



Appeal Decision

Site visit made on 1st October 2019

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2019

Appeal Ref: APP/T5150/W/19/3232281

5J Nicoll Road, London NW10 9AX

- 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 A Bacon, Berrien Springs Investment Ltd, against the decision of the Council of the London Borough of Brent.
 - The application Ref 18/0867, dated 5 March 2018, was refused by notice dated 29 April 2019.
 - The development is change of use from hotel (Use Class C1) to student accommodation (*sui generis*), involving internal alterations at the third-floor level to provide a total of 139 rooms, louvered privacy screens and ancillary support facilities.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the amended description of development which the appellant agreed with the Council, though removed the phrases "part retrospective" and "retention of" as these are not descriptions of the development.
3. The officer report refers to the development being part retrospective primarily based on the building now being used predominantly as student accommodation. The appellant agreed with the amended description referencing the development as being part retrospective, and I have no grounds on which to reach a different conclusion. Therefore, I have determined the appeal on that basis.
4. The appellant states that an additional plan (171120 A(GA)100 Rev B) was submitted to the Council as part of ongoing discussions regarding communal space, but it did not form part of the application. I have based my decision on the plans which the Council based its decision on, which are detailed on the decision notice.
5. A Unilateral Undertaking (UU) has been submitted with the appeal and the Council has commented on its provisions. I have taken the UU into consideration and this is a matter I return to later in my decision.

Main Issues

6. The main issues are:

- whether the development provides satisfactory living conditions for future occupiers, with particular regard to internal and external space, outlook, light, privacy and communal facilities;
- the effect of the development on the living conditions of existing adjoining occupiers, with particular regard to privacy, and
- whether the UU secures provision for student accommodation for members of a specified educational institution(s), or whether it secures provision for affordable accommodation.

Reasons

Living conditions - future occupiers

7. There is no disagreement between the parties on the need for student accommodation across London. The development would change the use of the premises from an apart-hotel (Use Class C1) with 126 private rooms, to student accommodation (*sui generis*) with 139 private rooms and communal facilities. I note that although the building is being used to accommodate students, most of the internal alterations and the limited operational development shown on the plans had not been carried out when I visited the site.
8. The building has four-storeys and a basement. Student rooms would be provided on all 5 floor levels. Although the Council has questioned the accuracy of plans in respect of room sizes, submissions from both parties refer to them as varying between 13.5 sq m and 15 sq m. I have no reason to disagree with these figures. However, I consider that the quality of the rooms should not be judged solely on their size, as, for example, a 15 sq m room in a basement with no outlook or natural light is not the same as a 15 sq m room on a third floor with a satisfactory outlook and level of natural light.
9. Nonetheless, the rooms would be used by future occupants to meet basic day-to-day needs of living, sleeping, washing, catering, studying and storage of personal items. As such, they need to be of a size to adequately satisfy such needs. I acknowledge that there are no nationally defined standards for student accommodation, and the Council has not referred to any policies within the development plan that detail specific standards for such accommodation. Although I also consider that the standards of Purpose Built Student Accommodation (PBSA) do not have to meet those of conventional residential accommodation, this appeal relates to the change of use of an existing building, which itself presents some constraints from the outset.
10. However, as each room would be required to meet the everyday needs of a student as described above for significant periods, potentially between 1 to 3 academic years, I consider the standard of accommodation needs to be better than that which a visitor to a hotel for a short period might expect.
11. Nearly all the rooms in the basement would have a single outlook onto a retaining wall at very close proximity. The retaining wall also has a boundary wall above it, around 3 m high, along the western boundary. I consider that the

quality of outlook from these rooms would not be of a satisfactory standard. Furthermore, in the absence of any compelling evidence to enable me to conclude otherwise, I consider it likely that the levels of natural light to these rooms would not be of a satisfactory standard.

12. On the ground-floor, railings are to be located above the retaining wall close to the sole windows of rooms 101 to 104. At the time of my visit the railings had planting growing up them from planters. If the planting was left in place, it would reduce the outlook from these rooms and the extent of natural light that the rooms would receive. If the planting was removed, these rooms would not be sufficiently private, given that the path that passes close by the windows is one of 2 main routes into the building.
13. The sole windows of most of the rooms between Nos 110 to 121 and Nos 124, 125 and 126, look directly onto a boundary wall at close proximity. The rooms along the western boundary that don't look directly onto the boundary wall, ie 112, 113, 117, 118 and 119, have narrow side facing windows that look into the gap between the building and boundary wall. I consider the quality of outlook from these rooms would not be satisfactory. The light levels to most of the rooms on the ground-floor would also be unsatisfactory. Furthermore, room 127 has a sole window positioned at a re-entrant corner of the building, which is very close to an access route into the building. Consequently, I consider the level of privacy afforded this room would not be of an acceptable standard.
14. At first-floor level, with a few exceptions, I consider most of the rooms would have a satisfactory outlook and receive a satisfactory level of light. However, the rooms with a single narrow window, ie 215, 216, 220, 221 and 222, would have a restricted outlook and receive limited natural light. The outlook from room 233 onto the four-storey building directly opposite would also be restricted.
15. The issues associated with the second-floor are similar to those identified at first-floor level, ie with a few exceptions I consider most of the rooms would have a satisfactory outlook and receive a satisfactory level of light. However, for rooms with a single narrow window, ie 315, 316, 320, 321 and 322, outlook and natural light levels would be restricted. The outlook from room 332 onto the building directly opposite would also be restricted.
16. The third-floor is where most of the internal alterations are still to take place and 3 vertical timber louvered screens would be installed for privacy reasons. Except for a few rooms, I consider most of the rooms on this floor would be provided with a satisfactory outlook and would receive satisfactory levels of natural light. However, a louvered screen would be installed virtually directly in front of the sole window to room No 10 and a secondary window to room 11. Although this would ensure acceptable privacy levels between these rooms and the building directly opposite, it would result in outlook and natural light levels for room No 10 not being satisfactory. Room No 11 has a further window, facing a different direction, which would provide an acceptable outlook and level of natural light.
17. Although the Council and the appellant disagree on the extent of area proposed internally for communal facilities, I consider the reception area to constitute a communal facility as this would be an integral part of the overall facility to be provided, and one that would be used by all future occupants. As such, the combined area of internal communal facilities would be around 195 sq m, and,

in addition to the reception area, would include at ground-floor level a communal/social/seating area with a small canteen. A small communal/reading/I.T. room would be provided on the first-floor (around 8.5 sq m), and the third-floor would have a communal/kitchen area (approximately 32 sq m) and a second communal area (around 19 sq m).

18. As no communal facilities are provided on the second-floor occupants residing on this floor would have to go to one of the other floors to access such a facility, which I consider to be unsatisfactory. Given the small size of the communal area provided on the first-floor, the extent of facilities on the third-floor area are unlikely to satisfy the demands likely to be made on them from occupants of the third-floor and occupants of the second-floor. The nature and extent of the communal room on the first-floor is unlikely to be adequate to meet the demands that would be made on it from occupants of the first-floor alone. Consequently, occupants of the second-floor that couldn't be accommodated on the third-floor would have to travel down 2 floor-levels to access the ground-floor communal area. Furthermore, on the ground-floor the canteen area would be relatively small, and no laundering facilities would be provided.
19. In the absence of a Management Plan for the accommodation, and in particular details of how the communal areas would be managed, it is not clear which of the facilities would be available and when and whether they could satisfy the likely demands. For example, what food/drinks would be available and at what times from the canteen, and would it be able to adequately provide for the potential number of customers? Bearing these factors in mind, I am not convinced that the overall extent, range and siting of the communal facilities would satisfactorily meet the needs of future occupants, who I consider would require satisfactory communal facilities given the limited size of the private rooms.
20. In respect of external amenity space, the plans only show a designated bin store/recycling area. However, during my visit I saw that a small corner within the site, close to room No 104, had been covered with a metal framed structure with planting growing over it. A few outdoor tables and chairs had been placed in this area. Given the constraints of the site there would be no further opportunity for outdoor amenity space to be provided within it. However, given the location of the site and its proximity to a range of facilities, including parks, and access to public transport, I consider the limited outdoor amenity space that would be available within the site would not be a reason to withhold planning permission.
21. Notwithstanding my conclusion regarding outdoor amenity space, in light of all other matters discussed above, I conclude that the development as a whole would not provide satisfactory living conditions for future occupants in respect of internal space, outlook, natural light, privacy and internal communal areas. As such the development would not accord with policies DMP 1 and DMP 20 of the London Borough of Brent Local Plan Development Management Policies (2016) (LPDMP), which, among other things, support development that provides high levels of internal amenity and is of an acceptable quality to meet appropriate standards for the needs of its occupants, including appropriate communal facilities. Nor would it accord with Policy 3.5 of The London Plan: Consolidated with alterations since 2011 (2016) (LP), which requires housing developments to be of the highest quality internally, or paragraph 127 of the

National Planning Policy Framework (the Framework), which seeks to ensure that developments provide a high standard of amenity for future users.

Living conditions – existing adjoining occupiers

22. Apart from the additional private student rooms that would be mainly introduced on the third floor, the relationship between all other private rooms and neighbouring properties would remain as it is. I consider that the use of the private rooms by students, as opposed to their use by occupants of an apart-hotel, would not significantly change the relationship with neighbouring properties and therefore existing privacy levels would be maintained.
23. As such, in this respect, the development would accord with paragraph 127 of the Framework, which seeks to ensure that developments provide a high standard of amenity for existing users.

Provisions of the Unilateral Undertaking

24. Policy 3.8 of the LP seeks to ensure Londoners have a genuine choice of homes. Paragraph 3.53A of the LP states that the Mayor will support proactive partnership working to secure accommodation that is more affordable for the student body. Paragraph 3.53B states that student accommodation should be secured by a planning agreement or condition relating to the use of the land or to its occupation by members of specified educational institutions. Where there is not an undertaking with a specified educational institution(s), providers should, subject to viability, deliver an element of student accommodation that is affordable. Paragraph 3.53C states that if the accommodation is not robustly secured for students, it will normally be subject to requirements of affordable housing policies. Paragraph 3.9.2 of The Mayor of London Housing Supplementary Planning Guidance (2016) (SPG), states that normally housing provision would be subject to the requirements of the Plan's affordable housing policy, but because student housing is used to meet distinct needs this requirement is not generally applied if the student accommodation is secured as such by planning agreement.
25. As noted above, the appellant has submitted a UU. In summary, the UU would commit not to permit the occupation of the student accommodation otherwise than in accordance with the student accommodation requirement. Notwithstanding concerns raised by the Council regarding a lack of clarity around some of the terms used in the UU and their definitions, the Council considers that the UU seems satisfactory to the extent that the use of the accommodation would be restricted to students. However, regardless of some of its detail, the UU is not dated or signed and does not have a site plan attached to it. As such, it is not currently a legally binding document. Consequently, the UU does not secure provision for student accommodation for members of a specified educational institution(s), nor does it secure provision for affordable accommodation. As such, the development does not accord with policies 3.8 to 3.13 or paragraphs 3.53A, 3.53B and 3.53C of the LP; paragraph 3.9.2 of the London Housing SPG, policy DMP15 of the LPDMP or policies CP2 and CP21 of the London Borough of Brent Local Development Framework Core Strategy (2010) (CS), which collectively seek to provide a choice of homes, a balanced housing mix, student accommodation for members of a specified educational institution(s) or affordable accommodation.

Other Matters

26. The appellant offers several considerations in support of the development. Thus, the site is close to a full range of services and facilities that provide for day-to-day living needs, which can be readily accessed by walking or cycling, with good public transport links. The development would optimise the use of a brownfield site, support the local economy and promote Brent as a centre for Higher Education. Development of student accommodation benefits the wider housing market as it frees up homes that are suitable for other demographics. It is also claimed that there have not been any complaints from residents regarding light levels since the inauguration of the premises.
27. The appellant also draws upon aspects of the LP and the Emerging London Plan (ELP) in support of the development. Thus, paragraph 3.52 of the LP states that London's universities make a significant contribution to its economy and labour market. It is therefore important that their attractiveness and potential growth are not compromised by inadequate provision for new student accommodation. Although I have not been provided with a copy of the ELP, the appellant asserts that paragraph 4.17.1 states that every 3 student bedrooms in PBSA that are completed equate to meeting the same need that one conventional housing unit meets. Hence, such accommodation would contribute to meeting a borough's housing target at a ratio of 3 student bedrooms to one home. The development of 139 student rooms would therefore equate to 46 conventional homes. The appellant also suggests that the ELP emphasises the need to develop sites at a higher density, particularly near town centres where there are good public transport links, thereby reducing the need for parking.
28. I have weighed all the considerations outlined above in the planning balance. Although the ELP has not yet been adopted and I have not been provided with its details, even if I were to give full weight to it the considerations outlined above neither individually nor collectively overcome the harm I have identified in respect of unsatisfactory living conditions for future occupiers.
29. I note that a small area of the site falls within the Harlesden Conservation Area (CA). The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of a CA, which is a matter of considerable importance and weight. Paragraph 193 of the Framework requires decision-makers to give great weight to the conservation of a designated heritage asset, CAs being designated heritage assets. Within the context of the site, I consider the proposed external alterations, ie the insertion of 2 windows and erection of 3 timber privacy screens, to be minor in scale and nature. Therefore, I consider that the development would not harm the CA.

Conclusion

30. For the reasons outlined above, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR