



Appeal Decision

Site visit made on 1 February 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2023

Appeal Ref: APP/N5090/W/22/3308002

Land at 33A Cromer Road and 2 Boleyn Way, Barnet EN5 5HT

- 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 Sevag Balkorkian, Stararkitekt Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/3469/FUL, dated 4 July 2022, was refused by notice dated 29 September 2022.
 - The development proposed is described as 'to erect timber fencing to separate our land from surrounding properties. We request permission from the Council to fence our property, which is located at 33a Cromer Road and 2 Boleyn Way. The fence's purpose is to protect our property from intruders and for security reasons related to the construction work that we plan on carrying out on our property. We want to request permission from the Council to fence the boundaries of our land to protect our property. The application is for permission to erect timber fencing to separate the plot from the surrounding land. We also need to remove the tree, which is not TPO protected, and the council has already approved the removal of the tree.'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are
 - (i) the effect of the proposal on the character and appearance of the area;
 - (ii) the effect of the proposal on trees; and
 - (iii) the effect of the proposal on the living conditions of the occupiers of 33A Cromer Road and 2 Boleyn Way with particular regard to outlook and light.

Reasons

Character and Appearance

3. The appeal site comprises an irregularly shaped area of grass with a large Oak tree at the junction of Boleyn Way and Cromer Road. These streets are generally characterised by terraced dwellings which are laid out either facing the streets behind relatively generous open frontages, or in groups arranged around central greenspaces. Further greenspaces are typically present to the sides of buildings on corners, and together with a large green between Cromer Road and Shaftesbury Avenue, these factors provide for a distinct impression of

spaciousness around the buildings which contrasts with the tighter-knit layout of development on streets to the south.

4. The appeal proposes timber fencing to all sides of the site, with a door in one of the sections facing towards Boleyn Way. The combined height and length of the fence would form a large, solid visual barrier that would notably restrict views across the site, and would result in an unusual degree of enclosure that would be at odds with the open greenspaces generally found to the sides of buildings on corners nearby. As a result, there would be a significant reduction in openness on the site, diminishing its contribution to the distinctive open character of the area. Furthermore, the enclosure around all sides of the site would separate it from its surroundings, and it would share no apparent connection with nearby buildings. In my view, this lack of relationship would be incongruous and visually jarring in the street scene. The site occupies a prominent corner location, and I find given these factors that the development would stand out as a discordant and obtrusive feature and that it would detract significantly from the character and appearance of the area.
5. In addition, the Oak tree on the site is subject to a Tree Preservation Order ('TPO'). Although the Council notes that the tree has been recently reduced in height, I saw that it is still of considerable height and is a prominent feature in the street scene. While I acknowledge that the TPO was served after the planning application was submitted, the tree complements other mature street trees that I observed nearby, and I consider that it makes a positive contribution to the character and appearance of the site and area. The removal of the tree as part of the proposal would obviate the contribution that it currently makes, further harming the character and appearance of the area.
6. The appellant refers to a fence at 56 Boleyn Way, but this is set in from the boundaries with the street so that there remains an open strip which maintains a degree of spaciousness around the corner. The fence at 35-41 Cromer Road does extend up to the boundary with the street, but this relationship is unusual, and in my view diminishes the otherwise spacious quality of the area. I do not have full details of the circumstances which led to the fence here, but I do not therefore consider that it is a type of development that should generally be replicated. Moreover, the fences at No 56 and Nos 35-41 adjoin the adjacent properties and appear to enclose their gardens. They are not therefore directly comparable to the appeal development where the site would be separate from neighbouring buildings. Consequently, these examples do not alter my assessment of the appeal proposal which I have considered on its own merits and found to be harmful.
7. Irrespective of the use of timber similar to other fences nearby, I conclude for these reasons that the proposal would cause unacceptable harm to the character and appearance of the area contrary to Policies CS1 and CS5 of the Core Strategy Development Plan Document 2012 ('the CS'), Policy DM01 of the Development Management Policies Development Plan Document 2012 ('the DMP'), and Policy D3 of the London Plan 2021 ('the LP'). Amongst other things, these policies require high quality design, development that respects local context and distinctive local character, and that trees are safeguarded.

