
Appeal Decision

Site visit made on 12 April 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2022

Appeal Ref: APP/N5090/W/21/3282268

133 Brent Street, Hendon, London NW4 4DA

- 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 Readysset Resources Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/4357/FUL, dated 17 September 2020, was refused by notice dated 14 May 2021.
 - The development proposed is described as the redevelopment of the site with an 8-storey building comprising Class E use on the ground floor, Class E (g) (i) offices and (ii) research and development use on the first, second and third floors with 9 residential units on the fourth, fifth, sixth and seventh floors.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Following receipt of final comments, the appellant asked me to consider a recent High Court judgement (CO/1683/2021: LB Hillingdon v Mayor of London 15 December 2021). The judgement is pertinent to the interpretation of Policy D9 of the London Plan 2021. The main parties were afforded the opportunity to comment on the implications of this judgement in respect of the determination of this appeal and I have taken the received comments into account as part of the determination of this appeal.

Main Issues

3. The main issues are (i) whether the proposal would accord with local policies relating to the location of 'tall buildings' and the effect of the development on the character and appearance of the area; (ii) the effect of the proposal on the amenity value of surrounding trees; (iii) whether the proposal would lead to sustainable means of travel; (iv) whether adequate provision would be made for outside amenity space for future occupants of the flats and (v) whether the proposal would result in unacceptable levels of carbon dioxide emissions.

Reasons

4. The appeal site is located on the western side of Brent Street, close to the junction with Brampton Grove and within Brent Town Centre. It adjoins Hendon Post Office, which is a part single part two storey brick building. A three storey residential block (Homemead) is immediately to the north-west and Churchill

House, an office building, is positioned to the north. Burnham Court, a four storey development, is positioned on the other side of Brent Street to the east.

5. It is proposed to erect an eight-storey building comprising Class E use on the ground floor, offices and research and development on the first, second and third floors, and nine residential units on the upper floors. Thirteen car parking spaces are proposed with access from Brampton Grove.

Tall buildings and character and appearance

6. Policy C5 of Brent's Local Plan Core Strategy 2012 (CS) states that tall buildings (eight-storeys (or 26 metres) or more) may be appropriate in identified strategic locations. The policy goes on to state that *'outside these specific locations, proposals for tall buildings will not be supported'*. This restriction is mirrored in policy DM05 of Barnet's Local Plan Development Management Policies DPD 2012 (DMP LP). The appeal proposal constitutes a 'tall building' and the site does not fall within an identified strategic location for tall buildings. Hence, there is direct conflict with policy C5 of the CS and policy DM05 of the DMP LP.
7. Reference is made in policy C5 of the CS to the 2011 London Plan. There is now a new London Plan published in 2021 (LP). Policy D9 of the LP is applicable in terms of the determination of this appeal. This policy states that *'Boroughs should determine if there are locations where tall buildings may be an appropriate form of development'* and *'tall buildings should only be developed in locations that are identified as suitable in Development Plans'*. The Council has identified the areas where it considers tall buildings can be located through policy C5 of the CS. The proposal would therefore conflict with the requirements of policy D9.B of the LP.
8. Notwithstanding the above, the Court judgement referenced at the start of this appeal decision clarifies that Parts A and B of Policy D.9 are not a gateway for considerations of tall buildings under Part C. Tall buildings outside of designated locations can be judged against the requirements under Part C, and all other material planning considerations. However, and as detailed below, I do find conflict with policy D9.C of the LP and there are no other material planning considerations that outweigh the harm identified.
9. The appeal site is located within Brent Town Centre and fronts Brent Street which is a busy and main throughfare. The appearance of the mainly linear positioned buildings along this street varies, but there is nonetheless a pleasing consistency to the height of the buildings with three and four storeys being the most common. This gives this street its distinctive character.
10. The appeal building would be eight-storeys in height. The upper four floors would be set back from the edges of the lower floors, but despite this tapering effect the building as a whole would still be seen as a tall, dominant, bulky and materially out of scale form of development when seen against surrounding buildings. The effect would be to materially disrupt the general consistency of height to the buildings, particularly when viewed from Brent Street, thereby causing unacceptable harm to the aforementioned positive and distinctive characteristic of the immediate locality.
11. Given the above, there would be conflict with policy D9.C of the LP which requires development proposals to address visual impacts including the 'views

of buildings from different distances'. There would not be an appropriate transition in scale between the appeal building and surrounding buildings.

12. Overall, the development would fail to appropriately integrate into the existing urban fabric and would appear incongruous in the street-scene. I appreciate that the appeal site has some open gaps with existing surrounding buildings, but for those travelling up and down Brent Street, this would not have the effect of suitably mitigating against the out of keeping bulk and height of the building when seen in the immediate context.
13. In reaching the above view, I am cognisant of the fact that the Council has previously approved five-storey development on the appeal site. However, such approved development was significantly lower in height than the appeal proposal and would not have the same harmful impact.
14. The appellant has referred me to examples of tall buildings and approved development elsewhere including for example the Hyde Estate Road Site¹, 46 Watford Way², Sentinel House, and Upper Fosters. However, these sites are not located within the same visual context as the appeal site. I have determined this appeal on its individual planning merits and on the basis of the effect of the development on the character and appearance of the immediate locality when experienced by passers-by. The examples of tall development elsewhere do not alter or outweigh my conclusion on this main issue.
15. For the reasons outlined above, I conclude that the development would conflict with the tall building requirements of policy CS5 of the CS, DM05 of the DMP LP and policy D9 of the LP. Furthermore, very significant harm would be caused to the character and appearance of the area owing to the height, position and bulk of the proposed building. Therefore, the proposal would not accord with the design, character, appearance and visual impact requirements of policies D3 and D9 of the LP, policies CS1 and CS5 of the CS, policies DM01 and DM05 of the DMP LP and chapter 12 of the National Planning Policy Framework 2021 (the Framework).

Trees

16. The Council considers that the appeal development would result in some pressure to lop or fell trees on the adjoining plot, Homemead, given the proximity of the proposed development. I agree with the Council that such pressure would be likely and that these trees do have amenity value in the environment in what is otherwise a largely built up and urban area. These trees soften the effects of surrounding development and break up built form.
17. There is very little opportunity to provide tree planting on the site and given the likely post development pressure on trees at Homemead, I find that it would be necessary, as mitigation, to provide some new tree planting close to the appeal site. These trees could be provided within Brent Street. The appellant agrees that it is necessary to provide some additional trees off-site, but the dispute between the main parties relates to the number of trees to be provided, with the Council requesting 40 trees and the appellant commenting that only 10 trees were requested in respect of the adjoining post office site where five-storey development has been approved.

¹ Planning permission 20/3906/FUL

² Planning permission 20/1111/FUL

18. The appellant's unsigned unilateral undertaking includes a tree planting contribution of £26,000 which would relate to 40 trees. However, they dispute the requirement for this number of trees and indicate that in requesting 10 trees for the adjacent site at the post office (£650 per tree) a financial contribution of £6,500 was sought.
19. The Council has referred me to the Barnet Tree Policy SPG which at paragraph 1.36 states that '*Section 106 agreements can be sought from developers by the Council. They are to improve the community and local area and are commonly sought to improve the local amenity including parks and open spaces*'. However, there is no reference to how many trees should be sought for a particular development. In this case, I do not consider that the Council has provided reasonable justification for the provision of 40 trees off-site, although it is of note that there is no dispute between the parties about the £650 per tree amount.
20. In this case, the proposal would not result in pressure being placed on 40 existing trees at Homemead. There are fewer trees that would likely be impacted. From a pure mitigation point of view, I have my doubts, based on the evidence before me, about whether 40 street/off-site trees could reasonably be justified. In other words, in this regard I am not persuaded that a financial contribution of £26,000 meets the tests of necessity and reasonableness.
21. While it would be necessary to provide some trees off-site to mitigate likely pressures on existing trees, it has not been necessary for me to reach a definitive view in terms of the exact number of trees and financial contribution required, given my conclusions in respect of the other main issues. Had this been my only concern in respect of this appeal, it is possible that I would have pursued this matter further with the main parties.
22. While 40 street trees would have the effect of softening the impact of the development, as well as mitigating harm caused from the likely pressure to fell or lop trees at Homemead, this would not, in any event, be sufficient to overcome my finding in respect of the adverse impact of the height and bulk of the building on the character and appearance of the area. Indeed, the appeal site is at the brow of a hill and so even if some or all of the requested 40 trees were to be planted along Brent Street, and reach maturity quickly, one's eye would be drawn upwards when travelling in one direction on this main thoroughfare, thereby drawing even more attention to the fact that the building would be uncharacteristically eight storeys high when seen on the skyline.
23. In this case, I have not been provided with a completed planning obligation relating to the provision and payment of any trees off-site. Consequently, and in this regard, I cannot conclude that the proposal would accord with the tree, character and appearance requirements of policies CS1, CS5 and CS15 of the CS, policy DM01 of the DMP LP, the Council's Planning Obligations SPD 2013, and paragraph 131 of the Framework.

Sustainable means of travel

24. The appeal site does not fall within an area with a high PTAL rating. The appellant has provided an unsigned unilateral undertaking as part of the appeal in response to the Council's third reason for refusal. The appellant acknowledges the need for a Green Travel Plan to promote more sustainable

means of travel and a contribution of £300 per residential unit to fund green travel measures (e.g. oyster cards, cycle loans, car clubs) for each household, and including a local planning authority monitoring fee of £10,000. I do not disagree that this would be necessary to make the development acceptable from the point of view of seeking to discourage less sustainable means of travel.

25. While it would be possible to secure the submission and approval of a Green Travel Plan by planning condition, the additional and necessary financial contributions would need to be secured by means of a planning obligation. I have not received a completed planning obligation and hence the proposal would not accord with the sustainable transport and accessibility requirements of policies CS9 and CS15 of the CS, policy DM17 of the DMP LP, policy T4 of the LP and the Council's Planning Obligations SPD 2013.

Outside amenity space

26. There is no dispute between the parties that some of the proposed residential units (i.e. 2-8) do not meet the outside amenity space requirements of the Council's Sustainable Design and Construction SPD 2016 (2016 SPD) of 5 square metres per habitable room. However, this is a town centre location and the 2016 SPD states that where the standards cannot be met, and an innovative design solution cannot be met, the Council will seek a planning obligation financial contribution.
27. In this case, and taking into account the town centre location, the Council consider that it would be acceptable to deal with the under-provision of outside amenity space for some of the residential units by providing a financial contribution of £3,275 towards improvements in Hendon Park which is about 650 metres from the site. The appellant confirms an agreement to pay this necessary contribution in a submitted albeit unsigned unilateral undertaking. However, as the unilateral undertaking has not been signed, there is no mechanism before me to suitably address the shortfall in the amount of outside amenity space for the occupants of some of the proposed flats.
28. For the reasons outlined above, I therefore conclude that in respect of outside amenity space the proposal fails to accord with the amenity and open space requirements of policy CS7 of the CS; policy DM02 of the DMP LP and the 2016 SPD.

Carbon dioxide emissions

29. Policy S1.2 of the LP states that '*major development should be net zero carbon*'. Overall, I consider that the proposal does constitute major development. While the proposal would exceed the minimum on-site reduction of greenhouse gases of at least 35 percent beyond the Building Regulations 2013, it would not achieve net zero carbon. In these circumstances, policy S1.2 C states that any shortfall should be provided either through a cash in lieu financial contribution or by means of off-site provision of an alternative proposal as long as delivery is certain.
30. The appellant confirms an agreement to pay a financial contribution of £49,053 in an unsigned submitted unilateral undertaking towards carbon off-setting to achieve a net zero carbon position. I have no reason to disagree with the Council's calculated financial contribution and find that it would meet the test of

necessity. However, a completed planning obligation has not been submitted and hence there is no mechanism before me to suitably address the policy requirement of achieving net zero carbon in respect of the proposed development.

31. For the above reasons, I therefore conclude that the proposal would not accord with the carbon reduction requirements of policy S1.2 of the LP, policy CS13 of the CS, policy DM04 of the DMP LP, the 2016 SPD and the Council's Planning Obligations SPD 2013.

Other Considerations

32. The proposal would seek to boost the supply and choice of energy efficient housing in the area (including accessible accommodation) and provision of commercial and employment floorspace would likely have some positive effects on the vitality and viability of the town centre. The evidence is that the proposal would also deliver a biodiversity net gain. These are material considerations that weigh in favour of allowing the appeal.
33. I acknowledge that the proposal would seek to make very efficient use of a brownfield site. However, it is necessary that a balance is struck between achieving that aim and ensuring that the prevailing character and appearance of the area is not unduly harmed. In this case, the Council has made it clear that it does not object to some form of mixed use development being constructed on the site, and indeed it has previously approved planning permission for five-storey development on the site. The evidence is that, in principle, it would be possible to opt for a development that is less bulky and high on the site while also safeguarding the character and appearance of the site.
34. The appeal proposal causes significant harm to the character and appearance of the area and maximising the use of the site does not, in this case, outweigh that harm. In addition, I would add that there is no evidence that in dismissing this appeal it would mean that the site was not developed as part of an alternative proposal and, in that regard, the site need not remain vacant indefinitely.
35. None of the other considerations identified above are individually or collectively of sufficient weight to alter or outweigh the harm that I have identified in respect of my conclusions on the main issues.

Conclusion

36. For the reasons given above, I conclude that the proposal would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR