

Appeal Decision

Site visit made on 18 August 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th October 2020

Appeal Ref: APP/N5090/W/20/3248645

Land at 49 and 51 Beresford Avenue, London N20 0AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Vince Millen (Millen Homes Ltd) against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/5079/OUT, dated 16 September 2019, was refused by notice dated 20 January 2020.
 - The development proposed was originally described as 'Retention of 49 and 51 Beresford Avenue to provide 6 Passive Eco Houses'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 6 passive semi-detached houses and provision of new access at land at 49 and 51 Beresford Avenue, London N20 0AD in accordance with the terms of the application, Ref 19/5079/OUT, dated 16 September 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Millen Homes Ltd against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Procedural Matters

3. The address in the heading above has been taken from the appeal form as it is more accurate than the planning application form. The description of the development in the heading has been taken from the planning application form. However, the appeal form describes the proposal more accurately and I have therefore used that wording in the formal decision, albeit omitting the repetition of the site address.
4. Outline planning permission is sought with details of access and layout to be considered at this point and appearance, landscaping and scale reserved for future consideration. I have therefore taken the submitted drawings into account insofar as they relate to access and layout but otherwise treated them as illustrative.

Main Issues

5. The main issues are the effects of the proposal on: (i) the living conditions of nearby residents, with particular reference to noise and disturbance; and (ii) highway safety and the free flow of traffic in Beresford Avenue, with particular regard to the movement of large vehicles.

Reasons

Living conditions

6. The appeal site comprises 49 and 51 Beresford Avenue, which are residential properties located towards the end of a cul-de-sac. A lane between 47 Beresford Avenue and No 49 connects to Weirdale Avenue and provides access to the rear of the properties in both roads.
7. A Noise Assessment was submitted with the application subject to this appeal. It calculates the anticipated noise levels at the closest windows of Nos 47 and 49 from vehicles moving along the access road. It concludes that the noise generated would not be harmful to the occupiers of the properties. Although noise levels within the ground floor rooms of the properties may be close to acceptable limits, assuming the windows are open, it states that acoustic fencing could mitigate this. The Council's Environmental Health Officer (EHO) raised no concerns with the assessment. The EHO also raised no objection in respect of vibrations or light from vehicles using the access road.
8. The Council considers that the use of the access road would result in an unacceptable level of noise and disturbance; however, it does not provide reasons why it considers this to be the case, nor any technical evidence to counter the findings of the Noise Assessment. In the absence of substantive evidence indicating otherwise, I have no reason to conclude that the anticipated noise levels are inaccurate.
9. Interested parties suggest that acoustic fencing is intended to attenuate noise at a distance, deflect rather than absorb noise and would not reduce vibrations from vehicles. Product details have been submitted which indicate that noise can be absorbed by acoustic fencing. I have no firm evidence which suggests this would not be the case, nor which indicates that any vibrations from vehicles would be harmful to living conditions. A planning condition to require details of the acoustic fencing to be installed would ensure that the noise mitigation is effective. The Council has not raised concerns regarding the effect of acoustic fencing on the outlook or the character and appearance of the area and thus I have no reason to find it would be inappropriate in those respects.
10. The access road as proposed would be sufficiently wide for 2 vehicles to pass. It has been raised that the appellant does not have control over the existing lane and that parking may occur along the access road. Land ownership and rights are private matters which are not within my jurisdiction. Notwithstanding this, parking would be provided within the site in excess of that required by the Highway Authority and thus it is unlikely that the prospective occupiers or their visitors would park within the access road or on Beresford Avenue. While parking occurs on-street within Beresford Avenue, many properties have driveways and thus the parking of existing residents' vehicles within the access road is also unlikely. In any case, I have not been provided with firm evidence

which indicates that noise and disturbance generated from vehicles being parked would be harmful to the occupiers of the nearby properties.

11. In addition, the Highway Statement indicates that between one and 2 vehicles would arrive and a similar number would depart from the development each hour for most hours during the daytime and less so during the night. In that context, even if the access road were used for parking, it is unlikely that there would be conflicts between vehicles entering and exiting the site at the same time or that there would be a need for vehicles to idle in front of Nos 47 and 49. Notwithstanding the vehicle arrival and departure times indicated, there may nonetheless be vehicle movements along the access road outside daytime hours. However, disturbance to the occupiers of the nearby properties from headlights would be limited as a result of the fencing to the sides of the access road and the proposed fence and hedge to the front of No 49.
12. Interested parties contend that the proposal would result in noise and disturbance to other nearby properties; however, these would be further from the access road than Nos 47 and 49 and thus less affected by vehicles moving along it. It could be ensured that any vegetation would not narrow the effective width of the access road when landscaping is considered. It has been suggested that the proposed dwellings would be subject to harmful levels of noise and vibration from the railway; however, a condition could require mitigation to be provided in respect of this. Overlooking has also been raised as a concern, but the separation distances between the proposed dwellings and those nearest to them would be sufficient to prevent this.
13. The proposal would not be harmful to the living conditions of nearby residents. There would be no conflict with Policy CS5 of Barnet's Local Plan Core Strategy Development Plan Document (CS), which requires development to respect local context and character. I also find no conflict with Policy DM01 of Barnet's Local Plan Development Management Policies Development Plan Document (DM), which requires development to be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers.

Highway safety and the free flow of traffic

14. I noted from my site visit that the existing turning area at the end of the cul-de-sac is small and it is not possible for 2 vehicles to pass side-by-side in Beresford Avenue as a result of parked vehicles. I also have no reason to doubt that large vehicles, such as waste collection and heavy goods vehicles, are currently required to reverse out of the cul-de-sac.
15. The small increase in vehicular activity generated by the development would not impede the movement of large vehicles within the site or Beresford Avenue. I have not been referred to any technical evidence which indicates that the size of the turning area within the site would be inadequate. In addition, as a result of the amount of parking proposed, it is unlikely that vehicles would park in the site's turning area and reduce the amount of space to turn vehicles. Based on the evidence before me, large vehicles would be able to turn within the site and move to and from it in a forward gear.
16. Vehicles exiting the site would be able to wait clear of Beresford Avenue when large vehicles are being manoeuvred at the end of it. In addition, the junction between the highway and the access road would provide extra space for vehicles, including larger ones, to turn at the end of Beresford Avenue. In this

respect the proposed arrangement is likely to reduce conflicts in the highway and improve the flow of traffic. A condition could be imposed to require the development to be carried out in accordance with a construction management plan to minimise vehicle conflicts within the highway that might otherwise arise during construction.

17. Various concerns are raised by interested parties in respect of highway safety matters. It is unlikely that vehicles would travel along the access road at high speeds due to its short length and the bend in its alignment. There would be enough space for pedestrians and vehicles to pass side-by-side in the access road. As vehicles would be able to enter and exit the site in a forward gear, pedestrians near to the site would be visible. I am therefore satisfied that the proposal would not result in harm in respect of highway safety.
18. I therefore find that the proposal would not adversely affect highway safety or the free flow of traffic within Beresford Avenue. I find no conflict with CS Policy CS5 or DM Policy DM01, the requirements of which have been identified.

Other Matters

19. A range of other matters have been raised by interested parties. I note that previous applications have been refused and appeals have been dismissed at the site; however, this does not prevent the appellant from attempting to address the reasons for permission not being granted. I understand that large development schemes may have been permitted in the area recently, but that in itself is not a reason for resisting this proposal.
20. The most recent appeal decision¹ concluded that that proposal would be acceptable in respect of matters relevant to the character and appearance of the area and the changes between that proposal and this one are minor. This proposal would involve the creation of a gated access which does not appear to have formed part of the previous scheme. I have been made aware that an appeal decision made prior to the most recent one may have identified concerns in respect of that matter; however, I have not been provided with full details regarding that case. Moreover, the Council has not raised concerns regarding the gated access. Based on the evidence before me, the provision of a gated access does not indicate that the development is unacceptable.
21. The proposal seeks to build over a railway tunnel, but Network Rail has not lodged an objection to the proposal nor did it for the previous one. I thus have no substantive evidence which indicates that its location is problematic. I also have no firm evidence which suggests that wildlife or protected species will be harmed or that the development would result in flooding or an increase in fly tipping or crime. The Council has not identified any development plan policies which require affordable housing to be provided for a scheme of this size and thus no provision is required.
22. It is stated that a precedent would be set for similar development elsewhere in the vicinity; however, each application must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.

