

Appeal Decision

Hearing held on 3 November 2016

Site visit made on 3 November 2016

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 29 November 2016

Appeal Ref: APP/N5090/W/16/3155067
290-294 Golders Green Road, London NW11 9PY.

- 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 Neel Khiroya (Excelsior Project Management Ltd) against the decision of the Council of the London Borough of Barnet.
 - The application Ref 15/05062/FUL, dated 10 August 2015, was refused by notice dated 27 January 2016.
 - The development proposed is the erection of a part two, part six, part seven storey building with lower ground floor and basements providing 67 residential flats with ancillary resident's spa facility, associated car and cycle parking, landscaping and associated other works with access from Golders Green Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Shortly before the Hearing commenced the Council granted planning permission for an alternative scheme on the appeal site consisting of a part two, part four, part five, part six storey building providing 60 residential flats¹. I requested copies of the plans pertaining to this scheme for completeness. These were subsequently submitted at the Hearing. Whilst I have assessed the appeal before me on its own merits, I concur with the appellant that the 60 flat scheme represents a genuine fallback position and therefore it is a material consideration of significant weight.
3. A concern was raised at the Hearing regarding the accuracy of the development description. The Council confirmed they were content with the version provided by the Appellant although acknowledged that it does not encapsulate every detail of the scheme. To my mind, the description is broadly reflective of the proposed development. Moreover, the plans submitted with the application are presented in some detail and in these circumstances no injustice has been caused by any shortcomings in the wording of the description.
4. Finally, a signed Statement of Common Ground and a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 were submitted at the Hearing and I have had regard to these in reaching my decision.

¹ LPA Ref 16/03806/FUL

Main Issues

5. The main issues are the effect of the development on, firstly, the living conditions of neighbouring occupiers with particular regards to outlook and overshadowing and, secondly, the character and appearance of the area.

Reasons

6. The Council's reasons for refusal refer to Policy DM01 of the "*Barnet Local Plan (Development Management Policies)*" (the DMP) which states that proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers. "*The National Planning Policy Framework*" (the Framework) includes as a core principle that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings. Policy 7.6 of "*The London Plan*" (the LP) in part states that buildings should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing and other matters.
7. Policy DM01 of the DMP states that all development should represent high quality design based on an understanding of local characteristics and respect the appearance, scale, mass and height of surrounding buildings. In a similar vein Policy CS5 of the CS seeks development that respects local context and character.
8. The site is bounded to the east by a line of two-storey, semi-detached houses located on Princes Park Avenue. These have modest rear gardens that back onto the appeal site. The site boundary is currently delineated by traditional timber fences and a line of landscaping that filters rather than screens views across the appeal site.
9. Due to the site's open nature the rear of some of these dwellings currently experience a largely unrestricted aspect towards the site. This contributes to standards of daylight/sunlight, outlook and privacy for the occupiers that are relatively high in the context of this high density location. Given the acknowledged potential of the site for residential development, it is inevitable that such development would lead to a noticeable erosion of the existing level of neighbouring amenity. It is also a long established principle that there is no right to the maintenance of a view.
10. In this instance, it is pertinent that there is a viable fallback position which is a factor to be taken into account in considering the degree of impact. Although it is common ground that the appeal scheme would have a greater impact on neighbouring residents than the consented scheme, it is the scale of that impact that is the issue and whether it would represent unacceptable or significant harm. To assist me, I had the benefit of visiting 1 Princes Park Avenue on my site visit which both parties agreed would be the property most affected by the development in terms of outlook and overshadowing.

Outlook

11. The submitted plans show that the rear block would be sited approximately 30m metres from the rear elevation of 1, 3, 5, 7, 9 and 11 Princes Park Avenue. Despite increased proportions, the development would not be dissimilar to both the 2016 consented scheme and a 45 flat scheme approved

in 2008² in terms of separation distances. Although, these would meet the guidelines set out in the *"Supplementary Planning Document: Residential Design Guidance"* (the SPD), these relate to privacy and the potential for overlooking rather than outlook.

12. As I saw when I visited the site, there are various trees, some evergreen, dotted along the site boundary with Nos 3-11. Whilst the development would still be visible behind these, they would nonetheless help to mitigate its effect by filtering views particularly in the summer months. At the Hearing the appellant confirmed that the existing trees would be retained and strengthened as part of the proposed landscaping scheme. As a result and with cognisance to the inner city context where there is a less legitimate expectation of longer distance views, I do not consider the development would lead to an unacceptable loss of outlook for these occupiers.
13. However, I am less satisfied with the effect on the occupiers of No 1. Unlike other properties, there is no mature landscaping across the rear boundary to alleviate the visual impact of the development. From the rear of the property, the additional bulk and mass of the building would be all too apparent as the building would loom large above the rear boundary. The fact that these occupiers would have to contend with a multi-storey building along two boundaries would compound the sense of encirclement and enclosure and create an oppressive outlook particularly from the rear garden. To a lesser extent it would also impinge upon the outlook from rear habitable rooms windows.
14. Unlike the consented scheme, no attempt has been made to scale down the section of building directly behind No 1 and to my mind the resulting overbearing impact would significantly diminish the enjoyment of the garden for the occupiers of No 1. In coming to that view I have carefully considered the effect of the consented scheme. However in that case the scale and height of the rear block is markedly smaller particularly so in relation to that section which would be most visible from the rear of No 1 where the building would be 2 as opposed to 5-6 storeys high. I have also considered whether the harm I have identified could be overcome by appropriate landscaping along or close to the boundary with No 1. However, this would take a number of years to mature to the height where it would have any meaningful effect and in the meantime the occupiers of No 1 would have to endure unacceptable living conditions.

Overshadowing

15. The Council refer solely to the harmful overshadowing to the rear garden of No 1. The appellant's assessment of this is contained within an *"Hours in Sun Overshadowing Report"* (HiS Report), which in turn, is based upon the BRE guide *"Site Layout Planning for Daylight and Sunlight"* (2011). The latter provides criteria for use in assessing existing daylight and the effects of development on existing buildings and suggests that 50% of a garden should receive 2 hours of sunlight on the spring equinox. The BRE guide is cited in the Council's SPD although it is not specifically endorsed³. Accordingly, I consider it is a useful guide in assessing the effect of a development on neighbouring occupiers.

² C00513AA/08

³ Page 12 Design Principle, first bullet.

16. The report examines the amount of overshadowing on the garden areas of adjacent properties on the spring equinox/summer solstice in both a 'do nothing' and 'with development' scenario. It concludes that with the exception of No 1, the development will have a negligible overshadowing effect on the Princes Park Avenue properties. With regards to No 1, the HiS report finds that there would not be a material difference between the two scenarios on the 21 June with the majority of the garden retaining unobstructed sunlight throughout the morning and into the early afternoon. However the effect would be more pronounced on the 21 March with the area of the garden receiving over 2 hours of direct sunlight falling from 66% to 35%⁴. This is significantly below the 50% threshold stipulated in the BRE guide.
17. However, at the Hearing a number of criticisms were levelled at the HiS report. I too have some misgivings. Firstly, the report states that the software tracks the sun's path at one minute intervals. However, it is not clear whether this is over a whole day or a specified time. In the absence of clarity on this issue, I have assumed that the plans presented in Appendix 2 represent a whole day rather than a specific time. However, the problem with this is that it is not possible to determine the true extent of overshadowing at specific times such as in the afternoon and evening when residents are more likely to make use of their gardens. My concern here is that the report may mask the impact of the development at these times.
18. Secondly, as the report only looks at the area receiving 2 hours of direct sunlight or more, there is no way of quantifying what the level of reduction is. For example, it could be the case that No 1 currently receives 8 hours of sunlight to 66% of its garden or alternatively it could be 2.1 hours. However as the report is only concerned with a 2-hour threshold, I cannot objectively assess the severity of overshadowing nor to make an informed comparison with the consented scheme. I acknowledge the appellant's view that the methodology is in accordance with the BRE guide but since a copy of that document has not been submitted with the appeal documentation, I cannot be sure about that. In any event, as I have already noted, I am not persuaded that the BRE guide is tantamount to Council policy.
19. I accept that the consented 60 flat scheme is a significant material consideration. The HiS report submitted with that scheme indicates that the area receiving over 2 hours of sunlight on the 21 March would be 40.6%. Accordingly, there would be a difference of some 5% between the two schemes. Although small in numerical terms, in light of the concerns I have set out above, this figure could well mask the amount of overshadowing at key times. Moreover, in my view that the argument that the development would only be slightly worse than a development which itself fell well below the 50% threshold, is not a good one in principle as it could be oft-repeated in order to secure the eventual erosion of almost all sunlight to neighbouring gardens.
20. Taking all these considerations in the round, it is therefore necessary for me to take a precautionary approach to the issue of overshadowing. I therefore find that it has not been demonstrated that the development would not have a harmful adverse impact on overshadowing to the occupiers of No 1. The development thereby conflicts with Policies DM01 and DM02 of the DMP.

⁴ Paragraph 5.3.4 of the Council's Statement refers to a reduction to 31%. It was clarified at the Hearing that 35% is the correct figure.

Privacy and Noise

21. The proposal meets the guidelines set out in the SPD relating to privacy distances and potential for overlooking. The privacy of the adjoining occupiers would thereby remain uncompromised. Although the occupiers would be well aware of the development because of its proximity, I am not convinced that any perceived overlooking would result in harm to living conditions.
22. Concerns have also been raised by local residents at the potential for noise disturbance from circulation areas close to the boundary with those properties on Princes Park Avenue. I am mindful that the site previously accommodated a public house which would inevitably have generated a certain amount of noise in its own right. Moreover, Princes Park Avenue is located on the edge of a busy high street and therefore a certain amount of background noise is to be expected. Accordingly, this is not an area that is notable for its tranquillity. In any event, there is no substantive evidence before me to suggest that future occupiers of the development would generate unacceptable levels of noise.

Character and appearance

23. The appeal site is an L-shaped parcel of vacant land set within the busy high street of Golders Green Road. It occupies a prominent position on a bend that rises gradually away from the junction with the North Circular Road to the north-west. The majority of the site is currently vacant and covered in a thick brush with a mix of evergreen and deciduous trees particularly to the site boundaries.
24. The site was formerly occupied by a Harvester restaurant and a car park related to the adjacent Roman House office development. A small rectangular area close to the Golders Green Road/Princes Park Avenue junction is let out to a third party and used as a parking compound. Large unsightly hoardings mark the site frontage. The site has a protracted planning history which is set out in some detail in the various submissions and it is not necessary for me to repeat it again here. However, as I have already noted, it is germane that planning permission was recently granted for a similar flatted development albeit somewhat smaller than the one before me.
25. The immediate area is predominantly a mixed commercial/residential area with a considerable variety in terms of the height and style of buildings. Thus there is not a characteristically uniform grain of development in the vicinity. Whereas traditional 2.5/3-storey properties tend to dominate on the west side of Golders Green Road, the appeal site is flanked by Roman House, a modern 4-storey office development to the north and a 3-storey building known as Phildor Court. However, just beyond these Golders Green Road is framed by a number of large bulky 7-storey and 5-storey flatted developments. To the rear of the site and separated by Decoy Brook and associated landscaping are two post-war residential tower blocks known as James Close. To my mind, whilst none of these buildings set a precedent for a large-scale building on the appeal site, they are an intrinsic part of the urban fabric and part of the site's context.
26. The proposed building would take the form of two large interlocked blocks set roughly perpendicular to each other essentially forming an L-shape. Due to the topography, the frontage block would rise to 6 storeys at its northern end and 5.5 storeys at its southern end close to the junction with Princes Park Avenue. The second block would extend into the site and vary between 6 and 7 storey

in height. It would align roughly with the residential properties on Princes Park Avenue. Both blocks would have a common theme of brick, glass and recessed top floors producing robust, clean lines in a modern style. Height and mass aside, the Council raises no particular objection to the detailed design and appearance of the development including the materials. Parking would be provided in two basement levels which would be accessed from Golders Green Road via a new priority junction. Communal gardens and circulation areas would be provided within the site.

27. The Council's opposition is based largely on the bulk and mass of the block fronting the road which it is argued would related poorly to its surroundings particularly the residential properties along Princes Park Avenue. Unlike the 60 flat scheme where the frontage block was broken into two distinct elements, the appeal scheme would comprise a single large almost monolithic structure.
28. I acknowledge that the appeal scheme particularly when viewed from Golders Green Road would have a bulky appearance. However, the computer generated images submitted by the appellant demonstrate that the set back and glazed nature of the top storey and the use of contrasting materials, recessive elements, bays, balconies and symmetrical fenestration patterns would all help provide articulation to the elevations. Rather than oppressive and dominating, the result would be a striking building with considerable presence which would add a new and distinct element to the street scene whilst reflecting elements of other similarly proportioned buildings in the locality.
29. Although larger than some buildings in the locality, the appellant's computer generated images demonstrate that in the vast majority of views the bulk and general appearance of the building would not differ significantly from that of the approved scheme. Consequently, it would not be out of keeping with the massing and variety of buildings in the wider area and the Council accept there would not be any harmful erosion of the building line along this side of Golders Green Road.
30. Like the consented scheme, a two-storey element to the rear of the frontage block would help to assist the transition in building heights with the residential properties along Princes Park Avenue. Whilst I accept the Council's point that the height of the building would be more pronounced than the consented scheme, this would not be readily apparent when viewed at close quarters given the set back of the top floor. Even in longer distance views to the south-east, I am not persuaded that the manner of this relationship could reasonably be described as harmful. Moreover, one also has to accept that a degree of contrast is almost inevitable in areas such as this where residential properties are located in close proximity to a built-up high street. Indeed, I noted numerous other examples in the area where multi-storey buildings sit aside more modest residential properties.
31. For the reasons set above, I consider that the character and appearance of the area is sufficiently robust to accommodate the proposed development without causing unacceptable harm. I therefore conclude on the second issue that the development would accord with Policy DM01 of the DMP, Policy CS5 of "*Barnet's Local Plan (Core Strategy) 2012*" and Policies 7.4 and 7.6 of the LP. These seek high quality design that respects the character of the surrounding environment and has an understanding of local characteristics. I am also satisfied the development would amount to high quality design, add to the

overall quality of the area and reinforce local distinctiveness as required by the Framework.

Overall Conclusions

32. The scheme would cause significant harm to the living conditions of the occupiers of No 1. Although I have found the development acceptable in terms of its effect on the character and appearance of the area, this is a neutral benefit that does not weigh in favour of the scheme.
33. Although there are other factors that which count in favour of the proposal, of particular note would be 67 homes in an area of need, either on their own or in combination they do not outweigh the harm I have found and the conflict with the local plan in that regard.
34. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

D. M. Young

Inspector

APPEARANCES

FOR THE APPELLANT

Neil Cameron QC
Mr Kieran Rushe
Mr Edward Buckingham
Mr Neel Khiroya
Mr Martin Goddard

Instructed by Mr Neel Khiroya of Excelsior Homes
Peter Brett Associates
Peter Brett Associates
Excelsior Project Management Ltd
Scheme Architect

FOR THE LOCAL PLANNING AUTHORITY

Mr Graham Robinson London Borough of Barnet

INTERESTED PERSONS

Mr Eli Pick	Planning Consultant representing local residents
Mr Sefton Solomon	Local resident
Anita Broza	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Signed Unilateral Undertaking (dated 2 November 2016).
- 2 Drawing No. AD-ST-00-01-02 rev PL2 Site Plan Dimensioned.
- 3 Aerial photograph showing distances between Princes Park Avenue and James Close.
- 4 Portfolio of documents relating to appeal scheme and consented 60 flat scheme.