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## Appeal Decision

Hearing Held on 2 July 2019

Site visit made on 2 July 2019

**by D J Board BSc (Hons) MA MRTPI**

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

**Decision date: 31 July 2019**

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**Appeal Ref: APP/N5090/W/18/3205752**

**105 West Hendon Broadway, Colindale, London, NW9 7BN**

- 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 Dartland Properties Ltd against the decision of the Council of the London Borough of Barnet.
  - The application Ref 17/4293/FUL, dated 4 July 2017, was refused by notice dated 13 February 2018.
  - The development proposed is described as *'new 5 storey residential development, comprising 48 no. flats, concierge's flat, basement carpark and landscaping including the demolition of existing 2 storey car show room & offices and basement car park'*.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appellants submitted amended plans as part of the appeal. These plans, amongst other things, show amendments to the shared garden, roof layout, balconies, removal of storage lockers, confirmation of use of the concierge office and addition of wheelchair turning circles. The extent of changes is not significant. Therefore, I am satisfied that no parties' interests would be prejudiced by my taking the amended plans into account. The appeal is considered on this basis.
3. The Council clarified that the reference to policy DM17 in reason 6 is an error. It should read DM10. I was provided with a copy of policy DM10 of the Council's Development Management Policies (DMP) at the hearing.

### Background and Main Issues

4. The Council's statement of case and table of differences indicated that it is no longer defending reasons 1, 2, 3, 4, 8, 12, 13, 15 & 16 of the decision. The Council confirmed this position at the hearing and that either the amended plans or conditions would overcome their concerns. The issue of provision of affordable housing was included in reason 6. At the hearing, after discussion and an adjournment, the Council also withdrew its defence of this reason. As such I have dealt with affordable housing under other matters. I have been provided with a planning obligation that addresses affordable housing, provision and monitoring of a travel plan and provision of a carbon offsetting contribution.

5. Accordingly, the main issues are:

- Whether the scheme would provide a suitable mix of units, having particular regard to the provision of family units;
- Whether the scheme would provide appropriate living conditions for future occupiers of the units, having particular regard to noise and air quality;
- The effect of the scheme on the occupiers of existing dwellings in Stuart Avenue, having particular regard to privacy and outlook;
- Whether the scheme would make appropriate provision for infrastructure, with particular regard to the provision of a travel plan;
- Whether the scheme would make appropriate provision for planning policy targets for climate change.

## Reasons

### *Mix of units*

6. DMP Policy DM08 is seeking a variety of sizes of new homes to meet housing need. Within this it places a high -medium priority on the provision of family sized units, which are 3 or 4 bed in size. This is supported by the London Plan (LP) which seeks a genuine choice of homes of different sizes and types. The appeal scheme would provide a mix of studio, 1 bed and 2 bed units.
7. The appellants submit the scheme as being a public rented sector (PRS) scheme and referred me to LP policy 3.8. This specifically sets out that boroughs should ensure that positive and practical support is provided to sustain the contribution that PRS makes in addressing housing need and increasing housing delivery. This is further supported by the Planning Practice Guidance<sup>1</sup> (PPG) which sets out how build to rent is distinct. It refers to plan making. Nonetheless this advocates a range of housing types and tenures and an evidence based approach to establishing a need for build to rent in an area and how such provision could contribute to meeting housing need.
8. I appreciate that policy DM08 was adopted prior to the revision to the PPG and the support for this housing type identified by the appellants. I also accept that it does not explicitly refer to PRS and that there are cases where policies should be applied flexibly. However, in this case I am mindful that whilst supporting the provision of build to rent there is nothing in the PPG that indicates to me that the intention is to reduce choice of type and tenure as advocated by the aim and purpose of DM08. More specifically it seems to me that such an approach would need to be justified in the manner advocated in the PPG. That is not the case here where I have no detailed evidence supporting the submitted unit mix and how it would meet housing need in the borough.
9. The appellants consider that the sites location would support the mix proposed. Specifically, that the character of the built form in the locality is akin to a town centre location<sup>2</sup> and as such suitable for provision of smaller units. There is no dispute that the location is not defined as a town centre for application of

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<sup>1</sup> Paragraph: 001 Reference ID: 6000120180913

<sup>2</sup> Outer London Commission Report as referred to in appellants' statement of case 6.42, 6.43 & 6.44

planning policies. The site is located on a busy road and I would agree that the scale of the buildings creates an urban character along the road frontage. However, the group of buildings opposite contains houses as do the roads behind and adjacent. Indeed, my impression of the wider area is that it contains a mix of dwellings types, some of which will be family homes. As such I do not consider that it would be reasonable to apply the exception the appellants advance in this case.

10. I therefore consider that the scheme would be in conflict with the development plan. In particular CS10 of the Core Strategy (CS), DMP policy DM08 and LP policy 3.8. Whilst I have carefully considered the other material considerations advanced by the appellants, I do not consider that they would outweigh the conflict with the development plan on this point.

*Living conditions of future occupiers*

11. The Council is concerned about the fact that the units will single aspect and located adjacent to a main A class road. The scheme is supported by an Acoustic Report<sup>3</sup> and an Air Quality Assessment<sup>4</sup>.
12. The appellants position is that this matter can be dealt with by condition. Further at the hearing it was suggested that single aspect units have been permitted by the mayor, in particular reference was made to the Hoover building located on the A40. The Council consider that this is not a like for like comparison as that building is set back. I have no detailed information on this scheme. Nonetheless, I have considered the scheme before me on its individual merits.
13. The layout of the scheme would place single aspect units on the site frontage across all floors. Moreover, a number of these units would be studios or have a living area with its only aspect onto the site frontage. The submitted air quality report, which is dated from 2010, identifies that units on higher stories are removed from sources of pollution at ground level. However, in this case there will be both ground floor units and landscaped areas at ground floor with winter garden/balcony areas on the upper floors. The acoustic report sets out that glazing with sound insulation would be required for living rooms and bedrooms in order to meet the relevant noise criteria. There would also be a requirement for a ventilation strategy for the scheme. The Council's view is that on the front elevation only mechanical ventilation would be possible as windows should not be opened. In addition, that all of the units would require nitrogen filters.
14. I appreciate that it may well be technically possible to provide ventilation and acoustic glazing to the units to meet the relevant standards for internal noise and air quality. Furthermore, the detail of this could be secured by condition. However, the reality of the scheme built out in this manner is that the occupants of the flats in the front of the building would not have the option to open windows for ventilation. With the units being single aspect there would not be a choice of other windows on the opposing elevation. In addition, the un mitigated outdoor environment of the units facing onto the main road would not make the winter gardens and roof terrace areas pleasant to use.

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<sup>3</sup> Bickerdale Allen Partners, March 2017

<sup>4</sup> Gem Air Quality Ltd, April 2010

15. The Council raise the provision of disabled units. This is a requirement of the building regulations. The appellants provided an annotated plan<sup>5</sup> showing the level access to the building and there would be a lift between floors. Within individual flats wheelchair turning circles have been indicated. Therefore, overall, I am satisfied that the scheme would be able to make provision for disabled units and that the detail could be secured condition if I were minded to allow the appeal.
16. Whilst I am satisfied on the matter of disabled units this does not alter my findings regarding the single aspect units to the front of the building. I therefore conclude that the scheme would not provide appropriate living conditions for future occupiers of the units, having particular regard to air quality and noise. It would be in conflict the DMP policies DM04 and LP policy 7.14 which amongst other things require schemes to ensure that exposure to air pollutants is minimised and avoid noise sensitive development in areas with existing high levels of noise.

*Living conditions of existing occupiers*

17. The Council's decision notice refers to 'amenity' of existing occupiers in Stuart Avenue. Its statement of case clarifies that there it is satisfied that there would not be an issue regarding loss of daylight or sunlight based on the appellants Sunlight and Daylight Assessment<sup>6</sup>. The issues remaining in dispute relate to privacy and outlook.
18. There are three properties in Stuart Avenue with a private garden area that share a common boundary with the appeal site. These are Nos 24, 26 & 28. I understand that there is a previously approved scheme for the site<sup>7</sup>. However, this was for 18 units and involved new floors to the existing building. As such it is distinct from a new five story building. I have judged the scheme before me on its merits.
19. The officer's report on the scheme refers to the Council's Residential Design Guidance SPD. It sets out that the scheme would accord with the minimum requirement for 10m to the boundary wall and 21m between windows. In this regard the scheme would be compliant with the numeric policy requirements of this document and the London Plan and the detail of the balconies could be agreed by condition.
20. I note that whilst taller, the appeal scheme would move built form back from the common boundary with properties in Stuart Avenue. However, the rear elevation of the appeal scheme would face the dwellings in Stuart Avenue. This would be across the entirety of the rear boundary of the gardens of Nos 26 and 28. The width and height of the building would be significant and visible for occupiers of Stuart Avenue from both home and garden. Therefore, even taking into account the privacy separation distance, I consider that the effect would be overbearing. It would result in substantial harm to outlook.
21. The appellants have provided indicative details<sup>8</sup> regarding how landscaping of the areas around the buildings could be carried out. Nevertheless, whilst this

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<sup>5</sup> P102 Rev S Mark up for Appeal

<sup>6</sup> Eb7 Daylight and Sunlight Report March 2012

<sup>7</sup> LPA ref H/02159/13, outline on plan section BB DAS page 12

<sup>8</sup> Tretec

may provide setting to the building, it would not lessen the imposing nature of the building for the existing occupiers in Stuart Avenue.

22. The Council's statement of case also refers to noise and disturbance from plant that may be required for the scheme. However, had I been minded to allow the appeal I am satisfied that this could be dealt with by condition.
23. Therefore, whilst I do not consider that the scheme would harm the living conditions of existing occupiers with regard to privacy and noise and disturbance this does not alter my finding on outlook. I therefore find that the scheme would be in conflict with CS policy CSNPPF and DMP policies DM01 and DM02 which amongst other things set out that development proposals should be designed to allow for outlook for adjoining and potential occupiers and users.

#### *Travel plan*

24. The application was not supported by a Travel Plan which the Council consider is required by DMP policy DM17. The policy requires it to be developed, implemented and maintained with outcomes that can be monitored. The appellants provided an example of this process to the hearing, which the Council accepted could be undertaken in principle. There is a requirement for the provision of a Travel Plan in DM17 although I note that the threshold in the Council's SPD<sup>9</sup> for residential development is 50 units. However, the SPD does allow for a case by case assessment. I consider that it would be reasonable for a scheme of this size, which is close to the threshold, to provide a Travel Plan through the imposition of an appropriately worded condition.
25. The Council's second concern related to monitoring of the Travel Plan and the need for a financial contribution to be secured for this<sup>10</sup>. The SPD sets out a minimum and maximum amount and I have no evidence regarding how the amount for this scheme was arrived at. The appellants referred me to a high court judgement on this point<sup>11</sup>. In this case I agree with the appellants that the payment of a monitoring fee is not necessary to make the development acceptable in planning terms. Therefore, this contribution would not be necessary to make the development acceptable in planning term and would not meet the tests within the CIL Regs and those in paragraph 56 of the National Planning Policy Framework (the Framework).
26. Therefore, I consider that the absence of a travel plan could be resolved by use of a planning condition and in its absence the limited conflict with CS policy CS9 and DMP policy DM17, given the SPD threshold, in this regard would not be sufficient to resist the scheme.

#### *Climate change*

27. LP Policy 5.2 sets out requirements for energy assessments at part D. Part E is clear that carbon dioxide reductions should be met on site but if it is clear that this cannot be achieved then the shortfall can be provided off site or through a cash in lieu contribution.

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<sup>9</sup> Supplementary Planning Document : Planning Obligations April 2013

<sup>10</sup> SPD 3.1.19

<sup>11</sup> CO/4757/2014

28. The appellants have provided a 'Sustainable Design & Construction Statement'<sup>12</sup>. This document considers the requirements of part D of LP policy 5.2 and makes recommendations for the design of the building. The conclusions within the report are that an improvement of over 35% can be made against the 2013 Building Regulations. However, it is clear that to meet the zero carbon requirement in part B of the policy that a contribution in lieu would have to be made.
29. The LP policy as worded allows for this approach to meeting requirements for minimising carbon dioxide emissions. I agree with the Council that such a contribution should be provided by means of a planning obligation rather than by condition. I consider that this contribution would be necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind. Therefore, it would meet the tests within the CIL Regs and those in paragraph 56 of the Framework.
30. I have received a planning obligation which it appears is intended as a unilateral undertaking. However, it is not dated and it is not clear how the provisions of 9.1 would take effect as the bank have not signed it. Therefore, whilst I note that in principle the appellants are agreeing to make the contribution, I am not satisfied that the mechanism before me can be relied upon to take effect. As I am dismissing the appeal for other reasons, I have not pursued this matter.
31. I therefore conclude that in the absence of a means to secure the carbon offsetting contribution that the scheme would be in conflict with DMP policy CSNPPF and LP policy 5.2.

#### *Other matters*

32. The appellants case is that the scheme should not make provision for affordable housing. This case was supported by a viability submission. At the hearing the Council confirmed it would not be defending the reason for refusal relating to affordable housing. The appellants have submitted a planning obligation which would provide an affordable housing contribution on disposal other than for a private rented use. This would require a disposal viability assessment to be undertaken should the units be disposed of for anything other than private rented sector units. In principle this approach does not appear unreasonable and is supported by the provisions for build for rent outlined in the extract submitted as HD8 Homes for Londoners, Viability Review Mechanisms & Part 4 Build to Rent. Nonetheless, as set out above I am not satisfied that the mechanism before me can be relied upon to take effect. However, I am dismissing the appeal for other reasons I have not pursued this matter.
33. The Council confirmed that it considered that the provision of a suitable bin store could be controlled by condition. However, the appellants remained concerned about the need for the provision of a fully enclosed bin store. The site is constrained and the bin storage would be in close proximity to the side elevation of some ground floor units. Furthermore, the plans show it would be possible to walk through this area to access the rear shared garden area. In

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<sup>12</sup> Daedalus Environmental May 2017

this context I consider that the requirement for a fully enclosed bin store would be reasonable to protect the living conditions of future occupiers of the units.

34. I appreciate that the scheme would reuse a previously developed site in a location where there is access to public transport, shops and services. However, none of these matters alters my conclusions on the determining issues in the appeal.

### **Conclusion**

35. The scheme would not provide a suitable mix of dwellings, would harm the living conditions of existing occupiers and not provide suitable living conditions for future occupiers. In this regard it would be in conflict with the development plan. I appreciate that a travel plan could be provided and that the matter of a climate offsetting contribution could be resolved. However, paragraph 2 of the Framework is clear that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case there are not any material considerations that would lead me to make a decision other than in accordance with the development plan.
36. Accordingly, for the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*D J Board*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANTS:**

|                   |                     |
|-------------------|---------------------|
| Kieran Rafferty   | KR Planning         |
| Robert O'Hara     | ROH Architects Ltd  |
| Dr Andrew Golland |                     |
| David Azouri      | Dartland Properties |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                  |                          |
|------------------|--------------------------|
| Jaydine Keenan   | London Borough of Barnet |
| Nicholas Linford | London Borough of Barnet |
| Anna Cane        | London Borough of Barnet |
| Olivia Fuller    | London Borough of Barnet |

### **INTERESTED PERSONS:**

Valdet Arifi

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Travel Plan information
- 2 Policy DM10 of the Development Management Policies
- 3 Updated copy of summary table for reasons for refusal
- 4 Local Plan Supplementary Planning Document: Planning Obligations
- 5 Appeal Decision APP/N5090/A/10/2129022/NWF
- 6 Local Plan Supplementary Planning Document: Delivering Skills, Employment, Enterprise and Training from Development through s106
- 7 Supplementary Planning Document Affordable Housing
- 8 Homes for Londoners, Viability Review Mechanisms & Part 4 Build to Rent