



Appeal Decision

Site visit made on 9 October 2020

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Appeal Ref: APP/N5090/W/20/3249832

Rear of 77 Somerset Road, New Barnet, Barnet, EN5 1JD

- 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 EDIT Residential Ltd against the decision of London Borough of Barnet.
 - The application Ref 19/6724/FUL, dated 16 December 2019, was refused by notice dated 4 March 2020.
 - The development proposed is the erection of a two storey detached dwelling with associated amenity space, refuse storage and cycle parking, provision of 2no. off street parking spaces with associated access from York Road.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two storey detached dwelling with associated amenity space, refuse storage and cycle parking, provision of 2no. off street parking spaces with associated access from York Road at the rear of 77 Somerset Road, New Barnet, Barnet, EN5 1JD in accordance with the terms of the application, Ref 19/6724/FUL, dated 16 December 2019, subject to the conditions set out in the schedule attached to this decision.

Procedural matters

2. The planning application described the development proposed as the erection of a single 3 bedroom detached dwelling. I note that the Council describes the development more fully as: the erection of a two storey detached dwelling with associated amenity space, refuse storage and cycle parking, provision of 2no. off street parking spaces with associated access from York Road. As this better reflects the development proposed, I have used this description in my decision.

Main Issues

3. The main issues in this case are the effect of the proposed development on the character and established pattern of development in the area, and the living conditions of the neighbouring occupiers.

Reasons

Character and established pattern

4. The refusal reasons quote a number of planning policies: I consider that the principal policy relating to this issue is Policy DM01 of Barnet Development Management Policies (2012): Protecting Barnet's character and amenity. In particular, from that policy:
"b. Development proposals should be based on an understanding of local characteristics. Proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.
J v. make a positive contribution to the surrounding area"
In addition, I have taken note of section 6 of Part 2 of the Supplementary Planning Document: Residential Design Guidance which sets out more detail about local character and pattern of development.
5. The appeal site is 'L' shaped and is currently part of the rear garden of the existing dwelling at 77 Somerset Road, containing an outdoor pool and associated paved area. There are mature trees within the garden and on adjoining land. The site is set in an area that is primarily residential with an eclectic mix of mainly 2 storey well established detached, semi-detached and terraced houses, generally of traditional appearance, together with a number of blocks of flats. There is very little development behind the frontages, one such dwelling being mentioned in the representations at 85 Somerset that was apparently approved in 1986. The site is in a sustainable area, being in close proximity to public transport and local shops and other services.
6. This proposal follows on from a previous application that was refused and dismissed at appeal. The current proposal is for a smaller development, having a reduced footprint some 50% less than the previous proposal, and being 1.8m lower. Having a height of 3.6m, its appearance from the front would be little more than that of a single storey building. Whilst the proposal is located on garden land at the rear of the host and other dwellings, the access is gained from York Road by way of a private drive that is fronted, on the opposite side to the appeal site, with a flatted development containing 10 units and numbered as 65 York Road.
7. At my site visit I concluded that effectively there would be very little change to the character of the area arising from the proposal, since it would not be apparent from Somerset Road or York Road. To the extent that it would have a presence in the immediate vicinity, it would have a minor frontage onto an existing minor private road, which as I have described, has frontage development opposite in the form of 10 flats.
8. As I have already noted, the site levels would be reduced by 1.8m. and the frontage would consist of high sliding timber gate to the access and a rendered wall. Above this would be seen the first floor of the proposed dwelling under a flat sedum roof. The contemporary design would add a pleasing variety to the architecture of the area. I therefore consider that the proposal would not have a detrimental impact on the character or the established pattern of development in the area. Nor do I consider that it would amount to a precedent for further proposals for development of garden land due to the appeal site

effectively having a 'frontage' to an established access serving a significant number of dwellings.

9. I have been provided with a copy of the decision on the previous appeal for a dwelling on this site. The appeal before me is for a substantially different building: the previous proposal spanned the entire width of the plot, and extended much further into the site. The Inspector in that case described the proposed dwelling as being "in stark contrast to the established pattern of development" having a "short, squat rear garden". The current proposal is substantially smaller in footprint and in height, and has less of an impact on foliage. Essentially I regard the proposal as not being 'in a back garden', since it fronts onto a form of roadway with frontage development on the other side. While it is behind number 77 Somerset Road, this is not essentially different to housing between 2 highways where the back gardens of frontage development abut one another. The 2 different proposals have markedly different impacts, and for the reasons I have set out, my planning judgement differs from the previous Inspector.

Living conditions of neighbours

10. The design of the proposed dwelling is modern with flat sedum roofs. The later reduces the physical impact of the building and helps integrate it into its setting. It would be sufficiently distant and screened from the dwellings fronting Somerset Road to the south, whilst the blank east and west elevations and the amount of screening means that there would be no material impact on privacy or other living conditions of 61 and 63 York Road or the dwellings fronting Lyonsdown Road.
11. It is the impact on the flats at 65 York Road, opposite the entrance to the site on the northern side of the access drive, that needs careful consideration. The outlook from the flats is currently onto a retaining wall about 1m high, surmounted by a high wooden face topped by trellis, backed by trees and shrubs. From a visual amenity point of view, the proposed development would change the outlook, but would not be harmful. Nor do I consider that there would be a loss of privacy. The windows in the northern elevation of the proposed dwelling would be either obscure glazed or, where clear glazed, would be angled so that there would only be an oblique view to the north. The permanence of the obscure glazing could be covered by condition so as to avoid any future change that might result in a loss of privacy.
12. Whilst the site is at a higher level than the flats, due to rising ground levels, I do not consider that the dwelling would appear dominant or over-bearing, taking account of the existing situation with boundary treatment of a brick wall topped by fencing with a total height of some 3-3.5m, and the reduction in ground level on which the dwelling would sit. As for vehicular access, provision is made for on-site parking for 2 cars, that should not restrict access to the existing garages, one of which I note houses the vehicle of a disabled person. Undoubtedly the proposal would bring additional vehicles onto the private drive, over which I understand the appellant has a legal right of way, but this is not at such a level as to justify refusal of permission.
13. Whilst I understand the concerns raised by the occupants of the flats, for the reasons that I have given, I do not consider that there are matters of dominance, outlook, over-looking and privacy or other living conditions, that warrant the refusal of permission. In addition, I take account of the fact that

the appeal proposal meets, albeit in a small way, the policies of the National Planning Policy Framework, the London Plan, the Council's Core Strategy and policy DM08 of Barnet Development Management Policies (2012) that seek to increase the supply of housing in Barnet to address the national housing shortfall. It thus has modest social and economic benefits that weigh in its favour.

Conclusions

14. In light of the above considerations, I conclude that the appeal should be allowed.

Conditions

15. A number of conditions have been suggested by the Council in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text. I consider that they should be imposed for the following reasons: condition 2 – for certainty and avoidance of doubt, although I consider that it is only the plans that need to be referenced and not supporting statements; condition 3 – to ensure that the precise details of materials are approved in order to safeguard the appearance of the development; conditions 4, 7 and 8 – to ensure highway safety, provision of adequate parking and associated works, and safeguard the living conditions of neighbouring occupiers; condition 5 – to ensure suitable levels in relation to the highway and adjoining land; conditions 6, 9 and 10 – to safeguard existing trees and to ensure the development is completed in a satisfactory manner; condition 11 – to ensure a satisfactory roof covering, conditions 12 and 13 – to safeguard the living conditions of neighbouring occupiers; condition 14 – to encourage the efficient use of water.
16. In addition, as I mentioned in paragraph 11 above, it is necessary to include a condition requiring the windows shown to be obscure glazed to be so glazed, and to remain so thereafter.
17. A number of these conditions, suggested by the council, are 'pre-commencement conditions'. Section 100ZA(5) and (6) of the TCPA90 provides that planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition. In this case it has been confirmed on behalf of the Appellant that there is agreement to the imposition of the pre-commencement conditions.

Terrence Kemmann-Lane

INSPECTOR

Appeal Ref: APP/N5090/W/20/3249832

Schedule of conditions

- 1) The development hereby permitted shall begin no 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 plans:
 - 101 – Rev P.01 Site Location Plan
 - 201 – Rev P.01 Block and Roof Plan
 - 553 – Rev P.01 Existing Street Scene
 - 501 – Rev P.01 Proposed Elevations Front and Side
 - 501 – Rev:P.01 Proposed Elevations Rear- and Side
 - 302 – Rev P.01 Proposed First Floor Plan
 - 301 – Rev P.01 Proposed Ground Floor Plan
 - 551 – Rev P.01 Proposed Street Scene
 - 552 – Rev P.01 Proposed Street Scene
 - 401 – Rev P.01 Site Cross Sections
- 3) Notwithstanding any description of materials in the application and the requirements of condition 2 of this permission, no above ground works shall take place until samples or full details of all materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. The development shall thereafter be implemented in accordance with the duly approved materials.
- 4) a) No development or site works shall take place on site until a 'Demolition and Construction Management and Logistics Plan' has been submitted to and approved in writing by the Local Planning Authority. The Demolition and Construction Management and Logistics Plan submitted shall include, but not be limited to, the following:
 - i. details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures;
 - ii. site preparation and construction stages of the development;
 - iii. details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
 - iv. details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway;
 - v. the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;

- vi. a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
 - vii. noise mitigation measures for all plant and processors;
 - viii. details of contractors compound and car parking arrangements;
 - ix. details of interim car parking management arrangements for the duration of construction;
 - x. details of a community liaison contact for the duration of all works associated with the development.
- b) The development shall thereafter be implemented in accordance with the measures detailed within the statement.
- 5) a) No development shall take place until details of the levels of the building(s), road(s) and footpath(s) in relation to the adjoining land and highway(s) and any other changes proposed in the levels of the site have been submitted to and approved in writing by the Local Planning Authority.
- b) The development shall thereafter be implemented in accordance with the details as approved under this condition and retained as such thereafter.
- 6) a) No site works or development (including any temporary enabling works, site clearance and demolition) shall take place until a dimensioned tree protection plan in accordance with Section 5.5 and a method statement detailing precautions to minimise damage to trees in accordance with Section 6.1 of British Standard BS5837: 2012 (Trees in relation to design, demolition and construction - Recommendations) have been submitted to and approved in writing by the Local Planning Authority.
- b) No site works (including any temporary enabling works, site clearance and demolition) or development shall take place until the temporary tree protection shown on the tree protection plan approved under this condition has been erected around existing trees on site. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas at any time. The development shall be implemented in accordance with the protection plan and method statement as approved under this condition.
- 7) Prior to commencement of the development details of the refuse collection arrangements shall be submitted to and approved in writing by the Local Planning Authority.
- 8) Before the development hereby permitted is first occupied turning space and parking spaces shall be provided and marked out within the site in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and that area shall not thereafter be used for any purpose other than the parking and turning of vehicles.
- 9) a) a scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to and agreed in

writing by the Local Planning Authority prior to the occupation of the hereby approved development.

b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner.

c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

- 10) a) No development shall take place until details of the location, extent and depth of all excavations for services (including but not limited to electricity, gas, water, drainage and telecommunications) in relation to trees on and adjacent to the site have been submitted to and approved in writing by the Local Planning Authority.
- b) The development shall thereafter be implemented in accordance with details approved under this condition.
- 11) a) Prior to the first occupation of the development hereby approved, details of the proposed green roof shall have been submitted to and approved in writing by the Local Planning Authority.
- b) The green roof shall be implemented in accordance with the details approved by this condition prior to the commencement of the use or first occupation of the development and retained as such thereafter. Should part of the approved green roof be removed, die, become severely damaged or diseased within five years of the completion of development, it shall be replaced in accordance with the details approved by this condition.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development otherwise permitted by any of Schedule 2 of that Order shall be carried out within the curtilage of the site.
- 13) The lower roof of the development hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.
- 14) Prior to the first occupation of the dwellinghouse (Use Class C3) hereby approved it shall have been constructed to have 100% of the water supplied to it by the mains water infrastructure provided through a water meter or water meters and the dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day; a fittings based approach should be used to determine the water consumption of the proposed development. The development shall be maintained as such in perpetuity.

- 15) Prior to the first occupation of the dwellinghouse, hereby approved, the windows shown on drawing reference 302 Rev P.01 as being glazed with obscure glass shall be glazed accordingly and thereafter retained with obscure glazing.