



Appeal Decision

Site visit made on 30 July 2024 by I Chukwujekwu BSc MSc MIEMA CEnv MRTPI

Decision by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2024

Appeal Ref: APP/N5090/W/24/3341227

5 Hemswell Drive, London, NW9 5WN

- 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 Mr L Xhauri against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/5363/FUL.
 - The development proposed is conversion of existing dwelling into 2no self-contained flats.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. A draft revised National Planning Policy Framework (2024) (the Framework) was published during the appeal process. The substance thereof as far as it relates to the following main issues has not however changed. Moreover, as a draft version it could be subject to change. As such, for clarity, my references to the Framework are to the current 2023 version.
4. The appeal proposal has been amended from the original submission in order to address some of the Council's concerns. The amendment has repositioned the enclosed garden area which is part of the appeal proposal. The Council has not objected to this amendment, and I have used it to assess the merits of the proposal in making my decision. I am satisfied that in so doing neither party would be disadvantaged. Neither would any third party who would ordinarily have been consulted be disadvantaged, as the amendment is minor and does not materially alter the scheme which is the subject of this appeal.
5. The Council has referred to Policy HOU03 of Barnet's Draft Local Plan (the draft plan) in its decision notice. Though a relevant material consideration, the policies within are not decisive as this remains a draft Plan and could be subject to change. In accordance with paragraph 48 of the Framework, only limited weight can be afforded to this Plan. I have determined the appeal accordingly.

Main Issues

6. The main issues are:

- 1) The effect of the proposal upon the character and appearance of the surrounding area;
- 2) Whether the proposal would provide suitable living conditions for future occupiers of the proposed development with particular reference to outlook and privacy (flat 1), private amenity space and gross internal area (GIA) (flat 2) and internal floor to ceiling height (both flats).

Reasons for the Recommendation

Character and appearance

7. The appeal property is a two-storey mid terrace dwelling located on Hemswell Drive. It is set back from the road and has a front garden partly enclosed by a low timber fence and an open parking area in front of a single storey garage to the front. There are also two additional off-street parking areas across the pedestrian walkway to the front.
8. The surrounding area is residential and is characterised by a mix of two-storey terraced single family dwellings and purpose-built flatted development. Similar to the appeal property, the terraced family dwellings feature front parking areas with garages to the front and front gardens. These are either open or bounded at the front by either low timber fencing, mature hedging or a combination of both. These areas cannot however be said to be private amenity spaces as they are open to the street on account of the parking area and access in front of the garage. Thus, the area to the front presents a distinctive open character.
9. The appellant proposes an area to be bounded by mature hedging within the front garden area. This enclosed amenity space would be viewed from the street above the timber fence and via the gap created by the access and parking area and would be an incongruous feature, which would be harmful to the open character and appearance of the area.
10. The harm would be further exacerbated by the increased intensity of use as a result of the conversion. There is likely to be a generation of outdoor furniture associated with the use of the outdoor amenity space and may also include washing lines and other domestic accoutrements. Together with the level of external cycle and bin storage, the increased intensity from two flats would appear a striking departure from the prevailing pattern of single terraced houses on that side of the street. In this regard, even though internal alterations would not be evident in the public realm, the external visible manifestations of the subdivided house would be overtly distinctive and would fail to harmonise with the group of houses.
11. The appeal property by nature of its design contrasts with the blocks of purpose-built flats and there is a striking difference between the character and appearance of houses on the west side of the street compared with the purpose-built flats on the east side of the street. Thus, the number of flats or their character and appearance on the eastern side of the street does not alter or outweigh my findings of harm in relation to the proposed flats on the western side of the street within the terrace block of houses.

12. I find that by virtue of its position within a terraced block of family housing and the open character of the area, the proposed conversion of the existing dwelling into 2no self-contained flats would be harmful to the character and appearance of the surrounding area. Consequently, it would conflict with Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document (September 2012) (the LP), Policies CS1 and CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document (September 2012) (the CS), Policy D3 of the London Plan 2021 and guidance within the SPD. These, amongst other matters, seek to ensure that proposals are of the highest standards of urban design and should be based on an understanding of local characteristics and should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.

Living conditions

Outlook and Privacy (Flat 1)

13. The amended drawings submitted after the Council's decision have repositioned the enclosed garden area to be situated 3 metres from Bedroom 2 of Flat 1. In order to provide some privacy for this space, the hedges would need to be at least 1.8 metres in height. Although, the appellant submits that the hedge will be of evergreen planting, a planning condition cannot be imposed to ensure that the hedge grows in perpetuity. Natural causes put this beyond planning control. In the absence of such, it is likely that the hedge would not always provide sufficient screening to prevent overlooking into these habitable rooms. In this regard, the use and activity in the amenity space would be invasive to the occupiers of the flat.
14. At the proposed separation distance, though there is likely to be some impact to the outlook from the aforementioned habitable room windows, I find that it would not be materially harmful on account that the windows would be afforded oblique views.

Private Amenity Space (Flat 2)

15. Following from the above, the hedge is also unlikely to provide sufficient screening for the users of the proposed enclosed garden. As such, the privacy of users of this space cannot be considered to be sufficiently protected. The private garden has been increased to 15 metres square on the revised drawings to meet the requirements of Table 2.3 of London Borough of Barnet's Local Plan Supplementary Planning Document: Sustainable Design and Construction (October 2016). However, due to the scope for overlooking, I find that provision of a private outdoor amenity space would not be sufficiently provided by the proposal.

GIA (Flat 2)

16. Table 3.1 of Policy D6 of the London Plan 2021 sets out minimum internal space standards for new dwellings. The requirement for a 1 bedroom 2-person (1b2p) 1 storey dwelling is 50 metres square. Flat 2 would have a GIA of 57 metres square and would contain 1 bedroom for 2 persons with a small study doubling as a guest bedroom for occasional guests. As such, I am satisfied that Flat 2 would have acceptable internal living space for the number of occupiers proposed.

17. As I have given limited weight to Policy HOU03 of the draft plan, the conflict against the requirement for 61 metres square in the latest draft version does not outweigh my findings on this matter.

Internal Floor to Ceiling Height (Both Flats)

18. Policy D6 of the London Plan 2021 states that developments are required to meet the minimum standards which apply to all tenures and all residential accommodation that is self-contained. It further states in F (8) that the minimum floor to ceiling height must be 2.5 metres for at least 75 per cent of the Gross Internal Area of each dwelling. The existing height which is to be retained is 2.4 metres which falls short of this requirement. However, it is in use as an existing dwelling and there is no substantive evidence that these existing internal floor to ceiling heights are leading to poor living conditions. Moreover, the difference would be a marginal 0.1 metres. I find that while the proposal would be contrary to Policy D6 of the London Plan 2021, it would not be significantly inadequate to amount to detrimental living conditions on its own.

Summary

19. To conclude on this main issue, I find that the proposal would result in unacceptable living conditions for future occupiers of the proposed development with particular reference to privacy (Flat 1) and private amenity space (Flat 2). Accordingly, the proposal would conflict with the requirements of Policy DM01 of the LP, the guidance within the Supplementary Planning Document (SPD): Sustainable Design and Construction (2016) and the Residential Design Guidance SPD, when taken together and in so far as they relate to these matters. These seek, amongst other things, to ensure that development proposals should be designed to allow for adequate privacy.

Other Matters

20. As the appellant has suggested, the proposal would provide an additional residential unit without resulting in the loss of a family dwelling. There would be social and economic benefits from provision of an alternative type of housing. The Council has referred to Policy D14 of the London Plan 2021 in its reason for refusal. However, this policy specifically applies to the control of noise which hasn't been presented as a reason for refusal. The absence of harm in relation to noise or other beneficial aspects of the scheme do not outweigh my findings of harm in the main issues.
21. The appellant has stated that there is precedence in existing residential conversions on the west side of Hemswell Drive at No 13 and No 14 Hemswell Drive. However, no further details have been provided and I have no substantive evidence that any such conversions are lawful. Moreover, I did not observe any obvious signs of a change in character in contrast with the appeal proposal which would be made obvious in the bid to provide private amenity space at the front.

Conclusion and Recommendation

22. The proposal would conflict with the development plan and there are no material considerations that outweigh this conflict.

23. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

I Chukwujekwu

APPEAL PLANNING OFFICER

Inspector's Decision

24. I have considered all the submitted evidence and my representative's report and on that basis the appeal is dismissed.

Mr R Walker

INSPECTOR