



Appeal Decision

Site Visit made on 17 May 2021

by Mr Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2021

Appeal Ref: APP/N5090/W/20/3255864

592 Finchley Road, London NW11 7RX

- 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 S. Kapoor against the decision of London Borough of Barnet.
 - The application Ref 20/1887/FUL, dated 22 April 2020, was refused by notice dated 17 June 2020.
 - The development proposed is Change of use from health centre studio to residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has cited policies 3.5 (table 3.3) and 7.6 of the London Plan (2015) in its second reason for refusal. These policies have been transposed and renumbered as policies D3, D4 and D6 (table 3.1) within The London Plan (2021) which has now been published. These policies are substantially the same as the ones they replace. I shall take these into account in my decision.
3. The outbuilding, the subject of this appeal, was allowed at appeal in 2018¹ for its erection and use as a physiotherapy and Pilates studio. The Inspector determined that the main issue, noise and disturbance of neighbouring occupier's living conditions, would not result in an unacceptable impact. Furthermore, the outbuilding was also approved² in 2020 to be used as an office associated with the ground floor medical use.

Main Issues

4. The main issues are:
 - The effect of the proposed change of use on the character and appearance of the area, and
 - The effect of the proposal on the living conditions of future occupiers with particular respect to size of internal area, privacy, access to natural light, outlook and access to external amenity space.

¹ Planning Appeal Reference: APP/N5090/18/3204246

² Planning Application Reference:20/4141/FUL

Reasons

Character and appearance

5. Many dwellings within this area have been partially converted to uses related to the provision of professional services. This group of converted buildings are close to the Golders Green commercial centre. A Sainsbury's car park is also located behind the appeal site and its neighbouring plots. The main building on site is a semi-detached property with a consulting service at ground floor and residential use above. The site is therefore at a point of transition between residential and commercial activity with a surrounding area that is mixed use in character.
6. The National Planning Policy Framework (The Framework) requires development to be sympathetic to local character, to take opportunities to add to the quality of an area and to maintain a strong sense of place. The property has already been subdivided into mixed use and this type of dual use appears to be common with many neighbouring properties. As such, the proposal would neither result in the loss of a single-family dwelling nor erode the residential character of the area. Furthermore, although the proposed residential use may result in increased activity during unsociable hours, any adverse effect would be unlikely to demonstrably affect the character of the area due to the identified context.
7. Consequently, the proposed change of use would not have an adverse impact on the character and appearance of the area. Accordingly, the proposal would satisfy policies CS1 and CS5 of the Barnet Local Plan: Core Strategy (2012) (CS) in relation to character considerations. These seek, among other matters, for development to create an attractive environment and to respect the site's context and distinctive local character. Furthermore, also with respect to character the proposal would accord with policy DM01 of the Barnet Local Plan: Development Management Policies DPD (2012) (LP), and the Council's Residential Design guide SPD (2016). These seek development to respect and reinforce local character.

Living conditions

8. The Council's Residential Design Guide SPD seeks a separation distance of 21 metres between properties with facing windows of habitable rooms to avoid overlooking. The space between the existing ground floor windows and the windows of the outbuilding is around 8 metres. The first floor and second floor windows, of the main building, would be around 4 metres further from the outbuilding. Consequently, the separation distance falls substantially short of the Council's guidance. Also, the change in levels would exacerbate the deficiency of distance. As such, future occupiers of the proposed dwelling would suffer substantial overlooking from the rear windows of the existing building. Furthermore, the main building has a relatively tall and wide rear elevation. This dominates the view from the outbuilding. The impact on outlook would also be intensified by the change in levels to the rear. Therefore, future occupiers would also suffer demonstrable harm to their outlook due to the overbearing nature of the rear elevation.

9. The Council's Sustainable Design and Construction SPD requires proposed residential development to include 5 sqm of external space per habitable room. The main building has a garden located to its rear. This is raised around one metre above the ground level of the outbuilding above a retaining wall. The outbuilding is located beyond the rear garden and would overlook the wall. The garden is labelled on plans as a communal space. This is however unsatisfactory as the space is not clearly defined as to how it would be shared. Without dedicated space, or formal subdivision, it seems likely to me that a future occupier would not have assured access to the space. Although, flats over shops and elsewhere do not always have access to gardens, the context of this site suggests that an occupier should have reasonable access to a private external area. Consequently, the identified deficiency would be substantively harmful to future occupiers.
10. The outbuilding consists of a large single room, with a small kitchenette to one side and a separate wet room. The Council identifies that the outbuilding has an internal area of 38 sqm. Table 3.1 of the London Plan requires a one person/one bed dwelling, to be a minimum of 39sqm. However, a following footnote explains that 37sqm could be appropriate if the dwelling has a shower room rather than a bathroom. Therefore, the proposal would meet this policy. Furthermore, I find that the internal area is well laid out and would provide sufficient space to meet the day-to-day needs of a future occupier.
11. The building has skylights along the rear roof plane and large glass doors/glazing along its front elevation. The Council's Residential Design Guidance SPD identifies that access to daylight not only contributes to a more pleasant living environment but can also reduce energy requirements. The Council's Sustainable Design and Construction SPD, at table 2.4, requires glazing to a habitable room to not normally be less than 20% of the internal area of a room. However, the Council has not clearly explained how the proposal would fail this requirement. The outbuilding has a substantial area of glazing that provides floor to ceiling glazed panels for around 60% of the front elevation. Access to daylight is further supplemented by the skylights. As a result, I find that the internal area would gain sufficient daylight.
12. Consequently, the identified adverse impacts of the proposed use on the living conditions of future occupiers would be significant and demonstrable, due to overlooking, outlook and access to external amenity space. The proposal would therefore not accord with the parts of policies CS1 and CS5 of the CS with respect to impact on living conditions. These require development to be of the highest standards of design and to maximise the opportunity for community cohesion. Furthermore, with respect to living conditions, the proposed dwelling would not satisfy policies DM01 and DM02 of the LP or the Council's Residential Design Guide SPD or Sustainable Design and Construction SPD. These seek development that would allow for adequate privacy and outlook for future occupiers and comply with outdoor amenity space requirements. The proposal would also not satisfy policies D3, D4 and D6 of the London Plan which requires housing development to be of a high-quality design and be fit for purpose. These policies are broadly consistent with the Framework which requires development to create a high standard of amenity for existing and future users.

Other Matters

13. The Council raises a concern with regard to setting a poor precedent and the cumulative erosion of the residential character of the area. However, each case must be considered on its own merits. Having found that the area has a mixed character, the harm to the character found by the Council would not manifest.
14. The Council also raises a further concern that existing neighbours would be overlooked by the proposal. However, overlooking and any impact on privacy would not be materially greater than that possible from the existing lawful use of the outbuilding.
15. Accordingly, the proposal would not harm the character and appearance of the area. Also, I have found that the scheme would provide adequate access to daylight and have sufficient internal space. However, these merits are outweighed by the harm found by the design and context of the proposal that would result in a substandard form of accommodation.
16. I do not find that conditions could be used to address the identified harm. Fencing, placed within the garden to define garden areas and generate privacy, would be likely to increase the adverse impact on the outlook of future occupiers. Also, the appellant has not provided a compelling reason why it is essential to find an alternative use for the building.

Conclusion

17. The Framework seeks to boost the supply of housing. The proposal would make a small contribution to the Borough's housing provision. However, the proposal would result in a substandard form of accommodation that would conflict with the development plan when taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Mr Ben Plenty

INSPECTOR