



Appeal Decision

Site visit made on 4 December 2024

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2025

Appeal Ref: APP/R5510/W/24/3351583

Land to the side of 218 Nestles Avenue, Hayes, UB3 4QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by RURI Properties Ltd against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref is 78423/APP/2023/3486.
 - The development proposed is a new dwellinghouse.
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Decision

1. The appeal is allowed and planning permission is granted for a new dwellinghouse at land to the side of 218 Nestles Avenue, Hayes, UB3 4QG in accordance with the terms of the application, Ref 78423/APP/2023/3486, subject to the conditions in the attached schedule.

Procedural Matters

2. The declaration on the planning application form was signed by Clive Wren, who is not named on the application form itself. However, it has been confirmed during the appeal process that Clive Wren was acting in his capacity as an agent for the applicant at the planning application stage.

Main Issues

3. The main issues in this appeal are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the appeal site as a private garden is an appropriate location for the proposal;
 - the effect of the proposal on the living conditions of the occupants of 218 Nestles Avenue, with particular regard to the amount of garden space; and
 - the effect of the proposal on highway safety.

Reasons

Character and appearance

4. The appeal site currently comprises garden space serving 218 Nestles Avenue, which is located at the eastern end of Nestles Avenue on the corner with North Hyde Gardens.

5. Nestles Avenue is reasonably long and predominately residential. On its south side it comprises pairs of semi-detached 2-storey houses and detached bungalows, some with rooms in the roof. In contrast, on the opposite side of the road the site of the Nestles Factory is currently being redeveloped and consists of larger, more modern buildings, including high-rise residential blocks. The buildings on both sides of the road are set back from the highway, which creates a sense of spaciousness. Large street trees, as well as landscaping within the redevelopment site, add verdancy to the street scene.
6. On the other side of North Hyde Gardens to the appeal site there are some large commercial buildings, of approximately 4 storeys. North Hyde Gardens splits close to the appeal site providing access to Segro Park Industrial Estate, a car park and other commercial properties. I saw on my visit that there are frequent vehicle movements from North Hyde Road along North Hyde Gardens to access these facilities, including HGVs. Given this, despite there being a fire gate between North Hyde Gardens and Nestles Avenue, the highway somewhat dominates the character of the immediate area to the appeal site.
7. Overall, the appeal site has a diverse context. However, notwithstanding this, given the position of the appeal site and its current garden use, it relates more to the two-storey semi-detached houses along Nestles Avenue and North Hyde Gardens. These houses have similar forms and features, which create a rhythm in the street scene. Nonetheless, the degree of uniformity between the properties has been eroded over time by small extensions, mostly porches, and changes to the roof profiles from a hipped form to gable ends. I also saw on my visit that the appeal site, as an open corner, is not typical of the prevailing pattern of development. The corners of Nestles Avenue with Gordon Crescent, Harold Avenue and Black Rod Close are significantly more built up.
8. The proposed dwellinghouse would be attached to 218 Nestles Avenue. As such it would extend the existing semi-detached pair of houses creating a short terrace of three dwellings. It would be set back the same distance from the highway as the neighbouring properties, Nos 216 and 218 Nestles Avenue and would be the same height and depth. Thus, it would follow the existing pattern of development along Nestles Avenue. The proposed elevation fronting Nestles Avenue has been designed to reflect the neighbouring dwellings. It would have a similar arrangement of fenestration and would incorporate a ground floor bay window of a similar design to its neighbours. The proposed external finishes would match materials used on houses along Nestles Avenue and North Hyde Gardens.
9. The proposal includes a moderate sized dormer window on the elevation fronting Hyde End Road, which would be evident from Nestles Avenue. Dormer windows are not an uncommon feature in the surrounding area and can be seen on the rear and side elevations of nearby houses. While the proposed dormer could be considered to unbalance the short terrace of dwellings, the houses within the three pairs of semi-detached houses closest to the appeal site already have contrasting roof forms to their attached neighbour. The mass of the proposed side dormer window, from Nestles Avenue, would appear comparable to a gable end roof form. For these reasons it would not harm the character and appearance of the area.
10. Although the proposed dwellinghouse would be wider than Nos. 218 and 216 Nestles Avenue, given the consistency in its form, features and materials and its corner position, the additional width would not be overly noticeable.

11. The proposed dwellinghouse would be positioned closer to the highway on North Hyde Gardens than the existing dwellings along this road. Nonetheless, this would not be to such a significant degree that it would appear incongruous. Furthermore, the proposed dwellinghouse would be separated from No. 8 North Hyde Gardens by the proposed garden space. Thus, despite the proposed dwelling fronting North Hyde Gardens, it would be more visually connected to the houses and pattern of development on Nestles Avenue. The distance of the proposed dwelling from the boundaries of the plot and the amount of space surrounding it would be similar to other corner plots along Nestles Avenue. The proposal would therefore not appear cramped and would not harm the spacious character of the area.
12. The 1.8 metre timber fencing proposed along the site boundary with North Hyde Gardens to enclose the rear garden would not be strictly in keeping with the immediate area. However, I saw on my visit that there is already a timber fence of a similar height in a similar location. The existing fence is an open timber fence rather than a closed board fence, and a similar type of fence could be secured as part of a condition requiring the submission of a hard and soft landscaping scheme to be approved with the Local Planning Authority.
13. The proposed dwellinghouse would positively address North Hyde Gardens with its front door positioned on this elevation and a porch with a hipped roof of a similar, although slightly larger form, to the bay windows characteristic of the surrounding houses. While front dormers are not a typical feature of the surrounding area, the large rear box dormers of Nos 206, 208 and 212 Nestles Avenue are evident from North Hyde Gardens, which would moderate the prominence of the proposed dormer. The roof pitch of the proposed dormer would be the same as the main roof of the proposed dwelling and, although a moderate size, it would appear subservient to the proposed dwelling. Moreover, the location of the appeal site, as a corner plot with a wide variety of buildings in its immediate context, allows for a more distinct and prominent building.
14. Overall, the proposal would appear as an unpretentious and harmonious addition to the houses along Nestles Avenue and would positively address the corner position of the appeal site. It would make an efficient use of land, while maintaining the area's prevailing character and, subject to a soft and hard landscaping condition, would be visually attractive. Thus, it would comply with paragraphs 129 (d) and 135 (b) of the National Planning Policy Framework (the Framework)

Accordingly, for the reasons set out above, subject to a soft and hard landscaping scheme, the proposal would not harm the character and appearance of the area. It would accord with Policy BE1 of the Hillingdon Local Plan Part 1 Strategic Policies (2012) (Local Plan Part 1), Policies DMHB 11 and DMHB 14 of the London Borough of Hillingdon Local Plan Part 2 – Development Management Policies (2020) (Local Plan Part 2) and Policy D3 of the London Plan (2021). These seek to ensure that all development, including garden development, harmonises with the local context by maintaining the character of the surrounding area, including hard and soft landscaping appropriate to the character of the area.

Location

15. The proposal would unavoidably reduce the amount of garden space serving No. 218 Nestles Avenue.

16. Policy BE1 of the Local Plan Part 1, among other things, requires all new development to not result in the inappropriate development of gardens and green spaces that erode the character and biodiversity of suburban areas and increase the risk of flooding through the loss of permeable areas.
17. I have found that the proposal would not harm the character and appearance of the area. Subject to conditions, the Council has not raised any concerns regarding biodiversity or flood risk. From the evidence before me and my observations on site, I can find no reason to disagree. The proposal would therefore not constitute inappropriate development of the garden and would comply with Policy BE1 of the Local Plan Part 1.
18. The Council's Decision Notice also refers to conflict with Policy DMH 1 of the Local Plan Part 2 in this regard. This policy seeks to safeguard existing housing and Part B relates to the subdivision of dwellings. Although the proposal would subdivide the garden space serving No. 218 Nestles Avenue it would not subdivide the dwelling. This policy is therefore not applicable in this case.

Living conditions

19. Policy DMHB 18 of the Local Plan Part 2 seeks to ensure that all new residential development provides good quality and useable private outdoor amenity space in accordance with specific space standards. For 2 and 3 bedroom houses the minimum space provision is 60 sqm and for 4+ bedroom houses it is 100 sqm.
20. The remaining garden space that would serve the occupants of No. 218 Nestles Avenue, after it had been split with the proposed dwellinghouse, would be 88 sqm. No. 218 Nestles Avenue is a 3-bedroom house and therefore this size of garden would comply with Policy DMHB 18 of the Local Plan Part 2.
21. Nevertheless, I understand that the appellant intends to convert the roof of No.218 Nestles Avenue. While the conversion does not form part of the proposal subject to this appeal and is permitted development which could be implemented at any time, the appellant intends to undertake the conversion at the same time as the appeal proposal. This would potentially increase the number of bedrooms within No. 218 Nestles Avenue from 3 to 4. Consequently, the minimum space provision for the garden would increase to 100 sqm. Thus, the proposed garden space for No. 218 Nestles Avenue at 88 sqm would not strictly accord with the requirements of Policy DMHB 18 of the Local Plan Part 2.
22. Notwithstanding this, the garden space would be a comparable size to Nos 206, 208 and 212 Nestles Avenue, which all have similar roof conversions. Moreover, the garden space would be south facing, a straightforward shape and a sufficient size for a range of domestic outdoor activities such as sitting and dining, clothes drying and playing. For these reasons, the proposal would not result in any harm to the living conditions of the occupants of 218 Nestles Avenue in this regard and would comply with paragraphs 124 and 135 (f) of the Framework.
23. Accordingly, despite the conflict I have identified with Policy DMHB 18 of the Local Plan Part 2, the proposal would accord with Policies DMH 6 and DMHB 11 of the Local Plan Part 2 and Policy D3 of the London Plan (2021). These seek to ensure that all development, including garden development, would not adversely impact the amenity of neighbouring properties and would deliver appropriate amenity and outdoor environments that are comfortable and inviting for people to use.

Highway safety

24. Policy DMT 6 of the Local Plan Part 2 requires development proposals to comply with the parking standards set out at Appendix C. The maximum requirement for the proposal is 2 spaces. Nonetheless, Policy T6 of the London Plan (2021) sets the maximum parking provision as up to 1 space per dwelling. As the London Plan (2021) is more up to date than the Local Plan Part 2, I give greater weight to the policies in the London Plan (2021) and have assessed the appeal on this basis.
25. The proposal would include 1 parking space to serve the occupants of the proposed dwelling. It also includes the provision of a vehicle footway crossover to allow the occupants of No. 218 Nestles Avenue to park on the frontage of the house, which consists of a hardstanding. The delivery of the crossover would need to be secured by condition prior to the commencement of the appeal proposal.
26. The Council does not object to the level of off-street parking provision proposed. However, it has concerns that the proposal would increase on-street parking stress and indiscriminate parking. As such, it considers it necessary to prevent future occupants of the proposed dwellinghouse from joining the Parking Management Scheme HY2 and requires this obligation to be secured by a legal agreement.
27. Nevertheless, there is no substantive evidence before me to demonstrate that the proposal would increase on-street parking stress and indiscriminate parking. Moreover, on my visit many of the resident permit parking bays were available. Although I recognise that my observations only represent a snapshot in time, there is no suggestion that what I saw is untypical. Given this, the likelihood of the proposal compromising highway safety or impacting the road network is very limited. Thus, the proposal would comply with paragraphs 115 and 116 of the Framework.
28. While the appellant would be willing to enter into an agreement to restrict the occupants of the proposed dwellinghouse from joining the Parking Management Scheme HY2, in this case, it has not been demonstrated that it is necessary to make the development acceptable in planning terms. It is therefore unlikely that this obligation would meet the tests set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 58 of the Framework.
29. Accordingly, in the absence of any substantive evidence that the proposal would increase on-street parking stress and indiscriminate parking, it would not compromise highway safety. It would therefore accord with Policies DMT 1, DMT 2 and DMT 6 of the Local Plan Part 2. These seek to ensure development proposals have no significant adverse impacts on the road network, street parking provision, congestion, or local amenity. It would also accord with Policies T2, T4, T6 and T6.1 of the London Plan, which seek to reduce the dominance of vehicles on London's streets, not increase road danger and restrict levels of car parking by applying maximum parking standards.

Other Matters

30. The residents of Nestles Avenue and North Hyde Gardens have raised concerns regarding additional overlooking arising from the proposal compromising the privacy of those nearby. However, the Council consider the levels of overlooking would be considered normal for the site context. From the evidence before me and my observations on site, I am of a similar view. The level of overlooking introduced

by the proposal, when taking account of the level of mutual overlooking that already exists, would not be to such a degree that it would compromise the privacy and consequently harm the living conditions of the occupants of the neighbouring dwellings.

31. The residents also raise concerns regarding noise, congestion, and air pollution, particularly during construction. I understand that construction activities may cause noise and disturbance to occupants of neighbouring properties and sympathise with the residents who have experienced a significant amount of construction activity related to the redevelopment of the adjacent Nestles Factory site. However, the construction would only take place for a time limited period and would therefore not be a reason to withhold permission.

Conditions

32. The Council have suggested that 10 conditions be imposed on any grant of permission, which I conclude on below. In imposing conditions, I have had regard to the approach in the Framework and the Planning Practice Guidance. I have accordingly modified the wording or form of certain conditions without altering their fundamental aims. The numbers given in brackets (x) refer to the conditions being imposed, with the order being prescribed by the time when the condition needs to be complied with.
33. In addition to the statutory time limit condition (1), a condition specifying the plans that are approved and that the development shall be undertaken in accordance with them (2) is required in the interests of certainty. For the same reason, and to protect the character and appearance of the area and amenity of neighbouring occupants, a condition requiring details of the site, finished floor, and ridge levels is also necessary (6). This condition must be pre-commencement as the finished levels affect the fundamental design of the proposal. This condition has been agreed by the appellant.
34. To ensure an appropriate and sustainable stock of housing, it is necessary to impose a condition to ensure that the proposed dwelling is constructed to meet the standards for a Category 2 M4(2) dwelling (3). This is an optional requirement so will only apply where a condition that the dwelling should meet the requirement is imposed as part of the process of granting planning permission. For the same reason, a condition requiring step-free access to the dwelling is needed (13).
35. To be certain that the development does not increase flood risk on or off the site, a condition is required to ensure that the development includes an adequate sustainable water management scheme (4). This condition must be pre-commencement as the drainage scheme could affect the fundamental design of the proposal. This condition has been agreed by the appellant.
36. In the interests of highway safety, a condition is necessary to ensure the construction of a vehicle footway crossover providing vehicle access to the frontage of No. 218 Nestles Avenue (5). This condition must be pre-commencement to ensure enough off-street parking is provided for the whole construction process. This condition has been agreed by the appellant. For the same reason it is necessary to also impose a condition requiring the provision of the vehicular parking space for the proposed dwelling (12).

37. To protect the character and appearance of the area, it is necessary to impose a condition requiring details of the external surfaces of the development (7), including both soft and hard landscaping schemes (8 & 9) to be approved by the Local Planning Authority. Also to protect the character and appearance of the area and to encourage active and sustainable travel, a condition is necessary to require the provision of bicycle storage (10). Again, also for this reason and to protect the living conditions of future and neighbouring occupants, a condition requiring adequate bin storage is necessary (11).
38. I have imposed separate conditions for some of the details suggested to be included in the hard landscaping scheme, including parking, refuse storage and bike storage. This is to ensure these facilities are maintained and are available at all times for their intended uses. I have also removed the requirement for details of the Electric Vehicle Charging Point as there is nothing before me to suggest that this could not be secured by Building Regulations. The requirement for a 1.2 metre pedestrian/cycle access refers to a location between the bin store, cycle store and Waterloo Road, which does not relate to the appeal proposal.
39. In the interests of mitigating and adapting to climate change, it is necessary to impose a condition to ensure that the development meets the Building Regulations optional water efficiency requirement (14). Again, this is an optional requirement so will only apply where a condition that the dwelling should meet the requirement is imposed as part of the process of granting planning permission.
40. I have not imposed a condition removing permitted development rights relating to outbuildings and roof alterations. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this case, the proposed dwelling would have a good-sized plot and roof alterations are a characteristic of the surrounding area. Given this, there is no clear justification to remove these permitted development rights. Thus, the condition would not be necessary to protect the character and appearance of the area.

Planning Balance

41. While the proposal would result in a breach of Policy DMHB 18 of the Local Plan Part 2, this would not be a significant breach, as No. 218 Nestles Avenue would continue to benefit from a garden of a comparable size to neighbouring dwellings and sufficient for a range of domestic outdoor activities. The overarching aim of Policy DMHB 18 is to ensure that all new development provides good quality and usable outdoor amenity space, which the proposal would achieve.
42. I am mindful that there is a substantial borough-wide requirement for larger private market dwellings. The proposal, as a four-bedroom house, would therefore deliver a much-needed dwelling in an accessible location, which would support the objective of the Framework in significantly boosting the supply of homes. There would also be modest economic and social benefits resulting from the construction of the dwelling and spending associated with its occupation. Accordingly, I am of the view that the benefits of an additional 4-bedroom house would outweigh the minor conflict with Policy DMHB 18 of the Local Plan Part 2. Thus, in this case, other material considerations justify allowing the appeal.

Conclusion

43. For the reasons above, having had regard to the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed subject to the conditions set out in the attached schedule.

Hannah Guest

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 198P.L1A; 198P.L3A; 198P.L4A; 198P.L5A; 198P.L6A; 198P.L7A.
- 3) The development hereby permitted shall be constructed to meet the standards for a Category 2 M4(2) dwelling, as set out in Approved Document M to the Building Regulations (2010) 2015. Thereafter all such provisions shall be retained and maintained.
- 4) No development shall take place until a scheme for the provision of sustainable water management has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that sustainable urban drainage systems have been incorporated into the development. The details shall include:
 - Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - an implementation programme;
 - a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime; and
 - methods to minimise the use of potable water, including water collection facilities to capture excess rainwater and the reuse and recycling of rain and grey water.

Prior to first occupation the scheme shall be incorporated into the development in accordance with the approved details. Thereafter the completed scheme shall be maintained in accordance with the approved details.

- 5) No development shall take place until a domestic vehicle footway crossover providing vehicle access to the frontage of No. 218 Nestles Avenue has been constructed in accordance with a scheme submitted to and approved in writing by the Local Planning Authority. Thereafter the crossover should be maintained in accordance with the approved details.
- 6) No development shall take place until details of the existing and proposed ground levels of the site and the proposed finished floor levels of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 7) No development above slab level shall take place until details of all materials and external surfaces, including details of windows and doors have been submitted to and approved in writing by the Local Planning Authority. The details should include the make, product or type, and colour of the external surfaces and photographs and images of these. The development shall be constructed in accordance with the approved details and be retained as such.
- 8) No development above slab level shall take place until a scheme of soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- a planting plan at not less than a scale of 1:100;
 - written specifications of planting and cultivation works;
 - a schedule of plants including species, plant sizes and proposed numbers/densities; and
 - an implementation programme.

The scheme of soft landscaping shall be carried out in accordance with the approved details and agreed implementation programme. Thereafter the completed scheme shall be maintained in accordance with the approved details.

If, within a period of 5 years from the date of planting, any tree or plant (or any tree or plant planted in replacement of them) is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, another tree or plant of a similar size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or plant.

- 9) No development above slab level shall take place until a scheme of hard landscaping has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- means of enclosure/boundary treatments
 - hard surfacing materials; and
 - external lighting

Prior to first occupation of the development hereby permitted the scheme of hard landscaping shall be carried out in accordance with the approved details. Thereafter the completed scheme shall be maintained in accordance with the approved details.

- 10) Prior to first occupation of the development hereby permitted, bicycle storage shall have been provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority. Thereafter the bicycle storage shall be maintained in accordance with the approved details, available at all times for the storage of bicycles.
- 11) Prior to first occupation of the development hereby permitted, waste and recycling bin storage shall have been implemented in accordance with details previously submitted to and approved in writing by the Local Planning Authority. Thereafter the bin storage shall be maintained in accordance with the approved details, available at all times for the storage of waste and recycling.

- 12) Prior to first occupation of the development hereby permitted the vehicle parking space shown on approved plan 198.L3A shall have been constructed. Thereafter the vehicle parking space shall be maintained, available at all times for the parking of vehicles.
- 13) Prior to first occupation of the development hereby permitted, the dwelling hereby approved shall ensure step-free access via the principal private entrance and all other points of entry and exit. Thereafter the step-free access should be maintained for the life of the building.
- 14) Prior to first occupation of the development hereby permitted, measures shall be incorporated within the development to ensure the dwelling achieves a water efficiency standard of 110 litres (or less) per person per day, including a fixed factor of water for outdoor use of 5 litres per person per day. Thereafter these measures shall be maintained.