



Appeal Decision

Site visit made on 7 March 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/Q5300/W/22/3299831

2-16 Burleigh Parade, Nursery, Burleigh Gardens, Southgate N14 5AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Osman Ismail (Lycium Properties) against the Council of the London Borough of Enfield.
 - The application 21/03492/FUL is dated 10 September 2021
 - The development proposed is the erection of a third floor rear extension to create a two bed self-contained flat
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a third floor rear extension to create a two bed self-contained flat at 2-16 Burleigh Parade, Nursery, Burleigh Gardens, Southgate N14 5AD in accordance with the terms of the application Ref 21/03492/FUL dated 10 September 2021, and subject to the conditions set out in Schedule 1 to this decision.

Application for Costs

2. An application for costs was made by Mr Osman Ismail (Lycium Properties) against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. Planning permission was granted on 27 January 2018 for a first and second floor extension to create two flats at the site by way of an appeal decision, a copy of which has been provided¹ (the Original Permission). The proposal relates to the construction of a third floor on top of this extension. The parties disagree as to whether the Original Permission was implemented within the required timeframe. In addition, the Council has stated that the pre-commencement conditions in the Original Permission have not been discharged.
4. Notwithstanding the above, I must decide the appeal as it is before me on its own merits. In the event that the Original Permission has not been lawfully implemented, other powers are available to the Council to address this issue.

Main Issue

5. The appeal was submitted due to the Council failing to make a decision within an agreed period of time. Based on the submitted policies, my site visit, and representations from the parties I consider the main issue to be the effect of the development on highway safety and parking.

¹ APP/Q5300/W/17/3186976

Reasons

6. The appeal site is a four-storey building on Burleigh Gardens, occupied at street level by a nursery with residential flats above. A rear projecting element contains garages at ground floor and three storeys of residential flats, the topmost of which is the subject of this appeal. It comprises a two-bedroom, three-person self-contained flat. Concerns have been raised by the Council that the proposal would lack a safe, shared pedestrian access, vehicle parking and refuse collection, giving rise to conditions prejudicial to the free flow and safety of vehicular traffic and unsafe pedestrian movements.
7. Pedestrian access to the proposal is taken from Burleigh Gardens, using the front entrance door serving those units above the nursery. From here, it is possible to access the flat via walkways serving other units. This route is well-used and overlooked by flats within the wider complex. It provides a convenient and dedicated access to the proposal that is separate from the vehicular entrance.
8. A chute on the communal stairwell, accessible from the proposal, transfers waste to a ground floor room. A dedicated external refuse storage area has also been provided. Both areas have direct access to the highway. While large bins would be located on the pavement awaiting collection, they would be set back from the main thoroughfare of Burleigh Gardens, with space in front and to the side of the entrance to the internal waste storage area that could accommodate their temporary placement without creating an undue obstruction. Accordingly there would be no significant implications for highway safety or the free and safe flow of pedestrians.
9. The Design and Access Statement outlines that one car parking space is provided in the street level garage. While plans show three garages, I observed that two of these are used in connection with the units below the proposal, which aligns with the Original Permission. As such, one garage, and therefore one parking space, is provided for use in connection with the proposal. This is located off Burleigh Gardens to the side of the site alongside other parking with adequate space for manoeuvring, such that its use would not give rise to highway safety concerns.
10. It is further proposed that a cycle space would be provided, however precise information on this is limited. I observed cycle parking in a dedicated area adjacent to the car park which is currently in use and am satisfied that it does not give rise to highway safety concerns. However, I do not have details on the number of cycle spaces currently in use to be certain that the proposed space could be accommodated in this area. Nevertheless, I am satisfied that this can be addressed by way of condition, requiring the submission of details to the Council on the proposed cycle parking connected with the proposal.
11. The site is located in a Controlled Parking Zone, and the Council has concerns that, in the absence of a planning obligation limiting the right of future occupiers to apply for parking permits, the proposal would contribute to parking congestion and fail to encourage use of sustainable forms of transport.
12. I noted the immediate area surrounding the site to be moderately parked at the time of my visit, albeit that this represents a snapshot in time. However, it is also well served by public transport links, with numerous bus stops and an underground station in close proximity. In addition, the surrounds provide a

wide variety of amenities that would support the day to day living of future occupiers of the proposal and that are easily reached on foot from the site.

13. Taken together with the fact that the proposal provides a dedicated off-road car parking space and has a limited occupancy, I do not consider that it would be likely to result in significant on-street parking that would impact the safe and efficient operation of the highway network. In addition, the provided cycle parking space and overall accessibility of the site to amenities and public transport would continue to encourage the use of sustainable modes of transport. For all of these reasons, I do not find a section 106 agreement restricting occupiers from applying for parking permits would be reasonable or necessary in this instance.
14. For the reasons given, the proposal would not have an adverse effect on highway safety or parking. As such, it would comply with Policy T4 of the London Plan 2021, Policies CP24 and 26 of the Enfield Core Strategy 2010 and Policies DMD47 and 48 of the Enfield Development Management Document 2014 insofar as they seek to ensure that development does not result in adverse transport impacts and provides adequate and safe routes for pedestrians and cyclists.

Other Matters

15. Concerns have been raised regarding the effect of the proposal on the views from Nos. 2c – 12c Burleigh Parade, and on the value of these properties. There is no right to a view within the planning system, and I note that the Council did not raise an objection to the effect of the proposal on the outlook from these properties. Based on my observations, I have no reason to disagree. The effect of a scheme on the value of private interests such as property value does not fall within the remit of the planning considerations.
16. While the Council has stated that it would have refused the proposal due to the absence of a legal agreement securing a construction and demolition management plan, as the proposal has now been constructed I have not considered this as an issue in this appeal.
17. The Council has cited Policies T6 and T6.1 of the London Plan 2021 in its suggested reasons for refusal, which relate to parking standards. However, I do not have any information before me on the applicable parking standards at the appeal site nor do I have any substantive evidence that the Council is opposed to the number of parking spaces provided as part of the proposal. In any event, for the reasons given above, I do not consider that the provided parking space would result in any negative effect on highway safety, parking congestion, or promotion of sustain transport modes. As such, any potential conflict with these policies is outweighed by this material consideration.

Conditions

18. I do not have evidence of conditions suggested by the Council in the event that the appeal is allowed. Conditions relating to the commencement of the development, and for it to be carried out in accordance with the plans, are not necessary as the appeal is retrospective.
19. In the interests of highway safety I have attached a condition to secure the proposed parking area for the use of current and future residents. I have tied this specifically to occupiers of the proposal rather than the wider surrounding

units to ensure that the development before me does not lead to increased on-street parking.

20. In addition, while reference is made to the provision of cycle parking, limited detail on this has been provided. Accordingly, Condition 2 is imposed to ensure that details of the cycle parking are approved and implemented to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matter before the development takes place. I have imposed timescales which I deem to be reasonable, and have sought the appellants views on these.

Conclusion

21. For the reasons given, the appeal is allowed, subject to the conditions at Schedule 1 to this decision.

C Rafferty

INSPECTOR

SCHEDULE 1 – CONDITIONS

1. The parking area forming part of the development shall only be used for the ancillary parking of private motor vehicles in connection with the occupation of the hereby approved development and shall not be used for any other purpose.
2. Unless within 6 months of the date of this decision a scheme for the cycle parking to be provided on site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the use of the site hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

END OF SCHEDULE