



Appeal Decision

Site visit made on 7 September 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/N5090/W/21/3269370

Rear of 12 To 22, Falkland Avenue, Finchley Central, London N3 1QR

- 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 Nevyan Markov of Global Acquisitions Group Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/2620/FUL, dated 8 June 2020, was refused by notice dated 21 August 2020.
 - The development proposed is demolition of existing warehouse (Use Class B8) and erection of a two storey residential block to provide eight flats (Use Class C3), consisting of a tenure of 6no. 2B3P units and 2no. 1B2P units; with provision of cycle spaces, refuse storage and associated landscaping works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The revised National Planning Policy Framework (the Framework) was published 20 July 2021 and the new London Plan was also adopted 2 March 2021. Consequently, the main parties were given an opportunity to comment on both documents and any subsequent implications that may have emerged.
3. New evidence was submitted by the appellant at the start of the appeal, including a letter describing the marketing of the site, a tree survey, ecological surveys, and appeal decisions. Other interested parties, including the Council, will have had an opportunity to comment on the new evidence through normal procedures. The new evidence has therefore been accepted and the appeal dealt with accordingly.

Main Issues

4. The main issues are the effects of the proposal on:
 - (a) employment space and the local economy;
 - (b) living conditions of future occupiers in relation to outlook and level of private outdoor space;
 - (c) living conditions of neighbouring occupiers in relation to outlook and privacy;
 - (d) highway safety;
 - (e) biodiversity including protected species; and
 - (f) character and appearance of the area including existing trees;

Reasons

Employment

5. The site is located on the edge of Finchley Church End's town centre, where it is currently occupied by a business use operating in the storage and sale of vehicle parts. Policy DM14 of Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP) is clear that the loss of such a use will only be permitted if it can be demonstrated that the site is no longer suitable and viable for its existing or alternative business use in the short, medium, or long term and a suitable period of effective marketing has been undertaken.
6. The appellant has submitted a letter from a property agent outlining the marketing exercise undertaken at the site. However, it is very brief and lacking detailed objective analysis. For example, it is not clear why the market is currently depressed, or what the short, medium, or long term outlook might be, whether in the context of the pandemic or otherwise. Furthermore, it is not clear why the design is considered to be flawed, or what the market demands are in the area and whether there are reasonable prospects of putting the site to an alternative business use, to generate more employment opportunities compared to the existing use.
7. It is noted that there were a number of viewings at the site. However, it is not clear whether those who viewed the site represent a comprehensive cross section of prospective operators. Furthermore, it is not clear why the site was not appropriate for their needs. Altogether, there is insufficient evidence to demonstrate that alternative business uses, across an appropriate range of prospective operators, have been comprehensively exhausted or that the site has been marketed effectively.
8. Notwithstanding the potential economic benefits associated with the proposal's operation, there is insufficient evidence on the baseline conditions at the site and the extent to which the existing employment use or potential alternative uses could benefit the local economy. Consequently, it is unclear what relative weight should be given to the potential economic benefits of the proposal's operation, and it can only reasonably carry limited weight in this context. Similarly, any benefits derived from the construction of the proposal would be temporary in nature and would not be comparable or offset the loss of a permanent employment use at the site.
9. The appellant contends at Paragraph 5.13 of their appeal statement that Policy DM14 of the DMP is inconsistent with the London Plan 2016. However, without a direct policy reference within the London Plan 2021 and an accompanying assessment of consistency in terms of strategic industrial land, it is not possible for me to make a firm conclusion in this respect. In terms of consistency with the Framework, Paragraph 122 confirms that decisions need to reflect changes in the demand for land and Paragraph 123 is clear that local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose.

10. However, it is also clear that this is in the context of meeting identified development needs. It has not been demonstrated in this case that there is a change in demand for land, whether it is brownfield land or not, or that there is an acute housing need in the local area, a shortfall in five year housing land supply or failure to meet housing delivery tests.
11. Even if this was demonstrated, Paragraph 123 of the Framework also establishes that the use of employment land for homes in areas of high housing demand should come forward without undermining key economic sectors, sites or the vitality and viability of town centres. This is not sufficiently proven.
12. Policy DM14 of the DMP serves to protect the local economy, including the town centre, by ensuring that employment sites are not developed where they are still viable. There are opportunities to develop such land under Policy DM14 of the DMP, providing adequate evidence is submitted. Consequently, it is consistent with the Framework and is not out of date.
13. Paragraph 60 of the Framework makes clear that it is important for a sufficient amount and variety of land to come forward where it is needed. Paragraph 69 of the Framework sets out that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. However, similar to my foregoing assessment, it has not been demonstrated that there is an acute housing need in the area, a shortfall in five year housing land supply or failure to meet housing delivery tests that would necessitate the loss of employment land in this case.
14. Although the site may not be formally designated, this does not prevent the existing use from being valuable to the local economy or make it exempt from policy protections. Overall, the proposal would result in the loss of employment space and harm the local economy. This would conflict with Policy DM14 of the DMP, which among other things seeks to preserve employment uses and the local economy. It has been found consistent with the Framework and carries full weight in the planning balance.

Living Conditions of Future Occupiers

15. The site is located to the rear of Falkland Avenue. It is a small area of land in the centre of a wider perimeter block of residential development. The existing building already takes in an appreciable amount of the site. The proposal would be larger in scale, and although this may not be problematic in the context of character and appearance as reasoned later in my decision, it would end up taking in the majority of the site as a result.
16. Consequently, it would sit in relatively close proximity to the rear garden areas and rear habitable room windows of surrounding residential development. The separation distances involved mean there are potential views coming from many directions. It is acknowledged that the proposal attempts to mitigate overlooking through the positioning and angle of windows and the use of obscure glazing on the north-east and south-west elevations.
17. However, the obscure glazing would not provide any meaningful outlook, and there is no evidence before me, through design standards or otherwise, that the severely restricted visibility cones from angled windows would be sufficient to provide an adequate level of outlook either.

18. For example, it seems reasonable that future occupiers should be able to enjoy an outlook when using the habitable rooms in a normal fashion; and not be required to sit or stand in a limited or restrictive area of the room. It is not clear that the angled windows allow this to happen or that they are proportionately sized to the room and provide adequate levels of outlook.
19. Patio areas at ground floor level, and balcony areas at first floor level would be provided by the proposal. However, separation distances with neighbouring residential development would necessitate extensive use of high boundary treatments generally and privacy screening on the north-west and south-east elevations, which would limit outlook when using these spaces.
20. This problem would be particularly acute at the balconies associated with the first floor accommodation, which unlike the ground floor patio areas, fall below the space standards required by Local Plan Supplementary Planning Document: Residential Design Guidance 2016. Consequently, a combination of limited outlook and instances of substandard private outdoor space provision means future occupiers would not be able to enjoy any meaningful relief from the reduced outlook imposed within the building.
21. It is acknowledged that the private outdoor space requirements may be a matter of guidance. Notwithstanding whether they are mandatory requirements or not, given the restricted outlook internally within the building in this case, it is necessary to apply the guidance in a more rigid manner to generate some additional visual relief for future occupiers.
22. There is no evidence before me demonstrating that access to parkland mitigates the lack of outlook or restricted use of private outdoor space. Moreover, it is likely that future occupiers would spend a significant proportion of time within their dwellings. Consequently, there needs to be an acceptable baseline of living conditions.
23. In theory the habitable room windows facing north-west and south-east would have an improved outlook compared to those facing north-east and south-west. This is mainly because these windows would not be subject to a restricted angle of view or subject to obscure glazing. However, the boundary features and privacy screening would be 1.8 metres in height. Consequently, for all intents and purposes, it would obscure and significantly diminish the outlook from these habitable rooms.
24. It is acknowledged that the residential units themselves may accord with minimum space standards, but this does not mitigate the other concerns surrounding the living conditions of future occupiers. Policy D6 of the London Plan 2021 is clear that its private outdoor space standards only apply where there are no higher local standards. Without evidence to the contrary, it would appear there are higher local standards that need to be applied in this case.
25. The availability of sufficient levels of light for future occupiers is briefly mentioned within the planning officer's report and the Council's appeal statement. However, it is without substantive assessment and it is not present in the reasons for refusal. Consequently, I am unable conclude that the proposal would be harmful in this regard.

26. Overall, the proposal would harm the living conditions of future occupiers by restricting outlook and providing substandard private outdoor space in certain instances. It would therefore conflict with Policy D3 of the London Plan 2021, Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document 2012 (CS), Policies DM01 and DM02 of the DMP.
27. Furthermore, the proposal does not accord with the Local Plan Supplementary Planning Document: Residential Design Guidance 2016 and the Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016. Among other things, these policies and documents seek to secure adequate living conditions for future occupiers.

Living Conditions of Neighbouring Occupiers

28. In a similar context to the above, the characteristics of the proposal and site, in conjunction with the proximity of neighbouring residential development, gives rise to potential effects on the living conditions of neighbouring occupiers.
29. The proposed building would be within 1 metre of the rear garden areas, and around 15 metres from the rear habitable room windows of the residential development along Falkland Avenue to the south-west. It would be within 3 metres of the rear garden areas, and around 13 metres from the rear habitable room windows of the residential development along Cornwall Avenue to the north-east. Lastly, it would be within 8.5 metres of the rear garden area, and around 21 metres from the rear habitable room windows of the residential development along Grove Avenue to the north-west.
30. It is clear that in the vast majority of cases the proposal would not accord with the required separation distances set out within the Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016, which would require 10.5 metres to the rear garden areas and 21 metres to the nearest habitable room windows.
31. In practical terms, it is highly likely that because of intervening boundary treatments, including Lovers Walk to the north-east, the ground floor of the proposal would not generate actual or perceived overlooking. However, such effects could potentially be realised at first floor level due to the scale and layout of the building in conjunction with the lack of separation distances involved.
32. Notwithstanding the acute angle of view from the north-east and south-west habitable room windows, the Council maintains that the separation distances involved would not be in accordance with guidance. This would appear to be the case, where the vision cones highlighted on the proposed floor plans¹ demonstrate that every window illustrated on the drawing would intersect the rear garden areas of neighbouring residential development within around 10.5 metres.
33. Consequently, there would be clear and actual levels of overlooking generated by the first floor of the building upon the rear garden areas of neighbouring residential development at Cornwall Avenue to the north-east and Falkland Avenue to the south-west. Paragraph 7.4 of the Local Plan Supplementary Planning Document: Residential Design Guidance 2016 does support design solutions through window placement in order to mitigate overlooking.

¹ Drawing Number: 945/SPB/NM/4 Rev G

34. However, it is clear from my foregoing assessment that the current placement of windows and their angle of view does not mitigate overlooking at the rear garden areas to an acceptable degree.
35. There are contentions from the Council that the vision cones also intersect with habitable room windows at the rear elevations of the aforementioned residential development. However, there is no firm evidence presented in the Council's appeal statement in this regard, and the proposed floor plans previously cited do not indicate where these windows are placed on neighbouring residential development. Consequently, I cannot conclude that this would actually be the case, or that there would be actual levels of overlooking in this regard.
36. There is an argument that the obscure glazed habitable room windows at the first floor level, and the privacy screening at the first floor balconies, would generate perceived levels of overlooking. However, given that the area is generally high density in nature, it is not unreasonable to conclude that there is already a high degree of perceived overlooking amongst existing residential development. Consequently, the proposal is unlikely to alter the levels of perceived overlooking within the area to any material extent and would not harm the privacy of neighbouring occupiers in this context.
37. I note that when considering outlook earlier in their statement, the Council argued that the privacy screening at the first floor balconies would have harmful effects. However, later in their statement, the Council argued that there would still be a degree of outlook resulting in overlooking. It is clear that 1.8 metres is a substantial height and that the average person using the balconies would be unable to overlook neighbouring residential development in normal use case scenarios. This is consistent with my earlier conclusions on outlook, wherein I found the privacy screens to be overly restrictive.
38. The proposal is larger in footprint compared to the existing building. However, the majority of its additional footprint appears to be concentrated at either end of its length. Consequently, it does not materially encroach on the rear garden areas of what is currently the most proximal residential development to the north-east and south-west.
39. Its relationship with the rear garden areas to the north-west would be materially closer than the existing building, however the relationship would not be dissimilar to the prevailing context between the existing building and the rear garden areas to the north-east and south-west. Altogether, the layout of the proposal does not represent a significant change from what is existing in this regard.
40. In terms of scale, an increase of around 1 metre in height appears somewhat limited in and of itself. This height increase, considered in conjunction with my foregoing assessment of the proposal's layout and relative proximity to neighbouring residential development, leads me to the conclusion that although larger compared to the existing building, the increase in scale would not generate harmful overbearing effects on neighbouring occupiers.

41. The availability of sufficient levels of light for neighbouring occupiers is briefly mentioned within the planning officer's report and the Council's appeal statement. However, it is without substantive assessment and it is not present in the reasons for refusal. In any event, it is clear from the appellant's daylight and sunlight report that the proposal would accord with relevant standards.
42. Overall, although the proposal would not generate unacceptable levels of overbearing or perceived overlooking, it would still generate unacceptable levels of actual overlooking and would harm the living conditions of neighbouring occupiers in this context. It would therefore conflict with Policies DM01 and DM02 of the DMP, Local Plan Supplementary Planning Document: Residential Design Guidance 2016 and the Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016. Among other things, these seek to secure adequate living conditions for neighbouring occupiers.

Highway Safety

43. The site is located in an area with a good public transport accessibility level of four. This means that the maximum allowable parking provision for the development is between 6 and 11 spaces. This is in accordance with Policy DM17 of the DMP. Consequently, the proposal has been submitted without dedicated parking arrangements, wherein the transport assessment submitted demonstrates a parking stress of around 50% with approximately 68 spaces available.
44. However, it is clear that the surveys underpinning the transport assessment were around the time of the pandemic restrictions. Consequently, I cannot be certain that the survey data included therein is representative of parking stress in normal times, without pandemic restrictions. With this in mind, and notwithstanding the good public transport accessibility among other things raised by the appellant, it is not possible for me to determine whether the proposal would be acceptable in parking terms.
45. Similarly, without reliable evidence on parking stress, it is not possible to assess the proposal against Paragraph 111 of the Framework, which acknowledges that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
46. The site is accessed from Adams Close, which links with the wider highway network via Falkland Avenue. From my site visit, Adams Close appeared to be a narrow highway, and the yard area adjacent to the site also appeared a small area of land. Consequently, the Council's concerns about emergency access appear reasonable in principle.
47. In the absence of dimensions demonstrating that Adams Close and the yard area are suitable for emergency services, I cannot be certain that the proposal would be acceptable in this regard. This is unless it can be demonstrated that emergency services do not need to access Adams Close itself and can carry out their functions by decanting from Falkland Avenue, in a similar manner to how refuse services may fulfil their functions. This has not been demonstrated either.

48. I note the appellant originally cited Policy 6.13 of the London Plan 2016, which deals with car free developments. Nonetheless, it is clear from Policy CS9 of the CS that the Council should seek to manage a parking regime which recognises that many Barnet residents will continue to own and travel by car. Furthermore, it is not clear how a car free development would be appropriately secured in any event.
49. The Council acknowledge that the maximum residential parking standards are reduced in the London Plan 2021, but that the proposals nonetheless represent a significant shortfall with respect to these standards with insufficient justification as to how overspill would be accommodated. The appellant did not provide an assessment to the contrary and in essence the Council's position on this point is unopposed.
50. It is acknowledged that higher order technical documents, such as a transport assessment may not strictly be required in this case and that the proposal is not major development. However, smaller proposals can still give rise to unacceptable levels of parking stress in and of themselves. Consequently, such risks still need to be objectively assessed in a reliable manner. Similarly, it is acknowledged that the proposal may be compliant with cycle parking. However, it is not clear that this would mitigate parking stress resulting from the proposal.
51. Regarding the cited appeal² the full details are not before me in order to make a comprehensive comparison and determine whether it is relevant. Notwithstanding, it would appear that the appeal is from 2018, before the pandemic and therefore not comparable with some of the issues pertinent to this case, such as the validity of the survey data.
52. Overall, there is insufficient evidence to determine that the proposal would have an acceptable effect on highway safety. Consequently, it would not accord with Policies T4 or T6.1 of the London Plan 2021, Policy DM17 of the DMP or Policy CS9 of the CS, which among other things seek to manage parking standards and access in the interests of highway safety.

Biodiversity

53. The site comprises mostly hardstanding and the existing building. The preliminary ecology and bat roost assessment has demonstrated that the building has potential for bats, which are protected species. Where the potential for protected species is confirmed, further surveys establishing if the site is used or not should be undertaken in accordance with best practice³.
54. It may be the case that protected species are not present and that the building could be demolished without harmful effects on protected species. However, it may also be the case that protected species are present and it would therefore be necessary to determine if demolition would be acceptable and what mitigation or compensation may be appropriate depending on the extent of the protected species present. Consequently, without this information, it is not possible to determine with certainty whether the building can be demolished without harmful effects on protected species.

² 17/3185754

³ Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edition), Collins, J., 2016

55. Paragraphs 98 and 99 of Circular 06/2005 state that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
56. Consequently, the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances. It has not been demonstrated that exceptional circumstances exist in this case. There is no evidence before me demonstrating a policy position within the development plan, the Framework, or other such document that a pre-emptive mitigation and enhancement strategy for bats is acceptable. Consequently, I have given it limited weight under the appeal.
57. Overall, there is insufficient evidence to determine that the proposal would have an acceptable effect on biodiversity including protected species. Consequently, it would not accord with Policy G6 of the London Plan 2021, DM16 of the DMP, and the Biodiversity and Geological Conservation: circular 06/2005. Among other things, these seek the retention and enhancement of biodiversity.

Character and Appearance

58. The site is located to the rear of Falkland Avenue. It is a small area of land in the centre of a wider perimeter block of residential development. Consequently, it is framed by the rear elevations and gardens of several dwellings. The site is in small scale employment use but is very much read in a residential context.
59. The building itself is a non-descript single storey unit of industrial design. It is constructed of red brick with shallow pitch corrugated roofing. The elevations consist a number of rainwater goods and signage, whilst the building contains a limited number of windows generally. Overall, it lacks interest, or any defining architectural quality and makes a limited contribution to the character and appearance of the area.
60. Trees populate the perimeter block and are a noticeable feature of the area. A tree survey in accordance with BS5837:2012 demonstrates that that there are no Category A (high quality) trees or groups of trees on or adjacent to the site. There is one Category B tree (T2) located on the south-western corner of the site and of moderate quality to the area.
61. The remaining trees in the immediate vicinity are of lower quality. Notwithstanding, the trees that permeate the perimeter block make a collective contribution to a leafy character and appearance which softens the existing built form.
62. The proposal would deliver a residential use within an existing residential context, and therefore as a matter of principle would be acceptable. The scale of the proposal is more pronounced than the existing building at the site. However, the larger footprint and limited increase in height is mitigated at first floor level, which incorporates a stepped arrangement to reduce massing and the perception of scale.

63. Elsewhere the design of the building includes angled windows at the front and rear elevations and appreciable amounts of glazing with balconies at the side elevations. These elements help to further reduce the perception of mass by providing interest and visual relief to avoid monotony of built form. The fact that obscure glazing is used would not appear to diminish this effect, it would still be glazing that contrasts with other materials used in the construction, creating interest.
64. Consequently, although the proposal maximises the plot of land relative to the existing building, it is designed in such a way that it does not present itself as an inappropriate mass. Furthermore, the rear garden areas of neighbouring dwellings create separation between the wider prevailing built form.
65. As such, although close to existing boundaries, the visual relationship between the proposal and surrounding dwellings, insofar as it relates to character and appearance, is not cramped. There is no evidence that such a high density arrangement is inappropriate as a matter of principal, by way of density standards or otherwise.
66. Although it may depart from the more traditional construction of surrounding dwellings, it is clear from Paragraph 6.2 of the Local Plan Supplementary Planning Document: Residential Design Guidance 2016 that respecting local character does not necessarily mean replicating it.
67. The proposal serves to make the most efficient use of land, designed in a way that adds interest to avoid monotony and reduces the perception of scale. Furthermore, it is clear that the existing building is of little interest, and therefore the proposal would enhance the character and appearance of the area in this context.
68. Although an arboricultural impact assessment has not been submitted with the proposal to definitively address the potential impact on trees, because of the nature and location of the trees present the likely effects are clear and can be deduced from comparing the tree survey with what is proposed. Even in the worst case scenario, the only tree of moderate value likely to be affected by the proposal is the one Category B tree (T2) located on the south-western corner of the site.
69. Even if this tree is lost to the proposal, along with other lower category trees elsewhere along the site's boundary, there would be an appreciable number of trees remaining throughout the perimeter block, including other Category B trees. In addition, there are opportunities to secure additional landscaping measures, such as replacement tree planting by planning condition. This would help to soften the built form further. Consequently, the prevailing leafy character and appearance of the perimeter block could be adequately preserved by the proposal.
70. Altogether, the proposal would preserve and enhance the character and appearance of the area. It would therefore accord with Policies D3 and G7 of the London Plan 2021, Policy DM01 of the DMP, Policies CS NPPF, CS1 and CS5 of the CS, Local Plan Supplementary Planning Document: Residential Design Guidance 2016, and Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016. Among other things, these seek to protect and enhance Barnet's character to create high quality places.

Other Matters

71. In relation to the planning history near the site, the planning permissions granted under the relevant applications⁴ are noted. However, the full details of these are not in front of me and I cannot make a comprehensive assessment of their relevance or how the planning balance was struck in each case.
72. In addition, given the age of the planning permissions, the context within which they were granted may have subsequently changed, for example through a change in development plan such as the London Plan 2021, or changes to national policy such as the revised Framework, among other things. Altogether, they carry limited weight under the appeal.
73. There is no evidence before me that the site or the proposal would interface with listed buildings within the locality. This is mainly due to intervening development and boundary treatments, which segregate the site from their settings. Consequently, the proposal would have no effect on their settings, preserving their heritage significance accordingly.

Conclusion

74. Although the proposal would preserve and enhance the character and appearance of the area, this is a singular matter and there are a significant number of other matters weighing against it. Altogether, the cumulative weight of these other matters would create a level of harm that outweighs the more limited benefits, and this means that the appeal is dismissed.

Liam Page

INSPECTOR

⁴ 17/5180/FUL & 20/0645/FUL