
Appeal Decision

Hearing held on 8 November 2016

Site visit made on 8 November 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 17 February 2017

Appeal Ref: APP/N5090/W/16/3149029

Viceroy Court Car Park, East End Road, London N2 8AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Livemanor Ltd against the Council of the London Borough of Barnet.
 - The application Ref 16/0487 is dated 22 January 2016.
 - The development proposed is demolition of external stair access to Viceroy Court flats, development of 8 residential units (7x2 bed and 1 x1 bed) and a raised landscaped courtyard over part of the car park and service area, to tie in with the existing raised podium of Viceroy Court. This will include a new internal secure stair and lift access to serve both the new apartments and the residents of Viceroy Court. There are currently 18 pay and display car parking spaces in the centre of the existing car park. This car park will be decked over with a transfer slab, the parking will be reconfigured to allow for 8 parking spaces for residents, and a bin and bike store. Delivery and parking areas for the two supermarkets will remain unchanged.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of external stair access to Viceroy Court flats, development of 8 residential units (7x2 bed and 1 x1 bed) and a raised landscaped courtyard over part of the car park and service area, to tie in with the existing raised podium of Viceroy Court. This will include a new internal secure stair and lift access to serve both the new apartments and the residents of Viceroy Court. There are currently 18 pay and display car parking spaces in the centre of the existing car park. This car park will be decked over with a transfer slab; the parking will be reconfigured to allow for 8 parking spaces for residents, and a bin and bike store. Delivery and parking areas for the two supermarkets will remain unchanged at Viceroy Court Car Park, East End Road, London N2 8AU in accordance with the terms of the application, Ref 16/0487, dated 22 January 2016, subject to the conditions in the attached schedule.

Preliminary Matter

2. The site address was given as Viceroy Close on the application form but the parties now agree that 'Viceroy Court Car Park, East End Road...' is a more accurate description and I have used this in the banner heading and formal decision.
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Main Issues

3. Based on my considerations of the Council's submission, representations received in respect of the application and my observations on site, I consider the main issues to be:
- The effect of the proposal on the character and appearance of the surrounding area; and
 - The effect of the proposal on the living conditions of future occupiers, with regard to noise and disturbance.

Reasons

Character and appearance

4. The appeal site is formed of a private car park. The eastern boundary is formed by the rear of shops on High Road with residential properties above at Viceroy Court. Part of the southern boundary is also formed by the 3m flank wall of Viceroy Court, built at the back edge of the pavement. The site has an existing access from East End Road which would be retained and used for access and servicing of shops to the rear of High Road.
5. Buildings in the vicinity are mostly two storey Victorian and Edwardian properties, including a school opposite that is set back from the road behind railings. A mosque to the west is also enclosed by a low wall with railings above, and separated from the appeal site by a parking area within the mosque site. Further along East End Road, terraced properties have a stronger building line and frontages of a lesser depth.
6. The proposal is to build over part of the 'airspace' above the surface car park. Such developments are supported in the Mayor of London's Housing Supplementary Planning Document (SPG) (2016)¹. The Council are concerned with the density of the scheme and overall height of the development, the impact of the large service access and the expanse of blank wall along the East End Road frontage.
7. The development would incorporate a three storey element which would be partly built over the existing site access. The overall height of the building would not exceed the height of the mosque to the west, and would sit comfortably within the surrounding context of two and occasional three storey properties, and the four storey building to the east fronting High Road. Moreover, the location of the site behind the High Road frontage and within easy walking distance of public transport networks can reasonably be described as edge of centre. It would thus provide an appropriate transition between the town centre and the residential streets to the west.
8. At ground floor level the site would continue to function as a parking and servicing area for shops on High Road and to provide access for residential properties on Market Place. The large vehicular entrance off East End Road is required for heavy goods vehicles, and would need to be factored into any redevelopment of the site, if the operation of the commercial properties on High Road is to continue. In addition, the form of the development set at the back edge of the pavement provides a clear demarcation between public and

¹ Paragraphs 1.2.56 and 1.2.57

private areas and a continuity of frontage, in accordance with the Council's Residential Design Guidance Supplementary Planning Guidance (2016) for developments located in a similar urban typology.

9. The proposal would continue the building line of the 3m flank wall with an extended wall of similar height where there is currently a single storey structure enclosing plant set slightly further back from the pavement. However, it would only be about a metre higher than the existing wall enclosing this plant, and visual interest would be enhanced by the introduction of a porch over the ground floor entrance, and variation in the pattern and colour of the bricks, the details of which can be secured by condition. In addition, the set back at first floor level to provide a raised landscaped courtyard level with the outdoor space for the adjacent Viceroy Court would reduce the visual impact of the building from street level.
10. Although the Council considers that there are other ways in which the site could be developed that the appellant has not explored, I have determined the appeal before me on its own merits. Taking all of the above into account I conclude that the proposal would not harm the character and appearance of the surrounding area, and would accord with the design objectives of Policies CS1 and CS5 of the Core Strategy (2012), Policy DM01 of the Development Management Development Plan Document (DMP)(2012) and policies 3.5, 7.4 and 7.6 of the London Plan (2016).

Living conditions of future occupiers

11. There are several heating and cooling units located at the rear of commercial units on High Road. The Noise Impact Assessment², undertaken in accordance with BS 4142:2014, undertook surveys of the background noise levels and noise levels adjacent to existing plant equipment located close to the proposed dwellings within the car park area. The assessment concluded that noise levels from existing plant would have a low adverse impact on future occupiers of the proposed dwellings providing that the recommended mitigation measures were implemented, so that the development would have a No Observed Effect Level (NOEL)³. In other words this is the level below which there would be no detectable effect on health and quality of life due to noise.
12. Two acoustic 'strategies' are set out in the assessment. Strategy 1 involves the construction of a self-contained pressurised plant room enclosing the Searle Units that lie within the appeal site. Work to encase the air conditioning units to the rear of Iceland, and to install noise attenuators and acoustic louvres would also be required. However, whilst Strategy 1 is the appellant's preferred course of action, the air conditioning units at the rear of Iceland lie outside the appeal boundary, and therefore out of the control of the appellant.
13. I have considered the potential for the use of a Grampian condition to secure option 1. The appellant has advised that works can be agreed between the respective landowners through the provisions of the Party Wall Act, and given the relatively small scale nature of the works required I consider there is a reasonable likelihood that the action in question could be carried out within the time limit imposed by the permission, and thus a Grampian condition would be appropriate.

² Noise Impact Assessment – Sound Advice Acoustics Ltd (August 2016)

³ Noise Policy Statement for England 2010 (NPSE)

14. Strategy 2 is considered as a fall-back position should Strategy 1 not be implemented. In addition to the enclosure of the Searle units within the site, this requires the provision of mechanical ventilation to windows within the North West elevation, facing out onto the car park courtyard. The predicted noise levels in the assessment to achieve NOEL on site are for these windows when closed. The appellant has confirmed that the windows would not be sealed shut but the mechanical ventilation negates the need for purge ventilation from open windows. The windows predominantly serve bedrooms, and units with lounge windows within the North West elevation are dual aspect. Consequently, should Strategy 1 not be implemented, the proposed mitigation measures set out in Strategy 2 could be carried out as they are within the appeal site boundary, and would achieve the required noise attenuation so as to avoid unacceptable harm to the living conditions of future occupiers.
15. Potential for vibration from lorries during deliveries has also been assessed in the Noise Impact Assessment, on the basis of double the current amount of daily deliveries using a 14.25m vehicle. Whilst the assessment demonstrated there would be no significant impact, to address potential concerns and taking a precautionary approach, anti-vibration pads can be installed on top of supporting walls and columns in addition to any areas of connection between existing and new concrete slabs, and a condition can be imposed to require a scheme for protection from vibration to be submitted and approved by the local planning authority.
16. For these reasons, I conclude that the proposal would not harm the living conditions of future occupiers, with regard to noise and disturbance, subject to appropriate conditions for noise mitigation. It would therefore accord with DMP policy DMO2, which requires that the amenities of occupiers are not prejudiced by noise in the immediate surroundings of the site.

Other Matters

17. There is a parade of commercial properties on High Road, including Budgens and Iceland stores. These units are served from the rear via the appeal site, and operators of the adjacent commercial units have expressed concern that the appeal scheme would prejudice the servicing of these stores. Budgens head office has stated that deliveries are made to their store using 16.5m long articulated vehicles. However, the appellant has indicated⁴ that deliveries using a 16.5m articulated vehicle cannot be serviced satisfactorily via the existing site without intruding on the existing parking spaces, and notes that Iceland receives deliveries from a 14.25m long articulated vehicle.
18. I have no evidence to the contrary on this matter, but in any case it appears that the existing servicing arrangements are not ideal, particularly when using the larger vehicles. The appeal proposal would provide an altered parking and servicing layout that would not prejudice the capacity for the adjacent supermarkets to service their stores using a 14.25m vehicle, and would not worsen the existing situation.
19. There would be a loss of 18 pay and display car parking spaces, but there was no objection from the Council's Highway team with regard to parking and servicing, and given the modest size of the scheme and its good public

⁴ Ref. drawing V580-101

transport accessibility, any increase in traffic generation would not be significant. As such, I have given this matter little weight in my decision.

20. I have also had regard to concerns from local residents about the impact of the scheme on local infrastructure. However, as the Council has adopted a Community Infrastructure Levy (CIL), there is no requirement for a site specific planning obligation for infrastructure and the developer would make a financial contribution towards local infrastructure through the CIL.
21. I also understand residents of Viceroy Court and Market Place are concerned whether future vehicular access to the site would be maintained. This is a private legal matter to be resolved between the parties, but the appellant has indicated that key fobs will be provided to those that require vehicular access, and the details of such a scheme can be secured by a suitably worded condition.

Conditions and Conclusion

22. I have found that the proposal would be acceptable subject to certain conditions. In addition to those I have already referred to, I shall specify the approved plans for certainty. I shall also require details of external materials and hard surfacing and refuse storage and collection points to safeguard character and appearance of the area. However, details of levels are not required as these are already provided on the approved drawings.
23. As the Council still require details of storage areas and provision for wheel washing for vehicles associated with construction works, an updated Demolition and Construction Management and Logistics Plan is necessary in the interests of highway and pedestrian safety and to avoid the transfer to mud and dirt to the highway. Details of parking and turning within the site and a requirement for parking spaces to be retained thereafter are also required, again in the interests of highway safety.
24. I shall impose conditions requiring revised noise assessments relating to all extraction and ventilation equipment, plant noise and vibration within the site, and of the impact of external noise on future occupiers of the flats, to safeguard the amenity of existing and future residents. These conditions allow the parties to agree the most appropriate solution for noise mitigation measures in detail, to ensure that the living conditions of future occupants will not be unacceptably harmed.
25. The London Plan and the Mayor of London's Housing SPG (2016) require all new residential developments to meet M4(2) of the Building Regulations. This will ensure the dwellings are capable of adaptation for accessibility in the future if appropriate, and the appellant has confirmed that the scheme is designed for lifetime homes. Notwithstanding this I have imposed a condition ensuring that the standard is implemented and that the development is retained as such thereafter.
26. The Council seek to impose the optional requirement for a lower level of wholesome water consumption, albeit the wording of the condition refers to 105 litres per person per day rather than the 110 litres as set out in the Building Regulations. This is supported by CS Policy CS13 and Policy 5.15 of the Minor Alterations to the London Plan (MALP) (2016), which set the context for the need for water efficiency measures to be imposed in the Borough.

Although the appellant correctly states that this requirement is set out in the Building Regulations, it is necessary to impose a condition to trigger the optional lower requirement, and I have done so in this case.

27. Details of the access entry gates are required to be submitted to and approved by the local planning authority to ensure that access for deliveries and car parking is maintained at all times and that vehicles waiting to enter the site do not obstruct the public highway, in the interests of highway safety.
28. The Council consider that a condition should be imposed to require the developer to sign a waiver of liability to indemnify it against any claims for consequential damage to private roads, for example arising from the collection of refuse. As I have found the parking layout acceptable including the swept path for refuse vehicles this condition would be unduly onerous and I shall not impose it. Similarly the proposed restriction on the internal layout of the residential units would fetter future occupants in the use of their properties. Furthermore, the proposed noise mitigation measures are designed to address the Council's concerns regarding the living conditions of the occupants. The condition is therefore unnecessary.
29. There is no need for a condition to prevent a change of use to Class C4 as an Article 4 direction within the Borough prevents this. Furthermore a condition requiring permitted development rights to be removed is not necessary as the properties are all flats.
30. Finally, a condition was suggested by the Council to restrict openings in the east elevation of the proposed building facing onto 11-36 Viceroy Court but it was agreed by the main parties at the Hearing that this was not necessary due to the adequate separation distance between the existing and proposed dwellings, and no objection has been raised by the Council in terms of this relationship. As such I shall not impose the condition.
31. For the above reasons I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kieran Rafferty	Urban Planner, KR Planning
Lara Carneiro	Senior Architect, IDM Properties Ltd
Brian Scrivener	Sound Advice Acoustics Ltd
Andrew Braun	Ardent Consulting
Martin Hay	Metropolitan and County Ltd

FOR THE COUNCIL:

Denisse Patten	Planner, London Borough of Barnet
Richard Pelham	Senior Engineer, London Borough of Barnet
Graham Robinson	London Borough of Barnet
Michael Polyiou	Environmental Health, London Borough of Barnet
Ralph Haynes	Environmental Health, London Borough of Barnet

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground
- 2 Extract from Barnet's Residential Design Guidance Supplementary Planning Guidance (2016)
- 3 Extract from Barnet Characterisation Study (2010)
- 4 Mechanical Ventilation specification
- 5 Swept path drawings for proposed parking area

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing no. P_001; Drawing no. P_002; Drawing no. P_003; Drawing no. P_004; Drawing no. P_005; Drawing no. P_006; Drawing no. P_007; Drawing no. P_008; Drawing no. P_009; Drawing no. P_010; Drawing no. P_011; Drawing no. P_012; Drawing no. P_013; Energy and Sustainability Strategy by Building Energy Ltd Ref Viceroy Parade – BE0537; Appendix A – SAP Documents for Unit 4 by Building Energy Ltd; Appendix B – SAP Documents for Unit 6 by Building Energy Ltd; Viceroy Parade East Finchley Development Proposals by IDM Properties January 2016; Construction Traffic Management Plan Report Ref V580-05 by Ardent Consulting Engineers; Residential Travel Plan Statement Report Ref V580-03 by Ardent Consulting Engineers; External Noise Assessment Revision 1 by Sound Advice Acoustic Ltd; External Noise Assessment Downloaded Results; Schedule of Areas by IDM; Comparative Height Analysis.
- 2) The development hereby permitted must be begun within three years from the date of this permission.
- 3) No development other than demolition works shall take place until details of the materials to be used for the external surfaces of the buildings and hard surfaced areas hereby approved have been submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with the approved details.
- 4) Before the development hereby permitted is first occupied, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 5) Notwithstanding the submitted Construction Management and Logistics Plan (CMLP), no site works or works on this development including demolition or construction work shall commence until a revised Demolition and Construction Management and Logistics Plan has been submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in full accordance with the details approved under the revised CMLP. The details shall include, but not be limited to: details of routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures; site preparation and construction stages of the development; details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials; details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the adjoining highway; the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works; a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;

noise mitigation measures for all plant and processors; details of contractors compound and car parking arrangements; details of interim car parking management arrangements for the duration of construction; details of a community liaison contact for the duration of all works associated with the development.

- 6) No construction work resulting from the planning permission shall be carried out on the premises at any time on Sundays, Bank or Public Holidays, before 08:00 hours or after 13:00 hours on Saturdays, or before 08:00 hours or after 18:00 hours on other days.
- 7) Before the development hereby permitted is occupied; parking spaces shall be provided in accordance with a scheme to be submitted to and approved in writing by the local planning authority. Thereafter, the parking spaces shall be used only as agreed and not be used for any purpose other than the parking and turning of vehicles in connection with approved development.
- 8) No development other than demolition works shall take place until details of all extraction and ventilation equipment to be installed as part of the development, to be set out in a technical report, have been submitted to and approved in writing by the local planning authority. The report shall be prepared by a competent acoustic consultant, and shall assess the likely noise impacts from the development of the ventilation and extraction plant, and mitigation measures to reduce these noise impacts to acceptable levels. The report shall include all calculations and baseline data, and be set out so that the local planning authority can fully audit the report and critically analyse the content and recommendations. The approved extraction and ventilation equipment shall be installed using anti-vibration mounts, and the measures approved under this condition shall be implemented in their entirety prior to the first occupation of the development and retained as such thereafter.
- 9) No development other than demolition works shall take place on site until a revised noise assessment, carried out by an approved acoustic consultant, which assesses the likely impacts of externally generated noise on the development and measures to be implemented to address its findings has been submitted to and approved in writing by the local planning authority. The report shall include all calculations and baseline data, and be set out so that the local planning authority can fully audit the report and critically analyse the content and recommendations. The measures approved under this condition shall be implemented in their entirety prior to the commencement of the use or the first occupation of the development and retained as such thereafter.
- 10) The level of noise emitted from the proposed plant hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 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 1 metre outside the window of any room of a neighbouring residential property.
- 11) A scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions of any

soft landscaping, shall be submitted to and agreed in writing by the local planning authority before the development hereby permitted is commenced. All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use. Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

- 12) Prior to the first occupation of the development hereby approved it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 35% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirement of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.
- 13) Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellinghouses permitted under this consent, they shall all have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be maintained as such in perpetuity thereafter.
- 14) Before occupation the dwellings shall comply with Building Regulations Optional Requirement G2 relating to water efficiency. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 15) Prior to the occupation of the development details of the access entry gates including control and opening times are to be submitted to and approved by the local planning authority.