



Appeal Decision

Site visit made on 4 November 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/T5150/W/19/3226345

Willesden Green Garage, St Pauls Avenue, London NW2 5TG

- 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 Healey Development Solutions (Willesden) Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 17/5291, dated 12 December 2017, was refused by notice dated 20 February 2019.
 - The development proposed is the demolition of MOT garage and erection of a part seven-storey and part four storey building with basement level to provide 70 self-contained flats (35 x 1 bed, 22 x 2 bed and 13 x 3 bed) with ground, third and fourth floor amenity spaces and ground floor play area, provision of basement car parking, cycle and refuse storage, alterations to vehicular accesses and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of MOT garage and erection of a part seven-storey and part four storey building with basement level to provide 70 self-contained flats (35 x 1 bed, 22 x 2 bed and 13 x 3 bed) with ground, third and fourth floor amenity spaces and ground floor play area, provision of basement car parking, cycle and refuse storage, alterations to vehicular accesses and associated landscaping at Willesden Green Garage, St Pauls Avenue, London NW2 5TG in accordance with the terms of the application, Ref 17/5291, dated 12 December 2017, subject to the conditions listed at Annex A.

Application for costs

2. An application for costs was made by Healey Development Solutions (Willesden) Ltd against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Preliminary Matters

3. The address on the application form is different to that contained on the appeal form, which matches the address on the Council's decision notice. I have used the address on the Council's decision notice in my formal decision.
4. The original development proposal was for 81 flats. However, both the scale and the design of the scheme has changed since this time and it is the appeal for the revised scheme which I have determined. I have therefore used the description of the development contained on the appeal form and the Council's decision notice, in my formal decision above.

Main Issues

5. The main issues are the effect of the proposal on:

- the living conditions of nearby occupiers with particular regard to natural light
- highway safety and vehicular and pedestrian movement
- carbon emissions
- affordable housing provision in the area.

Reasons

6. The appeal site is currently occupied by an open-air car-sales business and a car wash / valet business. The car-sales business occupies the eastern part of the site closest to No 75 St Pauls Avenue, whilst the car wash / valet business occurs in a 2-storey building at the western end of the site.
7. The proposed development would entail the demolition of the existing structures and the construction of a residential apartment building, up to 7-storeys in height, with a basement car park and associated landscaping and amenity spaces.

Living Conditions

8. To the east of the appeal site is a row of traditional, 2-storey semi-detached dwellings on the northern side of St Pauls Avenue. The nearest pair of semi-detached dwellings, Nos 75 and 73 has a substantial 2-storey rear outrigger with a pitched roof, which is set-back a short distance from the respective gable elevations. The roof ridgeline of the outrigger follows the property boundary between Nos 73 and 75.
9. There is a brick boundary wall some 2.0metres high that separates the appeal site from No 75, which has been divided into a ground floor flat (No 75) and an upper floor flat (No 75A), both of which have a similar internal layout. There is a narrow path adjacent to the boundary wall from St Pauls Avenue, which leads to the side and rear garden areas.
10. There are no windows on the western gable elevation of the main building of No 75/75A. However, there are bedroom windows at ground and first floor level on the front and rear sides of the main building, facing generally southwards towards St Pauls Avenue and northwards towards the rear.
11. The rear outrigger contains large bedrooms at its end, with a large window at first floor level and a window / doorway at ground floor level, facing towards the rear amenity spaces. The western side elevation of the outrigger, facing towards the appeal site, contains two windows and a doorway / window at both ground floor and upper floor level, which are generally aligned. The doorway / windows are furthest north and provide access to the side and rear garden areas from the kitchens of both flats, the upper one via a metal staircase and porch. The windows / doorways provide larger areas of glazing than the other window openings along the western elevation. The two central windows are obscure-glazed and serve bathrooms, where a loss of natural light would not be significant.

12. The Council's first reason for refusal concerns the impact upon the southernmost of the ground floor windows in the side elevation of the rear outrigger, which affords light to a small living room. The Council's statement also refers to the impact upon the ground floor kitchen, as do third party objectors.
13. The revised appeal development has had some regard to reducing its impact upon Nos 75 / 75A in terms of natural light, including a stepped design to the rear, level with the rear outrigger¹. The building envelope would be set below a line of 30 degrees from the ground floor windows and at a height of 2.0 metres, until the 7-storey element that fronts onto Park Avenue, which is some 24 metres from them. The entire development would be below a similar line of 30 degrees from the first floor windows.
14. The Brent Design Guide Supplementary Planning Document 1 of November 2018 (SPD1) recommends that developments should accord with such 30 degree lines to the rear of existing dwellings, although the principle would equally apply in this case in terms of side-to-side elevations.
15. I note from the evidence that the appeal development would perform better in terms of daylight loss than a 'mirror-image' development of the semi-detached dwellings at Nos 73 and 75, with the boundary wall as a centre line. I also note that an equivalent window of a comparator dwelling (71 St Pauls Avenue, constructed to the same design and layout as No 75) performs less well in terms of natural light (against No 73) than would be the case for No 75 against the appeal development. The Council has not disputed these findings and I give them weight.
16. It is also not disputed that the siting, scale and massing of the appeal development would significantly reduce natural light to habitable ground floor rooms on the western side of the rear outrigger. This would detract from the usability of these ground floor communal rooms and would therefore be detrimental to the living conditions of the occupiers of the ground floor flat.
17. However, the small size of the sitting room suggests that it has only a limited function within the flat. Furthermore, I am not satisfied that the impact of the proposed scheme would reduce its usability or the usability of the kitchen to an unacceptable extent, particularly given the comparable situation at Nos 71 / 73. I also note that the bedrooms, which would be either unaffected or affected to a very limited degree by the proposed scheme, provide alternative rooms for the occupiers to use.
18. The proposal would have a significantly lesser impact upon the corresponding habitable rooms in the upper floor flat, which would not be harmful to the living conditions of their occupiers.
19. The National Planning Policy Framework 2019 (the Framework) advises that substantial weight should be given to the use of 'suitable brownfield land within settlements for homes...'. The Framework also advises taking 'a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site'.
20. In this case, the appeal development would be making effective use of a brownfield site at a sustainable location. The site is within a predominantly

¹ Submitted drawing ST-04-104A

residential urban area, close to local shops and services as well as public transport infrastructure, such as Willesden Green Underground Station.

21. The provision of a significant number of new homes, would contribute towards meeting Brent's current housing requirement, against which it slightly under-delivered during the period 2015/16 – 2017/18². Furthermore, there is no dispute between the main parties that the provision of affordable and family homes would be acceptable. I am also content with the approach.
22. Reference is made to an assessment carried out by Brooke Vincent Partners in response to a planning application made in 2010, which was refused. I am not familiar with this scheme or the assessment, which is not in the evidence before me. Any impact that this scheme may have had with regard to Nos 75 / 75A does not have a bearing on this appeal, which I have determined on its individual merits.
23. Whilst not referenced in the Council's reasons for refusal, a number of third parties have objected to the proposal in terms of the effect it would have on natural light to other nearby properties, including along Park Avenue. From the evidence I am not satisfied that the appeal development would significantly affect any properties other than 75 St Pauls Avenue in this regard.
24. For these reasons, whilst the appeal development would adversely affect the living conditions of the occupiers of No 75 with regard to natural light, the layout of the properties and the limited extent of the adverse effects means that this would not result in unacceptable harm. On balance, I am satisfied that the benefits of the proposed scheme would outweigh this limited harm and would therefore be acceptable. It would therefore accord with Policy DMP1 (General Requirements) of the Brent Local Plan Development Management Policies 2016 (BLPDMP), and guidance contained within SPD1 and the Framework.

Highway safety and vehicular and pedestrian movement; Carbon emissions; and Affordable housing provision in the area.

25. The Council's second reason for refusal concerns additional pressure on servicing, parking demand and transport infrastructure to the detriment of the free and safe flow of traffic and pedestrians; additional carbon dioxide emissions; and, failure to provide the maximum reasonable amount of affordable housing.
26. Measures to address these and other matters were proposed in the Council's officer report to be addressed by way of a legal agreement prior to the granting of planning permission. The appellant has subsequently provided a certified copy of a signed Unilateral Undertaking (UU) in response to these matters which is said to be consistent with the agreed heads of terms listed in the officer report.
27. Following consideration of the submitted UU, the Council has withdrawn its second reason for refusal on the basis that it would satisfactorily address its stated concerns. I have considered the submitted UU and I am satisfied that it would be necessary to make the development acceptable in planning terms,

² Housing Delivery Test: 2018 Measurement

would be directly related to the development and would be fairly and reasonably related in scale and kind to the development³.

28. For these reasons the signed and dated UU means that the proposed development would have an acceptable impact with regard to Highway safety and vehicular and pedestrian movement; Carbon emissions; and Affordable housing provision in the area. It would therefore accord with Policies DMP1 and DMP12 (parking) of the BLPDMP; Policy CP19 (climate change mitigation and adaptation) of the Brent Core Strategy 2010; Policies 5.2 (minimising carbon dioxide emissions), 5.3 (sustainable design and construction) and 7.14 (improving air quality) of the London Plan 2016⁴ and with guidance contained in the Mayor of London's Sustainable Design and Construction SPG 2014.

Other Matters

29. In addition to matters addressed in my reasons above, objections were made on various other grounds by interested parties. These matters were considered by the Council in reaching its decision to refuse planning permission and are not listed as reasons for refusal.
30. From the evidence, and my observations on site, I am satisfied that the scale, siting, massing, design and materials of the proposed development respond to the infill nature of the appeal site. The proposed development would have appropriate regard to neighbouring properties and would not harm the setting of the nearby listed building, Kingsley Court. The proposed landscaping and greenspace provision would also be in keeping with the urban character and appearance of the area.
31. Concerns regarding potential flood risk, including interactions with the sewer system; the impact of potential land contamination on the site; noise from the proposed development, including the basement car park gate; and noise and disturbance during the construction period could be satisfactorily addressed by way of conditions.
32. No substantive evidence has been presented that the appeal development would significantly impact upon existing local services, such as GP surgeries and schools. I also note that the appeal development would be liable for a Community Infrastructure Levy (CIL) charge which could be used to support facilities in the area. Some objections concern potential impacts of parts of the scheme in terms of generating anti-social behaviour, causing disruption to cycle infrastructure in the area or adversely affecting the microclimate of the area. Again, no substantive evidence has been provided to support such concerns.
33. I am content from the evidence that there would be adequate waste storage arrangements, and sufficient family housing within the context of the scheme. Furthermore, there would not be harmful overlooking of, or significantly reduced outlook from, neighbouring properties as a result of the proposal.
34. Some objections concern the principle of the development and whether an alternative park or recreation scheme would be better. Others concern the perceived lack of benefits of the scheme for existing residents in the area, or whether there would be undue noise from construction. Such matters are outside the scope of this appeal or are controlled by other means.

³ Paragraph 56 of the Framework

⁴ The Spatial Development Strategy for London consolidated with alterations since 2011

35. None of these matters cause me to reach a different conclusion with regard to the appeal development, the overall impact of which would be acceptable.

Conditions and Conclusion

36. The Council has suggested a number of conditions are attached to any grant of planning permission, should the appeal be allowed, which I have considered in light of Government guidance.
37. In addition to the standard commencement condition, a condition specifying the approved drawings would be necessary for reasons of certainty. Conditions specifying the maximum permitted internal noise levels within the residential development hereby approved and the noise levels of the associated plant and ancillary equipment would be necessary to protect the living conditions of nearby and future occupiers.
38. A condition requiring a minimum number of dwellings to be constructed so as to meet accessibility / adaptability standards would be necessary in order to meet the needs of people with disabilities. A condition requiring provision of marked vehicle parking spaces / charging points would be necessary to ensure the safe and effective use of the parking areas.
39. A condition preventing the disturbance of nesting birds on the appeal site by inappropriate vegetation clearance would be necessary in the interests of biodiversity.
40. Pre-commencement conditions relating to materials and landscaping would be manifestly necessary to protect the character and appearance of the area. Pre-commencement conditions relating to land contamination and drainage would be manifestly necessary in the interests of safety and the living conditions of nearby occupiers.
41. A condition relating to water consumption standards for the dwellings hereby approved would be necessary to provide sustainable development. Pre-commencement conditions requiring the approval of air quality mitigation measures and details of the gate and access to the basement car park would be manifestly necessary to protect the living conditions of future and nearby occupiers.
42. Pre-commencement conditions concerning the approval of details for certain works relative to the nearby railway / Underground tracks would be manifestly necessary to protect future and nearby occupiers and to ensure the safe operation of such transport infrastructure.
43. However, no evidence has been provided to show that a condition restricting permitted development rights under the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) would be necessary or reasonable to make the development acceptable in planning terms.
44. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is allowed.

Andrew Parkin

INSPECTOR

Annex A – Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning on the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings and/or documents:
 ST-02-099B; ST-02-100A; ST-02-101A; ST-02-102A;
 ST-02-103A; ST-02-104A; ST-02-105A; ST-02-106A;
 ST-02-107A; ST-02-108; ST-02-109A; ST-02-111; ST-02-115;
 ST-03-100A; ST-03-101A; ST-03-102A; ST-03-103A;
 ST-03-104A; ST-03-112; ST-04-100A; ST-04-101A;
 ST-04-102A; ST-04-103A; and ST-04-104A

- 3) All residential premises shall be designed in accordance with BS8233:2014 'Guidance on sound insulation and noise reduction for buildings' to attain the following internal noise levels:

Time	Area	Maximum noise level
Daytime Noise 07:00 – 23:00	Living rooms and bedrooms	35 dB LAeq (16hr)
Night time noise 23:00 – 07:00	Bedrooms	30 dB LAeq (8hr)

Tests shall be carried out prior to first occupation within one room of each built facade type for a living and bedroom area over a four-day period, to show that the required internal noise levels have been met and the results submitted to the Local Planning Authority for approval in writing.

- 4) Any plant together with any associated ancillary equipment shall be installed so as to prevent the transmission of noise and vibration into neighbouring premises. The rated noise level from all plant and ancillary equipment shall be 5dB(A) below the measured background noise level when measured at the nearest noise sensitive premises. An assessment of the expected noise levels shall be carried out in accordance with BS4142:2014 'Methods for rating and assessing industrial and commercial sound.' and any mitigation measures necessary to achieve the above required noise levels shall be submitted to the Local Planning Authority in writing for approval. The plant shall thereafter be installed prior to the first use of the building to which the plant relates and maintained in accordance with the approved details for the lifetime of the Development.
- 5) Not less than 10% of residential units shall be constructed to wheelchair accessible requirements (Building Regulations M4(3)) or shall meet easily accessible/adaptable standards (Building Regulations M4(2)) unless otherwise agreed in writing by the Local Planning Authority
- 6) Prior to the commencement of the use of any part of the approved Development the following shall be constructed and permanently marked out:-

- the approved number of car parking spaces as shown on the approved plans which shall include the provision of at least 20% active and 20% passive electric vehicle charging points and at least 8 spaces designed and laid out for disabled parking
- cycle parking numbers as approved

Thereafter the approved parking shall be retained and used solely for the specified purposes in connection with the Development hereby approved for the lifetime of the Development and shall not be obstructed or used for any other purpose/s unless otherwise agreed in writing by the Local Planning Authority.

- 7) Vegetation clearance of shrubs/trees shall be undertaken outside of the nesting bird season (generally extends between March and September inclusive). If this is not possible then any vegetation that is to be removed or disturbed shall be checked by an experienced ecologist for nesting birds immediately prior to works commencing. If birds are found to be nesting any works which may affect them is required to be delayed until the young have fledged and the nest has been abandoned naturally.
- 8) Before any above ground construction work (excluding demolition) is commenced, details of materials for all external work shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 9) Before any above ground construction work (excluding demolition) is commenced a detailed scheme for the hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping works shall be fully completed prior to occupation of the building(s), or within 12 (twelve) weeks of the commencement of the next planting season. Such a scheme shall include, but is not limited to:-
 - (a) Details of proposed walls, fencing and other means of enclosure indicating materials and heights, including secure fencing around the boundary of the site and the neighbouring designated SINC areas;
 - (b) Details for all new tree planting across the site, with all new trees planted at a minimum girth of 12-14cm,
 - (c) Details of adequate physical separation, such as protective walls and fencing between landscaped and paved areas;
 - (d) Details of existing contours and any proposed alteration to ground levels such as earthmounding;
 - (e) Details of any balustrade/balcony treatment
 - (f) Details of areas of hard landscape works and proposed materials, including details of a robust and durable choice of material for the refuse turning area;
 - (g) Details of the proposed arrangements for the maintenance of the landscape works.
 - (h) Details for the provision for outside seating / benches and children's play equipment
 - (i) Details for the provision of on-site bird and bat boxes

Any planting that is part of the approved scheme that within a period of five years after planting is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced with others of a similar size and species and in the same positions, unless the Local Planning Authority first gives written consent to any variation.

- 10) Prior to first occupation of the development hereby approved, confirmation from the Building Control body shall be submitted to the Local Planning Authority to demonstrate that the relevant building has been designed so that mains water consumption does not exceed a target of 105 litres or less per person per day, using a fittings-based approach to determine the water consumption of the development in accordance with requirement G2 of Schedule 1 to the Building Regulations 2010.
- 11) Notwithstanding the details submitted in the Air Quality Report (CS093291-03 dated December 2017) in support of the application, prior to the commencement of development further details on the proposed mitigation measures for the site based on the APEC levels B/C and also the transport emissions being above benchmark emissions for AQ neutral shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and maintained as such for the lifetime of the development.
- 12) No works shall take place until full details of a drainage strategy detailing any on and/or off site drainage works which shall include but is not limited to a scheme of drainage measures for all areas of hard surface within the site, showing those areas to be treated by means of hard landscape works to utilise a sustainable urban drainage system (SUDS) to reduce run-off rates, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to first occupation of the development and shall be retained for the lifetime of the Development.
- 13) Prior to the commencement of above ground works further details of the proposed access and gate to the basement car park shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and maintained as such for the lifetime.
- 14) **SITE INVESTIGATION AND REMEDIATION**
 - (a) Prior to the commencement of any works on site, with the exception of works necessary to facilitate compliance with part (a) of this condition, a Site Investigation shall be submitted to and approved in writing by the Local Planning Authority. The Site Investigation shall be carried out by competent persons in accordance with the principles of BS 10175:2011 to determine the nature and extent of any soil contamination present; include the results of any research and analysis undertaken as well as an assessment of the risks posed by any identified contamination; and include an appraisal of remediation options should any

contamination be found that presents an unacceptable risk to any identified receptors.

(b) Prior to the commencement of any works, with the exception of works necessary to facilitate compliance with part (b) of this condition and UNLESS the Local Planning Authority has previously confirmed in discharging part (a) above that no remediation measures are required, a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority.

The Remediation Strategy shall specify measures to contain, treat or remove any soil contamination to bring the site to a condition suitable for the intended residential use; include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures; ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The works shall be carried in accordance with the approved details in accordance with the approved timetable of works. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Any remediation measures required by part (a) above shall be carried out in full.

(c) Prior to the occupation of the Development and UNLESS the Local Planning Authority has previously confirmed in discharging part (a) above that no remediation measures are required, a Verification Report shall be submitted to and approved in writing by the Local Planning Authority. The Remediation Verification Report shall demonstrate that the remediation has been carried out in accordance with the approved Remediation Strategy; and that the Development is permitted for its approved end use.

- 15) Prior to the commencement of development further details of a detailed design and construction method (in consultation with London Underground) shall be submitted to and approved in writing by the local planning authority which:
- provide details on the use of tall plant
 - accommodate the location of the existing London Underground structures

The approved details shall be implemented in full and maintained as such for the lifetime of the development.

- 16) Prior to the commencement of development further details of piling and excavation works (in consultation with Network Rail) shall be submitted to and approved in writing by the local planning authority which provide details of:
- Vibro-compaction machinery/piling machinery
 - Ground treatment works
 - A method statement to include the proposed methods of piling, excavation and construction

All works shall be carried out in accordance with the approved details and maintained as such for the lifetime of the development.