
Appeal Decision

Site visit made on 15 September 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2020

Appeal Ref: APP/N5090/W/20/3251900

Land at Oakleigh Court, Church Hill Road, Barnet EN4 8UX

- 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 Bluebay Properties Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/0651/FUL, dated 23 January 2020, was refused by notice dated 7 April 2020.
 - The development proposed is new block of 4no flats with landscaping and parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the address from the appellant's appeal form and the Council's decision notice in the banner heading, rather than the address on the application form, as this more accurately describes the location of the site. Therefore, I have determined the appeal on this basis.
3. As part of the appeal the appellant submitted amended plans. The plans show revisions to the internal layout of the proposed building to address the Council's 3rd reason for refusal in terms of storage space. The Council have had an opportunity to comment on the amended plans and interested parties would have been notified of the appeal. Having had regard to the Wheatcroft Principles¹ and Government guidance², and given that the amendments only relate to the internal makeup of the proposal, I am satisfied that the amendments would not prejudice interested parties. Consequently, I have accepted the amended plans and decided the appeal on this basis.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the site and surrounding area, with particular regard to the presence of trees on the site;
 - The effect of the proposed development on the living conditions of the occupiers of the neighbouring properties, with particular reference to outlook and outdoor space; and

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

² Annexe M.1.1 and M.2.1 of Planning appeals – England: Procedural Guide

- Whether the proposal would provide acceptable living conditions for future occupants, with particular reference to the standard of accommodation, outdoor space, outlook and light.

Reasons

Character and appearance

5. The appeal site is an open piece of land located off Church Hill Road and it is located behind a gated access. The site is situated between a block of flats and the rear boundary of Nos 8-10 Church Hill Road, which form part of a shopping parade, with predominately residential properties above. The site also adjoins the rear gardens of residential properties on Jackson Road where there are a number of mature trees and landscaping.
6. A substantial mature oak tree, along with a number of other trees exists on the site, which is covered by a Tree Preservation Order (TPO/CA/356/T1). The oak tree is substantial in size and located towards the northern boundary of the site, it is an attractive specimen and makes a substantial and positive contribution to the visual amenity of the area, as recognised by its inclusion in the TPO.
7. At the time of my site visit the majority of the site had been sectioned off by temporary metal fencing, with a metal container and construction materials and paraphernalia on parts of the site. The area closest to Nos 8 and 10 was being used for the parking of vehicles.
8. The proposal would include a 2 storey block of flats along with 8 vehicle parking spaces and 6 cycle parking spaces. The proposed building would be sited adjacent to the rear boundary of the properties on Church Hill Road and the rear boundaries of Jackson Road. The front elevation would face the private gated driveway access from Church Hill Road. The parking spaces would abut Oakleigh Court, and the vast amount of proposed amenity space would be located to the rear and side elevation of the building.
9. Due to the positioning of the proposal it would not align with the existing nearby buildings, and would be at odds within the existing pattern of development, particularly those on Church Hill Road. Whilst the flats at Oakleigh Court also face on to the access road, the proposal, due to the separation of the new parking area, combined with its design and size, would not relate well to the existing context and would appear incongruous.
10. The proposal would also be located near to the recent development at 14 Church Hill Road, which is opposite the site. Given the existing development in the area, the proposal would appear as a cramped and oppressive development on entering the access road. This would be in contrast to the relatively open and spacious nature of the existing site, particularly on the approach from the access gate.
11. The mature trees in and around the site are an important feature of the character and appearance of this area, the verdant nature of these features break the otherwise built up aspect of the area. Due to the height and prominence of the trees, they are readily visible outside the site, and they form a visible part of the street scene from the nearby roads, particularly the shopping parade.

12. The proposal would remove 5 category C trees, which would result in a loss of the verdant character that currently exists. The proposal would also impact on the root protection areas (RPA) of the retained trees, particularly the Oak tree. The appellants Arboricultural Reports³ state that the proposed foundations, hardstanding car park area and soft landscaping, would be within approximately 48% of the RPA of the oak tree.
13. The report also highlights that other trees would also be impacted, although not to such an extent as the Oak tree. Given that the BS 5837: 2012 recommends that new permanent hard surfacing should not exceed 20% of any existing unsurfaced ground within the RPA, the proposal would greatly exceed this figure. The proposed parking area and cycle store would cover a large part of the RPA. This would have a substantial impact on the RPA of the TPO tree and others growing nearby, which could lead to them being damaged and dying. This would have a significant harmful effect on the character of the site and the surrounding area, especially as the trees still have a relatively long lifespan.
14. Whilst I note there was a previous planning application on the site⁴, which was dismissed on appeal, I have only been provided with a small extract from the appeal decision, and I do not have full details of the previous proposal or an appeal reference. In any case, this was a number of years ago and from the provided extract, it would appear that the site circumstances have changed since this was determined by the previous Inspector. Therefore, I have determined the appeal on the basis of the current circumstances. I note there have been a number of previous planning applications refused and approved on, or near the site, however, I have determined the proposal before me on its own planning merits.
15. The proposed development would be harmful to the character and appearance of the site and surrounding area, with particular regard to the presence of trees on the site. Therefore, it would be contrary to Policy CS5 of Barnet's Adopted Core Strategy (CS) (2012), Policy DM01 of the Adopted Development Management Policies Development Planning Document (DMP) (2012) and the Adopted Residential Design Guidance Supplementary Planning Document (RDG) (2016). These policies and guidance, amongst other things, collectively seek development to be high quality and to respects local context and distinctive local character and to protect existing trees and their root systems. The Council in its reason for refusal referred to Policy CS1 of the CS, however, this policy is not directly relevant to the proposal as it is concerned with major housing and economic growth, rather than smaller schemes such as this.

Living conditions of the occupiers of the neighbouring properties

16. The proposed block of flats would be sited in close proximity to the boundaries of Nos 6, 8 and 10 Church Hill Road. Nos 6 and 8 have retail stores at ground level with residential at first floor, as well as rooms in the roofspace. The appellant has highlighted that No 10 is in commercial use at the ground floor and first floor levels. Due to the use of the ground floor areas being used for commercial purposes, and No 10 having commercial premises on the first floor,

³ Bartlett Tree Consultants – Arboricultural Implication Assessment and Tree Protection Plan (2019) and Tree survey and Tree constraints plan (2019)

⁴ N10810C/03

I consider that the proposal would not cause significant harm to these areas of the properties, as they are not in residential use.

17. However, the proposal would be in close proximity to the neighbouring residential properties on Church Hill Road at the first floor level. Given the proximity and the height of the proposal, it would introduce built form into an area which is currently free from development and relatively open. This change would significantly alter the open and green natured outlook for the occupiers of these properties. It would appear as an overbearing and obstructive structure and would result in a significant loss of outlook, and would create a sense of enclosure, when in the properties and in the outdoor space.
18. Table 2.4 of the Sustainable Design and Construction SPD (2016), advises that there should be a minimum distance of 21 m between properties with facing windows to habitable rooms to avoid overlooking, and 10.5 m to a neighbouring garden. The proposed development would fall significantly short of the required standard, with a distance of approximately 6.7m to windows likely to be serving habitable rooms and approximately 1m to No 6's outdoor space.
19. I note that the submitted plans indicate that the windows on the proposed development on these elevations would be obscure glazed and non-opening below 1.8m. However, this solution would then present issues for the future occupiers in terms of outlook. The appellant has also proposed to finish parts of the appeal building with vertical planting, to reduce any potential impact on outlook. Whilst I acknowledge that this would soften the appearance of the proposal in terms of providing greenery on the built form, it would not completely cover the building, and the proximity and stature of the proposed building would still exist.
20. The Council has stated that the appeal site is part of the re-provision of amenity space for 14 Church Hill Road, which has been constructed⁵, and that 50sqm was provided at the site. As the proposal only provides 33sqm, it would fall short of this standard. Furthermore, as this amenity space is situated directly adjacent to car parking, it would not provide a user friendly or attractive space for outdoor activities.
21. The proposed development would harm the living conditions of the occupiers of the neighbouring properties, with particular reference to outlook and outdoor space. Therefore, it would be contrary to Policy CS5 of the CS, Policy DM01 and DM02 of the DMP, and the Council's Sustainable Design & Construction Supplementary Planning Document (SDC) (2016) and the RDG. These policies and guidance, amongst other things require development to be designed to allow for adequate privacy and outlook for adjoining and potential occupiers and users and should retain outdoor amenity space having regard to its character.

