
Appeal Decision

Site visit made on 21 January 2021

by Baljit K Muston BA(Hons) PGDip MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Appeal Ref: APP/N5090/W/20/3260193

6 Cornwall Avenue, Finchley, London N3 1LD

- 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 Ceka Gramos and Ilias Anoichtomatis against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/0045/FUL, dated 2 December 2019, was refused by notice dated 6 July 2020.
 - The development proposed is the conversion of the existing dwelling into two self-contained flats with associated bin and cycle storage, and enclose the existing porch.
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Application for Costs

1. An application for costs was made by Mr Ceka Gramos and Ilias Anoichtomatis against the Council of the London Borough of Barnet. This application is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Procedural Matter

3. The Planning Statement that accompanied the application describes the proposal in different places as a conversion into one 2 bedroom and one 3 bedroom flat, and a conversion into 3 flats. It states in one place that the open space to the rear will be dedicated to the ground floor flat and elsewhere that each flat has dedicated amenity space. The proposal was described on the application form as set out above, and the submitted plans show two 2 bedroom flats, each with a study, and the entire rear garden being for the benefit of the ground floor flat. I have determined the appeal on this basis.
4. The submitted plans show the ground floor flat as Flat 1 and the flat occupying the first and second floors as Flat 2. I have used these shorthands to describe the two flats in my decision.

Main Issues

5. The main issues are:-
 - whether the development would provide acceptable living conditions for the occupants of 'Flat 2', with particular regard to the provision of private external amenity space; and

- whether the absence of off-street parking would have an unacceptable impact on parking conditions in the area.

Reasons

Living conditions

6. Policy DM02 of Barnet's Local Plan (Development Management Policies) (2012) (DMP) says that, where appropriate, development will be expected to demonstrate compliance with a series of national and Londonwide standards. One of these is listed at (7) as the Sustainable Design and Construction Supplementary Planning Document (SPD), in relation to outdoor amenity space.
7. The supporting text to Policy DM02 explains in paragraph 3.8.1 that *"the provision of outdoor amenity space is an important consideration for residential development"*, and that *"residential units with insufficient garden outdoor amenity space are unlikely to provide good living conditions for future occupiers"*. Paragraph 3.8.3 further explains that *"in town centres and for some higher density schemes including tall buildings, it may not be feasible for development to provide individual private garden space"*, and that, *"in these instances the development should make a financial contribution to the nearest appropriate green space to compensate for the lack of private garden space"*.
8. The SPD expands on the importance of providing outdoor amenity space further in paragraph 2.3.1, saying that *"for flats, options include provision communally around buildings or on roofs or as balconies"*. The SPD also includes a table that sets out the outdoor amenity space requirements, which, for flats, is 5 square metres of space per habitable room. In paragraph 2.3.3, it goes on to say that *"higher density development, such as flats, may not always be able to provide amenity space"* to these standards. It goes on to say that *"where the standards cannot be met and an innovative design solution is not possible the Council will seek a Planning Obligation"*.
9. The Mayor of London has also produced Supplementary Planning Guidance on Housing (2016) (SPG). Standard 26 deals with private open space, and says that *"a minimum of 5 sqm of private outdoor space should be provided for 1-2 person dwellings and an extra 1 sqm should be provided for each additional occupant"*.
10. Paragraph 2.3.31 explains that *"private open space is highly valued and should be provided in all new housing developments"*. The SPG goes on to say in paragraph 2.3.32 that *"in exceptional circumstances, where site constraints make it impossible to provide private open space for all dwellings, a proportion of dwellings may instead be provided with additional internal living space equivalent to the area of the private open space requirement"*. It goes on to explain that this area must be added to the minimum floor space, and that *"enclosing balconies as glazed, ventilated winter gardens can be considered an acceptable alternative to open balconies"*. Paragraph 2.3.33 says that *"dwellings on upper floors should all have level access to a terrace, roof garden, winter garden, courtyard garden or balcony, and that the use of roof areas for additional amenity or garden space is encouraged"*.
11. The proposal involves dividing the property into two dwellings in what is undoubtedly the most straightforward manner. Flat 1 occupies the whole of

the ground floor and would have sole access to the rear garden. Flat 2 occupies the whole of the first and second floors and would have no access to any private outdoor amenity space. Both flats would have two double bedrooms and a study and would be likely to appeal to families. The absence of any private external space for Flat 2 would be contrary to the advice in both the Council's SPD and the Mayor of London's SPG.

12. The appellant argues that both pieces of guidance include exceptions. The supporting text to Policy DMD 02 says that it may not be possible to provide individual private gardens in town centres, and in some higher density schemes, including tall buildings. The SPD says that higher density developments may not always be able to provide amenity space, and that where an innovative design solution is not possible, the Council will seek a planning obligation. However, the conversion of one house into two flats is not a particularly high density development, the site is not in a town centre, and I have no evidence before me that the appellant has explored "*innovative design solutions*". These could range from providing balconies or a roof garden, to splitting the property in a different way to allow the rear garden to be split between flats or used communally.
13. In any event, even if such alternative solutions had been explored and found to be unworkable, the SPD and supporting text in the DMD say that a planning obligation would be sought, to make a financial contribution to the nearest appropriate green space to compensate for the lack of private garden space. No such obligation is before me; indeed the appellant states in his Appeal Statement that the level of open space deficiency would not justify the expense of a legal agreement.
14. Turning to the Mayor of London's SPG, this says that, in exceptional circumstances, where site constraints make it impossible to provide private open space for all dwellings, then this requirement could be added to the minimum floorspace. However, this is in the context of paragraphs that emphasise the importance of providing private open space in all new housing developments, and of dwellings on upper floors providing some kind of outdoor space, such as a roof garden or balcony. The conversion of a two storey dwelling into two flats is a commonplace form of development, and does not to my mind meet the definition of "*in exceptional circumstances*".
15. The appellants also argue that the site is located close to Victoria Park, which provides public open space. Whilst this is useful in providing space for exercise and play in the area, it does not make up for the complete absence of private amenity space for a two bedroomed flat suitable for a family.
16. It is not enough to simply assert that it is impossible to provide any private external space and then seek to take advantage of exceptions without fully considering alternatives or seeking to enter into a planning obligation. I conclude that the proposed development would not provide acceptable living conditions for the occupants of Flat 2, because of the absence of private external amenity space, contrary to Policy DM02 of the DMP, as well as guidance in the SPD and SPG.

Parking

17. The appeal site is within a Controlled Parking Zone (CPZ). Policy DM17 of the DMP says that residential development may be acceptable with limited or no

parking within a CPZ, where it can be demonstrated that there is sufficient capacity on street and the applicant enters into a legal agreement to restrict future occupiers from obtaining on street parking permits.

18. The site has good access to public transport and the Council is prepared to accept a 'parking-free' scheme provided that the appellants enter into a legal agreement as set out in Policy DM17. Without such a legal agreement, there would be nothing to stop future occupiers of the appeal site from applying for residents' parking permits.
19. The appellants have submitted, with the appeal, photographs taken late in the evening on a weekday in September, showing a large number of empty spaces in the street. I accept that, if this number of free parking spaces is indeed regularly available overnight, then there would be no need for a restriction on future occupiers applying for a parking permit, as sufficient space would be available for the extra cars that might need to park in the street. However, I am also aware that this parking survey only covers one night and may not necessarily be representative of the general situation.
20. On my site visit, in the middle of the morning on a weekday during the current national lockdown, all the parking spaces along this part of Cornwall Avenue were occupied. Given the restrictions and advice currently in place regarding avoiding all but essential travel, it may well be that far more spaces in this residential area were occupied than would normally be the case during a working day. However, only a limited number of premises were open in the nearby shopping centre, which is therefore unlikely to account for the demand for parking that I witnessed. This is more likely to have resulted predominantly from demand from local residents. In addition, a number of residents who objected to the planning application cited the existing difficulty of finding a parking space near their home as a reason for objecting. As a result of all of the above, I do not feel that I can regard the survey undertaken on one occasion as definitive in coming to a conclusion on this issue.
21. The appellants complain that the Council has not used the data it has on the number of residents' parking permits issued to residents in the area and compared it to the number of available spaces. However, as I have not seen this data either, I cannot comment on or come to any conclusions as to what it may have shown. In the circumstances, and without a planning obligation before me to prevent future occupiers from applying for residents' parking permits, I cannot conclude that the proposal would not result in a situation where there are more permits issued than spaces available, and hence to 'parking stress'.
22. I conclude that, from the evidence before me, the absence of off-street parking in the appeal scheme may have an unacceptable impact on parking conditions in the area, contrary to Policy DM17 of the DMP.

Planning balance and conclusion

23. The appellant has pointed out that the proposal would provide an additional dwelling in a sustainable location and would represent an opportunity to put the site to its best and most efficient use. Both of these factors weigh in favour of the appeal proposal. However, my conclusions on the main issues are that, from the evidence before me, it may be possible to achieve these benefits without the harm to the living conditions of future occupiers, and to parking

conditions in the area, that I have identified. These conclusions outweigh the benefits of the proposal.

24. For the reasons set out above, I conclude that the appeal should be dismissed.

Baljit K Muston

INSPECTOR