
Appeal Decision

Site visit made on 11 October 2017

by G Rollings BA(Hons) MA(UD) MRTPI

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

Decision date: 7th November 2017

Appeal Ref: APP/N5090/W/17/3179087
54a St Albans Road, Barnet, EN5 4LA

- 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 Messrs O'Sullivan and Togher against the decision of the Council of the London Borough of Barnet.
 - The application Ref 17/0122/FUL, dated 26 November 2016, was refused by notice dated 14 March 2017.
 - The development proposed is demolition of the car tyre sales and fitting depot and erection of 1 office unit, 3 flats and 2 semidetached houses together with car parking.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the supply of local employment floorspace within the area;
 - The effect of the proposed development nearby protected trees; and
 - Whether the proposed development would provide satisfactory living conditions for future residents, with particular consideration for the quality and layout of private amenity space, and sunlight and daylight.

Reasons

Effect on the supply of local employment floorspace

3. The Council considers the most recent use of the site to be a 'B-class' use, comprising the uses set out in the description above. Conversely, the appellant considers the use to be sui generis, citing the example of similar uses in other local authorities, and legal advice. The appellant has advised that the uses present on the site at the time of my visit, which consisted of a car washing facility and car storage, are temporary, which has not been disputed by the Council.
4. A primary purpose of B class uses is business accommodation, of which employment generation and provision is a major component. Although the previous use included a sales element, there is insufficient evidence for me to determine whether this was ancillary to the fitting depot, and there is also insufficient information for me to draw clear comparisons with the other

examples provided. Although I have not discounted the possibility of different interpretations between local authorities, the onus is on the appellant to provide sufficient information to support the case, and in this instance I cannot be satisfied that the Council's interpretation of the former use is incorrect.

5. Accordingly, the balance of evidence leads me to consider the previous lawful use of the site according to the Council's interpretation. *Barnet's Local Plan (Development Management Policies)* (2012) (DMP) Policy DM14 requires development sites involving a loss of a B-class to be subject to a demonstration of viability for accommodation by an alternative business, and a suitable period of effective marketing. This is defined in the policy's accompanying text as continuous marketing for sale and rent for a period of 12 months at an appropriate price.
6. I accept that the existing building on site is aged and that it would require significant restoration for any future use, which would be potentially unviable. The proposed office accommodation of 65 sq.m has been proposed as a replacement employment use, which the appellant notes could accommodate four employees. Although this could be greater than that of the former use, without sufficient demonstration of the site's former employment generation, I cannot be certain that there would be an increase. Although different uses generate different employment densities, there is a large disparity between the existing and proposed level of employment floorspace, and I am not satisfied that this would account for similar or increased employment levels within the proposed office use. In the absence of a suitable comparison I am unable to fully assess the viability of the proposed space as a suitable replacement for the existing space.
7. The marketing information provided by the appellant suggests that the site was made available to prospective occupiers for more than a year. This is accompanied by advertising material and I have no reason to consider that the required period of marketing did not occur. It included a description of the previous use as sui generis, but given the main parties' differing use class interpretations, the Council considers that the lack of suitable marketing interest could have derived from this issue. I have already explained that I consider the onus for demonstrating a lawful use is on the appellant, and although the marketers seem to have acted in good faith on the basis of the information provided to them at the time, it is my view that the marketing materials did not set out the correct use. Accordingly, I am not convinced that the marketing was effective, for the purposes of satisfying the requirement of DMP Policy DM14.
8. I therefore conclude that, in the absence of appropriate and suitable evidence, the proposed development would have a detrimental effect on the supply of local employment floorspace, and conflicts with DMP Policy DM14 for the reasons set out above.

Protected trees

9. The Council identified that the proximity of trees protected by a Tree Preservation Order (TPO) to the proposed dwellings could result in post-development pressure (PDP) by future occupiers, for works to reduce their substantial canopy cover. The TPO trees are located in a linear arrangement outside the northern boundary of the property. Most are mature oaks. They are clearly visible from the public realm to the front and rear of the property,

as well as private land around the site, and make a positive contribution to the character and appearance of the area.

10. The trees are set back from the boundary, inside the adjoining private garden to the north, but multiple branches and significant amounts of crown coverage overhang the existing property and the single-storey building. This overhang would remain within the proposed scheme, and I note that the Council has not raised significant concerns about any physical incursion into the crown or root spread areas, or any potentially detrimental effects during the proposed development's construction phase. The appeal plans show that the proposed flats 1 and 3, and both of the proposed houses, would have room openings and/or garden areas in close proximity to the trees.
11. Given this proximity, there is a substantial risk of PDP from future occupiers requesting tree works. I agree with the Council's assessment that this could lead to the trees' owner to be liable for more frequent works. Whilst I acknowledge that the current development of the site requires some maintenance of the trees with regard to potential damage from falling debris, the demand for works is likely to be greater from residential development, particularly due to the newly created open garden areas beneath the crown area and more intensive use of the land. I acknowledge the appellant's point that the Council would be the decision-maker for applications for future works, but increased pressure for such works would not necessarily result in the retention of their current amenity value. The knowledge of potential owners of the trees' existence prior to occupation of the dwellings is not a sufficient guarantee that this situation would be avoided completely.
12. I have taken account of the appellant's management proposals for tree maintenance following occupation of the development, which could mitigate some of the potentially harmful effects on the character and appearance of the trees, and the fact that this iteration of the proposal is less harmful than previous proposals. However, this does not ameliorate the risk of increased PDP or a more regular maintenance schedule potentially resulting in additional financial pressure on the third-party owner of the trees.
13. I therefore conclude that the proposed development would have a potentially harmful effect on the protected trees. The proposal would conflict with DMP Policy DM01, which incorporates a requirement to safeguard trees.

Living conditions (external amenity space)

14. The two proposed houses would be located towards the rear of the site, with the appellant likening the layout to a mews-style arrangement. Both would have private garden areas arranged around two sides of the dwellings: house 1 would have its garden arranged around its western and predominantly northern sides, and house 2 around its northern and predominantly eastern sides.
15. Although the northern parts of the gardens would be most affected by the aforementioned tree overhang and resultant shading, the alternative garden areas would receive direct sunlight during the main part of the day, despite the proximity of other buildings. Additionally, despite the Council's concerns that the spaces would be cramped, there is not suggestion that the space provision guidance set out *Sustainable Design and Construction Supplementary Planning Document* (2016) (SPD) would not be achieved.

16. Enclosure of space is not uncommon in built-up areas and I have taken into account the appellant's comments on the potential provision of species more tolerant to shaded areas. Together with the matters that I have already raised but notwithstanding the TPO issues discussed above, I consider the proposed amenity space provision to be appropriate.
17. Turning now to internal living conditions, it is true that shading from the trees could have a limiting effect on the amount of daylight entering the proposed dwellings. However, the affected windows are mostly north-facing, and the affected rooms benefit from dual-aspect layouts. As such, additional windows would contribute to internal daylight levels. Given the north-facing orientation of the windows closest to the trees, I do not consider that they would have a harmful impact on levels of direct sunlight reaching dwellings during the majority of daytime hours.
18. I therefore conclude that the proposed development would provide satisfactory living conditions for future residents, in respect of the quality and layout of private amenity space, and sunlight and daylight. There would be no conflict with Core Strategy Policies CS NPPF or CS5, or DMP Policy DM01. Together, these require proposals to achieve a high quality of design and have regard to the amenity of occupiers, amongst other factors.

Conclusion

19. Although I have found that the proposed development would not have a detrimental impact on the living conditions, this does not mitigate my concerns over its potential impacts on the TPO trees, or its effect on the supply of local employment floorspace. The absence of harm from the former does not outweigh the harm from the remaining issues. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Rollings

INSPECTOR