
Appeal Decision

Site visit made on 15 September 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th October 2020

Appeal Ref: APP/N5090/W/20/3253296

Rear of No. 62 Clifford Road, Barnet EN5 5NY

- 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 Jonathan Kassrai against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/0037/FUL, dated 6 January 2020, was refused by notice dated 16 March 2020.
 - The development proposed is erection of a new two storey plus basement level dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have used the description of development provided by the appellant in the appeal form, as this more accurately describes the proposed development.

Main Issues

3. The main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the site and surrounding area;
 - the effect of the proposed development on the living conditions of the occupiers of the neighbouring properties, with particular reference to privacy and noise and disturbance; and
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular reference to outlook, privacy and outdoor space.

Reasons

Character and appearance

4. The appeal site is situated to the rear of No 62 Clifford Road which contains 4 self-contained flats (62A, 62B, 62C and 62D). The site is part of the outdoor space for 62C Clifford Road. The surrounding area is predominately residential, although there is a park and an associated car park adjacent to the site. The area is characterised by 2 storey detached and semi-detached dwellings, which front on to the road and have open gardens to the rear.

5. The proposal is for the erection of a new 2 storey property, along with a basement level and outdoor amenity space. I observed on my site visit that there was an existing property adjacent to the appeal site. The Council has stated that this property, No 62E Clifford Road, was not a garden land development, as the dwelling was built on the footprint of an existing garage¹.
6. No 62E is an exception to the general pattern of development nearby, and was approved under a particular set of circumstances unique to the site. I observed that the neighbouring semi-detached properties feature garages at the rear of the gardens, and are also accessed by a vehicular side access. However, only No 62E is in use as a dwelling. Therefore, the existence of the adjacent dwelling does not necessarily set a broader pattern of development in the area.
7. Notwithstanding the development at No 62E, the gardens to the rear are open garden areas, which have general outbuildings or have garages beyond the gardens. The proposal would fill the gap to the rear of No 62, which is currently relatively open. It would be at odds with context of the wider area, as the presence of residential dwellings situated behind the existing dwellings, is not a common feature of the local pattern of development.
8. I note that the appellant has sought to introduce a scheme which would align with and complement the existing development at No 62E. However, as the proposed dwelling would be situated in close proximity to the rear gardens of the neighbouring properties with little space around it, it would appear as a cramped and intrusive development, when having regard to the predominant spatial pattern of development. Due to the nature of the site, it would appear as an overdevelopment of the currently open garden areas. I acknowledge that due to its location, it would not be readily visible from the street scene. Nevertheless, given its positioning, it would be a prominent structure when viewed from the neighbouring properties and their gardens as well as the public areas to the rear.
9. The appellant has also drawn my attention to a number of planning approvals² which he deems to be similar to this proposal. However, whilst these might be considered back land development, the context for these applications is not directly comparable, as some of these approvals front on to the road or there was an established pattern of development in the area. In any case, these approvals do not necessarily make the harm caused by this proposal acceptable, which I have determined on its own merits and within its own context.
10. The proposed development would have a harmful effect on the character and appearance of the site and surrounding area. Therefore, it would be contrary to Policy 7.4 of the London Plan (LP) (2016), Policies CS1 and CS5 of the Barnet Core Strategy DPD (CS) (2012) and Policy DM01 of the Barnet Development Management Policies DPD (DMP) (2012) and the Residential Design Guidance SPD (RDG) (2016). These policies and guidance, amongst other things, require development to be high quality and respect the local context.

Living conditions of the occupiers of the neighbouring properties

11. The proposed dwelling would be located approximately 19m from the existing properties at Nos 62C and 62D, and it would have 4 windows along the front

¹ 14/07456/FUL and 16/0820/FUL

² 16/4420/FUL, B/00953/14, 19/2086/FUL and 15/01050/FUL

elevation which would face towards the neighbouring properties. The separation distance between the properties would fall short of the guidance figure in the RDG, which recommends a minimum distance of 21m separation between habitable windows.

12. Two of the windows would be located at ground floor level, as such they would not be able to overlook the neighbouring properties. The other windows would be at first floor level for the master bedroom and would be rooflights. Due to the positioning of the windows, and the close proximity of the neighbouring properties, it would give views towards the garden area and the properties themselves. However, this could be resolved by the introduction of obscure glazing, which could be implemented through an appropriately worded condition.
13. In terms of access, the future occupants would travel along the private access road and across the front of No 62E, which according to the approved plans is the amenity area for the existing dwelling. However, the appellant states that the land for the amenity, landscaping and cycle and bin storage associated with the approval, is not owned by No 62E, and only has a right of access.
14. A dwelling of this size could accommodate up to 4 individuals, which could generate a number of trips and journeys. However, the proposal does not include a parking space, therefore, these trips would be by foot. Therefore, this would be unlikely to result in significant noise and disturbance for the neighbouring occupiers. In addition, as the appellant owns the freehold land at 62 Clifford Road, he has a legal right to access the appeal site regardless of the outcome of this appeal.
15. Accordingly, the proposal would not have a harmful effect on the living conditions of the neighbouring occupiers, with particular reference to privacy and noise and disturbance. Therefore, it would accord with Policy DM01 of the DMP, the RDG and the Sustainable Design and Construction SPD (SDC) (2016). This policy and guidance, amongst other things, requires development to allow for adequate privacy for adjoining occupiers and users and to avoid noise and disturbance.

Living conditions for future occupants

16. The proposed dwelling would be split over 3 levels with the living area situated in the basement, and the bedrooms on the other 2 levels. However, due to the nature of the design there would be no outlook for the basement living area, which is where the majority of time would be likely to be spent. The lack of outlook would result in unacceptable living conditions for the future occupants. The appellant has suggested that the internal layout could be altered to resolve this issue. However, even with the bedroom and living areas swapped around, the outlook from the basement bedroom would not be acceptable. Therefore, I do not consider this a practical solution that would resolve the harm.
17. In terms of privacy, I note that that a new boundary fence and trees and plants, are proposed as part of the proposal. However, whilst the fence is relatively high, it would not completely obscure the views to the windows to the 2nd bedroom from the first floor and the dormer roof of No 62. In any case, landscaping cannot be considered a permanent feature and it is likely to be less effective during the winter months. As such this would not provide an acceptable level of privacy for the future occupants.

18. Turning to outdoor space, the SDC provides guidance on the outdoor amenity space requirements, and states that private gardens should provide adequate space for day to day uses such as, a table and chairs for outdoor dining, clothes drying, relaxation and safe children's play. For houses with up to four habitable rooms, it states that 40 sqm of space should be provided. Whilst the frontage to the propose totals 54 sqm, the SDC outlines areas which should not be counted such as, hard standings, footpaths, cycle storage areas and refuse areas. Having regard to these factors, the Council states that only around 25sqm would constitute useable amenity space. Having regard to the figure put forward by the Council, and the lack of useable, private amenity space, for day to day activities, the proposal would not provide adequate private outdoor space for the future occupants.
19. The appellant has suggested that the floor area of the proposal is similar to a flat, and would only require 15sqm outdoor amenity area. However, I am not persuaded that proposed dwelling could be considered a flat. The layout and design of the property would function as a house, having a singular kitchen and one bedroom having an en-suite. Furthermore, the description of the development provided by the appellant in the application form and appeal form, describes the proposal as a house, rather than as a flat.
20. The appellant has drawn my attention to outdoor space for No 62E which he states falls well below the 40 sqm. The appellant has also highlighted that the officer report states that it would provide adequate amenity space to the front of the property. However, it is not clear how that conclusion was reached, as there are no calculations or evidence put forward within the officer report. In any case, the lack of amenity space for the neighbouring property does not necessarily make this proposal acceptable, which I have determined on its own merits.
21. The proposed development would not provide acceptable living conditions for the future occupants, with particular reference to outlook, privacy, and outdoor space. Therefore, it would be contrary to Policies DM01 and DM02 of the DMP, the RDG and the SDC. These policies and guidance, amongst other things, requires development to not have an unacceptable impact on the living conditions of future occupants.

Other Matters

22. I note that the appellant has highlighted that the site would make an efficient use of land, which would result in additional residential accommodation within a sustainable location. However, the benefits of the proposal, being only one dwelling, would be limited and it would not overcome the harm that I have identified above.

Conclusion

23. Whilst I have identified that the proposal would have an acceptable effect on the living conditions of the neighbouring occupiers. It would have a harmful effect on the character and appearance of the site and surrounding area, and would not provide acceptable living conditions for future occupants. Therefore, for the reasons set out above, I conclude that the appeal is dismissed.

D Peppitt INSPECTOR