
Appeal Decision

Site visit made on 10 February 2021

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021.

Appeal Ref: APP/N5090/D/20/3262791

29 Decoy Avenue, Golders Green, London NW11 0ES

- 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 Mrs Esther Gurvits against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/2553/RCU, dated 7 June 2020, was refused by notice dated 20 October 2020.
 - The development is described as retention of first floor rear extension.
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Decision

1. The appeal is dismissed.

Procedural and preliminary matters

2. The proposed development is in place. It is broadly consistent with the details shown on the submitted plans.
3. Retention is not an act of development under the above Planning Act. I have assessed the appeal scheme as one that seeks retrospective planning permission for the development as it is described above.
4. The Council's decision notice refers to 3 Eastside Avenue in the first reason for refusal. I have assumed this reference is an error because the address of the property adjacent to the site is 3 Eastside Road, to which the rest of the evidence refers. I have proceeded on that basis.
5. While I have taken into account the planning and enforcement history of the site, which includes recent decisions made on application and appeal, I have assessed the development sought on its own merits.

Main issues

6. The main issues are the effect of the development on the living conditions of the occupiers of 3 Eastside Road with particular regard to privacy and on the character and appearance of the host building and the local area.

Reasons

Living conditions

7. The appeal property is a detached dwelling with a first floor rear extension in the form of a dormer, which for brevity I shall refer to hereafter as 'the extension'. Each of the larger rooms in the extension, which are denoted as

bedrooms 1 and 2 on drawing number 29DA-PP3-01, has a window that faces towards a residential property at 3 Eastside Road that stands 'side-on' to the back of No 29, just beyond the rear boundary of the site.

8. A timber fence with a trellis generally marks the shared boundary between the site and No 3. On either side of this boundary fence is existing planting that includes a well-established tree in the back garden of No 3. Within the site itself, the boundary planting includes evergreen trees and shrubs that have been carefully selected to suit local soil conditions and these also benefit from an irrigation system. Together, the vegetation on both sides of the boundary fence heavily filters views from the rear windows of the extension such that only glimpses of the back garden of No 3 are possible with more open views of the upper side and rear elevations and roof of this adjacent property.
9. Although this boundary planting is an effective screen to prevent overlooking from the rear windows of the extension, soft landscaping cannot be relied upon in this way because it can be cut back or removed at any time. While the appellant does not intend to do so, future occupiers of No 29 may decide otherwise as a way, for instance, to improve the outlook from or natural light reaching to the rear of this property. As the back of No 29 broadly faces to the southeast, with the opportunity to take advantage of the sunlight that might otherwise be available to the property throughout a major part of the day, that possibility cannot be ruled out. Equally, the efficacy of the landscape screen between the site and No 3 relies to some extent on the planting on both sides of their common boundary being retained. That retention cannot be assured in this case because the boundary tree in the back garden of No 3 lies outside the site and is beyond the control of the appellant.
10. Having carefully viewed No 3 from the extension, I am in little doubt that without the intervening landscaping or if it were to be cut back significantly there would be clear views at close range from an elevated position towards the back garden of this adjacent property. The overlooking possible would be considerable. To my mind, it would unduly impinge on the reasonable enjoyment of the garden space of No 3 because the occupiers of this adjacent property would experience an unacceptable loss of privacy. Given the outward projection of the extension, the level of overlooking is greater than would have been possible from the previous rear dormer at No 29 as shown on drawing number 29DA-PP3-03 and as shown in the historic photograph of the building.
11. It would be difficult to effectively mitigate this harm by, for example, requiring a taller boundary fence at this point, because views towards No 3 from the extension are at close range and from a high-level position. Consequently, to be an effective screen, the height of a fence or similar boundary treatment would need to be so tall as to be unduly imposing on the occupiers of No 3. To require that the rear facing windows of the extension include obscure glazing would unacceptably diminish what would be the sole external outlook from a main habitable room.
12. A condition that requires the planting to be retained and managed or, if necessary, replaced if it becomes damaged or dies, would be confined to the planting within the site and would not necessarily ensure that it provides an effective screen. Consequently, this condition would not be sufficiently precise or enforceable and so it would fail at least 2 of the 6 tests of conditions set out in the National Planning Policy Framework (the Framework).

13. In my experience, some overlooking is a characteristic of the relationship between dwellings that stand close together within the built up area. As the appellant points out, several properties close to the site also overlook the rear of No 3 albeit in different ways, including 1 Eastside Road and 27 and 31 Decoy Avenue. However, in this case, the overlooking possible from the extension affects a substantial part of the rear garden of No 3 with the greatest intrusion felt within the area that is nearest to the main house. It is this area where the occupiers of No 3 are entitled to expect a reasonable level of privacy, because it is likely to be most used. Furthermore, as some of the rear windows of the extension are also likely to be seen from the garden of No 3, the occupiers of No 3 would also experience a strong sense of being overlooked, especially if some of the boundary landscaping were to be cut back or even removed. That level of intrusion is likely to be less evident from other nearby properties that differ in their relationship and orientation to No 3 compared to the appeal property. In any event, it seems to me that additional harm cannot be justified simply because some harm may already exist.
14. With regard to the role of existing landscaping as a shielding feature, my attention has been drawn to a recent appeal decision involving a proposal at the Chumleigh Lodge Hotel, London. In that case, the Inspector found, amongst other things, that the screening provided by a line of tall boundary trees inside and adjacent to the boundary served to mitigate any adverse impact primarily on the outlook for the occupiers of a neighbouring property. In reaching that conclusion, the Inspector assessed the role and significance of the existing vegetation as a screen and the likelihood of its removal given local conditions and circumstances. I have taken a similar approach and find that the existing boundary landscaping cannot be relied on as an effective screen for the reasons given. Moreover, as it is not a permanent feature, the presence of vegetation is not, in itself, sufficient reason to put to one side the minimum separation distances between properties with facing habitable room windows or in relation to an adjacent garden that is advised in the Council's Supplementary Planning Document (SPD), *Residential Design Guidance*.
15. Reference is also made to a development at 19 Gloucester Gardens in which the appellant states that there are views from its loft extension towards the rear of 32 Sneath Avenue with some background details of the scheme provided. While I have no reason to doubt that opinion, it is the specific relationship of the extension to the back garden of No 3 and the consequences for the occupiers of that property that is objectionable here.
16. The Council and an interested party raise additional concern that the dormer window in the side elevation of No 3 is also overlooked from the extension. Although the separation distance between the extension and the side dormer of No 3 falls short of the minimum distance of 21 metres cited in the SPD, such views are at a tight oblique angle. Given that relationship, the overlooking possible would have no significant impact on the living conditions of the occupiers of No 3 insofar as the side dormer window is concerned.
17. Nevertheless, I conclude on the first main issue that the extension unacceptably harms the living conditions of the occupiers of No 3. As such, it conflicts with Policy CS5 of the Barnet's Local Plan (Core Strategy) (CS), Policies DM01 and DM02 of the Barnet's Local Plan (Development Management Policies) (DMP), and the Council's SPDs entitled *Sustainable Design and Construction* and *Residential Design Guidance* insofar as they aim to safeguard

residential amenity. It is also at odds with the Framework, which states at paragraph 127 that planning decisions should ensure a high standard of amenity for existing and future users.

Character and appearance

18. The appeal property is a detached dwelling within a predominantly residential area wherein buildings vary in scale, design, age and roof form, as the appellant's photographs clearly show. Consequently, there is considerable variety to the appearance of the existing built form in the local area.
19. The extension is a sizeable addition. It is considerable in width and it extends outwards well beyond the confines of the main roof slope and across part of the ground floor rear addition. From the evidence provided, it is noticeably deeper and larger than the rear dormer that was previously in place on the rear roof of No 29. Taken together with its flat roof, I consider that the scale and bulk of the extension causes it to appear as an overly large 'box-like' addition that relates poorly to the modest size and proportions of the host building and that it dominates the rear elevation. While public views of the extension are largely hidden by intervening development, the extension is visible at close range from a short section of Eastside Road roughly in front of No 3. It is also likely to be evident from some windows and back gardens of nearby properties. Having viewed the extension from Eastside Road and the back garden of No 29, I consider that it appears as a large unsympathetic addition and that it is a discordant feature even among the varied built form within the local area.
20. Both Nos 27 and 31 include sizeable first floor rear projections although these examples differ in scale, shape and in their relationship to the host building compared to the development sought. While the rear elevation of the extension broadly lines up with the rear dormer of No 31, it projects well beyond the side gable wall of the host building unlike its adjacent counterpart. For these reasons, No 27 and 31 are not directly comparable with the development sought and so they do not support the appellant's case.
21. Having spent some time looking at other properties in the area to which No 29 belongs, including Decoy Avenue, Eastside Road and Hillcrest Road, I agree with the appellant that there are several examples of large rear projections especially at first floor and roof levels. While these built additions form part of the character of the locality, their presence does not, however, necessarily signal that such schemes are therefore acceptable. In my judgement, the examples of existing rear extensions have blended into the visual character of the local area and respected the appearance and qualities of the host building with varying degrees of success. These cases serve to illustrate that changes to the upper part of a building can have a significant impact on the character and appearance of that property and the area of which it forms part. Having considered the examples cited by the appellant and those that I observed, these cases do not justify an unsympathetic form of development, as sought.
22. On the second main issue, I conclude that the extension unacceptably harms the character and appearance of the host property and the local area. As such, it is contrary to DMP Policy DM01, CS Policy CS5 and the Council's SPD, *Residential Design Guidance*. Together, these policies and guidance aim to ensure that new development achieves a high standard of design, respects local context, reflects the character of the original house and is not dominant.

Other matters

23. An interested party supports the development, which I have taken into account. However, this support is insufficient to outweigh the significant harm that I have identified in relation to the main issues.

Conclusion

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

Gary Deane

INSPECTOR