



Appeal Decision

Site visit made on 20 September 2022

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2022

Appeal Ref: APP/A5270/W/21/3289614

44a York Road, Acton W3 6TP

- 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 Pierre Taylor against the decision of the Council of the London Borough of Ealing.
 - The application Ref 213663FUL, dated 14 May 2021, was refused by notice dated 1 November 2021.
 - The development proposed is construction of a new single storey two bedroom dwelling (following demolition of existing workshop)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form describes the site address as 44a York Road and I have used this address in my heading in the interests of consistency. However, I note from a representation from a neighbouring resident that 44a York Road is a separate residential property which does not form part of the appeal site.
3. It appears that during the consideration of the application amended plans were submitted that introduced 2 additional windows to the side elevation. While there are 2 versions of the floor plan before me, the Council's second refusal reason refers to windows shown on the amended floor plan and general arrangement plan¹ and lists these plans in the decision notice. It is therefore clear that the application was determined on the basis of these plans. The appellant has not disputed this. Moreover, the appellant has provided evidence in respect of privacy in relation to these windows. This indicates that the plans showing the windows are the ones intending to form part of the proposal. Therefore, I have determined the appeal on this basis.

Main Issues

4. The main issues are:
 - i) The effect of the proposal on the living conditions of the occupants of 46 York Road with particular regard to noise disturbance and privacy; and
 - ii) Whether the proposal would provide satisfactory living conditions for future occupiers with particular regard to levels of privacy.

¹ drawings SO-983-03A and SO-983 07

Reasons

Neighbouring residents' living conditions

5. The appeal site is a workshop located to the rear of No 36-44 York Road. The workshop is single storey in height and is not currently in use. Access to the building, and to the rear of 36-42 York Road, is through the communal rear garden of 46 York Road, which has been subdivided into 6 flats. The access runs through the centre of the garden and is not physically separated from the communal garden area. During my site visit I observed that this garden space was larger than other gardens nearby and was relatively sheltered from nearby highway noise and, whilst shared by the occupants of 6 flats, was generally private to the occupiers of the flats.
6. The proposed dwelling would replace the workshop. The position of windows in the rear and side elevations of No 46 would prevent direct overlooking of internal spaces. However, the proposal would result in an intensification of the use of this access. Whilst a degree of overlooking is to be expected in urban areas and communal living environments, including during periods of use for rear access by the occupants of Nos 36-42, this space is not currently intruded upon by the free flow of visitors to an entirely separate property. The introduction of these movements would result in overlooking of the garden at close-range, resulting in an unacceptable loss of privacy for the occupiers of these flats which would go beyond existing levels. Additionally, occupiers of these flats may be exposed to an unacceptable level of noise from future occupiers when using this access. Whilst the frequency of use of this access would likely be low, nonetheless given the proximity between the access and the garden area, this would go beyond existing and reasonable noise levels and I have no evidence that the neighbours would be protected from such disturbance.
7. The existing industrial building has right of access through this rear garden. Therefore, were this industrial building brought back into use, the access arrangements would result in overlooking of this rear garden. However, it appears from the condition of the building that significant works might be required to reinstate the building for any use to be carried out that would generate a comparable level of footfall to the proposed dwelling. While the appellant may be unlikely to leave the building permanently unused, given its condition and lack of substantive evidence as to what any alternative use may be, it has not been demonstrated that the effects would be comparable.
8. I therefore find that the proposal would harm the living conditions of the occupants of 46 York Road through loss of privacy and noise disturbance. The proposal therefore conflicts with those aims of Policies D3 and D6 of the London Plan (2021) and Policy 7B of the Ealing Development Management Development Plan Document (2013) which seek to ensure that developments deliver appropriate outlook, privacy and amenity for users and adjacent uses.

Future occupiers' living conditions

9. A right of access runs along the site's eastern boundary, providing access to the rear of 36-44 York Road. The appellant states that this access is infrequently used and that these neighbours do not have a key to access

through No 46, albeit that assertion is not substantiated by robust evidence. At the time of my site visit I observed that the southern part of this access appeared to be blocked by garden waste, however the remainder of this access was clear and contained gates providing access to the rear of Nos 40, 42 and 44. Therefore, it appears that at least part of this access remains in use. This is supported by letters of representation from neighbouring residents confirming the use of this access.

10. The proposed dwelling would border this access and would contain window openings facing the access. The users of this access would have clear and direct views of the proposed kitchen/ diner/ reception, corridor and bedrooms. Whilst the level of use of this access is likely to be low such an arrangement is not characteristic of the area and the level of overlooking in such close proximity to these openings would result in a lack of privacy for future occupiers. Furthermore, the path providing access to the rear of Nos 36-42 would run through the centre of the proposed garden, providing further opportunities for overlooking of private spaces.
11. The appellant suggests that any overlooking could be overcome through the use of obscure glazing. The plans show that the 2 bedrooms and the kitchen/ diner/ reception room would each also have a secondary window and roof light. Therefore, the incorporation of obscure glazing to these windows, which could be controlled through a suitably-worded condition, would allow for adequate levels of natural light to these rooms. However, whilst the overlooking of internal spaces could be overcome by a condition requiring the use of obscure glazing to these windows, this would not overcome the harm arising from the loss of privacy to the proposed garden.
12. For the reasons given above I conclude that the proposed development would not provide satisfactory living conditions for future occupiers. Accordingly, it would conflict with those aims of Policy D6 of the London Plan (2021) and Policy 7B of the Ealing Development Management Development Plan Document (2013) which seek to ensure that housing developments provide privacy for residents and are of a high quality with usable private amenity space.

Other Matters

13. The Council concluded that the principle of residential development in this location is acceptable. Additionally, the construction of one dwelling would make a small contribution towards the borough's housing supply and would bring a brownfield site back into use. This factor weighs in favour of the scheme. However, one new home would make only a small contribution in this respect.
14. Additionally, there may be benefits to the users of the access to the east of the existing building through the removal of the existing building and the clearance of the pathway, to which I attribute limited weight given the limited and private nature of this benefit.
15. I note that the proposal would be provided with adequate car parking, bin and bike storage, and would re-use and recycle the existing building materials where possible. This matter is neutral in the overall planning balance.

Conclusion

16. For the reasons given above I conclude that the appeal should be dismissed.

Nichola Robinson

INSPECTOR