



Appeal Decision

Site visit made on 23 August 2022

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/M5450/W/22/3296479

101 Malvern Avenue, Harrow HA2 9ER

- 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 Sanjay Raizada against the decision of London Borough of Harrow.
 - The application Ref P/1778/21, dated 28 April 2021, was refused by notice dated 15 December 2021.
 - The development proposed is single storey front extension incorporating front porch; single and two storey side extension and part first floor rear extension comprising two flats (1no. 3 bed and 1no. 2 bed); rear dormer; separate amenity space; bin and cycle stores.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst not in the description of development, the appeal proposal comprises extensions to the front, side, rear and roof of 101 Malvern Avenue (No 101). Part of the rear extension benefits from a prior approval¹ and the loft extension has planning permission². Combined with the front and side extensions, these form the proposed development and have been assessed by the Council. I have also considered the appeal proposal on this basis.

Main Issues

3. The main issues of this appeal are:
 - the effect of the development on the character and appearance of the area;
 - the effect of the development on the living conditions of the occupiers of No 101 and 99a Malvern Avenue (No 99a), with reference to daylight and outlook; and
 - whether the site is an appropriate location for the development with regard to the local development strategy.

Reasons

4. The surrounding area is characterised by residential development comprising individual pairs of semi-detached and small terraced rows of dwellings with a consistency in their design, style and proportions.

¹ P/0407/21/PRIOR

² P/0811/21

5. The proposed development would replicate some of the fenestration arrangement of the existing dwelling, use matching materials and incorporate similar design details. Notwithstanding this, as the frontage of the new flats would be wider, it would stretch the proportions of the façade and erode the consistent character of this row of properties in the streetscene.
6. The existing flat-roofed linked garage with accommodation above would be replaced with new flats. I acknowledge that this part of the appeal property is an unusual feature in the streetscene and of limited architectural merit. Nevertheless, the width and roof height of the garage demonstrates a subservience to the existing dwelling. Additionally, in contrast to the appeal proposal, the small gap in the frontage created by the link, coupled with the simple fenestration arrangement in the garage frontage, maintains the proportions of the existing dwelling.
7. The combination of the side and full width single storey rear extensions would create a bulky form. Furthermore, the variations in roof heights, styles and pitch, and the differing dormer window scales would result in the rear of the existing and new dwellings being dominated by incongruous additions uncommon to the area. Although the rear of the proposed development would not be visible from the avenue, it would be seen from neighbouring properties and rear gardens.
8. My attention has been drawn to the recent conversion of 103 Malvern Avenue (No 103) to two dwellings. As I observed during my site visit, the relationship between Nos 101 and 103 has altered as a result. These new dwellings demonstrate a consistency in design, style, materials and proportions, and therefore are materially different to the appeal proposal. Additionally, the rear dormers on the two properties at No 103, are subservient to their host dwellings and of consistent scale and design.
9. I conclude, therefore, that the proposed development would cause unacceptable harm to the character and appearance of the area. In this respect, it would be contrary to policies D3.D(1) and D3.D(11) of the London Plan (2021), Policy CS.1B of the Harrow Council Core Strategy (2012) (the Core Strategy) and Policy DM1 of the Harrow Development Management Policies Local Plan (2013) (the Local Plan). Amongst other things, these policies seek to enhance local character whilst resisting development that harms the character and appearance of an area.
10. In addition, it would not accord with the design principles set out in the Supplementary Planning Document: Residential Design Guide (2010) (RDG SPD) and Chapter 12 of the National Planning Policy Framework (the Framework) which, amongst other things, seek to ensure development is well designed and sympathetic to local character.

Living conditions

11. The new flats comprise one and two storey sections that would have a rear building line sited beyond that of No 99a. Whilst the side elevation would not be sited on the boundary with the neighbouring property, it would be located close to it. Given the existing substantial mature trees on the boundaries with 99 Malvern Avenue and at the end of the garden, the outlook from the first floor bedroom window of No 99a is already restricted. As a result, the bulk and

depth of the first floor of the new flats would be an intrusive feature in the outlook from this window.

12. In addition, due to the scale and siting of the new flats, there would be an unacceptable reduction in the amount of daylight reaching this window which would create a dark and uninviting room. Although it has been suggested that the daylight reaching this window would not fall below thresholds defined by the Building Research Establishment, I have no detailed assessment showing this.
13. There is no dispute between the main parties that the 45-degree code would be breached in respect of No 99a's rear first floor bedroom window. As set out in the RDG SPD, the 45-degree code is not intended to be used as a blunt assessment tool but should be considered alongside the specific circumstances and characteristics of each site. In this instance, my assessment has considered, amongst other things, the proximity of the proposed development to existing buildings and their boundaries, the siting of windows to habitable rooms and the bulk of the appeal proposal.
14. The first floor of the new flats would also extend beyond the rear building line of the existing dwelling. At first floor level, the rear windows of the existing dwelling relate to a bathroom and bedroom. The appeal proposal retains this internal configuration. Whether or not the 45-degree code would be breached in respect of the bedroom window, given the depth of the side extension and its position on what would be the boundary between the existing dwelling and new flats, it would feature in the outlook from the bedroom window.
15. Nevertheless, the existing view from this window is relatively open, extending across to the rear of properties on Kings Road and, in comparison with No 99a, the appeal site has a deeper garden with mature trees on the rear boundary only. As a result, the outlook from this window would remain acceptable. Similarly, given the distance between the bedroom window and the first floor of the new flats, based on the evidence before me, there would be no unacceptable loss of the daylight reaching this window.
16. I conclude the proposed development would unacceptably harm the living conditions of the occupiers of No 99a with regard to outlook and daylight. Therefore, the proposed development would conflict with Policy D3.D(7) of the London Plan, Policy CS.1B of the Core Strategy and Policy DM1 of the Local Plan. Amongst other things, these policies require all development to deliver appropriate outlook, privacy and amenity to neighbours.
17. In addition, it would not accord with the design principles set out in the RDG SPD which requires that careful design of new development to ensure it does not cause an unreasonable loss of amenity to neighbouring residents. Similarly, I find conflict with Chapter 12 of the Framework which seeks to ensure development is well designed with a high standard of amenity for existing and future users.

Development Strategy

18. Policy CS1 of the Core Strategy sets out that the Harrow and Wealdstone Intensification Area, town centres and strategic previously development sites in suburban areas will be the focus for new development. While it does not

exclude all other land, CS1.B also states that garden development will be resisted.

19. I acknowledge the age of the Core Strategy and that the Framework and London Plan have been adopted in the interim. Nevertheless, I am satisfied that Policy CS1 of the Core Strategy is consistent with Chapter 5 of the Framework which, amongst other things, requires plans to consider policies that resist inappropriate development of residential gardens, for example where development would cause harm to the local area. As such, the Core Strategy should be given full weight in the determination of this appeal.
20. Supplementary Planning Document: Garden Land Development (2013) (GLD SPD) defines garden land as any land within the curtilage of a building the principal use of which is residential, including hardstanding and outbuildings, with certain exceptions. The proposed development would introduce additional residential units into an area that is currently part of, and within, the garden of an existing property. As it does not fall within any of the exceptions listed, it meets this definition.
21. The GLD SPD is not a tool for attributing value to garden land, therefore the lack of objections from the Council on the quantum of garden space provided for the proposed flats is not determinative in my decision.
22. Garden land development is defined in the GLD SPD as any development on garden land that results in the formation of one or more new dwellings (houses or flats). As the proposed development would result in two new flats, it would meet this definition. Nevertheless, it has been suggested that as the proposed development does not represent any of the typical examples specified in the GLD SPD, it should fall into a type which is not considered to be garden land development. These comprise either; the redevelopment of an existing dwelling to provide multiple dwellings or flats on the same building footprint, plus any appropriate enlargement; or the conversion of an existing dwelling to flats or multiple dwellings, with or without any appropriate enlargement.
23. Whilst the proposed development could be described as either of the forms above, the crucial consideration in both exceptions is the assessment of an appropriate enlargement. This is confirmed in the GLD SPD as the larger of either; the footprint of any permitted extensions that could be exercised for the dwelling; or the footprint of an extension that would be consistent with RDG SPD.
24. As the single storey rear extension has prior approval, this would be an appropriate enlargement. However, the appeal proposal comprises a substantially larger footprint. As I have found that the proposed development would cause unacceptable harm to the character and appearance of the area, and the living conditions of existing occupiers, it would not be consistent with the RDG SPD. Therefore, the proposed development falls within the definition of garden land development.
25. On this basis, I conclude the proposed development is contrary to policies CS1.A and CS1.B of the Core Strategy which seek to resist garden land development and ensure all development responds positively to the local context. The proposed development would also conflict with the guidance set out in the GLD SPD which supports the implementation of these policies and

Chapter 5 of the Framework concerning the delivery of a sufficient supply of homes.

Other Matters

26. I am satisfied that there is every likelihood that the single storey rear extension with prior approval and the loft extension with planning permission would be built regardless of this decision. As these extensions comprise significantly smaller forms than the appeal proposal, I do not consider this fallback to be more harmful than the proposed development.
27. I note the comments about the Council's handling of the case however these have not been determinative in my decision. Additionally, a lack of objections to the planning application is not a reason in itself to allow development that is unacceptable.
28. I have been referred to another appeal³ within the borough, relating to garden land development. As this appeal concerned a site which the Inspector considered to be a gap site, and therefore excluded from the definition of inappropriate development of garden land, it is not directly comparable to this appeal.

Conclusion

29. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, the appeal is dismissed.

Juliet Rogers

INSPECTOR

³ APP/M5450/W/20/3250746