
Appeal Decisions

Site visit made on 21 January 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2020

Appeal A Ref: APP/T5150/W/19/3237663

7 Barn Rise, Wembley, HA9 9NA

- 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 Mrs Salma Yousif against the Council of the London Borough of Brent.
 - The application Ref: 18/4724 is dated 6 December 2018.
 - The development proposed is described on the application form as an outdoor building.
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Appeal B Ref: APP/T5150/W/19/3239794

7 Barn Rise, Wembley, Brent, HA9 9NA

- 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 Mrs Salma Yousif against the decision of the Council of the London Borough of Brent.
 - The application Ref: 19/2931 dated 13 August 2019, was refused by notice dated 9 October 2019.
 - The development proposed is described on the application form as a replacement driveway.
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Decisions

1. Appeal A is allowed, and planning permission is granted for an outdoor building at 7 Barn Rise, Wembley, HA9 9NA, in accordance with the terms of the application Ref: 18/4724 dated 6 December 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawings; EX-001, PL-001 (as amended), PL-002 and PL-003 (as amended).
 - 3) The development hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as 7 Barn Rise.
2. Appeal B is dismissed.

Procedural Matters

3. These appeals relate to two separate proposals for development at the appeal property. For simplicity, both appeals have been included on the same decision letter.
4. In respect of Appeal A, Drawing PL-001 submitted with the application is titled "Ground Floor Plan and Elevations as Existing". However, it shows the proposed ground floor plan and elevations. Drawing PL-003 submitted with the application incorrectly showed the depth of the proposed outbuilding. The appellant submitted revised Drawings PL-001 and PL-003 during my determination of this appeal with the correct title and correct dimensions respectively¹.
5. As the amendment to Drawing PL-001 is just a correction of its title and the correct dimensions of the proposed outbuilding are shown on Drawing PL-001, having regard to the 'Wheatcroft Principles'² I do not believe that to accept and consider these revised drawings would disadvantage the Council or third parties. I have thus had regard to the revised drawings in my determination of this appeal.

Main Issues

6. In respect of Appeal A, the Council has not specifically confirmed what its decision would have been had it been in a position to make a decision within the statutory timescale nor, if it would have refused permission, what the reason(s) for refusal would have been. However, it is clear from the Council's Statement that it is concerned about the size and use of the proposed building and its potential effect on the living conditions of the occupiers of 11 Eversley Avenue.
7. The main issues in respect of Appeal A are therefore i) the effect of the proposed development on the character and appearance of the area, with particular regard to the Barn Hill Conservation Area (BHCA), in which the appeal site is located; ii) the effect of the proposed development on the living conditions of the occupiers of 11 Eversley Avenue and iii) the use of the proposed building.
8. The main issues in respect of Appeal B are the effect of the proposed development on i) the character and appearance of the area, with particular regard to the Barn Hill Conservation Area (BHCA), in which the appeal site is located and ii) the safe use of the highway by pedestrians and vehicles.

Reasons

Barn Hill Conservation Area

9. The BHCA Design Guide (2013) (the Design Guide) explains that the special historic interest of the BHCA lies in the association of the Uxendon Estate, on part of which Barn Hill was developed, with Humphrey Repton. The character and appearance of the BHCA derives principally from its hillside setting and consequent views and the architectural quality of the generally mock-Tudor style houses. The appeal property has some mock-Tudor detailing.

¹ By email dated 31 January 2020

² *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

10. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the BHCA. Moreover, paragraph 193 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
11. Policy DMP7 of the London Borough of Brent Local Plan Development Management Policies (2016) (DMP) requires proposals for or affecting heritage assets to, amongst other things, sustain and enhance the significance of the heritage asset including by respecting and reinforcing the street scene and frontages and contribute to the character of assets by good quality subordinate design.
12. In order to protect the character and appearance of the BHCA, the Council has made a direction under Article 4 of the General Permitted Development Order 2015 (as amended) (the GPDO) (Article 4 Direction) restricting certain permitted development rights for a number of properties within the BHCA, including the appeal property.

Appeal A

Character and appearance

13. The site of the proposed development is partly occupied by an existing outbuilding. I observed during my site visit that part of the rear boundary of the appeal property is formed by high combined wall and fence / trellis and that there is an existing outbuilding in the garden of the neighbouring property to the north and vegetation to the south. The site is hidden from view from Barn Rise by the appeal property and from Eversley Avenue to the north and from Grendon Gardens to the south of the appeal property by the existing fencing along the return boundaries of 9 and 3 Barn Rise. As a consequence, the appeal site makes a neutral contribution to the character and appearance of the BHCA.
14. Although the width of the proposed building would be slightly greater than that of the original dwelling, the depth and height of the proposed building relative to the main dwelling would make it subordinate to the main dwelling and other dwellings in the area. As noted above, the site is hidden from public view and the proposed building would therefore not adversely affect the street scene of the BHCA. I note that a similar conclusion was reached by the Inspector that determined an appeal relating to a rear extension to the appeal dwelling to which the appellant draws my attention³.
15. The Design Guide sets out that in gardens between 10 and 25 m in length, garden buildings should have a maximum footprint of 15 sq.m and be set away from joint boundaries by at least 1 m. The diagram in the Design Guide indicates that garden buildings should be no more than 2.1 m high to the eaves. In addition, the appellant refers to the Council's SPD2 Residential Extensions and Alterations (SPD2). From the evidence before me, this sets out that for a garden the size of that of the appeal property, the maximum size of an outbuilding should be no more than 30 sq.m and should be no higher than 2.5 m.

³ APP/T5150/D/18/3195866

16. The proposed building would have a footprint of approximately 68 sq.m, an eaves height in excess of 2.1 m and a roof height of approximately 2.7 m. As shown on the submitted Block Plan and Ground Floor Plan, it would be set away from the joint boundaries with neighbouring properties by less than 1 m. The proposed development would therefore not accord with the guidance in the Design Guide or in SPD2. However, this is only guidance and the weight I can attach to it is less than that of a development plan policy.
17. From the evidence before me, the Council has failed to identify any specific harm to the character or appearance of the BHCA that would arise from the proposed development other than non-compliance with the Design Guide. I conclude that the proposed development would not harm and would therefore preserve the character or appearance of the BHCA and so would not conflict in this respect with Policy DMP7 of the DMP or paragraph 193 of the Framework.

Living conditions

18. The proposed building would effectively extend along the full length of the side boundary of the rear garden of 11 Eversley Avenue. However, the existing outbuilding on the appeal site is adjacent to this boundary for a significant part of the latter's length. The proposed building would be higher than the existing building but not such that it would have a materially greater effect on the garden of No. 11 given the size of that garden.
19. The boundary closest to the rear elevation of No. 11 is marked by a high combined wall and fence / trellis along that part of this boundary. This would largely screen the building along this section. I therefore conclude that the proposed building would not be detrimental to the living conditions of the occupiers of No. 11 by being overbearing or in other ways.
20. Accordingly, I conclude that the proposal would not conflict in this respect with Policy DM1 of the DMP which, amongst other things, requires development to be of high-quality design and detailing that provides high levels of external amenity. Nor would it conflict with paragraph 127 f) of the Framework which requires planning decisions to ensure that developments have a high standard of amenity for existing users.

The use of the building

21. The Council contends that the washroom shown in the building on the submitted floor plan would not be ancillary to an outbuilding. However, to my mind, it would be ancillary to the indicated use of the main part of the proposed outbuilding as a gym. Were permission to be granted, the use of the outbuilding could be restricted to uses ancillary to the residential use of the main dwelling.
22. I note that, from the evidence before me, SPD2 sets out that outbuildings should not include bathrooms / shower rooms, but I am satisfied that, given the particular needs of the appellant, to which I return below, an exception to this guidance is justified in this case.

Other matters

23. I have had regard to the documents concerning the health of the appellant and I note that the proposed development is supported by the appellant's medical consultant. I give this matter substantial weight.

Conditions

24. Although the Council has not suggested any conditions were planning permission to be granted, I consider that conditions are necessary to make the development acceptable. Planning permission is granted subject to the standard three-year time limit condition. It is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and I have therefore imposed a condition to this effect.
25. Condition 3 is necessary to safeguard the character and appearance of the area and the living conditions of the occupiers of neighbouring properties and to allow any unauthorised use easier to enforce through the breach of planning condition procedure.

Appeal B

Character and appearance

26. The existing planting beds to the frontage of the appeal property delineate that frontage and separate it from the highway. This defining of front boundaries with dwarf walls and / or planting contributes positively to the character and appearance of the area as I observed during my site visit.
27. The Design Guide notes that "*low front boundary walls add to the suburban character of Barn Hill*" and advises that their removal will only be permitted where they form part of an acceptable off-street parking scheme. 'Acceptable' in this context is set out in sub-section 5.2 of the Design Guide as being where "*at least 50% of the total front garden area will be retained and suitably landscaped with soft planting features*". The majority of the frontage of the property is already hard paved and used for parking so the development proposed would not be 'acceptable' in this context. However, this is only guidance and the weight I can attach to it is less than that of a development plan policy.
28. Nevertheless, I consider that the removal of the planting beds and opening up of the frontage would be detrimental to the street scene by the loss of the characteristic front boundary walls and by reducing the differentiation between the private frontages and the public highway. This is notwithstanding the proposed use of 'high quality materials' and the indicated retention of the small verge and the tree on that verge to the front of the appeal property.
29. The appellant draws my attention to the neighbouring property, 9 Barn Rise, where there is direct access from the highway to two off-street parking spaces on the frontage. However, I note that this property has a very low wall with planting behind to the remainder of the frontage. Its situation is therefore distinguishable from that of the appeal property and the proposal before me. From my observations during my site visit, the proposed development would be

at odds with, rather than replicate, the prevailing pattern of development in the area of the appeal property.

30. I therefore conclude that the loss of the planting beds from the frontage would be harmful to and thus fail to preserve or enhance the character or appearance of the BHCA. In terms of the Framework, I consider this to be less than substantial harm. In accordance with paragraph 196 of the Framework, it is necessary to weigh this harm against the public benefits of the proposed development.
31. In this case, there would be a limited public benefit in the provision of an additional off-street parking space. However, I have no persuasive evidence that parking is such an issue in the area that this would be a significant benefit. Otherwise, the benefits of the proposal would mainly accrue to the appellant and her family in allowing an additional vehicle to park on the frontage and affording easier vehicular access to and from the property with easier manoeuvrability and less danger of hitting the planting beds, rather than being wider public benefits. I therefore consider that the public benefits of the proposed development do not outweigh the harm that I have identified.
32. I therefore conclude that the proposed development would be contrary in this respect to Policy DMP7 of the DMP and to clause d. of Policy DMP1 of the DMP, which requires development to conserve or enhance the significance of heritage assets. It would also conflict in this respect with clauses d., e. and f. of Policy DMP12 of the DMP, which require off-street parking to preserve the character of the surrounding area, preserve any features that make a significant contribution to the visual appearance of the area and provide adequate soft landscaping and other treatments to offset adverse visual impact.
33. In addition, the proposed development would be contrary to clause c) of paragraph 127 of the Framework, which require planning decisions to ensure that developments are sympathetic to local character and history, including the surrounding built environment.

Highway safety

34. The Council's first reason for refusal refers to the proposed development resulting in vehicles driving over the footway contrary to the Highways Act 1980. However, it has not been explained in what respect the development would contravene the Highways Act and, in any event, compliance with separate legislation is a separate matter from the planning merits of the proposed development, on which this appeal should be determined.
35. Furthermore, whilst the removal of the central planting bed would allow an additional crossing point of the footway and verge, in practice this crossing point would be restricted by the existing tree in the verge to the front of the property, narrowing the point of exit from / entry to the property.
36. From my observations during my site visit, there would be adequate visibility to and from the additional parking space for drivers of vehicles exiting the property to see approaching pedestrians, and for pedestrians to see vehicles about to exit the property. I have no evidence that the pedestrian use of the

footway is particularly intensive or that the access to the proposed dwelling would be intensively used.

37. Drivers of vehicles exiting or entering the property would be aware of the potential for pedestrians to be passing and could reasonably be expected to be cautious when exiting or entering. Likewise, as a residential area, pedestrians would be aware of the potential for vehicles to be exiting or entering properties. I therefore consider that the potential for conflict between vehicles exiting or entering the property and pedestrians on the footway to be low.
38. I therefore conclude that the proposed development would not conflict in this respect with clause b. of Policy DMP1, which requires development to be satisfactory in terms of parking and not to have an adverse impact on the movement network, nor with Policy DMP12 which requires, amongst other things, additional parking provision to not have negative impacts on highways. The proposed development would not conflict with paragraph 109 of the Framework as it would not have an unacceptable impact on highway safety or severe impacts on the road network.

Other matters

39. I have had regard to the documents concerning the health of the appellant. However, it has not been demonstrated that the removal of the planting beds is necessary for the appellant to be able to get in and out of a car or to enter or leave the property. I have no evidence that the existing frontage is inadequate to function as a disabled parking space. I have not found any reference within the supporting documentation provided by the appellant to a need to make changes to the frontage of the property. It is not clear to me therefore that the proposed development is necessary to meet any particular health-related needs of the appellant.
40. I therefore conclude that the appellant's health has not been shown to indicate that a decision should be made other than in accordance with the development plan in this instance.
41. Any damage being caused by the tree in the highway verge in front of the appeal property is a matter between the appellant and the Council and is outside my jurisdiction and the scope of this appeal.

Conclusions

42. For the reasons given above, and having regard to all matters raised, Appeal A is allowed, and planning permission is granted subject to conditions and Appeal B is dismissed.

Martin Small

INSPECTOR