



Appeal Decision

Site visit made on 12 December 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2024

Appeal Ref: APP/N5090/W/23/3323682

87 Kingsbury Road, Colindale, London NW9 7HU

- 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 RPR Planning Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 21/0725/FUL.
 - The development proposed is described as the "subdivision of the site and the construction of a 3 bedroom end of terrace house including a single rear extension to the existing house."
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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. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the revised version.
3. Barnet's Draft Local Plan has been submitted for examination under Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012. However, I am not aware of the exact stage it has reached, the extent of unresolved objections or whether its policies will be considered as consistent with the Framework. Consequently, in accordance with paragraph 48 of the Framework, I give it limited weight.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of the occupiers of 2 Talgarth Walk, with particular regard to privacy, and the living conditions of the occupiers of neighbouring properties, with particular regard to outlook, and
 - the character and appearance of the area, with particular regard to a nearby tree.

Reasons

Living conditions

5. The Council has raised concerns in respect of the proposed dwelling, which has been reduced from a three bedroom house to a two bedroom house.
6. The Local Plan Supplementary Planning Document: Residential Design Guidance October 2016 (SPD) advises that privacy can be safeguarded by achieving adequate window to window distances between buildings, both existing and proposed. While other parts of London may use a lower threshold, the SPD stipulates a minimum distance of about 21 metres to avoid overlooking.
7. There is dispute between the parties in respect of the exact distance between the windows in the rear elevation of the proposed dwelling and a first floor bedroom window within 2 Talgarth Walk. While at an oblique angle and with a distance the appellant contends is only marginally shorter than that between No 87 and the rear of 1 and 2 Talgarth Walk, the distance between the appeal property and No 2 would, nevertheless, fall short of that required by the SPD.
8. The Council has not highlighted which windows are of concern and the proposed dwelling's rear elevation contains several openings, some of which serve habitable rooms. There is a large, glazed opening at ground floor, serving a living, kitchen and dining room, and two first floor windows, serving a bedroom and stairwell.
9. Due to the differences in land levels between the appeal site and No 2, there would be views from the ground floor opening and first floor windows within close proximity of the bedroom window serving No 2. As such, the proposed dwelling would result in a material loss of privacy for the occupiers of No 2.
10. The appellant has indicated that they would be willing to obscure glaze the first floor, rear windows within the appeal scheme. This could be secured by an appropriately worded condition and would sufficiently mitigate against any overlooking of No 2 from these windows.
11. The submitted plans indicate that the bedroom would be served by two windows. As such, sufficient outlook would be afforded to future occupiers of the proposed development, given that the second bedroom window would provide sufficient outlook over the front of the appeal site.
12. Notwithstanding this, overlooking from the ground floor opening within the proposed dwelling would remain. As a result, there would be a material loss of privacy for the occupiers of No 2.
13. There is a tight knit relationship between properties within the vicinity of the appeal site. The proposed dwelling would be positioned to the side of No 87, which is located within a row of terraced properties. The rear of this terraced row faces, at an oblique angle, towards the rear gardens of properties on Talgarth Walk, including No 2. As a result of this layout, land levels and boundary treatments, the occupiers of the properties on Talgarth Walk have a degree of restricted outlook from their gardens at present.
14. Although the appeal site is elevated, the existing boundary treatment and the design, layout, height and orientation of the proposed dwelling, would ensure

that the proposal would not result in an overbearing or visually obtrusive form of development. As such, it would not have a materially harmful impact upon the outlook of the occupiers of neighbouring properties along Talgarth Walk from their gardens.

15. The appellant alleges that if the appeal scheme comprised a two storey side extension to No 87, it would be highly unlikely to be refused. However, no further details have been submitted and a detailed comparison with the appeal scheme cannot be made. Additionally, there is little before me that the alternative scheme suggested is a greater than theoretical possibility or, that if the appeal is dismissed, the alternative would be pursued. Consequently, I find the suggested fallback position to have limited weight in the determination of the appeal.
16. For these reasons, notwithstanding my conclusions about the effect on outlook, the proposed development would harm the living conditions of the occupiers of 2 Talgarth Walk, with particular regard to privacy, contrary to Policy D3 of the London Plan 2021 (LP), Policy DM01 of Barnet's Local Plan Development Management Policies Development Plan Document September 2012 (DMP) and the guidance within the SPD. Collectively, these seek, among other things, to ensure development proposals are designed to allow for adequate outlook and privacy for adjoining occupiers.
17. The Council have referred to Policy CS5 of Barnet's Local Plan Core Strategy Development Plan Document September 2012 (CS) within their reason for refusal. This policy relates to protecting and enhancing Barnet's character. As this policy does not refer to living conditions of future occupiers, with regard to outlook or privacy, it is not relevant to the main issue.

Character and appearance

18. A tree located within a grass verge lies outside of, but close to, the front boundary of the appeal site. Although it is not covered by a Tree Preservation Order or on Council owned land, due to its siting and height, it is a prominent feature in the street scene. When viewed alongside other trees and vegetation in the wider area, the tree helps to soften the surrounding built development and contributes towards the verdant character of the area. The tree therefore contributes positively towards the visual amenity of the area.
19. Although the appellant asserts the tree would be retained and would likely need to be trimmed back in the crown, the proposed development would, nevertheless, be uncomfortably close to the tree and result in works within the Root Protection Area. Therefore, the proximity of the tree to the proposed development is such that any adverse damage to the tree during construction, or in the future, cannot be ruled out.
20. The appellant states it is possible to build a suitable foundation with some king piles and steel lintel, to ensure there would be minimal impact upon the tree. However, limited substantive evidence, such as an arboricultural report, has been submitted to demonstrate that the suggested measures would adequately mitigate against any harm to this tree.
21. As such, the information submitted is inadequate to ensure that the proposed development would not result in harm to the health and longevity of this tree. Furthermore, the proximity of the tree to the appeal scheme could lead to

future pressure to carry out works to the tree, including pruning. Therefore, over time, this could adversely affect the contribution the tree makes to the character and appearance of the area.

22. The appellant has indicated that appropriate construction works could be secured by condition. However, due to the siting of the proposed development, this would not be effective as there is no evidence that would indicate any potential harm to the tree arising from the appeal scheme would be avoided while according with the submitted plans. Furthermore, while additional planting within the appeal site is proposed, this would take some time to establish and replace the amenity value of the tree.
23. A separate site has been drawn to my attention, which has a tree directly beside a new build house. I have been advised that the foundations were built to reduce the impact on the tree, which now only requires periodical pruning. However, I do not have the full planning background before me, including the precise details of the foundations, or the tree's root spread. As such, I cannot be certain the exact circumstances of the site are directly comparable. In any case, I have considered the appeal on its own merits.
24. For these reasons, the proposed development would cause unacceptable harm to the character and appearance of the area, with particular regard to a nearby tree. This is contrary to LP Policy G7, CS Policies CS NPPF and CS1 and DMP Policy DM01. Collectively, these seek, among other things, to ensure development proposals ensure that, wherever possible, existing trees are retained and safeguarded, and Barnet's character is protected.

Other Matters

25. The appeal scheme would provide a family home, in an accessible residential location, that would make a modest contribution towards the supply of housing in the area, thereby supporting the Government's objective of significantly boosting the supply of homes. The appellant also highlights that the appeal scheme would make good use of the site and improve its appearance. Given the scale of the proposed development, even cumulatively, these benefits attract limited weight. An absence of harm in respect of levels of sunlight or the 25-degree line of sight are neutral matters.
26. The appellant's comments in regard to the positive advice received from the original planning officer prior to the determination of the planning application are noted, as is the length of time taken to process the application and the allegation that Council officers making the decision did not visit the site. I am, however, required to have regard to the planning merits of the case and, as such, these are matters between the appellant and the Council.

Conclusion

27. For the above reasons, notwithstanding my conclusions on the living conditions of the occupiers of neighbouring properties, with particular regard to outlook, the harm I have identified to the living conditions of the occupiers of No 2, with particular regard to privacy, and the character and appearance of the area, with particular regard to a nearby tree, is determinative. Therefore, the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I

should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR