



Appeal Decision

Site visit made on 23 September 2025

by H Whitfield BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st October 2025

Appeal Ref: APP/U5930/W/25/3368958

Land adjacent to 99 Antlers Hill, London E4 7RX

- 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 Mrs Arlinda Jahelezaj against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 250074.
 - The development proposed is the erection of 2No. two storey new semi-detached 2B4P houses with private gardens.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, I have taken the appellant's name as it is stated on the application form.
3. The Council's fourth reason for refusal refers to the need for a legal agreement to secure various planning obligation requirements. The appellant accepts a legal agreement is necessary to secure the requirements listed on the decision notice and confirms their willingness to enter into such an agreement. However, no finalised legal agreement is before me. I shall return to this matter later in this decision.

Main Issues

4. Considering the matters raised in the Council's decision notice and officer report, the main issues are:
 - the effect of the proposed development on the living conditions of the occupants of 99 Antlers Hill, with particular regard to privacy and 101a Antlers Hill, with regard to privacy, outlook and light;
 - Whether the proposed development would make adequate provision for Biodiversity Net Gain (BNG); and
 - the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

Living conditions

99 Antlers Hill

5. The Appellant states the proposed dwellings would be positioned approximately 7 to 7.5m off the common boundary with No 99. Despite No 99 being set on higher ground, given the relative positioning of the proposed dwellings with this neighbouring property, the first-floor windows within the property labelled 99b on the Proposed Block Plan would have a clear and unobstructed view into the entire rear garden of No 99 over a very short distance. These first-floor windows would serve a bathroom and a bedroom. While a condition could be imposed to require the bathroom window to be obscure glazed, the same could not be imposed for the bedroom window. Despite the slight angle of No 99b, views from this bedroom window would still be across the entirety of the neighbouring garden, which would unacceptably compromise their external privacy.
6. The appellant considers this relationship would be comparable to that between No 101b and No 99. However, the separation distance between these two properties appears to be greater than would be the case with the appeal scheme and No 101b is sited on a much lower ground level which results in a less acute overlooking impact. As such, this relationship is not directly comparable to the appeal scheme.

101a Antlers Hill

7. The proposed dwellings would be set on higher ground than No 101a, orientated with the side elevation of No 99b broadly facing the rear elevation of this neighbouring property. I observed that the land to the side and rear of No 101a is split between two levels. To the rear the property has a small patio at lower level. To the side, the lower level contained a larger patio, and the upper level was grassed. This side garden area appeared to be used as the property's main external amenity space. The proposed dwellings would be positioned to the south-east of No 101a. The Council estimates the dwellings would be approximately 4m from No 101a at the closest point and set on approximately 2m higher ground, which is undisputed by the appellant.
8. The supporting Daylight and Sunlight Assessment (D&SA) concludes that there would be no adverse effect on daylight levels inside 101a and this property and its garden space would retain over 80% of existing sunlight levels following the development. The D&SA therefore concludes that the scheme is compliant with BRE guidance¹ and would not result in an unacceptable loss of daylight or sunlight. The findings of the D&SA are undisputed by the Council. Notwithstanding the concerns that have been raised by interested parties to which I have had due regard, based on this technical evidence and given the relative position of the development to this neighbour and the path of the sun, I see no reason to come to a different conclusion.
9. No 99b would have two windows in the side elevation facing this property. Given the relative positioning of the dwellings, views of the side and rear garden areas of No 101a are likely to be achievable from these windows. The ground floor window would serve a WC and, despite being set on higher ground than the neighbour, I am satisfied that conditions requiring the WC window to be obscurely glazed, and the installation of an appropriate intervening boundary treatment would prevent any overlooking from this window.
10. The first-floor window would serve the staircase which is not considered to be a habitable room. Nevertheless, even though this window would serve circulatory space, it would be in very close proximity to the windows in the flank elevation of No 101a and its private garden space. Because the views from the first-floor window towards No 101a would be at an oblique angle and there are no windows in the part of the rear

¹ BRE guidance: Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (3rd Edition, 2022)

elevation that is closest to the appeal site, there is unlikely to be any direct overlooking into the windows of this neighbouring property. However, given the limited separation distance and fact that No 99b would be set on higher ground, there would be, at the very least, a perception of overlooking from this window into the private amenity spaces of No 101a which would compromise external privacy levels.

11. The positioning of No 99b means that the development would project past the patio area outside the patio doors of No 101a, which is the area most likely to be used for sitting out. For the same reasons given above, there is unlikely to be any significant effect on internal outlook from the windows in the side and rear elevation of No 101a. However, given the extent of projection adjacent to this property's garden area, very close interrelationship and fact that the new dwellings would be set significantly higher than No 101a, the development would have an imposing and overbearing effect on its external amenity space, which would compromise outlook.
12. Therefore, to conclude on this main issue, for the above reasons, I find that the development would harm the living conditions of the occupants of 99 Antlers Hill, with particular regard to privacy and 101a Antlers Hill, with regard to privacy and outlook. This conflicts with Policy 57 of the Waltham Forest Local Plan Part 1 (2024) (the WFLP) insofar as it requires new developments to respect the amenity of existing occupiers by avoiding harmful impacts from loss of privacy and outlook.

Biodiversity Net Gain

13. BNG is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) (the Act). Under the statutory framework for BNG, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met. As such, unless specifically exempt, the development would be subject to the mandatory BNG condition, which requires the delivery of at least 10% BNG.
14. The application form indicates that the site area is 304 square metres (sqm). The land is understood to formerly be part of the garden land serving No 99. The appellant advises the land has been cleared following a letter from the Council. The application form states that the development is subject to the *de minimis* BNG exemption as it would impact less than 25sqm of on-site habitat. However, they concede in their statement of case that as garden land with a baseline habitat value, the development is likely to result in a reduction in biodiversity units in the absence of compensatory measures, and that the site does not qualify for this exemption.
15. Article 7(1A) of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended) (the DMPO) sets out the minimum information requirements that should accompany applications that are subject to the BNG requirement. This includes the provision of a biodiversity metric for the appeal site showing the pre-development biodiversity value of the on-site habitat. As this is a legislative requirement at the point of application when a development does not meet any of the BNG exemptions, it is not possible to secure the information via condition, as suggested by the appellant. Whilst the on-site planting and landscaping proposed is not unrelated, it does not override the statutory requirements in relation to BNG.
16. The appellant accepts that the proposal would not be exempt from the BNG condition. The appeal scheme does not contain the minimum information required by Article 7(1A) of the DMPO for the purposes of the statutory BNG condition. Therefore,

I cannot be certain that the statutory BNG condition would be capable of being complied with in this instance. While the appellant refers to the guidance in the Planning Practice Guidance relating to the application of the biodiversity gain condition, this is a condition deemed to apply to all applicable developments to secure the delivery of BNG and does not circumvent the need to first comply with the minimum BNG information requirements.

17. I therefore conclude that the proposed development would not make adequate provision for Biodiversity Net Gain. This is contrary to Policy 79 of the WFLP which requires proposals to demonstrate a minimum 10% BNG using the Defra Biodiversity Metric, even when proposals do not result in biodiversity loss, and fails to satisfy the statutory requirements for BNG as set out in the relevant Schedule of the Act.

Character and appearance

18. The appeal site relates to a parcel of land located on the bend of Antlers Hill between properties 99 and 101a. The land is currently covered by overgrown vegetation and enclosed by fencing. The site has a sloped gradient, and the land level increases substantially from No.101a towards No.99. Because of the land levels and positioning on the corner of the road, the site is prominent in the street scene. The surrounding area is residential in character, consisting predominately of two-storey terraced rows and semi-detached dwellings with gabled roofs and a generally consistent material palette. The pattern of development is relatively uniform in the immediate area, with properties set back behind landscaped front gardens and positioned to respond to the curvature and gradient of the road.
19. The area has a relatively dense urban grain. However, the gaps that exist between buildings allows for views between and around properties which gives the area an open character. Pockets of grass land, verges and planting in front gardens also provides the area with a green character and appearance. Houses are typically orientated to face the road. However, to the north and north-west there are examples of blocks orientated side on to Antlers Hill.
20. The proposed dwellings would be positioned facing north-east. As such, they would not be positioned in alignment with No 99 and would be marginally closer to the highway. However, the development would respond to the curve of the road and changing land levels, rounding off the corner between No 99 and No 101a. The development would fill the majority of the gap between these two neighbouring properties. However, space would still be retained between the blocks of development, which would allow for views to be achieved between and around the dwellings. Landscaping would also be incorporated to the front of the properties which would provide some greenery to the site frontage, which is currently enclosed by fencing. Therefore, even though not strictly following the pattern of neighbouring development, the proposal would be sympathetic to the defining characteristics of the area and would not appear incongruous in the street scene.
21. Given the site's location on the bend, the side elevation of No 99a would be orientated to face the street and would be highly prominent. However, this elevation would contain ground and first floor windows and therefore would not result in a totally blank façade in the street scene. In any event, blank elevations facing the highway have already been established elsewhere in close proximity to the site, such that the limited fenestration on the side elevation of No 99a would not be uncharacteristic or harmful to the

appearance of the area. In the Officer Report the Council also accepts that the general design and massing of the dwellings would be acceptable.

22. For the above reasons, I conclude that the development would not harm the character or appearance of the surrounding area. It would therefore accord with Policy D4 of the London Plan (2021) and Policy 53 of the WFLP which together and amongst other things seek high-quality, good design that reinforces local character and distinctiveness and developments that respond appropriately to their context.
23. Whilst the Council's decision notice refers to Policy D1 of the London Plan, this policy is not determinative in my consideration of this main issue as it provides a policy framework for how to assess an area's characteristics and use this information to establish its capacity for growth rather than relating specifically to individual proposals and matters of character and appearance.

Other Matters

Epping Forest Special Area of Conservation

24. The appeal site falls within the Zone of Influence for the Epping Forest Special Area of Conservation (SAC), which is a European Site as defined by the Conservation of Habitats and Species Regulations 2017 (as amended). The qualifying features of the SAC are its value in respect of beech trees, wet and dry heaths and population of stag beetle. The conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features and Species. One of the pathways of impact currently affecting the SAC is noted to be recreational pressure from people visiting the forest. Therefore, for new residential development a financial contribution per dwelling is required towards Strategic Access Management and Monitoring (SAMM) mitigation.
25. It is common ground between the parties that a SAMM contribution would be required to mitigate any likely significant effect of the development on the integrity of the SAC. The appellant has indicated their willingness to enter into a legal agreement to secure this contribution. However, there is no such mechanism before me in this appeal. Nevertheless, as I have found that the scheme would be unacceptable for other reasons, it is not necessary for me to consider whether there would be a Likely Significant Effect on the integrity of the European Site or undertake an Appropriate Assessment.

S106 Agreement

26. In addition to matters addressed above, the Council's fourth reason for refusal refers to the requirement for a legal agreement to secure highway contributions towards the monitoring of the Construction Logistics Plan, a S278 agreement for highway related works, the SAC SAMM contribution and a financial contribution towards a carbon levy as energy mitigation in the event that carbon reduction targets are not met. The Council states these contributions are necessary to mitigate the effects of the development.
27. The appellant's statement of case does not contest any of the requirements listed by the Council. The appellant acknowledges the need for a legal agreement to secure the above requirements and confirms their willingness to enter into such an agreement. However, no finalised legal agreement is before me and so there is no

mechanism to secure the provisions requested by the Council. Had the proposal been acceptable in all other respects, this is a matter I would have raised with the main parties.

Planning Balance and Conclusion

28. I have found that the proposal would not have an adverse effect on the character and appearance of the surrounding area. However, the absence of harm in this regard is a neutral factor and does not outweigh the significant harm, and subsequent policy conflict, that I have found with regards to the overall effects on the living conditions of neighbouring occupiers and insufficient information provided relating to BNG, to which I attach significant weight.
29. Set against this, the development would make an efficient use of land and provide two dwellings in an existing residential area that is relatively close to services, facilities and public transport links. It would also help to meet an identified housing need in the area and as a small-site, it could be built-out reasonably quickly. The development would therefore make a small but beneficial contribution to the choice of homes in the area and the supply of housing land; as well as providing social and economic benefits during construction and after occupation. Sustainable building materials and integrated features are proposed to be incorporated along with energy mitigation measures to support carbon dioxide reduction targets for the area which would provide environmental benefits.
30. Housing delivery is supported by the Framework and, therefore, this benefit weighs in favour of the proposal. However, given the scale of the development, the benefits associated with the delivery of two dwellings would be modest, even taking account of the objective of significantly boosting the supply of housing in the Framework, and would not outweigh the harm I have identified.
31. Therefore, for the reasons given above, I conclude that the proposal conflicts with the development plan as a whole and material considerations do not indicate that a decision should be made other than in accordance with the development plan. Accordingly, the appeal should be dismissed.

H Whitfield

INSPECTOR