

Location 78 Kings Drive Edgware HA8 8EF

Reference: 23/0823/RCU Received: 27th February 2023
Accepted: 28th February 2023

Ward: Edgware Expiry: 25th April 2023

Case Officer: Basya Markovits

Applicant: Ms Poppy Pilram

Proposal: Erection of a rear outbuilding (Retrospective)

OFFICER'S RECOMMENDATION

Refuse

AND the Committee grants delegated authority to the Service Director – Planning and Building Control to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chair (or in their absence the Vice-Chair) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1 The outbuilding, by reason of its size, height and siting, constitutes a disproportionate intervention, incongruous to the prevailing pattern of development and to the detriment of the character and appearance of the host property and street scene and contrary to Policy D3 of the London Plan (2021), Policies CS1 and CS5 of the LB Barnet: Local Plan (Core Strategy) DPD (2012), Policy DM01 of the LB Barnet: Local Plan (Development Management Policies) DPD (2012) and Residential Design Guidance SPD (2016)
- 2 The outbuilding by reason of its size, height and siting, constitutes a visually obtrusive development in the outlook from the habitable room at ground floor level to the front of No 76 Kings Drive, to the detriment of the visual and residential amenities of neighbouring occupiers and contrary to Policy DM01 of the LB Barnet: Local Plan (Development Management Policies) DPD (2012) and Residential Design Guidance SPD (2016).

Informative(s):

- 1 In accordance with paragraphs 38-57 of the NPPF, the Council takes a positive and proactive approach to development proposals, focused on solutions. To assist applicants in submitting development proposals, the Local Planning Authority (LPA) has produced planning policies and written guidance to guide applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered.

The applicant did not seek to engage with the LPA prior to the submission of this application through the established formal pre-application advice service. In accordance with paragraph 189 of the NPPF, the applicant is encouraged to utilise this service prior to the submission of any future formal planning applications, in order to engage pro-actively with the LPA to discuss possible solutions to the reasons for refusal.

OFFICER'S ASSESSMENT

This application has been brought before the Committee at the request of Cllr Mearing-Smith for the following reason:

[T]he scale, height and siting of the garage are commensurate with its context and not injurious to the amenity of the area. In particular, the requirement currently placed upon the owner is to reduce the height of the garage. However, it is currently exactly the same height as the garage behind it, as can be clearly seen by visiting the site. Most neighbours approve of what has been built, as it is great improvement on what was there before.

The principal objector is the immediate next door neighbour, where the garage wall flanks his drive. However, the reduction in height required under the current enforcement order will make little practical difference to that neighbour. Moreover, garages of roughly this siting and scale were always allowed for this site; the neighbour might not like that, but that is how the houses were always designed.

1. Site Description

The application property is a semi-detached dwellinghouse with front, side and rear garden, located on a corner plot at a bend in the road (Kings Drive). The outbuilding has a flat roof and is sited on the rear boundary of the garden, filling the full width of the plot and projecting beyond the side of the house beyond the building line of neighbouring properties.

The application property is not listed nor located on land designated as a Conservation Area. There are no protected trees on or adjacent to the application site.

2. Site History

Reference: 22/3547/RCU

Address: 78 Kings Drive, Edgware, HA8 8EF

Decision: Refused

Decision Date: 30 Sep 2022

Description: Erection of a rear outbuilding (retrospective)

Reference: 19/6469/RCU (APP/N5090/W/20/3250137 & APP/N5090/C/20/3249686)

Address: 78 Kings Drive, Edgware, HA8 8EF

Decision: Refused

Decision Date: 5th February 2020

Appeal Decision: Dismissed

Appeal Decision Date: 22 January 2021

Description: Erection of a single rear outbuilding

Reasons for refusal:

1. The outbuilding, by virtue of its size, height and siting, constitutes a disproportionate intervention, incongruous to the prevailing pattern of development and to the detriment of the character and appearance of the host property and street scene and contrary to Policy 7.4 of the London Plan (2016), Policies CS1 and CS5 of the LB Barnet: Local Plan (Core Strategy) DPD (2012), Policy DM01 of the LB Barnet: Local Plan (Development Management Policies) DPD (2012) and Residential Design Guidance SPD (2016).

2. The outbuilding by virtue of its size, height and siting, constitutes a visually obtrusive development in the outlook from the habitable room at ground floor level to the front of No 76 Kings Drive, to the detriment of the visual and residential amenities of neighbouring occupiers and contrary to Policy DM01 of the LB Barnet: Local Plan (Development Management Policies) DPD (2012) and Residential Design Guidance SPD (2016).

Reference: 19/2749/192

Address: 78 Kings Drive, Edgware, HA8 8EF

Decision: Lawful

Decision Date: 14 June 2019

Description: Single storey rear outbuilding

Reference: 17/2207/HSE

Address: 78 Kings Drive, Edgware, HA8 8EF

Decision: Approved subject to conditions

Decision Date: 15 June 2017

Description: Erection of new means of enclosure around the perimeter of the property and the installation of an electric gate.

Reference: 19/2749/192

Address: 78 Kings Drive, Edgware, HA8 8EF

Decision: Lawful

Decision Date: 17 June 2019

Description: Single storey rear outbuilding

3. Proposal

The proposal is for the retention of a single storey rear outbuilding. The measurements are as follows; a depth of 11.2 metres, a width of 5 metres, and a mono-pitched roof rising from an eaves height of 2.9 metres to a maximum height of 3.1 metres from the pavement level.

4. Public Consultation

Consultation letters were sent to 22 neighbouring properties. 38 replies were received, 35 in support of the scheme and 3 in objection.

In objection:

- Too high
- Out of character with the area
- Overbearing and blocks daylight (no. 76)

In support:

- Same height as neighbour's outbuilding (No. 80)
- Not overbearing
- Reducing the height would not make much difference
- Prominence could be disguised with landscaping
- No worse than other structures that have been approved
- Causes no inconvenience to neighbours
- Same height as neighbour's
- It would be expensive to reduce the height
- Makes the street look wealthier
- It was mutually agreed by owners of No. 76 and 78
- Built to high standard, well-designed and meets building regulations
- An improvement on what was already there
- Matches host property, neighbourhood and surrounding area
- Improves the appearance of the street
- Structure has been there for many years
- Relieves street parking by creating two off-street parking spaces.

5.1 Policy Context

National Planning Policy Framework and National Planning Practice Guidance

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The National Planning Policy Framework (NPPF) was published on 20th July 2021. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, creates better places to live and work and helps make development acceptable to communities...being clear about design expectations, and how these will be tested, is essential for achieving this'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would significantly and demonstrably outweigh the benefits.

The Mayor's London Plan 2021

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2050. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

- Relevant Core Strategy Policies: CS NPPF, CS1, CS5.
- Relevant Development Management Policies: DM01, DM02, DM06

The Council's approach to extensions as set out in Policy DM01 is to minimise their impact on the local environment and to ensure that occupiers of new developments as well as neighbouring occupiers enjoy a high standard of amenity. Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

Barnet's Local Plan (Reg 22) 2021

Barnet's Draft Local Plan on 26th November 2021 was submitted to the Planning Inspectorate for independent examination which will be carried out on behalf of the Secretary of State for the Department of Levelling Up, Housing and Communities. This is in accordance with Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2021 (as amended).

The Regulation 22 Local Plan sets out the Council's draft planning policy framework together with draft development proposals for 65 sites. The Local Plan 2012 remains the statutory development plan for Barnet until such stage as the replacement plan is adopted and as such applications should continue to be determined in accordance with the 2012 Local Plan, while noting that account needs to be taken of the policies and site proposals in the draft Local Plan and the stage that it has reached.

Supplementary Planning Documents

Residential Design Guidance SPD (adopted October 2016)

- Sets out information for applicants to help them design an extension to their property which would receive favourable consideration by the Local Planning Authority and was the subject of separate public consultation. The SPD states that large areas of Barnet are characterised by relatively low density suburban housing with an attractive mixture of terrace, semi-detached and detached houses. The Council is committed to protecting, and where possible enhancing the character of the borough's residential areas and retaining an attractive street scene.

- States that extensions should normally be subordinate to the original house, respect the original building and should not be overly dominant. Extensions should normally be consistent in regard to the form, scale and architectural style of the original building which can be achieved through respecting the proportions of the existing house and using an appropriate roof form.

- In respect of amenity, states that extensions should not be overbearing or unduly obtrusive and care should be taken to ensure that they do not result in harmful loss of outlook, appear overbearing, or cause an increased sense of enclosure to adjoining properties. They should not reduce light to neighbouring windows to habitable rooms or cause significant overshadowing, and should not look out of place, overbearing or intrusive when viewed from surrounding areas.

Sustainable Design and Construction SPD (adopted October 2016)

- Provides detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet.

5.3 Assessment of proposals

Preliminary comments

An identical scheme to this one was submitted on 08.07.2022 (ref: 22/3547/RCU) and was refused on character and amenity grounds. As there has since been no change in the planning policy context or any other relevant material consideration, the appraisal that follows remains essentially the same as the previous one:

- Enforcement background;

The site is the subject of an enforcement notice that was issued on 20th February 2020 concerning the erection of an outbuilding not in accordance with the approved plans of the lawful development certificate reference 19/2749/192, requiring the owner to lower the roof to comply with original approved plans. The enforcement officer subsequently invited the owner to submit a retrospective planning application for the retention of the structure, which was submitted (19/6469/RCU) and refused on 6th February 2019 and subsequently dismissed at appeal. The owner was allowed to submit the previous planning application on the basis that new information on the measurements had been provided and the enforcement notice remains in force.

The issues in assessing the application are:

- Does the permitted development (PD) fallback position apply
- Impact on character
- Impact on neighbours

- Does the permitted development fallback position apply;

The applicant emphasises that the outbuilding as built is no more than 2.5 metres in height from the adjacent ground level (internally) and thus conforms to permitted development in terms of height and is in accordance with the plans for the lawful development. It is contended that the drawings approved under the lawful development certificate (LDC) did not show the true highest adjacent ground levels, failing to show the difference in height between internal and external ground levels.

Officers acknowledge there is some difference in ground levels between the gently sloping pavement level and the garden level, which appears higher. Indeed, the applicant has submitted historic photos showing the garden after the demolition of the previous outbuilding showing the garden level, and submitted revised drawings showing the distinction in ground levels. A site visit also confirms the outbuilding to be no higher than 2.5 metres from the garden level internally.

However, in spite of these amended drawings and evidence, the development remains unlawful because the outbuilding as built is not in conformity to the drawings approved under the LDC, which showed the ground levels internally and externally of the site to be the same and failed to provide a distinction. The outbuilding is unlawful because it does not comply with these drawings and the revised information cannot override this.

Furthermore, to reconsider the PD fallback position of the outbuilding in the assessment of a planning application in light of further information and amended plans would also require the council to take into account that the building has been built forward of the principal elevation, which is not permitted development.

A previous refusal (19/6469/RCU) of the outbuilding gave no weight to the lawful development certificate (LDC) as a fallback position, because it was considered the outbuilding as built was unlawful and not in accordance with the LDC and an existing unlawful development could not be made lawful retrospectively unless regularised by a planning permission. This decision was upheld at a subsequent appeal. The same applies this time in that the outbuilding as built does not reflect the drawings of the LDC, regardless of the applicant providing revised drawings at this stage.

A further point is that the photos submitted showing the garden shortly after the previous outbuilding was demolished is not considered a reliable guide to the original ground levels of the garden. Furthermore, the retrospective nature of the information is also a weakness.

It is therefore assessed that there is not a credible case for the PD fallback position given that the development is clearly not in accordance with the approved plans of the LDC; and furthermore, a reconsideration of the development in light of permitted development would take into account the building being forward of the principal elevation, which immediately disqualifies it from PD.

- Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality;

Any scheme for the site will need to respect the character and appearance of the local area, relate appropriately to the sites context and comply with development plan policies in these respects. This will include suitably addressing the requirements of development plan policies such as DM01 which states that all proposals should preserve and enhance the local character of the area, as well as policies CS05 (both of the Barnet Local Plan), D1, D3 and D6 (of the London Plan).

The outbuilding as built is not considered to preserve the character of the local area. The outbuilding is excessive in both the height and scale, having a similar footprint to the original house. As such the development is considered to be disproportionate to the host dwelling. The height of the outbuilding at 3.1 metres from pavement level is also considered to be excessive.

Due to the property being situated on a corner plot, the outbuilding is highly visible from the street scene of Kings Drive, coming forward of the principal elevation, and fails to respond to the established building lines. The existing outbuilding is therefore considered to have an unacceptable impact with respect to the street scene.

Although No. 80 benefits from an existing outbuilding, the garage is of a significantly less dominant size and height, not appearing as disproportionate to the host dwelling or out of character of the area. There is also a significant loss of the rear amenity space due to the size of the outbuilding. The outbuilding is therefore considered to detract from the established character and appearance of the host property, street scene and general locality and is recommended for refusal.

- Whether harm would be caused to the living conditions of neighbouring residents.

It is important that any scheme addresses the relevant development plan policies (for example policy DM01 of the Barnet Local Plan policy D6 of the London Plan) in respect of the protection of the amenities of neighbouring occupiers. This will include taking a full account of all neighbouring sites.

It will be important that any scheme addresses the relevant development plan policies (DM01 of the Barnet Local Plan and policy 7.6 of the London Plan) in respect of the protection of the amenities of neighbouring occupiers. This will include taking a full account of all neighbouring sites. Any application should include plans demonstrating how this has been achieved. Specific areas which will need to be addressed in this regard include the proposals impacts on daylight and sunlight.

The proposal is considered to detrimentally impact the neighbouring property of No. 76 Kings Drive by virtue of the overbearing appearance of the flank wall in the outlook from the ground floor habitable room to the front.

5.4 Response to Public Consultation

The material considerations raised in comments have been addressed in the body of the report.

6. Equality and Diversity Issues

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and supports the Council in meeting its statutory equality responsibilities.

7. Conclusion

Having taken all material considerations into account, the proposed development would have an unacceptable impact on the character and appearance of the application site and the wider locality. The development is considered to have an adverse impact on the amenities of neighbouring occupiers. This application is therefore recommended for REFUSAL.

