
Appeal Decision

Site visit made on 5 September 2022

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal Ref: APP/A5270/W/22/3295218

23 Kenilworth Road, Ealing W5 5PA

- 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 Daniel Adler (Greatglen Estates) against the decision of the Council of the London Borough of Ealing.
 - The application Ref 216122FUL, dated 17 October 2021, was refused by notice dated 9 December 2021.
 - The development proposed is demolition of a garage and the construction of a studio at the rear of 23 Kenilworth Road, W5 5PA.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's statement of case contains a sunlight study, which was not part of the original application. This does not represent an amendment to the scheme. The Council has had the opportunity to comment on this. On this basis, I do not consider that any party would be unfairly prejudiced. I therefore have had consideration to the submitted study in determining this appeal.
3. The Council's officer report and statement of case refer reflective glass to the first floor western elevation of the proposed dwelling. However, I note that during the course of the application an amended plan was submitted¹ which shows the window in the first floor western elevation with frosted/ obscure glazing. This plan is referenced on the Council's decision notice. I therefore have had consideration of this plan in determining this appeal.

Main Issues

4. The principle of the proposed residential use is not opposed by the Council, subject to the development meeting other relevant policies. Against this background I consider the main issues to be:
 - Whether the proposal would provide satisfactory living conditions for the future occupants with particular regard to outdoor amenity space provision, outlook and privacy;
 - The effect of the proposal on the living conditions of the occupants of No 26 The Park with particular regard to overlooking, outlook and light; and

¹ 1524-48 PL/01 Rev A

-The effect on the proposal on the character and appearance of the area, including the Ealing Common Conservation Area.

Reasons

Living conditions for future occupiers

5. Occupants of the proposed one-bedroom dwelling would be provided with private amenity space measuring 17.2 m². This would fall significantly below the garden space standards set out in the development plan for a new house, which is what the proposal would be, and not a flat as suggested by the appellant. Moreover, the outdoor amenity space would be shady for large parts of the day on account of its aspect and it would be overshadowed by existing boundary treatment. It would not be a pleasant space for the intended occupiers to spend time in. Whilst Ealing Common may serve to meet some recreational needs of future occupants of this dwelling, I observed at my site visit that this is some distance from the appeal site (in excess of 400 metres). Given its distance it would not compensate for a lack of private amenity space. The appellant's comment that future occupiers of the unit would not purchase the property if they felt that amenity space was unacceptable is noted. Nonetheless, it is necessary to ensure that future occupants are provided with adequate usable amenity space to ensure satisfactory living conditions, which would not be achieved in this case.
6. The proposed lounge/ kitchen would be served by 3 windows, 2 of which would be located close to boundary treatment which would restrict light levels to these openings. Whilst natural light to each window would be compromised by the proximity to boundary treatment, the combination of light sources would allow for adequate levels of natural light to this room. However, the limited separation between these windows and boundary treatment would restrict outlook from these windows creating an unwelcomed sense of enclosure. This would not be negated by the outlook from one of these windows being over the private amenity space. Consequently, the occupants of the proposed dwelling would experience restricted outlook which would make the room an unpleasant space within which to spend time in, to the detriment of future occupants.
7. The proposed north-facing kitchen window would be located on the site boundary and would overlook the side passageway which separates the appeal site and the neighbouring property and provides access to garages. Clear and direct views into this window would be gained by the users of this passageway. This does not comprise a public thoroughfare, and footfall within this passageway is likely to be light and limited to residents accessing garages. Nonetheless, during periods of use there would be likely to be a loss of privacy to this window, and given the open plan nature of the accommodation, the kitchen, living and dining spaces would be affected as a result.
8. Whilst not specified as a reason for refusal the Council raise concerns regarding the passageway access to the proposed dwelling. I observed during my site visit that this passageway is approximately 2 metres wide with reasonable light levels and could comfortably serve the access requirements for future occupants. I have been presented with no compelling evidence which sets out why such an access would be unacceptable in terms of security. I also note the appellant's willingness to provide appropriate lighting through an appropriately worded condition.

9. For the foregoing reasons, whilst I have found that the proposed site access would be acceptable, the proposal would fail to provide satisfactory living conditions for the future occupiers in regard to amenity space provision, privacy and outlook, contrary to those aims of The London Plan (2021) (LP) Policies D3 and D6, and Ealing Development Management Development Plan Document (2013) (DPD) Policies 7.4, 7B and 7D that, among other matters, seek to ensure that development is provided with adequate usable amenity space and that housing developments are comfortable and functional and achieve a high standard of amenity. I also find conflict with paragraph 130 of the National Planning Policy Framework (the Framework) which requires that places are designed with a high standard of amenity for future users.

Living conditions of neighbouring residents

10. The proposed dwelling would contain windows within the west-facing elevation at ground and first floors. These windows would be located close to the boundary with No 26 The Park. I note that the ground floor window would not result in overlooking given its height and siting close to boundary treatment. The first floor window shows frosted/obscure glass, which could be secured by condition, including a non-opening nature, which would restrict overlooking of No 26 The Park. As this window serves internal circulation space this would seem reasonable. Additionally, I note that the proposed dwelling has been designed to minimise the overbearing impact on and loss of light to neighbouring properties.
11. I therefore find that the proposed dwelling would not harm the living conditions of the occupants of No 26 The Park through loss of privacy. Therefore, the proposal accords with those aims of LP Policy D6, Policies 1.1, 1.2 and 4.1 of the Ealing Development Strategy 2026 Development Plan Document (2012) (EDSDPD) and DPD Policies ELV 7.4 and 7.B that seek, among other things, to ensure that development achieves high standards of amenity for adjacent users. I also find no conflict with paragraph 130 of the Framework which requires that developments ensure a high standard of amenity for existing users.

Character and appearance

12. No 23 Kenilworth Road is a large 3 storey semi-detached dwelling. The building is located within a streetscene of similarly large detached and semi-detached properties which are set back from the road. Planting within the road and within front gardens gives the area a green and spacious character. Views of private rear gardens cannot be gained from the building frontages.
13. Part of the appeal site is in the Ealing Common Conservation Area (CA). The CA encompasses the host dwelling, rear amenity space and side passageway but excludes the garage, which would be demolished as part of this proposal, and the adjoining studio building. The CA encompasses Ealing Common and many of the residential roads surrounding it. The Ealing Common Conservation Area Character Appraisal (ECCACA) (2009) notes that the prevailing suburban character of the CA is formed by Victorian and Edwardian residential properties and identifies 4 separate character areas. The appeal site is located within the west character area, in which dwellings, whilst substantial in size, are more tightly-arranged than dwellings elsewhere in the CA. The design and layout of dwellings here make a positive contribution to the character and appearance of the CA which also appears to be a key part of its significance. Whilst there is

evidence from the road that the appeal property has been subdivided to form 6 self-contained flats, in terms of bin storage, nonetheless it makes a positive contribution to the CA.

14. The Ealing Common Conservation Area Management Plan (ECCAMP) (2009) states that the generous plots in which houses are sited within some residential streets within the CA is one of the outstanding characteristics of the CA and all aspects of this openness will be protected. The ECCAMP goes on to state that existing open spaces and gardens will preferably be maintained, and their improvement will be sought.
15. The proposal would result in the loss of an area of garden space to the rear of the host dwelling and would comprise backland development. The subdivision of the garden would conflict with the garden retention aims of the ECCAMP. Notwithstanding the fact that the appeal site is located within one of the more tightly-arranged character areas of the CA, part of the site currently comprises a garage and the loss of garden land would therefore be limited in area. Furthermore, based on my observations on site, this existing garden is not visible from the road and is well screened and its contribution to the quality of the environment is limited. It therefore has limited impact on the character and appearance of the CA. Consequently, the loss of garden space and the creation of an additional dwelling with a garden which would be smaller than others in the area would not be harmful to the character and appearance of the CA.
16. Although the new dwelling would be within a smaller plot compared to nearby development, it would not be seen in views from the road and would not disrupt the rhythm of the streetscape. It would also be well screened by existing structures and vegetation in views from neighbouring dwellings. Therefore, the effect of the proposal on the character and appearance of the surrounding area and the CA would be limited. Additionally, I find that the modern design of the proposed dwelling, and the proposed palette of materials would not be entirely inappropriate to the site setting.
17. Statute requires that I pay special regard to the desirability of preserving a listed building or its setting². The ECCACA notes that neighbouring property 26 The Park is grade II listed. There is no indication that the site has any form of historic significance in association with 26 The Park, noting that this property, along with the other dwellings in this row, were created in a different aesthetic and appear to pre-date the appeal site and the other dwellings on Kenilworth Road. The proposed dwelling would be located to the rear of the site and would adjoin an existing outbuilding of a similar scale and its impact on the setting of this listed building would be limited. Consequently, the proposed development would preserve the setting of this listed building.
18. As the appeal property is within a Conservation Area, I have therefore had special regard to section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). For the reasons set out above I consider that the proposal would preserve the character and appearance of the CA.
19. For these reasons I conclude that the proposed dwelling would not have a harmful effect on the character and appearance of the area or the Ealing Common CA. I therefore find no conflict with those aims of LP Policies D3 and

² Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

HC1 or DPD Policies 7.4, 7B and 7C, which, among other matters, seek to ensure that development complements local character and conserves the significance of heritage assets. I also find no conflict with the Framework, which requires that great weight should be given to the conservation of heritage assets.

Planning Balance

20. The Council has confirmed that it is not able to conclusively demonstrate a five-year supply of deliverable housing sites. I have no reason to take an alternative view. As the proposal involves the provision of housing, Footnote 8 of the Framework indicates the most important policies for determining the appeal are deemed to be out of date and paragraph 11. d) ii. of the Framework is engaged. This requires that 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.
21. The Framework expects developments to create places which promote health and well-being with a high standard of amenity for existing and future users and for the reasons identified this would not be achieved by the proposed development. The conflict between the proposal and LP Policies D3 and D6, and DPD Policies 7.4, 7B and 7D, which are consistent with the Framework, should be given significant weight in this appeal.
22. I acknowledge that the construction of one dwelling would make a small contribution towards the district's housing supply and whilst supporting the Government's objective is to significantly boost the supply of homes, given the quantum of development, such benefit would be limited. There would be short-term economic benefits associated with construction and Council tax revenues in the longer term. Additionally, the site is well-located in relation to local services and facilities and public transport. In light of the shortfall in the Council's five-year housing land supply, I attach moderate weight to the development's positive contributions to the social and economic objectives of the Framework.
23. Consequently, the adverse impacts on the living conditions of the future occupiers demonstrably outweighs the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply

Conclusion

24. I find in favour of the appeal proposal in relation to the issue of character and appearance and the effect on the living conditions of neighbouring occupants. However, the appeal proposal would not provide future occupants with satisfactory living conditions. Consequently, it fails to accord with the development plan taken as a whole. Therefore, for the reasons given above, the appeal should be dismissed.

Nichola Robinson

INSPECTOR