¹ Appeal reference: APP/N5090/W/18/3208804

Conditions

23. I have considered the conditions put forward by the Council and the appellant's comments on them. I have included those conditions that meet the tests set out at paragraph 55 of the National Planning Policy Framework (the Framework), with some minor editing of the suggested wording for precision and clarity.
24. In addition to the conditions already identified, conditions relating to the submission and timing of the reserved matters and the commencement of development are necessary. Conditions are also needed to require the development to accord with the plans insofar as they relate to the details sought for approval and to limit the number of dwellings to no more than 6, as the proposal has been assessed on those terms.
25. In the interests of nature conservation and ecological enhancements, it is necessary to require the development to accord with the recommendations of the Extended Phase 1 Ecological Habitat Survey Report. Conditions relating to cycle parking and storage and waste storage and collection arrangements are required to ensure that satisfactory provision is made. In the interests of access, parking and highway safety, conditions to require details of the junction of the highway with the access road to be approved, and to require the parking spaces and electric vehicle charging facilities to be provided, are needed.
26. A condition relating to tree protection is necessary in order to ensure that any trees identified for retention are protected during construction. Limits to the construction times are required in the interests of the living conditions of the occupiers of nearby properties. Details of foundations and below ground services are required as a result of the proximity to the railway and details of levels are required to ensure that the development is appropriately integrated within its surroundings.
27. Conditions to require the dwellings to incorporate carbon dioxide emissions reduction and water efficiency measures are necessary to ensure they are sustainably constructed. In the interests of the living conditions of prospective occupiers a condition is required to ensure that the dwellings are accessible and adaptable.
28. The Council has suggested that additional conditions are imposed to require further assessments and mitigation of noise and vibration, but they are unnecessary given that evidence in respect of those matters has already been submitted and I have found that the development would not be harmful, subject to conditions already identified.
29. Notwithstanding the acoustic fencing, details of boundary treatments and hard and soft landscaping can be assessed when approval of landscaping is sought. It has not been demonstrated that a land contamination condition is necessary given that the site is located on garden land. The Council has also suggested that permitted development rights be removed; however, paragraph 53 of the Framework states that this should only be done where there is clear justification. There is no evidence that the use of permitted development rights would result in harm and therefore a condition is unnecessary.
30. It is not necessary to impose conditions recommended by the Highway Authority that would require an amended parking arrangement or details of

access arrangements and tracking drawings for waste and emergency vehicles to be submitted for approval. This is because permission for the proposal's layout has been submitted for detailed consideration, the Highway Authority did not object to the proposal and I have found the layout to be acceptable.

31. It is also suggested that conditions set out that expectations that the developer shall enter into a Section 278 Agreement and a Waiver of Liability and Indemnity Agreement in respect of any claims for damage. The informative nature of these conditions suggests they are not necessary. Moreover, the layout is acceptable and thus the latter condition would be onerous. It is also not necessary to impose a condition to require the stopping up of the highway.

Conclusion

32. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed subject to the identified conditions.

Mark Philpott

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following plans insofar as they relate to matters of access and layout: Location Plan; BAB001 Revision No. 9; BAB002 Revision No. 9; 9464-15.
- 5) No more than 6 dwellings shall be erected on the site.
- 6) Demolition and construction works shall take place only between 8:00am and 6:00pm on Monday to Friday, 8:00am and 1:00pm on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7) Demolition and construction works, including site clearance, shall be implemented in accordance with the mitigation strategy and the biodiversity enhancements detailed in Section 8 of the Extended Phase 1 Ecological Habitat Survey Report prepared by Hone Ecology (February 2016).
- 8) The dwellings hereby permitted shall be constructed to have 100% of the water supplied to them by mains water infrastructure provided through a water meter or water meters and each dwelling shall be constructed with water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G2 of the Building Regulations 2010 (or in equivalent standards if replaced) to ensure that a maximum of 105 litres of water is consumed per person per day. The dwellings shall be maintained as such thereafter.
- 9) The dwellings hereby permitted shall be constructed to achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such a measure of accessibility and adaptability for house design if replaced). The dwellings shall be maintained as such thereafter.
- 10) No demolition or construction works shall take place until a Demolition and Construction Management and Logistics Plan has been submitted to and approved in writing by the local planning authority. The Demolition and Construction Management and Logistics Plan shall include, but not be limited to, the following information: (i) details of the routing of construction vehicles to the site, hours of access, access and egress arrangements, security procedures and the provision of a competent banksman; (ii) site preparation and the construction stages of the development; (iii) details of provision for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site

facilities and materials; (iv) details showing how all vehicles associated with the construction works will be properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway; (v) the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works; (vi) details of contractor's compound and car parking arrangements; (vii) details of interim car parking management arrangements for the duration of construction; and (viii) details of a community liaison contact for the duration of all works associated with the development. The development shall be implemented in accordance with the details approved under this condition.

- 11) No demolition or construction works shall take place until a dimensioned tree protection plan in accordance with Section 5.5 and a method statement detailing precautions to minimise damage to trees in accordance with Section 6.1 of British Standard BS5837: 2012 (Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved under this condition and no site works (including any temporary enabling works, site clearance and demolition) shall take place until the tree protection has been erected as shown on the tree protection plan. This protection shall remain in position until after the work is completed and no material or soil shall be stored within these fenced areas at any time.
- 12) No development shall take place until details of the levels of the buildings and roads in relation to the adjoining land and highways and any other changes proposed in the levels of the site have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved under this condition.
- 13) No development shall take place until details of the location, extent and depth of all excavations for foundations and services (including but not limited to electricity, gas, water, drainage and telecommunications) in relation to the railway tunnel shaft on site, and a method statement for implementation, have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved under this condition.
- 14) No development shall take place until a report which includes details of mitigation measures to protect the development from noise and vibration generated from the railway has been submitted to and approved in writing by the local planning authority. The report shall ensure that the levels of noise generated from the railway will be no higher than 35dB(A) from 7:00am to 11:00pm and 30dB(A) in the bedrooms of the development from 11:00pm to 7:00am. The report shall include all calculations and baseline data and be set out so that the local planning authority can fully audit the report and critically analyse the content and recommendations. The mitigation measures specified within the approved report shall be implemented in their entirety prior to the first occupation of the dwellings and retained as such thereafter.

- 15) No development shall take place until details of the junction between the proposed access road and the highway have been submitted to and approved in writing by the local planning authority. The development hereby approved shall not be occupied until the junction between the access road and the highway have been constructed in accordance with the details approved under this condition.
- 16) Notwithstanding the details shown on the plans submitted and otherwise hereby approved, prior to the first occupation of the dwellings hereby permitted details of the acoustic fencing to be erected on the site shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved under this condition prior to the first occupation of the dwellings and retained as such thereafter.
- 17) Prior to the first occupation of the dwellings hereby permitted, space shall be laid out within the site in accordance with drawing no. BAB001 Revision No. 9 for cars to be parked and that space shall thereafter be kept available at all times for the parking of vehicles.
- 18) Prior to the first occupation of the dwellings hereby permitted, details of the Electric Vehicle Charging facilities to be installed in the development shall be submitted to and approved in writing by the local planning authority. These details shall include provision for not less than 20% of the proposed car parking spaces to be provided with active Electric Vehicle Charging facilities and a further additional 20% of the proposed car parking spaces to be provided with passive Electric Vehicle Charging facilities. The development shall be implemented in accordance with the details approved under this condition prior to the first occupation of the development and be maintained as such thereafter.
- 19) Prior to the first occupation of the dwellings hereby permitted, details of cycle parking spaces and cycle storage facilities shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved under this condition prior to the first occupation of the dwellings and retained as such thereafter.
- 20) Prior to the first occupation of the dwellings hereby permitted, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with satisfactory collection points, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved under this condition prior to the first occupation of the dwellings and retained as such thereafter.
- 21) Prior to the first occupation of the dwellings hereby permitted, the dwellings shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the Building Regulations 2010 (or the equivalent standard if replaced). The development shall be maintained as such thereafter.