



Appeal Decision

Site visit made on 11 April 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2023

Appeal Ref: APP/N5090/W/22/3309697

28 Cheviot Gardens, Cricklewood, Barnet, London NW2 1QE

- 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 Marjaee against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/1495/FUL, dated 21 March 2022, was refused by notice dated 16 September 2022.
 - The development proposed is a first floor rear extension incorporating a dormer to provide conversion of a single family dwellinghouse to 3no self-contained units. Associated alterations to fenestration and front porch. Provision of amenity space, parking, cycle storage and refuse and recycling storage.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor rear extension incorporating a dormer to provide conversion of a single family dwellinghouse to 3no self-contained units. Associated alterations to fenestration and front porch. Provision of amenity space, parking, cycle storage and refuse and recycling storage at 28 Cheviot Gardens, Cricklewood, Barnet, London NW2 1QE in accordance with the terms of the application, Ref 22/1495/FUL, dated 21 March 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. On my site inspection I saw that construction was underway on extensions to the property that have already been granted planning permission. There were some differences between the previously approved plans that I have been provided, and the built situation, including the fenestration of the rear dormer extension. Consequently, I have determined the appeal on the proposed plans.
3. The Council have referred to the Draft Barnet Local Plan, dated 2021 Regulation 22 Submission version (DBLP), which they say was approved to be submitted for examination. The Council have not referred to any policies of the DBLP as being relevant to this proposal. As such, I have not determined the appeal against any policies of the DBLP.
4. In their Appeal Statement the appellant has referred to an alternative scheme for 2 no. flats. I have not been asked to consider any changes to the proposed plans. I have therefore determined the appeal based on the plans also considered by the Council.

Main Issues

5. The main issues are the effect of the proposals upon:

- the character and appearance of the property and the area, with particular regard to the proposed conversion of the property into 3 no. flats and the siting, scale and design of the proposed rear dormer roof extension; and,
- the living conditions of nearby occupiers with regard to noise and disturbance.

Reasons

Character and appearance

6. No. 28 Cheviot Gardens is a semi-detached property, located in a residential area predominantly containing similar two-storey semi-detached properties, with many having rear roof extensions. The appeal property has been extended to its front, side and rear elevations, including a large rear dormer roof extension across the majority of its rear roof.
7. Some of the semi-detached properties nearby have been converted to flats, mainly as 2 no. flats, and one as 3 no. flats. Policy DM01 of the Barnet's Local Plan (Development Management Policies) Development Plan Document, adopted September 2012 (DPD), states that the conversion of houses to flats is not normally acceptable, however in this case the Council has stated that they have no objection to the conversion of the property to flats in principle due to the number of other similar conversions nearby, with 2 no. flats said to be acceptable at the appeal property.
8. I note the concern in respect of the number of movements to and from the property, however limited evidence has been provided to substantiate this. Moreover, the comings and goings from the flats proposed would be unlikely to be discernible from the comings and goings likely associated with a multi-generational occupied dwelling, or 2 flats, which has been previously found to be acceptable to the Council.
9. From the outside the proposed conversion to 3 no. flats would appear little different to that of a house, particularly as there would only be one front entrance door. The appearance of the proposed front car parking and refuse areas, would be similar to others nearby, and whilst the subdivision of the rear garden would not be similar to that of a single dwelling, it would not be materially different to a sub divided garden serving flats.
10. The approved dormer roof extension is flush with the ridge height of the property and abuts the adjoining neighbour's party wall, it includes a small set-in at eaves level. The proposed additional rear dormer window would be sited above an extended part of the property; however, it would be much smaller in width and height compared with the existing dormer extension. It would also be positioned below its ridge line, would not be flush with the outer wall of the property, and set some distance above its eaves height.
11. The proposed dormer extension's simple rectangular design is representative of the appeal property's existing dormer extension and the many others on nearby rear roof slopes, that would be seen in the same context of the proposal. Furthermore, there would only be glimpsed views of it from Cheviot

Gardens between buildings, and its small scale and size, limits its overall effect upon the character and appearance of the host property and the area. Notwithstanding the additional dormer roof extension and taking into account the cumulative effect of extensions to the appeal property, this modest addition is not considered to be harmful to the character or appearance of the host property or the area.

12. The other external changes include alterations to the front entrance together with the proposed fenestration changes. These changes would relate well to the character and appearance of the property. It is noteworthy that the Council found similarly.
13. The proposal would respect the character and appearance of the property and the area, and would comply with the relevant parts of Policy DM01 of the DPD and Policies CS1 and CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document, adopted September 2012 (CS), which amongst other things seek high quality development that preserves or enhances the local character, creates accessible, safe and attractive environments, and respects the local context. The proposal would also be consistent with paragraph 130 of the National Planning Policy Framework (the Framework) by providing development that will function well and be sympathetic to the built environment. In addition, whilst the proposed dormer extension has some conflict with the Council's Residential Design Guide, Supplementary Planning Document, adopted October 2016 (RDG) in terms of its position relative to the property's outside wall, it is consistent with the objectives of the RDG to protect the character and appearance of the property and the area.
14. I do not find Policies D1 and D4 of The London Plan, adopted March 2021 (the LP) referred to by the Council as relevant to the proposal, as they are concerned with strategic development and strategic design analysis and review respectively.

Living conditions

15. Adjoining the appeal property is the attached semi, No. 26, with No.30, part of another pair of semi-detached properties to the opposite side. There are also other semi-detached properties both opposite the appeal site on Cheviot Gardens, along with those to the rear on Cumbrian Gardens, whose rear elevations abut the rear boundary of the site.
16. The proposal would take the front door of the property closer to No 30 as well as a new parking space. However, a garage at No 30 is located close to the party boundary and any comings and goings associated with the use of the property, including vehicular movements would be unlikely to cause noise and disturbance to the occupiers of this property given the separation distance between habitable accommodation and these features.
17. Moreover, the entrance door would be located at the far end of the host property, some distance from habitable accommodation at No 26 and it would be unlikely that occupiers of this property would be aware of the comings and goings to it. The use of the parking area to the front of the property would be more noticeable, but the provision of 3 car parking spaces and the likely vehicle movements would be unlikely to be any greater than those associated with the approved 2 flats on the site, or indeed a family sized dwelling.

18. Movements to the shared refuse area near to the front of No.26 would likely be increased for three separate units of accommodation, however, this is still likely to be on a relatively infrequent basis. Furthermore, refuse collection, would likely be weekly and the additional bins for collection and the associated disturbance involved would be unlikely to be objectionable in terms its effect upon nearby occupiers living conditions.
19. In addition, I note the appellants have proposed sound proofing for the proposed flats above the minimum standard required by Building Regulations, and this would also limit noise and disturbance to adjoining occupiers when the proposed flats would be occupied.
20. The location of the proposed ground floor flat's garden area, immediately to its rear elevation, is comparable with the location of the garden of the adjoining semi. The proposed first and second floor flats shared garden area would be located away from the rear elevations of the surrounding properties. In view of this, and given its existing use as a garden, this is unlikely to create noise and disturbance that would be harmful to the living conditions of any surrounding occupiers.
21. In view of the above, and in the absence of substantive evidence to indicate otherwise I conclude that the proposed development would not be an over intensive use of the property or result in unacceptable noise and disturbance to nearby occupiers. As a result, the proposal would provide acceptable living conditions for nearby occupiers and comply with Policy D3 and Policy D14 of the LP which amongst other things, requires new development to provide an appropriate amenity and avoid significant adverse noise impacts on health and quality of life. The proposal would also be consistent with paragraph 130 of the Framework that requires a high standard of amenity for existing and future users. In addition, the proposal would also be consistent with the RDG that seeks to ensure the conversion of houses into flats minimises the effects upon neighbouring properties and future residents. For similar reasons, the proposal is consistent with the Council's Sustainable Design and Construction, Supplementary Planning Document, adopted October 2016 (SDC) that seeks to ensure residential occupiers are not exposed to high levels of noise through inappropriate siting of development, incompatible neighbouring uses, and where appropriate mitigation is used, such as appropriate noise insulation.
22. The Council referred to the proposal being contrary to Policy DM01 of the DPD and Policies CS1 and CS5 of the CS, however these policies are mainly concerned with character and appearance, location, and scale of development. I did not regard these policies to be directly relevant to the issue of noise and disturbance in this case.

Other Matters

23. Although I have limited information before me, a neighbouring resident who has objected to the application has brought to my attention the effects of development at the appeal property, upon their health. Based on the information before me, this indicates they have a protected characteristic.
24. In light of this, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected

characteristic and people who do not share it. I have also had due regard to the Human Rights Act 1998 (HRA) which at Article 8, requires that decisions ensure respect for private and family life, and the home, Article 8 is also engaged in this case. In reaching my decision, I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.

