
Appeal Decision

Site visit made on 12 July 2017

by A A Phillips BA (Hons) DipTP MTP MRTPI

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

Decision date: 10 August 2017

Appeal Ref: APP/L5810/W/17/3173385

8 Barnes High Street, Barnes, London SW13 9LW

- 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 Richard Frankel against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/3961/FUL, dated 10 October 2016, was refused by notice dated 20 February 2017.
 - The development proposed is demolition of rear stock room and yard to create a two bedroom dwelling over two floors with one integral parking space at ground level.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of rear stock room and yard to create a two bedroom dwelling over two floors with one integral parking space at ground level at 8 Barnes High Street, Barnes, London SW13 9LW in accordance with the terms of the application, Ref 16/3961/FUL, dated 10 October 2016, subject to the conditions in the Schedule to this decision.

Main Issues

2. The main issues are:
 - i. The effect on the living conditions of the occupants of nearby residential properties with particular reference to outlook and enclosure;
 - ii. Whether the proposal preserves or enhances the character or appearance of the Conservation Area; and
 - iii. Whether appropriate provision is made for affordable housing.

Procedural Matter

3. I have noted that the Council has referred to the Publication Local Plan Policies in its appeal statement. According to the evidence before me in this particular case, the Council's Cabinet agreed in December 2016 that the emerging Plan and its policies would be adopted for development management purposes with immediate effect. However, it does not yet form part of the development plan and therefore in determining the current appeal I have given it limited weight.

Reasons

Living conditions

4. I observed on site that the local area is characterised by properties which have a close relationship with one another. The closest window to the proposal is a rear facing kitchen window serving a residential flat above No 9 Barnes High Street. It appears to me that although the outlook from this window would be affected by the proposal, as a result of the distance between it and the opposing wall of the first floor part of the proposal much of its existing outlook would be retained. Furthermore, given the overall massing of the first floor of the proposal I do not consider it would result in an unacceptable overbearing effect on the window. I also understand that the window serves a small galley kitchen which also has a glazed side door which serves a balcony. Therefore, in terms of light and outlook the kitchen which I do not consider to be a habitable room would remain entirely useable for its purpose.
5. The flat above No 9 Barnes High Street also has another rear facing window which I understand serves a habitable room. However, I consider that suitable outlook from this window would be retained due to the eastern wall of the proposed first floor part of the proposal being almost in line with the flank wall of the outrigger at No 9. Furthermore, the separation between the proposal and this window is nearly ten metres.
6. There are three side facing windows in the side elevation of Nos 10 – 12 High Street which I understand serve offices. I also noted on site that the bottom part of these windows is obscure glazed. Consequently, the existing outlook from these windows is limited. The distance between the windows and the proposal would be very limited at less than 1.5 metres. Nonetheless, Policy DM DC5 of the Development Management Plan Adopted November 2011 (the DM Plan) recognises that the impact of a proposal on habitable rooms will be given most weight when determining planning applications. Therefore, on balance, whilst the relationship would be very close I do not consider that there would be sufficient harmful effect to justify withholding planning permission in this particular case.
7. The relationship between the proposal and No 7 Barnes High Street is satisfactory owing to the fact that the windows facing the appeal site serve commercial premises and there is a reasonable separation distance. Furthermore, the first floor window is obscure glazed and does not benefit from any outlook at present.
8. The outlook from the main habitable windows of No 2 Stanton Road, which is a residential property, face either to the rear onto their private amenity space or to the front onto the street. I observed on site that there is a window in the flank wall facing the appeal site which appears to serve a landing rather than a habitable room. Furthermore, the relationship between this window and the appeal site is very much at an angle and therefore the proposal would not result in an unacceptable loss of outlook.
9. Therefore, on this issue I conclude that the proposal would not have a harmful effect on the living conditions of the occupants of nearby residential properties with particular reference to outlook and enclosure. As such it is in accordance with the provisions of Policy DM DC 5 of the DM Plan and Supplementary Planning Document Small and Medium Housing Sites Adopted February 2006

which seek to protect adjoining properties from unreasonable visual intrusion, among other objectives.

Character and appearance

10. The appeal site is a typical urban back land site surrounded by buildings of different designs and uses in close proximity to one another. The site itself is currently used as a service yard with a single storey flat roof stock room. The site does not at present make a positive contribution to the character or appearance of the Conservation Area in which it is situated. Several buildings in the vicinity of the site on Barnes High Street are Buildings of Townscape Merit (BTM) where the development plan seeks to preserve and enhance the historic and architectural value, including their setting.
11. To the front of the site properties facing Barnes High Street are imposing buildings whereas the residential street Stanton Road has a more suburban and structured character. The site is not prominent from the surrounding area, although it can be seen from the access route into the site from Stanton Road.
12. In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the National Planning Policy Framework (the Framework) in determining this appeal I attach great weight to the desirability of preserving or enhancing the character or appearance of the Conservation Area within which the site is located.
13. The proposed building is of a modest scale and would follow the pattern of development of the area to the rear of Barnes High Street. The height of the proposal reflects that of the surrounding area including the adjacent commercial buildings either side. Although I recognise that it is a constrained site I consider that a well-designed new development could make a positive contribution to the character and appearance of the surrounding area, making efficient use of the land.
14. The modern design of the proposed dwelling would be very different from the form of existing development in the locality. However, the immediate surroundings are fairly unattractive and undistinguished with a mix of traditional and modern commercial and residential properties of different design, materials, appearance and uses. I consider the design of the proposal to be of a high quality modern appearance which would contrast but not compete with the important buildings in the area. It would not be particularly prominent from Stanton Road.
15. The proposal would replace the existing extension which relates poorly to the original building and its setting. The proposal would not cause harm to the character or appearance of the BTM along Barnes High Street and would not be read against them. This would also be the case for the designated buildings along Stanton Road.
16. Given the alterations that have taken place over the years around the site I do not consider that the current proposal would be harmful to the character and appearance of the Conservation Area. Therefore it would accord with the provisions of policies DM DC1, DM HD1, DM HD3 and DM HO3 of the DMD, Policy CP7 of the Core Strategy and the Framework. Together, these seek to protect areas of high quality and historic interest from inappropriate development, ensure that new development recognises distinctive local

character and contribute to creating places of a high architectural and urban design quality, retain features which make a positive contribution to the character of Conservation Areas, preserve or enhance the character or appearance of Conservation Areas, encourage the preservation and enhancement of buildings of townscape merit and limit the scale of backland development, among other objectives.

Affordable Housing

17. Policy CP15 of the Core Strategy Adopted April 2009 (the CS) seeks the provision of a range of housing to meet the needs of all types of households. There is an expectation that a contribution towards affordable housing will be made on all new housing sites and Policy DM HO6 of the Development Management Plan Adopted November 2011 (the DMP) provides that where it is not proposed to provide affordable housing on site a financial contribution will be secured via a legal agreement. This approach is detailed in the Council's adopted Supplementary Planning Document Affordable Housing Adopted March 2014 (the Affordable Housing SPD). This approach is in line with the Framework which requires Councils to meet the full, objectively assessed need for market and affordable housing. This can include requiring financial contributions if they can be robustly justified.
18. In determining this case I have also had regard to the Court of Appeal judgement in overturning the High Court Decision in the case of *The Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* which had effectively quashed the Written Ministerial Statement (WMS) of 28 November 2014 regarding contributions for affordable housing. The WMS states that *'for sites of ten units or less...affordable housing and tariff style contributions should not be sought.'* This is reflected Planning Practice Guidance.
19. The Council has also drawn my attention to some appeal cases in the Borough where it has been concluded by my colleague Inspectors that there are particular circumstances to indicate that the development plan should outweigh the WMS. I have had regard to the WMS as a material consideration and I attach great weight to it. However, in this particular case, based on the evidence before me I find that it does not outweigh the significant and substantial weight which I attach to the Council's strong local evidence of affordable housing need. Therefore I find that the proposal should contribute to the Borough's affordable housing need.
20. At the time of determination of the application a legal agreement for the provision of a contribution was not forthcoming. However, a completed agreement dated 20 June 2017 has been presented as part of the appeal documentation submitted which provides for a suitable financial contribution towards affordable housing. I can reasonably take it into account. Therefore, I have found that the proposal would make appropriate provision for affordable housing in accordance with Policy CP15 of the CS, Policy DM HO6 of the DMP, the Affordable Housing SPD and the Framework.

Section 106 Agreement

21. As well as the completed agreement of 20 June 2017 I have also received a signed and dated legal agreement of 17 July 2017 in which the local planning authority has sought to amend the original agreement that the scheme should

be parking permit free. I have noted that this matter did not warrant a reason for refusing the application. Furthermore, I have also noted that in its committee report the Council confirms that the proposal complies with the parking standards and suitable cycle parking provision is also made. Although the transport section of the committee report recommends that access to resident parking permits and contracts in Council run car parks is removed for future occupants through a legal agreement I do not consider that this is clearly and reasonably justified in this particular case. Therefore, in determining the current appeal I have not given weight to the amended legal agreement dated 17 July 2017.

Conditions

22. The Council has suggested a list of conditions which I have considered, and where necessary amended, in line with national policy and guidance. I have specified the approved plans as this provides certainty. In the interests of the character and appearance of the Conservation Area I have also imposed conditions relating to samples of materials, including fenestration and hard standing and details of refuse arrangements and storage.
23. In the interests of energy conservation I have attached a condition relating to the reduction of carbon dioxide emissions and I have also conditioned water consumption targets to ensure water efficiency. In order to discourage the use of the car where possible I have imposed a condition requiring cycle parking and to ensure satisfactory parking provision a condition restricting the use of the garage is necessary.
24. In order to protect the living conditions of nearby residential properties conditions relating to privacy screens to the roof terrace, the use of the roof terrace and the provision of non-openable and obscure glazing for the proposed first floor windows in the north elevation are appropriate in this case. A land contamination condition is necessary to protect the future occupants of the development and I have also attached a condition requiring a detailed construction method statement in the interests of highway safety and the living conditions of neighbouring occupants.
25. I have not imposed a condition removing permitted development rights because such a condition should only be used in exceptional circumstances which have not been clearly demonstrated in this particular case.

Conclusion

26. Therefore, for the reasons given above and taking into account other matters raised I conclude that the proposal is in accordance with the development plan taken as a whole and that the appeal should be allowed.

Alastair Phillips

INSPECTOR

SCHEDULE

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: A_PL_001, A_PL_010, A_PL_011, A_PL_030, A_PL_031, A_PL_032, A_PL_033, A_PL_040, A_PL_100 Revision E, A_PL_101 Revision F, A_PL_102 Revision E, A_PL_200 Revision A, A_PL_201 Revision B, A_PL_300 Revision D, A_PL_301 Revision D, A_PL_302 Revision D and A_PL_303 Revision B.
- 3) No development shall take place until samples of all external materials including fenestration and areas of hard surfacing have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) The development hereby approved shall not be occupied until arrangements for the storage and disposal of refuse have been made in accordance with the details shown on drawing number A_PL_100 revision E. Once implemented the storage facility shall be retained thereafter. No refuse or waste material shall be left or stored anywhere on the site other than within the approved detailed scheme.
- 5) The dwelling hereby approved shall achieve a 35% reduction in carbon dioxide emissions beyond Building Regulations requirements (2013).
- 6) The dwelling hereby approved shall not be occupied other than in accordance with the water consumption targets of 105 litres or less per person per day, and 5 litres or less per head per day for external water use.
- 7) The dwelling hereby approved shall be occupied until cycle parking facilities have been provided in accordance with the details shown on drawing number A_PL_100 revision E. Once implemented the cycle parking shall be retained thereafter.
- 8) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning

authority within 28 days of the report being completed and approved in writing by the local planning authority.

- 9) The garage hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for no other purpose.
- 10) The privacy screens to the roof terrace showing on drawings A_PL_300 Revision D, A_PL_301 Revision D, A_PL_302 Revision D and A_PL_303 Revision B shall be erected before the building hereby approved is occupied and shall thereafter be retained in their approved positions. The roofs of the building other than those shown as a terrace on the approved drawings shall not be used for any purpose other than as a means of escape in emergency or for maintenance of the building only.
- 11) The proposed first floor windows in the north elevation as shown on drawings A_PL_302 Revision D hereby approved shall at no time be openable or glazed, otherwise than in obscured glass, below a minimum height of 1.75 metres above the relevant floor level.
- 12) No development shall take place, including any works of demolition, until a Construction Management Statement (to include any demolition works) has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. The size, number, routing and manoeuvring tracking of construction vehicles to and from the site, and holding areas for these on / off site;
 - ii. The layout plan showing manoeuvring tracks for vehicles accessing the site to allow these to turn and exit in forward gear;
 - iii. Details and location of parking for site operatives and visitor vehicles (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - iv. Details and location where plant and materials will be loaded and unloaded;
 - v. Details and location where plant and materials used in constructing the development will be stored, and the location of skips on the highway if required;
 - vi. Details of any necessary suspension of pavement, road space, bus stops and/or parking bays;
 - vii. Details where security hoardings (including decorative displays and facilities for public viewing) will be installed, and the maintenance of such;
 - viii. Details of any wheel washing facilities;
 - ix. Details of a scheme for recycling/disposing of waste resulting from demolition and construction works (including excavation, location and emptying of skips);
 - x. Details of measures that will be applied to control the emission of noise, vibration and dust including working hours. This should follow

Best Practice detailed within BS5288:2009 Code of Practice for Noise and Vibration Control on Construction and Open Sites;

- xi. Details of any highway licenses and traffic orders that may be required (such as for licences for any structures / materials on the highway or pavement; or suspensions to allow the routing of construction vehicles to the site);
- xii. Details of the phasing programming and timing of works;
- xiii. Where applicable, the Construction Management Statement should be written in conjunction with the Arboricultural Method Statement, and in accordance with British Standard 5837:2012 'Trees in relation to design, demolition and construction - recommendations'; and
- xiv. A construction programme including a 24 hour emergency contact number.

END OF SCHEDULE