
Appeal Decision

Site visit made on 2 February 2021

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Appeal Ref: APP/N5090/W/20/3258831

70 Shurland Avenue, East Barnet, Barnet EN4 8DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Tony Beels against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/2409/OUT, dated 29 May 2020, was refused by notice dated 27 July 2020.
 - The development proposed is demolition of existing garage and construction of new detached dwelling to the rear of 70 Shurland Avenue.
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Decision

1. The appeal is allowed and outline planning permission is granted for demolition of existing garage and construction of new detached dwelling to the rear of 70 Shurland Avenue at 70 Shurland Avenue, East Barnet, Barnet EN4 8DD in accordance with the terms of the application, Ref 20/2409/OUT, dated 29 May 2020, subject to the conditions in the attached schedule.

Procedural Matter

2. The application was made in outline with all matters other than access, layout and scale reserved for future consideration. I have determined the appeal on this basis, treating the submitted plans and details provided as illustrative, insofar as they relate to matters other than access, layout and scale of the development.

Main Issues

3. The main issues are the effect of the proposed development on:
 - (i) the character and appearance of the area,
 - (ii) the living conditions of the occupants of Nos. 48 to 52 Cranbrook Road and Nos. 70 and 72 Shurland Avenue with particular regard to noise, disturbance and general activity associated with the new dwelling;
 - (iii) the living conditions of the future occupiers of the proposed dwelling with particular regard to privacy and outlook; and
 - (iv) biodiversity and protected species interest on the site

Reasons

Character and appearance

4. The appeal site forms part of the garden area of No. 70 Shurland Avenue, a two storey end terrace dwelling set within a relatively spacious landscaped plot, with a number of trees and other mature planting within and immediately adjacent to the site.
5. The topography of the site slopes away from Shurland Avenue towards the residential properties on Cranbrook Road to the east of the site. The surrounding area is characterised by two and three storey residential properties of varying styles and ages set back from the road within relatively spacious landscaped plots primarily fronting onto the highway but with some backland courtyard flats style development. This provides a diverse mix of house types and variety in the design, density and appearance of the residential properties that gives the area a mixed well-established residential character.
6. The proposal would involve the erection of a detached two storey contemporary style dwelling with associated landscaping, garden and parking. The proposed dwelling would be stepped down to utilise the natural sloping topography of the site and set back from the adjacent residential properties, with vehicular access via a new access driveway at the side of No. 70 Shurland Avenue.
7. The National Planning Policy Framework (the Framework) and Policy 3.5.A of the London Plan 2016 (LP) allow Councils to introduce a presumption against development on private residential gardens, albeit that the Framework phrases this as being in circumstances where such resistance is where it would be 'inappropriate development of residential gardens, for example where development would cause harm to the local area'¹. In Barnet's case, development involving the loss of gardens will be assessed in accordance with Policy DM01 of the Barnet's Development Management Policies Document 2012 (DMP) in order to ensure they are not detrimental to the suburban character that makes Barnet a distinctive place².
8. The appeal site is in a relatively large plot and as such the proposed development would not appear overlarge, relative to the overall plot size. Given the topography, boundary treatment and mature landscaping along the boundaries of the site, the proposal would only be visible over short distances from the adjacent properties and in limited glimpses along the accessway when passing the front of the site. Given this context, to my mind, the development would not be unsympathetic to the streetscene nor would it appear cramped when taking into account the overall character of the area.
9. Turning to the scale and layout of the development. The proposed dwelling, with its own separate access, would be seen in the context of the adjacent more traditional two storey properties along Cranbrook Road and the varied two and three storey properties along Shurland Avenue, including the large modern three storey courtyard flats style development with its staggered form set back from the road immediately to the west and south west of the site. The location of the site behind the existing buildings, however, creates something of a break from the varied prevailing character of the area. As such, I see no particular reason why the development need mirror those on the surrounding

¹ Paragraph 70 of the Framework

² Paragraphs 10.7.3 and 10.7.4 of the Barnet's Core Strategy 2012

streets or that the lack of consistency of design would necessarily be harmful. The contemporary form and layout of the development shown on the submitted plans would add to the mixed and varied residential character in this location.

10. Against this backdrop, the scale, form and layout of the proposed two storey dwelling would not look out of place or excessive in relation to the built form of the adjacent properties and the surrounding area. The scale and layout of the contemporary style dwelling, set back and stepped down, together with the control of the use of materials, fenestrations, landscaping and boundary treatment through appropriate planning conditions would ensure the proposal would sit relatively unobtrusively against the built form of the adjacent properties and would ensure that the overall proposal would not have a significant impact on the character and appearance of the surrounding area.
11. Consequently, I conclude that the proposed development would not have a harmful effect on the character and appearance of the area. It would be consistent with Policies 3.5, 7.4 and 7.6 of the LP, Policy DM01 of the Barnet's Development Management Policies Document 2012 (DMP), Policies CS1 and CS5 of the Barnet's Core Strategy 2012 (CS) and the Council's Residential Design Guidance Supplementary Planning Document 2016 (SPD), which I consider are relevant in this case. These policies and guidance, amongst other things, seek to ensure that all development is of a high quality design that respects the local context and preserves or enhances the local character.

Living conditions of the occupiers of the neighbouring properties

12. The proposed dwelling would set back from the rear elevations and the shared common boundaries of the neighbouring properties at Nos. 70 and 72 Shurland Avenue (Nos. 70 and 72) to the west and Nos. 48, 50 and 52 Cranbrook Road (Nos. 48, 50 and 52) to the east of the site. The proposed dwelling would be set back and stepped down below the rooms and the gardens at the rear of Nos. 70 and 72. The rear elevations and gardens at the rear of Nos. 48, 50 and 52 would be separated from the appeal site by a number of outbuildings, a high closed boarded fence and mature vegetation along the boundaries. These would be supplemented by additional landscaping and boundary treatment as part of the appeal scheme.
13. The creation of a new dwelling would clearly lead to some increased noise and disturbance from general household activities. However, the appeal site is already used as a garden area. The occupiers of the neighbouring properties would therefore be used to a certain degree of noise and disturbance associated with the household and leisure activities associated with the existing dwelling in this location. The Council have not provided any substantive evidence which demonstrates the proposed dwelling would generate a more harmful level of noise or disturbance compared to those already in place.
14. Given the overall scale and layout of the proposed dwelling, set back and stepped down, together with the landscaping, boundary treatment, site levels and the separation distance between the properties, I consider that the proposed dwelling would not result in significant harm to the amenity, nor result in significant noise, disturbance and general activity associated with the new dwelling to the occupiers in the rear gardens of the adjacent properties.
15. As such, I conclude that the development would not adversely harm the living conditions of the occupants of Nos. 48, 50 and 52 Cranbrook Road and

Nos. 70 and 72 Shurland Avenue with particular regard to noise, disturbance and general activity associated with the new dwelling. It would be consistent with Policy CS5 of the CS, Policy DM01 of the DMP and the SPD, which I consider are relevant to this case. This policy and guidance, amongst other things, seek to ensure that all development proposals achieve a high quality design and provide adequate amenity for adjoining and potential occupiers.

Living conditions of the future occupiers

16. The submitted plans illustrate that the proposed dwelling would be split over four levels. The main living room, master bedroom and bedroom 2 would overlook the proposed timber decking area and landscaped garden via an area of extensive glazing illustrated on the south elevation. The lower ground level bedroom 1 window illustrated on the north elevation would overlook the sloping landscaped wildlife garden area and would be set back and stepped down below the rear garden of No. 70 Shurland Avenue.
17. The proposed external amenity space would be separated from the neighbouring properties by a high closed boarded fence and mature vegetation along the site boundaries together with a number of outbuildings at the rear of Nos. 48, 50 and 52 Cranbrook Road. These would be supplemented by additional landscaping and boundary treatment as part of the appeal scheme
18. Whilst I accept that there would be some impact from the development, given the layout of the development, set back and stepped down, together with the boundary treatment, landscaping, site levels and the separation distance between the properties, I consider that the proposed development would not result in significant harm to the privacy, nor result in significant overlooking of the future occupiers in bedroom 1 and the external amenity space from the rear gardens of the adjacent properties.
19. Given the layout of the development, I consider that the proposed development would not significantly dominate the views to cause an unacceptable sense of enclosure and outlook from the main living room, master bedroom and bedroom 2. I therefore consider that the proposal would provide a satisfactory living environment and standard of accommodation for the future occupants of the proposed dwelling.
20. Consequently, I conclude that the proposed development would not result in an unacceptable impact on the living conditions of the future occupiers of the proposed dwelling with particular regard to privacy and outlook. It would be consistent with the overall aims of Policy CS5 of the CS, Policy DMP1 of the DMP, Sustainable Design and Construction Supplementary Planning Document 2016 and the SPD, which I consider are relevant in this case. These policies and guidance seek, amongst other things, to ensure that development proposals achieve a high quality design and provide adequate privacy and outlook for adjoining and potential occupiers. In addition, it would accord with the Framework that development should seek to create places with a high standard of amenity for existing and future users (paragraph 127).

Biodiversity and protected species interest

21. Given the nature of the site and its surroundings, the Council's Ecologist has recommended that an ecological assessment and a preliminary bat roost

survey should be undertaken and any subsequent survey works recommended prior to any approval.

22. The increased areas of hardstanding and development of the site would inevitably increase the need for appropriate measures to deal with potential biodiversity and protected species interest. The appellant has provided a Preliminary Ecological appraisal including a preliminary bat roost assessment. This appraisal shows the low to negligible habitat value of the appeal site for roosting bats and protected species together with no foreseen impacts or further survey works required and appropriate mitigation measures for the enhancement of the potential biodiversity and protected species interests³.
23. Based on the evidence before me, in the absence of any convincing evidence to the contrary from the Council, I am satisfied that adequate information has been submitted to demonstrate that the proposed development would not have an adverse impact on the biodiversity and protected species interest and the necessary mitigation measures could be put in place through an appropriate planning condition.
24. Consequently, I conclude that the proposed development would be consistent with Policy DM16 of the DMP and the Sustainable Design and Construction Supplementary Planning Document 2016. This policy and guidance, amongst other things, seek to ensure development proposals make a contribution to the retention, enhancement or creation of biodiversity.

Other Matters

25. I have noted the other development in the area drawn to my attention by the main parties. However, the various examples of backland style residential development considered at appeal have different development and locational characteristics to the appeal scheme⁴. In any event, each proposal falls to be assessed primarily on its own merits and I am unaware of the full circumstances associated with these other cases. I therefore accord them limited weight as precedents in this case.
26. I have noted the objections raised by third parties to the proposal. These include the impact on the amenities of local residents, noise and disturbance, character of the area, access, parking, highway safety, standard of accommodation, accessibility requirements, drainage, flooding, sewage, excavation works, security, impact on trees, biodiversity, wildlife, loss of valued green space, covenants on the land, land ownership, property devaluation, setting a precedent and the impact during the construction works.
27. However, I have addressed the matters relating to the character and appearance of the area, the living conditions of the neighbouring properties and future occupiers and the biodiversity and protected species interest in the main issues above. No objections were received from the Council's Highways Officer, subject to appropriate planning conditions being applied. Property devaluation and restrictive covenants are not material planning considerations to which I can attach significant weight in making my decision.
28. The other matters raised did not form part of the Council's reasons for refusal. I am satisfied that these matters would not result in a level of harm which

³ Arbtech Preliminary Ecological Appraisal Survey – 70 Shurland Avenue, Barnet, Greater London EN4 8DD

⁴ APP/N5090/A/08/2087002, APP/N5090/W/17/3172374, APP/N5090/W/16/3149519, APP/N5090/W/20/3249832

would justify dismissal of the appeal and can be dealt with by planning conditions where appropriate. In addition, I have considered the appeal entirely on its own merit and, in the light of all the evidence before me, this does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

Conditions

29. Having regard to the Framework, and in particular paragraph 55, I have considered the conditions suggested by the Council but with some variation to the wording where necessary and in the interests of clarity.
30. The conditions relating to the detailing of the reserved matters and the standard time limits for submission of the reserved matters and the commencement of development are reasonable and necessary. I have specified the approved plans as this provides certainty. Those conditions relating to the detailing of the external materials, site levels, hard and soft landscaping, boundary treatment, a construction management and logistic plan, working hours and no windows on the flanks elevations facing Nos. 48, 50 and 52 Cranbrook Road are necessary in order to protect the character and appearance of the area and to safeguard the amenities of the nearby residents
31. A condition relating to cycle parking and cycle storage facilities is necessary in the interests of highway safety and to promote sustainable transport. A condition relating to the refuse and recycling storage facilities and collection is necessary in the interests of amenity and promoting sustainable waste management. I agree that the condition relating to measures to improve carbon dioxide emission levels is necessary in order to ensure a sustainable development and minimise carbon dioxide emissions. A condition relating to the recommendations of the appellant's submitted Preliminary Ecological Appraisal Survey is necessary for the protection and enhancement of potential biodiversity and protected species interests.
32. The Council have suggested the removal of permitted development rights. However, in light of my findings, it is not considered necessary, given that the proposal is acceptable on its own merits. There are no exceptional circumstances that would justify the removal of permitted development rights that are reasonable and necessary to make the development acceptable.
33. The Council has suggested two conditions relating to water saving and efficiency and accessibility arrangements that specify compliance with the relevant parts of Building Regulations. As the requirements of these conditions are administered and enforced by legislation other than planning, the suggested conditions are not necessary, reasonable nor relevant to planning.

Conclusion

34. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be allowed.

David Troy

INSPECTOR

Schedule of Conditions

- 1) Approval of the details of the appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced and shall be carried out as approved. Application for approval of the reserved matters shall be made within 3 years of the date of this decision.
- 2) The development hereby permitted shall be commenced within 2 years of the date of the approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans and particulars: -
351.ST.01, 351.P.01, 351.P.02, 351.P.03, 351.P.04A and PS-2022-TS.
- 4) No development shall take place until details of the levels of the building in relation to the adjoining land and any other changes proposed in the levels of the site have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the details as approved under this condition and retained as such thereafter.
- 5) No development other than demolition works shall take place until details of the materials to be used for the external surfaces of the building and hard surfaced areas hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 6) No development shall take place until 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, has been submitted to and agreed in writing by the Local Planning Authority. 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, or commencement of the use. 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.
- 7) The site shall not be brought into use or first occupied until details of the means of enclosure, including boundary treatments, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the details approved under this condition before first occupation or the use is commenced and retained as such thereafter.
- 8) Before the development hereby permitted is first occupied, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in full in accordance with the details

- as approved under this condition prior to the first occupation and retained as such thereafter.
- 9) Before the development hereby permitted is first occupied, details of cycle parking and cycle storage facilities shall be submitted to and approved by the Local Planning Authority. The development shall be implemented in full in accordance with the details as approved prior to the first occupation and shall be permanently retained thereafter.
- 10) Prior to the commencement of the development a Construction Management and Logistics Plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented and constructed in full in accordance with the details approved under this Plan. This Construction Management and Logistics Plan submitted shall include, but not be limited to, the following information:
- 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 the measures to be implemented to manage the construction of the sunken building and minimise the impact of this process on the amenities of neighbouring occupiers and ground and surface water conditions in the area;
 - iv. details of provisions for recycling of materials, the provision on site of storage/delivery area for all plant, site huts, site facilities and materials;
 - v. details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the adjoining highway;
 - vi. the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;
 - vii. 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;
 - viii. noise mitigation measures for all plant and processors;
 - ix. details of contractors car parking arrangements; and
 - x. details of interim car parking management arrangements for the duration of construction.
- 11) No construction work resulting from the planning permission shall be carried out on the premises at any time on Sundays, Bank or Public Holidays, before 8.00 am or after 1.00 pm on Saturdays, or before 8.00 am or after 6.00pm pm on other days.
- 12) The development hereby permitted shall be carried out in accordance with the ecological and protected species mitigation and enhancements measures as recommended in the submitted Arbtech Preliminary

Ecological Appraisal Survey – 70 Shurland Avenue, Barnet, Greater London EN4 8DD and shall be retained thereafter.

- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order) no windows, other than those expressly authorised by this permission, shall be placed at any time in the flank elevations facing the rear gardens of Nos. 48, 50 and 52 Cranbrook Road.
- 14) Prior to the first occupation of the development hereby permitted, it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.