



Appeal Decision

Site Visit made on 29 June 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2021

Appeal Ref: APP/N5090/W/21/3270385

56 Hendale Avenue, Hendon, London NW4 4LS

- 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 Moshe Tsemah against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/2253/FUL, dated 19 May 2020, was refused by notice dated 5 February 2021.
 - The development proposed was described as 'conversion of existing house into two, vertically split, self-contained residential units'.
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Decision

1. The appeal is allowed and planning permission is granted for 'vertical sub-division to form a pair of semi detached houses with new side access; single storey side / rear extension; first floor rear extension; associated amenity space, refuse and recycling, parking and cycle store' at 56 Hendale Avenue, Hendon, London NW4 4LS in accordance with the terms of the application Ref 20/2253/FUL dated 19 May 2020 subject to the conditions in the attached schedule.

Application for Costs

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

Procedural Matters

3. The description of development in the banner heading above is taken from the application form. However, the Council's decision notice describes the proposal as 'vertical sub-division to form a pair of semi detached houses with new side access; single storey side / rear extension; first floor rear extension; associated amenity space, refuse and recycling, parking and cycle store'. This is also the description used by the appellant on the appeal form, and I consider it a more accurate description of the proposal. I have therefore used it in my formal decision.
4. The appellant has submitted a Unilateral Undertaking dated 7 June 2021 (UU) containing planning obligations relating to the holding of residential parking permits by occupiers of the development. I return to this matter below.
5. Since the Council issued its decision, the London Plan 2021 (LP) was published and became an operative part of the development plan. The appellant has not disputed the Council's comments that there are no substantive policy changes between the LP and the earlier iteration in force at the time the application was determined, and I afford full weight to its relevant policies within my decision.

Main Issues

6. The main issues are the effect of the proposal on:
- (i) the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and disturbance; and
 - (ii) the safety and efficient operation of the highway network in the vicinity of the appeal site with particular regard to provision for parking.

Reasons

Living Conditions

7. The appeal proposes alterations to a detached property close to the junction of Hendale Avenue and St Mary's Crescent to form 2 three-bedroom dwellings. The Council has not objected to the proposed extensions and alterations to the appeal building, advising that the majority of works have been previously approved. From my visit and the evidence before me, I see no reason to take a different view.
8. Hendale Avenue and St Mary's Crescent include a mix of semi-detached and detached buildings which appear predominantly to be occupied as single family dwellings. While they would share an entrance, the appeal proposes a pair of semi-detached houses with separate gardens to the rear. In this regard, I find no inherent conflict with provisions within Policy DM01 of Barnet's Local Plan Development Management Policies 2012 (DMP) advising that conversion of dwellings to flats or loss of houses will not normally be appropriate in roads characterised by houses.
9. The shared entrance would limit the visual impact of the proposal on the street scene, and although the subdivision of the garden to the rear may be visible from St Mary's Crescent, this would not be conspicuous given the mix of semi-detached and detached buildings nearby. As a consequence, the general character of the surroundings as an area of single family dwellings would be maintained. In addition, there is no dispute between the parties that levels of internal and outdoor space would accord with relevant standards, and I am satisfied that the dwellings would be adequate to meet the needs of future occupiers.
10. The number of bedrooms on the site would increase from 4 to 6. However, the dwellings have a suggested occupancy of four-persons, and I consider this reasonable in view of the relatively small size of 2 of the bedrooms in each dwelling. In comparison to the suggested seven-person occupancy of the existing dwelling which I similarly consider fair given its 3 large bedrooms which could offer double rooms as well as one smaller bedroom, the total of 8 occupiers on the site would represent only a slight increase.
11. I acknowledge that the occupation of the building by 2 different households may result in some increase in activity and comings and goings at different times compared to a single dwelling. Nevertheless, I consider this would be likely to be small overall given the nature of the development and the difference in total occupancy. Moreover, the Council has offered no clear evidence to show how increased activity would result in excessive noise or disturbance detrimental to the living conditions of neighbouring occupiers, and while I note the number of objections received, this is not in itself a determining factor.

12. Notwithstanding the size of the plot, it seems to me that activity levels and any impact on neighbouring occupiers would be little different to other semi detached properties in the vicinity. The entrance door would be set away from the boundaries of the site, and with the modest number of parking spaces to the front of the building would reduce the potential for noise or disturbance associated with comings and goings to impact on neighbouring occupiers. I am also not persuaded that additional temporary on-street parking by deliveries or other visitors to the site would be conspicuous given the set-back of properties from the street and existing parking in the area. Furthermore, the site would remain in residential use as 2 dwellings, and given the small scale of the proposal, any change in use of the gardens to the rear, requirements for servicing, or the usage of cycle storage associated with the development would in my judgement be modest. Taking these factors into account, I find that levels of noise or disturbance resulting from the development would not be significant or intrusive so as to detract from the quality of life of neighbouring occupiers in any meaningful way.
13. For all of these reasons, I am satisfied that the proposal would not comprise overdevelopment or over-intensive use of the site, and I conclude on this main issue that there would not be unacceptable harm to the living conditions of neighbouring occupiers. Accordingly, I find no conflict with Policies CS1 or CS5 of Barnet's Local Plan Core Strategy 2012 (CS) or Policy DM01 of the DMP. When taken together these policies seek, amongst other things, the protection and enhancement of Barnet's character and protection for amenity. Nor would there be conflict with requirements of LP Policy D14 referred to by the Council seeking to avoid significant adverse noise impacts on health and quality of life.

Parking

14. The appeal site is within a Controlled Parking Zone (CPZ) which restricts parking to permit holders between certain hours. Within CPZs, DMP Policy DM17 indicates that development may be acceptable with limited or no parking, but that where insufficient on-street capacity can be demonstrated, a legal agreement to restrict future occupiers from obtaining on street parking permits will be required.
15. With regard to the parking standards within Policy DM17 which indicate a maximum requirement of 3-4 parking spaces to serve the development, the Council considers that the 2 spaces proposed would be acceptable subject to a legal agreement to deny occupiers the right to purchase permits to park within the CPZ. The appellant's UU sets out that any freehold, leasehold, option, licence or other disposal agreement for the dwellings would include restrictions to the effect that the dwelling may not be occupied by a person who has a residents parking permit unless they are a disabled badge holder, and that occupiers may not purchase or procure permits while occupying the site. The UU also provides that occupiers would be informed that they will not be entitled to a residents parking permit other than holders of a disabled persons badge.
16. Because it is made under Section 16 of the Greater London Council (General Powers) Act 1974 (as amended) which does not require a restriction on land, I am satisfied that the obligations within the UU would be legally valid. Be that as it may, I am also obliged to consider this matter in the context of statutory tests at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL regulations) which are reflected at paragraph 56 of the

National Planning Policy Framework (the Framework). These require that any 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.

17. At the time of my visit, there were a significant number of parking spaces available on street on Hendale Avenue and St Mary's Crescent very close to the site. I acknowledge that this was a snapshot and that my visit was carried out during a working day at a time when it would be reasonable to expect that some residents may be out at work or engaged in other activities away from home. Nevertheless, the majority of the buildings that I saw along these streets have some provision for off-street parking, and there is no firm information before me to indicate a high level of parking stress locally or to demonstrate insufficient on-street capacity. Given these circumstances, I see no reason that the development would be likely to result in unsafe or indiscriminate on-street parking so as to cause obstruction or otherwise adversely affect the safety or operation of the surrounding highway network.
18. In this context, I am unable to conclude that it would be necessary to prevent future occupiers from obtaining permits to park within the CPZ. I am not therefore satisfied that the obligations within the UU would meet the tests set out in Regulation 122 of the CIL Regulations. Accordingly, I have not taken them into account in determining the appeal, and they do not constitute a reason for granting planning permission.
19. Given my findings above, I conclude on this main issue that the proposed parking arrangements would not lead to unacceptable harm to the safety or operation of the highway network in the vicinity of the appeal site. I therefore find no conflict with Policies CS9 or CS15 of the CS or Policy DM17 of the DMP which together broadly seek safe, effective and efficient travel; management of parking and the mitigation of development impacts.

Other Matters

20. I have given careful consideration to representations made by interested parties, and note submission of a petition objecting to the proposal. A number of comments refer to past works undertaken to the appeal building and its occupation as a House in Multiple Occupation (HMO) resulting in concerns including noise, overcrowding, anti-social behaviour and management issues. However, that is not a reason in itself to dismiss the appeal which I must instead consider according to the merits of the development before me. The proposal is for 2 dwellings and I have no reason to assume that these would in future be occupied as HMOs, but any such proposals would in any event be assessed on their own merits.
21. There is no substantive evidence to suggest that the development would place an undue strain on local services, nor that the proposal would harm safety or security or result in anti-social behaviour or other nuisance. I acknowledge concerns that the grant of planning permission would set a precedent for other similar developments. However, given my conclusions above, I can see no reason why it would lead to harmful developments on other sites in the area. Moreover, each application and appeal must be determined on its individual merits. A generalised concern of this nature does not therefore justify withholding permission in this case.

Conditions

22. I have considered suggested conditions having regard to the tests set out at paragraph 55 of the Framework. As a result, I have amended some where necessary, or for the sake of consistency, brevity or clarity.
23. In addition to the standard time limit, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. In order to ensure a satisfactory appearance, I have imposed a condition to require the use of external materials to match the existing building. To safeguard the living conditions of neighbouring occupiers and highway safety, a condition is required to agree details of how construction will be managed. This is a pre-commencement condition as details need to be agreed before any works take place to ensure that they are satisfactory, and the appellant has provided written agreement to the suggested condition.
24. Conditions to require details and implementation of cycle storage, refuse and recycling storage and landscaping and the implementation of the indicated amenity spaces are necessary in the interests of the character of the area, the living conditions of occupiers and to ensure satisfactory provision. Given the position of the existing crossover to the site and a lighting column, I have also imposed a suggested condition to require details of the layout of parking and vehicular access to the site in the interests of highway safety.
25. In the interests of resource efficiency and to meet requirements of the development plan, I have imposed a condition relating to water use. Finally, a condition to prevent use of the roof of the extension as a balcony, roof garden or similar is necessary in the interests of the living conditions of neighbouring occupiers.

Conclusion

26. I find that the proposal would accord with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 83-100, 83-101 Rev D, 83-110, 83-111 Rev D, 83-112 Rev A, 83-200, 83-300 and 83-301 Rev B.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 4) No development or site 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 submitted shall include, but not be limited to, the following:
 - i) details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures;
 - ii) site preparation and construction stages of the development;
 - iii) details of provisions 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 are 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) a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
 - vii) noise mitigation measures for all plant and processors;
 - viii) details of contractors compound and car parking arrangements;
 - ix) details of interim car parking management arrangements for the duration of construction; and
 - x) details of a community liaison contact for the duration of all works associated with the development.

The development shall thereafter be implemented in accordance with the measures detailed within the statement.

- 5) Before the development hereby permitted is first occupied, cycle storage shall be provided in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority, and shall be permanently retained as such thereafter.
- 6) Notwithstanding the approved plans, revised details of enclosures and screened facilities for the storage of recycling containers, wheeled refuse bins or other refuse storage containers where applicable - including space

for a second garden waste bin - together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development hereby permitted. The development shall be implemented in accordance with the details as approved under this condition prior to the first occupation of the development and shall be permanently retained as such thereafter.

- 7) Before the development hereby permitted is first occupied, a scheme of hard and soft landscaping, including boundary treatments, hardsurfacing materials, details of any existing trees to be retained and size, species, planting heights, densities and positions of any proposed soft landscaping shall be submitted to and approved in writing by the Local Planning Authority.

All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner.

Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

- 8) Notwithstanding the approved plans, a revised parking layout plan including existing and proposed crossover dimensions and areas of redundant crossovers to be reinstated to footway shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development hereby permitted. The development shall be implemented in accordance with the details as approved under this condition prior to first occupation of the development and shall be permanently retained as such thereafter.
- 9) Before the development hereby permitted is first occupied, the rear amenity spaces shall be laid out in accordance with the details shown on approved drawing no 83-101 Rev D (Proposed Site Plan) and shall be permanently retained as such thereafter.
- 10) Prior to the first occupation of the development hereby permitted, the dwellings shall each have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters, and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach used to determine the water consumption of the development. The development shall be permanently retained as such thereafter.
- 11) The roof of the extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.

End of Schedule