



Appeal Decision

Site visit made on 3 October 2023

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2023

Appeal Ref: APP/T5150/W/23/3317504

19 Christchurch Avenue, Brent, London NW6 7QP

- 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 Avenue NW6 Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/3562, dated 17 October 2022, was refused by notice dated 10 February 2023.
 - The development proposed is for the conversion of existing outbuilding at the rear of 19 Christchurch Avenue into a self contained 3 bedroom C3 residential dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Avenue NW6 Ltd against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Preliminary Matter

3. Revised plans have been provided during the appeal process, which provide section drawings and the proposed development in the context of the host dwelling. As the amended plans do not involve a substantial difference or fundamental change to those considered by the Council, I am satisfied there would be no procedural unfairness to anyone involved in the appeal, including those consulted on the original application. I have therefore determined the appeal on the revised plans.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the living conditions of existing and future occupiers, in terms of overlooking and loss of privacy;
 - The effect of the proposed development on the living conditions of future occupiers, in respect of access and the overall standard of accommodation; and
 - The effect of the proposed development on the character and appearance of the site and surrounding area, with particular regards to trees.

Reasons

Living conditions

5. The appeal site (No. 19) comprises a semi-detached property fronting Christchurch Avenue in the predominantly residential suburb of Brondesbury Park. The local development pattern along Christchurch Avenue comprises large semi-detached dwellings sitting forward within rectangular-shaped plots with large gardens extending to the rear.
6. A detached, single-storey L-shaped outbuilding stands towards the rear of the garden plot of No. 19. The appeal proposal is to subdivide the rear garden of No. 19 and convert the outbuilding into a self-contained three-bedroomed dwelling. The Council contends that the proposal would result in harmful overlooking and loss of privacy to the occupiers of No. 19, No. 17 and No. 21 Christchurch Avenue (No. 17 and No. 21).
7. No. 19 has been subdivided into five flats, accommodation to the rear extends over four storeys. A single storey extension projects rearwards at basement level at No. 19, which also has accommodation in the roof. The rear elevation of No. 19 features numerous window openings facing towards the garden, including windows within full-height canted bay projection and box dormer and balcony at roof level.
8. Both No. 17 and No. 21 are broadly alike to No. 19 in terms of their overall scale, rear building line and pattern of fenestration within their rear elevations. Albeit No. 21 also has a roof terrace and No. 19 has been extended at basement level.
9. The revised plans submitted show a fence would partition the garden of the proposed new dwelling from the remaining garden associated with No 19. Although the distance between the basement at No. 19 and the proposed dwelling would be relatively close, owing to the scale of the basement extension and the outbuilding, I am satisfied that such a boundary feature would limit the opportunities for intervisibility and associated loss of privacy for the occupiers of the basement of No. 19.
10. In order to ensure new development provides adequate living conditions in terms privacy, Principle 5.1 of the Brent Design Guide Supplementary Planning Document SPD1 (2018) (SPD1) indicates that directly facing habitable room windows will normally require a minimum separation distance of 18 metres, except where the existing character of the area varies from this.
11. The intervening distance between the proposed dwelling and the main rear elevation of No. 19 would be further than the basement extension but would still be below the 18-metre recommendation in SPD1. Crucially, the relationship between habitable rooms at ground floor level and the proposed new dwelling would be more elevated. Moreover, the proposed block plan shows an open-plan living space within the new dwelling with sliding doors facing directly towards the rear of No. 19. Even if some shorter-range views would be limited by the proposed fence, further back from within the proposed dwelling, I consider that there would be opportunities for direct overlooking into the ground floor rear windows of No. 19.
12. With regards to above-ground floors at No 19, the angles and location of these upper storey windows would minimise the opportunity for clear views into

habitable rooms served by these windows, therefore the living conditions of the existing occupiers of these parts of the appeal site would not be harmed.

13. The appellant contends that the separation distance between the proposed dwelling and No. 17 and No 21 to be greater than the 13-metre distance indicated by the Council. Irrespective of the precise distances, the habitable rooms within the rear elevations of Nos. 17 and 21 would be at oblique angles in relation to the appeal building. I am therefore satisfied that the relationship between the proposed dwelling and these neighbouring properties would limit opportunities for overlooking and so the living conditions of the occupiers of either No. 17 or No. 21 would not be harmed. I am also satisfied that the existing and proposed fencing would prevent harmful overlooking and loss of privacy from the basement levels of Nos. 17 and 21.
14. Furthermore, the Council's Officer Report raises the possibility of overlooking into the proposed dwelling from the upper floors of Nos. 17 - 21. Windows within No. 17 and No 21 are set at an oblique angle to the appeal premises and whilst there would be limited views into the proposed dwelling due to the angle, there would be clear views of the garden. With regards to No. 19, the existing terrace provides occupants with direct views over and across the gardens to the rear of Christchurch Avenue. Notwithstanding my finding in respect of loss of privacy to existing occupiers, there would be opportunities for the users of the terrace and those looking down from rear upper storey windows at No. 19 to look directly down onto the garden area of the proposed dwelling. I consider the relationship between the proposed dwelling and the terrace and upper storey windows of No. 19 would contribute to a sense of being overlooked and a loss of privacy. The appellant raises the possibility of a condition to control the installation of privacy glass within the proposed dwelling. However, even if a condition was imposed, intervisibility would still be possible when the patio doors are open. The installation of a 'winter garden' does not appear on the plans before me and has not been consulted upon. I therefore cannot be certain that either suggestion would mitigate the harms identified.
15. Accordingly, even if there would not be opportunities for direct overlooking to the extent contended by the Council, overall, the proposed development would contribute to harmful overlooking, or perception of overlooking, and loss of privacy and therefore fail to provide satisfactory living conditions for existing and future occupiers. Conflict therefore arises with Policy DMP1 of the Brent Local Plan (2019-2041) (2022) (Local Plan) which seeks, amongst other things, to ensure that development creates a high-quality environment including in respect of privacy, outlook and avoid impacting upon neighbouring occupiers. There would also be conflict with SPD1, which seeks, amongst other things, to ensure good levels of privacy inside buildings. Furthermore, there would also be conflict with the National Planning Policy Framework (the Framework) insofar as it seeks to ensure development creates places with a high standard of amenity for existing and future users.

Access and standard of accommodation

16. Access to the proposed dwelling would be via a narrow pedestrian path that would link with Chatsworth Road via the rear of the attached property, No. 17 Christchurch Avenue (No. 17). While the matter of land ownership is not before me to consider, other than the suggested route, there are no details of the

proposed access provision including in terms of lighting, security or the detailed design of the of the access onto Chatsworth Road.

17. The appellant has provided plans that demonstrate the internal ceiling height within the proposed dwelling would be sufficient and in accordance with the minimum requirement set out in Policy D6 of the London Plan (2021). Even so, the evidence submitted casts doubt whether the proposed development would offer a high standard of amenity for future users, especially in respect of whether it would be safe, inclusive and accessible.
18. Conflict therefore also arises with Policy DMP1 of the Local Plan that indicates development will be acceptable provided it is of a location, detailing and design that provides high levels of external amenity; is satisfactory in terms of means of access for all; and is safe and secure. Furthermore, there would also be conflict with the Framework insofar as it seeks to ensure development creates places with high standards of amenity for future users.

Trees

19. Towards the rearmost part of the appeal site is a mature tree that is one amongst a group of trees protected by a Tree Preservation Order (TPO) 08/00055. These trees, together with other mature trees in nearby gardens and those along the boundary of Chatsworth Road collectively make a positive contribution to the character and appearance of the locality, especially in views across private gardens gained from Chatsworth Road.
20. The tree within the appeal site is shown to be retained and the proposed development would not involve any increase in the footprint of the extant outbuilding. While the appellant indicates that no new pathway and associated excavation would be required anywhere near the protected tree. From my observations on site, flagstones have been laid around two sides of the extant tree within the appeal site, which extend back to the rear wall of the appeal premises and up to the boundary with No 17.
21. Nevertheless, Policy BGI2 of the Local Plan is clear that development with either existing trees on site or adjoining it that could affect trees will require a submission of a BS5837 or equivalent tree survey detailing all tree(s) that are on, or adjoining the development site. The proposed plans show access to the appeal site would be along a newly created pedestrian route that would run from Chatsworth and in proximity to existing trees. Even if these trees are not protected by a TPO, the level of detail submitted with the appeal is insufficient to satisfactorily ensure the effect of the proposals on trees.
22. Without substantiated evidence before me to demonstrate that the proposals would not have a harmful impact on trees. Given the loss of trees on or adjoining the appeal site would have a detrimental impact on the character and appearance of the area, I do not consider it would be appropriate to leave the matter to be controlled by the imposition of an Arboricultural Impact Assessment condition. Accordingly, the proposal conflicts with Policy BGI2 of the Brent Local Plan. There would also be conflict with the Framework, notably insofar as it seeks to ensure that developments are visually attractive as a result of, amongst other things, layout and appropriate and effective landscaping; and to ensure existing trees are retained wherever possible.

Planning balance

The proposed development would provide one housing unit on a small site in an existing residential area identified as having very good public transport accessibility. The principle of the proposal is therefore acceptable in respect of Policies BH1 and BH4 of the Local Plan. It would also be acceptable in respect of London Plan Policy D6 insofar as it provides well-proportioned habitable rooms and external amenity space, and the Framework insofar as it seeks to boost the supply of housing, the choice of homes available and promotes efficient use of land.

23. However, increasing housing numbers and matters of good design are not mutually exclusive. Even if there would be no harm in respect of internal space standards, light and ventilation and external amenity space provision, I have found that the proposed development would cause harm to the living conditions of current and future occupiers; and would not demonstrably be of satisfactory design to provide safe and suitable access or avoid harm to trees. On balance, therefore, I find that the proposal conflicts with the development plan taken as a whole, and material considerations do not indicate the decision should be made other than in accordance with the development plan.

Other matters

24. I note that other development within rear gardens has been granted planning permission or gained consent in the locality, notably at 2A Chatsworth Road (No 2A) and 2B Chatsworth Road (No 2B). However, these are not demonstrably comparable to the proposal before me in terms of the pattern of fenestration and opportunities for overlooking. Consequently, I do not consider these offer useful justification for the appeal scheme, which has been determined on its own merits and taking account of the site-specific circumstances.

Conclusion

25. For the reasons set out above, and having had regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

L Clark

INSPECTOR