



Appeal Decision

Site visit made on 2 October 2012

by John Bell-Williamson MA MRTPI

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

Decision date: 26 October 2012

Appeal Ref: APP/N5090/A/12/2173384
37-39 Kingsgate Avenue, London N3 3DH

- 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 Intercontinental Developments Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref F/03131/11, dated 25 July 2011, was refused by notice dated 5 March 2012.
 - The development proposed is erection of three storey building following demolition of two existing single family dwelling houses, with entrances from Amberden Avenue and Kingsgate Avenue and vehicular access from the existing access between the rear of 39 Kingsgate Avenue and 10 Amberden Avenue associated landscaping, cycle storage, pergolas and parking for 10no cars.
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Preliminary Matters

1. The Council's description of the development has been used as it is more accurate in representing all the main elements of the development, as follows: 'erection of a three storey building comprising of 9 self-contained units, following demolition of two existing single family dwelling houses, with entrances from Amberden Avenue and Kingsgate Avenue and vehicular access from the existing access between the rear of 39 Kingsgate Avenue and 10 Amberden Avenue, with associated landscaping, cycle storage, pergolas and parking for 10no cars'.
2. The Council adopted its Local Plan Core Strategy and Development Management Policies document (the Local Plan) in September 2012. I have, therefore, determined the appeal on the basis of the up-to-date policies in the Local Plan, as well as others, indicated by the Council.

Decision

3. The appeal is allowed and planning permission is granted for erection of a three storey building comprising of 9 self-contained units, following demolition of two existing single family dwelling houses, with entrances from Amberden Avenue and Kingsgate Avenue and vehicular access from the existing access between the rear of 39 Kingsgate Avenue and 10 Amberden Avenue, with associated landscaping, cycle storage, pergolas and parking for 10no cars at 37-39 Kingsgate Avenue, London N3 3DH. The permission is granted in accordance with the terms of the application, Ref F/03131/11, dated 25 July 2011, subject to the conditions included in the Schedule at Annex A.
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Main Issues

4. The main issues are the effect on the character and appearance of the appeal site and surrounding area; and on the living conditions of occupiers of No 35 Kingsgate Avenue, with regard to daylight and outlook.

Reasons

5. The appeal site stands on a corner of Kingsgate Avenue and Amberden Avenue and is currently occupied by a pair of two storey detached houses. The surrounding area is predominantly residential with two storey semi-detached houses on Kingsgate Avenue, close to the appeal site, and larger detached properties on Amberden Avenue. Opposite the site are a number of low rise apartment blocks on Amberden Avenue and Basing Way.

Character and appearance

6. The proposed building would stand further forward on the corner plot than both of the existing houses and would be a large structure. However, viewed from Amberden Avenue, the main part of the building would not be taller than the neighbouring detached houses and it would retain a good degree of separation from the nearest house, No 10. Many of the semi-detached properties on Kingsgate Avenue have been extended resulting in a wide development frontage, particularly where both properties have had additions. While the proposed building would be larger than these, given the general scale of buildings, its overall appearance and position at the end of the row of properties would not be incongruous.
7. Landscaped areas, including trees, would be retained to both street frontages, ensuring a degree of separation between the footpath and development. While the building would be further forward than No 39 on the Amberden Avenue frontage, due to the degree of separation from No 10 and the staggered building line of the adjacent detached houses, its position would not result in a harmful effect on the character and appearance of the site or surrounds.
8. Properties on Kingsgate Avenue are set on a consistent front building line, except No 37, which is set well back on the appeal site with a large front garden. The proposal would bring development forward to broadly the same building line as other properties and, therefore, would not be uncharacteristic of the pattern and layout of development in this regard. While the proposed building would be taller than neighbouring houses on Kingsgate Avenue, its additional height would reflect a natural progression of staggered rises in the height of houses as they follow the upward gradient of the road. The rooflines of No 35 and the houses on the appeal site are currently the highest in Kingsgate Avenue and the appeal building would continue the upward movement, which would then continue to the nearest apartment block on Basing Way, which would be taller than the appeal building.
9. While the gables and tower would add to the mass and bulk of the building, as these are in proportion to the overall building and given the relationship between the existing houses and proposed building already described, these would not be incongruous or harmful features. Indeed, the corner tower would act as a landmark feature and full stop at this location at the top of Kingsgate Avenue looking towards the larger residential blocks opposite. In this respect

the design of the building would reflect a transition from the houses on Kingsgate Avenue and Amberden Avenue to the larger residential blocks on Basing Way. The small dormer windows would not be a prominent design feature and are not uncharacteristic of the surrounding area as examples exist on houses in Amberden Avenue.

10. For all these reasons, I conclude that the proposal would not have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. As such, it is not contrary to the following development plan policies: GBEnv1, D2, D3, D4 and H16 of the Barnet Unitary Development Plan (the UDP) and CS5 and DM01 of the Local Plan, which require development to respect the character and context of the surrounding area; or to GBEnv2 and D1 of the UDP, which require high quality design in new development.

Living conditions

11. With regard to the effect on daylight reaching No 35 Kingsgate Avenue, the appellant has provided a technical report which addresses this issue. The findings from this report are that the levels of daylight reaching the first and ground floor windows of No 35 closest to the appeal site would exceed the acceptable standards. As the report follows established guidelines for such assessments, I have given its findings considerable weight.
12. The side elevation of No 37 Kingsgate Avenue is currently only some two metres from the garden boundary of No 35. The stepping in of the proposed building's side elevation would result in the main part of the building adjacent to No 35's garden being around ten metres away from the boundary. Despite the increased bulk and scale from the existing house on the site, with this degree of separation I consider that the proposal would not have an overbearing effect viewed from No 35 or its garden.
13. For these reasons, I conclude that the proposal would not have an unacceptably harmful effect on the living conditions of occupiers of No 35 Kingsgate Avenue, with regard to daylight and outlook. Therefore, it is not contrary to Policy D5 of the UDP or Policy DM01 of the Local Plan, which require that new development should, amongst other matters, allow for adequate daylight and outlook for adjoining occupiers.

Other Matters

14. The Council's appeal statement refers at paragraph 4.2 to the submission of a Unilateral Undertaking by the appellant at application stage to address provision of additional services and facilities arising as a result of the proposed development. However, a copy of this document has not been provided to me by either main party as part of their appeal submissions. While I acknowledge the existence of an Undertaking as indicated by the Council, I am required to determine the appeal on the basis of the information before me. Consequently, I have not had regard to the Undertaking or the issues raised by it and this matter has not led me to reach a different overall conclusion.
15. Interested parties raise a range of issues which I have had regard to. I have no evidence before me about the type and frequency of any public transport services in the vicinity of the appeal site and, therefore, can give this matter only limited weight. Moreover, notwithstanding this issue, I take the view that

the level of residential accommodation proposed will not lead to harmful levels of car dependency. The fact that flats in a nearby development are unsold is not a matter that has a direct bearing on the decision in this case.

16. Evidence of overshadowing effects from the existing house, No 37 Kingsgate Avenue, on No 35 and its garden cannot be directly compared to the proposed building due to the different positions of the existing and proposed buildings on the site, as noted above. Use of obscured glass is the usual, effective means of avoiding direct overlooking and maintaining privacy between neighbouring occupiers and I see no reason that this should not be the case with regard to the proposed development. The condition suggested by the Council requires any windows with obscured glass to be retained in perpetuity and I have no evidence to suggest that this will not be the case.
17. While development would take place on garden land, PPS3 has been replaced by the National Planning Policy Framework. In accordance with Annex 2 to the Framework, such land is now excluded from the definition of previously-developed land. However, neither the new Framework nor development plan policies drawn to my attention preclude development on such sites. In essence, national and local policies require that new housing should not harm the character and appearance of an area, which I have already addressed.
18. The level of parking and its location is not, in my view, a prominent feature of the development and will not be harmful to local character or appearance. The plans do not suggest insufficient space for cars and other vehicles to park and access and exit the site safely. I note concerns about use of what is alleged to be a private service road and the appellant's contention that this is not the case. However, disagreements concerning private legal matters, including land ownership and rights of access across land, are not for me to resolve.
19. While I have had regard to all these matters, for the reasons set out above I have given them limited weight and they do not lead me to reach a different overall conclusion.

Conditions

20. Of the Council's suggested conditions, I have imposed the standard time condition and, to avoid doubt and in the interests of good planning, one which requires development to be carried out in accordance with the approved plans.
21. A condition requiring approval of materials for external surfaces is necessary in the interests of the appearance of the new building and surrounding area. It is important that appropriate landscaping is approved and implemented for the dwellings' visual integration into the site and surrounding area, although I have combined the Council's suggested conditions. I agree that details of ground levels should be approved to ensure these are appropriate for drainage and in relation to the highway and neighbouring properties. I also accept that the bin storage area should be in place before occupation in the interests of amenity and public health.
22. While I accept that noise levels of any extraction or ventilation equipment should be controlled to protect living conditions, I consider that the suggested condition for a more general scheme of noise mitigation is too imprecise and is not necessary in this case. There is no evidence to suggest that the

development will generate excessive levels of general noise or that due to its relationship with neighbouring properties any effects of its use would be harmful in this regard.

23. I agree that the parking area should be available before occupation in the interests of highway safety and that the upper floor windows facing No 35 Kingsgate Avenue need to be obscure glazed to prevent overlooking and loss of privacy. A condition requiring approval of enclosure of amenity space and its protection is needed to ensure adequate space is available for the building's occupants. Finally, a construction method statement is necessary to ensure on and off-site safety and to protect visual amenity of neighbouring residents.

Conclusion

24. For the reasons given above and having regard to all other matters raised, it is concluded that the appeal should be allowed.

John Bell-Williamson

INSPECTOR

Annex A

Schedule – conditions

- 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: PL-001, PL-003 Revision E, PL-004 Revision D, PL-005 Revision D, PL-006 Revision D, PL-007 Revision D, PL-008 Revision D and SK-07.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces and hard surfacing of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the levels of the building, parking spaces and footpaths in relation to adjoining land and highways and any other changes proposed in the levels of the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until a scheme of hard and soft landscaping, including details of existing trees to be retained, has been submitted to and approved in writing by the local planning authority. The scheme as approved shall be carried out before the end of the first planting and seeding season following occupation of any part of the building or completion of the

development, whichever is sooner. Any newly planted or retained tree or shrub that is removed, dies, or becomes severely damaged or diseased within five years of completion of the development shall be replaced in the next planting season with another of similar size and the same species.

- 6) Before the development hereby permitted is occupied, the enclosures and screened facilities for the storage of recycling containers and refuse bins shall be provided in accordance with drawings PL-003 Revision E and SK-07 and shall be permanently retained thereafter.
- 7) The level of noise emitted from any ventilation/extraction plant or equipment required as part of the development hereby permitted shall be at least 5dB(A) below the background level, as measured from any point one metre outside the window of any room of a neighbouring residential property. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point one metre outside the window of any room of a neighbouring residential property.
- 8) Before the development hereby permitted is occupied, parking spaces shall be provided in accordance with the parking layout shown on drawing PL-003 Revision E. The parking spaces shall not be used for any purpose other than the parking of vehicles in connection with the development hereby approved.
- 9) Before the development hereby permitted is occupied, the windows at first and second floor level in the side elevation facing No 35 Kingsgate Avenue shall be glazed with obscured glass only and be permanently fixed shut with only a fanlight opening above a height of 1.7 metres measured above floor level of the room in which the window is installed. The windows shall be permanently retained in this condition.
- 10) Before the development hereby permitted is occupied, details of boundary treatments, including any subdivision of the amenity space, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and the amenity space shall not thereafter be built upon or used for any other purpose.
- 11) No development shall take place, including any works of demolition, until a Construction Method Statement for the development hereby approved has been submitted to and approved in writing by the local planning authority. The Statement shall provide for: access to the site and the parking of vehicles for site operatives and visitors; hours of operation, to include deliveries and loading and unloading of plant and materials; storage of plant and materials used in the construction of the development; the erection of any temporary means of enclosure or security hoarding; and measures to prevent mud and debris being carried on to the public highway. The approved Statement shall be adhered to throughout the demolition and construction period.