



Appeal Decision

Site visit made on 25 July 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/T5150/W/21/3288582

Land adjacent to 98 Elms Lane, Wembley HA0 2NP

- 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 Fadi Zewani against the decision of London Borough of Brent.
 - The application Ref 21/3000, dated 3 August 2021, was refused by notice dated 29 September 2021.
 - The development proposed is erection of new two storey, two bedroom detached dwellinghouse with associated car parking, refuse and cycle storage.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a new two storey, two bedroom detached dwellinghouse with associated car parking, refuse and cycle storage, at land adjacent to 98 Elms Lane, Wembley HA0 2NP, in accordance with the terms of the application Ref 21/3000, dated 3 August 2021, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development in the decision has been taken from the appeal form as this more accurately describes the proposal.
3. The Brent Local Plan 2019-2044 (the Local Plan) has been adopted since the Council issued its decision. Policy DMP1 of the Local Plan replaces Policy DMP1 of the Development Management Policies document 2016 (the DMP) and I have referred to this in my assessment of the appeal. The main parties have had the opportunity to comment on the revised policy.
4. A Tree Categorisation Report, and a Arboricultural Impact Assessment and Method Statement (AIAMA) accompanies the appeal, and seeks to overcome concerns in the refusal notice. This represents new information. The appeals procedural guide makes it clear that 'the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'¹.
5. Nevertheless, having regard to the Wheatcroft Principles², it is my view, that the additional information does not fundamentally alter the scheme in terms of its design and layout, while the details submitted seek to demonstrate that the proposal would safeguard trees at the site. Whilst I appreciate that the

¹ Annex M, M.2.1, The Planning Inspectorate Procedural Guide, Planning Appeals – England, August 2019

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]. This decision has since been confirmed in Wessex Regional Health Authority v SSE [1984] and Wadehurst Properties v SSE & Wychavon DC [1990] and Breckland DC v SSE and T. Hill [1992].

information is technical in nature, the Council have had sight of it and had the opportunity to comment. Furthermore, I do not consider that the interests of neighbouring occupiers would be prejudiced in my accepting of the information. I have therefore assessed the appeal on the basis of the additional information.

Main Issues

6. The main issues are the effect of the proposal on: (i) the street scene; (ii) the health and well-being of existing trees at the site; and (iii) the living conditions of occupiers of No 12 Aspen Drive, with particular reference to privacy and daylight/sunlight.

Reasons

Street scene

7. The appeal site comprises No 98 Elms Lane (No 98), a semi-detached house located at the end of a short row of similar properties that follow a consistent building line. These units are set back from the road and maintain short gaps between one another. The host dwelling differs in having a wider side garden space which tapers towards its rear. In addition, it incorporates a pitched roof that contrasts with the hipped roofs of the other properties in the row.
8. The proposed dwelling is consistent with others in the row in that it follows the established building line and spacing between properties, while being of comparable mass, height, and architectural detailing. The roof form and profile would also match that of the host dwelling. It is acknowledged that the other roofs in the row are hipped and that the proposal together with No 98 would break this sequence. Yet were the appeal scheme to have a hipped rather than pitched roof, to match those other dwellings it would appear discordant next to No 98. Therefore, I am satisfied that the proposal's pitched roof design would have a more unifying effect within the street given its proximity to the host dwelling.
9. The Council's officers report indicates that the proposal would not be consistent with the hipped roof of No 98. Yet, it was clear from my site visit along with updated photographs submitted with the appeal that the host dwelling has recently reverted to having a pitched roof and is now an established part of the street.
10. It is noted that the Council raise questions regarding the functionality of the proposed rear amenity area, owing, in part, to its irregular shape. However, they indicate that the new dwelling would be appropriately set in from the boundary to the south, with a minimum of 1.1m from the rear of the dwelling, increasing to a set in of 4.9m along the front portion of the dwelling. This in their view allows the proposal to maintain the character of the corner plot and is considered acceptable. I have no reason to disagree with the Council in this respect, having inspected the site and submitted layout.
11. The Local Plan has superseded the DMP. Accordingly, in the absence of a similar policy before me, the requirements of Policy DMP12 of the DMP no longer apply i.e. 50% of front gardens to consist of soft landscaping. Nonetheless, Policy DMP1 of the Local Plan, requires amongst other things, that proposals should where possible provide enhancements in green infrastructure and landscaping.

12. The appeal site incorporates a wide, and relatively open roadside frontage that includes a parking forecourt serving No 98, as well as some undeveloped space partially covered in vegetation. There is a requirement, based on the number of bedrooms proposed together with No 98, for two parking spaces at the site. The Council's Transport adviser suggests that the optimum arrangement would be to provide a central 4.8m wide crossover straddling the new and existing plots to provide access to one space for each dwelling side by side.
13. Those parking spaces would not take up a significant portion of the site's frontage. Together with an access ramp leading to the proposed dwelling's front door, there would still be a generous area at the front of the appeal site that could be landscaped and secured through a planning condition. This would soften the appearance of the parking and access infrastructure and along with the retention of the existing boundary trees, would ensure the appeal scheme enhances the visual amenities of the site and the street.
14. On this basis the appeal scheme would maintain the spatial pattern of development along this part of Elms Lane whilst also being consistent with the general scale and appearance of other properties. There would also be sufficient space along the appeal site's frontage to provide landscape enhancements that would consolidate and improve the existing character along this section of Elms Lane. Therefore, the proposal would have an acceptable effect on the street scene and would accord with Policy DMP1 of the Local Plan and the Supplementary Planning Document 1 – Brent Design Guide (November 2018) (SPD1) insofar as requiring proposals to compliment the scale, layout, design and detailing in the locality and to provide landscape enhancements.

Trees

15. The appeal site has several tall mature trees of moderate amenity value. The Council's concerns on this matter refer to the lack of assessment of the proposal's effect on trees at the front and side of the plot. On this basis it could not be certain that the proposal would not harm the trees at the site and accordingly refused the scheme for this reason.
16. Where there are existing site trees, Policy BGI2 of the Local Plan requires that proposals include the submission of a BS5837:2012³ or equivalent tree survey detailing all trees that are on, or adjoining the development site. Where existing trees are to be retained this must accord with the recommendations of BS5837, while all agreed works to trees must accord with BS3998:2010⁴.
17. The submitted AIAMS includes location details of the trees, their amenity value and current health, crown dimensions and root protection areas. To facilitate the development, three of the Category B trees would require crown lifting and reducing, limb removal and root pruning. Although this would alter the appearance of the trees somewhat, the extent of the works proposed would be proportional and ensure the trees continue to provide moderate amenity value for the plot and immediate area. Moreover, proposed protective fencing would safeguard the trees during construction.
18. I am satisfied that the level of assessment accords with BS5837:2012, while the proposed works would be carried out in accordance with BS3998:2010. Besides, the Council has not submitted any evidence which challenges the

³ British Standard "Trees in Relation to Design, Demolition and Construction – Recommendations (BS5837) (2012)

⁴ British Standard "Tree Work – Recommendations" (BS3998) (2010)

appellant's findings including the remedial measures to facilitate the construction of the dwelling.

19. Therefore, the proposal would have an acceptable effect on the health and well-being of trees at the site, and would accord with the provisions of Policies DMP1 and BGI2 of the Local Plan, the requirements of which I have already referred to.

Living conditions

20. The rear façade of the proposed dwelling would face the corresponding elevation of No 12 Aspen Drive (No 12) as well as that dwelling's rear garden. According to the appellant, the proposed dwelling's rear habitable room windows would be between 4m and 7m of No 12's garden at its closest point. Around 17.3m would separate the opposing rear elevations of the dwellings.
21. Those distances fall short of the requirements of the SPD1 which advises new dwellings maintain 9m from gardens and 18m from opposing elevations. However, there is already a degree of overlooking from the rear of the host dwelling towards No 12, which would be comparable to the orientation and separation distance maintained by the proposal. Therefore, the appeal scheme would not materially add to the level of intrusion that No 12 currently experiences. Moreover, the existing boundary trees along No 12's boundary would provide a reasonable degree of screening to parts of its garden, such that privacy levels would be acceptable.
22. To safeguard neighbouring daylight and sunlight the SPD1 advises that the proposed building envelope should be set below a line of 30 degrees from the nearest rear habitable room window of an existing property, measured from a height of two metres above floor level. Where proposed development adjoins private amenity / garden areas then the height of new development should normally be set below a line of 45 degrees at the garden edge, measured from a height of two metres.
23. The appellant's statement includes drawings showing compliance with those tests, and accordingly I am satisfied that there would be no unacceptable reduction to the daylight No 12 receives. Moreover, the proposed dwelling's orientation to the west of No 12 would not significantly reduce direct sunlight being received by its garden and habitable rooms.
24. In view of the above, the proposal would not have an unacceptable effect on the living conditions of occupiers of No 12 Aspen Drive, with particular reference to privacy and daylight/sunlight. It would accord with the requirements of Policy DMP1 of the Local Plan where they require proposals to provide high levels of amenity. Although there would be some technical breaches of the guidance in the SPD1, the proposal accords with the general principles of ensuring good levels of daylight/sunlight and privacy.

Other Matters

25. The Council has raised questions regarding the useability of the proposed rear amenity space. This would be somewhat irregular in shape and narrow towards the rear boundary. However, there would be a patio and adjoining space at the dwelling's rear that are of sufficient depth and width to accommodate outdoor seating, storage and clothes drying areas. The overall area of the proposed

amenity space also satisfies the minimum space requirements outlined in SPD1.

26. The Council's transport advisers have raised no objection to the scheme subject to details of parking arrangements and soft landscaping across the site's frontage. I am satisfied that those matters can be secured by condition.
27. Policy BH4 of the Local Plan requires, amongst other things, that small housing developments are located within priority locations in PTAL 3-6 areas. When determining proposals outside the priority locations greater weight will be placed on the existing character of the area, access to public transport and a variety of social infrastructure easily accessible on foot.
28. The appeal site falls within a PTAL 2 area and is therefore not within a priority area for new homes. However, the appeal site is a short walk from a good variety of shops and local services located along Court Parade and Watford Road. A primary school and health centre is also located close to those amenities, along with bus stops. Accordingly, I am satisfied, that despite the appeal site's PTAL rating, it is accessible by foot to a variety of local facilities and transport connections and aligns with those terms of the policy dealing with sites outside of priority areas.
29. Following the replacement of the DMP by the Local Plan, I have been referred to Policy BGI1. This requires proposals to achieve a net gain in biodiversity and avoid any detrimental impact on the geodiversity of an area. I am satisfied that a landscaping condition and the associated provision of new planting and green areas, would provide solutions that support biodiversity and meet the aims of that policy.
30. Concerns have been raised by third parties regarding potential damage to drainage or waterways and the foundations of neighbouring garages. However, I have no technical evidence to support this, nor has the Council raised any specific objections in this regard. I therefore give limited weight to this matter.
31. The proximity of an electricity substation to the appeal site has also been raised as a concern. As with the preceding matter, there is no technical evidence before me to confirm how this would affect the amenities of existing or future occupiers. Moreover, the Council confirms that all relevant persons have been consulted whilst I have not been directed to any specific objections on this matter. Consequently, it attracts limited weight.

Conditions

32. I have had regard to the Council's suggested conditions amending or omitting them where necessary for clarity and to ensure compliance with the tests set out in paragraph 56 of the Framework.
33. It is necessary that planning permission is granted subject to conditions that relate to the standard time limit for commencement of development and a schedule of plans that the development relates to (including compliance with the AIAMS). These are necessary for the avoidance of doubt and in the interests of certainty.
34. To maintain the character and setting of the site and to enhance local biodiversity, details of hard and soft landscaping are required before development commences. An implementation condition which will include

scheme commencement details and a strategy for replacement species is also necessary in the interests of local character.

35. Similarly, it is necessary to include a condition requesting details of external finishes in the interests of local character and appearance.
36. Conditions requiring details and completion of works relating to parking, turning, access, and vehicular crossovers are necessary in the interests of highway safety.
37. Although I have found the amenity space provision acceptable, further additions to the property could have unacceptable effects on the extent of this, as well as local character and neighbouring living conditions. A condition removing permitted development rights relating to additions to the dwelling is therefore necessary.

Conclusion

38. For the reasons given above I conclude that the appeal should be allowed.

RE Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans / information: site location plan, XEVA/98EL/301, XEVA/98EL/302, XEVA/98EL/303, XEVA/98EL/304, XEVA/98EL/305, XEVA/98EL/306, XEVA/98EL/307, XEVA/98EL/308, XEVA/98EL/309 and Tree Categorisation Report, Arboricultural Impact Assessment and Method Statement (Ref HAO 2NS).
3. Notwithstanding the submitted plans otherwise approved, further details of soft and hard landscaping to the new dwellinghouse (including No 98 Elms Lane) shall be submitted to and approved in writing by the Local Planning Authority prior to commencement (but excluding demolition, site preparation and the laying of foundations). The details shall include:
 - (i) Details of existing and proposed boundary treatments including the means of enclosure within the rear gardens, indicating materials, height, and showing pedestrian visibility splays (2m x 2m above a height of 0.8m) at the vehicular accesses;
 - (ii) Details of soft landscaping which should provide a net increase in biodiversity (including tree pit design, species, location and densities);
 - (iii) Details of any external lighting within the rear gardens or attached to the dwellinghouse;
 - (iv) Details of the hardstanding, including the proposed raised patio;
 - (v) Full details of any trees to be retained, together with measures for their protection during the course of development;
 - (vi) Details of landscaping within front gardens to provide one off-street parking space per dwelling accessed via a shared 4.8m wide vehicular crossover straddling the two plots, with 50% soft landscaping to be provided across each dwelling's front forecourt with a net gain in biodiversity.
4. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the dwelling or the completion of the development whichever is the sooner. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development.
5. No part of the development hereby permitted shall be first occupied until details of access, turning areas and parking for both appeal development and No 98 Elms Lane have been approved in writing by the local planning authority. The development shall be completed in accordance with the agreed details prior to its first occupation. The areas shall be maintained for those purposes at all times.
6. All crossover works forming part of the development proposal hereby approved, including the reinstatement to footway and/or grass verge of any

lengths of crossover rendered redundant by this development, shall be carried out and completed prior to the first occupation of the development hereby approved. The works shall be carried out at the applicant's expense, in compliance with a scheme to be submitted to and approved in writing by the Highway Authority, with the works carried out and completed in accordance with these approved details

7. No works above ground floor level of the development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details / samples.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) (or any order revoking and re-enacting that Order with or without modification), no additions or buildings, as specified in Classes A, B, E and F of Part 1 of Schedule 2 of the Order shall be erected other than those expressly authorised by this permission.

*****End of Schedule*****