
Appeal Decision

Site visit made on 22 July 2014

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 July 2014

Appeal Ref: APP/N5090/A/14/2218917

27 Wickliffe Avenue, London, N3 3EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by the Dorchester Group of Companies against the decision of the Council of the London Borough of Barnet.
 - The application Ref F/01543/14, dated 26 March 2014, was refused by notice dated 2 May 2014.
 - The development proposed is demolition of existing dwelling and proposed development of six apartments within two storey building with rooms in roof space and basement level, provision of car parking area and hard and soft landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and proposed development of six apartments within two storey building with rooms in roof space and basement level, provision of car parking area and hard and soft landscaping at 27 Wickliffe Avenue, London, N3 3EL in accordance with the terms of the application, Ref F/01543/14, dated 26 March 2014, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The description of development used above is taken from the decision notice as it is more detailed than that given on the application form. The appellant does not object to the amended description¹.

Main Issues

3. The main issues in this case are the effects of the proposal on:
 - the character and appearance of the area
 - the living conditions of the occupiers of 25 Wickliffe Avenue with particular regard to outlook and privacy
 - the living conditions of future occupiers with particular regard to outlook, privacy and the provision of amenity space.

¹ Paragraph 1.01 of the appellant's statement

Reasons

Character and Appearance

4. The appeal site is located at the end of Wickliffe Avenue adjacent to Windsor Open Space. It currently contains a substantial, detached two storey dwelling which is typical of the properties on the south side of the road. Development on the north side of the road is more varied in form and includes the six storey block of flats at Cranmer Court directly opposite the appeal site as well as three storey townhouses.
5. The proposed building would have a significantly larger footprint than the existing dwelling on the site. However, it could be accommodated within the site whilst substantially retaining the established planting on the Wickliffe Avenue and Windsor Open Space boundaries. The massing of the building would be stepped back so that the frontage facing the road, although broader than the existing building, would be comparable in scale with the neighbouring property at number 25. The eaves and ridge heights of the proposed building would be slightly lower than its neighbour and would, therefore, maintain the characteristic stepping down of building heights with the fall of the road.
6. The elevation facing Windsor Open Space would be broader and taller than the existing building as well as closer to the site boundary. Nevertheless, this elevation would be articulated with two projections and balconies and the lower level would be partly screened by a retaining wall and the embanked ground level. This would ensure that the elevation would have a domestic scale. The retained planting within and beyond the site boundary would also filter views to the new building from the Open Space. As such, I consider that the size and scale of the building would not have a harmful effect on the character and appearance of the area.
7. Although the terrace for the lower ground floor flat would be below the adjoining ground level, it would only be visible from a limited range of viewpoints within the site and would not be apparent from external views. It would not infringe on site boundary planting and, as the appellant suggests, further planting could be provided along its edge. Therefore, notwithstanding the presumption against sunken terraces in the Council's *Residential Design Guide Supplementary Planning Document*, in this case, the lower ground floor and terrace would not have a damaging effect on the character and appearance of the area.
8. The proposal includes an access and six car parking spaces in front of the building. However, the width of the access would be reduced compared with the existing situation and the car parking spaces would be screened by new or existing planting on the site boundary. Further planting would be provided behind both rows of spaces. Together with the existing planting on the western site boundary, this would effectively separate the hard standing from the Windsor Open Space. A variety of finishing materials would be used in the hard surfacing which would help to break up its visual effect.
9. The proposed refuse enclosure would be a relatively modestly sized structure sited some 3m off the Wickliffe Road boundary and accessed by path less than 2m wide. The enclosure and path would be flanked by new and existing planting. These arrangements would ensure that the enclosure would not be intrusive in the street scene or from Windsor Open Space.

10. The Council is concerned regarding the potential loss of significant site boundary planting. I agree that the retention of this planting would be important in maintaining the character of the area. The proposal is supported by an arboricultural report² which finds that six trees would need to be removed, but that they could be lost without significant landscape impact. The report sets out proposals for the protection of the remaining trees. The findings of this report have not been disputed and its recommendations can be secured by condition. The details of new soft landscaping can also be secured by condition. With these safeguards in place, I am satisfied that the proposed hard and soft landscaping and the refuse storage enclosure would maintain the character and appearance of the area.
11. The parties disagree on whether the proposal complies with the density matrix at Table 3.2 of the *London Plan* (LP). Compliance or otherwise depends on how habitable rooms are defined. However, the standard of accommodation and, indeed, accessibility to public transport (another consideration in Table 3.2) are not factors in this appeal. Rather the concern is with effect of the scale and site coverage of the proposal on its surroundings. As paragraph 3.28 of the LP and paragraph 1.3.6 of the *London Plan Supplementary Planning Guidance* advise, density figures should not be applied mechanistically; the acceptable density of a development is the product of a range of design and management factors. For the reasons outlined above, I find that the density of the proposal would not have a harmful effect on the character and appearance of the area and it would not, therefore, amount to overdevelopment.
12. Accordingly, the proposal would comply with policy DM01 of the Council's *Development Management Policies* (DM) insofar as the building would respect the scale, mass, height and pattern of surrounding buildings and the hard standing would not adversely impact on local character. The decision notice also refers to the Council's *Sustainable Design and Construction Supplementary Planning Document* (SPD). However, there is nothing in the Council's submissions to show how the proposal would conflict with this document in respect of this issue.

Living Conditions of the Occupiers of 25 Wickliffe Avenue

13. Whilst the proposed building would be sited close to the common boundary with number 25, the part of the flank wall nearest to the boundary would be the same height as the existing building and project a similar distance to the rear of the neighbouring dwelling. Therefore, this part of the building would not reduce the outlook of the occupiers of number 25 compared with the existing situation. The Council argues that the existing relationship is problematic. However, it would not be reasonable to withhold permission on the basis that the proposal fails to resolve an existing concern.
14. Part of the proposed building would also project a further 3.55m to the rear of the existing building. However, that part of the building would be set 6m off of the common boundary and, therefore, would not be seen from the rear windows of number 25 closest to the boundary or from the area of the garden closest to the house. The rear projection would be a sufficient distance away from other parts of the neighbouring property to prevent occupiers experiencing a material loss of outlook.

² Phelps Associates dated 24 March 2014.

15. Concern has also been expressed regarding loss of privacy for the occupiers of number 25. However, all the upper floor windows in the elevation facing the common boundary serve circulation areas. I will impose a condition requiring these windows to be obscure glazed.
16. Accordingly, I consider that the proposal would not have a harmful effect on the living conditions of the occupiers of number 25 by reason of loss of outlook or privacy. The proposal would, therefore, comply with DM policy DM01 which, among other things, requires proposals to be designed to provide adequate privacy and outlook for adjoining occupiers.

Living Conditions of Future Occupiers

17. Flat 1, on the lower ground floor level, would have windows and doors looking onto a terrace which would be 675mm and 1m below ground level on, respectively, the west and south sides of the flat. The flat's principal windows and doors would face west and allow reasonably open views to the attractive planting on the western boundary. The height of the terrace retaining wall on this side of the building would be below the cill height of most windows, and, even allowing for the enclosing effect of the balconies of the flats above, I consider that the occupiers of flat 1 would have a satisfactory outlook.
18. The communal garden area, which would be available to the occupiers of all of the proposed flats, would extend along the west side of the building adjacent to the window and doors in flats 1. Whilst the scheme would not provide the privacy separation distances often applied in residential schemes, given the semi-private character of the garden area, it would not be unreasonable or unusual to accept a somewhat lesser level of privacy in this case. As the appellant suggests, planting could be used to deflect direct views from the garden area to flat 1.
19. The Council's statement also expresses concern regarding the privacy of the occupiers of flat 2. However, the floor level of this flat would be almost 2m above the adjoining garden area. This degree of vertical separation would be sufficient to ensure adequate privacy for the occupiers of flat 2.
20. The appellant has confirmed that the communal garden area would be available to the occupiers of all of the flats. This arrangement can be secured by condition and would overcome the Council's concern regarding the amount of amenity space available to the occupiers of flats 1 and 2. Consequently, I conclude that the proposal would not have a harmful effect on the living conditions of future occupiers by reason of inadequate outlook, privacy or amenity space provision. As such, it would comply with DM policy DM01 inasmuch as that policy requires proposals to provide potential occupiers with adequate outlook and privacy. It would also accord with DM policy DM02 and the SPD with regard to the provision of outdoor amenity space.

Other Matters

21. Neighbouring occupiers have objected to the proposal on the basis of its effect on the living conditions of the occupiers of Charlton Court and 54 and 56 Broughton Avenue with regard to loss of privacy and overshadowing. The rear elevation of the proposed building would be more than 18m away from the closest part of Charlton Court and further from the Broughton Avenue houses. Substantial

- boundary planting would also be retained between the new and existing buildings. I consider that these arrangements would safeguard the privacy of neighbouring occupiers. Notwithstanding that the proposed building would be at a higher level than Charlton Court, the distance between the buildings would also prevent it from overshadowing the properties to the rear.
22. Concern has also been expressed locally regarding the effect of the proposal on car parking and traffic movements along Wickliffe Avenue, particularly in view of the car parking associated with the recently increased popularity of Windsor Open Space. However, the proposal provides car parking in accordance with Table 6.2 of the London Plan and DM policy DM17. Whilst I recognise that there may be increased use of Wickliffe Avenue for parking a certain times, it remains a fairly lightly trafficked cul de sac with most properties having off street parking. As such, I am not persuaded that the relatively small number of vehicle movements generated by the six proposed flats would lead to highway safety or convenience problems.
23. There is no substantive evidence to suggest that the proposal would have a harmful effect of the bio-diversity or recreational value of Windsor Open Space.
24. The existence of restrictive covenants affecting the appeal site and the effect of the proposal on ground water are not planning matters. I will impose a condition to require the construction works to be undertaken in accordance with an approved construction method statement in order to protect the living conditions of neighbouring occupiers during the construction period. The statement should include provisions to control construction working hours and to ensure that safe access to Windsor Open Space is maintained during the works.
25. My decision relates to the proposal as determined by Council and has no bearing on any potential further development of the site.
26. There is nothing to indicate that the development plan policies referred to above are in conflict with the *National Planning Policy Framework*.

Conditions

27. The Council has suggested a list of conditions to which the appellant does not object. One of the suggested conditions requires the proposal to comply with Building Regulations sound insulation requirements. The *National Planning Policy Guidance* (PPG) advises that conditions requiring compliance with other legislation will not meet the necessity test and should not, therefore, be imposed. Suggested conditions dealing with construction working times and construction vehicle cleaning are unnecessary since they replicate the provisions of a Construction Method Statement to be secured by another condition. One of the suggested conditions also repeats the requirement for tree protection measures. With amendments for clarity, I find that the other conditions meet the tests set out in the PPG.
28. A condition specifying the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. Conditions requiring details of external materials of the building, hard surfaces and the refuse storage enclosure are required to safeguard the character and appearance of the area. The approval and implementation of a landscaping scheme and measures to secure replacement planting if necessary are required for the same reason. Conditions

requiring details of excavations and the protection of existing trees are necessary in view of the contribution those trees make to the character of the area.

29. I have already referred to the need for a condition to secure obscure glazing in the southern elevation windows to protect the privacy of the occupier of number 25. Conditions requiring details of ventilation and extraction equipment and defining the use of the building are necessary to safeguard the living conditions of adjoining occupiers. A condition requiring the approval and implementation of a Demolition and Construction Method Statement is necessary for the same reason and in the interests of highway safety. A condition dealing with the provision and use of the parking spaces is also necessary for highway safety reasons.
30. A condition securing compliance with Code for Sustainable Homes level 3 and the Lifetime Homes standard is necessary in order to meet the aims of development plan policies for sustainability. A condition to secure the implementation of bio-diversity mitigation measures is also necessary for this reason. Conditions dealing with the provision of play equipment and the layout of the amenity area are required in the interests of the living conditions of future occupiers.

Conclusion

31. For the reasons outlined above, the appeal should be allowed.

Simon Warder

INSPECTOR

**Schedule of conditions attached to
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27 Wickliffe Avenue, London, N3 3EL**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and reports: PL-101, PL-102, PL-103 PL-104, PL-105, Ecological assessment by AAe Environmental Consultants and the Arboricultural Report by Phelps Associates.
- 3) Before the development hereby permitted commences, details of the materials to be used for the external surfaces of the buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance approved with the details.
- 4) Before the development hereby permitted commences, details of the enclosures and screening for the storage of recycling and refuse bins shall be submitted to and approved in writing by the Local Planning Authority and shall be provided at the site in accordance with the approved details before the development is occupied.
- 5) A scheme of hard and soft landscaping, including details of existing trees to be retained as shown on the approved plans and the Arboricultural Report, shall be submitted to and agreed in writing by the Local Planning Authority before the development hereby permitted is commenced.

- 6) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner.
- 7) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.
- 8) Before development is commenced details of the location, extent and depth of all excavations for drainage and other services in relation to trees on the site shall be submitted and approved in writing by the Local Planning Authority and the development carried out in accordance with such approval.
- 9) No siteworks or works on this development shall be commenced until a dimensioned tree protection plan in accordance with Section 5.5 of British Standard BS5837: 2012 (Trees in relation to design, demolition and construction – Recommendations) and a method statement based on and expanding the details set out in the submitted Arboricultural Report detailing precautions to minimise damage to trees in accordance with Section 6.1 of British Standard BS5837: 2012 have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved documents.
- 10) Before the building hereby permitted is occupied the proposed windows in the east elevation facing 25 Wickliffe Avenue shall be glazed with obscure glass only and fixed shut with only a fanlight opening. The windows shall be permanently retained as such thereafter.
- 11) Prior to the commencement of development, details of all extraction and ventilation equipment shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
- 12) The property shall be used as self-contained units as shown on the approved drawings under Class C3(a) and for no other purpose (including any other purpose in Class C3 or C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, with or without modification).
- 13) No development shall take place until a 'Demolition and Construction Method Statement' has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide details of: access to the site: the parking of vehicles for site operatives and visitors; hours of construction, including deliveries, loading and unloading of plant and materials; the storage of plant and materials used in the construction of the development; the erection of any means of temporary enclosure or security hoarding and measures to prevent mud and debris being carried on to the public highway and ways to minimise pollution. Throughout the construction period the detailed measures contained within the approved Statement shall be strictly adhered to.
- 14) Before the development hereby permitted is occupied the parking spaces shown on Plan PL-102 shall be provided and the spaces shall not be used for any

purpose other than the parking of vehicles in connection with the approved development.

- 15) The dwellings shall achieve a Code Level 3 in accordance with the Code for Sustainable Homes Technical Guide (October 2008) (or such national measure of sustainability for house design that replaces that scheme) and achieve full Lifetime Homes credits. No dwelling shall be occupied until evidence that the Lifetime Homes credits have been achieved and a Final Code Certificate certifying the achievement of Code Level 3 have been submitted to and approved in writing by the Local Planning Authority.
 - 16) Before the development hereby permitted is commenced, details of proposed ecological mitigation as outlined in the letter dated 20 March 2014 from AAe Environmental Consultants shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with these details and permanently maintained thereafter.
 - 17) Prior to the first occupation of the development a scheme detailing all play equipment to be installed in the communal amenity space on the site shall be submitted to the Local Planning Authority and approved in writing. The development shall be implemented in full accordance with the details as approved prior to the first occupation of any dwelling.
 - 18) Before the development hereby permitted is occupied, details of the sub-division of, and access to, the amenity area shall be submitted to and approved in writing by the Local Planning Authority, implemented and retained as such thereafter.
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