



Appeal Decision

Site visit made on 23 February 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2021

Appeal Ref: APP/N5090/W/20/3263545

7 Shakespeare Road, London N3 1XE

- 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 Hayashi Developments Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/2813/FUL, dated 19 June 2020, was refused by notice dated 18 August 2020.
 - The development proposed is the change of use of part of existing ground floor B8¹ warehouse into 4no. residential units (C3 use).
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Decision

1. The appeal is allowed, and planning permission is granted for change of use of part of existing ground floor B8 warehouse into 4no. residential units (C3 use) with associated refuse/recycling area, amenity space and cycle store at 7 Shakespeare Road, London N3 1XE, in accordance with the terms of the application, Ref 20/2813/FUL dated 19 June 2020, and the plans with it, subject to the conditions in the attached schedule.

Procedural Matters

2. For clarity, I have taken the description of development in the banner heading above from the application form. However, in my decision, I have taken the description from the Council's decision notice and appeal form as it is more accurate. I have also taken the address from the appeal form, as it would appear from the wider evidence that the site is not located within 'Finchley Central' as listed on the application form.
3. At the time of my site visit, it was apparent that construction work on the appeal scheme had commenced, albeit the development was not completed. I have dealt with the appeal on this basis.
4. Whilst not cited on the Council's decision notice, concerns have been raised by the Council in respect of the amount of day/sunlight received by some of the residential units and to private outdoor space in its submission. As the appellant has had the opportunity to comment on these matters, I have included them as part of the main issues in this appeal. I will not prejudice any party in taking this approach.
5. The London Plan 2021 (LonP 2021) has been published by the Mayor during the course of this appeal. The LonP 2021 comprises the spatial development strategy for London and is now part of the development plan, to which I attribute full weight to its policies. I am required to determine this appeal on

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

the basis of the development plan policies which are in force at the time of my decision. Section 38(5) of the Act² states that where there is conflict between policies in different plans, the conflict must be resolved in favour of the more recent policy. Both main parties were given the opportunity to comment on any implications for the appeal, although only comments from the appellant have been received. In this instance, I will not prejudice either party in taking the LonP 2021 into account in the determination of this appeal.

Application for costs

6. An application for costs was made by Hayashi Developments Limited against the London Borough of Barnet. This application is the subject of a separate Decision.

Main Issues

7. The main issues of this appeal are the effect of the development on:
 - i. the living conditions of future occupiers, with particular regard to outlook, day/sunlight and private outdoor space;
 - ii. whether the development would be acceptable in terms of its transport and highways impacts, with particular regard to vehicular parking; and,
 - iii. whether the planning obligation is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

Reasons

Living conditions

8. It is common ground between the main parties that the level of internal accommodation for future occupiers would be satisfactory. It is also agreed that the internal head heights of the flats are acceptable.
9. During my visit in the middle of a weekday morning, I entered the site, viewing the 4no. units internally. I also had the ability to look through the windows of all of the 4no. units, apart from the rear door at Flat 01 in the kitchen/living area. This was due to the storage of construction materials within the room restricting access to it. Nonetheless, I could see the opening from within this room, which also benefits from an additional window above the kitchen unit. In Flat 03, the rear door was open, so I had the benefit of viewing the external area directly behind the development.
10. It was apparent that due to the location of the flats within the host building, that they would have a single aspect. With the exception of Flat 04, the outside area to the rear of the units has a depth ranging from approximately 1.71m at Flat 03, to approximately 1.87m at Flat 01 due to a slight chamfer in the line of the shared boundary with Norman Court. Herris fencing was present in proximity to the shared boundary where newly planted trees are located on the opposite side to the development.
11. My attention has been drawn towards Standard 27 in the Mayors Housing Supplementary Planning Guidance 2016 (the LonP SPD), which states the

² Town and Country Planning Act 1990

minimum depth and width for all balconies and other private external spaces should be 1500mm. In the case of Flat 01 to 03, each unit would be in excess of this requirement. It is common ground that no such concerns surround Flat 04 which I note has a depth of approximately 4m. The appellant has confirmed that boundary fencing would be installed at a height of 1.5m. The appellant refers to the installation of 'venetian' timber slatted fencing, which could be controlled through the imposition of a suitably worded condition.

12. Thus, in conjunction with the floor levels of the development, I consider that future residents would still be able to experience notable views into the neighbouring landscaped gardens of Norman Court. Whilst the potential growth of the newly planted trees has been raised as a concern, there is little evidence before me to demonstrate that these trees will not be properly managed and maintained. In any event should any issues arise in the future, I agree that suitable legislation³ exists to protect future residents of the development. Therefore, on the details before me and from my findings during the site visit, I consider that future occupiers will have a satisfactory and reasonable outlook from the windows and openings serving the development.
13. The Council has raised concerns in its submission regarding the size of the windows and the amount of light that all units receive. Guidance on amenity is contained within the Council's Residential Design Guide Supplementary Planning Document 2016 (SPD1) and further detailed requirements are contained within the Sustainable Design and Construction Supplementary Planning Document 2016 (SPD2). The SPD2 states that glazing to all habitable rooms should not normally be less than 20% of the internal floor area of the room. The appellant disputes that Flats 01 and 04 would not comply with this guidance in the SPD2, as they would achieve 28% and 22% respectively. Although, the appellant does acknowledge that in the case of Flats 02 and 03 they would only achieve 17% and 18% respectively. However, the appellant has provided an addendum⁴ (the addendum) to its original Daylight and Sunlight Provision Assessment⁵.
14. In the addendum it confirms that some of the properties fall short of reaching the targets set by Building Research Establishment⁶ (BRE). Nonetheless, it confirms that Flat 04 significantly exceeds the Annual Probable Sunlight Hours and that Flats 01, 02 and 03 all receive some direct sunlight for 'all year' and 'winter conditions'. In all cases the addendum confirms that the development will comply with the LonP SPD Standard 32, regarding sunlight as sunlight will enter at least one habitable room for part of the day. Regarding natural light, the addendum confirms that the development will exceed the minimum requirement set out by BRE. Given that the addendum appears to have been produced by a suitably qualified authority and without an equivalent report on the part of the Council, I have given it significant weight. Thus, in the absence of substantiated evidence to the contrary, I have found no good reason to conclude that the addendum is unreliable in this or any other significant respect.
15. The Council have raised concerns in its submission surrounding the provision of private outdoor space within Flats 02 and 03, stating that as each of their

³ Part 8, Sections 65 to 97 of the Anti-social Behaviour Act 2003

⁴ Letter from Herrington Consulting Limited, dated 29 October 2020

⁵ Undertaken by Herrington Consulting Limited, dated July 2019

⁶ 'BRE Site Layout Planning for Daylight and Sunlight – Guide to Good Practice 2011

habitable rooms exceed 20m², they should be counted as 2no. rooms as defined in the Glossary of the SPD2. Thus, the Council considers that Flats 02 and 03, each require a provision of 10m² of private outdoor space. However, I note that this had been considered in the Officer Report, where it stated that it had “accepted shortfalls in the past at the application site due to its Town Centre location”. Whilst there is minor conflict with the guidance contained in the SPD2, the scheme would nonetheless, provide in excess of 5m² of private outdoor space⁷ as required in LonP 2021 Policy D6 for a 1-2 person dwelling.

16. In any event, taking the Council’s admission to relaxing this requirement previously on other development within the host building, I see little reason why such a consideration could not be applied in this instance, under very similar circumstances, especially as the development still accords with the general amenity aims of its SPD1 and SPD2. Therefore, given the site-specific circumstances, I conclude that a satisfactory provision of private outdoor space is included within the development.
17. For the reasons given above, I conclude the development provides satisfactory living conditions for future occupiers, with particular regard to outlook, day/sunlight and private outdoor space. Consequently, the development accords with the amenity aims of Policy DM01 of the Council’s Local Plan (Development Management Policies) Development Plan Document 2012 (DMP), the SPDs 1 and 2, LonP 2021 Policy D6 and the requirements of the National Planning Policy Framework (the Framework).

Vehicular parking

18. No 7 is sited within Finchley Church End Town Centre, located in proximity to Ballards Lane, which is the main shopping street, with access obtained from Shakespeare Road. The site lies in an area with a Public Transport Accessibility Level (PTAL) rating of 5 on a scale of 1 to 6 where 1a is the lowest level and 6b is the highest level of accessibility to public transport services. Adjacent to the building is a supermarket that provides 2 hours free parking, albeit for its customers. Streets surrounding the site are covered by a Controlled Parking Zone (CPZ).
19. DMP Policy DM17 states that normally up to 1 space should be provided for one-bedroom units. This policy goes on to state that residential development may be acceptable with limited or no parking outside a CPZ, but only where it can be demonstrated through a survey that there is sufficient on street parking capacity. Additionally, where there is insufficient capacity on street in accessible locations the development would be required to be car free.
20. The appellant in their planning application identified that their development would be car free⁸. Nonetheless, in their submission, they have sought to attempt to justify that a restriction on the ability of future occupiers to acquire a parking permit in the CPZ would not be necessary, as there is not sufficient parking stress in the area surrounding the site in the CPZ, and that capacity exists to accommodate any potential vehicles of future occupiers. The appellant has provided a number of appeal decisions and Judgments to support their position, which I have had regards towards as material considerations in the determination of this appeal.

⁷ Flat 02 = 5.45m² and Flat 03 = 5.45m² in Planning Statement, June 2020 p.15

⁸ 5.1.31. on p.16 of the Planning Statement dated June 2020

21. However, the recent publication of the LonP 2021 has introduced new standards on this issue. Therefore, despite the case put forward by the appellant on this matter, the LonP 2021 has sought to further define residential parking requirements. LonP 2021 Policy T6⁹ states that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport. Additionally, LonP 2021 Policy T6.1¹⁰ states that new residential development should not exceed the maximum parking standards¹¹. As the site is located in an area of PTAL 5, the maximum standard in this instance is car-free.
22. Consequently, the acceptability of the development in respect of its transport and highways impacts, with particular regard to vehicular parking will depend of the ability to ensure that the development comprises car-free housing. My conclusions on the next issue will, therefore, determine whether or not the development complies with the objectives of the development plan.

Planning Obligation

23. Although the appellant has questioned the need for a planning obligation, a revised and signed Unilateral Undertaking (the revised UU), dated 23 March 2021 has been submitted with their submission. The aim of the revised UU is to facilitate car-free housing by preventing future occupiers of the development applying for parking permits and to financially contribute to the cost of amending the Traffic Regulation Order (TRO) for the CPZ and to pay a monitoring fee in accordance with the Council's Planning Obligations Supplementary Planning Document 2013 (the SPD3).
24. The appellant considers the need of a legal undertaking is neither necessary nor reasonable in scale for the development. However, given my reasons on the previous main issue, a planning obligation to prevent future occupiers from acquiring parking permits and a financial contribution to cover the cost of amending the TRO would be necessary to ensure that car-free housing is delivered, thus, meeting the requirements of paragraph 56 of the Framework.
25. The requirement of a monitoring fee has also been heavily disputed by the appellant, where they have provided a Judgement¹² (the Judgement) to support their argument on this matter, and further state that the Council have not provided clarity on the calculations for the monitoring fee, despite this being requested by their solicitor. I acknowledge that the Council has provided some reasoning to justify the cost of amending the TRO, but I accept that there is little justification surrounding the monitoring fee.
26. However, from 1 September 2019¹³ Local Planning Authorities can charge a monitoring fee as part of a planning obligation to cover the cost of monitoring and reporting on its implementation, which the Judgement predates. The sum to be paid must fairly and reasonably relate to the scale and kind of the development; and not exceed the authority's estimate of the cost of monitoring the development over the lifetime of the planning obligation which relates to that development. In this instance, the monitoring fee would be proportionate,

⁹ Page 422 of the LonP 2021

¹⁰ Page 425 of the LonP 2021

¹¹ Table 10.3 on Page 426 of the LonP 2021

¹² *Oxfordshire County Council v Secretary of State for Communities and Local Government and Other* [2015] EWHC (Admin)

¹³ Regulation 10 of the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019

reasonable and reflect the actual cost of monitoring as defined in the Planning Practice Guidance (PPG)¹⁴.

27. For the reasons given above, I conclude that the revised UU is a reliable mechanism that satisfactorily ensures that the development would be car-free. Therefore, the development when occupied, would not have a significantly detrimental impact on transport and highways, with particular regard to vehicular parking. Consequently, the development accords with the strategic highways aims of DMP Policy DM17, LonP 2021 Policies T6, T6.1, the SPD3 and the requirements of the Framework.

Conditions

28. The Council has suggested conditions which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 55 of the Framework and the PPG. A condition relating to the time limit for implementation is not required in this instance as the development has commenced. A condition surrounding the approved plans is required for certainty, although, I have amended the list suggested by the Council, as it was not necessary to include all of the documents.
29. I have amended the suggested conditions by the Council regarding cycle/refuse and recycling storage into one condition, as it is still reasonable and necessary to ensure that the internal cycling/refuse and recycling area identified on the submission, is available to future residents prior to their occupation of the proposed development, in the interest of their living conditions, character and appearance and to ensure that alternative methods of travel and its security are available. I have also included a condition surrounding the boundary treatments to the dwellings, in the interest of the living conditions of future occupiers of the development.
30. I have not included conditions relating to water meters, sound insulation or carbon savings as they are not reasonable or necessary, due to them being covered under Building Regulations legislation. Furthermore, I am not convinced that there is justification or a requirement regarding the additional measures and details, surrounding noise and air pollution that have been suggested by the Council, given the location of the dwellings and the surrounding environment. Therefore, it would not be reasonable or necessary to impose such conditions in this instance. I also consider that a condition for a 'Demolition and Construction Management and Logistics Plan' is not reasonable or necessary, given the scale of the development and given that construction works have already commenced and are currently being undertaken in other parts of the host building, in which the development is incorporated within.

Conclusion

31. Taking all matters into consideration, I conclude that the appeal should succeed.

W Johnson

INSPECTOR

¹⁴ 036 Reference ID: 23b-036-20190901

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: P17-031 SLP-400 Rev A; P17-031 GA 402 Rev A; P17-031 GA; 403 Rev B; P17-031 SEC 001 Rev A; P17-031 EL 404 Rev B; P17-031 ESP 500 Rev A.
- 2) Prior to the first use and occupation of the dwellings hereby approved, the provision of a cycle/refuse and recycling area, as identified on drawing number: P17-031 GA 403 Rev B, shall be fully implemented and made available for future residents, and then subsequently, maintained and retained for the life of the development.
- 3) Prior to the first use and occupation of the dwellings hereby approved, details of the proposed external boundary treatment shall first be submitted to and approved in writing by the Local Planning Authority. The approved details shall then be fully implemented prior to the occupation of the dwellings, and then subsequently, maintained and retained for the life of the development.

End of Schedule