



Appeal Decision

Site visit made on 11 November 2024

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/N5090/D/24/3349777

11 Prospect Road, New Barnet, EN5 5BJ

- 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 Borna Abbassian against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/5295/HSE.
 - The development proposed is alterations to rear garden including new raised patios and raised garden levels with associated screening and steps, raised planters, soft landscaping and planting beds and new garden shed.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to the rear garden including new raised patios and raised garden levels with associated screening and steps, raised planters, soft landscaping and planting beds and a new garden shed at 11 Prospect Road, New Barnet, EN5 5BJ in accordance with the terms of the application, Ref 23/5295/HSE, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 112-BP-SL1, 112-BP-SL2, 112-BP-EX-00, 112-BP-EX-S, 112-BP-P-01, 112-BP-P-00, 112-BP-P-SAA, 112-BP-P-SBB, 112-BP-P-E, 112-BP-P-IMG1, 112-BP-P-IMG2, 112-BP-P-IMG3, 112-BP-P-IMG4, 112-BP-P-IMG5.
 - 3) Before the construction of the hard surfaces of the development hereby permitted (including paving, retaining walls, planting beds and screens) begins, details/samples of the materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details/samples.
 - 4) Before the patios hereby permitted are first brought into use, the privacy screens hereby permitted and shown on the approved plans shall be erected and shall thereafter be retained.
 - 5) The chestnut tree within the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are

brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

Main Issues

2. There are two main issues. Firstly, the effect of the proposed new garden design on the character and appearance of the host property and the surrounding area; and secondly, the effect on the living conditions of neighbouring occupiers and in particular occupiers at 9 Prospect Road with respect to outlook, enclosure and privacy.

Reasons

3. The appeal dwelling is an extended detached dwelling on a significantly sloping plot with the dwelling set at a higher level than the rear garden. It is the last house on the south-east side of Prospect Road before its junction with King Edward Road. The corner dwelling in King Edward Road and its adjoining neighbour face the side boundary of the appeal dwelling and overlook it, being set on noticeably higher ground. No 9 Prospect Road is set on lower ground than the appeal dwelling and shares a side boundary which is marked by a close boarded fence.
4. A recently completed single storey rear extension at the appeal dwelling has been built over a large former raised rear patio, such that there is now a significant drop from the rear patio doors (which provide the only rear access from the enlarged dwelling) to the garden. The remaining garden is modest in size and smaller than others nearby. At the time of my site visit, some work to increase levels to create a new patio appeared to have taken place but a large step-down still existed between the extension and the garden. There was also evidence of retaining walls having been commenced but work had ceased at the time of my visit.
5. Owing to the significant level difference over the length of the garden, it was inevitable that an extension with the same finished floor level as the original dwelling would be well above the natural ground level immediately to its rear. To provide safe and convenient access to the garden the need for some building up of ground levels was therefore unavoidable. A noticeable reduction in the size of the remaining garden was also inevitable.
6. The proposed garden design would incorporate three patios on three levels abutting the rear of the dwelling and the side boundary with King Edward Road. The lowest part of the garden which is lawned would be retained. Steps would link the dwelling with the highest Patio A, with further steps providing access to Patios B and C which would be at a lower level. A number of large, raised planters would edge the patios, providing softer landscaped areas and focal points.
7. Patios B and C which are at a lower level would be largely hidden from adjoining dwellings and gardens by their proximity to the side boundary, limited height above original ground levels and the fall in levels between them and the adjoining garden at No 9. The patios in part replace an earlier Patio 2.

Retaining walls and a set of steps and raised planters would define and break up the hard surfaces. Overall, I find that they and the small garden shed would not be prominent in the surrounding area or detract from its character or appearance which is a typically suburban layout comprising built development, including garden buildings and landscaped areas.

8. Patio A which is located immediately behind the extended dwelling would be accessed from the house by two wide steps. It would have a depth of about 3m and width of some 5.5m. Its finished level would be about 1.1m above the closest section of retained lawn which is 1.6m below the floor level of the new extension. Patio A would therefore have a finished level some 0.5m below the floor level of the new extension. It would have planters on the sides facing No 9 and the lower garden. It would be set off the side boundary with No 9 by some 1.4m and visually separated from it by a wooden slatted screening panel some 1.7m in height above the floor level of Patio A.
9. Owing to its position behind the dwelling, offset from the shared boundary and beyond the screening panel, Patio A would be largely hidden from the dwelling and large rear patio at No 9. Moreover, owing to its offset from the shared boundary, the proposed screening panel would not detract from the character or appearance of the site or surrounding area when viewed from dwellings in Prospect Road. Due to the significant drop between dwellings in King Edward Road and the appeal site, the patio would be visible from these. However, the intervening distance and associated planting would ensure that no material harm occurred to the perceived character or appearance of the area.
10. In terms of the site overall, in most cases householders are free to landscape their gardens as they choose. In this case, the topography of the site necessitates the raising of ground levels and hence planning permission is required. However, a detailed scheme has been proposed which, whilst altering the appearance of the site and introducing significant hard landscaping, would ensure that it retained its character and appearance as a carefully landscaped domestic garden. Although significant areas of hard landscaping may not be common in the vicinity, I am satisfied that in this case the proposed scheme would provide a visually appropriate and functionally satisfactory solution at this small and awkward site.
11. It is concluded on the first main issue that the proposed new garden design would have no materially detrimental effect on the character or appearance of the appeal site or the surrounding area. In consequence, in the context of other more strategic policies set out in The London Plan (LP), 2021, and Barnet's Local Plan (Core Strategy) (CS), 2012, it would comply with Policy DM01 of Barnet's Local Plan (Development Management Policies) (DPD), 2012, and the Council's Supplementary Planning Document: Residential Design Guidance (SDP), 2016. Taken together and amongst other things these expect outdoor amenity spaces to be of a high quality design which preserves or enhances local character and respects the appearance of surrounding spaces. In particular, outdoor amenity space should be of high quality design in terms of layout and materials and be functional such that it is accessible, provides opportunities for recreation, leisure, tranquillity and overall quality of life and provides a reasonable level of privacy outlook and sunlight.
12. Turning to living conditions, on balance the Council is satisfied that Patios B and C would not materially harm the living conditions of neighbours. I agree

that their lower level, screening from dwellings in King Edward Road and separation distance from 9 Prospect Road would ensure that no material overlooking or overbearing sense of enclosure resulted for neighbouring occupiers.

13. With respect to Patio A, the Council considers that it would result in a loss of privacy at No 9 and, owing to its size, height and visibility, it would appear overbearing and visually obtrusive when viewed from neighbouring dwellings, particularly No 9.
14. It appears from the evidence that some limited overlooking of No 9 would have occurred from the original patio at the appeal dwelling which has been lost to the recent extensions. This was due to the limited height of the boundary fence compared with the original patio level, which appears to have been built up by about 1m above the closest original ground level, and the limited off-set from the boundary or further screening.
15. Although proposed Patio A would project further into the garden and be some 1.1m above the adjoining original ground level, it would be some 0.5m below the floor level of the dwelling. It would be set off the shared boundary by about 1.4m and the proposed screen would be some 1.7m above the floor level of the patio. This would ensure that most people standing on the patio would not have a view over it. I accept that people using the steps from the dwelling to the patio would be able to see over but this would be fleeting and would not result in material overlooking or loss of privacy. Likewise, the proposed screening and separation distance between Patio A and the gardens in King Edward Road would ensure no loss of privacy to these dwellings.
16. In terms of an overbearing sense of enclosure, I am satisfied that the short section of proposed screening, adjacent to the proposed Patio A but offset from the shared boundary, would not lead to a material sense of enclosure at No 9. This is due in part to the offset and because it is considerably lower than the extension, and secondly, because the primary outlook from No 9 would be across its own garden, towards the south-east and the lower ground.
17. It is concluded on the second main issue that the proposed new garden design would have no materially harmful effect on the living conditions of occupiers of neighbouring properties, and in particular 9 Prospect Road, with respect to loss of privacy or an overbearing sense of enclosure. In consequence, in the context of other more strategic policies set out in the LP and CS, it would comply with Policy DM01 of the DMP and the SPD. Taken together and amongst other things these expect outdoor amenity spaces to ensure there is no detriment to occupiers or users of existing adjoining residential amenity space through overlooking, loss of privacy or overdominance.
18. Turning to conditions, the Council suggests five conditions in addition to the statutory commencement condition. I agree that the development should be carried out in accordance with the approved plans in order to protect the character and appearance of the area and to provide certainty. In addition, details of materials to be used in the external surfaces, including raised beds and screens should be submitted to and approved before the construction works commence in order to ensure a satisfactory appearance. I also agree that the proposed privacy screens should be installed and thereafter retained before the use of the proposed development in order to protect the privacy of neighbouring occupiers. Finally, to ensure it is not damaged, the retained

chestnut tree in the garden should be protected during construction works. However, owing to its small size and lack of protection, I do not consider that a full tree protection method statement is necessary or reasonable. I have therefore substituted suitable wording.

19. The Council suggests a condition requiring details of soft landscaping. However, as the development is a private rear garden I consider it would be unreasonable for the detailed planting scheme to be controlled in this way. I do not therefore propose to impose such a condition.
20. A number of third parties, including in King Edward Road and at 9 Prospect Road, have raised objections to the proposed development. The occupiers of No 9 were supported by their former Member of Parliament. I have given careful consideration to all the points raised but have concluded, for the reasons set out above, that the proposed development would have a satisfactory effect on the locality, including the living conditions of nearby occupiers. Moreover, I am satisfied that there would be no material additional run-off from the site, for which there is no evidence.
21. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed.

KE Down
INSPECTOR