Trees

8. In addition to contributing to the character and appearance of the area, I have no firm reason to doubt the Council's comments that Oak trees have very high

biodiversity values, nor that large canopy trees can assist in reducing the urban heat island effect and surface water flooding peaks. I have not been provided with substantive evidence to demonstrate that the Oak tree on the appeal site does not hold these general attributes, nor that its contribution is insignificant or would not be harmed. Irrespective of the presence of other trees nearby, I have insufficient evidence to find that the loss of the tree would not be likely to harm biodiversity, to increase surface water flooding risks, or to increase the urban heat island effect.

9. The appellant suggests that additional trees could be planted elsewhere, but I have no firm details of any proposals for planting which limits the weight that I can afford to this, and I cannot be sure that adequate compensation for the loss of the tree at the appeal site would be possible.
10. I appreciate that the tree was not protected by TPO at the time the planning application was submitted. Nevertheless, I conclude for the above reasons that the effect of the proposal on trees would be unacceptable, causing harm to biodiversity and to flood risk. Consequently, there would be conflict with Policies G6 and G7 of the LP and Policies DM01 and DM16 of the DMP insofar as they broadly seek to retain trees and require development that contributes to biodiversity including the retention of existing wildlife habitat and trees.

Living Conditions

11. The development includes fencing running along the full depth of the boundary of the site with the neighbouring dwellings at 2 Boleyn Way and 33A Cromer Road, stepping slightly beyond each of their front elevations. Separation between the fence and ground floor windows to the sides of these neighbours which face towards the site would be very limited, and it would project to a similar, if not greater, height as the top of the windows. In my judgement, its height and depth in such close proximity would cause a pronounced degree of enclosure that would significantly reduce opportunities for open views from the windows, and it would present a highly dominant and overbearing feature. As a consequence, I find that there would be significant harm to outlook for the occupiers of No 2 and No 33A.
12. Given its height, depth and proximity, the fence would also be likely to affect natural light to the adjacent windows. The appellant refers to daylight simulations for neighbouring properties provided as part of pre application advice, but these have not been submitted to me as part of the appeal. I am accordingly unable to determine that the development would have no significant effect on light levels to the neighbouring rooms.
13. I acknowledge that there are additional windows to the front of the neighbouring dwellings. Nevertheless, the windows facing the appeal site are large multi-pane bay windows which it seems to me would offer an important source of light and outlook for the rooms served, making a meaningful contribution to the quality of life of the occupiers currently. This contribution would be harmfully eroded by the proposal.
14. I observed reasonable separation between the windows to No 2 and No 33A and other nearby dwellings and footways, and I have not been provided with clear evidence to demonstrate that standards of privacy or security currently experienced by the occupiers of these dwellings are otherwise inadequate. In this context, I do not find that any greater sense of privacy or security resulting

from the development would outweigh the harm that I have identified to outlook and light so as to improve neighbouring living conditions overall.

15. I therefore conclude on this main issue that the development would cause unacceptable harm to the living conditions of the occupiers of 2 Boleyn Way and 33A Cromer Road through loss of outlook, and it has not been demonstrated that there would not be further harm through loss of light. The proposal would accordingly conflict with Policies D3 and D6 of the LP and Policy DM01 of the DMP which include requirements broadly for adequate daylight, sunlight, and outlook for adjoining occupiers.

Other Matters

16. The appellant advises that the proposal is intended to protect their property from intruders and for security reasons related to construction work, and I note comments about past damage and removal of trees at the site without consultation with the property owners. However, encroachment, property rights and the protection of land ownership interests and boundaries are private matters between the relevant parties rather than the responsibility of the Council, and other legal mechanisms for redress exist. There is also no firm evidence before me to indicate an unmet requirement for privacy on the site. In my assessment, the benefits of the proposal identified by the appellant would not outweigh the harm that I have found would be caused to the character and appearance of the area, to trees and to the living conditions of neighbouring occupiers.
17. I note the appellant has requested that the Council covers the costs of an impact assessment on the removal of the tree at the site and compensation for additional tree planting. However, the onus is on the appellant to provide adequate information to demonstrate that a proposal would be acceptable. The Council disputes the appellant's comments that their access to the Council's portal and submitted documentation had been blocked. In any event, my remit is focused on the planning merits of the appeal. The Council's administrative processes, decision to serve a TPO and timing of the service of the TPO do not affect my assessment of these planning merits, and are not matters for me to address as part of this appeal.

Conclusion

18. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR