



Appeal Decision

Site visit made on 24 March 2025

by F P Tinsley MA (Hons) MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Appeal Ref: APP/N5090/W/25/3358432

67 Westbury Road, North Finchley, Barnet, LONDON N12 7PB

- 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. Mohammed Ibrahim, against the decision of the Council of the London Borough of Barnet.
 - The application reference number is: 24/3762/FUL.
 - The development proposed is described as 'Erection of a two-storey dwelling with rooms in the roof space following demolition of the existing garage. Associated amenity space, refuse/recycling storage, cycle store and parking.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council of the London Borough of Barnet adopted a new Local Plan on 4 March 2025. The Council has confirmed that the policies from Barnet's Local Plan (Core Strategy) Development Plan Document (September 2012) and Barnet's Local Plan (Development Management Policies) Development Plan Document (September 2012) referred to in the Decision Notice have been superseded by policies from the Barnet Local Plan 2021-2036 (March 2025) (the Local Plan). The main parties to this appeal were provided with the opportunity to comment on the new Local Plan as part of the appeal process.
3. Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. Policies referred to in the reason for refusal, relating to the planning application subject to this appeal from the Barnet Local Plan 2012, are no longer in force. The relevant corresponding policies in the Local Plan are Policies CDH01, CDH07 and HOU03. The refusal reason on the Council's decision notice also cites policy D6 of The London Plan (2021) which remains part of the development plan.

Main Issue

4. The effect on the living conditions of future occupiers of the proposed development having regard to the provision of outdoor amenity space.

Reasons

Living conditions of future occupiers

5. The appeal site is located on the corner of Westbury Road, a residential street, and a pedestrian access route to the Dollis Valley Greenwalk. 67 Westbury Road (No.67) is a traditional, two storey, semi-detached property that fronts on to Westbury Road. The side boundary of No.67 is angled inwards towards the rear garden and is tapering towards the rear of the plot.
6. It is proposed to construct a dwelling on the plot to the side of No.67 between the existing house and the property boundary. This currently accommodates a garage on part of the plot. The proposed dwelling would be a two-storey (with a habitable room in the roof space) three bed, 5 person dwelling with a GIA of 99.8m².
7. Following approval of planning permission in 2022¹ for a dwelling on the site, a topographical assessment established that the boundary of the plot detailed on the approved plans was incorrect and included some public land. The appeal proposal is for demolition of the existing garage and the erection of a dwelling with an amended design to reflect the smaller plot size.
8. An application was refused, and an appeal subsequently dismissed in 2023² which sought permission to vary a condition attached to Ref: 22/0932/FUL relating to approved plans. This application sought to alter the appearance of the building and provision of outdoor amenity space to reflect the smaller plot size.
9. The appeal proposal provides 65.8 sq.m of outdoor amenity space and therefore complies with the Local Plan standard with respect to the quantum of outdoor amenity space. It also complies with the London Plan Policy D6 in this regard. The Local Plan also states that for houses, amenity space should be provided in the form of individual rear gardens, which is the case in the current proposal.
10. Nevertheless, the Local Plan also places a focus on the quality of open space to be provided. Paragraph 6.20.2 provides commentary to Policy CDH07 and states that *'Private outside space should be practical in terms of its shape and utility, to ensure the space offers good amenity.'*
11. To address the issue concerning the size, shape, and utility of the amenity space, the appellant has increased the size of the amenity area compared to the proposals under Ref: 23/2827.S73 and APP/N5090/W/23/3332921. While this adjustment partially resolves the inadequate amenity space identified by the Inspector in that instance, the revised proposal introduces new concerns related to its location and footprint.
12. The amenity space would splay beyond the rear building line of the dwellings, resulting in the garden space associated with the new dwelling extending across the rear elevation of No.67 Westbury Road to a significant degree. The elevated rear balcony terrace at No.67 would allow views at close quarters, into the amenity space associated with the new dwelling. This overlooking would be exacerbated by the sloping nature of the garden away from the dwelling. The result would be significant overlooking and loss of privacy for those using the new amenity space. This would offer a very low level of amenity for users and would be likely to impede the enjoyment of day-to-day family activities within the amenity space for play activities, sitting out and relaxing.

¹ Ref: 22/0932/FUL

² Ref: 23/2827.S73 & APP/N5090/W/23/3332921

13. As such the amenity space provided would fall considerably short of the level of privacy and refuge at the rear of the home where occupants might reasonably expect to spend prolonged periods of time.
14. In this regard, Barnet's Residential Design Guidance SPD (2016), which remains a material consideration in the context of the current appeal with the adoption of the new Local Plan, states at Table 1.2 that: *'outdoor amenity space which does not have a reasonable level of privacy will not be considered to be usable.'* I am not satisfied that the proposed amenity space will have a reasonable level of privacy and therefore its amenity value is diminished significantly.
15. This conclusion is based on the boundary between the amenity area comprising of a 1.8-metre-high fence. It has been suggested that a higher fence, trellising or some other form of boundary treatment could be erected to screen the new amenity area from No.67. This would be delivered by means of condition. However, should the height of the boundary fence be increased to a sufficient level to address overlooking, this would act to create a harmful sense of enclosure in the rear garden for the existing occupiers at No.67. Proposals such as trellising would have limited impact on increasing privacy levels and would still contribute to a sense of enclosure in the rear garden for the existing occupiers at No.67. For these reasons, I do not consider the harm identified could be addressed by a planning condition without resulting in other knock-on adverse effects.
16. For the reasons detailed above the proposal would result in unacceptable harm to the living conditions for future occupants having regard to the provision of outdoor amenity space. Therefore, the proposal is contrary to Policies CDH01, CDH07 and HOU03 of the Local Plan which, amongst other things, require that development should provide a good standard of amenity, including privacy, for potential occupants.

Other Matters

17. The proposal would deliver one additional dwelling unit, contributing to Barnet's housing supply and supporting the Government's objective of significantly boosting the supply of homes. This would be beneficial and policy support is found for the efficient use of land in both local and national policies. Nevertheless, the extent of such benefit accruing from a single dwelling would be limited and would not outweigh the harm identified.
18. The proposed dwelling would not negatively impact on the character and appearance of the area. It would meet internal space standards and provide future occupants with an adequate outlook, ventilation, sunlight and daylight. It would not have a harmful impact on the living conditions of the occupants of neighbouring properties. Nevertheless, the absence of harm in these respects is not a tangible benefit that weighs in favour of the proposal, rather they are expectations of other local and national planning policies.

Conclusion

19. For the reasons given above, I conclude that the proposal would conflict with the development plan as a whole and there are no material considerations that indicate that the development should be determined otherwise than in accordance with it. Therefore, the appeal is dismissed.

F P Tinsley

INSPECTOR