



Appeal Decisions

Site visit made on 17 January 2022

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2022

Appeal A Ref: APP/A5270/W/21/3266371

12 Kathleen Avenue , Acton, London, W3 ONG

- 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 R Anderson against the decision of the Council of the London Borough of Ealing.
 - The application Ref 201866FUL, dated 12 May 2020, was refused by notice dated 6 July 2020.
 - The development proposed is demolition of existing garage and erection of a house.
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Appeal B Ref: APP/A5270/W/20/3252411

12 Kathleen Avenue, Acton, London, W3 ONG

- 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 R Anderson against the decision of the Council of the London Borough of Ealing.
 - The application Ref 185943FUL, dated 21 December 2018, was refused by notice dated 12 December 2019.
 - The development proposed is demolition of existing garage and erection of two maisonettes.
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Decisions

1. Both Appeal A and Appeal B are dismissed.

Procedural Matters

2. The two appeals relate to different proposals on the same site. I have considered both on their respective merits but for simplicity and efficiency I have dealt with both appeals in one decision letter.
3. During the course of the appeal The London Plan The Spatial Development Strategy for Greater London (2021) was published (the London Plan). This replaced The London Plan The Spatial Development Strategy for London Consolidated with Alterations Since 2011 (2016), the policies of which have been superseded and are no longer relevant to my decision. The main parties have been given the opportunity to comment on the relevant policies in the new London Plan.
4. The appellant submitted an alternative first floor plan drawing with Appeal A. I am satisfied that this revision does materially alter the nature of the application nor prejudice the interests of any interested parties. I have therefore determined this appeal on the basis of the revised drawing.

Main Issues

5. The main issues in both appeals are:
- i) the effect of the proposed development on the character and appearance of the area;
 - ii) whether the proposed development would provide adequate and satisfactory living conditions for its future occupiers; and
 - iii) the effect of the proposed development on the living conditions of the occupiers of the ground floor flat at No 12 Kathleen Avenue, with particular regard to the use of the side / rear garden.

Reasons

Character and appearance

6. Kathleen Avenue is part of a mature residential area with predominantly 2-storey semi-detached dwellings set back from the road fronted by gardens and hardstandings. On the corner of Kathleen Avenue and Western Avenue is a 3 - 4 storey building.
7. No 12 is located on the corner of Kathleen Avenue and an accessway leading to Wilfrid Gardens and Lucy Crescent. The appeals site is a triangular-shaped plot that previously formed part of the side garden to No 12. It has been separated from the garden by a close boarded fence and accommodates a small garage but is otherwise overgrown. It is bounded by narrow accessways serving the rear of properties on Western Avenue and Kathleen Avenue / Wilfrid Gardens.
8. The appeals site therefore forms part of an area which, given the prevailing layout, is characterised by gardens, garages, outbuildings and narrow accessways. Although the single-storey buildings give the area somewhat cluttered appearance, the gardens provide a sense of openness and opportunities for planting to give relief to the surrounding densely developed urban form.
9. Appeal A is for a single dwelling and Appeal B is for 2 maisonettes, the former orientated to align with Lucy Crescent and the latter with Kathleen Avenue, although set back from the street frontage. Whilst there is no objection in principle to development on the site, dwellings are not characteristic of this backland area nor are single dwelling frontages. The loss of the openness of the existing garden area would harmfully intensify the extent of built development in this backland context.
10. Moreover, given the shape of the site and the orientation of the building in each scheme on the plot, both schemes would result in a poor and awkward relationship between the footprint of the building and the plot boundaries, with both schemes having small triangular areas of garden. The lack of space around the building in either scheme with built form so close to the boundaries and retaining only small corners as gardens would be entirely inconsistent with the prevailing pattern of development of regularly shaped plots and gardens that characterises the surrounding area. Neither scheme would therefore complement the street sequence or building pattern of the area.
11. The proposed dwelling in Appeal A would be 1.5 storeys, with the upper storey partially within the roof space. It would therefore be smaller than the existing

- dwelling but larger than the garage being replaced and other outbuildings in the vicinity. Rather than bridging the scale between the dwellings and the outbuildings, it would relate to neither in scale or form and would thus be incongruous.
12. The proposed maisonettes building in Appeal B would be a full 2 storeys. Whilst this would be of a height and form comparable to existing dwellings in the vicinity, it would be substantially larger than the garages and outbuildings and would thus also be incongruous in the backland context.
 13. The height of either scheme would also detract from the important openness of this area. Their combination of height and proximity to the front boundary of the site with consequent lack of room for mitigating planting would result in a harmful impact on the streetscape. Consequently, neither scheme would be of a high standard of design, reinforce or enhance the identity of the neighbourhood nor result in a positive visual impact.
 14. Existing boundaries in the backland area are formed by walls, close boarded fencing and garages / outbuildings. Therefore, the use of solid boundary treatments for the appeals site would not be harmfully incongruous. Nor would it result in an unacceptably harmful sense of enclosure to the accessways. The provision of appropriate boundary treatments could be secured by a condition. Both of the proposed appeal schemes would be of materials in keeping with those of existing dwellings in the locality.
 15. The appellant has drawn my attention to a new dwelling at the junction of Lucy Crescent and Wilfrid Gardens which was allowed on appeal (APP/A5270/A/09/2110544). This was also a triangular site but fronts onto Lucy Crescent rather than being within a rear service area and therefore relates to an established street frontage.
 16. Furthermore, the Inspector in that case considered the site to be previously developed land. The site before me contains a garage but is primarily a residential garden, albeit apparently currently unused as such. The definition of previously developed land in the National Planning Policy Framework (the Framework), which postdates that previous appeal decision, specifically excludes residential gardens in built up areas from the definition of previously developed land. This previous appeal decision is thus not directly comparable to the appeals before me.
 17. For the reasons given above, I therefore conclude that both the proposed schemes would be significantly harmful to the character and appearance of the area. Accordingly, both schemes would conflict with Policy 7.4 of the Ealing Development Management Development Plan Document (EDM DPD) (2013) which seeks to protect local character. Although not cited in the reasons for refusal, this policy is referenced within the Planning Officer's Report.
 18. There would also be conflict in this respect with clause G of Policy GG1, clause C of GG4 and clause D11) of Policy D3 of the London Plan. In combination, these set out requirements for new buildings, a high standard of design and for development proposals to respond to the existing character of a place. However, although Policies D1 and D4 of the London Plan require boroughs to undertake area assessments and sets out how boroughs should deliver good design respectively, neither are directly relevant to the determination of these individual proposals.

Living conditions of future occupiers

Appeal A

19. The front elevation of the proposed dwelling would face the narrow, utilitarian accessway between Wilfrid Gardens / Lucy Crescent and Kathleen Avenue, with its garages and outbuildings of varying design, materials and appearance and lack of planting. The accessway provides vehicular access to garages and between Wilfrid Gardens / Lucy Crescent and Kathleen Avenue. It is therefore an unattractive environment which would not be a pleasant outlook. Given the proximity of the scheme to its front boundary and the need to allow access, there would be limited scope for planting to ameliorate this outlook. Views to the rear would be of a similar accessway.
20. The amended plan shows bedrooms that would meet the Technical housing standards - nationally described space standard as required by Policy D6 of the London Plan, as would the other rooms within the proposed dwelling. The scheme would provide approximately 53m² of private garden space and would therefore satisfy the space requirement standards set out in Table 7D.2 of the EDM DPD.
21. However, the Key to Table 7D.2 sets out that the private garden space should be fit for purpose and genuinely private. The scheme would provide 3 separate triangular garden areas, which could include adequate provision for refuse / recycling and cycle storage (in accordance with Policies SI 7 and T5 of the London Plan) without unacceptably compromising their space or utility. The areas would receive adequate sunlight but their configuration and lack of connectivity of the garden areas would reduce their attractiveness and functionality. Furthermore, with a boundary treatment to ensure privacy, these garden areas would be very enclosed.
22. I therefore conclude that the scheme would not provide satisfactory living conditions for future occupiers in respect of outlook and the quality of garden. Accordingly, in this respect, it would conflict with Policies 7B and 7D of the EDM DPD which requires new development to achieve a high standard of amenity for users and provide gardens that are fit for purpose.
23. However, I find no conflict with Policy 3.5 of the EDM DPD or Policy D6 of the London Plan which require internal and private garden space to be provided in accordance with adopted quantitative standards. I have no evidence that the scheme would conflict with Policy D5 of the London Plan on inclusive design to which the appellant refers. The second reason for refusal for this scheme cites Policy 6.13 of EDM DPD, which relates to the provision of disabled parking spaces. However, the development is proposed to be car-free and therefore this policy is not relevant to this appeal.

Appeal B

24. The front and northern side elevations of the proposed maisonettes building would also face the accessway with views to the rear of another accessway. This scheme would therefore also have a poor outlook.
25. Both maisonettes in the Appeal B scheme would meet the relevant internal floorspace standards. The scheme would provide approximately 12m² for each of the units in the form of two separate triangular areas for the ground floor

unit and a triangular area with a narrow strip along the west side of the building for the first floor unit.

26. Both units would have adequate provision for refuse / recycling and cycle storage as bins for the first floor unit could be relocated to the west side of the building and cycle storage would be internal. The side garden for the ground floor unit would receive adequate sunlight during the latter half of the day but that for the first floor unit would be largely overshadowed by the building throughout the day. Again the garden areas for both units would be very enclosed.
27. I therefore conclude that the scheme would not provide satisfactory living conditions for future occupiers in respect of outlook and the quality of gardens. Accordingly, in this respect, it would conflict with Policies 7B and 7D of the EDM DPD which requires new development to achieve a high standard of amenity for users and provide gardens that are fit for purpose.
28. However, I find no conflict with Policy 3.5 of the EDM DPD or Policy D6 of the London Plan which require internal and private garden space to be provided in accordance with adopted standards. I have no evidence that the scheme would conflict with Policy D5 of the London Plan on inclusive design to which the appellant refers.

Living conditions of the occupiers of neighbouring properties

29. No 12 is divided into 2 flats with the ground floor flat having the use of the side / rear garden of the property. The proposed dwelling in the Appeal A scheme would be close to the boundary fence between the side / rear garden of No 12. Although the eaves height would be lower than that of the surrounding 2-storey dwellings and the roof would slope away from the boundary, the dwelling would extend significantly above the boundary fence. The Appeal B scheme would have a 2-storey elevation along a substantial proportion of the rear / side garden of No 12 which, even though stepped, would dominate that garden.
30. The height and proximity to the garden boundary of both appeal schemes would therefore result in a harmful overbearing effect on the side / rear garden to No 12, unacceptably diminishing its enjoyment by its users. This would outweigh any limited benefit of the screening of Lucy Crescent from the garden by either scheme.
31. I therefore conclude that both appeal schemes would be harmful to the living conditions of the occupiers of the ground floor flat at No 12. Accordingly, in this respect, both proposals would conflict with Policy 1.1(g) of the Council's Development Strategy 2026 (DS), referenced in the Planning Officer's Report, which seeks to protect and enhance suburban communities. They would also conflict in this respect with Policy 7B of the EDM DPD which protects the living conditions of the occupiers of adjacent properties.
32. However, I have no evidence that either appeal proposal would result in unacceptable air quality or noise level effects or other harmful emissions. I therefore find no conflict in these respects with Policy 1.1(j) of the DS which seeks to reduce the environmental impact of activities within the borough nor with Policy 7A of the EDM DPD, which relates to emissions.

Other Matters

33. Either proposal would increase natural surveillance and so potentially reduce instances of such anti-social behaviour such as flytipping. However, if the proposed developments were enclosed by fencing to ensure privacy this benefit would be very limited and would not outweigh the harm I have identified above.
34. The Council has concerns with both appeal schemes over the safety of the access along Lucy Crescent to the appeal site for pedestrians, although has not directed me to any extant policies in this specific regard. I have no evidence on the level of use of this accessway but it is narrow with no dedicated footway and only limited opportunities to step out of the way of vehicles, mainly onto private property. Consequently, either appeal proposal could result in conflicts between pedestrians and vehicles, which although not sufficient to justify withholding permission in isolation given the existing pedestrian use of the accessway, nevertheless weighs against either scheme.

Planning Balance

35. The DS dates from 2012 and the EDM DPD from 2013. However, the weight to be attached to the policies of these documents does not hinge on their age. Rather, paragraph 219 of the Framework sets out that due weight should be given to policies according to their degree of consistency with the Framework.
36. The Framework sets out that development proposals should have regard and be sympathetic to the character of an area, add to the overall quality of an area and create places with a high standard of amenity for existing and future users. Therefore, Policy 1.1(g) of the DS, Policies 7.4, 7B and 7D of the EDM DPD and Policies GG1, GG4 and Policy D3 of the London Plan are broadly consistent with the Framework. Consequently the conflict with these policies attracts significant weight.
37. Both appeal proposals gain support in principle from Policies 1.1(a) and (b) and 3.1 of the DS and Policies H1 and H2 of the London Plan 2021, to which the appellant refers, which set out the previous and revised housing figures for the borough and promote development on small sites. The schemes may be compliant with other policies of the development plan as I have found above, but these other policies do not positively favour either of the appeal schemes. I therefore find, having regard to the main policy areas relevant to the proposals; housing supply, character / appearance and living conditions, that neither appeal scheme is compliant with the development plan taken as a whole.
38. The parties dispute whether or not the Council is able to demonstrate a 5-year supply of deliverable housing sites. The appellant contends that the housing land supply for the period 1 April 2020 – 31 March 2025 is between 3.04 and 4.58 years. The shortfall could therefore be significant.
39. In response, the Council accepts that it is unable to demonstrate a 5-year housing land supply using traditional / conventional methods. It relies instead on the Strategic Housing Land Availability Assessment (SHLAA) prepared for the new London Plan in 2017 and recent housing delivery exceeding the adopted housing targets.

40. Whilst a SHLAA can be used as evidence to demonstrate a 5-year housing land supply, the pan-London SHLAA is now over 4 years old and paragraph 157 of the new London Plan Inspector Panel Report explains that the SHLAA is not an exact assessment of supply but rather one of theoretical capacity. The SHLAA does not set out allocations nor confirm deliverability as defined in Annex 2 of the Framework. The SHLAA therefore does not demonstrate a 5-year housing land supply in the borough for the period 1 April 2021 – 31 March 2026.
41. The Council has not identified and updated annually a supply of specific deliverable sites in accordance with paragraph 74 of the Framework and there is no allowance in the Framework for subtracting past oversupply from the annual requirement. The burden is upon the Council to demonstrate a sufficient supply of housing sites and it has failed to do so. Accordingly, for the purposes of this appeal, I find that the Council cannot demonstrate a 5-year housing land supply.
42. Paragraph 11 d) of the Framework is therefore engaged. I have no evidence that the appeal schemes would affect areas or assets of particular importance. Thus, under paragraph 11 d) ii), planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
43. Appeal A would provide a single dwelling and Appeal B 2 units of accommodation. Both would contribute to the Government's aim of significantly boosting the supply of homes, including on small / medium and windfall sites. The appeal site has reasonable access to facilities and services, including public transport. However, the contribution of either scheme would only make a very modest contribution to housing supply. Consequently, the associated social, economic and environmental benefits would be very limited.
44. Weighed against those benefits, both schemes would conflict with the policies in section 12 of the Framework to promote good design through the creation of high quality buildings and places, particularly by ensuring development accords with the criteria set out in paragraph 130. Due to this conflict I do not find that the appeal site is a suitable site for a home (paragraph 69) nor that either of the proposed developments would make efficient use of land having regard to paragraph 124 d).
45. Therefore, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the limited benefits of a single dwelling or 2 maisonettes when assessed against the policies of the Framework taken as a whole. Consequently, the presumption in favour of sustainable development does not weigh in favour of either appeal.

Conclusion

46. I have found above that the proposal in both Appeal A and Appeal B would conflict with the development plan taken as a whole. There are no material considerations, including the policies of the Framework, that indicate that a decision should be made other than in accordance with the development plan. For this reason, and having regard to the other matters raised, both Appeal A and Appeal B are dismissed.

Martin Small INSPECTOR