's Local Plan, Development Management Policies, Development Plan Document, September 2012 (the DPD) which amongst other considerations seek to ensure that proposals do not have an unacceptably harmful impact on their surroundings and adjoining occupiers.

Effect on living conditions of future occupiers

13. The proposed dwelling would comprise one bedroom. Situated at first floor level this would be served by three windows, two of which are narrow in width and inserted into the south and west elevations. They would allow some light to enter the bedroom, but I consider that this would be limited by the scale and close proximity of neighbouring buildings. The third window proposed is much wider and would face the large mature tree just beyond the site's southern boundary. It would also look onto the flank wall of the large neighbouring utilitarian outbuilding, albeit obliquely. Due to their proximity and scale the tree and outbuilding would appear as dominant and imposing features from within the bedroom that would have a stifling effect upon future occupiers while limiting the light the bedroom receives. I consider that this would unacceptably harm the outlook of future occupiers and would be accentuated at times when the tree is in leaf.
14. I acknowledge that there would be some views from the bedroom through and beyond the tree, as demonstrated by the supporting information, but these would be from limited parts of the bedroom and the presence of the tree would still be harmful in general in my view.
15. The additional information I have accepted, relates to obscure glazing panels inserted into the internal bedroom door and the door leading into the winter

² Supplementary Planning Document – Residential Design Guidance (2016)

garden. These panels would be tall and slim, and whilst I accept that they would likely allow further light into the bedroom, they would not overcome the identified unacceptable harm upon the outlook of future occupiers.

16. The appellant has indicated that pruning of the tree could take place to limit the harm. However, the tree is not in the control of the appellant, and whilst some partial pruning could take place where the tree overhangs the appeal site, further work to it would require the agreement of the neighbouring landowner. On this point I have not been presented with any details where there is an arrangement between the parties, or a mechanism to enable this.
17. Therefore, there would be a harmful effect on the living conditions of future occupiers of the proposed development with particular reference to their outlook. In doing so it would be contrary to Policies CS1 and CS5 of the Core Strategy and Policy DM01 of the DPD, where they require development proposals to not have an unacceptably harmful impact on potential occupiers and users.

Character and appearance

18. Comprising an area of undeveloped land behind the primary street frontage, the appeal site is visible from the private service lane off Torrington Park and from windows of nearby properties. The immediate area is compact and dense and characterised by the large extensions projecting from the rear of commercial properties fronting Finchley Road. These are often long, rectangular in shape and have a flat roof. Many of the extensions are residential flats and dwellings, with their entrance doors accessed off the service lane and via external staircases. The roofscape to the rear of Finchley Road and adjacent to the appeal site is haphazard and disorderly, consisting of amongst other paraphernalia, external staircases, parapet walls, railings, and air conditioning units. The appeal property is notable along with a small number of other yards and parking lots in the vicinity for being undeveloped by a building or a structure.
19. In this context, the appeal scheme, at two storeys in height and with a flat roof design would share a similar size and profile to the vicinity's many flat roofed rear extensions, and I do not consider that the scale and height of the dwelling would detract from the immediate built character of the area. Furthermore, when viewed from rear windows at Michelle Court and No 1, the proposed dwelling would be seen against the backcloth of taller buildings, thus reducing its prominence in the hierarchy of adjacent structures.
20. The proposal would be positioned within a narrow plot surrounded by buildings, but this is typical of the prevailing pattern of development in the area where spacing between buildings is limited and more often than not neighbouring buildings are adjoined to one another, creating a very confined built relationship. Consequently, the proposal would appear consistent and not out of place within this setting.
21. The appeal scheme would not harm the character and appearance of the surrounding area. It would therefore accord with Policies CS1 and CS5 of the Core Strategy and Policy DM01 of the DPD, which require amongst other considerations that development proposals respect local context and the distinctive local character of the area. It would also comply with Policies 7.4

and 7.6 of the London Plan, 2016 where they require buildings to be appropriately designed in relation to their context.

Other Matters

22. There is a suggestion that the Council is falling short in meeting its annual housing delivery target, however, the figures presented are not up to date. Furthermore, the Appellant states that the Council failed to account for housing supply in making their decision. Even if I were to conclude there is a shortfall in the delivery of housing on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefit of a further dwelling.
23. I also acknowledge that local and national policy looks favourably on utilising vacant and undeveloped sites. However, this is not at the expense of causing unacceptable impacts to the surrounding environment, and in this case, I have identified that the living conditions of existing and future occupiers would be harmed.

Conclusion

24. I have found that the proposed development as it relates to the effect on the character and appearance of the surrounding area would not have a harmful impact. However, this is outweighed by its effect on the living conditions of neighbouring occupiers in relation to overlooking and noise and disturbance. Furthermore, there would be an unacceptable effect on the amenities of future occupiers of the proposed development, in particular their outlook.
25. For the reasons set out above, and having regard to all other matters raised, the appeal is dismissed.

R. E. Jones
INSPECTOR