



Appeal Decision

Site visit made on 18 July 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2023

Appeal Ref: APP/T5720/W/22/3311771

96 Tavistock Crescent, Mitcham CR4 1QG

- 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 Shah against the Council of the London Borough of Merton.
 - The application Ref 21/P2584, is dated 28 June 2021.
 - The development proposed is demolition of existing garage in the rear garden and construction of a new 1 bedroom (studio) self-contained dwelling.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing garage in the rear garden and construction of a new 1 bedroom (studio) self-contained dwelling is refused.

Preliminary Matters

2. The appeal follows the Council's failure to determine the respective planning application. In response to the lodging of the appeal, the Council have provided an officer report which confirms that had it determined the application it would have refused it on 5 grounds. The appellant has had the opportunity to respond to these grounds and therefore, whilst no comments have been provided, they would not be prejudiced by my taking such matters into account and for them forming the main issues.
3. The description of development given on the application and appeal forms is the 'demolition of existing garage in the rear garden and construction of a new 1 bedroom (studio) self-contained flat'. The appellant has, however, stated that it should be noted that what is sought is the erection of a detached one-bedroom dwelling. Furthermore, the Council have described and assessed the proposal, within the officer report, as a one-bedroom self-contained dwelling. Accordingly, in the banner heading above, I have replaced 'flat' with 'dwelling' so that it better reflects the appeal proposal and have determined the appeal on that basis.
4. The appellant has submitted revised and additional plans as part of the appeal, on which the Council has had an opportunity to comment. The amended plans are minor, introducing two small rooflights in the rear roof plane, and do not alter the original site layout or the scale of the development. The additional section plan shows the ceiling heights within the rooms. I am satisfied that no party would be prejudiced by my taking Drawing Nos. AWA/1070/05 Rev A, AWA/1070/06 Rev A, AWA/1070/09 Rev A and AWA/1070/10 into account. I have made my decision on that basis.

Main Issues

5. The main issues are:

- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on the living conditions of neighbouring occupants, with particular regard to outlook and privacy;
- Whether adequate living conditions of future occupants would be provided, with particular regard to ceiling height and private amenity space;
- Whether the proposal would comply with sustainable construction requirements; and
- Whether the proposal makes adequate provision for waste and recycling storage and collection facilities.

Reasons

Character and appearance

6. The appeal site contains a single pitched roof garage and forms part of the rear garden of 96 Tavistock Crescent that backs onto the rear garden of a property on Yorkshire Road. The garage is accessed off Nineteenth Road, a relatively short side street, which, I noted on my site visit, was well maintained and not unwelcoming despite it being flanked by tall boundary treatments and narrow in width.
7. Whilst there is some variation to the design of properties in the surrounding area, the predominant character comprises two-storey terraced and semi-detached, pitched roof dwellings of similar proportions. The properties on Tavistock Crescent and Yorkshire Road are laid out in a linear pattern set back from the road behind small front gardens and with a generally consistent plot size. Nineteenth Road, from which the proposal would gain access, currently does not have any dwellings fronting onto it.
8. The siting of the proposed dwelling would be at odds with this pattern of development and would give rise to a cramped appearance, due to the limited space around it and its proximity to the side and rear boundaries of adjoining properties. Furthermore, the proposed single storey dwelling with a partially hipped roof would be in marked contrast with the two-storey pitched roof appearance of the surrounding houses.
9. Overall, the proposal would have a jarring and unacceptable relationship with the street scene which would harm the character and appearance of the area. Such harm would not be reduced through the use of matching materials and the retention of a 1.8m boundary wall to match the existing, as proposed.
10. My attention has been drawn to development on Berkshire Way. However, the plot sizes and two storey nature of the more recent development sit comfortably within its context and in that regard differs from the case before me. The existence of such development does not, therefore, weigh in favour of the appeal proposal which I have determined on its individual planning merits.

11. Therefore, the proposal would cause unacceptable harm to the character and appearance of the area, contrary to the design aims of Policy DMD2 of the Sites and Policies Plan (2014) (SPP), Policies D3 and D4 of the London Plan 2021 (LP) and Policy CS14 of the LDF Core Planning Strategy (2011) (CPS).

Living conditions of neighbouring occupants

12. The siting of the proposal would result in it being close to the boundary of the short rear garden of 96 Tavistock Crescent. The overall height of the proposal would be greater than the boundary treatment and the resultant building would have an enclosing and dominating effect on the outlook from the rear facing windows and the garden of that property. Consequently, the proposal would create an unacceptable visual intrusion which would be detrimental to occupants' enjoyment of the rear garden, and unacceptably affect the outlook from their rear windows.
13. The erection of a suitable boundary treatment, which could be secured by condition, would prevent overlooking and loss of privacy from the proposed ground floor windows to any neighbouring occupants. In addition, the submitted section plan shows that the roof lights in the rear roof plane would be above head height and, therefore, would not enable the overlooking of neighbouring properties thereby ensuring that a material loss of privacy does not arise.
14. The proposed front dormer windows would, however, look across Nineteenth Road, towards the rear garden of 94 Tavistock Crescent. Whilst overlooking of rear gardens is typical and accepted within most residential areas, in this case the separation distance that would be attained would be notably shorter than between the rear facing windows of the existing dwellings on Yorkshire Road and the private garden of No 94. As such a comparable level of overlooking of the rear garden of No 94 does not already exist and the consequent loss of privacy from the appeal proposal would be detrimental to the living conditions of the occupiers of that property.
15. Accordingly, the proposal would be harmful to the living conditions of neighbouring occupants, with particular regard to outlook and privacy, contrary to SPP Policy DMD2 which seek to achieve high quality design and the protection of amenity within the borough.

Living conditions of future occupants

16. The Technical Housing Standards – Nationally Described Space Standard (THS) sets minimum standards for floor to ceiling height of 2.3m for at least 75% of the Gross Internal Area (GIA). However, LP Policy D6 is more stringent, requiring that at least 75% of the GIA of a dwelling has a ceiling height of at least 2.5m. The section plan submitted during the appeal shows that a ceiling height of 2.5m is not achieved in any part of the proposed dwelling. Furthermore, less than 75% of the GIA would have a ceiling height of 2.3m given that the majority of the first-floor area is lower than that height. It is therefore apparent that neither the requirements of LP Policy D6 or the THS standard would be achieved in this regard.
17. SPP Policy DMD2 states that proposals for all development will be expected to meet several criteria. One criterion is the provision of outdoor amenity spaces which accords with appropriate minimum standards which, at paragraph 6.17,

is defined as a minimum garden area of 50sqm for all new houses. The amount of amenity space as proposed would fall significantly short of this requirement even when the front and rear garden areas are combined. Whilst one bedroom accommodation is proposed, and it is therefore not suitable for a family, the shortfall of amenity space would unacceptably compromise the living conditions of future occupants.

18. I therefore conclude that the proposal would not provide adequate living conditions for future occupants, with particular regard to ceiling height and private amenity space. Consequently, it would not accord with SPP Policy DMD2, LP Policy D6 and the THS which seek to ensure residential development achieves a good standard of accommodation for its occupiers and which adheres to minimum space standards.

Sustainability Construction

19. CS Policy CS15 sets an expectation for all minor and major development proposals to make effective use of resources and materials, and minimise water use and carbon dioxide as well as achieving Code for Sustainable Homes Level 4. LP Policy SI5 also requires development proposals to incorporate water saving and recycling measures.
20. There is a lack of substantial evidence with the appeal submission with regards to such matters and therefore I cannot be certain that the proposed development would comply with the provisions of the policies. Additionally, given the degree of uncertainty, the use of conditions to address this issue would not be reasonable in this case.
21. Therefore, the proposal would not comply with sustainable construction requirements and would therefore be contrary to CS Policy CS15 and LP Policy SI5.
22. As the proposal is not major development the requirements of LP SI2 do not apply. The proposed development would not, therefore, be required to be net zero carbon as set out in this policy. As a result, the absence of any evidence regarding the minimisation of greenhouse gas emissions does not weigh against the scheme.

Waste and recycling storage and collection

23. Due to the narrowness of Nineteenth Road, a waste vehicle may not be able to access the front of the appeal site to collect waste and recycling without driving on the pavement, which would not be acceptable. However, the pavement along the route to Tavistock Crescent is flat, firm and smooth and the overall distance, in the absence of any guidance which suggests otherwise, is not excessive. In addition, the bins associated with the proposed dwelling could be accommodated on the pavement on Tavistock Crescent, given its width, without impeding pedestrian or vehicular movements. Whilst it is not ideal for an occupier to have to move waste and recycling bins onto Tavistock Crescent for collection, I am satisfied that the proposed waste and recycling storage and collection facilities would, nonetheless, be acceptable.
24. For these reasons, I conclude on this issue that the proposal would make adequate provision for waste and recycling storage and collection facilities. It would therefore accord with LP Policy SI7 and CPS Policy CS17 which seek to achieve sustainable waste management.

Other Matters

25. The appellant refers to the Council having only delivered 80% of the housing supply targets, leading to the requirement to apply a 20% buffer to its supply of deliverable sites in order to improve the prospect of achieving the housing supply targets. There is, however, no information within the submissions indicating that the Council is currently unable to demonstrate a five-year housing land supply or that relevant development plan policies are out-of-date for other reasons. Consequently, there is no reason to conclude that para 11d) of the Framework is engaged.
26. The proposal would provide a modest contribution of one dwelling, in an accessible location, to the supply of houses and a boost to the local economy, which would be small given the scale of the scheme. Therefore, even if para 11d) of the Framework was engaged, the harm that I have identified above would significantly and demonstrably outweigh such benefits.
27. The appellant has raised concerns with the Council's handling of the planning application, however that is not relevant to my findings on the planning merits of the scheme.

Conclusion

28. I have found that the proposal would provide adequate waste and recycling and storage and collection facilities. However, this does not outweigh the harm that I have identified above. The proposed development therefore conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
29. I conclude that the appeal should be dismissed and planning permission refused.

Elaine Moulton

INSPECTOR