



Appeal Decision

Site Visit made on 10 June 2021

by Scott Britnell MSc FdA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/T5150/W/20/3263741

69 Hardinge Road, London NW10 3PN

- 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 Dhanji Jetha against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/2052, dated 10 July 2020, was refused by notice dated 4 September 2020.
 - The development proposed is conversion of single dwellinghouse into two flats and associated internal alterations.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr Dhanji Jetha against the Council of the London Borough of Brent. That application is the subject to a separate decision.

Preliminary Matters

3. Policy DMP18 of the London Borough of Brent Local Plan Development Management Policies (November 2016) (DMP) states that the size of dwellings should be consistent with London Plan Policy 3.5 Table 3.3 Minimum Space Standards. Following the determination of the appeal, the Mayor of London published the London Plan (March 2021). I have asked the main parties for their comments on this matter and I have taken their responses into account in assessing the proposal.
4. During the course of the application, the appellant submitted an amended scheme to the Council. A further amended scheme has now been submitted with the appeal. In respect of the amended scheme submitted during the application process, I am mindful that any interested third parties have not had the opportunity to consider this or make representations on it. This is also the case for the further scheme submitted with the appeal and I note the Council's suggestion that they also need the opportunity to fully assess that scheme. I am also mindful that appeal proceedings should not be used to evolve a proposal.
5. In the interests of fairness and having regard to the principles established by the Courts under Wheatcroft, I have not considered the amended scheme or the further amended scheme. For the avoidance of doubt, I have assessed the proposal on the basis of the details that were refused by the Council.

Main Issue

6. The main issue is whether the proposal would provide adequate living conditions for future occupants, with particular regard to the provision of internal and outdoor space and privacy.

Reasons

7. The main parties agree that the proposed 3 bed flat has a floor space of approximately 88 square metres. However, there is dispute between the parties as to whether this flat would be set over two or three floors. The Council suggest that any calculation must include the entrance area to the flat which is set on the ground floor and includes cycle storage.
8. The Council refer to the definition of Gross Internal Area (GIA) from the Technical Housing Standards. This indicates that a room does not have to be a habitable room to be included in the GIA calculations and as such the entrance area must be included. For a 3 bed, 4 person dwelling set over three floors, the space standards require a minimum internal floorspace of 90 square metres. The proposed 3 bed flat would, according to the Council's own figures, fall short of this requirement by less than 2 metres. This is not a significant amount and I note that the proposed bedrooms and living area would all receive sufficient light and have acceptable outlooks. Consequently, the shortfall in floorspace would not harm the living conditions of future occupants of this flat.
9. There is no dispute that the ground floor flat would meet the minimum space standards for a 1 bedroom, 2 person unit. I note the Council's concern that the study to the rear of the proposed ground floor flat could be used as a bedroom. However, I have assessed the proposal on the basis of the information before me, which indicates that the proposed flat would be a 1 bedroom, 2 person unit. While I acknowledge the Council's concerns, there is no compelling evidence before me to indicate that it would be used as an additional bedroom. Therefore, in terms of the internal spaces of the proposed flats, the proposal would comply with the aims of DMP Policy DMP18.
10. However, DMP Policy DMP19 requires all new dwellings to have external private amenity space. Private gardens are normally used for occupants to sit out in, for children to play in and as an area for washing to be put out to dry. This is particularly important for family sized units where it is reasonable to consider that occupants are likely to include children. The absence of private amenity space for the occupants of either proposed flat would result in an area where such activities are less likely to be carried out. The proposal would therefore fail to provide adequate private external amenity space, which would be harmful to the living conditions of the future occupants of the proposal.
11. Further, the communal garden would include all of the space up to the rear elevation of the appeal building, which would be served by a window and glazed doors. It is reasonable to consider that the study could be in use for a number of hours each day, particularly if future occupants work from home. The adjacent area, served by the glazed doors, is part of the open plan living area and so could be in use throughout the day. Consequently, users of the communal garden, including the occupants of the 3 bed flat and their visitors, would have unobstructed views into the rear of the proposed ground floor flat from very close proximity. This would make these areas unpleasant to use and would cause harm to the living conditions of the future occupants of that flat.

12. The appellant indicates that the existing outbuilding in the rear garden would be divided for use by the occupants of the proposed flats. While this may provide a useful space for storage, or a private area away from the appeal building, it would not negate the harm that I have identified above.
13. The appellant has also referred me to other developments permitted by the Council¹. In both cases, only the approved ground floor flats have access to the respective rear gardens, while the upper floor flats would have no external amenity space. As such, these examples are not directly comparable to the proposal before me whereby the external amenity space would be communal.
14. The Council have indicated that they have an in-principle objection to the proposal based on a conflict with DMP Policy DM17. This states that to maintain family size housing conversion of a family sized home (3 bedrooms or more) to two or more other dwellings will only be allowed where the existing home is 130 square metres or more, and it results in at least a 3 bedroom dwelling, preferably with direct access to a garden/amenity space.
15. The proposal would provide 3 bedroom dwelling capable of occupation by a family. As I have reasoned above, the living accommodation for this flat would be below minimum space standards but not to a degree that would result in a substandard form of accommodation. Further, Policy DMP17 does not stipulate that garden/amenity space cannot be communal, while indicating that direct access is preferable as opposed to being an absolute requirement. As such, I find that the proposal would not conflict with Policy DMP17. However, the development plan must be read as a whole and my findings with regard to this specific issue is a neutral factor in my overall considerations.
16. I conclude that the proposal would fail to provide adequate living conditions for future occupants in conflict with DMP Policies DMP1 and DMP19. In summary, these policies seek to ensure that developments provide high levels of internal and external amenity and that they have external private amenity space of a sufficient type to satisfy its proposed residents' needs.

Other Matters

17. The appellant suggests that the Council did not act proactively in assessing the application. In particular, they did not accept amended plans during the course of the application process. There is no requirement for councils to accept amended details during the assessment of development proposals. As such, this is not a matter upon which the substantive appeal turns.
18. I note that the Council did not refuse the proposal on the basis of its potential effect on the character and appearance of the area and the living conditions of occupants of neighbouring properties and I have no reason to reach a different conclusion. However, the absence of harm in this regard is a neutral factor in my assessment. I also note the Council's concerns regarding the proposed layout of the front garden and in particular the provision of a car parking space. As I am dismissing the appeal on other substantive grounds, I do not need to explore this matter further.

¹ 20/0400 & 20/1589

Conclusion

19. For the above reasons, having considered the development plan as a whole, the approach in the National Planning Policy Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Scott Britnell

INSPECTOR