

# Appeal Decision

Site visit made on 11 May 2021

**by K E Down MA(Oxon) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 27<sup>th</sup> May 2021**

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**Appeal Ref: APP/N5090/W/20/3259983**

**Willenhall Lodge, 10 Great North Road, Underhill, Barnet, EN5 1JP**

- 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 Crownwide Investments Ltd against the decision of the Council of the London Borough of Barnet.
  - The application Ref 20/0349/FUL, dated 20 January 2020, was refused by notice dated 30 March 2020.
  - The development proposed is the erection of a single storey residential dwelling following the demolition of existing single storey garage with associated parking, refuse storage and landscaping.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. There are three main issues. Firstly, the effect of the proposed dwelling on the character and appearance of the appeal site and the surrounding area; secondly, the effect of the proposed dwelling on the living conditions of occupiers of Willenhall Lodge with respect to noise and disturbance; and thirdly, the effect of the proposed dwelling on the living conditions of future occupiers with respect to outlook and outdoor amenity space.

## Reasons

3. The appeal site is accessed off Lyonsdown Road, close to its junction with Great North Road. It lies in a residential area which comprises mainly detached and semi-detached houses. There is significant variation in design with no one overriding architectural style. The character of the area is therefore defined by the pattern, scale and density of development. Houses are generally large, two storey buildings and are set back from the street behind enclosed front gardens. The low density of development with abundant vegetation, including large trees, some of which close to the appeal site are subject to Tree Preservation Orders (TPOs), gives the area a spacious suburban character.
  4. The appeal site currently comprises mainly a semi-derelict single garage and an area of hardstanding. There are two flights of steps leading up to Willenhall Lodge which sits on land significantly higher than the site. The garage appears
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to have been ancillary to Willenhall Lodge which has now been converted into eight flats with a vehicular access off Willenhall Avenue and parking within the curtilage. To the north, 93 Lyonsdown Road formerly comprised a large, detached dwelling which is currently being replaced with a new large, detached dwelling on a similar footprint. This dwelling is also on land noticeably higher than the appeal site and is set away from the shared boundary.

5. Planning permission was granted on 20 August 2019 under ref. 19/3692/FUL for the demolition of the existing single garage and its replacement with a new garage/store which occupies the same footprint and is of the same height and broad design as the proposed dwelling. This permission is understood to be extant. The permission is subject to a condition (No 3) requiring the garage/store to be used ancillary to Willenhall Lodge and not to be occupied as a separate unit or dwelling. The reason for the condition is to ensure that the development does not prejudice the character of the locality or the amenity of occupiers of adjoining residential property.
6. The effect of the proposed dwelling on the character and appearance of the area therefore turns on the proposed physical alterations to the approved plans, which comprise mainly the replacement of garage doors with domestic windows and doors, and the proposed change of use from an ancillary garage/store to an independent dwelling.
7. In terms of appearance, the dwelling would be constructed of brick to match Willenhall Lodge. I do not find that the physical alterations required would result in any material harm given the setback from the street and the modest changes proposed. One parking space would be provided on the forecourt, as is proposed under the garage permission, and the amount of landscaping on the frontage would be increased slightly which would be in keeping with the front gardens seen at other dwellings.
8. In terms of character, the dwelling would sit on a similar building line to the dwelling at No 93 and would comprise a detached dwelling at the end of a row of other detached dwellings, reflecting the prevailing pattern in the street. It would lie in front of the northern side elevation of Willenhall Lodge when viewed from Lyonsdown Road but as it would be set down below the height of the existing fence it would not obscure views of this building which would remain as an imposing structure on its corner plot. I therefore find that the proposed dwelling would not be unduly cramped and that there would be ample space between it and other buildings to ensure it did not appear squeezed-in, despite its plot being much smaller than those nearby.
9. The key difference between the proposed dwelling and others nearby would be in size. Whereas most dwellings are two storey and some are very large, the proposed dwelling would be a small, single storey one-bedroom dwelling. The Council suggests that this, coupled with the small plot size and its set down from closest dwellings, would be unsympathetic to the established spatial pattern of development in the street and detrimental to local character.
10. I accept that the proposed dwelling would be noticeable as not conforming to the established scale of development in Lyonsdown Road. Nevertheless, I am not convinced that in this location, close to the wide junction with Great North Road which dominates the immediate street scene and where smaller

bungalows are visible on the opposite side, that the proposed dwelling would be materially harmful to the character of the area. I therefore find that despite differences in scale and design compared with other dwellings nearby, the proposed dwelling would have a satisfactory character and appearance.

11. It is therefore concluded on the first main issue that the proposed dwelling would have no materially detrimental effect on the character or appearance of the appeal site or the surrounding area. In consequence, there would be no conflict with Policies CS1 or CS5 of Barnet's Local Plan (Core Strategy) (CS), 2012, Policy DM01 of Barnet's Local Plan (Development Management Policies) (DMP), 2012, Policy D3 of the London Plan (LP), March 2021 (which I consider to be the most relevant replacement policy for those in the London Plan, 2016, cited in the Council's refusal notice), the National Planning Policy Framework (NPPF) and the Council's Supplementary Planning Document: Residential Design Guide (SPD), 2016. Taken together these policies and guidance expect new development to create an attractive, high quality environment that responds positively to and preserves or enhances local context and distinctive local character and respects the layout, scale, mass and design of surrounding buildings, spaces and streets through good architecture that pays attention to detail.
12. Turning to the effect on the living conditions of neighbouring occupiers, the Council is concerned that the dwelling would be overbearing and detrimental to occupants of Willenhall Lodge due to noise and disturbance. However, I am not convinced that the activity, including comings and goings and domestic activity, associated with one small dwelling, set well below Willenhall Lodge, adjacent to the street and on the site of a garage with forecourt parking would be likely to cause undue noise or disturbance. There are likely to be fewer vehicular movements since there would be parking for only one vehicle and all proposed windows and doors would face away from windows in Willenhall Lodge.
13. It is therefore concluded on the second main issue that the proposed dwelling would have no materially harmful effect on the living conditions of occupiers of Willenhall Lodge with respect to being overbearing through noise and disturbance. In consequence, in the context of amenity for existing occupiers, there would be no conflict with CS Policy CS5, DMP Policy DM01, the NPPF or the SPD. Taken together these policies and guidance expect new development to create places with a high standard of amenity for existing adjoining occupiers.
14. Turning to the living conditions of occupiers of the proposed dwelling, outlook from the bedroom and kitchen/living room would be over the hard surfaced frontage which would provide a parking space. Although this would potentially result in outlook towards a vehicle this is not an unusual situation in built up areas where many frontages are given over to vehicle parking. The set back from the street would be sufficient to ensure that the windows were protected from street activity and there would be space to park a vehicle an adequate distance from them to ensure it did not unacceptably restrict outlook.
15. In addition to street facing windows, the living area would be dual aspect with north facing windows towards a small garden area. I agree with the Council that outlook from one window would be restricted by the proximity of the boundary

but the proposed patio doors would be a sufficient distance from boundaries to allow for adequate light penetration and a reasonable outlook.

16. With respect to outside amenity space, although generous in quantity this would be of a poor quality. The area outside the living room windows would be an irregular shape, north facing and enclosed by high boundaries. It would also be significantly overhung by a large tree which is subject to a TPO. Overall, I consider that this area would be damp and gloomy for much of the year, making it an unattractive outdoor amenity space.
17. A larger area of amenity space would be provided to the front and side of the dwelling and adjacent to the street, close to the junction with Great North Road. It would be on a noticeable slope. The section furthest from the street would be narrow and the area closest to the street would lack privacy and be subject to street noise. I therefore agree with the Council that, overall, the proposed private amenity space would be of an inadequate quality. This would be unacceptable in this low density, suburban area.
18. The appellant proposes that occupiers of the dwelling could have access to the communal amenity space at Willenhall Lodge. This is a pleasant and quiet area which would provide a more attractive sitting out area for occupiers of the proposed dwelling. The proposed access would be via steps and then along a path between the rear of the dwelling and Willenhall Lodge. However, the proposed access steps shown on the plan for the permitted garage do not appear on the submitted plan for the dwelling and I have some doubt as to whether these could be provided as shown because the dwelling appears to have a side doorway that would conflict with them.
19. Moreover, the Unilateral Undertaking (UU) provided with the appeal documents is not a UU under s106 of the Town and Country Planning Act 1990 and does not bind successors in title. It is not witnessed or executed as a deed and appears not to comply with other requirements for a binding UU under s106. I therefore consider that it is fundamentally flawed and not legally sound and would not secure access to the communal garden for occupiers of the proposed dwelling in perpetuity. It therefore carries no weight.
20. In consequence, it is concluded on the third main issue that the proposed development would have a materially harmful effect on the living conditions of future occupiers of the dwelling with respect to outdoor amenity space. Notwithstanding that I find that outlook from habitable rooms would be adequate, the development would therefore conflict with CS Policies CS1 and CS5, DMP Policies DM01 and DM02, the NPPF and the SPD. Taken together, these policies and guidance seek to create quality environments, including housing that offers a high standard of amenity for future occupiers and, in particular, provides high quality, useable outdoor amenity space that is not awkwardly shaped, unduly narrow or steeply sloping, provides adequate privacy and sunlight and is not unduly noisy.
21. The appellant points out the need for the delivery of new homes, including in Barnet, and the policy support at both national and local level for the delivery of new housing, including on small and brownfield sites and where land is currently underutilised. I accept that the appeal site falls within one or more of these categories. Nevertheless, it is essential that new homes provide for a high

standard of living conditions for future occupiers, including outdoor amenity space, and where this is not achieved homes should generally be resisted.

22. Notwithstanding that there is a need for the delivery of more housing and I have found no material harm to the character or appearance of the area or to the living conditions of nearby occupiers, this would not alter or outweigh the material harm I have found to the living conditions of future occupiers of the proposed dwelling through the inadequate provision of outside amenity space. Therefore, for the reasons set out above and having regard to all other matters raised, including the appellant's willingness to enhance biodiversity at the site and the representations of third parties, I conclude that the appeal should be dismissed.

*KE Down*  
INSPECTOR