



Appeal Decision

Hearing Held on 17 November 2021

Site visit made on 22 November 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18/03/2022

Appeal Ref: APP/N5090/W/20/3265467
738-742 High Road, London N12 9QD

- 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 Costas Christou against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/6202/FUL, dated 15 November 2019, was refused by notice dated 26 June 2020.
 - The development proposed is described on the application form as 'Demolition of the existing building and the erection of a new mixed-use development with a commercial ground floor/basement unit and 19no. self-contained flats arranged over 5 storeys, along with a roof terrace communal amenity area and car parking arranged over the basement'.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. On the decision notice the Council has described the development as '*Demolition of the existing building and the erection of a new mixed-use development with a commercial use (Use Class A1) at ground floor and basement level, and 17 no. self-contained flats (Use Class C3) arranged over 5 storeys. Provision of car parking, cycle parking and storage, and refuse/recycling storage at basement level. Roof terrace at fourth floor to provide communal amenity area, glass enclosure to access stairs and provision of plant room and lift overrun at fourth floor. New dropped kerb. [AMENDED DESCRIPTION]*'. I also note that the appellant has not raised an objection in this regard. I consider that this revision provides an accurate description of the proposal and I have therefore determined the appeal on this basis.
3. On 20 July 2021 a revised version of the National Planning Policy Framework (the Framework) was published. However, as the main parties have had an opportunity to comment on this matter, I am satisfied that neither party has been prejudiced in this regard.
4. Since the determination of the original application the London Plan 2021 (a Replacement Plan) has been published by the Mayor of London. This London Plan replaces all previous versions. The new London Plan is clearly referred to within the Council's submissions as are the relevant policies. Therefore, I am satisfied that no party has been prejudiced in this regard either.

5. The main parties have advised that they are no longer in dispute in respect of the fourth and fifth reasons for refusal and the rationale for this is clearly set out in the agreed Statement of Common Ground (SoCG). Further, additional evidence to support this fact has been submitted in relation to these matters. Consequently, based on this and in the context of the above I am satisfied that these former matters of dispute have now been resolved. I therefore do not address these matters in the reasoning below.
6. Both main parties have referred to the fact that the recently approved development at no. 744 High Road (Ref. 17/0594/FUL) has been fully implemented. Indeed, while on my site visit, I observed this to be the case and I have determined the appeal on this basis.

Main Issues

7. In the context of the above, the main issues are:
 - the effect of the proposed development on the living conditions of its future occupiers and on those of the neighbouring occupiers of no. 744 High Road having regard to privacy;
 - the effect of the proposed development on the living conditions of its future occupiers having regard to daylight and sunlight;
 - the effect of the proposed development on the living conditions of the future occupiers of unit nos. 12 and 17 having regard to outlook; and
 - whether it would be economically viable for the proposal to provide affordable housing in accordance with the relevant policies of the adopted development plan for the area.

Reasons

Living Conditions of neighbouring occupiers and future occupiers - Privacy

8. As a general principle, Policy DM01 of the adopted Barnet Local Plan Development Management Policies Development Plan Document (DMP) stipulates that development proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users.
9. At paragraph 7.3 the adopted Residential Design Guidance Supplementary Planning Document (RDSPD) states that in new residential development there should be a minimum distance of about 21 metres between properties with facing windows to habitable rooms to avoid overlooking.
10. Section 2.4 of the adopted Sustainable Design and Construction Supplementary Planning Document (SDSPD) provides further guidance on daylight, privacy, outlook, and light pollution. In relation to privacy, it stipulates that in new residential development there should be a minimum distance of 21 metres between properties with facing windows to habitable rooms to avoid overlooking.
11. In relation to the first floor, according to the submitted plans and the evidence, the side elevation first floor window serving the living/kitchen/dining (LKD) room of proposed unit 6 would face the corresponding LKD room window of unit 2 of the adjacent property no. 744 High Road with approximately 9 metres between them. Similarly, the other first floor side window, serving the kitchen of proposed unit 6, would face the windows of bedroom 2 of unit 2 at no. 744 with approximately 11 metres between them. In addition, the same evidence shows that the first-floor

- windows serving bedroom 1 of proposed unit 6 would also face one of the windows serving bedroom 2 of unit 2 at no. 744 as well as its first-floor balcony.
12. Likewise, one of the LKD room windows and both bedroom windows of proposed unit 5 would also face the corresponding windows serving bedroom 1 and the LKD room of unit 3 of no. 744 with respective separation distances of approximately 9 and 11 metres. The balconies serving proposed units 5 and 6 would also directly face the corresponding first floor balcony of unit 2 of no. 744 with approximately 9 metres between them. In addition, the window serving bedroom 1 of proposed unit 3 would face the balcony with there being a separation distance of approximately 9 metres between them. It would also face the LKD room window of unit 4 at no. 744 with a separation distance of approximately 10 metres.
 13. Regarding the second floor, the submitted plans and evidence shows that: windows serving the LKD room of proposed unit 11 would face windows serving bedroom 1 of unit 6 at no. 744 and the LKD room of unit 7 at no. 744 with respective separation distances of 9 and 11 metres; the windows serving the bedrooms of proposed units 10 and 11 would also face windows serving the LKD room and bedroom 1 of unit 7 at no. 744 and bedroom 1 of unit 8 at no. 744 at a distance of approximately 11 metres; and that the window serving the LKD room of proposed unit 10 would also face the windows serving the LKD room of unit 8 at no. 744 having a separation distance of approximately 9 metres.
 14. In relation to the third floor, according to the submitted plans, including those of no. 744 submitted as part of the Council's statement, the window serving the LKD room of proposed unit 16 would directly face the corresponding LKD room window of the opposite flat of no. 744 which would also have a separation distance of approximately 9 metres.
 15. Consequently, none of these proposed separation distances meet the requirements as set by the SDSPD and RDSPD. Therefore, and given the proposal's location in relation to no. 744, the proximity of their respective flank elevations which directly face each other, the fact that many of the rooms which would face each other would be habitable rooms with clear glazed windows means that I consider it likely that the proposal would have a significant cumulative adverse impact in relation to overlooking of the relevant units of no. 744. For similar reasons I also find that there would likely be a mutual loss of privacy for the proposal's future occupiers.
 16. I note the appellant's point that as per the London Mayor's Housing Supplementary Planning Guidance (SPG), flexibility in the application of the standards in urban areas is advised and that adhering rigidly to these measures can limit the variety of urban spaces and housing types in the city and can sometimes be unnecessarily restrictive. However, in this case the proposed separation distances would represent approximately less than half of the minimum distances set out in the SDSPD and RDSPD which is not insignificant. As a result, and considering the large number of windows serving habitable rooms that would be facing each other, I consider that such a reduction would apply too much flexibility in this particular case.
 17. Furthermore, the relevant standard set out in the SPG states that design proposals should demonstrate how habitable rooms within each dwelling are provided with an adequate level of privacy in relation to neighbouring properties, the street and other public spaces. In the context of the above I consider that the appellant has failed to adequately demonstrate this.
 18. I also note that many of the proposal's windows on the flank elevation that would face the corresponding one of no. 744 would be double-angled. However, at the

hearing the appellant's consultant confirmed that the angle of these windows would be approximately 30 degrees. As a result, I consider that the potential mitigation that these angled windows would provide at such a close distance would be limited.

19. The appellant has also stated that mutual overlooking could potentially be mitigated via the installation of opaque privacy screens in front of certain windows of the proposal. However, given the number and position of these windows it would not be an ideal or practical solution in every case which may well cause other issues in relation to loss of outlook. I also consider that it would also not be reasonable to place such privacy screens in front of all of the affected flank elevation windows.
20. The appellant has also pointed to other examples of residential developments on corner plots in the area. However, on my visit I observed that the majority of such buildings in the area appeared to have greater separation distances between their flank elevations and those of the buildings on their respective opposite sides than the proposal and no. 744 would. As a result, I afford this consideration limited weight.
21. I therefore conclude that the proposed development would materially harm the living conditions of its future occupiers and those of the neighbouring occupiers of no. 744 High Road having regard to privacy. Accordingly, it would fail to meet the relevant requirements of policy DM01 of the DMP as supported by the RDSPD and the SDSPD. It would also fail to meet the relevant requirements of policy D3 of the published London Plan (LP).

Living Conditions of the proposal's future occupiers – Daylight and Sunlight

22. The Council have raised concerns in relation to the amount of daylight and sunlight that the habitable rooms of some of the proposed units would receive. They are particularly concerned with several units which are single aspect with predominately north facing windows, namely units: 5 (first floor); 10 (second floor) and 15 (third floor). They are also concerned that these proposed units as well as units 4, 7, 9, 12, 14 and 17 would also have windows facing the proposed atrium/lightwell meaning that they would not receive enough daylight or sunlight to meet the required standards.
23. In relation to any north-facing windows serving these units the Council accept the fact that these windows have not been included in the appellant's submitted daylight/sunlight report dated May 2020 (the daylight/sunlight report) in accordance with the BRE Site Layout: Planning for Sunlight and Daylight: a Guide to Good Practice. They do however raise a concern in relation to the fact that the only 'assessed' windows serving proposed units 5, 10 and 15 would be their obscure glazed south facing ones meaning that they would only be likely to receive direct sunlight by reflection from the walls of the atrium/lightwell.
24. However, the appellant has submitted additional evidence in the form of a response to the Council's statement on this matter which shows the elevation of the sun from 10am until 2pm on 21 March. It also highlights that the windows of proposed units 5, 10 and 15 that would face the atrium/lightwell would have Annual Probable Sunlight Hours (APSH) measurements that either meet or exceed the required standard as is also reflected in appendix 2 of the daylight/sunlight report. As for proposed units 4, 7, 9, 12, 14 and 17 the evidence shows that these units would be dual aspect and that the light they would also receive via their windows which would face the atrium/lightwell would also have APSH measurements that would meet or exceed the required standard.

25. As a result, I am satisfied that all of the aforementioned units would receive an adequate amount of direct sunlight in accordance with the required standards.
26. The evidence also shows that while most of the rooms of these proposed units would likely meet the required Average Daylight Factor (ADF) standards not all of them would likely meet the required Vertical Sky Component (VSC) standards e.g., bedrooms 2 and 3 of unit 4, bedrooms 1 and 2 of unit 5, bedroom 2 south of unit 12 as well as others such as the north bedroom of unit 1.
27. Furthermore, the submitted daylight/sunlight report also does not contain any No Sky Line (NSL) assessment for any of the proposed units. At the hearing I asked the appellant's consultant why no NSL assessment had been included and they did not have an adequate answer for this. Normally, NSL measurements form an integral component of assessing the likely potential impact of a proposal in terms of daylight and sunlight. Moreover, the evidence also does not show what the likely levels of daylight and sunlight would be for all of the proposed amenity spaces on 21 March.
28. Consequently, the evidence before me suggests that the proposal would not meet the required daylight and sunlight standards in full or fully comply with the relevant guidance and development plan policies. As a result, I also consider that the proposal would have an adverse impact in this regard.
29. Accordingly, I conclude that the proposed development would materially harm the living conditions of its future occupiers having regard to daylight and sunlight. As a result, it would fail to meet the relevant requirements of policy DM01 of the DMP as supported by the RDSPD and the SDSPD. It would also fail to meet the relevant requirements of policy D6 of the published London Plan (LP).

Living Conditions of future occupiers - Outlook

30. The Council has raised concerns in relation to proposed units 12 and 17 in that in their view the future occupiers of these units would not have adequate outlook from the bedrooms. The reason for this is the fact that for unit 12, a 1.8 metre high privacy screen would be placed along the edge of the balcony serving the larger double bedroom 1. In addition, the Council is of the view that the proposed obliquely angled fenestration serving unit 12's smaller single bedroom would be located very close to the side elevation of no. 736 High Road, therefore only providing a limited outlook onto the High Road via the smaller of the double angled windowpanes. Regarding unit 17, the Council is concerned in that the larger window serving the unit's bedroom would be obscure glazed and that the only outlook for future occupiers would be a limited view through the other smaller and obliquely double-angled window. As outlined at the hearing the appellant has submitted additional evidence showing what the views from proposed units 12 and 17 would look like from certain vantage points within the respective bedrooms.
31. While these drawings show that there would be views from the angled fenestration of the smaller single bedroom of unit 12, these would be limited with the greatest proportion of a 'skyward view' only being possible when standing very close to the smaller angled windowpane. The drawings as well as the submitted plans also clearly show that the view through the other larger angled pane of this window would be of a brick wall i.e. the flank elevation of no. 736.
32. The view drawings for unit 12 do not show what would likely be seen through the large window of the double bedroom of unit 12. As a result, and based on the submitted plans and evidence, I consider it likely that this view would be limited given the height of the proposed privacy screen and that what outlook would be garnered would be of not much more than the upper built form of proposed unit

- no. 9. For similar reasons I also consider it unlikely that the proposed unit would have a spacious or airy feel.
33. The appellant has stated that future occupiers of the bedroom would be able to view over the top of the screen to the sky beyond the other part of the building opposite and that this would be a typical relationship found in dense urban area. They also point out that as unit 12 would be at second floor level that the opportunity of outlook in a vertical direction would be increased with the angled window also providing a view out of the room and along the length of the building. In their view this would provide a spacious feel an appropriate outlook in an urban environment that would not lead to a sense of enclosure for future occupiers. However, the fact that the proposal is in a dense urban location does not, in my view, automatically mean that a limited view of the sky which would be partially obscured by the building opposite and a limited angled view of the length of the proposed building, would provide an acceptable level of outlook, as evidenced by the submitted photo montage. Moreover, for similar reasons the fact that unit 12 would be on the second floor would not by itself automatically mean that the outlook would be acceptable.
34. As for proposed unit 17, the submitted drawings also only show potential views via the smaller pane of the double angled smaller window serving the bedroom. Along a similar vein to the drawings for unit 12, these also show an outlook that would be quite limited with only partial views of the skyline. Again, the drawings do not show the view through the larger of the angled windowpanes, which would, according to the submitted plans and evidence, likely be of nothing other than the roof of no. 736. Therefore, while a view along the building skyward would technically be provided, this would be limited and would also not likely provide the unit with either a spacious or airy feel or provide an adequate level of outlook for future occupiers of this bedroom.
35. In relation to unit 17 the appellant has stated that the angled window would provide future occupiers with an 'outlook along the building skyward' which would be enhanced by the fact that it would be at third floor level thereby providing an outlook over the neighbouring property. He also states that although it would be obscure glazed, the other window serving this bedroom would in combination with the proposed angled window 'lead to a spacious feel within the bedroom and avoid a sense of enclosure'. However, a completely opaque window would not provide an adequate amount of outlook from any angle within the room. Furthermore, as set out above and as demonstrated by the submitted drawings, I consider that a limited view along the building skywards, would not by itself provide an adequate level of outlook for future occupiers of this bedroom.
36. Consequently, I find that the proposal would have a significant adverse impact in these regards. I therefore conclude that the proposed development would materially harm the living conditions of the future occupiers of unit nos. 12 and 17 having regard to outlook. Accordingly, it would fail to meet the relevant requirements of policy DM01 of the DMP as supported by the RDSPD and the SDSPD.

Affordable Housing provision

37. The appellant submitted an Economic Viability Assessment (EVA) dated November 2019 with the original application which concluded that it would not be viable to provide any affordable housing as part of the proposal. Subsequently, an updated EVA, dated December 2020 (EVA2) was submitted by the appellant as part of their evidence for the appeal which came to a similar conclusion.

38. The Council commissioned a review of EVA2 dated March 2021 (the BNP Paribas report) which they submitted as part of their evidence. It concluded that while it was agreed that the residual land value generated by the appeal scheme would be lower than the existing use value, that this did not provide a compelling argument for the provision of no affordable housing given that in their view a contribution of approximately 20% affordable housing would only have a very marginal impact on the residual land value generated by the appeal scheme.
39. Indeed, according to table 5.2.2.1 of the BNP Paribas report the provision of any affordable housing as part of the proposal would lead to a negative residual land value, and that these would be of a similar value to what it would be if 100% private housing were provided, taking into account factors such as the mix of units, their size, values per square foot and lower profit margins for affordable units. However, this is not necessarily the same as the provision of affordable housing being economically viable. As shown by the evidence, the provision of any affordable housing as part of the proposal would result in a negative residual land value.
40. Therefore, while I note the Council's point that the difference between the respective deficits in terms of the residual land value would be marginal, the fact remains that the provision of affordable housing would lead to a greater deficit than the provision of 100% private housing. Consequently, I find that the provision of affordable housing as part of the appeal scheme would not represent a financially sound option in this instance.
41. I therefore conclude that it would not be economically viable for the proposed development to provide affordable housing in accordance with the relevant policies of the adopted development plan for the area. Accordingly, it would meet the relevant requirements of policy CS4 of the adopted Core Strategy (CS), policy DM10 of the DMP, the adopted Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance and the adopted Barnet Planning Obligations Supplementary Planning Document.

Planning Balance and Conclusion

42. I must consider the appeal afresh, however my conclusion above means that I can only dismiss the appeal, on the basis that there are material considerations, matters of importance in the planning balance, where I have found that the proposal would cause material harm. Additionally, even though it would not currently be economically viable to provide affordable housing and the fact that a signed and executed UU has been submitted which includes review mechanisms, these considerations are not of sufficient weight to outweigh the material harm I have identified above.
43. Consequently, the proposal would not accord with the development plan when read as a whole and the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies contained within it. Furthermore, there are no material considerations which indicate a decision otherwise than in accordance with the development plan. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Jones – Agent

Chris Georgiou - Architectural Consultant

Terrence Rook – Daylight/Sunlight Consultant

Mark Smith – Viability Consultant

Andy Christou - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Alissa Fawcett – Senior Planning Officer

Dominic Duffin – Principal Planning Officer

Emily Bell – Planning Assistant

Eva Quill – Principal Planning Officer

Ashley Niman – Planning Officer

Lesley Feldman – Area Planning Manager

Anthony Lee – Senior Director, BNP Paribas

INTERESTED PARTIES:

Mr Ian Murphy

Mr Sagar Chandra