



Appeal Decision

Site visit made on 21 September 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Appeal Ref: APP/Q5300/W/23/3320237

Land rear of 296 Hoe Lane, Enfield EN1 4JL

- 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 A Himallari against the decision of London Borough of Enfield.
- The application Ref 22/03199/FUL, dated 14 September 2022, was refused by notice dated 3 February 2023.
- The development proposed is a new two storey dwelling.

Decision

1. The appeal is allowed and planning permission is granted for a new two storey dwelling at Land rear of 296 Hoe Lane, Enfield, EN1 4JL in accordance with the terms of the application, Ref 22/03199/FUL, dated 14 September 2022, and the plans submitted with it, subject to the conditions set out in the Schedule at the end of this Decision.

Preliminary Matters

2. I have taken the address from the decision notice rather than the application form, as it more accurately reflects the site's location being to the rear of the existing dwelling. I have removed the part of the description of development on the application form which includes the address.
3. The decision notice list of plans relates to Issue 08 (November 2022). However, the appellant submitted Issue 09 (December 2022) to the Council in December 2022, and assumed that the decision would be based on these plans. Refuse vehicle tracking drawings were also submitted prior to the decision, and are not referenced in the Council's evidence. The Issue 9 revisions relate to a minor parking space alteration and additional detailing of the bin and bike stores, and the tracking plans provide additional clarity. All parties have had a chance to comment on these plans during the appeal. In accordance with the Holborn Studios Ltd¹ judgement, using Issue 09 as the basis for the appeal would therefore meet both the substantive and procedural tests.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of the occupiers of neighbouring properties, with particular regard to privacy;
 - the character and appearance of the area;
 - highway safety, with particular regard to pedestrian movements; and
 - waste management.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Reasons

Living Conditions

5. The site comprises part of the rear garden of No. 296 Hoe Lane and part of the verge of the unadopted access road known as Linden Walk. This is poorly maintained with an unmade verge area along the appeal side, with vehicle parking on this and the opposite side. No. 296 is the end terrace dwelling, with its garage now lying beyond the fenced off appeal site. The Hoe Lane terraces have relatively long rear gardens plus garages accessed by a gated lane off Linden Walk. On the opposite side of Linden Walk is a garage/lock up site and a pair of semi-detached houses, with 3 storey flat blocks beyond. The proposal is for a 2 storey dwelling, and the Council considers that it would result in an unacceptable loss of privacy to neighbouring properties.
6. There would be an approximate angled separation distance of 20m between the front windows of the appeal dwelling and the rear windows of No. 298 Hoe Lane. Although the appellant suggests that many Councils use 20m as an acceptable distance between directly facing windows, the parties have not directed me to any local guidance for acceptable distances. The proposal's first floor frontage includes a balcony, from which views would be likely to be more frequent and for longer periods, than from internal views. A balcony would also generate an increased perception of overlooking, as people on it would be more obvious.
7. Furthermore, existing overlooking of the No. 298 rear garden is only from angled and fleeting views from the first floor of its conjoined neighbour. In comparison, the use of the proposed balcony would allow for more lengthy periods of overlooking at a relatively close range, onto the majority of a garden which is currently substantially private. Overall, there would be a harmful impact on privacy for the occupants of No. 298 Hoe Lane. Although there are no interested party objections, this does not equate to a lack of harm.
8. With reference to the proposal's scale and bulk, this would not be overbearing to the extent that it would affect the outlook from neighbouring properties.
9. Views from the proposal's rear first floor windows would be angled only towards the ends of the gardens and garages, which are already directly overlooked by their neighbours. Due to their length, a reasonable amount of these gardens would also remain not overlooked at close range from the new dwelling. New trees are also proposed to provide further screening. The first floor window on the side elevation would be obscurely glazed, and could be conditioned to be high level opening only.
10. At ground floor, I could impose a condition to require further details of the boundary treatment with 294 Hoe Lane, which would allow control for a higher new or additional fence compared to the current low fence. Views over neighbouring properties from the new garden would thus be screened to a large extent. The fencing would also screen direct views over gardens from the rear ground floor windows. The effect on privacy overall to the properties to the east of Linden Walk would therefore not be unreasonable.
11. However, the proposal's front balcony would harm the living conditions of No. 298 Hoe Lane, with particular regard to privacy. It would conflict with the Enfield Development Management Document (DMD) (2014) Policies DMD7,

DMD8, and DMD37, which amongst other things together require the orientation and layout of new development to not adversely impact on residential amenity, including privacy and overlooking. It would also conflict with the National Planning Policy Framework ('the Framework') (2023) paragraph 130, which similarly requires proposals to provide a high standard of amenity for existing and future users.

12. The Council also references the London Plan (2021) Policy D4, the Enfield Plan Core Strategy 2010-2025 (CS) (2010) Policy CP30, and the DMD Policy DMD6 in its reason for refusal, but I do not find these directly relevant to matters of privacy in this instance.

Character and Appearance

13. The dwellings within the immediate surroundings have no overriding design aesthetic, beyond the predominance of being attached dwellings/blocks. They display a range of types and detailing including their roof form, sizes, heights, materiality, and colouring. The variety of rear extensions and dormer windows further add to this impression. Additionally, the garage site on Linden Walk and the garages to the rear of the Hoe Lane terraces are single storey and functional in nature.
14. The layout of the existing built form is similarly somewhat varied. There are differing building line set backs from Hoe Lane, and a grassed open space diagonally opposite the Linden Walk entrance. Although the garages are only single storey, and those to the east of Linden Walk do not comprise garden subdivision as would the appeal proposal, they still establish some physical form of back land development. This overall mix contributes to the character and appearance of a relatively low rise suburban built form, which is cohesive but also somewhat diverse. The proposed dwelling would thus sit appropriately within this context.
15. Furthermore, the garden of No. 296 is wider than its neighbours, is directly adjacent to Linden Walk, and is opposite a relatively large garage site. As such, the new dwelling would not be so disproportionate to the existing pattern and rhythm that it would be out of character with the area, or create a cramped form of development. The suburban character would still be retained despite the garden development. This specific context would also therefore not set a precedent for future garden sub-division.
16. The proposal's overall impression of bulk would also be reduced by the use of the mono-pitch roof and the lower height to the eaves compared to the surrounding dwellings. The green roof would further assist, as would to some extent the limited tree planting. The red brick would tie it in visually with the more traditional context, within a more unusual design incorporating modern materials and form. Although this would create some extent of incongruity, this would not be obtrusive or unduly dominant due to the existing diversity of the surrounding form. Indeed, the appellant's justification highlights that the design is intentionally to add a building of interest to the streetscene rather than replicate any of the nearby buildings.
17. Overall, the proposal would not harm the character and appearance of the area. It would comply with the CS Policy CP30, the DMD Policies DMD6, DMD7, DMD8, and DMD37, and the London Plan Policy D4. Together and amongst other things, these require development to be high quality and design-led, to

not harm the character of the area, and to be appropriately located including with its scale and form being appropriate to the existing pattern and setting. The proposal would also comply with the Framework paragraph 130 whereby developments should be visually attractive as a result of good architecture and layout, and be sympathetic to the surrounding built environment, while not preventing or discouraging appropriate innovation.

Highway Safety

18. The Council objects on the basis that the primary function of Linden Walk is for the use of motor vehicles, with no allocated pedestrian area, resulting in unsafe pedestrian movements. Pedestrians have to walk along the main part of the carriageway due to a lack of formal pavement and the presence of parked cars.
19. I have no information before me as to how many vehicles may use Linden Walk daily. It provides access to the Hoe Lane properties' garages, but as the majority of these also have frontage parking spaces, I find this would reduce the need and desirability of vehicle access to the rear. There is also an additional access to these garages further along Hoe Lane. Linden Walk also provides vehicle access to a dwelling to its south, and the garaging/lock up site opposite the appeal site. Altogether, I expect only limited daily movements.
20. In addition, if the numerous cars parked each side are present long term, they would not generate many daily vehicle movements. If instead this space is used for daily parking, then numerous pedestrians would already be navigating the stretch of carriageway. I have seen no evidence to suggest that any conflict has occurred thus far. The introduction of a single new dwelling would only result in limited additional vehicle and pedestrian movements. Furthermore, any vehicles would be travelling extremely slowly such that conflict could be avoided.
21. Although the access situation would not be ideal, I find that overall the proposal would not cause harm to highway safety, with particular regard to pedestrian movements. It would comply with the CS Policies CP24 and CP25, and the DMD Policies DMD8 and DMD45. Amongst other things, these seek to provide adequate parking, foster road safety, and provide safe and accessible routes for pedestrians and cyclists. It would also comply with the Framework paragraph 112 with relation to safety and pedestrian conflict. The Council also references the London Plan Policy T6, but I do not find it of direct relevance.

Waste Management

22. In compliance with the Enfield Waste and Recycling Storage Planning Guidance ('the Guidance') (2020), the site's refuse provision would be 2 wheeled bins, stored within the front curtilage. The Guidance also requires that these should be presented on the curtilage of the property to facilitate safe collection and protect the health and safety of collection staff. The Council states a lack of evidence that refuse vehicles can access the site taking into account the heavy parking, and that confirmation is required from the waste team. I find the tracking plans show that a refuse vehicle would be able to reverse down Linden Walk for collection adjacent to the property.
23. However, there is uncertainty as to the exact status of the Linden Walk in relation to whether any legislative or civil matters apply to restrict such refuse vehicle movements. I also note from my visit that the extent of the car parking

may on occasion make it difficult for a refuse vehicle to access the street, despite the ability to do so as shown on the plans.

24. On collection days the bins could therefore be moved 30m onto Hoe Lane, adjacent to where bins are placed out for No. 296. I find this would not cause an obstruction or hazard as it is standard practice for bins to be placed out in this manner. As I found above that the site access would be safe for pedestrians, I therefore also do not see any harm for pedestrians to move the bins in this way. In the site context and also the appellant's reference to a 30m drag distance within the Building Regulations Part H, I find this to be an acceptable back up approach.
25. The proposal would therefore have an acceptable approach to waste management. It would comply with the CS Policy CP25 in fostering road safety, the DMD Policy DMD47 in ensuring that adequate, safe, and functional provision is made for refuse collection, and Policies D4 and D6 of the London Plan in reference to quality housing design and the provision of movement modelling assessment. Although not in strict compliance with the Waste and Recycling Storage Planning Guidance, its general aims would be met for adequate provision for space and access for waste storage and collection. The Council also references the CS Policy CP45 and the DMD Policy DMD48 in its reason for refusal, but I do not find these directly relevant.

Other Matters

26. The proposal includes a green roof and additional planting. This would achieve a limited biodiversity gain compared to the site at present, but the site's function as a garden would also have allowed for biodiversity measures. This would only be a benefit overall if biodiversity benefits were imposed and retained via a condition.

Planning Balance

27. The appellant identifies that the Council is unable to demonstrate a 5 year supply of deliverable housing sites, with a supply of only 3.8 years as based on the Enfield Annual Monitoring Report (February 2023). The Council has not disputed this position. As such, relevant policies for the supply of housing are not deemed up to date and the Framework paragraph 11d falls to be considered. Paragraph 11d indicates that planning permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
28. The proposal would result in an additional dwelling in an established urban area. The Framework seeks to significantly boost the supply of homes, and so additional housing in this location is a benefit of the proposal. The benefits associated with the construction and occupation of one additional dwelling would be limited and so I give each of these matters moderate weight. The biodiversity benefit identified above I give very limited weight. I have found that there would be minor harm to the living conditions of the occupiers of a neighbouring property, which would conflict with paragraph 130 of the Framework, and I give this moderate weight.
29. Taking the policies of the Framework as a whole, I find that the adverse impacts of granting permission would not significantly and demonstrably

outweigh the benefits in this case. Accordingly, the proposal benefits from the presumption in favour of sustainable development as a material consideration outlined at paragraph 11 of the Framework.

30. There would be some conflict with the DMD Policies DMD7, DMD8, and DMD37 and with the Framework as regards the impact on the privacy of occupiers of No. 298 Hoe Lane. However, I find the material considerations of the benefits of the proposal to outweigh this harm in this instance.

Conditions

31. I have imposed conditions which align with paragraph 56 of the Framework and the Planning Practice Guidance, to which the main parties have agreed. I have attached the statutory condition to limit the lifespan of the planning permission, and one to specify the approved plans to provide clarity for the terms of the permission. Details of hard and soft landscaping and biodiversity improvements are required in order to safeguard the character of the area, the living conditions of neighbouring occupiers, and to ensure the proposal's ecological benefits.
32. Control relating to contamination is necessary to ensure that contamination risks are minimised. Control over the parking area to be provided free from obstruction is required for highway safety. Confirmation of details of the Electric Vehicle Charging Points will ensure that this is appropriately provided and maintained.
33. I have added a condition that no further windows are to be inserted, and that the bathroom window is to be obscure glazed and high opening, to protect the living conditions of neighbouring occupiers. A Sustainable Drainage Strategy is required in order to ensure the sustainable management of water and to minimise flood risk. Thames Water has provided an informative that a Groundwater Risk Management Permit will be required for discharging groundwater into a public sewer, and so I highlight that here for the appellant's information.

Conclusion

34. I conclude that while the proposed development would be in some conflict with the development plan and the Framework taken as a whole, I find the material considerations weigh in its favour to the extent to outweigh this conflict and the harm. I therefore allow the appeal.

L Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan
 - 1024-A005-P1 Block Plan Proposed
 - 1024-A006-P1 Overlooking Plan
 - 1024-A020-P3 Ground Floor Proposed
 - 1024-A021 First Floor Proposed
 - 1024-A022-P1 Roof Plan Proposed
 - 1024-A023-P2 Amenity Bins Bikes Proposed
 - 1024-A030 Rear Elevation Proposed
 - 1024-A031 Front Elevation Proposed
 - 1024-A032-P2 Side Elevation Proposed
 - 1024-A033-P2 Side Elevation Proposed
 - 1024-A034 Bins and Bikes Proposed Details
 - 4 x Refuse Tracking dated November 2022
- 3) No development shall take place until full details of hard and soft landscape works, measures to enhance the ecological value of the site, and their implementation programme have been submitted to and approved in writing by the Local Planning Authority. The hard landscaping details shall include surfacing materials and boundary fences or walls. The soft landscaping details shall include specification of species, tree and plant sizes, number and planting densities, and the timing of the implementation of the scheme, including any earthworks required. The landscape works shall be carried out in accordance with the approved details before any part of the development is first occupied, in accordance with the agreed implementation programme. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant specified in the approved details, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or shrub, or plant of the same species and size as that originally planted, shall be planted at the same place.
- 4) No development shall take place until a Sustainable Drainage Strategy has been submitted to and approved in writing by the Local Planning Authority. The details of this Strategy shall be based on the disposal of surface water by means of a sustainable drainage system in accordance with the principles as set out in the Technical Guidance to the National Planning Policy Framework (2023). The Strategy shall include a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. The sustainable drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details.
- 5) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the Local

Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of Potentially Contaminated Sites - Code of Practice and the Environment Agency's Guidelines for the Land Contamination: Risk Management (LCRM 2020) (or equivalent if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

- 6) If any contamination is found, no development shall commence until a report specifying the measures to be taken to remediate the site to render it suitable for the approved development, including the timescale, shall be submitted to and approved in writing by the Local Planning Authority. The remediation scheme shall be sufficiently detailed and thorough to ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990.
- 7) If contamination remediation is necessary, prior to first occupation, the site shall be remediated in accordance with the approved measures and timescale, and a verification report shall be submitted to and approved in writing by the Local Planning Authority.
- 8) If during the course of development, any contamination is found which has not been previously identified, work shall be suspended, and measures for its assessment and remediation to bring the site to a condition suitable for the intended use shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved measures, including any identified timescales or notification periods, and a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.
- 9) Prior to any above ground works, details of the Electric Vehicle Charging Points (EVCP) shall be submitted to and approved in writing by the Local Planning Authority. The installation of EVCP shall be completed in accordance with the approved details and made operational prior to first occupation, and retained thereafter.
- 10) Prior to first occupation of the dwelling hereby permitted, the parking area shown on the approved plans shall be provided and retained thereafter free of obstruction in order to allow for the parking of resident and visitor vehicles.
- 11) The bathroom window is to be obscure glazed and only high opening for the lifetime of the development.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any other order revoking and re-enacting that order), no windows or doors shall be inserted on any elevations with the exception of those shown on the approved plans.

END OF SCHEDULE