



Appeal Decisions

Site visit made on 19 December 2023

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st January 2024

Appeal A Ref: APP/Z5060/W/22/3297734

8 Neville Gardens, Dagenham RM8 3QT

- 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 Mohamed Bharadia against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref 22/00253/FULL, dated 17 February 2022, was refused by notice dated 13 April 2022.
 - The development proposed is 2 new single storey dwellings (1x3b4p and 1x1b2p) with associated external amenity areas, parking, bicycle spaces and waste storage.
 - This decision supersedes that issued on 14 April 2023. That decision on the appeal was quashed by order of the High Court.
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Appeal B Ref: APP/Z5060/W/22/3313978

8 Neville Gardens, Dagenham RM8 3QT

- 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 Mohamed Bharadia against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref 22/00769/FULL, dated 8 May 2022, was refused by notice dated 1 July 2022.
 - The development proposed is 2 new single storey 1 Bed 2 Person dwellings with associated external amenity areas, parking, bicycle spaces and waste storage.
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Decisions

1. Appeal A and Appeal B are both dismissed.

Preliminary Matters

2. As set out above there are two appeals relating to residential development at the site. They differ insofar as the proposal under Appeal B is smaller. I have considered each proposal on its individual merits, however to avoid duplication I have dealt with the issues common to both schemes together.
3. Since the determination of the applications subject of the appeals, planning permission has been granted by the Council for an attached dwelling at the appeal site. I have taken that into account.
4. During the determination of the appeals, a revision to the National Planning Policy Framework (the 'Framework') was published. The main parties were given an opportunity to comment on the effect of the revision on the appeals and their comments have been taken into account.

Main Issues

5. In both appeals, the main issues are the effect of the developments on the character and appearance of the area and the effect on the living conditions of neighbouring occupiers with regard to noise and disturbance.

Reasons

Character and appearance

6. The appeal site comprises an end of terrace dwelling and its extensive garden. It is sited in a 'banjo' style cul-de-sac, which comprises a terrace of six or seven houses along each side and a shorter terrace of four houses at the end. No 8 is at the end of this terrace of four. Although some of the houses in the terraces have had minor alterations undertaken such that the terraces are not identical to each other, a strong sense of uniformity remains. In particular, when looking down Neville Gardens from Neville Road, the host terrace has a strong sense of symmetry provided by the form, width, height, roof design and fenestration pattern of the houses within it. This effect is complimented by the similar flanking terraces to either side.
7. There are no other banjo cul-de-sacs close to Neville Gardens, though I understand they are a feature of the wider Beacontree Estate. As has been referred to in many of the appeal decisions provided to me, the Beacontree Estate is a large interwar housing estate which, although not a designated conservation area, does have some historic significance. Across it, there is a degree of consistency in the design and form of many of the houses and the street pattern.
8. Both proposals would be sited in the rear garden of No 8. Also, in both schemes, the dwellings would be a pair of semi-detached bungalows. The proposal subject of Appeal A would span almost the whole width of the garden, and would be wider than the entirety of the host terrace and have a comparable depth. The scheme in Appeal B, while narrower, would still occupy a significant proportion of the existing garden. Both dwellings in both schemes would have greater footprints than the host dwelling, the other dwellings in Neville Gardens, and most of the other houses nearby. Although this would represent a more efficient use of land, their scale, as well as their single storey nature, means they would not reflect the generally consistent scale and form of the surrounding houses.
9. This inconsistency would be apparent from a wide number of the surrounding houses in Neville Gardens, Bennetts Castle Lane and Temple Gardens which all have clear views across the site as the intervening boundary treatment is mostly low fences and intermittent vegetation. It would also be apparent from public view points in Neville Gardens through the gap between Nos 7 and 8. Indeed from here, and despite being set back behind the terrace, the dwellings would disrupt the symmetry of the host terrace.
10. On this particular point, however, the extant permission for an attached dwelling would also affect the symmetry of the terrace, and most likely to a greater degree than that which would occur from either of the two proposals before me. In addition, there is an extant Lawful Development Certificate for a hip to gable extension which would also affect the symmetry of the terrace. As such, in these respects, they add some weight in favour of the appeal schemes.

11. Nonetheless, those consents do not form advantageous fall backs in all respects. The roof extension is clearly a different development, and the dwelling, by being attached to No 8, could be read, from neighbouring properties, as an extension to the host dwelling. Many of the other houses nearby have been subject of extensions, but none of them appear to have had detached bungalows built in their rear gardens. Therefore, overall, the current proposals would be more harmful to the character of the area than either of the consented developments at the site.
12. There are three houses to the rear of 79 Bennetts Castle Lane and three to the rear of 23 Neville Road. Although these are very close to the appeal site and are examples of backland development, they are not directly comparable to the schemes before me in that they are all two storey houses with their own vehicular accesses, so more closely reflect their context.
13. My attention was also specifically drawn to a planning permission granted for a new dwelling at 24 Lynnett Road. There are some similarities between that case and the ones before me insofar as No 24 is an end of terrace property in a 'banjo' cul-de-sac. However, notwithstanding that that proposal is for a single attached dwelling, not two detached dwellings; Lynnett Road is a considerable distance from the appeal site. The overriding character of the area within which the appeal site sits would therefore remain unaffected by that permission.
14. Overall, both proposals would harm the character and appearance of the area. They would both fail to accord with policy CP3 of the Core Strategy and policy BP11 of the Borough Wide Development Policies document which both seek to ensure developments are of high quality design and protects an area's local character. Similarly it would conflict with London Plan policy D3 which, despite promoting incremental densification, requires this to be done by positively responding to local distinctiveness. These policies are consistent with section 12 of the Framework and so the conflicts with them carry considerable weight. The proposals would also conflict with emerging Local Plan policies SP 2 and DMD 1 which support development that is sensitive to the character and distinctiveness of the local area.
15. There is little direct conflict with London Plan policies D1, which relates more to plan-making rather than decision-taking; D4, which is mainly directed towards information requirements and the Council's responsibilities in decision making; or D8, which relates to development in the public realm, which is not applicable to these developments for two private backland houses. There is also no reason to consider there would be conflict with policy D5 which supports inclusive design.
16. Policy BTC15 of the Barking Town Centre Area Action Plan is referred to in the decision notice subject of Appeal A. However, the site is not in Barking Town Centre so this policy is not applicable.
17. Reference is made to the Mayor of London's Small Sites Design Code. Whilst this highlights the opportunities for additional housing that backland development can provide, it does not suggest that all backland housing is acceptable. Indeed the example provided in the document is of a larger development with a more definable frontage, similar to the developments at 79 Bennetts Castle Lane and 23 Neville Road. It also advises that such development should not result in a loss of green cover, which, by building on an existing grassed back garden, the proposals before me would do.

Living conditions

18. Pedestrian access to both developments would be achieved by using the same access as that which is currently shared by the host dwelling and No 7. The development in Appeal A would potentially result in an additional six people using this access; the development in Appeal B would potentially result in an additional four people.
19. The front doors to Nos 7 and 8 are both on the side elevations of the properties so would directly face the access route and, due to the tightly packed nature of the cul-de-sac, these doors are close to each other. As such, the developments would result in additional people passing almost directly by the front doors, and close to the ground floor windows on these houses' front elevations. This is a relationship that does not exist elsewhere in Neville Gardens.
20. The increase in comings and goings from two additional dwellings so close to these neighbouring properties at a point where currently the only movements are those generated by one other property, would represent a significant increase in pedestrian movements. This could result in an unacceptable increase in noise and disturbance such that the living conditions of the neighbouring occupiers would be harmed. In addition the intensification of the use of the whole site from one house to three units would be significant and, despite remaining in domestic use, could lead to unacceptable amount of noise and disturbance.
21. The extant consent for an attached dwelling would also generate an increase in comings and goings close to Nos 7 and 8. But as that permission is for one dwelling, and both these current proposals are for two, the impact of them would be materially greater.
22. Although the appellant suggests that this is a commercial area, I found Neville Gardens, and the appeal site in particular, to have a quiet domestic character distinct from the busier and noisier areas around the junction of Becontree Avenue and Valence Avenue. In any case, noise and disturbance from neighbouring residents coming and going directly past a property creates a very different effect than the general background noise of traffic and commercial activity in the wider area.
23. As such, both proposals would conflict with Borough Wide policy BP8 which seeks to ensure existing occupiers are not exposed to unacceptable levels of noise or general disturbance, and London Plan policy D14 which requires development to minimise adverse noise effects from new development. These policies are consistent with paragraphs 135 and 191 of the Framework and so the conflicts with them carry considerable weight. The developments would also fail to accord with emerging Local Plan policies DMD 1, which seeks to ensure high quality design by considering the impact on the amenity of neighbouring properties, and DMSI 3, which says that developments that generate unacceptable levels of nuisance will be resisted.
24. There is limited direct conflict with London Plan policies GG1 and GG3 as these primarily seek to ensure inclusive and healthy communities and there is no suggestion by the Council that the proposals would not fulfil these aims.

Other Matters

25. During the appeal the Council have advised that they have a 5 year supply of housing, and this has been confirmed in an update they provided in December 2023 for their current Local Plan examination. However it is also clear that their latest Housing Delivery Test figure shows an undersupply of housing over the previous three years, with a figure of 62% given. As a result, paragraph 11 d) of the Framework applies which states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
26. The provision of two houses would assist in boosting the supply of homes as supported in paragraph 60 of the Framework. Furthermore, as single storey dwellings, they would be well suited to the elderly, those with mobility difficulties or for small families as advocated in paragraph 63. As a small site, it could be developed out quickly and support for such sites, particularly windfall sites within existing settlements, is provided by paragraph 70. The fact that the site is within walking distance of a range of shops and public transport facilities is also a benefit supported by paragraph 110. Combined, I give these factors significant weight.
27. However, the Framework also sets out, in paragraph 131, that the creation of high quality and beautiful places is fundamental to what the planning process should achieve. The failure of the proposals to represent a high quality form of development carries substantial negative weight. In addition, paragraph 135 identifies that development should provide a high standard of amenity for existing users. This also weighs heavily against the proposals.
28. It is not disputed between the parties that there would be no harmful impact on outlook from, or the light received by, neighbouring properties. Likewise, internal and external space standards would be met, and sufficient cycle parking would be provided. The acceptability of the proposals in these regards however do not carry positive weight as they would be expected of any development.
29. Taking the Framework as a whole it is considered that, in both schemes, the harms significantly outweigh the benefits.
30. The appellant has directed me to policies H1 and H2 of the London Plan, which encourages development on windfall sites to increase housing supply and encourages the development of small sites, respectively. These are consistent with the Framework and weigh in favour of the proposals. But in the same way that I consider the conflict with the parts of the Framework relating to quality of design and amenity significantly outweighs the accordance with those seeking to provide housing; the conflict with the parts of the London Plan which aim to ensure development minimises noise and respects local distinctiveness outweighs the support from H1 and H2.
31. There is no reason to believe the existing property does not have full permitted development rights. Under Class E, Part 1, a significant amount of built form could be constructed in the rear garden of the property. However all such works would necessarily be incidental to the main dwelling, so would not be comparable, in terms of the level of occupation, with the proposals for two new dwellings. Moreover, I have no information before me as to the precise scale of

development that could be built under these rights so cannot attest to the comparability to the proposals before me. For these same reasons the outbuilding to the rear of 81 Bennetts Castle Lane does not provide a useful precedent for the developments.

32. The existing garden is substantial, and I understand is too much for the current occupiers to manage. However, I give little weight to these personal circumstances and the benefit of the schemes before me in this regard to the occupiers, particularly given the extant permission for a dwelling at the site would address this.
33. In addition to the planning permission relating to Lynnett Road referred to above, I have been provided with a substantial number of other appeal decisions; some refer to other development in the Becontree estate, some refer to other housing development in the Borough, and some relate to other backland development elsewhere in London. I have carefully considered them all.
34. From the appeal decisions provided of cases within the Borough, including those on the Becontree Estate, none appear to relate to backland development comparable to the schemes before me, with many relating to the conversion of existing buildings, extensions or new houses to the side of existing houses. I note some have been provided to illustrate that, within the Borough, previous Inspectors have found the Council's failure to provide housing outweighs harms in other respects. However that balance is a matter for the planning judgement of individual Inspectors taking account of the weight given to the benefits of those schemes and the weight given to the harms.
35. Plans of some of the other cases referred to elsewhere in London have been provided. These show that in different contexts backland development is acceptable. They do not suggest that all backland development is acceptable. In any case, the examples for which I do have plans for all relate to the provision of one unit, not two as in the proposals before me. In the examples without accompanying plans, I cannot attest to their comparability with the developments subject of the appeals before me.
36. Overall, while I recognise there are some similarities between these cases, each one will have had a unique set of circumstances which means each case is determined on its own merits. Consequently, none of the other appeal decisions quoted lead me to a different view on the current appeals.

Conclusion

37. Both proposals would conflict with the development plan as a whole. There are no other material considerations, including the Framework, that would indicate that the proposals should be determined other than in accordance with the development plan. The appeals are therefore both dismissed.

A Owen

INSPECTOR