



Appeal Decision

Site visit made on 27 September 2022

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2022

Appeal Ref: APP/M5450/W/22/3297295

Land to the rear of 166 and 168 Whitchurch Lane, Edgware HA8 6QL

- 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 G Sewell of Clovercourtblaise Limited against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/4948/21, dated 20 December 2021, was refused by notice dated 23 March 2022.
 - The development proposed is erection of a two storey dwelling with car parking, garden, cycle and bin storage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal accords with the Council's locational strategy for residential development, in particular in relation to the use of garden land to facilitate the proposal;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of the occupants of Nos 162, 164 and 168 Whitchurch Lane with particular regard to privacy, outlook and light; and
 - Whether the proposal would provide adequate living conditions for the future occupiers with particular regard to light levels and outlook.

Reasons

The development of garden land

3. The proposed dwelling would be located on land to the rear of Nos 166 and 168 Whitchurch Lane. This area has been separated from the rear gardens of these properties by boundary treatment.
4. Policy CS1 of the Harrow Core Strategy (2012) (CS) sets out that the Harrow and Wealdstone Intensification Area, town centres and strategic previously developed 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.

5. I acknowledge the age of the CS and that the National Planning Policy Framework (the Framework) and London Plan (2021) (LP) have been adopted in the interim. Nevertheless, I am satisfied that CS Policy CS1 is consistent with 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. Therefore, the CS should be given full weight in the determination of this appeal.
6. The Supplementary Planning Document Garden Land Development (2013) (GLSPD) aims to assist in the interpretation and application of existing policies which encourage development on allocated sites in accordance with the CS to ensure that it is effective in preventing new residential development on garden land. The GLSPD sets out that garden land includes gardens of houses and any land that formed part of a garden, but which has been legally and/or physically severed from the donor property(ies). It also states that gardens within the curtilage of commercial premises, such as offices and public houses, will not be treated as garden land.
7. The appellant states that the property and associated land is sui generis mixed use following the grant of a certificate of lawful existing use¹ and remains as one single planning unit. Given this mixed commercial use the appellant states that the site is not garden land as defined by the GLSPD. I have been provided with a copy of the decision notice for the certificate of lawful existing use which confirms that the lawful use of 166 Whitchurch Lane is for a 'mixed use comprising dentists residence and a dental surgery within the ground floor of the side extension'. Therefore, the commercial use of 166 Whitchurch Lane relates to the side extension of the property only and the rest of the dwelling remains in residential use. This is evidenced in the floor plans which accompanied the certificate of lawful existing use, of which I have also been provided a copy. Furthermore, this commercial use does not cover 168 Whitchurch Lane and the site comprises parts of 2 separate planning units.
8. Therefore, whilst the land is physically severed from 166 and 168 Whitchurch Lane and is not currently in use as a garden, the appeal site is currently part of, and within, the garden of a residential property. As it does not fall within any of the exceptions listed, the site meets the definition of garden land as set out in GLSPD paragraph 3.1 criterion e.
9. Garden land development is defined in the GLSPD 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 one new dwelling on an area of garden land, it would meet this definition.
10. Accordingly, the appeal site is not suitably located for new housing as it does not accord with the Council's housing strategy. The proposed development would therefore be contrary to those aims of Policies CS1 of the CS, which collectively aim to secure appropriately located development and seek to resist garden land development. The proposed development would also conflict with the guidance set out in the GLSPD which supports the implementation of these policies and the National Planning Policy Framework (the Framework) concerning the delivery of a sufficient supply of homes.

¹ Ref: P/0675/09

Character and appearance

11. The appeal site comprises land to the rear of 166 and 168 Whitchurch Lane which are located on a corner plot at the junction between Whitchurch Lane and Whitchurch Avenue. 166 and 168 Whitchurch Lane are two storey semi-detached dwellings. Whilst there is some variation in building form and height, including the 3-storey block of flats at Whitchurch Avenue to the south of the site, the resonating character consists of traditional 2 storey semi-detached properties which are set back from the highway. This part of Whitchurch Avenue accommodates the side and rear elevations of dwellings on Whitchurch Lane and Whitchurch Avenue and does not contain any building frontages. The large gaps between the buildings inform the character of the street scene.
12. The proposed dwelling would be a small modern detached dwelling with a flat roof which would accommodate car parking within an under-croft area to the front. The dwelling would front Whitchurch Avenue with a small set back from the highway. This would be at odds with the prevailing pattern of development in the area in which there are no other buildings fronting this part of Whitchurch Avenue. This would also be contrary to the established character of the surrounding area in which dwellings are generally semi-detached with frontages which are well set back from the highway.
13. The elevations show expanses of light timber and render. The proposed dwelling would be smaller than other properties in the surrounding area and the modern design and palette of materials would look out of place within the traditional surrounding area. The flat roof design, overhang to the first floor and undercroft parking area would appear entirely at odds with the traditional neighbouring development. The proposal would therefore result in harm to the character and appearance of the area, which would not be outweighed by the benefits of tidying up this site.
14. The proposal would conflict with those aims of LP Policy D3, CS Policy CS1 and Policy DM1 of the Harrow Development Management Policies Local Plan (2013) (HDMP) which seeks to ensure that development achieves a high standard of design and is not detrimental to local character. In addition, it would not accord with the design principles set out in the Supplementary Planning Document: Residential Design Guide (2010) (RDG SPD) and the Framework which, amongst other things, seek to ensure development is well designed and sympathetic to local character.

Effect on the living conditions of neighbouring residents

15. The Council state that the proposed dwelling would be located 15 metres from the windowed rear elevation of 168 Whitchurch Lane, whilst the appellant states that this separation would be approximately 16.3 metres to the ground floor and 19.6 metres from the first floor of this property. Whilst there is disagreement on the exact separation distance between the 2 buildings, even if I were to take the smaller separation distance referred to by the Council, there would still be a reasonable level of separation between the two buildings to safeguard the outlook from windows in the rear elevation of 168 Whitchurch Lane and minimise any loss of light to these windows. Whilst the scale and siting of the proposed dwelling and its proximity to the site boundary would result in some loss of light to the rear garden to 168 Whitchurch Lane, this would be confined to the rear part of the garden and would not therefore be

significant in nature or compromise the living conditions of the occupants of this property.

16. Concern has been expressed that the development would result in perceived overlooking to the private rear gardens of 162 and 164 Whitchurch Lane. Given the separation distances and the mature vegetation to the site boundary, most of which would be retained as part of this proposal, the retention of which could be secured by condition, I consider that there would be no significant harm in this respect. Additionally, the inclusion of the proposed brise soleil and obscure glazing to the windows in the first floor rear elevation, which could also be secured by condition, would serve to further mitigate against perceived overlooking of these private rear gardens. Therefore, the proposal would not harm the living conditions of the occupants of 162 and 164 Whitchurch Lane through perceived overlooking.
17. I have found that the proposal would not harm the living conditions of the occupants of 162 and 164 Whitchurch Lane through loss of privacy or to 168 Whitchurch Lane through loss of outlook and daylight. Therefore, in regard to this main issue, the proposal would accord with those aims of LP Policy D3, and HDMP Policy DM1 which, amongst other things, require all development to deliver appropriate outlook, privacy and amenity to neighbours. Additionally, I find no conflict with the RDG SPD which requires new development is designed to ensure it does not cause an unreasonable loss of amenity to neighbouring residents. Similarly, I find no conflict with the Framework which seeks to ensure development is well designed with a high standard of amenity for existing and future users.

Living conditions for future occupiers

18. The rear first floor bedroom window would incorporate a brise soleil comprising fixed horizontal louvres to a height of 1.8 metres above floor level. The Council state that this fixture would restrict levels of natural light to this bedroom. Whilst light levels to this room would be limited by its north-easterly orientation, natural light would still enter the room throughout the day through the gaps in the louvres in addition to natural light from the glazed panel above the brise soleil. The proposed plans show that the occupants of the rear bedroom would have outlook over the proposed garden. Consequently, I find that outlook from this window would be satisfactory. Therefore, the proposal would provide adequate living conditions for the future occupiers.
19. In regard to this main issue, I conclude that future occupiers of the proposed development would be provided with satisfactory living conditions. The proposal therefore accords with LP Policies D3 and D6 and HDMP Policy DM1 which, amongst other things, require all development to deliver appropriate outlook, privacy and amenity. I also find no conflict with the RDG SPD which has similar aims, or with the Framework, which seeks to ensure development is well designed with a high standard of amenity for existing and future users.

Other Matters

20. The scheme would provide an additional residential unit which would boost the supply of housing in the area in line with national policy, the London Plan, and the long term aims of the council. Furthermore, the proposal would facilitate the delivery of housing on a small site, in an area which is located close to shops, services and areas of open space and has a good Public Transport

Accessibility Level rating. These benefits weigh in favour of the scheme. Additionally, I note that the proposal has been designed to achieve high standards of energy efficiency and makes adequate provision for private amenity space. These matters, however, do not outweigh my findings in respect of the main issues and the conflict I have found with the development plan.

Conclusion

21. I find no harm in respect of the living conditions of future occupiers and the effect of the proposal upon the living conditions of neighbouring residents. However, these are neutral matters and do not outweigh the harm to the character and appearance of the area and the Council's development strategy. Therefore, I conclude that the appeal scheme would be contrary to the development plan when taken as a whole. Accordingly, for the reasons above, and taking all other matters into account, the appeal should be dismissed.

Nichola Robinson

INSPECTOR