25. I recognise the paramount importance of the neighbouring occupiers right to have their home, and private and family life respected and this is a primary consideration. Any adverse effects experienced from construction works as a result of this appeal proposal and from any ensuing use of the property as 3 no. flats are likely to interfere with the neighbouring occupier's rights in respect of their home, and private and family life. Any such impacts would weigh against the proposal in these respects.
26. I am also mindful that most of the concerns raised in respect of the effect upon their living conditions relate to ongoing works that are currently taking place to implement planning permissions that have already been granted permission. The effects of these are clearly distinct from the proposal that is before me to consider, and I am also mindful that there is other environmental legislation to control noise complaints, separate from the planning system. Nevertheless, I have had due regard to the effects of the appeal proposal over and above those existing works currently taking place upon the living conditions of neighbouring occupiers.
27. In my decision above, I found the effects of the use of the appeal property as 3 no. flats would not be harmful to the living conditions of nearby occupiers, in terms of noise and disturbance.
28. Regarding the effects from construction works, I have given consideration to imposing conditions to control the hours of construction works at the property and a construction management plan, although neither of which have been recommended by the Council. I have also not been made aware that there are any similar conditions imposed on the existing permissions at the appeal property. Taking this into account, together with the relatively limited operational development that is proposed as part of this appeal, along with its temporary nature, I conclude that it is not reasonable or necessary to impose such conditions in this case. Moreover, with works ongoing on the other permissions at the property, there would likely be enforceability issues for the Council in respect of any such conditions.
29. If planning permission were to be refused, the neighbouring occupier would still likely experience noise and disturbance associated with building works. Moreover, by allowing the proposal it would facilitate the delivery of 3 units of residential accommodation, a net gain of 2 units, that would contribute to the Government's plan to boost housing delivery. These factors weigh somewhat in favour of the proposal.
30. The associated temporary construction works, above those already approved and being undertaken, are unlikely to have a more harmful effect than the existing situation. Having regard to the legitimate and well-established planning policy aims in respect of providing housing in appropriate locations and living conditions, a refusal of permission would not be proportionate and necessary. Allowing this appeal would not unacceptably violate the

neighbouring occupier's rights under the HRA and would be consistent with my PSED duty contained in Section 149 of the Equality Act 2010.

31. I note the comments about the number of planning related applications on the appeal property; that new tenants may not be connected to the area; about potential fly tipping; erosion of community; that the property should be kept as a family home; that a hole has been made in the wall of the attached property; that work has already started at the site; lack of consultation with residents; whether British Gas label the appeal property as flats or a house; and that the developer has previously advised it was to be used as a family home. However, these points do not alter my conclusions on the appeal proposal.
32. It has been suggested that Cheviot Gardens is highly congested with frequent blocking of driveways, that 2 no. parking spaces is inadequate for the proposal, along with comments that the road is used as a short cut to access the A41, and that access for emergency vehicles could be difficult. However, 3 no. parking spaces are proposed in this case and the Highway Authority do not raise objections to the proposal in terms of its effect upon highway safety. Consequently, I am content there are no unacceptable highway safety impacts arising from the proposal.
33. I am also aware of concerns about the effect of the proposal upon local services and waste disposal, but I have no evidence before me that such impacts upon any local services would be unacceptable as a result of this proposal, or indeed that any mitigation would be required.
34. There is no evidence that the use of the property as 3 no. flats would create anti-social behaviour, therefore I am not persuaded that this is a reason to refuse the application.
35. The second floor flat, as do all the proposed units, meet their respective minimum sizes for such units and accord with the LP.
36. The proposed external materials are to match those already used on the property the subject of other planning permissions and I am content that the proposal having a matching appearance, would not be harmful to the character and appearance of the area.

Conditions

37. The schedule of planning conditions imposed below have been thoroughly assessed against the tests in paragraph 56 of the Framework, to ensure they are necessary, reasonable, related to planning and the development permitted, enforceable, and precise.
38. I have imposed the standard time implementation condition, together with an approved plans condition for certainty. In the interests of the visual amenity of the area and to comply with Policy DM01 conditions are necessary to ensure the external appearance of the extensions and alterations match the existing property and the refuse enclosure is of an appropriate design and appearance.
39. Conditions are reasonable and necessary to ensure adequate cycle and vehicle parking is provided in accordance with the proposed plans and retained in perpetuity, to comply with Policies T5, T6, and T6.1 of the LP, respectively. I have re-worded the suggested conditions to reflect the information that has already been submitted on the approved plans in respect of these conditions.

40. To ensure compliance with the SDC, conditions are imposed to require appropriate reductions in carbon emissions and water usage.
41. Whilst the Council sought a condition relating to the subdivision of the rear amenity areas, it was clear from the proposed ground floor plan how this was to be undertaken, consequently I have only conditioned the details of the boundary treatment to implement the curtilage subdivision, and to comply with Policy DM01 of the DPD.
42. A condition requiring sound proofing in accordance with the appellant's sound insulation report, which proposed sound insulation above the minimum standard required by Building Regulations is imposed below, and to comply with Policy DM01 of the DPD. The Council's recommended condition relating to complying with Part E of the Building Regulations was not deemed to be necessary as it repeated the separate regulatory requirement, which the proposal seeks to improve upon.
43. Although not recommended by the Council, a condition is referred to in the Officer report to restrict the use of the flat roof part of a single storey extension to ensure it was not used as a roof terrace. I do not find this to be necessary, given that the development must be carried out in accordance with the approved plan, which shows no access onto this flat roof. In any event, due to the size and siting of the flat roof, it is unlikely that it would be used as a balcony or roof garden.
44. The Council in the Officer report referred to a condition to restrict hours of use of construction works, however no such condition was recommended. For the reasons outlined above, it is not considered to be reasonable or necessary to impose a condition to this effect. Neither is a condition restricting window openings in the side of the dormer window hereby approved considered to be necessary, given that it would serve a flat.

Conclusion

45. For the reasons given above, considering the development plan as a whole and the Framework, and all relevant considerations, the appeal is allowed.

A Hunter

INSPECTOR

Schedule of Conditions

- 1) This development must be begun within three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Location Plan)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Ground Floor Plan)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed First Floor Plan)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Loft Floor Plan)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Roof Plan)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Front Elevation)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Rear Elevation)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Side Elevation)
 - LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Side Section)
- 3) The materials to be used in the external surfaces shall match those used on the existing building.
- 4) Prior to the first occupation of any of the 3 no. flats hereby approved, they shall all have been constructed to have 100% of the wholesome water supplied to them by the mains water infrastructure through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day. A fittings based approach shall be used to determine the water consumption of the proposed development. Any use of grey water and/or rainwater systems needs to be separate from the potable (wholesome) water system. The development shall be maintained as such in perpetuity thereafter.
- 5) Prior to the first occupation of any of the 3 no. flats hereby approved, they shall all have been constructed to incorporate carbon dioxide emission reduction measures which achieve a reduction of not less than 10% of carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations with details that shall have first been agreed in writing with the Local Planning Authority. The development shall be undertaken in accordance with the details agreed.
- 6) Before any of the 3 no. flats hereby approved are first occupied, the secure cycle parking facilities on plan no. LCENG-DRG-502-28-NW2 1QE Rev 0 (Proposed Ground Floor Plan) shall be provided and made available for use and shall thereafter be retained in perpetuity.
- 7) Before any of the development hereby permitted is first occupied the parking spaces shown on the approved plan no. LCENG-DRG-402-28-NW2 1QE Rev 0 (Proposed Ground Floor Plan) shall be provided and maintained as such in perpetuity.
- 8) Before occupation of any of the 3 no. flats hereby approved, detailed drawings of the enclosures and screening of the refuse storage areas shall be submitted

to and agreed in writing with the Local Planning Authority together with a timetable for their implementation. Thereafter the development shall be undertaken in accordance with the details agreed.

- 9) Before occupation of the 3 no. flats hereby approved, details of the boundary treatment to subdivide the rear garden as shown on approved plan no. LCENG-DRG-402-28-NW2 1QE Rev 0 (Proposed Ground Floor Plan) shall be submitted to and agreed in writing with the Local Planning Authority together with a timetable for implementation. The development shall be carried out in accordance with the approved scheme.
- 10) The development hereby approved shall be undertaken in accordance with Section 4. Conclusions, of the Sound Insulation Improvements Technical Note prepared by Lotus Chartered Engineers ref. LCENG-28-NW2 1QE-TN01 Rev O dated June 2022.