
Appeal Decision

Site visit made on 13 September 2022

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2022

Appeal Ref: APP/W1905/W/21/3286359

91 Bury Green Road, Cheshunt EN7 5AG

- 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 Anton Berisha against the decision of Broxbourne Borough Council.
 - The application Ref 07/21/1032/F, dated 18 August 2021, was refused by notice dated 21 October 2021.
 - The development proposed is the demolition of garage and single storey side extension to existing property, and erection of two-storey semi-detached dwelling with associated landscaping and provision of off-street parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Within their statement of case and officer report the Council have raised concern regarding the effect of the proposed development upon the character and appearance of the area, due to an increase in the density of development and the loss of a gap. This matter was not raised within its decision notice. The appellant has had the opportunity to respond within their statement and at final comment stage. Therefore, they would not be prejudiced by my consideration of this matter.
3. The site has been the subject of a previous appeal decision¹, which I have had regard to insofar as it is relevant to the development before me.

Main Issues

4. The main issues are the effect of the development upon the:
 - living conditions of future occupiers of the development, with particular regard to privacy;
 - living conditions of the occupiers of number 1A Hargreaves Avenue and other neighbouring properties, with particular regard to outlook; and
 - character and appearance of the area.

Reasons

Living conditions – future occupiers

¹ Planning application reference: 07/20/0727/f and appeal reference: APP/W1950/W/20/3265422

5. One of the stated aims of policy EQ1 of the Broxbourne Local Plan² (the Local Plan) is to protect the amenities enjoyed by the occupiers of neighbouring properties. Future occupiers of the house would become occupiers of a neighbouring property. Thus, this policy is relevant to the consideration of this appeal. Furthermore, paragraph 130 of the Framework³ also seeks to ensure development provides a high standard of amenity for existing and future users.
6. I am advised by the Council that the recessed first-floor clear glazed window within the rear of 1A Hargreaves Road (number 1A) serves a bedroom. I have proceeded on this basis. A moderate level of use and activity would ordinarily be anticipated in such a room. Notwithstanding the presence of the high close-boarded fence which separates the appeal site and number 1A, direct overlooking would be possible at close distance from this elevated bedroom window into the open plan living accommodation of the proposed house. This would be via the glazed bifold doors in the side elevation of the proposed dwelling.
7. Whilst the offsetting of the doors from the window would reduce the extent of any such overlooking, the level of overlooking would still be significant. It would prevent future occupiers from being able to secure a reasonable degree of privacy within a main living space of their home.
8. From first floor rear windows in number 1A it would also be possible to directly and at close distance overlook the rear garden and sections of the side garden of the proposed house. I accept that the oblique angle between these windows and sections of the side garden would prevent direct overlooking over a moderate proportion of the side garden. However, if future occupiers wished to access this area from the side or rear door of the house, they would first be required to pass through directly overlooked sections of the garden. This would be to the detriment of their privacy.
9. I agree that prospective buyers may choose whether or not to purchase a property. However, this consideration does not justify allowing a development proposal which would result in unacceptable harm to the living conditions available to future occupiers of the property. Whilst, within a built-up residential area the level of privacy available may be to some degree constricted, this consideration does not outweigh the previously identified harms.
10. I therefore conclude that the development would fail to provide appropriate living conditions for future occupiers, as a result of insufficient external and internal privacy. It would therefore conflict with Policy EQ1 of the Local Plan, which amongst other things, seeks to ensure that development within urban areas avoid detrimental impacts on the amenities enjoyed by the occupiers of neighbouring properties in terms of overlooking. It would also conflict with paragraph 130(f) of the Framework where it seeks to ensure that development delivers a high standard of amenity for future users. In reaching this decision I have also had regard to the privacy guidelines contained within the Borough-wide Supplementary Planning Guidance⁴ (the SPG).

Living conditions – occupiers of 1A Hargreaves Avenue

² Borough of Broxbourne - The Broxbourne Local Plan - A framework for the future development of the borough June 2020

³ National Planning Policy Framework - 2021

⁴ Borough of Broxbourne - Borough-wide Supplementary Planning Guidance⁴ – adopted 2004 - updated 2013

11. Both the appeal site and the plot occupied by number 1A are roughly triangular in shape, and both have comparatively wide street frontages which taper to the rear. The building at number 1A, which has rear windows at both first and second floor level, has been constructed close to the shared boundary between the two properties. Although the proposed dwelling would have a hipped roof and a lower rear eaves height than the existing dwelling at 91 Bury Green Road, and whilst it would be located further from the shared boundary than that subject of the previous appeal, it would still result in a 2-storey structure being constructed in close proximity to the rear boundary with number 1A. Such development would have an additional, albeit limited, enclosing effect upon the small rear garden of number 1A, and it would adversely affect the outlook available from the first and second floor rear windows within number 1A.
12. Thus, I conclude that with regard to outlook, the proposed development would harm the living conditions of occupiers of number 1A within both their house and garden. It would therefore conflict with the requirements of policies EQ1 of the Local Plan, which amongst other things, seeks to ensure that development within urban areas avoid detrimental impacts on the amenities enjoyed by the occupiers of neighbouring properties in terms of outlook. It would also conflict with paragraph 130 (f) of the Framework where it seeks to ensure that development delivers a high standard of amenity for existing users. In reaching this decision I have also had regard to part 3 of the privacy guidelines contained within the SPG.
13. Policy DSC1 of the Local Plan does not relate to living conditions and therefore have no direct relevance to this main issue.

Character and appearance

14. An existing dropped kerb provides vehicular access from Bury Green Road over a narrow strip of grass verge, to the garage and an area of hardstanding under the control of the appellant. Along the stretch of Bury Green Road within which the appeal site is located, the grass verge is fragmented by vehicle crossovers and car parking provision. In character and appearance terms, the value of the section of verge to the front of the site, is therefore limited.
15. Whilst the proposed development would result in a small increase in the amount of hardstanding to the front of the appeal site, most of this increase would be within private land rather than within the green public verge. The area of public land which would change from grass to hardstanding would be of such limited proportions, that its change would be neither obvious nor prominent within the street-scene. The development would not therefore demonstrably harm the visual quality of the area in terms of its character and appearance.
16. There is a variety in the style, age and form of development within the area, which has resulted in a substantial range in the size of gaps between properties. Although the construction of the proposed house would reduce the amount of space at first floor level between the existing dwelling at 91 Bury Green Road and No. 1A, a gap would be retained. Visually this gap would be of a similar size to others within the area, and the proposed development would not therefore appear cramped within the street-scene.

17. For the reasons set out above, the development would not have an unacceptable adverse effect upon the character and appearance of the area. Accordingly, and in this respect, the development would not conflict with the requirements of Policies ORC3, TM6, or DSC1 of the Local Plan where they seek to prevent the loss of public greening land, and to ensure that development enhances local character and distinctiveness. Nor in this respect, do I find conflict with the objectives contained within paragraph 130 a, b, c, d, or e of the Framework, or the SPG, where they seek to ensure that development is of a good standard of design.

Other Matters

18. No compelling evidence has been presented to satisfactorily demonstrate that the very limited reduction to the size of the grass verge to the front of the appeal site would result in any discernible diminution in its recreational or amenity value.
19. The appellant has drawn my attention to previously permitted extensions and dwellings within the area. The site context and locations of surrounding development differs in each of these cases from that subject of this appeal, and as such no direct comparisons are possible.
20. The proposed development would follow established patterns of development within the local area, and occupiers of the proposed dwelling would benefit from adequate levels of internal floorspace, light and outlook. These are neutral factors. Even if I had found that there would be no unacceptable harm to the occupiers of 1A with particular regard to privacy or light, these are also neutral matters.

Planning Balance

21. Paragraph 11 of the Framework states that where the development plan is out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The Council have indicated that housing delivery within the borough has been 74% of its identified housing need over the last 3 years. This is below the 75% threshold identified within footnote 8 of the Framework. As such, the requirements of paragraph 11d) of the Framework are triggered, and the most important policies for determining the appeal are deemed to be out of date.
22. In the context of the development plan, I have found that the proposed development would be contrary to policy EQ1 of the Local Plan. For this appeal, I have found this policy to be generally consistent with the aim of the Framework to create spaces with a high standard of amenity for existing and future users, and I therefore attach substantial weight to it. Although, I have found no demonstrable harm would arise in response to the requirements of Local Plan policies ORC3, TM6 and DSC1, in respect of character and appearance, the proposal would not accord with the development plan when considered as a whole.
23. A limited amount of short-term employment would be created during the construction phase of the development. Some further modest benefits would result from future occupiers increasing custom for local shops and services, therefore contributing towards enhancing the vitality and viability of local town

centres. A single house would make a modest contribution to the supply of housing. Even if it had been adequately demonstrated that there is an unmet demand for 2-bedroom dwellings within the area, the provision of a single such dwelling can only be accorded limited weight. That it would help to address the Council's shortfall in housing delivery I attach moderate weight. I have considered the fact that the dwelling would be built to lifetime homes standards and accept that the site is well located in relation to services and facilities by means other than private car. I accord these matters limited weight.

24. If implemented the submitted scheme would result in significant harm to the living conditions which could be enjoyed by future occupiers of the proposed property with respect to privacy. I accord this substantial weight. It would also harm the living conditions of the occupiers of 1A Hargreaves Road, as a result of a reduction in outlook available from within the house and garden, to which I attribute moderate weight. The development proposals would therefore be contrary to the aims of the Framework to create places with a high standard of amenity for existing and future users.
25. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. As such, the development would not benefit from the presumption in favour of sustainable development.

Conclusion

26. I have found that the development proposals would be harmful to the living conditions of the occupiers of number 1A and to future occupiers of the proposed house. Whilst I have also concluded that the development would result in no unacceptable effects upon the character and appearance of the area, the absence of harm associated with this consideration does not justify a different conclusion being reached regarding the acceptability of the development.
27. 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.
28. For the reasons given above, I conclude that the appeal should be dismissed.

V Simpson

INSPECTOR