
Appeal Decision

Site visit made on 7 September 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/N5090/W/20/3244537

Land rear of, 9 Prospect Road, New Barnet, London EN5 5BJ

- 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 Hizo Enterprises against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/4814/FUL, dated 3 September 2019, was refused by notice dated 31 October 2019.
 - The development proposed is the erection of a one bedroom two person single-storey dwelling together with two car parking spaces and amenity space on land to the rear of 9 Prospect Road, Barnet.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council have described the proposal as the erection of 1no. detached single storey dwellinghouse, associated parking, amenity space, cycle store and refuse and recycle store on its decision notice. The Appellant has also utilised this description on their appeal form. Given that this revised description accurately describes the proposal I have determined the appeal on the basis of the revised description.

Main Issues

3. The main issues are:
 - (i) the effect of the development on the character and appearance of the area;
 - (ii) whether the proposal would provide suitable living conditions for the occupiers of the proposed dwelling with particular regard to light;
 - (iii) the effect of the development on the living conditions of the occupiers of the adjoining residential properties with particular regard to outlook and privacy; and
 - (iv) the effect of the development on biodiversity.

Reasons

Character and appearance

4. The appeal site is located to the rear of existing residential properties on Prospect Road, Warwick Road and King Edward Road which surround the site. The topography of the land in the area rises from Warwick Road to King

Edward Road but also falls away from Prospect Road. The area is very much residential in character and consists of development which fronts onto the surrounding road network.

5. The appeal site itself is accessed via a driveway from Warwick Road and the main part of the site is largely grassed with mature trees along the boundaries to the site, some of which are the subject of a Tree Preservation Order.
6. The introduction of a dwelling on this site, would clearly be in contrast to the established pattern of development in the area as it would result in a dwelling which would not have a direct road frontage. Whilst the position of the dwelling is such that it would not be readily visible from the street, it would be visible from a number of existing residential properties, particularly given the changing land levels in the area.
7. Furthermore, the views that would be available from the surrounding properties would be that of a dwelling which would be isolated from the streetscene. Taking all of this into account, to my mind, a new dwelling on the site would not be characteristic of the existing built form in the area and as a result the dwelling would form an incongruous feature.
8. Turning to the design of the dwelling itself, this has clearly been influenced by the surrounding trees and their respective root protection areas. The design solution put forward is therefore an innovative solution in this respect.
9. Whilst I acknowledge that the shape and design does not reflect any of the surrounding development, in this instance, I consider that this does not present a barrier to the granting of planning permission. However, this does not outweigh the harm I have found to the character and appearance of the area as a result of its tandem nature.
10. The Council has also suggested that the development would result in a cramped form of development and would be an overdevelopment of the site. However, given the size of the site and the dwelling itself I cannot agree with these assertions.
11. For the above reasons the proposal would harm the character and appearance of the area and would conflict with Policies 3.5, 7.4 and 7.6 of The London Plan (2016), Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document (2012) (CS); Policies DM01 and DM02 of Barnet's Local Plan (Development Management Policies) Development Plan Document (2012), (DMP) which amongst other matters seek to ensure that proposals create a quality attractive environment which respects the local context and character, including the pattern of surrounding buildings, spaces and streets.

Living conditions – appeal development

12. It is common ground that the appeal development would provide a suitable level of internal accommodation having regard to the Technical Housing Standards – nationally described space standard and I have no reason to disagree with that view.
13. The Council have set out for the size of the appeal property, there should be at least 40 square metres of garden area available. However, given the size of the site and the proposed building there would be considerably more than 40

square metres of garden land available, in addition to the raised terrace to the rear of the dwelling.

14. However, from the evidence before me, the garden area of the dwelling would be largely located under the canopies of the surrounding trees and as such there would be considerable pressure to reduce the amount of shade and coverage that these trees have to the site as a whole.
15. Given the height and proximity of these trees to the development it would be likely to restrict daylight and sunlight to the garden areas to the extent that the garden area would be unlikely to provide an attractive space. As a result, there would be significant pressure to reduce the size of the trees. Such works would not be in the best interests of the trees and their amenity value.
16. Whilst I accept that permission would need to be sought for pruning works to some of these trees, this is not a sufficient reason to indicate that permission should be granted for a new dwelling which would be highly likely to result in pruning works to the surrounding trees.
17. Indeed, this is highlighted by the fact that the Arboricultural Impact Assessment indicates that works would need to be undertaken to the Cedar tree (along with two others) as part of the appeal development.
18. Taking all of the above into account, I consider that the proposal would not provide suitable living conditions for the future occupiers of the dwelling as a result in the quality of the garden area. The proposal would therefore be in conflict with Policies CS NPPF, CS1 and CS5 of the CS, Policy DM01 of the DMP which amongst other matters seek to ensure that proposal which accord with the presumption in favour of sustainable development are approved without delay, and that development creates an attractive environment for people who live including adequate daylight and sunlight.

Living conditions – existing occupiers

19. The Council's Residential Design Guidance Supplementary Planning Document (2016) (SPD) indicates that there should be a minimum distance of about 21 metres between properties with facing windows to habitable rooms to avoid overlooking, and 10.5 metres to a neighbouring garden.
20. Given the siting of the proposed dwelling and the length of the gardens which surround the site, it is clear that there is well in excess of 21 metres between habitable room windows in all directions. As such, even taking into account the land level differences and the raised nature of the dwelling, there would not be an unacceptable level of overlooking between habitable rooms.
21. However, given the raised nature of the dwelling, and the much lower land level of the properties on Warwick Road, there would be some potential overlooking to the garden areas to these dwellings from the angled living room window. Whilst some views would be obscured by the Cedar tree (Tree T4), this would not totally obscure views of the neighbouring gardens. Furthermore, there is no guarantee that the tree would remain for the life of the development.
22. Having said that, the areas of the neighbouring gardens which would be overlooked cannot be said to be the most important areas for privacy. This is particularly the case given the length of these gardens. Taking this into

account, I consider that there would not be an unacceptable level of overlooking.

23. In respect of the dwellings on King Edward Road, it is significant that these are set at a higher land level, as are their gardens. I am also conscious that the length of the gardens to these properties is significant. Taking these factors into account, I consider that a suitable boundary treatment would resolve any potential overlooking issues to the garden areas of these properties.
24. Turning to the potential impact to the Prospect Road dwellings, I note from the submitted drawings, and what I observed on site, the bedroom window which would face the Prospect Road properties would not be significantly elevated when compared to the land level at the boundary of the site. Furthermore, given the distance between the bedroom window and the boundary and the length of the gardens of the Prospect Road properties I consider that there would not be any significant degree of overlooking either.
25. The Council has also raised concerns in respect of outlook. The most affected properties would be those on Warwick Road given the land level differences and the raised nature of the proposal. Whilst the proposal would clearly change the outlook from these properties, given the distance between the existing and proposed dwellings it would not result in an overbearing or visually intrusive feature.
26. For the above reasons the proposal would not adversely affect the living conditions of the occupiers of neighbouring properties and the development would accord with Policy CS5 of the CS, Policies DM01 and DM02 of the DMP which amongst other matters seek to ensure that development proposals should protect the gardens of residential properties, including ensuring suitable privacy and outlook.

Biodiversity

27. The Council's concern in respect of biodiversity is largely in relation to the potential for disturbance to bats, which local residents have reported to be flying in the vicinity of the site. There is no evidence to suggest that bats are roosting in the trees around the edge of the site. As such, in short, I consider that this is not a matter which should stand in the way of developing the site.
28. Notwithstanding that, in the event that I am minded to allow the appeal, it would be possible to impose a suitably worded planning condition to ensure that appropriate measures, such as bat friendly lighting, are incorporated into the design of the development.
29. For the above reasons, the proposal would not have an adverse impact on biodiversity and would accord with Policy CSNPPF of the CS and Policies DM01 and DM16 of the DMP which amongst other matters seek to ensure that proposals which accord with the presumption in favour of sustainable development are approved without delay, and that development contributes to biodiversity, including the retention of existing wildlife habitat and trees.

Other matters

30. The Appellant has acknowledged that given that the site is no longer part of a residential curtilage there is not a fallback position of a domestic outbuilding at the site.
31. Whilst the historical existence of such a fallback position, including the issuing of a certificate of lawful development for a garden and games room, is a material consideration, it is something I cannot give much weight to in my decision. Furthermore, possible future options on what to do with the land provide little justification for the development before me.
32. I also acknowledge that the appeal scheme represents a smaller dwelling than a scheme previously considered by the Council. Whilst this weighs in favour of the development, it does not provide a reason why planning permission should be granted for an otherwise unacceptable development.

Conclusion

33. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR