



Appeal Decision

Site visit made on 29 January 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2021

Appeal Ref: APP/Y5420/W/20/3259715

Garage to Rear of 35 Park Avenue North, Hornsey, London N8 7RU

- 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 & Mrs Dalton against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/0082, dated 13 December 2019, was refused by notice dated 27 March 2020.
 - The development proposed is demolition of the existing garage structures and erection of a single residential dwelling, including new basement.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. In the banner heading above I have added the postal city and postcode from the appeal form for completeness.
3. It is suggested that the Council's decision notice does not reflect the plans and details that the appellants sought the application to be determined on the basis of. I have been provided with the suggested revised and additional plans. However, the decision notice is a legal document, which in this case sets out the plans and details upon which the application was determined.
4. Amongst other things, the revised plans set out some revisions to the elevations and sections which reduce the height of the building by approximately 0.16m and the first floor window by approximately 0.2m. Ground and first floor layout plans have been provided which are understood not to have changed but are not referred to in the Council's decision notice. Taking into account the Wheatcroft principles¹, the amendments are minor alterations that do not significantly or materially change the development. I consider the Council or interested parties would not be prejudiced if I considered the plans. Therefore, I have had regard to the plans in the determination of this appeal.
5. I have had regard to the description of the nature of alleged harm in the decision notice and Council's report in setting out the living conditions for consideration in respect of the occupiers of Nos 33 and 35 Park Avenue North in the main issue below.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Main Issues

6. The main issues are the effect of the proposed development upon:
- the character and appearance of the area;
 - the living conditions of the occupiers of Nos 33 and 35 Park Avenue North with particular reference to outlook and privacy;
 - the living conditions of the future occupiers of the development with particular reference to outlook and daylight; and,
 - groundwater flooding and ground stability.

Reasons

Character and appearance

7. The appeal site is set within a street scene of terraced dwellings fronting Clovelly Road, the front and rear of dwellings of a similar vernacular on Park Avenue North and a modern dwelling opposite. The overriding character of the street scene derives from the rhythm of the Edwardian terraces integrating red brickwork, white fenestrations, bay windows, porches and decorative cross gables and modest gardens behind low front walls or fences and hedging. The rear of the terraced dwellings integrate paired outriggers mostly integrating traditional window openings.
8. The appeal site garage exhibits no discernible architectural characteristics of the terraced dwellings. The contribution of the appeal site to the character and appearance of the area derives from its ancillary scale giving some sense of openness. The recently constructed dwelling next to No 46 departs from the Edwardian character. However, its subordinate height, red brick gable, low front wall and sloping front facade means that while it is in contrast to the historic terraced properties, it maintains a degree of subordination and a coherence with the street scene. The Council does not object to the principle of a contemporary design on the appeal site, and I see no reason to disagree.
9. The new appeal site dwelling would be tightly bound within its plot. Given the amount of the plot that the garage occupies and the spacing between No 19 Clovelly Road and the rear of 35 Park Avenue North, the width and depth of the dwelling would not be out of keeping with the current appeal site layout. However, a significant proportion of the ground floor wall would adjoin the front of the plot, integrating with the boundary treatment. The height and forward projection of this would give the impression of a highly cramped and overdeveloped plot, significantly at odds with the frontages nearby.
10. The height, almost cubic forms, bulk, projecting large single pane square front window and almost entirely dark elevations would be a considerable contrast with surrounding character. The projecting ground floor and approximately 2.5m high boundary treatment would be a significant disruption to the building lines of the properties on Clovelly Road to which the site closely relates. The height and colours of the boundary would be significantly at odds with the neighbouring boundary treatments it adjoins. As a consequence, the proposal would be a highly incongruent and dominant development, which would have a harmful enclosing effect on the street scene.

11. The shape, forward projection of the building, vertical emphasis of the cladding, proposed large front dormer window and projecting element enclosing the stairs, would be significantly at odds with and would not relate well to the shapes and forms of surrounding dwellings which positively contribute to the character and appearance of the area. The appearance would be of a sizeable, dark, flat roof building that would be a stark and incongruent building, which integrates poorly and has little integration with the colours, palate of materials, shapes, and forms of existing development.
12. Even with the reduced height, the building still has a significant bulk and would be above the eaves height of 19 and neighbouring outriggers. Consequently, the development would not sit comfortably or appear subordinate, and would dominate the street scene. This is in contrast to the new dwelling adjoining No 46, which is below the eaves height and slopes away from the street. The appeal site occupies a prominent position within the street scene and the proposed development would be prominently visible to passers-by and a number of neighbouring occupiers, as a dominant and discordant development that would be harmful to the character and appearance of the area. For these reasons I cannot agree the proposed development represents a high quality design that has adequate regard to its context and surroundings.
13. I have been provided with other examples of contemporary dwellings in the area. The full details, circumstances and considerations that lead to their approval are not clear, so I cannot make a fully reasoned comparison with the appeal proposal. The decisions in respect of Clifton Road, Fairfield Road, Oakfield Road and Alexandra Park Road all pre-date the Haringey Development Management DPD (2017) (the DMDPD), the Haringey Local Plan (2017) (the HLP), the London Plan (2016) (the LP) and the National Planning Policy Framework (2019) (the Framework). These dwellings are of a significantly different design to the appeal proposal. They appear of a lower height in relation to the scale and height of the respective neighbouring properties, and the boundary heights more in keeping with those surrounding the properties.
14. The photographs of schemes in DeBeauvoir Road, Halliford Street and an unnamed street in Camden also appear significantly different in relation to their design and context. Therefore, none of the examples set out are directly comparable to the appeal proposal, which I have considered on its own merits. The existence of these examples does not justify allowing the appeal proposal.
15. For the reasons set out above the proposed development would be significantly harmful to the character and appearance of the area. It would conflict with Policies 3.5, 7.4 and 7.6 of the LP, Policies DM1, DM7 and DM12 of the DMDPD, Policy SP11 of the HLP and paragraph 127a) c) and d) of the Framework. In combination and amongst other things these require that development is of a high quality design that has regard to and positively contributes to the surrounding context and character, and preserves and enhances the character and appearance of the area.
16. The development may be compliant with some aspects of some of the policies referred to above and the London Plan Housing Supplementary Planning Guidance (2016). This includes in respect of being a distinctive design, respecting the urban grain, orientation, plot widths, some aspects of high quality design and quality of materials and providing some surveillance.

However, the development also results in significant harm, and the elements of compliance, does not outweigh the harm identified.

Living conditions – Nos 33 and 35

17. The dwelling would be approximately 6.7m high almost adjoining the rear gardens of Nos 33 and 35 Park Avenue North. It would be approximately 8.8m from the rear facing windows of No 35 across a significant width of the garden. Given the length of the garden, distance to the flat two storey side elevation, and the limited relief, the development would feel significantly overbearing when viewed from the rear windows and garden of No 35. It would result in a significant loss of outlook from the garden and rear windows that would be harmful to the living conditions of the occupiers of No 35.
18. The development would be viewed at an oblique angle from the rear facing windows of No 33, which given the distance would not result in a harmful loss of outlook from those rear windows. However, the full width of the new dwelling would be close to the side of the garden of No 33 from. Given the size of the garden and the height, scale and close proximity, the development would be significantly overbearing, resulting in a significant loss of outlook from the garden, which would be harmful to the living conditions of the occupiers of No 33.
19. The extract provided of the report from Dagmar Road refers to light and not outlook, so based upon the information before me is not directly relevant to outlook. The detailed relationship between the properties on Clifton Road and Crouch Hall Road is not clear. However, based upon the evidence before me the land rises up from the new property which has a roof curving away from the garden in question. Therefore, it is not directly comparable to the situation at the appeal site, which I have considered on its own merits.
20. The Council has referred to harm to the occupiers of No 33 due to a perception of overlooking from a rear facing part obscure glazed window facing the garden. I am satisfied that subject to the imposition of a suitable condition in respect of obscure glazing there would be no material harm to privacy or from overlooking. Given the direction of the window, such a perception would only be likely to occur from parts of the garden. The obscure glazing would be highly likely to be discernible from the outside, and so would the absence of material harm. Even if there was an initial perception of overlooking, this would not be prolonged even when internal lights are on.
21. The findings of the Daylight, Sunlight and Overshadowing Assessment in respect of daylight, sunlight and overshadowing and the pre-application advice are noted. However, these do not mitigate the harm I have found in respect of outlook.
22. For the reasons set out above the development would result in harmful living conditions for the occupiers of Nos 33 and 35 Park Avenue North with respect to a loss of outlook. Therefore, it would conflict with Policy 7.6 of the LP and Policies DM1 and DM12 of the DMDPD. Amongst other things these policies seek to ensure development does not result in harmful living conditions to neighbouring occupiers. For the reasons set out above I do not find the development would be materially harmful in respect of the perception of overlooking. However, this does not mitigate the other harm I have found.

Living conditions – future occupiers

23. The development would be reliant upon much of its daylight from the front and rear elevations, also integrating a rooflight and lightwell to maximise the daylight available. The first floor would benefit from the rooflight and front windows providing a good degree of daylight and outlook. While constrained by boundary treatments, the internal layout, and the position and size of the north and south facing windows would ensure a sufficient amount of daylight and outlook to the ground floor.
24. Daylight and outlook for the basement floor would from the lightwell/courtyard serving the front windows. Sunlight penetration to the ground floor would be highly restricted to limited parts of the day and year. While the overall amount of glazing would be relatively sizeable, it would be north facing. Furthermore, the level of daylight and outlook from the lightwell would be highly constrained by the steep angle created by the front boundary treatment. This space would only be approximately 1.7m in depth, but in excess of 5m in height. Although the basement floor comprises a bedroom, changing room, landing and bathroom, given its depth, there would be a poor quality of overall daylight and outlook, to a floor which occupies a significant proportion of overall living space. The remaining internal space and compliance with other aspects of development plan policies in respect of living conditions does not outweigh this.
25. The front outdoor courtyard space would similarly have a highly constrained outlook and daylight. However, the provision of the rear courtyard and openable first floor roof would ensure that the development has an adequate quality of outdoor space in respect of daylight and outlook.
26. From the information provided in respect of living conditions at Clifton Road, I cannot make a fully reasoned comparison with the appeal proposal. Therefore, it does not change my view with respect to the harm set out above. While paragraph 123d) of the Framework advises that standards should be applied flexibly, given the harm I have found and the amount and function of living space affected, the harm attracts weight against the scheme.
27. For the reasons set out above the development would result in harmful living conditions to the future occupiers of the development in respect of daylight and outlook. Therefore, it would result in a conflict with Policies 3.5 and 7.6 of the LP, Policy SP11 of the HLP and Policies DM1 and DM7 of the DMDPD, which seek to ensure that new homes are of a high quality internally that do not result in harmful living conditions and provide a high standard of amenity for future occupiers.
28. The Council's second reason for refusal refers to Policy DM12 of the DMDPD. However, this mainly relates to the living conditions of neighbouring occupiers and minimum space standards. Policy 7.2 of the LP primarily relates to inclusive design. Therefore, these policies of less relevance to this main issue than the other policies I have referred to above.

Groundwater and land stability

29. The Council's fourth reason for refusal relates to the absence of a Basement Impact Assessment (BIA) with the application, to demonstrate the development would not result in harmful effects in respect of groundwater flooding and ground stability.

30. The BIA accompanying this appeal confirms there is no significant surface water features nearby, the development is not located directly above an aquifer and would not be below the water table. Although it is not located within an area defined as being at risk of Flooding by the Environment Agency, it is within a Critical Drainage Area, and so is accompanied by a Flood Risk Assessment (FRA). The FRA confirms that the risk of flooding from watercourses, waterbodies, rainfall, groundwater, and sewage is low. No groundwater was encountered during investigative works.
31. The limited extent and depth of the basement and evidence in respect of the hydrogeology of the area, assures me the development could be constructed in a manner that would not result in the development suffering flooding from groundwater. Subject to the imposition of suitable conditions in respect of construction methods and drainage the development would not be at a significant risk of flooding, would not increase flood risk from groundwater or surface water to neighbouring properties, either alone or cumulatively with other neighbouring basements.
32. The basement would be constructed using a suitable thickness of concrete and designed to be waterproof, with either L-shaped concrete walls or piled foundations. The superstructure would be constructed of a steel frame incorporating bracing and connections, in a sequence set out in the Construction Method Statement. Retaining walls could be constructed from the top down, restrained prior to excavation, and be designed for a sufficient surcharge loading from the highway. Subject to the imposition of suitable planning conditions in respect of construction methods, the development would not be likely to result in an adverse effect upon ground stability or damage from vibration, either at the appeal site or neighbouring properties. The BIA, FRA and Ground Investigation Report have been prepared by qualified Engineers, to which I attribute the findings significant weight.
33. For the reasons set out above the development would not be likely to result in harm in respect of groundwater flood risk or land stability. Therefore, it would not conflict with Policies DM18 and DM24 of the DMDPD or Policy SP11 of the HLP. Amongst other things these policies require that development ensures impacts upon natural resources are minimised by sustainable design and construction techniques, development does not adversely affect the structural stability of surrounding buildings and land, and avoids and reduces flood risk.

Planning Balance

34. Section 38(6) of the Planning & Compulsory Purchase Act 1990 and the Framework state that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
35. The Housing Delivery Test results were published on 19 January 2021, showing the Council met approximately only 60% of its housing delivery requirements over the past 3 years, representing a significant shortfall. Therefore, the presumption in favour of sustainable development in paragraph 11d) of the Framework applies, and the most important policies for determining the application are considered out of date. I am advised that housing requirements may well increase based upon the Intend to Publish London Plan.

36. The social benefit of providing a single one bedroom dwelling well located for access to some services, facilities, and transport links, would make a small contribution to the supply of housing. There would be some small economic benefits from construction and on completion there would be a small sustained benefit to the local economy. The development would result in a small amount of additional on-street parking through raising the dropped kerb and enclosing the space in front of the garage, preventing any anti-social behaviour.
37. The development would be compliant with some development plan policies and the Framework aimed at increasing the supply of housing. It would result in the more effective use of previously developed underused land. In this regard the development would gain some support from paragraphs 117, 118a), c) and d) and 123 of the Framework. Compliance with policies in respect of car and cycle parking, accessibility, refuse and recycling storage, and tree protection would be neutral matters attracting neutral weight. The use of sustainable materials, planting, and resource and energy efficiency would help to off-set the effects of the development and so compliance with policies in this regard is a neutral matter. The combined economic, parking, social and environmental benefits of the appeal scheme are modest and only afforded limited weight.
38. However, I have found the development significantly harmful to the character and appearance of the area, and it would result in harmful living conditions to neighbouring occupiers and the future occupiers of the development. In this regard the proposed development conflicts with Policies 3.5, 7.4 and 7.6 of the LP, Policy SP11 of the HLP and Policies DM1, DM7 and DM12 of the DMDPD and the Framework.
39. The development plan policies are considered out of date. However, given the specific circumstances and nature of the proposal, resulting in significant harm to the character and appearance of the area and harmful living conditions for neighbouring and future occupiers, the conflict with the policies still carries significant weight in this instance. Overall, the harm from the development, significantly and demonstrably outweighs the benefits when assessed against the Framework taken as a whole. Therefore, the proposal would not amount to sustainable development under the terms of the Framework.

Conclusion

40. The proposed development would be contrary to the development plan and the Framework as a whole, and there are no other considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR