



Appeal Decision

Site visit made on 6 April 2021

by **P. D. Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/N5090/W/20/3260280

4-5 Ashbourne Parade, Finchley Road, London NW11 0AD.

- 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 Farshad Zargarif against the decision of the London Borough of Barnet Council.
 - The application Ref 20/3270/FUL, dated 16 July 2020, was refused by notice dated 16 September 2020.
 - The development proposed is side extension of existing storage shed converted into bakery/kitchen in the rear yard to bake bread and cook, to be used by the neighbouring market at No 5 Ashbourne Parade. Single storey rear office extension to be constructed above the flat roof at the rear of the lower ground floor shop. Proposals are to match the rear extension of neighbouring property No 3 Ashbourne Parade.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It was apparent from the appeal documentation and on the site visit from the appellant, who was arranging access, that the submitted plans in respect of the office extension, in particular the proposed elevations, were incorrect and showed the office extension as higher than was the intention. However, these were the plans that were assessed by the Council at the time the application was determined. No revised plans have been submitted and as such I must determine the application on the basis of the plans which are before me.
3. The appellant in his statement expresses procedural concerns regarding how the application was determined. My determination of the appeal deals with the planning matters of the case and the procedural concerns are not before me. If the appellant has concerns, the Council has a complaints procedure which should be followed.

Main Issue

4. The main issue is whether the proposed development would have a detrimental effect on the living conditions of the present and future occupiers of the first floor flat in terms of light levels and outlook and on neighbouring occupants in terms of noise and odour emissions from the proposed extraction equipment for the bakery.

Reasons

5. The appeal site is located at Nos 4-5 Ashbourne Parade on the west side of Finchley Road which is occupied by a terrace of 3 storey buildings. The frontage on the parade is occupied at ground floor by a takeaway and lettings agency at No 4

and a grocery supermarket at No 5. The upper floors are occupied by residential flats accessed from the rear service lane behind the parade.

6. The rear of the plot between the main building and the service lane extends for some 12 metres in depth and, as with other properties in the parade, this rear yard area is partially developed with storage sheds and ancillary buildings.
7. The property has the benefit of planning permissions under 19/4264/FUL and 20/0140/FUL to convert the current storage building to bakery use and extend it out to the rear boundary with the lane. The appeal proposal is to widen the storage building adjacent to the current storage building to the rear of No 5. The area between the main building and the storage building as part of the appeal proposal would also be infilled with an office building on top of the current lower ground floor flat roof section to the rear of the main building.
8. It has been put to me that the intention with the rear office extension is that it would be similar to the rear extension at No 3 and, that as this was permitted, the proposal at No 4 should also be permitted. However, there is a fundamental difference with the proposals at No 4 compared to the extension at No 3 and that is that the rear extension at No 3 sits lower and below the levels of first floor windows in the main building. The same would not be the case for No 4 and, although the appellant's statement suggests the intention is that they would be the same, the plans do not show this. Therefore, I will assess the proposal at No 4 on its own merits.
9. Construction of the office building above the flat roof section to the rear of No 4 would, according to the plans, result in a finished building height from yard level of almost 3.69 metres. The plans show that this would mean the top of the building encroaching on to the face of the first floor, bathroom window. The width of the office extension would extend across the whole width of the indented return in the rear elevation of the main building and would therefore cross in front of the rear facing window to the bed-sitting room of the first floor flat. It has been put to me that the office extension wall would be 4.39 metres from this window and the top section of the window would not be affected. From my assessment on site, from within the flat, the section of the window not affected would be above head height and eye level and therefore the extension's height would mean the outlook from the window would be significantly obscured and the effect of the extension would be enclosing and overbearing on this window. There would also be a loss of sunlight to this west-facing window particularly in the winter when the late afternoon sun is low in the sky. The proposal would also further enclose and worsen light levels to the adjacent kitchen window (not shown on the plans).
10. As regards the bathroom window I have been invited to conclude that because this is not a habitable room and the extension would only partially overlap the window it is acceptable. However, this arrangement would be simply bad design, potentially preventing the window from opening and could have been avoided by setting the extension just off the window opening or below it.
11. With respect to the second reason for refusal and the concern that insufficient details were provided to establish whether the operation of the bakery and the extraction system would cause harm to occupiers of surrounding residential properties, I note that this was the subject of conditions in the two earlier planning permissions. Whilst some specification details are given for the extractor system, the proposed positioning of the extractor outlet would be at the west end of the bakery building directly onto the service lane and close to the residential property at No 1 Ashbourne Avenue which would be classed as a sensitive receptor. No

noise or odour assessments are before me and whilst the matters of noise and odour were subject to conditions previously, this appeal proposal is now for a further extension to the proposed bakery and appears to be the third time the application has been submitted without adequate assessment of potential noise and odour. These details should be available before the decision is taken on the application in order to inform the design. The *Barnet Sustainable Design and Construction Supplementary Planning Document* at section 2.14 makes it clear that the potential for noise should be assessed at an early stage in the design stage and this has not been done.

12. The *National Planning Policy Framework* (The Framework) requires at paragraph 127 that developments should create places with a high standard of amenity for existing and future users. This national policy objective is reflected by Policy DM01 of the *Barnet Local Plan Development Management Policies* (BLPDMP) which at section e) requires that development proposals allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. Policy DM04 of the BLPDMP states that development likely to generate unacceptable noise levels close to noise sensitive uses will not be permitted. Clearly, therefore, Policy DM04 expects that noise levels will be assessed at the time of the planning application. For the reasons above, the appeal proposal would fail to comply with these policy objectives and it would be unacceptable in terms of the impacts on the living conditions of the present and future occupiers of the first floor rear flat at No 4 and potentially other residential occupiers in respect of noise and odour pollution in the absence of any noise or odour assessment.

Other Matters

13. I have had regard to the Public Sector Equality Duty contained in the Equality Act 2010 and understand the appellant's wish to provide extended and improved accommodation for a bakery and office purposes and that in doing so he is enabling business expansion, an objective which is encouraged by the Framework in Section 6. I acknowledge that this national policy objective makes the principle of extending business premises acceptable. However, both the Framework and the BLPDMP makes it clear that this should not be at the expense of local amenity. The growth and development of the business would not therefore outweigh the harm to the neighbouring occupants' living conditions as a result of the proposal or justify an exception to policies and guidance in this case.

Conclusion

14. In reaching my decision I have had regard to the matters before me but for the reasons above the appeal should be dismissed.

P. D. Biggers

INSPECTOR