



Appeal Decision

Site visit made on 16 August 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/L5810/W/21/3282792

Land at rear of 40 Pagoda Avenue, Richmond TW9 2HF

- 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 David Neuwirth against the decision of the Council of the London Borough of Richmond Upon Thames.
 - The application Ref 21/0944/FUL, dated 15 March 2021, was refused by notice dated 17 June 2021.
 - The development proposed is described as 'amended scheme (Ref. 20/0990/FUL) for the demolition of existing garage and the erection of a studio dwelling with partial / set back second floor'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development set out in the banner heading above is taken from the application form. At Section E of the appeal form, a revised description has been entered referring to 'demolition of existing garage and the erection of part two storey part single storey dwellinghouse with associated hard and soft landscaping, refuse and cycle stores and boundary treatment'. This is consistent with the description stated on the Council's decision notice, but neither party has provided written confirmation that the appellant agreed to the change. I have therefore used the description given on the original application.

Main Issues

3. In light of the evidence before me, the main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the living conditions of the occupiers of 2 Beaumont Avenue with particular regard to light and outlook; and
 - iii) whether or not living conditions for future occupiers of the proposed dwelling would be acceptable with particular regard to the provision of internal space.

Reasons

Character and Appearance

4. The appeal site includes a garage fronting Beaumont Avenue that sits between 38A Pagoda Avenue and an accessway to the side of 2 Beaumont Avenue, a shed, and part of the rear garden associated with 40 Pagoda Avenue. The appeal proposes to replace the existing structures on the site with a dwelling

that would front Beaumont Avenue. The front part of the dwelling would be single storey, but it would increase in height at the rear to accommodate a mezzanine level.

5. Policy LP 39 of the Local Plan 2018 ('LP') includes requirements for development to reflect the local context and character of the surrounding area, and, in the case of backgarden sites, to be more intimate in scale and lower than frontage properties. However, I have not been directed to any policy requirement or guidance that indicates to me that development must necessarily reflect the scale or form of other backgarden paraphernalia in order to meet these requirements. Instead, I consider it is important to take into account the specific circumstances of a proposed development.
6. In this case, the development would be of greater height and overall scale than outbuildings that I saw were typically present within other back gardens nearby. However, the dwelling would have a street frontage to Beaumont Avenue rather than sitting behind frontage buildings, and given its position between No 38A and No 2, I consider that it would be seen as an infill development along the street. The rear part of the dwelling would be taller than No 38A which is single-storey, but it would be of much lower height and of smaller scale than No 2 and the two-storey dwellings which predominantly characterise Pagoda Avenue and Beaumont Avenue. In my view, this relationship would provide for an impression of transition between No 38A and No 2 and other neighbours beyond, and seen in this context, I find that the greater height and scale of the building in comparison to garden outbuildings would not appear striking.
7. Although the form and appearance of the dwelling would also be different to neighbouring buildings, there is already diversity on this part of Beaumont Avenue as a result of the contrasting form, scale and appearance of No 38A. In addition, the dwelling would be set back in comparison to No 38A, and the front part of the building would be of comparable height to this neighbour which would together help to reduce the visual impact of the development. Furthermore, I agree with the main parties that the existing development on the site which is in fairly poor condition does not make a positive contribution to the street scene. In this context and given my findings above, I am satisfied that while the proposal would involve the development of backgarden land, it would not unacceptably disrupt the character of backgardens in the locality, and the development would not be incongruous in its setting or unduly conspicuous in the street scene.
8. For these reasons, I find that the development would sit comfortably on the site and as part of the street scene and I conclude that the proposal would not result in unacceptable harm to the character or appearance of the area. I therefore find no conflict with Policies LP 1 or LP 39 of the LP insofar as they together broadly seek high quality development that is sympathetic to local character.

Living Conditions – Neighbouring Occupiers

9. The dwelling would be built up to the boundary with the access running between the site and 2 Beaumont Avenue. It would project some way deeper than the closest part of this neighbouring building, and would be taller than the existing boundary fences, particularly towards the rear where the roof would increase in height over the mezzanine section.

10. The appellant has provided a Daylight, Sunlight & Overshadowing report 2020 ('DSO') carried out in accordance with 2011 guidance provided by the Building Research Establishment ('BRE'). This includes consideration of the effect of the development on windows to No 2, including assessment of vertical sky component ('VSC') as an indicator of daylight and of annual probable sunlight hours ('ASPH') as an indicator of sunlight.
11. The DSO shows that BRE guidelines on sunlight would still be met by windows to No 2 following the development. It also identifies that despite a reduction in VSC for the ground-floor window to the main rear elevation, levels would be at least 0.8 of their former value suggesting that the effect of the reduction in daylight to this window would not be significant. While I note that the development would intersect with a 25 degree plane from the neighbouring ground-floor windows, and with a 45 degree angle from the window to the main rear elevation, the Council has not provided compelling evidence to dispute these results of the more detailed assessments of light within the DSO.
12. However, the DSO does indicate that VSC for the ground-floor window to the side of the outrigger return of No 2 would be reduced to 19.1% and 0.72 of its former value, in both cases falling below the guideline levels referenced within the BRE guidance. The appellant suggests that this would be acceptable for an urban environment, but has not explained the basis for this assertion. From the evidence before me, I consider that the reduction in daylight to this window would be likely to be noticeable, and would cause some detriment to the quality of life of occupiers of the affected dwelling, albeit that the harm would be very modest given the degree of change and that only one window would be meaningfully affected.
13. Be that as it may, outlook is a distinct concept from daylight and sunlight. Even if I were to agree with the appellant and find that the effect of the proposal on light would be acceptable, the design of the higher part of the roof to the dwelling including a flat section would be fairly bulky, and would sit above the top of the neighbouring ground-floor windows. In combination, I consider that the depth, height and overall bulk of the development would present a dominant and visually intrusive feature when seen at such close range from the ground-floor window to the side of No 2's outrigger that faces towards the site, and would give rise to a significant degree of enclosure that would be overbearing. There would also be some enclosure to views from the ground floor window to the closest section of No 2's main rear elevation, and while the effect would be less pronounced, I find that these factors together would cause a notable loss of outlook for the occupiers of No 2 that would detract from their living conditions.
14. For these reasons, I find that the proposal would cause harm to the living conditions of occupiers of 2 Beaumont Road through loss of outlook, and some further albeit very modest harm through loss of light. Although the occupiers of No 2 have not raised an objection to the proposal, the harm that I have identified would be permanent and would result in conflict with Policy LP 8 of the LP. This policy includes a requirement that development protects the amenity and living conditions for occupants of neighbouring properties, and requires, amongst other things, that proposals enable good standards of daylight and sunlight and that they are not visually intrusive or overbearing.

Living Conditions – Future Occupiers

15. Policy LP 35 of the LP includes a requirement that all new housing development complies with the Nationally Described Space Standard ('NDSS'). The Council considers that the 45sqm area of the dwelling would result in a shortfall of 13sqm against the 58sqm internal area requirement specified within the NDSS for a one-bedroom, two-person dwelling over two-storeys.
16. The appellant asserts that the development should instead be considered a single-storey dwelling, for which the NDSS indicates a lesser requirement for 50sqm internal area. In support of this position, they comment that the 'sleeping gallery' would be a mezzanine level, and that it would be subservient in area to the ground floor. Be that as it may, the sleeping gallery would sit fully above the shower and part of the studio room on the ground-floor of the dwelling such that I am not persuaded that the development could reasonably be described as having a single-storey. Furthermore, the sleeping gallery would be accessed by stairs up from the ground-floor level of the dwelling, and I note that the NDSS comments that the standards for gross internal areas are organised by storey height to take account of the extra circulation space needed for stairs to upper floors. In this context, I find that it would be more reasonable to assess the proposal in light of the internal area requirement for a two-storey dwelling, and I consider that the shortfall of 13sqm against this standard would be significant.
17. The appellant suggests that the proposal would result in an improvement in quality in comparison to permission previously granted for a studio on the site¹ ('the extant permission') where a shortfall against the applicable NDSS standard for a one-bedroom one-person dwelling was accepted. However, the shortfall in that case was around 2sqm. While there would be an increase in the overall size of the dwelling now proposed, there would also be a fairly large increase in the shortfall in area as a proportion of the applicable NDSS standard in comparison to the extant permission. This would be the case even if I were to accept the appellant's position and consider the development as a single-storey dwelling.
18. I acknowledge that the site is constrained, and note supporting text to LP Policy LP 35 advising that where developments are not able to meet policy requirements for housing mix and standards, the applicant should identify the shortcomings and demonstrate reasons why including that suitable alternative layouts or provision have been considered and incorporated wherever possible. However, further commentary to LP Policy LP 35 states that adequate space in the home has an effect on health, diversity and community cohesion and that preventing substandard accommodation in small units is an important issue in the borough.
19. There is no dispute between the main parties that adequate external amenity space would be provided, and I note the appellant advises that Building Regulation Requirement M4 (2) 'accessible and adaptable dwellings could be met. The height of the dwelling and inclusion of rooflights would further provide for light, and would help to give an impression of space. Nevertheless, the ability of the dwelling to accommodate sufficient furniture, storage and circulation space would still be constrained by the significant degree of shortfall in the internal area of the dwelling against NDSS standards, and I am not

¹ Application ref 20/0990/FUL

satisfied that it would provide adequate space to comfortably support a range of day to day activities likely to be necessary to serve a 2 person dwelling. As a result, I find that there would be some detriment to the quality of life of future occupiers of the development.

20. Moreover, there is little substantive evidence before me demonstrating that the extant permission could not be delivered. While the dwelling now proposed would be of larger size, both the appeal and extant permission developments would provide one dwelling that could accommodate a small household, and this moderates the weight that I afford to the contribution that the proposal would make to the overall supply of housing.
21. For these reasons, I conclude on this main issue that the proposal would fail to provide acceptable living conditions for future occupiers of the development with particular regard to the provision of internal space, and it would conflict with Policy LP35 of the LP.

Planning Obligation

22. The National Planning Policy Framework ('the Framework') identifies that planning obligations must only be sought where they meet tests set out in the Community Infrastructure Levy Regulations 2010 ('CIL Regulations'). These tests require that obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
23. As part of the appeal, the appellant submitted a Unilateral Undertaking dated 29 November 2021 (UU) under the provisions of section 106 of the Town and Country Planning Act 1990. The UU covers the provision of a financial contribution towards affordable housing, a restriction on future occupiers' entitlement to parking permits, and highway works.
24. Based on the evidence before me, the affordable housing financial contribution would address the expectation within Policy LP 36 of the LP that development contributes towards provision of affordable housing. Given that there would be a loss of the existing garage on the site and no off-street parking is proposed to serve the dwelling, the restriction on future occupiers' entitlement to parking permits and highway works to reinstate the dropped kerb to the site frontage would also be necessary to mitigate the effect of the proposal on the local highway network in accordance with requirements of Policies LP 44 and LP 45 of the LP.
25. The Council confirms that the UU would address its fifth and sixth reasons for refusal. In light of the supporting information and evidence that is before me, I have no firm reason to reach a different view, and I consider that the obligations would satisfy the relevant tests within the CIL Regulations. I have therefore taken the obligations secured into account as material considerations.

Other Matters

26. The Council has confirmed that the appellant's Energy Statement submitted as part of the appeal would address its third reason for refusal. I have no basis to find differently, and I am satisfied that the proposal would make adequate provision to minimise greenhouse gas emissions and to meet requirements for environmental sustainability in accordance with Policy LP 22 of the LP and Policy SI 2 of the London Plan 2021.

Planning Balance

27. The proposal would make effective use of the site to deliver an additional dwelling, contributing to targets for the provision of new housing in the borough in an accessible location with access to public transport and some local services. In these regards, the proposal would accord with objectives in the Framework and development plan seeking to significantly boost the supply of homes. I also give significant weight to the financial contribution that would be made towards meeting needs for affordable housing in the borough. However, the contribution to housing supply and affordable housing would be limited by the very small scale of the development. In addition, I have found that the shortfall in the internal area of the dwelling would cause some detriment to the quality of life of future occupiers of the site which limits the weight that I afford to the benefit of the additional dwelling here. There is also no compelling evidence before me that an additional dwelling towards local housing supply could not be delivered equally in accordance with the extant permission.
28. I have found that the dwelling would sit comfortably in the street scene and that the development would not harm the character or appearance of the area. I also acknowledge the potential for new landscaping. However, while the existing buildings on the site are in poor condition, they are of small scale and fairly unobtrusive such that I consider the benefit arising from enhancement to the appearance of the site would be modest. The proposal would not harm trees, and I have found that it would make adequate provision for affordable housing and to meet standards for environmental sustainability. However, the lack of harm in these regards is a neutral factor and weighs neither for nor against the proposal.
29. Conversely, I have found that the proposal would harm the living conditions of neighbouring occupiers, and would not offer acceptable living conditions for future occupiers of the development resulting in conflict with the development plan. These matters attract significant weight, and taken together, I find that they would outweigh the modest benefits of the proposal.

Conclusion

30. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR