



Appeal Decision

Site visit made on 22 May 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Appeal Ref: APP/N5090/W/22/3313285

Warwick Court, Birkbeck Road, Mill Hill, Barnet, London NW7 4BL

- 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 R Childs of Whymark Moulton Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/4639/RCU, dated 15 September 2022, was refused by notice dated 10 November 2022.
 - The development proposed is a first floor rear extension. Alterations and extension to roof including raising the roof ridge height, partial hip to gable to both sides and front dormer window. Associated alterations to fenestration to side elevations to provide 1no additional self-contained flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner above has been taken from the decision notice as both parties have made me aware of their agreement for it to be changed from that stated originally on the application form. I have, however, deleted reference to 'retrospective application' as that is not an act of development.
3. On my site inspection I saw that the proposed development had been substantially completed, although there are some inconsistencies between the proposed plans and the built situation including to the rear roof design, and the balcony detail. Consequently, I have assessed the appeal against the proposed plans.
4. The extensive planning history for the appeal site is set out in the appellant's evidence, and where relevant I shall have regard to it in my decision.
5. Part of the proposed development, the 1 bed self-contained flat, the raising of the roof ridge height; partial hip to gable to both sides of the main building, and the front dormer; have already been granted planning permission at appeal¹. Subsequent alterations and extensions to the rear of the property were also allowed at appeal² (the 'most recently allowed scheme'). Works have already commenced on both of these permissions.
6. This appeal proposal differs from the most recently allowed scheme, in respect of the previously approved glazed balconies at first and second floor would be replaced by bricked walls that would also be extended rearwards at second

¹ Ref: APP/N5090/W/18/3205455

² Ref: APP/N5090/W/21/3286279

floor level bringing the ground floor, first floor and second floor levels all in line, with an extended roof featuring a half hip and the installation of solar panels on part of the extended roof area. My assessment of the appeal proposal is limited to those extensions and alterations that do not have planning permission.

7. 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, however they have not relied on any of its policies in its submissions. As such, I have not determined the appeal against any policies of the DBLP.

Main Issues

8. The main issues are the effect of the proposed development upon:
 - the character and appearance of the host property and the area, with particular regard to its siting, scale, and design; and,
 - the living conditions of neighbouring occupiers, with particular regard to outlook.

Reasons

Character and appearance

9. The appeal property contains a much-altered detached building used as flats; it has two flats at both ground and first floor level and a flat currently under construction at second floor level. The property faces onto Birkbeck Road, in an established residential area comprising mainly two storey properties, with an open grassed area to its rear side. The alterations and extension already undertaken to the property make it appear somewhat different to the other properties nearby.
10. There are two storey rear outriggers on the properties to either side of the appeal site, however these are shared with, and straddle the boundaries to their attached properties. These outriggers extend across only part of their rear elevations and have a relatively narrow span. The ridge heights of the outriggers are also lower than the main roof ridges and portray a subordinate relationship.
11. Although the proposal is broadly in line with the projection of other two-storey outriggers on neighbouring properties, by virtue of its three-storey scale and design, height and location, together with its span across the building's entire rear elevation, the massing and bulk of the proposal would be significantly increased. The tall expansive brickwork would contrast poorly against the mainly graduated rear elevations of neighbouring properties, which feature extensions generally lowering as they extend outwards.
12. Whilst a half-hip roof design is proposed, this on its own would not offset the harm from the increased scale, mass, and bulk of the proposal in this location.
13. The proposed extensions and alterations to the rear of the building would be partially visible from Shakespeare Road, and from neighbouring properties. The proposal by virtue of its siting, scale and design would not harmonise with the appeal property or the nearby buildings, views would be particularly jarring and

harmful to the character with the appearance of the appeal property and the area.

14. I acknowledge that my judgement on this aspect differs from that of the Inspector on the most recently allowed scheme, but the proposal before me has also significantly changed, particularly the increased scale and mass of the rear proposals and the extended roof design. Consequently, I am satisfied that the proposal has changed sufficiently from the most recently allowed scheme.
15. The proposed solar panels would be discretely located on one side of the building and would be unlikely to be visible from public viewpoints, there are no objections to them in terms of their effect upon the character and appearance of the building or the area. It is also noteworthy that the Council also did not raise objections to these aspects of the scheme. However, with them being dependent upon the proposed roof extension the subject of this appeal being permitted, to which I have identified harm, this aspect is not severable from the other parts of the proposal before me.
16. For the above reasons, I conclude that the proposed extensions and alterations would be harmful to the character and appearance of the property and the area, and would conflict with the relevant parts of Policy D3 of The London Plan, adopted March 2021 (the LP), Policy DM01 of the Barnet's Development Management Policies Development Plan Document, dated 2012 (DPD) and Policy 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 and responds to the distinctive built form of an area, creates attractive environments, and respects the local context. The proposal would also be inconsistent with paragraph 130 of the National Planning Policy Framework (the Framework) which seeks development that will function well and be sympathetic to the built environment.
17. In addition, the proposal would be inconsistent with the Council's Residential Design Guide, Supplementary Planning Document, adopted October 2016 (RDG) that requires new development to respond to the pattern and scale of surrounding built development.
18. I did not find the proposal to conflict with Policies D1, D4, D5, or D6 of The London Plan, adopted March 2021 (the LP). Policy D1 is concerned with plan making, Policy D4 relates to strategic design analysis and review, Policy D5 is focussed on accessible and inclusive design and Policy D6 relates to residential housing standards. Consequently, these policies were not determinative on this issue.

Living Conditions

19. The adjoining occupiers at no's 89 and 93 Birkbeck Road, to either side of the appeal site are most likely to be affected by the proposed rear extension and alterations.
20. No. 89 Birkbeck Road has its flank wall abutting the appeal site with a tall boundary fence separating its rear garden with the appeal property. Its rear elevation would be set some way behind the extent of the proposed rear extension. On its main rear elevation is a large first floor window, which has its outrigger to one side. This window is very close to the flank wall of the appeal

property, as a result the proposed scale and massing of the expansive brickwork, combined with its outrigger being to the opposite side, would be harmful to the outlook from this window. It would also result in a strong sense of enclosure from within the room that window serves.

21. My findings in this respect are different from the most recently allowed scheme, however, that is due to the increased projection of the rear extensions and the additional bulk and massing at first and second floor level. Again, I am satisfied that the effect of this proposal is significantly different from that of the most recently allowed scheme.
22. There are also two windows on the side of No.89's outrigger facing the appeal property (one is smaller and obscure glazed), and a conservatory to the side of the outrigger abutting the boundary to the appeal property. Considering the most recently allowed scheme, the separation distances and their position, the additional scale and mass of the proposals would not be harmful to the outlook from these openings, nor would there be any significant change in terms of an enclosing effect upon these openings.
23. No. 93 Birkbeck Road is a semi-detached property which is separated from the appeal property by a tall boundary fence. Each property has a small amount of space to either side of this fence. The proposal would extend beyond no. 93's main rear elevation. Between its outrigger and the appeal site is a large rear first floor window, likely to be affected the most by the proposal. I saw on site that this window is set some distance away from the property's flank wall. In view of this, and the separation to the proposal, the outlook from that window would not be unacceptably affected by it. Nor would there be an unacceptable sense of enclosure from that window, which faces towards the open land to the rear. Moreover, given the relationship of the appeal property to No. 93 and its other side and rear facing windows, the outlook from them would not be changed to a degree that would harm the living conditions of the occupiers of this property.
24. Whilst noting the representations raised in respect of loss of privacy, I am satisfied that given the relationship to nearby properties that the proposal would not increase overlooking over and above the existing situation, which has previously been found to be acceptable. It is noteworthy that the Council found similarly in this regard.
25. In view of the above, the proposed development would have an unacceptable effect upon the outlook of neighbouring occupiers at No 89 Birkbeck Road, which would be harmful to their living conditions and conflict with Policy D3 of the LP and Policy DM01 of the DPD, which amongst other things, requires new development to provide an appropriate outlook, particularly for adjoining and potential occupiers and users. The proposal would also be inconsistent 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 contrary to the RDG that seeks to ensure new development does not unduly affect outlook.
26. The Council's reason for refusal refers to the proposed development being contrary to Policies D4 and D5 of the LP and Policy CS5 of the CS. As these policies address design review, inclusive design, and character and appearance respectively, they were not determinative in terms of the effect of the proposals on living conditions in this case.

Other Matters

27. The comments about the timing of the Council's site visit and whether their reasons for refusal are copied from an earlier decision, does not relate to the planning merits of the proposal. The appellant could contact the Council separately if they are dissatisfied with their handling of the planning application.
28. I am content that I have been made aware of the relevant planning history by the appellant, and whether the application was given a retention and continued use application prefix or not, this does not affect the planning merits of the proposal before me.
29. The environmentally friendly design features to reduce energy use and water consumption along with there being no public right of access to the grassed area behind the appeal site belonging to St Joseph's school are noted, but these points do not alter my findings or the identified conflict with the development plan.
30. Although there are no objections raised regarding the size of the accommodation proposed, or the level of amenity space, these are policy requirements of the development plan and are neutral factors in my decision.
31. It is noted that extensive consultation with residents was undertaken by the Council resulting in 5 no. responses from local residents; that some of the objections were raised from occupiers on the opposite side of the road who may not be able to see the proposals to the rear of the appeal property from their particular properties; that the appellant has sought to engage with the occupiers of neighbouring properties, and not all the surrounding occupiers have objected to the proposal. Be that as it may, these points do not alter my conclusions.
32. The absence of harm in respect of privacy is a neutral matter which does not weigh in favour of the proposal as this would be expected of any well-designed development.

Conclusion

33. For the reasons outlined above, the proposed development conflicts with the development plan taken as a whole. There are no other considerations which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

A Hunter

INSPECTOR