



Appeal Decision

Site visit made on 24 August 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2024

Appeal Ref: APP/T5150/W/23/3317425

50 Kings Road, Brent, London NW10 2BN

- 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 Quest of Quest JV Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/3507, dated 11 October 2022, was refused by notice dated 7 February 2023.
 - The development proposed is described as the "erection of a single storey rear extension, loft conversion with rear dormer and 3 x front facing rooflights to facilitate conversion of dwelling into 3 self-contained flats; replacement of door to rear with window, provision of cycle and waste storage and associated hard and soft landscaping."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party's interests would be prejudiced by my taking this approach.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the living conditions of the occupiers of 149, 151 and 153 Harlesden Road, with particular regard to privacy and noise,
 - the effect of the proposed development on the character and appearance of the area, and
 - whether the development would achieve the highest standards of fire safety.

Background

4. A Certificate of Lawful Development (CLD)¹ has been drawn to my attention. The appellant highlights that the proposed ground floor extension and dormer

¹ CLD Reference 21/1563

extension match the locations and dimensions of the scheme granted under the CLD. The Council do not dispute this and, from the evidence before me, I see no reason to disagree. I have limited evidence before me which indicates the CLD scheme could not be built and, as such, there is a greater than theoretical possibility that the development might take place as a fallback position should this appeal fail. The CLD is therefore a material consideration in respect of the appeal, to which I attach significant weight.

5. The appeal site has been subject to a dismissed appeal² (the previous appeal), which sought to convert the property into three self-contained flats and erect a single storey rear extension and dormer roof extension. From the evidence before me, the main difference between the two proposals relates to the height of the single storey rear extension and the internal layout. This decision is also a material consideration in the determination of this appeal.

Reasons

Living Conditions

6. The appeal site, 50 Kings Road, comprises a detached dwelling with an attached, single storey, flat roof garage to the side. There are a number of residential properties to the rear of the site, including 149, 151 and 153 Harlesden Road.
7. It is not uncommon in residential areas for views into neighbouring gardens being permissible from the upper floors of properties. There is a degree of oblique potential overlooking into habitable room windows of Nos 149, 151 and 153 at present, as a result of the height and proximity of No 50.
8. In order to provide adequate privacy for residents, the Brent Design Guide Supplementary Planning Document 1 (SPD1) advises that directly facing habitable room windows will normally require a minimum separation distance of 18m. In the absence of guidance to the contrary, it appears this guidance applies to all directly facing habitable room windows. The Council contend that the proposed development falls significantly below this guidance and the appellant does not dispute this.
9. Flat 2 and Flat 3 are both duplex units, split over the first and second floors, with open plan kitchen, living and dining areas at first floor and bedrooms at second floor. The lower panels of the first floor, rear facing windows would be obscure glazed and fixed shut. The upper panels would remain clear glazed and opening. However, the relatively low height of the upper panels would still allow views out of these windows towards the habitable room windows of Nos 149, 151 and 153. As a result of the proposed layout, there would be views from the first and second floor windows within close proximity of the habitable room windows of Nos 149, 151 and 153, thereby resulting in a material loss of privacy for the occupiers of these properties.
10. While the appellant states the bedrooms located within the second floor of the appeal scheme would replicate the layout approved under the CLD, the CLD scheme is for one residential unit only. The appeal proposal would subdivide the property into three separate units, with Flat 2 and Flat 3 being one bedroom units and significantly smaller than the single residential unit shown in respect of the CLD scheme. Therefore, it is likely that the bedroom windows

² Previous Appeal Decision APP/T5150/W/21/3281997

within the appeal scheme would be in use for a greater proportion of the time than if they were associated with a single residential unit. As a result, even if the CLD scheme were to be implemented, the appeal proposal would result in more overlooking from first and second floor windows and a harmful greater loss of privacy for the occupiers of Nos 149, 151 and 153.

11. The proposed single storey rear extension would have habitable room windows and a glazed door facing towards the shared boundary with neighbouring residential properties, Nos 149, 151 and 153. The proximity of these windows to this boundary would fall below the distance of 9m advised by the SPD1 in order to provide adequate privacy for residents. The ground floor of the proposed extension would be lower than that of the host property. Land levels within and adjoining the appeal site are relatively flat.
12. Having regard to its overall height and ground floor level, which I note are both lower compared to the scheme proposed as part of the previous appeal, and the relatively flat rear garden, appropriate boundary treatment would sufficiently mitigate any overlooking from the ground floor openings within the proposed single storey rear extension. This could be controlled via a planning condition were the appeal to be allowed.
13. With respect to noise, there is limited substantive evidence before me which demonstrates the development would result in excessive noise or disturbance for the occupiers of neighbouring properties, Nos 149, 151 or 153, as a result of the proximity of the single storey rear extension. The appeal scheme proposes three flats, which would comprise a net gain of two residential units when compared with the existing use of No 50. The appeal site would, nevertheless, remain in residential use. Having regard to the modest size of the additional units, the number of additional future occupants and their associated movements are likely to be low. Consequently, the proposed development would not significantly increase comings and goings to the site to a level that would be unacceptably harmful to the living conditions of existing occupiers of neighbouring properties through noise and disturbance.
14. For these reasons, having taken into account the fallback option offered by the CLD and notwithstanding my conclusions about the effect on privacy at ground floor and from potential noise and disturbance, the proposed development would have an unacceptable impact on the living conditions of the occupiers of Nos 149, 151 and 153, with respect to privacy. This is contrary to Policy DMP1 of the Brent Local Plan 2019-2041 Adopted February 2022 (BLP) and the guidance within SPD1 which, collectively, states that development will be acceptable providing it is, among other things, of a siting, layout, scale, type and design that provides high levels of internal and external amenity and provides adequate privacy for residents. It would also be contrary to the Framework, which seeks to create places with a high standard of amenity for existing users.

Character and appearance

15. Properties along Kings Road and Harlesden Road, which runs to the rear of the appeal site, are predominately two storey semi-detached properties of similar architectural design and scale which, along with their proximity to the highway, create a strong uniformity to the street scenes. By reason of rear extensions and roof alterations, there is less consistency to the rear of the properties in this area. There is however a degree of spacing between the rear of the

properties, even allowing for the relatively modest depth of the rear gardens. Although detached, the appeal property contributes to the character and appearance of the area by reason of its design and relatively open rear garden.

16. There are very limited public views of the rear elevation and garden of No 50, as a result of surrounding buildings. Therefore, most of the views of this area are primarily private views from neighbouring properties.
17. Typically, properties in the area have broadly rectangular shaped rear gardens of modest depths. However, the rear boundary of the appeal site is angled, resulting in a largely triangular shaped rear garden, with the deepest section of the garden adjacent to 51 Kings Road. The proposed rear single storey extension would be sited towards the deeper section of the garden. However, as a result of the modest garden depth and layout of No 50, the proximity of the extension to the rear boundary would be unusual and erode the open nature of the rear garden.
18. The proposed dormer extension would extend for almost the full height and width of the rear roof slope of No 50. As a result, it would appear as a large, bulky extension that would fundamentally alter the rear roof slope of the host property, therefore detracting from its original character and appearance.
19. For these reasons, the proposed development would result in harm to the character and appearance of the area, contrary to BLP Policy DMP1 which states that development will be acceptable providing it is, among other things, of a siting, layout, scale, type and design that complements the locality. It would conflict with the Framework, which requires high quality development that is sympathetic to local character and the surrounding built environment.
20. However, the CLD scheme also has the potential to alter the character and appearance of this section of Kings Road if implemented, should this appeal fail. The two schemes are comparable in respect of the effect on the character and appearance of the area. Given that I consider the appeal scheme would be no more harmful when compared with the CLD scheme, I consider that as the CLD scheme would be likely to be implemented should the appeal fail, this factor is sufficient to overcome this identified harm and associated development plan conflict. Consequently, my findings on this matter are neutral in the planning balance.

Fire Safety

21. Policy D12(A) of the London Plan 2021 (LP) requires all development proposals to achieve the highest standards of fire safety and sets out a number of criteria to be addressed. While it does not require the submission of a Fire Statement or Reasonable Exception Statement, the supporting text to this policy states that the fire safety of developments should be considered from the outset.
22. While the appellant has indicated these matters could be dealt with by a condition, the criteria within LP Policy D12(A) has not been addressed in the submitted evidence and I cannot therefore be certain that these matters have been fully considered in the design and layout of the proposed development. Consequently, the potential for the scheme to present unacceptable fire risk to future residents cannot be ruled out and nor can I have confidence that they are matters that could be adequately addressed if they were to be controlled by way of a planning condition.

23. For these reasons, the proposed development would not achieve the highest standards of fire safety and is therefore contrary to LP Policy D12(A).

Other Matters

24. The proposed development would be provided with 7 full sized bins and 3 waste bins. The upper floor flats would benefit from south facing bay windows to the front elevations, therefore benefitting from high levels of light and outlook due to their southern orientation. Due to the modest amount of development proposed, these benefits carry limited weight which would not outweigh the harm that I have identified.

Conclusion

25. For the above reasons, the harm in respect to the living conditions of neighbouring occupiers in terms of privacy due to overlooking from upper floors, and to fire safety, are significant. These result in conflict with the development plan. However, the proposed development would not harm the living conditions of neighbouring occupiers in terms of privacy at ground floor or noise, nor would it, taking account of the CLD, result in material harm to the character and appearance of the area. Nevertheless, I conclude that the harm to living conditions and fire safety outweigh the other matters such that the proposal would conflict with the development plan as a whole. Accordingly, the appeal should be dismissed.

S Pearce

INSPECTOR