



Appeal Decision

Site visit made on 20 February 2018

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 12th March 2018

Appeal Ref: APP/N5090/W/17/3188467

Land rear of 77-79 Hale Lane NW7 3RU

- 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 Mr Peer, Iguana Architects Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 17/5351/FUL, dated 15 August 2017, was refused by notice dated 27 October 2017.
 - The development proposed is new three storey residential dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - The effect of the proposal on existing occupiers at numbers 77-79 Hale Lane and No 1 Downhurst Avenue with specific reference to light; privacy and outlook.
 - The effect of the proposal on the character and appearance of the area; and

Reasons

Living conditions of existing occupiers

3. The appeal is situated towards the northern end of Downhurst Avenue, close to the junction with Hale Lane. It is a small plot that appears to have once formed part of the rear gardens to Nos 77-79 Hale Lane.
4. Design principle A of the Council's Sustainable Design and Construction Supplementary Planning Document (SPD) 2016 seeks to ensure that design takes into account levels of daylight and sunlight that will penetrate into occupied spaces as measured by Vertical Sky Component and the Average Daylight Factor. The appellant has provided a Daylight and Sunlight Report (DSR) which indicates that of the windows assessed on the rear elevations of Nos 77 and 79 Hale Lane and the flank elevation of No 1 Downhurst Avenue all would comfortably meet the required standard and would, therefore, benefit from suitable daylight and sunlight.
5. The occupiers of No 79 Hale Lane are concerned that due to the location of the proposal to the south of their property that the rear garden area would experience a significant loss of light. The appendix which accompanies the DSR shows that there would be a reduction in sunlight to the garden of 15% assessed on 21 March, the spring equinox. However, the DSR indicates that whilst there would be a reduction in sunlight; the garden areas of both 77 and 79 Hale Lane would comfortably meet

the Building Research Establishment (BRE) guidelines in that half the amenity areas would receive at least 2 hours of sunlight on 21 March.

6. Furthermore, it is noted that this assessment has been undertaken on the basis of a worst case scenario as it did not include the trees which previously existed along the site boundary. Had the trees been included the surrounding properties would have experienced an actual gain in the potential for natural light. The windows to the flank elevations of no 1 Downhurst Avenue do not serve habitable rooms or are dual aspect. Consequently, on the basis of this evidence and in the absence of cogent evidence to the contrary, I am satisfied the existing occupiers at Nos 77-79 Hale Lane and No 1 Downhurst Avenue would receive sufficient daylight and sunlight.
7. Table 2.4 of the SPD sets out daylight, privacy (minimum distance), outlook and light pollution requirements. It states that in new residential development there should be a minimum distance of 21m between properties with facing windows to habitable rooms to avoid overlooking and 10.5m to a neighbouring garden. Existing occupiers at 77-79 Hale Lane would not be overlooked as the northern elevation would not contain any windows. In addition, the rear dormer would be obscure glazed up to 1.8m in height in order to prevent overlooking to the rear gardens. Furthermore, the windows on the side elevation of No 1 Downhurst Avenue do not serve habitable rooms. Consequently, I am satisfied that the proposal would not result in overlooking or a loss of privacy to existing occupiers.
8. The SPD also states that bedrooms, living rooms/kitchens should have a reasonable outlook with clear glazed windows. The proposal would be situated around 2.5m from the common boundary with 77-79 Hale Lane.
9. No 77 Hale Lane has a bay window and adjacent window on the ground floor from which occupiers have an outlook over their own garden and over the boundary fence to the appeal site and beyond. Occupiers also have a clear view from the upper floor windows across the appeal site. There would be around 11m between the rear elevation of No 77 and the closest part of the northern façade. Occupiers would be very aware of the proposal; however, as it would be off-set to No 77 an outlook would be retained from the rear elevation windows and garden over the fence, across the front garden of the appeal site and beyond. Consequently, on balance, I consider that occupiers would retain sufficient outlook from their rear windows and garden.
10. The northern façade of the appeal proposal would be approximately 7-8m from the rear elevation of the single storey extension of No 79 and around 11m to the upper floor windows. The single storey rear extension has windows in the rear elevation which according to the DSR serve an extended open plan kitchen dining area. Occupiers currently have an outlook from these windows over their own garden, over the fence to the appeal site and beyond. Occupiers would retain an outlook from their ground and upper floor windows of their own garden. However, the existing outlook over the appeal site would be abruptly curtailed by the flank elevation of the appeal proposal. Notwithstanding the slight off-set of the ridge of the roof, occupiers would be faced with an approximately 8.6m high brick wall in close proximity to habitable room windows. The dominating effect would be particularly pronounced when viewed from the windows of the extension. The proposal would also appear dominant and imposing from the rear garden area which is shorter than surrounding properties.
11. The slightly lower level of the appeal site would result in the eaves and ridge height of the proposal sitting below those of No 79. However, the three storey property

would, nevertheless, appear imposing and dominant particularly when viewed from the ground floor rooms and the garden. Although the proposal would not extend the full width of the rear garden it would extend a significant proportion of the common boundary. The proposed 'green wall' on the flank elevation would take some time to establish and would in any event do little to mitigate the dominating effect.

12. Whilst I acknowledge that there were trees on the appeal site previously, filtered views would have been available through the trees in the summer and clearer views in the winter months.
13. Attention is drawn to a previous appeal on the site for a similar proposal in which the Inspector stated that *'it is not in dispute that the local minimum separation distances are met in this case'*. However, the Inspector is merely acknowledging that there is no dispute between the parties on this particular matter. He does not express views or reach his own conclusions on the matter of living conditions.
14. I am also aware that the previous planning application which was subject to appeal was not recommended for refusal by the Council on grounds of living conditions. However, this decision appears to have partly been reached on the basis that the previous proposal met separation distances and I agree with third party submissions that the minimum separation distance of 21m set out in Table 2.4 of the SPD relates specifically to privacy, not outlook. The issue of outlook must be judged on its own merits.
15. For the reasons stated, I conclude that the proposal would have a harmful effect on the living conditions of existing occupiers at No 79 in terms of outlook. The proposal would, therefore, be contrary to Policy DM01 of the DMP which, amongst other things seeks to ensure that development proposals are designed to allow for adequate daylight/sunlight, privacy and outlook for adjoining and potential occupiers or users.
16. Policy DM04 relates to environmental considerations for development and does not relate to the appeal proposal.

Character and appearance

17. The area is characterised by predominately semi-detached dwellings set behind modest front gardens defined by low boundary walls creating a strong building line along Downhurst Avenue.
18. It is proposed to erect a three storey detached dwelling which would accommodate rooms in the roof space. It would be set approximately 8m back from the pavement and project around 1.6m from the front elevation of No 1 and 2 Downhurst Avenue and around 1m beyond the front elevation of other properties in Downhurst Avenue. Although the proposal would project beyond the established building line along Downhurst Avenue, I consider that it would provide an appropriate transition between No 1 Downhurst Avenue and No 77 Hale Lane the flank wall of which projects beyond the building line along Downhurst Avenue. Furthermore, the projection would not be so significant as to appear unduly prominent or incongruous.
19. The building would be situated on the boundary of the alleyway providing a gap of around 3.8m from the flank elevation with 1 Downhurst Avenue. It would also be situated around 2.5m away from the common boundary with 77-79 Hale Lane. The proposal would be in close proximity to the extension at the rear of No 79; however, there would be a greater distance between the proposal and the main rear

elevation. On balance, there would be sufficient visual separation at first floor level for the dwelling to not appear unduly cramped or excessive in its plot. Furthermore, the height of the eaves and ridge of the roof would be broadly consistent with that of the adjacent property 1 Downhurst Avenue.

20. The proposal would have a more contemporary appearance than surrounding properties and include some design features such as perforated brick and a green wall which are not characteristic features of the area. However, the overall scale and massing would broadly reflect the character of the surrounding area. In addition, the materials would generally be consistent with those of surrounding properties. Taking these factors in combination, I consider that the proposal would be consistent with the character and appearance of the area.
21. For the reasons stated, I conclude that the proposal would not harm the character or appearance of the area. It would not, therefore, be contrary to Policies DM01 and DM04 of the Council's Local Plan Development Management Policies (DMP) (2012), Policy CS1 and CS NPPF of the Council's Local Plan Core Strategy (2012) which collectively, amongst other things, seek to secure high quality urban design which preserves or enhances local character and respects the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.

Other matters

22. Concerns are raised by surrounding occupiers regarding the effect of noise arising from future occupiers; however, the proposal is for residential use situated within a predominately residential area and I do not, therefore, consider that there would be a material change in the level of noise arising from the development compared to existing noise levels. Concerns are also raised regarding the noise arising from the construction; however, this matter could have been addressed by condition had I decided to allow the appeal.
23. Objectors are concerned that the proposal would create a precedent for similar developments; however, I have considered the appeal proposal on its own merits.
24. The proposal would make a contribution, albeit limited, to housing land supply in an accessible location. The proposal would also contribute to the local economy in the short term during the construction phase and in the longer term as future occupiers contribute to local services. However, these benefits would be outweighed by the significant harm which I have identified.

Conclusion

25. Whilst I have concluded that the proposal would not harm the character and appearance of the area, this does not outweigh my findings regarding the first main issue.
26. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector