



Appeal Decision

Site visit made on 15 April 2021

by **P. D. Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2021

Appeal Ref: APP/N5090/W/20/3251795

42-48 Russell Road, West Hendon, London NW9 6AL.

- 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 Armend Sahatxhija against the decision of the London Borough of Barnet Council.
 - The application Ref 20/1133/FUL, dated 2 March 2020, was refused by notice dated 29 April 2020.
 - The development proposed is excavation of basement to form 1 No self contained flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site visit was arranged as an 'Access Required Site Visit' where the Inspector is met on site by the appellant. In the event the appellant was not present at the site on 15 April 2021 when I arrived at the notified time. However, the occupant of No 42 Russell Road was working in the garden and provided access to the rear of the property. A full assessment of the proposal was therefore possible. I can confirm that no representations on the matter of the appeal were made to me by the neighbour.

Main Issues

3. The main issues are whether the proposed development would have a detrimental effect on:
 - The character and appearance of the host building at Nos 42-48 Russell Road and the surrounding area.
 - the living conditions of the future occupiers of the basement flat in terms of the available internal and external space, light levels and outlook.
 - highway safety as a result of the absence of parking provision and the absence of any legal agreement to operate as a car free development.

Reasons

Character and Appearance

4. The appeal site is located on the north east side of Russell Road, a street of mainly 2 storeyed terraced housing built in brick, render and tile. None of the properties in the road appeared to have basements.
5. Nos 42-48 reads more as a pair of houses rather than part of the terrace even though it accommodates 4 flats and adjoins No 50 to the north. This is largely

because it is of a slightly different design to that prevailing in the terrace, is constructed entirely in red brick and is separated from No 40 by a narrow pedestrian accessway.

6. The site rises slightly to the north east into the rear gardens where there are allocated garden areas for each of the existing 4 flats in a tandem arrangement.
7. Although the properties are not listed and are not within a conservation area they nevertheless add interest to the character and appearance of the road. The introduction of a substantial basement at 3.3 metres deep under this building would be wholly disproportionate to the height and scale of the existing building and inconsistent with any other house in the road. Moreover, the construction of lightwells to the front and both sides of the building in an area where there are no other basements in the road would appear completely incongruous in the street scene. In addition, the fact that there is a gap between No 40 and No 42/44 would mean that the mass of the basement level would be readily visible in the side light well when viewed from the street. The proposal would be highly intrusive in an otherwise largely uniform street scene.
8. The *National Planning Policy Framework* (the Framework) at paragraph 127 requires that developments must be visually attractive and sympathetic to local character to create high quality buildings and spaces amongst other things and in these respects the proposal fails. The *Barnet Local Plan Core Strategy* (BLPCS) at Policy CS5 reflects the Framework in requiring development to respect local context and local character. Similarly, the *Barnet Local Plan Development Management Policies* (BLPDMP) at Policy DM01 requires proposals to preserve local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.
9. To assist in the implementation of these design policies the Council has produced the *Barnet Residential Design Guide* (BRDG) which provides guidance for householders considering extensions, including basements. The guide acknowledges that this type of extension whilst adding accommodation can have a significant impact on architectural character and requires careful handling. Amongst other things the guide advises that the basement should be proportionate to the building above, light wells should be discrete interventions and that not more than 50% of the front garden or courtyard space should be lost. The proposal would not comply with any of these guidelines.
10. For the reasons above, the design objectives of Policies CS5, DM01 and the BRDG would not therefore be achieved by this proposal and it would be unacceptable in terms of the impacts on the character and appearance of Nos 42-48 as the host building and of the surroundings on Russell Road.

Living Conditions

11. Although the appellant states that the basement flat would have 4 bedrooms the plans before me show a 5 bedroom property which it is stated extends to 77m² in area. The *Technical Housing Standards* require a 5 bedroom property to have a minimum floorspace of 103 m². Even were the basement to have only 4 bedrooms the floorspace would still be inadequate. In addition, none of the proposed bedrooms would meet the size standard for a double room, there would be limited public living space for the size of flat and no storage space including for cycles and refuse and recycling is shown on the proposed floor plan.
12. Not only would the internal space standards be inadequate but the basement would only have access to the lightwells as external amenity space. As stated,

each of the existing flats has its own rear garden area and none of this amenity space would be available for the basement flat. *Barnet Sustainable Design and Construction Supplementary Planning Document* (SDC-SPD) requires 5 m² of outdoor amenity space per habitable room in flats – a total requirement in this case of 30 m².

13. Finally, most of the basement rooms because of their size and the depth and limited width of the light wells would be likely to have substandard levels of daylight and no outlook to habitable rooms.
14. Policy DM01 of the BLPDMP requires proposals to be designed to allow for adequate daylight, sunlight, privacy and outlook for future occupiers and policy DM02 requires development to meet national and local development standards including those set out in the London Plan and the Council's own SDC-SPD. Taken together and considered against the standards, the proposal would result in substandard accommodation which would harm the living conditions for future occupants of the basement. Moreover, there is no explanation in the application as to how the current ground floor flats would gain access to their side/garden doors and as such there would also be harm to living conditions for present and future occupants of these flats as a result of the removal of direct garden access.

Highway Safety

15. The proposed basement flat would not have access to any parking spaces and Russell Road is within a Controlled Parking Zone where permits are required to park during the day on Mondays to Saturdays. At the time of my visit (13.00 hrs) the parking bays had a reasonable level of occupancy and it is likely that overnight and at weekends the bays would be fully occupied.
16. However, I acknowledge the area has a reasonable PTAL score of 3, being served by a number of bus routes along Herbert Road/Station Road plus Thameslink rail services from Hendon Station within a very short walk. The property could therefore operate on a car free basis and indeed such operation would be supported by Policy DM17 of the BLPDMP.
17. However, for this policy approach encouraging car free development to operate successfully in areas where parking cannot be provided and on street parking is limited, as in Russell Road, it would be necessary to restrict occupiers from being able to acquire a resident's parking permit or to occupy the dwelling if they have a parking permit.
18. The Council implements this policy approach through the use of S106 planning obligations which require the owner of the development to inform incoming occupiers that they are not eligible for a parking permit for on-street parking and not allowed to purchase a space in a Council controlled car park. The wording of the S106 obligation would control the occupation of the residential units by restricting the type of occupier to someone who has no permit and this approach is compliant with recent case law. I note that the appellant is proposing that he, as a disabled person, would occupy the dwelling and as such a parking permit may be allowed. However, there is nothing to guarantee who would occupy the dwelling and therefore an obligation would be required.
19. No planning obligation was proposed at the time the application was being considered and no completed planning obligation is before me.
20. I have considered the requirement for such an obligation in the light of the statutory tests contained in Regulation 122 of *The Community Infrastructure Levy*

(CIL) Regulations 2010 and in respect of the tests set out in the Framework and find that the planning obligation is necessary given policy DM17 and the absence of parking for the residents. Failure to restrict car use related to the development would contribute to parking stress in surrounding streets and adversely affect highway safety. The obligation is directly related to the development proposed and would be fairly and reasonably related to its scale and nature. It therefore passes the statutory tests of Regulation 122 and the Framework and should have been supplied. The absence of a completed S106 planning obligation is a material consideration in this case and in its own right justifies dismissal of the appeal.

Other Matters

21. I have had regard to the Public Sector Equality Duty contained in the Equality Act 2010 and understand the appellant's wish to make sustainable and effective use of housing land and that in doing so he is providing an additional residential unit, an objective which is encouraged by the Framework in Section 11. I acknowledge that this national policy objective makes the principle of the development acceptable. However, paragraph 122 in the same section of the Framework states that this should not be at the expense of maintaining an area's prevailing character and setting and at paragraph 123 that it should not be at the expense of acceptable living standards. Sustainable and effective use of the dwelling to provide basement accommodation would not therefore outweigh the harm to the character and appearance as a result of the proposal nor justify the harm to living conditions that would arise from substandard residential accommodation.
22. I note that the appellant states that he is a disabled person. The nature of the disability is not explained but given the nature of the basement accommodation and absence of any lift it is presumably not a mobility impairment. In any event, even though disability is a material consideration which I have taken into account, it is not a justification in this case for setting aside principles of good development management to create substandard accommodation.

Conclusion

23. In reaching my decision I have had regard to the matters before me but, for the reasons above, the appeal should be dismissed.

P. D. Biggers

INSPECTOR