
Appeal Decision

Site visit made on 16 July 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/N5090/W/21/3268251

1522 High Road, London N20 9PT

- 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 Craig Gray of Luxus Whetstone Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/2394/FUL, dated 26 May 2020, was refused by notice dated 30 October 2020.
 - The development proposed is described as: 'demolition of existing two-storey dwelling and construction of a new two storey building with basement level and rooms in the roof space, to provide residential flats. Associated off-street parking, cycle store, refuse and recycling storage and amenity space'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, I have taken the name of the appellant from the appeal form as it is more precise.
3. The London Plan 2021 (LonP) has been published by the Mayor during the course of this appeal. The LonP comprises the spatial development strategy for London and is now part of the development plan, to which I attribute full weight to its policies. Consequently, the policies contained within The London Plan 2016 have been superseded. I am required to determine this appeal on the basis of the development plan policies which are in force at the time of my decision.
4. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of the appeal. Both main parties have been given the opportunity to comment on the LonP and the Framework. In this instance, I will not prejudice either party in taking the LonP, the Framework and any associated comments received into account in the determination of this appeal.
5. Revised plans have been submitted with the appeal after the decision by the Council was made. I have not taken these into consideration as they have not benefitted from a full consultation exercise undertaken by the Council. In determining this appeal, I have therefore only considered the plans that formed the basis of the Council's refusal of planning permission.
6. Additionally, I note the assertion from the appellant surrounding the Daylight &

Sunlight Report¹, where it is claimed that the document was submitted with the planning application but was not uploaded to the Council's website. This is not disputed by the Council and consequently, in the absence of substantive evidence to the contrary, I will have regard to the Daylight and Sunlight Report in reaching my decision.

Main Issues

7. The main issues of this appeal are:

- i. the effect of the proposed development on the character and appearance of the appeal site and surrounding area, with particular regard to its depth and lightwells;
- ii. the effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to privacy and the proposed second floor balcony facing Weston Court;
- iii. whether future occupiers would be provided with satisfactory living conditions, particularly with regard to the outlook and private amenity space; and,
- iv. the effect of the proposed development on biodiversity, with regard to a protected species (bats).

Reasons

Character and appearance

8. The proposed development would extend further into the rear garden of No 1522 when compared to the existing detached house, and it will extend beyond the established rear building line of neighbouring properties, particularly those either side of the site.
9. However, I find that the proposed development would be articulated, and the elements that would project into the rear garden would be subordinate to the main property. Furthermore, the larger footprint of the proposed development would be contained at the lower levels, with the first and second floor being set back from the rear elevation. Whilst the proposed development would still extend beyond the existing rear building line of the adjacent buildings, this distance would not be excessive.
10. Lightwells would be constructed to the front and rear of the proposed development, which would also provide private outdoor amenity space for the occupiers of both the basement units. Even though, I find such lightwells are not a common feature in the locality, equally, I do not consider that they would form an incongruous feature on the proposed development or within the wider street scene. The rear lightwell would not be clearly visible from anywhere in the public realm, and the front lightwell due to the distance that would be maintained from the road and the rising levels within the site, would result in limited views from High Road.
11. Concerns have been raised regarding the effect on plant growth on adjoining land. However, very little has been provided to substantiate this reason for

¹ Daylight, Sunlight and Overshadowing To Neighbouring Buildings And Proposed Accommodation dated 14 May 2020 by Brooke Vincent and Partners

refusal. On the evidence before me and from my findings during my visit, I do not consider that the proposed development would have a significant effect on such matters above and beyond that of the existing house. Additionally, I acknowledge the findings in the Tree and Construction² report. Thus, in the absence of substantive evidence to the contrary, I do not find that the proposed development would have any significant adverse effects on plant growth on adjoining land or trees.

12. For the reasons given above, I therefore conclude that the proposed development would not harm the character and appearance of the appeal site or the surrounding area. This would accord with the design, character and appearance aims of LonP Policy D3, Policy CS5 of the Council's Local Plan (Core Strategy) Development Plan Document 2012 (CS), Policy DM01 of the Council's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP), the Council's Supplementary Planning Document: Residential Design Guide 2016, (the SPD1) and the requirements of the National Planning Policy Framework (the Framework).
13. The Council has cited its Supplementary Planning Document: Sustainable Design and Construction 2016 (the SPD2) on its decision notice in relation to its second refusal reason. However, the SPD2 sets out the Council's technical requirements for environmental design and construction management and is therefore not applicable to this main issue.

Living conditions of neighbouring occupiers

14. The terrace at second floor of the proposed development would face Weston Court and would be located within the roof of the proposed development. Access to the terrace would be taken from the kitchen/dining room of the 2-bed, 4no. person dwelling at second floor, and would measure 6m² in area.
15. The distance between the second-floor terrace and the side elevation of Weston Court is modest and would face a number of windows, some habitable, in the facing elevation at Weston Court. This would include some windows at a similar and lower levels. Additionally, whilst the rear garden area at Weston Court would be sited at an oblique angle, I am not convinced that a portion of this area would not be overlooked. Consequently, whilst I acknowledge the contention that the windows below would be afforded some protection, I am not convinced that a loss of privacy would not occur. Furthermore, I find that a suitably worded condition could not be imposed in this instance, to ensure that otherwise unacceptable development could be made acceptable.
16. For the reasons given above, I therefore conclude that the proposed development would significantly harm the living conditions of occupiers at Weston Court, particularly through a loss of privacy. This would fail to comply with the amenity aims of LonP Policy D3, CS Policies CS NPPF, CS5, DMP Policy DM01, the SPD1 and the requirements of the Framework.

Living conditions of future occupiers

17. The basement units would have their own areas of private amenity space, situated within the proposed lightwells directly to the front and rear elevations of the proposed development, measuring 38m² and 53.5m² respectively. These

² BS5837:2012 Tree Survey, Arboricultural Implications Assessment & Method Statement by Indigo Surveys Ltd dated October 2020

areas would be in excess of the minimum requirements set out in SPD2 and the LonP. I recognise by the nature of the design of basement development and its location within the proposed development that the outlook from these units would be more limited than the units on the upper floors.

18. Thus, given the generous area of these outdoor spaces and the amount of light that they would receive, I consider that there is an opportunity to provide sufficient hard/soft landscaping to successfully mitigate against the limited outlook due to the subterranean location of these units. Furthermore, I have little reason to doubt that these proposed outdoor areas could not become visually attractive areas for future residents. Additionally, I accept that the rear bedroom at second floor would only be served by 2no. rooflights, which is a misgiving, and would have improved outlook for its future occupiers if a further window was installed in this room.
19. Whilst not specifically mentioned on the decision notice, the Officer Report raises concerns surrounding the privacy of future occupiers in the basement units. The submitted drawings indicate that the outdoor areas would be contained within a retaining wall of notable height with railings above. Given the layout of the external areas surrounding the proposed development, I am not convinced that there would not be an ability for these private outdoor spaces to be overlooked from areas within the site at ground floor, which would significantly affect the level of privacy afforded by future occupiers of the basement units.
20. Additionally, due to the fenestration on the proposed development, occupiers on the upper floors would be able to view majority of these outdoor areas from their windows. In this instance, a suitably worded condition could not be imposed to ensure that otherwise unacceptable development could be made acceptable.
21. For the reasons given above, I therefore conclude that the proposed development would not provide satisfactory living conditions for future occupiers. This would be contrary to the amenity aims of LonP Policy D3, CS Policy CS5, DMP Policies DM01, DM02, the SPD1 and the requirements of the Framework.

Protected species

22. The appellant has suggested that surveys and any mitigation proposals could be dealt with by condition. However, Circular 06/2005³ (the Circular) states that it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established before planning permission is granted, and that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.
23. I recognise that at the time of the appeal submission it would not have been a suitable time of year to carry out a bat survey. However, such circumstances are not unusual and do not amount to exceptional circumstances to justify dealing with the matter by condition. I must determine the appeal on the basis of the evidence before me. I also note the assertion that the likelihood of bats

³ Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System.

residing in the existing house is limited due to it being occupied. Nonetheless, this factor does not guarantee that bats will not be in the property.

24. Therefore, in the absence of certainty regarding the likely effect of the proposal on bats or whether adequate mitigation could be incorporated within the scheme as necessary, I conclude that the proposed development could give rise to an unacceptable risk of harm to biodiversity, with specific regard to a protected species (bats). It would therefore conflict with the biodiversity aims of DMP Policy DM16 and the Framework. This is a matter to which I afford very significant weight in the overall planning balance.

Other Matters

25. Local residents have also expressed a wide range of concerns including, but not limited to the following: vehicle parking, highway safety, noise, general disturbance and crime. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
26. Additionally, I have had regard to the concerns of neighbouring occupiers, regarding the means of access to the site from Kingswood Close, and the presence of a 'ransom strip'. However, any ownership issues are a private matter between the relevant parties and not within my jurisdiction. I also acknowledge the 2no. representations in support of the scheme received from local residents, but these do not alter my findings on the main issues.
27. The appellant has raised concerns about the way the Council handled the application, but this does not go to the planning merits of the case. I have considered this appeal on its own merits and concluded that the proposed development would be unacceptable for the reasons set out above.

Planning Balance and Conclusion

28. Whilst I acknowledge the factors in favour of the proposed development, such as the economic and social benefits during the construction phase and their subsequent occupation of the proposed development, amongst other things. These considerations do not outweigh or overcome the harm that I have identified on the main issues. Consequently, the scheme would not accord with the development plan when considered as a whole and the evidence does not indicate a decision other than in accordance with the development plan would be justified.
29. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR