



Appeal Decision

Site visit made on 11 September 2025

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 December 2025

Appeal Ref: APP/T5150/W/25/3368761

19 Christchurch Avenue, London NW6 7QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr Qasim Gulamhusein of 19 NW6 A Ltd against the decision of the Council of the London Borough of Brent.
- The application reference is 25/0583.
- The development proposed is the demolition of an existing single storey outbuilding at 19 Christchurch Avenue and the building at 2B Chatsworth Road, and the erection of a pair of two-storey, semi-detached houses (all matters reserved except layout and scale).

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Qasim Gulamhusein of 19 NW6 A Ltd against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Preliminary and Procedural Matters; Main Issues

3. The proposal was described on the planning application form as “outline consent for demolition of existing single storey buildings and erection of two semi detached houses (all matters reserved except for scale and layout)”. An amended wording was used on the appeal form (“outline planning permission for demolition of existing single storey outbuilding at 19 Christchurch Avenue and workshop at 2B Chatsworth Road and erection of a pair of 2 storey, semi-detached houses (Matters determined: Layout and Scale) | 2B Chatsworth Road, London, NW2 4BN & 19 Christchurch Avenue, London, NW6 7QP”). I have used a modified version of the second wording which concisely and accurately reflects the nature of the proposed development in the banner heading above.
4. The application was submitted in outline, with layout and scale to be considered at this stage. I have therefore treated the submitted drawings or other material as being for illustrative purposes only in respect of the reserved matters of access¹, appearance, and landscaping.
5. I was also appointed to determine another appeal at the same address, the site visit for which I carried out in June 2025. The two appeals are quite different in their nature, and the other appeal is the subject of a separate Decision (PINS Ref: APP/T5150/W/25/3362587).

¹ In line with the requirements of Article 5 of The Town and Country Planning (Development Management Procedure) (England) Order 2015, the application also set out where access to the development would be situated.

6. The decision notice issued by the Council gave two reasons for which planning permission was refused:

- “1 *The proposed scale would be unacceptable. More specifically, given its excessive height, bulk, and massing and relationship to its plot, the proposal would result in a domineering and overbearing form of development which would erode the sense of openness of the plots and would appear distinctively out of character with the site's context. The proposal therefore fails to comply with policies DMP1 and BD1 of the Brent Local Plan and Brents Design Guide SPD1.*
- “2 *The proposed layout would be unacceptable. More specifically, it would facilitate overlooking/loss of privacy to neighbouring habitable room windows and create an overbearing impact to the basement flat within no.19 Christchurch Avenue, and furthermore the proposal has failed to include sufficient details on the impact of the proposal on nearby mature trees in the form of an Arboricultural Impact Assessment and Method Statement, which would be required to assess if there would be any harm to these trees. As such, the proposal fails to comply with policies DMP1 and BGI2 of the Brent Local Plan and Brent's SPD1 SPD.*”

7. The second reason for refusal covers two distinct matters. I have therefore identified three main issues in this appeal, which are the effect of the proposed development on:

- The character and appearance of the area;
- Living conditions for occupiers of neighbouring properties, with particular regard to privacy and whether the development would be overbearing; and
- Mature trees, including trees protected by a Tree Preservation Order (“TPO”).

Reasons

Character and appearance

8. The appeal site is an L-shaped plot which encompasses No 19 Christchurch Avenue (a large semi-detached property divided into five self-contained flats) and its rear garden (which contains a single-storey detached outbuilding²), and No 2B Chatsworth Road (a two-storey detached dwelling and its garden). The proposed development is the demolition of the existing outbuilding at No 19, and the building at No 2B, and the erection of a pair of semi-detached houses.
9. The surrounding area is predominantly residential; both Christchurch Avenue and Chatsworth Road are characterised by large semi-detached buildings, though the form and layout of buildings differs between the two streets. Rear gardens are of generous size, often with mature trees, giving the area at the back of dwellings a spacious and green character. The appeal site is close to the point where Chatsworth Road meets Christchurch Avenue, and on the inside of a V-shaped junction. The two buildings which would be demolished, plus another single-storey building known as 2A Chatsworth Road, are visible from Chatsworth Road; however, they are low in height and do not dominate their surroundings, so that the prevailing openness and verdancy of the gardens at the rear of the dwellings

² This outbuilding is the subject of the other appeal referred to in paragraph 5 above.

percolates into the streetscene making a very positive contribution to the character and appearance of the area.

10. The layout and scale of the proposed development are to be considered at this stage. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the DMPO”) defines “scale” (in this context) as “the height, width and length of each building proposed within the development in relation to its surroundings”; “layout” means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.
11. The submitted drawings show that the proposed building would be approximately 8.4m high and, by the Council’s measurement, around 11.75m deep; it would extend across almost the full width of the double plot, being set in from the side boundaries by around 0.75m. Though the increase in built footprint compared to the two existing buildings would be relatively modest, at around a quarter, the proposed building would be much taller; the outbuilding at No 19 rises to a little under 2.9m above ground level, and even the highest part of the two-storey building at No 2B is a little under 4.9m tall, and most of that building is considerably lower than that³. The volume of the proposed building would therefore be much greater than is currently found on the site. The site layout and scale of the building mean that the development would dominate and overwhelm the surrounding garden spaces, and intrude into the relatively open streetscene between No 2 Chatsworth Road (to the west of the site) and the rear of No 11 Christchurch Avenue (to the east).
12. I acknowledge that the proposed building would be lower in height than the large dwellings on Christchurch Avenue (which, by the appellant’s measurement, are typically around 12.02m tall) and No 2 Chatsworth Road (which has a ridge height of around 10.84m, again by the appellant’s measurement). However, while these buildings “frame” the site, the immediate context is the open and spacious character of the very generous rear gardens which I have described in paragraph 9 above. Existing buildings within that space, including the two which would be demolished as part of this proposal, are low in height and do not therefore significantly intrude into, or harm, that openness. Because of its scale, the same could not be said of the proposed development.
13. The appellant commented during the appeal that it would be “improper to pre-judge the effect of design on character without first allowing the developer the opportunity to submit and refine those details at the reserved matters stage”. They went on to suggest that “further extensive planting including tree-lined boundaries, living green roofs, and green walls [would] soften the visual impact of built form and reinforce the green character of the area”, and that the Council’s refusal “[failed] to consider the role of landscaping in mitigating visual impact and instead treats character as a function of built form alone, in disregard of adopted guidance”⁴.
14. Both “appearance” and “landscaping” are, of course, reserved matters, and my decision in this appeal is not therefore based on an assessment of the illustrative material put before me in these matters. The scale of the proposed building would

³ Calculated from levels shown in “existing sections” drawing A106 – max roof heights of 102.82m and 104.59m, lowest adjacent ground levels of 99.94m and 99.71m respectively.

⁴ Paragraphs 6.6.4. and 6.6.5 of the appeal statement.

be unsympathetic to its immediate surroundings; this could not be mitigated by ensuring (for example) use of materials of appropriate colours or textures, or by seeking tree planting to screen the building, which would be details to be resolved at a reserved matters stage.

15. In similar vein, both the Planning Statement within the original application and the appellant's appeal submissions included large amounts of material addressing the scope of outline applications and reserved matters, as well as numerous court judgments (to which I return briefly in "other matters" below). It is perhaps therefore also worth my including the definition of "appearance" from the DMPO; it is "the aspects of a building or place within the development which determines the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture". For the absolute avoidance of doubt, the harm which I have found would be caused to the character and appearance of the area would purely stem from the scale of the proposed building, and not from any of these other factors which are not before me in this appeal.
16. For the reasons set out above, I conclude that the scale of the proposed building and the proposed site layout would cause unacceptable harm to the character and appearance of the area. The development would therefore conflict with Policies DMP1 and BD1 of the 2022 Brent Local Plan ("the BLP"), which together (and among other things) seek to ensure that development is of the highest urban design quality, and of a scale which complements the locality. I note that the appellant suggested that "no objection can lawfully be sustained under these policies at the outline stage when appearance has been deferred to the reserved matters stage", but I cannot think of any sensible or practical assessment of urban design in which the "scale" of a proposed building or the "layout" of a site would not be essential considerations.

Living conditions

17. The Council's 2018 *Brent Design Guide* Supplementary Planning Document ("the SPD") provides guidance intended to ensure that there is a good level of privacy inside buildings and within private outdoor space. Among other things, it advises that directly-facing habitable rooms should be separated by a minimum of 18m, except where the existing character of the area varies from this. It goes on to say that the envelope of a new building should be set below a line of 30 degrees from the nearest rear habitable room window of an adjoining existing property, measured from height of 2m above floor level and, where proposed development adjoins private amenity or garden areas, the height of that new development should normally be set below a line of 45 degrees at the garden edge, again measured from a height of 2m.
18. The proposed new building would be around 15.5m from the nearest habitable room window, serving a basement bedroom at the rear of No 19, so would not provide the minimum separation distance set out in the SPD. The Council also considered that the building would breach the 30-degree line in respect of that window, though the appellant submitted drawings showing that that would not be the case. Nevertheless, as a result of the limited separation distance, the appeal scheme would lead to some loss of privacy within the basement flat at the rear of No 19 and harmful overlooking of its associated garden space.

19. The appellant has suggested that any harm in respect of privacy could be mitigated by design solutions at the reserved matters stage – for example, by the use of obscure glazing, by reconfiguring a first-floor window, or by introducing dense evergreen planting along the southern and western boundaries of the new dwellings' garden. I acknowledge that, as matters of "appearance", the window positions and sizes shown on the submitted drawings are indicative only. However, the scale and layout of the proposed development are such that it seems to me that almost any window on the western half of the elevation facing towards No 19 would not meet the minimum separation distance in respect of the basement flat, so this suggestion would be unlikely to address the proposed development's fundamental problems. Tree planting would also be a reserved "landscaping" matter and, while the use of dense planting might conceivably address some of the problems of overlooking, it would not prevent the new building from being overbearing.
20. The harm I have found here would arise from the scale and layout of the proposed development. It would not therefore be appropriate to grant an outline permission in the expectation or hope that it could be mitigated at reserved matters stage dealing with "appearance" or "landscaping".
21. The Council's offer report noted that the proposed development would comply with the 45-degree guidance in respect of neighbouring gardens and amenity spaces. Looking at the scale and layout of the proposed development in the submitted drawings – the building's height, and proximity to neighbouring gardens on either side – it seems unlikely that that would be the case in respect of No 17 Christchurch Avenue and No 2A Chatsworth Road. It may though, be that the "rule" is intended only to apply to end-to-end relationships and not side-to-side ones; that is not clear from the wording in the SPD. However, I have not sought further comment or clarification on this as, in view of my other findings on this matter, it could not alter my overall conclusion.
22. In response to the Council's concerns about overlooking, the appellant referred to a 2023 appeal decision relating to the use of the outbuilding at No 19 as a self-contained dwelling (PINS Ref: APP/T5150/W/23/3317504). In that decision, the Inspector noted that "although the distance between the basement at No. 19 and the proposed dwelling would be relatively close [...] I am satisfied that [a boundary fence between the garden of the proposed new dwelling and the remaining garden associated with No 19] would limit the opportunities for intervisibility and associated loss of privacy for the occupiers of the basement of No. 19". However, that scheme related to the use of the existing single-storey building; the proposal before me is for a much larger building with living accommodation on three levels, and people in rooms on upper floors would have a clear view over a fence. There is therefore a much greater potential for overlooking here, with a harmful loss of privacy, than was the case in the 2023 appeal; the earlier decision does not weigh significantly in favour of this appeal scheme.
23. For the reasons set out here, I conclude that the proposed development would cause unacceptable harm to living conditions for occupiers of the basement flat at the rear of No 19 Christchurch Avenue. It would therefore conflict with Policy DMP1 of the BLP which, among other things, requires all development to provide high levels of internal and external amenity.

Trees

24. The appeal site and surrounding gardens contain several mature trees, some of which are covered by a tree preservation order (“TPO”)⁵. No tree survey was provided with the planning application, and the Council was concerned that the scale and layout of the proposed development could cause significant harm to those trees.
25. During the appeal, the appellant submitted an arboricultural impact assessment (“AIA”) and supporting information including a tree protection plan. One of the TPO-protected trees on the site – a cedar at the rear of the outbuilding at No 19 – has suffered damage, and in October 2025 consent was granted for that tree to be removed and replaced⁶. The AIA submitted with this appeal sets out how existing trees would be protected during construction and beyond; it also provides for the replacement of the damaged TPO-protected cedar.
26. In order to ensure the protection, and replacement where relevant, of existing trees, it would be necessary (had the proposed development been otherwise acceptable) to impose a condition requiring the scheme to be carried out in accordance with the submitted AIA. Subject to such a condition, I am satisfied that the proposed development would not cause unacceptable harm to nearby mature trees, including those covered by the relevant TPO. There would therefore be no conflict with Policy BGI2 of the BLP, which seeks to protect existing high-amenity trees, and to ensure that appropriate replacement would be made where trees would be lost.

Other Matters

27. As mentioned above, the appellant’s submissions included reference to a large amount of caselaw. This was broken down in the appeal statement into three main categories relating to (in the headings used by the appellant) the “principle of scale”, the “requirement for clear and adequate reasons”, and the “outline planning framework”. I address the second of those groupings, relating to “reasons”, in the associated costs Decision.
28. In respect of the “principle of scale”, the appellant drew my attention to the judgment in *MMF (UK) Limited*⁷, in which Mr Justice Simon (as he then was) considered the question of scale, as opposed to appearance, in the context of outline and reserved matters applications. The judge’s observations at paragraph 15 of the judgment are helpful in setting out how the height of a building may be an issue in terms of both scale and appearance.
29. In this case, the Council used the word “appear” in its decision notice and officer report (“[...the building’s] height, bulk, and massing and relationship to its plot [...] would appear distinctively out of character with the site’s context...” in the decision; “...appearing distinctively at odds with the typical backland development seen in the rear gardens of Christchurch Avenue and which front Chatsworth Road...” in the officer report). However, this is not indicative of it having conflated the two matters of scale and appearance – had it instead used the words “be” and “being” instead of “appear” and “appearing”, it would have made no practical difference to my interpretation of its assessment.

⁵ The Chatsworth Road/Christchurch Avenue Tree Preservation Order 2008 (Ref: 08/00055).

⁶ LPA Ref: 25/2351

⁷ *MMF (UK) Limited v Secretary of State for Communities and Local Government & Anor* [2010] EWHC 3686 (Admin)

30. Taken as a whole and in its proper context, the Council's officer report is clear that it has correctly considered the matters of layout and scale which were before it. On my reading, *MMF (UK) Limited* does not therefore indicate that I should reach a different conclusion in this appeal. I note also that the Planning Statement submitted with the application at times put great emphasis on mitigation of harm through features such as the "pitched roof design" which might sensibly be regarded as matters of appearance rather than scale, not least in the light of the judge's comment⁸ that "at the most simple analysis, if one considers a building as a simple three-dimensional shape, a box, the size of the box, and importantly its relationship with other buildings, is a question of Scale. How the box is designed within that overall shape is its Appearance".
31. In respect of the "outline planning framework", the appellant drew my attention to a further twelve judgments. Issues highlighted by the appellant included analysis of what is a material planning consideration; the need for a "proportionate" level of scrutiny in decision making; and the need for planning applications to be determined on the basis of the submitted scheme, avoiding speculation on future possibilities or alternative schemes (whether real or hypothetical).
32. To the extent that matters raised in these judgments, and the conclusions the appellant suggests should be drawn from them, are relevant to this appeal, they are taken into account in my consideration of the main issues above. Again though, the caselaw put before me does not indicate that I should reach a different conclusion in this appeal. For the sake of completeness and ease of reference I have listed the judgments referred to in Schedule 1 at the end of this Decision, though as they have had no significant bearing on my conclusion I do not present an analysis of them here.
33. The appellant introduced the possibility of using permitted development rights under Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") as a fallback position in respect of the existing building at No 2B Chatsworth Road, arguing that Class ZA "notably omits any requirement to assess the impact on the character of the area". In my view, that is not an accurate summary of the situation – development under Class ZA requires prior approval for a range of matters, including the design of the building and the external appearance of the building⁹. In my experience, those matters can reasonably be said to encompass the effect of the proposed building on the wider area. To the extent that Class ZA may be a fallback position for the appellant, it does not therefore carry significant weight in support of this appeal scheme.
34. The appeal proposal would lead to the development of two new dwellings, a net gain of one over the current position, in an area well located in respect of services and public transport accessibility. Given the quantity of development proposed, these benefits carry only modest weight in favour of the proposal.

Conclusion

35. I have found that the proposed development would not have a significant adverse effect on nearby trees. However, it would cause significant harm to the character and appearance of the area, and to living conditions for residents of a

⁸ At paragraph 11 of *MMF (UK) Limited*, adopting the wording put forward by counsel for the claimant.

⁹ Paragraphs ZA.2.(2)(d) and (e).

neighbouring flat. It would therefore conflict with the development plan taken as a whole. The development's benefits would not outweigh the harm I have found.

36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The other material considerations identified in this case, including the benefits of the scheme, and the policies set out in the National Planning Policy Framework, do not justify a decision other than in accordance with the adopted development plan.
37. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector

Schedule 1

“Outline planning framework” judgments referred to by the appellant

Wright v Forest of Dean District Council [2019] UKSC 53

Tesco Stores Ltd v Dundee City Council [2012] UKSC 13

Morge v Hampshire County Council [2011] UKSC 2

R (Save Britain’s Heritage) v Number 1 Poultry Ltd [1991] 1 HoL (WLR 153)

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R (Sheakh) v London Borough of Lambeth Council [2022] EWCA Civ 457

Mansell v Tonbridge & Malling Borough Council [2017] EWCA Civ 1314

Cherkley Campaign Ltd v Mole Valley District Council [2014] EWCA Civ 567

Mount Cook Land Ltd v Westminster City Council [2003] EWCA Civ 1346

R (Arrowcroft) v Coventry City Council [2001] EWCA Civ 791

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Save Diggle Action Group v Oldham Metropolitan Borough Council [2017] EWHC 349 (Admin)

R (Hawksworth Securities PLC) v Peterborough City Council [2016] EWHC 1870

Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) EWHC (JPL 1982 P37)