
Appeal Decision

Site visit made on 4 October 2018

by P W Clark MA MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2018

Appeal Ref: APP/N5090/W/18/3197652

The Lodge, Long Lane, Finchley, London N3 2PY

- 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 The Lodge Victoria Park Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 17/4102/FUL, dated 27 June 2017, was refused by notice dated 19 September 2017.
 - The development proposed is demolition of existing building and construction of a 2-storey block of 6N^o flats including accommodation in roof space, 6N^o parking spaces, cycle storage, refuse storage, associated site works and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and construction of a 2-storey block of 6N^o flats including accommodation in roof space, 6N^o parking spaces, cycle storage, refuse storage, associated site works and landscaping at The Lodge, Long Lane, Finchley, London N3 2PY in accordance with the terms of the application, Ref 17/4102/FUL, dated 27 June 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Other than as indicated in the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: LL-PP3-01, LL-PP3-02, LL-PP3-03, LLPP3-04 and Tree Protection Plan 992-01 revision B.
 - 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;

- vi) measures to control the emission of dust and dirt during construction;
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until samples of all external facing materials 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.
- 5) No development shall take place until details of carbon dioxide emission reduction measures which achieve an improvement of not less than 35% in carbon dioxide emission when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations 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 which shall be retained thereafter in operational condition.
- 6) No development shall take place until details of foul and surface water drainage 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 which shall be retained in operational condition thereafter.
- 7) Notwithstanding the details shown on approved drawing number LL-PP3-01, no development shall take place until details of a revised external layout have been submitted to and approved by the local planning authority indicating the provision of a minimum 1200mm width path for disabled people to gain access to the building from the street and from the disabled access parking space, indicating a location of a sheltered refuse area from which collections can be made adjacent to the street, indicating the details of the appearance of the sheltered refuse area and secure sheltered cycle storage and indicating details of electric vehicle charging points for at least three of the parking spaces. The development shall be carried out in accordance with the approved revised details and no dwelling shall be occupied until the disabled access, sheltered refuse area, sheltered cycle storage and electric vehicle charging points have been provided and subsequently retained for their intended purpose.
- 8) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans. No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of this permission, other than in accordance with the approved plans, without the prior written approval of the local planning authority. All the retained trees shall be protected by strong fencing, in accordance with the recommendations of the Arboricultural Impact Assessment dated 6 June 2017 by S J Stephens Associates, submitted with the application. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and

surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 9) No dwelling shall be occupied until the three areas shown as new soft landscape area on the approved drawing have been laid out in accordance with a scheme of landscaping previously submitted to and approved in writing by the local planning authority.
- 10) No dwelling shall be occupied unless constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G2 of the Building Regulations.
- 11) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. LL-PP3-01 or a substitute approved in accordance with condition (7) above for six cars to be parked and that space shall thereafter be kept available at all times for its intended purpose. The disabled space shall be provided and clearly marked with a British Standard disabled symbol.
- 12) Details of the appearance and luminance of any external lighting shall be submitted to and approved in writing by the local planning authority before installation. Development shall be carried out in accordance with the approved details.

Main Issues

2. There are four. They are the effects of the proposal on :
 - The character and appearance of the area
 - The living conditions of potential future occupants in terms of outlook
 - Highway safety
 - The provision of open space.

Reasons

The provision of open space

3. The building presently on site was once a park keeper's cottage. As such it was, as all the relevant documents in this case make clear, an ancillary use to the primary use of the site as public open space, much in the same way as other buildings within the park are used for ancillary purposes such as a café, toilets or bowling club. But, as all the relevant documents in this case also make clear, that use on this plot was abandoned some twenty years ago in favour of a main use as a residential property not ancillary to the park, initially by the Council itself, subsequently by the current owner.
4. Many third party representations remain in denial about that change of use. They point out that it is in contravention of a covenant. But the covenant does not appear to have been enforced and there is no information to show that it is capable of being enforced or by whom. There is no information to show whether the change of use was specifically countenanced by a planning permission or became authorised through the passage of time. No certificate of lawfulness exists or has been sought and so it is not for me to make a

determination about the matter but, for the purposes of this appeal, such information as there is indicates that in planning terms the existing lawful use of the site is residential.

5. It follows that no loss of public open space would occur as a result of the current proposal. It would therefore comply with London Plan policy 7.18 and Barnet's Local Plan (Development Management Policies) policy DM15 both of which provide that open space will be protected from development.

Character and appearance

6. On plan, the site is surrounded by public open space on three sides and by public highway on its fourth side. In that sense, the proposed building would stand isolated within a public park. But, the park railing on the Long Lane frontage is set back behind a verge so that about half the site stands forwards of the park railing. The park gates are set back even further, aligning with the rear of the site so that, to all practical appearances, the site stands outside but juxtaposed with the park.
7. Its relationship with the park would not be unique. Although the majority of Victoria Park's boundaries abut public highways; Long Lane, Park View Road, Etchingham Park Road, Seymour Road, Ballard's Lane and The Ridgeway, its boundary to Seymour Road is similarly interrupted by a (much larger) enclave of residential development (2- 14 (even) Seymour Road).
8. In a sense, the whole of one side of The Ridgeway (numbers 1-47 (odd)) is "within" the park in that the open space wraps around that row of properties on three sides, although it may not be perceived as such because the enclosed grounds of the bowls club exclude the public from that boundary and the park railing on the Ballard's Lane frontage is set back to align with the flank of number 2 The Ridgeway, leaving a wide verge between the park railing and the highway, similar to but greater than that in Long Lane.
9. In Seymour Road and The Ridgeway the buildings are located towards the front of their plots. Their utilitarian rear elevations are separated from the park by a reasonable depth of private garden. The flanks of properties in Seymour Road abut the park boundaries but are screened by dense planting both evergreen and deciduous. The block of flats at 51 Long Lane abuts the park with little screening and with windows opening directly on to the park. By contrast, the proposed building would be close to but not actually abutting the park's boundaries at any point.
10. Properties in The Ridgeway are taller than would be the proposal. They flank the park closely without any screening to these utilitarian elevations and their windows overlook it. By contrast, the proposal would be lower than these and most other properties surrounding the park in every road except Long Lane. Although the separation of the proposal from the boundaries of its plot would range from about 1-5m on three sides and about 10-12m on the fourth, it would have fully composed elevations on all four sides. It is clearly designed to respect its location so at no point would it present a backside to the park requiring a buffer zone or screening. Nevertheless a signed and dated planning obligation provides a sum of £10,000 to be paid to the Council for five semi-mature trees to be planted in the park in the vicinity of the site which could supplement the screening which already exists around the site, including trees

which would be retained within the proposal, protected by a Tree Preservation Order.

11. I concur with the view expressed by one member of the public that it is the relationship with the park, not the surrounding streets, which is important. I find that relationship similar to other instances around the park and so, acceptable. Nevertheless, it is not the only consideration and I now turn to those other elements of its character and appearance which the Council finds unacceptable.
12. I have already noted that the height of the proposal would be less than that of the majority of properties in streets surrounding the park. Some of these, particularly in Etchingham Park Road, are very substantial three storey Edwardian houses with floor to ceiling heights much greater than those of the proposal. Those facing the proposal in Long Lane are smaller but the containment of the third storey of the proposal within its roof space would be consistent with the height of these.
13. The width of the proposal facing Long Lane would be about 11m. This is comparable to the width of a pair of Edwardian semi-detached houses in Long Lane, though the interest of the facade would be somewhat less because a pair of Edwardian semi-detached houses in Long Lane would have two projecting bays whereas the proposal would only have one.
14. The depth of the proposal would be about 15.5m. This would be almost identical to that of the Edwardian properties in Long Lane but, as noted earlier, all facades of the proposal would be architecturally composed, in contrast to the functional arrangements common in the flanks of Edwardian houses, even where they are exposed to view.
15. The bulk, size, scale and massing of the proposal would therefore be very similar to that of neighbouring buildings. The plot coverage would also be similar to though slightly less than that of neighbouring Edwardian houses but arranged differently, with the building placed close to the boundaries on one side of its roughly square plot, contrasting with the Edwardian buildings placed towards the front of their long thin plots. A greater proportion of the remainder of the plot would be laid out as parking than is traditional in the neighbourhood but, as proposed to be laid out with Grass Guard or similar, the adverse visual impact of the greater extent of hard surfacing would be minimised. Sufficient space would remain for soft landscaping as required by policy DM01(j) of Barnet's Local Plan (Development Management Policies) adopted in September 2012.
16. The style of the building proposed may not be cutting edge architecture but the use of projecting bays, tile-hung hipped-gables, a mixture of engaged and true dormers and balconies appears to be a well-considered design which would give the building sufficient interest comparable with that of its neighbours. (I read the term "Juliet balconies" used, possibly pejoratively, in third party comments but only true balconies are shown on the submitted drawings).
17. I conclude that the building would complement the character and appearance of the neighbourhood. It would therefore comply with policies CS5 and DM01 of Barnet's Local Plan (Core Strategy) and (Development Management Policies) adopted in September 2012 both of which require a high quality of development based on and respecting local characteristics amongst other

matters. It would also comply with policy 7.4 of the London Plan which requires buildings to provide a high quality design response that has regard to the pattern and grain of existing spaces and streets in orientation, scale proportion and mass, amongst other matters and with the Plan's policy 7.6 which, amongst other matters, requires buildings that are of a proportion, composition, scale and orientation that enhances, activates and appropriately defines the public realm, comprise details and materials that complement, not necessarily replicate, the local architectural character and optimise the potential of sites. It would not conflict with Barnet's Local Plan (Core Strategy) policies CS1, CS15 and CSNPPF which establish and apply the general principles of Barnet's Three Strands concept.

Living conditions

18. The living areas and one of the bedrooms of the two ground floor flats would have relatively restricted outlook onto the boundaries of the site which comprise or are proposed to comprise railings with hedges about 1.5-2m high where they give on to the interior of the park. But all three rooms concerned have aspects in more than one direction. The living area of unit 1 has eight windows facing boundaries to both north-west and south-west at distances of about 1.5- 4.5m. The bedroom of unit 2 has two windows facing boundaries to north-east and north-west at distances of about 1-4.5m. The living area of unit 2 has seven windows facing boundaries to south-east, north-east and north-west at distances of about 1-3.5m. As the appellant's daylight study shows, this quantity of window opening would provide adequate daylighting, the obverse of which is adequate outlook.
19. Upper floors would have less restriction on their outlook. I therefore conclude that the living conditions of prospective occupants in terms of outlook would be acceptable. The proposal would comply with policy DM01(e) of Barnet's Local Plan (Development Management Policies) adopted in September 2012 which requires an acceptable outcome in terms of sunlight and daylight (and by inference, outlook). It would not conflict with Barnet's Local Plan (Core Strategy) policies CS1, CS15 and CSNPPF which establish and apply the general principles of Barnet's Three Strands concept.

Highway safety

20. The Council's reason for refusal relating to the need to amend a traffic order to suppress a parking space within a controlled parking zone so as to permit the formation of an access to the site is satisfied by the provision within the signed and dated Unilateral Undertaking of a sum of £2,000 to cover the cost of amending the order. Third parties comment that the proposed layout of the parking spaces within the site would not make it easy to turn a car on site, so it might be necessary for cars to reverse to or from Long Lane. But most of the properties which front Long Lane and have paved over their front gardens to provide car parking are in a similar situation and there is no information to show that this presents a traffic hazard.
21. I conclude that the effect of the proposal on highway safety would be acceptable. The proposal would comply with policies CS9, CS15 and DM01 of Barnet's Local Plan (Core Strategy) and (Development Management Policies) adopted in September 2012 both of which require safe and efficient travel.

Other matters

22. Third parties raised a number of other matters in objection to this scheme. The proposal would provide about 194 sqm of outdoor amenity space and so would meet the requirements of 5 sqm per habitable room set out in Barnet's sustainable Design and Construction SPD. Approximately one-third of the nearby children's playground would lose about 57 of the 3493 hours of annual potential sunlight presently enjoyed, which is a minimal impact.
23. Allegations of a loss of privacy of both adults and children using what is a public space in a public park can only be understood as contradictions in terms. The building would be sited at least 16m away from the gates to the park and so would have no effect whatsoever on access for articulated lorries serving events at the park. Contrary to representations made, the proposal shows no basement proposed which could have any possible effect on the local water table. Consequently, the representations made do not cause me to come to any conclusion other than that reached in consideration of the main issues, which is that this appeal should be allowed, subject to conditions.

Conditions and obligations

24. The proposal is accompanied by a Unilateral Undertaking providing for payments of £10,000 for providing five trees to be planted within the park, £2,000 for amending the Controlled Parking Zone Traffic Management Order and £1,000 as a monitoring fee. I have already commented on the necessity of the tree planting and the amendment to the CPZ both of which are directly related to the development and fairly and reasonably related to it in scale and kind and so I find that these obligations comply with the CIL regulations and I take them into account in making my decision. But there is no justification for the monitoring fee as there is no ongoing activity resulting from the Unilateral Undertaking for the Council to monitor, simply compliance with the planning permission which is a part of the Council's normal enforcement activities and so I take no account of this last obligation in reaching my decision.
25. The Council suggests that 27 conditions are necessary to make this development acceptable. I have considered these in relation to the advice in national Guidance and with reference to the wording of the model conditions appended to the now superseded Circular 11/95, the Use of Conditions in Planning Permissions.
26. A time limit on the validity of the permission is required by law. A condition specifying the plans approved allows advantage to be taken of legal provisions for minor variations. The location of the site makes approval of a Demolition and Construction Management and Logistics Plan a necessary precondition of development.
27. The Council's committee report notes that no protected species has been identified on site or in its immediate vicinity, so no further ecological survey should be necessary. There is no necessity for the submission of a tree protection plan or arboricultural method statement, since there is no information to show that what has already been submitted is deficient. All that is necessary is a condition requiring its implementation.
28. No submission of details of the location of incoming services in relation to retained trees is necessary as the route is shown on the approved plan and

there is no information to show that this would be unacceptable. However, there is no information about surface or foul drainage which would be necessary as a precondition of development. A condition requiring details of facing materials to be used is necessary as a precondition as these are not fully specified on the application form or drawings but there is no information to show that electronic access to the building would have any material impact upon its design or appearance and so no condition requiring submission of that detail is necessary. Details of external lighting, if installed, would have an effect on the character and appearance of the development and so a condition is necessary to require approval before installation.

29. Details of fenestration and its positioning within window openings are sufficiently provided on the approved drawings so no further submission is necessary. Details of trees to be retained including those protected by a TPO are shown on the approved drawing and so no further submission of details is necessary but details of the new soft landscaping of the three communal areas is not provided and would be required. The approved plans show that natural ground levels are to be retained and the elevations of the building are drawn to scale so no further submission of details of levels and heights is necessary.
30. For the reasons explained in the Council's committee report, the proposed location of the refuse stores would be unsatisfactory. Nor is information provided of their design or appearance or that of the proposed cycle stores, so details will need to be provided which would need to be found acceptable before construction commences. Likewise, for the reasons given in the Council's committee report, a revised drawing showing acceptable widths and surface materials for access by disabled people needs to be approved before development starts together with a requirement for their provision and retention. Adequate details of the proposed railings ("to match") to replace the boundary fence on the north-west boundary of the site are shown on the approved drawing and so no further submission of details of boundary treatment should be necessary.
31. The existing building is not a designated heritage asset. Its charm lies more in its form than in any salvageable architectural detail and so there is no necessity for a condition requiring its salvage or recording.
32. No details are provided of the way in which the building would achieve the carbon dioxide reduction targets or water efficiency measures of the Council and of the London Plan and so a condition is required to secure these. Likewise a condition is necessary to secure the provision of electric vehicle charging points in accordance with London Plan policies, as is a condition to secure the provision of the parking spaces shown on the approved drawings.
33. Circulation space for wheelchairs is shown on the approved drawings. There is no information to show that the proposal would not meet the requirements of Part M4(2) of Schedule 1 of the Building Regulations 2010 and so no justification for the necessity of a condition to require compliance. There is no information to show why the development should not retain permitted development rights under Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order in accordance with the advice contained in national Guidance that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.

34. There are no proposed windows to bathrooms and toilets, so no necessity for a condition requiring such windows to be glazed with obscure glass. There is no necessity for a condition restricting the use to that proposed, since any change of use would require a new permission in any event.
35. None of the matters to be dealt with by pre-commencement conditions are susceptible to adjustment once development has commenced and so their consideration has to be by pre-commencement conditions.

P. W. Clark

Inspector