



Appeal Decision

Site visit made on 5 June 2024

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2024

Appeal Ref: APP/N5090/W/23/3326171

Cromer Road Open Space, Cromer Road, New Barnet EN5 5HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Sevag Balkorkian of Stararkitekt Ltd against the decision of London Borough of Barnet.
 - The application Ref is 23/1784/FUL.
 - The development proposed is: Planting a tree and setting up a protective barrier around protected Oak tree.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description on the refusal notice in the banner above for clarity and brevity. It is clear from the evidence before me that the development comprises a fenced enclosure. There is nothing before me to indicate that planting a tree on this site requires planning permission and as such, I have considered it only in the planning balance.
3. The Council's decision has not specifically cited light loss to existing occupiers as a concern. However, it has been raised by interested parties and the appellant has supplied a daylight and sunlight report. As such, I conclude that light loss should be included in my consideration of living conditions and that its inclusion would not be prejudicial to any of the parties.
4. The application form does not set out the proposed height of the fence. However, the plans indicate that the back section of the fence would be 2.4 metres tall and the remainder would be 2 metres tall. I have proceeded on that basis.

Main Issues

5. The main issues are the effects of the development on:
 - The character and appearance of the area;
 - The living conditions of occupiers of 33A Cromer Road and 2 Boleyn Way with particular regard to outlook and light; and,
 - Whether the development would accord with local policies with regard to a protected tree.

Reasons

Character and appearance

6. The appeal site is an area of grass behind the footway at the corner of Cromer Road and Boleyn Way, and also includes a small triangular area of paving between the front entrance of 33A Cromer Road (No 33A) and the footway. The surrounding estate comprises 20th century link housing laid out in an informal but pleasing and distinctive pattern. There is a significant sense of openness derived from the irregular layout and its integral open space, the predominance of a chalet bungalow typology and the notable absence of front boundary treatments for a large proportion of the dwellings.
7. The grassed area of the appeal site is overlooked by the gable end of the semi-detached No 33A and 2 Boleyn Way (No 2) which has a pair of bay windows on the ground floor with a pair of smaller windows above. Although the entrances to these dwellings are on adjacent elevations, this gabled elevation with its feature windows, is prominent in the street scene.
8. The proposals comprise the construction of a fenced enclosure. The rear and taller section would be parallel to the gabled elevation described above, at a distance of 2 metres. However, the drawings do not show the two bay windows on that gabled elevation. The distance between the fence and the outer pane of those windows would be considerably less than 2 metres.
9. Although I recognise that the appellant has purchased the site, it nonetheless appears to the casual viewer as an integral part of the road verge and the wider public realm. It contributes to the estate's general openness as well as providing visibility at the road junction. The construction of a fenced compound with door and mailbox would represent a significant intrusion into that openness. It would also appear highly incongruous given it would be unrelated to, and remote from, the building line and underlying development pattern and would have no obvious function or relationship with any existing dwellings. Moreover, it would obscure all views of the prominent gabled elevation and would appear wholly out of place in the street scene.
10. The appellant has advanced the argument that privacy and security is required for the site. However, as there are no proposals before me for the land within the enclosure, it is unclear why there would be a need for privacy or security. As such these arguments carry no weight in my reasoning.
11. It is proposed to plant a hedge along the front and sides of the enclosure to screen the fence. However, this does not alter my reasoning with regard to spatial intrusion into this area of open space. I acknowledge that the house opposite has a hedge planted in front of a boundary fence. However, that fence is clearly running along the rear plot boundary and enclosing a garden which is contiguous with the dwelling. What is proposed would not be enclosing the garden of an existing dwelling.
12. As such, the development would have an adverse effect on the character and appearance of the area and would conflict with Policies DM01 and CS5 of the Local Plan (LP) which taken together require development to protect and enhance Barnet's character to create high quality places, and to respect local context and the pattern of surrounding buildings and streets. There would also

be conflict with the general design aims of LP Policy CS1 and London Plan Policy D3.

13. The development would also fail to accord with the Residential Design Guidance SPD (SPD) which emphasises the importance of building lines to create continuity of frontage and definition, and states that where there is a strong building line any new development should be in keeping with this.

Living conditions

14. The fence parallel to the side wall of Nos 2 and 33A would be 2.4 metres high. The plans show that the fence would be as high or higher than the top of the bay windows. Measurements I took at my visit confirmed that this would be the case. Moreover, the fence would be not much more than one metre from the outer face of the bay windows. All views from those bay windows would be obscured. This would represent a considerable and highly unsatisfactory degree of enclosure for occupiers of Nos 2 and 33A. I see no reason to conclude that the loss of outlook and views from one window in a combined kitchen living space would not have a highly adverse effect on the living conditions of those occupiers.
15. With regard to light to existing buildings, BRE guidance¹ states that a badly planned development may make adjoining properties gloomy and unattractive. A daylight and sunlight report (DS report) has been provided. This states that it has been prepared in accordance with BS 8206-2², but the BRE guidance states that BS 8206-2 has been superseded by BS EN 17037 and that BS 8206-2 is no longer recommended.
16. The BRE guidance sets out several methods to assess daylight loss in relation to existing development. Where the distance of a new development would be less than three times its height above the centre of an existing window, as appears to be case here, the procedure that assesses enough skylight should be carried out. This does not appear to have been undertaken in the DS report. However, my assessment of the relationship of the bay windows and the proposed fence suggests that the angle subtended between the centre of the bay windows and the development would be significantly less than that required to demonstrate the rooms would have sufficient skylight. This, according to the BRE guidance, indicates that the development would have a substantial effect on the diffuse skylight currently enjoyed by the occupiers of Nos 2 and 33A.
17. I also concluded from my assessment that it is highly likely that there would be any views of the sky through those bay windows.
18. The DS report sets out the findings of a daylight impact assessment based on illuminance. However, daylight impact assessment is not a term included in the BRE guidance glossary. The report also compares the findings of the assessment to minimum requirements set out in BS8206-2, but as set out above, this standard has been superseded. Moreover, I was unable to find equivalent current standards in the BRE guidance.
19. In any case, even if I conclude that the illuminance method given in the DS report is an appropriate measure to assess potential daylight loss, the figures

¹ Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice, BRE 2022

² BS 8206-2: 2008 Code of Practice for Daylighting, 2008

show that both dwellings would have a light loss of around 30 per cent, irrespective of whether the overall light levels would exceed minimum standards. This is likely to be very noticeable by the occupiers and would have an adverse effect on their living conditions.

20. The appellant has advanced the argument that the bay windows are secondary windows to the combined living kitchen spaces. However, they are clearly architectural features and are not dissimilar in size to the other windows serving those room. It seems very likely that they make a significant contribution to the overall illumination of that living space. They also give open views across the grass verge to which I attribute some importance given the modest size of that combined living space. Moreover, the London Mayor's guidance highlights the inherent benefits of dual aspect dwellings, including gaining sunlight for longer periods, a choice of views and greater flexibility of use³. In any case, I see no reason why the occupiers of those buildings should have their light levels significantly reduced for a development that has no personal benefit for those occupiers, nor any discernible public benefit.
21. The evidence refers to compliance with the London Mayor's Housing Supplementary Planning Guidance 2016. However, this has not been provided and in any case, it is of some age and the current standards are set out in the 2022 BRE guidance.
22. The development would have a highly adverse effect on occupiers of Nos 2 and 33A with regard to light and outlook and as such would be contrary to London Plan Policy D6 which requires development to provide sufficient daylight and sunlight to surrounding housing, and London Plan Policy D3 which requires development to achieve indoor environments that are comfortable and inviting for people to use, and which delivers appropriate outlook and amenity. It would also conflict with LP Policy DM01 which states that all development should be designed to allow for adequate daylight, sunlight and outlook for adjoining properties, as well as failing to accord with the SPD with regard to amenity.

Protected Tree

23. The site contains a protected tall and mature Oak which has a largely columnar form seemingly as a consequence of pruning works, but which appears to be in good health. It is significantly taller than the nearby dwellings and is a prominent feature in the street scene.
24. The appeal statement appears to advance the argument that the fenced enclosure is designed to protect the tree. However, there is nothing before me to indicate that the Oak is at risk.
25. The appeal statement refers to neighbours carrying out construction works but the only construction apparent in the area to be fenced is timber posts which appear to have been installed by the appellant. In any case, no matter how carefully fence posts are installed, there could be disturbance which would be harmful to the Oak's future health and longevity. There is nothing before me to indicate that the diameter of the Root Protection Zone has been identified and given the Oak's overall girth it seems likely that it spreads across most of the site.

³ Residential Design Guidance SPD

26. The harm to the Oak's roots arising from the installation of fence posts is likely to be limited. Nonetheless, I cannot conclude that there would be no harm to the Oak. The development would therefore fail to accord with the aims of London Plan Policy DM01 which requires the root systems of existing trees to be adequately protected as well as LP Policies DM01, DM16 and London Plan Policies G6 and G7 which are broadly concerned with safeguarding biodiversity.

Other Matters

27. The appellant refers to Policies D12 and D13 of the Development Management Policies 2012 and London Plan G7. However, these are not mentioned by the Council as policies to be taken into consideration and nor are they cited in the reasons for refusal. Lack of conflict with development plan policies carries neutral weight.
28. The appeal statement refers to bias and discrimination. However, these are not matters before me. Nor is it within the remit of the appeal to undertake anything other than an assessment of the evidence on planning merits or to canvas local opinion. Issues raised around the timeliness of the Council's handling of the application are also outside the remit of this appeal.
29. Although the appellant refers to similar extensions to neighbouring property, those are associated with established dwellings and their attached gardens. This development would be a fenced enclosure remote from any dwelling, either physically or functionally. The situations are not comparable.
30. The argument is advanced in the appeal statement that some interested parties reside outside the EN5 postal area. I acknowledge that this is the case, but residence does not preclude the acceptance of representations. In any case, the weight given to concerns raised by interested parties is based on planning merit rather than the quantity of those representations or their addresses.
31. The argument is also advanced that nearby occupiers have encroached onto the appellant's land by building an extension. However, there is no evidence before me to support this argument. It appears that the encroachment referred to may be paving on the small triangular area included in the appeal site plan. However, the evidence suggests that the paving was in place when the appellant purchased the land and it is not on the land to be fenced.
32. It is also suggested by the appellant that neighbours have felled mature trees on the site but there is no evidence to support this. The photograph ringed in red in the appeal statement is not a mature tree. An extract from the officer's report for a previous application has been included in the appeal statement but it confirms only that the Oak has been recently pruned. In any case this is not a matter before me.
33. The appellant refers to the need for a fence to protect construction work on the site, but it is unclear what is being referred to. There is nothing before me to indicate that there are development options for the site, or that fencing is required in advance of development options being agreed with the Council or any other relevant parties. I give this argument no weight.
34. The argument is advanced that the development would align with the Barnet Tree Policy but this is guidance rather than a policy. Having reviewed this document it appears that the only relevant section is that concerning fences and hedges. This requires that fences or hedges adhere to guidelines in London

Plan Policy 3.5 and Chapter 7 of the SPD. In any case, lack of conflict with this document does not carry weight in favour of the appeal.

35. Interested parties have also raised a concern in relation to highway safety. There is nothing before me to indicate that the highway authority has been consulted. As the fence would be at a junction and impede visibility it seems reasonable to suppose that it could pose a risk to public safety. However, it is not raised as a main issue and I have not given this any weight in my reasoning.
36. Interested parties have raised concerns in relation to the land's ownership and existing covenants which require land to the front and side of the dwellings to be kept open. However, whilst I acknowledge those comments, this is not a planning matter and therefore not before me.
37. The appeal statement sets out that alternative works have been considered but as I am unaware of any benefits arising from the development, these carry no weight. Moreover, I am required to consider the appeal before me. I also note that the evidence refers to support from local tree specialists but there is no substantiating evidence. In any case, it would not alter my reasoning with regard to the harm identified above.

Human Rights

38. Article 8 of the ECHR⁴ is concerned with the right to respect for private and family life and for the home. Section 2 states that *there shall be no interference by a public authority with the exercise of this right except such as as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others.*
39. Protocol 1 of Article of the Human Rights Act 1998 states that *every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
40. In both cases the rights conferred by those articles are qualified by reference to the public interest, the underlying legal context and the rights and freedoms of others. In this case the right of the appellant to enjoy his land is outweighed by the conflict with the local development plan and the rights of the occupiers of Nos 2 and 33A to reasonably enjoy their property.

Planning Balance and Conclusion

41. There are no compelling reasons before me to support the building of a high fenced enclosure on a grassed verge. The only reasons given are the protection of private property and its use as a garden, and to protect the Oak. However, gardens are generally attached to residential dwellings and there is nothing before me to suggest that the Oak is at risk. Although in principle the planting of an additional tree would carry some very minor public benefit, this does not require planning permission. I conclude that there are no public or private

⁴ European Convention on Human Rights

benefits sufficient to outweigh the harm identified above in relation to character and appearance, and living conditions.

42. As such, the development conflicts with the policies of the development plan taken as a whole and there are no material considerations of such weight to lead me to conclude otherwise. The appeal is dismissed.

A Edgington

INSPECTOR