Living conditions of the future occupiers

22. The Council has suggested that Flat 3 would fall short of the required minimum space standards, and would therefore, fail to provide an acceptable level of accommodation. However, the submitted plans show that it would have a Gross Internal Area (GIA) of 61sqm, which would meet the requirement for a 2 bed 3

⁵ 15/07588/FUL

person flat as set out in the London Plan (2016) and SDC. It would, therefore, provide an acceptable level of accommodation for the intended occupancy levels.

23. In terms of built in storage, Flats 1 and 3 would have a requirement of 2sqm and Flats 2 and 4 would have a requirement of 1sqm. These have been identified within the amended plans for all 4 units, therefore, it is compliant with the necessary standards for storage space.
24. In terms of outlook, the SDC states that Bedrooms and living rooms /kitchens should have a reasonable outlook with clear glazed windows. However, the submitted plans show that the windows for Flats 2 and 4 would have windows which are obscure glazed, with only a fanlight opening. Whilst this would help protect the privacy of neighbouring properties, it would not provide a reasonable outlook for future occupiers. Furthermore, the eastern flank window serving the living room for these 2 units would also be obscure glazed with only a fanlight opening. Therefore, these units would in practice be single aspect dwellings.
25. Consequently, the outlook for flats 2 and 4 would not provide acceptable living conditions for the future occupants. The Council has also suggested that the proposal would provide a lack of daylight/sunlight to the bedrooms of Flats 2 and 4. Whilst they would be obscured glazed and north facing, I consider that the bedrooms would receive adequate amounts of light. In addition, other windows in the properties would receive daylight.
26. In relation to Flats 3 and 4, the appellant's design and access statement states that the outdoor amenity space would be communal. However, the submitted plans do not clearly define how this is provided, or whether it is actually a usable space for its intended purpose. Given that the communal areas are positioned adjacent to the proposed car parking and cycle storage areas, it is unclear whether any of the space being suggested is useable or would have any means of functionality to serve its purpose. In addition, Flats 1 and 2 do not accord with the requirements set out in the SDC, being short of the 20 sqm and 15 sqm requirements, which would further reduce the effectiveness of the communal amenity space for the future occupants.
27. I note that the appeal site lies within 140m of a substantial public park, Oakhill Park. However, this would not be used in the same way that a private garden within, or close to the curtilage of a residential dwelling would be used. Where for example, young children may play, or it may be used for drying washing. Therefore, it does not overcome the reduced outdoor space provision provided as part of the proposal.
28. The appellant has highlighted that the proposed density of the site is at an acceptable level using the London Plan density limits. However, whilst it may be acceptable in this aspect, it would not overcome the harm that I have identified above.
29. Whilst I have identified that the proposal would not have a materially harmful effect on the standard of accommodation and light, the proposed development would not provide acceptable living conditions for future occupants, with particular reference to outdoor space and outlook. Therefore, it would be contrary to Policy 3.5 of the London Plan, policies CS NPPF, CS1 and CS5 of the CS, Policy DM01 and DM02 of the DMP, the SDC and the RDG. These policies

and guidance, amongst other things require development to be designed to allow for adequate privacy and outlook for adjoining and potential occupiers and users and should retain outdoor amenity space having regard to its character.

Other Matters

30. I note that the appellant has stated that the site is located in a highly sustainable location, with easy access to local amenities, and has transport links such as the bus routes immediately outside the site. I also acknowledge that a development such as this, would support the local commercial uses nearby, and would provide further housing for the housing supply in the area. The appellant has also highlighted that the re-use of the space would make a positive contribution, by removing potential dark areas for anti-social behaviour.
31. However, these matters do not outweigh my findings in respect of the effect of the proposed development on the character and appearance of the area, the living conditions of the occupiers of the neighbouring properties, and the intended future occupiers.

Conclusion

32. For the reasons set out above, I conclude that the appeal is dismissed.

D Peppitt

INSPECTOR