



Appeal Decision

Site visit made on 21 November 2023

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2024

Appeal Ref: APP/A5270/W/23/3318113

Rear of 311 Uxbridge Road, Acton, Ealing W3 9QU

- 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 and Mrs Mohammad & Mahshid Kazemi & Patterson against the decision of the Council of the London Borough of Ealing.
 - The application Ref 223657FUL, dated 10 August 2022, was refused by notice dated 1 November 2022.
 - The development proposed is a new detached property (2b3p) built over a basement and ground floor with associated cycle store, refuse and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments.

Main Issues

3. The main issues are whether the proposed development would provide acceptable living conditions for future occupants, with particular reference to:
 - private amenity space; and,
 - outlook, daylight, and sunlight.

Reasons

Private amenity space

4. The appeal site is irregular in shape. The proposed dwelling would extend the full width of the plot and be set back from Denhurst Gardens behind a low boundary wall. The rear elevation would be set at an angle to the rear boundary, resulting in a triangular-shaped lightwell at the basement level.
5. Policy 7D of the Ealing Development Management Development Plan Document (2013) (DPD) and Policy D6 of the London Plan seeks to ensure, amongst other matters, a minimum of 6 sqm of private outdoor space within new development. Supporting text alongside Policy 7D table 7D.2 clarifies that the amount and form of provision should, amongst other matters, respond to the physical context, respect the established local character and pattern of building, and safeguard the privacy and amenity of future occupants, with the

- space fit for purpose, genuinely private, screened from roads and not permanently overshadowed.
6. Floor plans identify the front area as the only accessible amenity space for future occupants. Whilst this may comply with the dimensions cited in Policy 7D of the DPD and Policy D6 of the London Plan, this would be the only area for residents to sit out to enjoy the outdoors, dry washing, and for children to play. This area would also provide the sole access to the proposed dwelling as well as contain refuse storage, cycle stands, fire safety equipment, and the front lightwell.
 7. I accept that the proposal would provide an area of amenity, however, this area would be shared with ancillary elements necessary for the daily occupation of the dwelling and would be open to Denehurst Gardens with future occupants clearly visible. I therefore do not agree that the area is genuinely private or that the space would be of sufficient quality.
 8. The appellant has suggested the insertion of a door to the rear within the basement to allow access to the triangular lightwell. This would create a genuinely private amenity space. However, the tapered rear boundary would restrict the space and the retaining wall and rear boundary would tower above the occupants resulting in the space feeling confined. Furthermore, given the subterranean nature of the area, the height of the boundary treatments, the orientation and overall depth of the neighbouring property No. 1 Denehurst, it is highly probable that this area would be overshadowed for significant periods. Furthermore, I have not been provided with the overall area of this space, as such even if the rear basement area were of sufficient size, I do not consider that this area would provide suitable amenity space fit for purpose for future occupants of the proposed 2b / 3 person house.
 9. The use of the rear area within the previously approved¹ scheme was balanced alongside the use of the front area which was set behind a boundary wall built to the previous height. The Council were satisfied that the height of the wall provided a private amenity area for future occupants. This is not the case with respect to this appeal. The front would be the only accessible amenity area set behind a low wall and shared alongside access to the dwelling and ancillary domestic elements.
 10. Furthermore, the appellant has drawn my attention to the presence of two nearby parks. I have not been provided with their locations, notwithstanding this, the presence of parks as recreational spaces for future occupiers does not address the policy requirement identified within Policy 7D of the DPD for the provision of private amenity.
 11. I conclude that the proposed dwelling would not provide sufficient private amenity space for the future intended occupiers to provide them with satisfactory living accommodation. Accordingly, the proposal would conflict with policies 3.5, 7B, and 7D of the DPD which collectively seek to ensure, amongst other matters, that development achieves sufficient space for future intended occupiers with good levels of privacy. It would also be contrary to Policies D1, D4, and D6 of the London Plan which seek to ensure, amongst other matters, that new development delivers good design, understanding the existing

¹ 190541FUL

character and context; and ensures private outdoor space. There would also be conflict with the National Planning Policy Framework (Framework) which seeks, amongst other matters, to ensure a high standard of amenity for future users.

Outlook, daylight, and sunlight

12. The bedrooms would be located within the basement, with the larger bedroom (double) positioned to the front and the smaller (single) bedroom to the rear. The outlook from these rooms would be onto lightwells of varying sizes. To the front, the lightwell would be restricted to the width of the glazing within the projecting bay and be of limited depth with a retaining wall extending up to ground level. To the rear, the lightwell would span the full width of the plot reflecting the irregular shape of the rear boundary. The rear wall would extend from the basement upwards terminating approximately above the ground floor rear windows.
13. I acknowledge that the Building Research Establishment (BRE) analysis may use an overcast sky rather than a clear sky and that it is guidance. I also acknowledge that the ground floor would be an open plan living, kitchen, and diner which would exceed the Average Daylight Factor (ADF), and that the proposed dwelling may have additional windows above those within the previously approved scheme. However, bedrooms are habitable rooms and as such are equally important as living rooms, kitchens, and diners. Therefore, light levels should achieve the minimum requirements. The larger bedroom to the rear would receive 0.42% of the ADF, with the rear bedroom receiving 0.81%. ADF levels for bedrooms within the BRE are 2%. Whilst ADF light levels within the rear bedroom are slightly lower than the BRE guidance, the light levels associated with the front bedroom would be significantly lower.
14. Given the shallow depth of the lightwells and severely low light levels to the front, together with the height of the boundary wall to the rear, the outlook from these rooms would be unduly oppressive exacerbating the feeling of being hemmed in with rooms appearing gloomy with low levels of natural light and future occupiers reliant on artificial light.
15. For the above reasons I conclude that the proposed dwelling would fail to provide adequate living conditions to the future intended occupiers with regards to outlook, daylight and sunlight. Accordingly, the proposal would conflict with policies 3.5, 7B, and 7D of the DPD which seeks, amongst other matters, to ensure that development achieves a high standard of amenity for users including good levels of daylight and sunlight. It would also be contrary to Policies D1, D4, and D6 of the London Plan which collectively seek, amongst other matters, to ensure that new development provide sufficient daylight and sunlight. There would also be conflict with the Framework, which seeks, amongst other matters, to create places with a high standard of amenity for future users.

Other Matters

16. The appeal site is located on the edge of the Creffield Conservation Area (CCA), as such I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). The CCA immediate area, within which the appeal premises is located, appears to be characterised by a mix of 19th and 20th century buildings. With large two and a half storey residential buildings with bay windows and decorative eaves that are set back

from Uxbridge Road by front gardens and buildings with turrets on prominent corner sites. The appeal site is currently vacant and surrounded by hoarding. I consider that the proposed site has a neutral effect on the CCA. The positioning of the proposed dwelling would follow the building line within Denehurst Gardens, with its scale subordinate to those buildings within the immediate context and which fall within the CCA. I consider that the proposed dwelling would also have a neutral effect, and this preserves the character of the CCA.

17. The appellant contends that the footprint of the proposed dwelling is the same as the previously approved dwelling, and the ground floor would be dual aspect unlike the approved house. Whilst I have not been provided with the floor plans to compare, I note the elevations were provided within the Design & Access and Fire Safety Strategy. Whilst the footprint of the building may be similar, the overall floor area is not with the proposal subject to the appeal containing a basement.
18. The appellant has drawn my attention to a previous application² and subsequent appeal³ for the same site. Whilst I have been provided with the Appeal Decision, I have not been presented with the full details. Whilst both appeals relate to the same site and for the erection of one dwelling, the previous proposal was for a traditional two-storey dwelling which is different to the appeal before me.
19. My attention has also been drawn to a development "opposite." I have not been provided with an address and whilst I have observed other buildings within Denehurst Gardens, I did not see any areas which utilise the front as amenity spaces. Therefore, I cannot be certain which building or sites are being highlighted for my attention.
20. Furthermore, with regards to Acton Bus Depot, 283 High Street⁴. Whilst I have been provided with the relevant Appeal decision, I note that the redeveloped site is of a greater scale than the proposed dwelling before me. Notwithstanding this, matters considered by the Inspector only relate to traffic and highway and pedestrian safety and do not consider the living conditions of future occupiers. There are therefore no similarities between the two cases. As I have not been provided with the full details of the case, I am unable to comment on whether the Council considered amenity space for future occupiers as part of its assessment.
21. From the evidence before me and observations on site, I can confirm that the appeal site is vacant of any buildings and landscape features.
22. From the evidence before me, No. 7 Denehurst Gardens does appear to contain a basement. However, this area is shown to be a 'cellar' and not a bedroom. As such this case is not considered comparable to the matter before me.
23. Whether or not the Council have "familiarised themselves or conducted the necessary level of research into the facts", or considered the proposal to be an improvement on what has been previously approved are not matters which fall within the scope of my assessment which must focus on the planning merits of the appeal proposal.

² 170233FUL

³ APP/A5270/W/17/3173419

⁴ APP/A5270/A/09/2112430 & APP/A5270/E/09/2112431

24. The lack of objection from neighbouring properties does not in itself render the scheme acceptable.

Conclusion

25. The appeal proposal would create one new house, supporting the Government's objective of significantly boosting the supply of homes. However, the proposal would be harmful to the living conditions of the future intended occupiers, and this harm would outweigh the benefits associated with the creation of one new dwelling. Therefore, the proposal conflicts with the development plan taken as a whole, and there are no material considerations that lead me to find other than in accordance with it. Consequently, the appeal is dismissed.

L Clark

INSPECTOR