



Appeal Decision

Site visit made on 4 May 2022

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/N5090/W/21/3277045

Land adjoining Deans Court, Brook Avenue, Edgware HA8 9XB

- 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 Joseph Dan against the decision of London Borough of Barnet.
 - The application Ref 20/1647/FUL, dated 30 March 2020, was refused by notice dated 29 January 2021.
 - The development proposed is demolition of existing garage block and construction of 4no. part two, part three storey terraced houses including roof terraces, four integral carports and four additional parking spaces. Associated amenity space, refuse storage and bike stores.
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Decision

1. This appeal is dismissed.

Preliminary Matters

2. Amendments were made during the application process. Therefore, the description of development is taken from the appeal form and is agreed between the main parties. This adequately describes the development proposed.

Main Issues

3. The main issues are:
 - Whether the appeal site is a suitable location for the proposal, having regard to policies concerned with development in areas at risk of flooding.
 - The effect on the character and appearance of the area.
 - The effect on the living conditions of existing occupiers at Deans Court with particular regard to privacy, outlook and sense of enclosure.
 - The effect on biodiversity.

Reasons

Flood Risk

4. The appeal site is in Flood Zone 3a, and the appeal scheme would therefore fall within the 'more vulnerable' classification in the Planning Practice Guide. As a result, residential development may be appropriate subject to the application of the sequential test as set out in Policy DM04 of Barnet's Local Plan (Development Management Policies) Development Plan Document September

2012 (DMP). This is consistent with the sequential approach set out in Paragraph 162 of the National Planning Policy Framework (2021) (the Framework), which explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.

5. I am presented with evidence that there are no other reasonably available sites appropriate for the proposed development at a lower risk of flooding. This is on the basis that for the site to be appropriate it must be within PTAL level 3 or above, amongst other things.
6. The appeal scheme would be for open market dwellings aimed at addressing the housing needs of the borough. Whilst there are benefits in locating housing in accessible locations, nevertheless, PTAL level 3, 4 or above does not provide an appropriate catchment area for the type of development proposed. The sequential test area is therefore artificially small and this has seriously undermined the assessment of potentially suitable and available alternative sites. Consequently, I am not satisfied that there are no other sequentially preferable, suitable and available alternatives within an appropriate sequential test area.
7. As the development fails the sequential test there is no need to apply the exception test which, in part, determines whether the proposed development would increase flood risk elsewhere. The Environment Agency's (EA) comments assess flood risk mitigation which comes after the sequential test. As such the lack of objection from the EA does not alter my conclusion.
8. Therefore, the appeal site is not a suitable location for the proposal, having regard to policies concerned with development in areas at risk of flooding. As such, in this respect it would be contrary to Policy DM04 of the DMP, the aims of which are set out above.
9. Policy CS9 of Barnet's Local Plan (Core Strategy) Development Plan Document September 2012, (CS) mainly relates to providing safe, effective and efficient travel and therefore the policy set out above is more relevant to this main issue.

Character and Appearance

10. Brook Avenue includes mainly semi-detached two storey dwellings with a suburban character. Also, in close proximity to the appeal site are Deans Court, Victoria Court and Brooks Lodge. The former are three to four storey blocks of flats and the latter a two storey terrace of dwellings. Although they differ in scale, all these properties front the street and are set in grounds commensurate with their size with open space to the front and rear and notable gaps between pairs of dwellings and blocks. These shared characteristics result in a traditional pattern of development with buildings facing the road, and a sense of spaciousness around and between buildings.
11. The appeal site comprises a single storey garage block to the rear of Deans Court, accessed via a driveway. There are similar garages to the rear of Victoria Court. There was rubbish on site at the time of my visit. Nevertheless, this does not alter the fact that, due to their scale, character and location the garages are clearly ancillary to the main residential blocks and appropriate in this context.

12. There are trees on and adjacent to the appeal site, including three Ash Trees subject to Tree Preservation Orders (TPOs) on the southern boundary. These are highly visible from and make an important visual contribution to the green, leafy appearance of the public space around the pedestrian link between Brook Avenue and West Way/Farm Road.
13. The proposal would introduce development set back from the road, which, although it would not remove any existing street fronting buildings, would nevertheless harmfully erode the street fronting pattern of development in the surrounding area.
14. The development is a similar width to and lower than Deans Court and I have taken into account the proposed numerical density figures. However, the introduction of the proposed bulk and massing of a two and three storey terraced block in this location would significantly reduce the space around Deans Court. The varied height of the upper floor and car ports at ground floor do not alleviate this to any notable extent. There is no dispute regarding the quality of the outdoor space for future occupiers. However, the proposed building would also be set in limited open space relative to the character of the surroundings. Consequently, the proposed development would be harmful to the existing sense of spaciousness in this area.
15. The arboricultural report concludes that the development could be implemented with the trees along the southern boundary retained, and I am not provided with evidence that leads me to conclude otherwise. Once development is complete, the southernmost unit would be very close to these trees. Nevertheless, they are protected by TPOs. Therefore, in the event of any request for works to these TPO trees, the Council would retain control as to whether they should be felled and/or the extent of any pruning. This would consider their important effect on the character and appearance of the area. As such, I do not find harm in this regard. Albeit that this is a neutral factor.
16. Although contemporary design is not found in the immediate surroundings, this is not necessarily harmful in itself. Also, the provision of landscaping to the existing hardstanding would soften the appearance of this part of the site. However, this limited visual improvement does not make this otherwise unacceptable scheme appropriate.
17. Even with the retained trees and boundary treatment, the development would be highly visible in public views from the adjoining footpath, as well as from the occupiers of nearby properties. As such, this harm would be experienced.
18. Consequently, the proposed development would be harmful to the character and appearance of the area. As such, in this respect, it would be contrary to Policy CS5 of the CS and Policy DM01 of the DMP which together seek high quality design including respecting local context and character. As well as the advice in the Local Plan Supplementary Planning Document Residential Design Guidance October 2016 (Residential Design Guide SPD). This sets out further detail of how to achieve good standards of residential design. Including that for cul-de-sac forms of development the built up area should be in character with the surrounding area.
19. The Local Plan Supplementary Planning Document: Sustainable Design and Construction October 2016 mainly sets out the technical aspects of design standards. Therefore, the policies above are more relevant to this main issue.

Living Conditions

20. The outlook for occupiers at Deans Court at first floor and above is across the roof of the garages. The proposed development would introduce a two to three storey development in close proximity to these windows. Features such as the varied roof line with gaps for roof terraces and car ports break up the massing. However, due to the proximity and scale of the proposals, even with these features, the proposed building would harm the outlook from these properties and result in an unacceptable sense of enclosure. Windows at the rear ground floor of Deans Court currently have an outlook towards the garages. A view through a tunnel-like car port, set at a lower ground level, would not notably improve the outlook or sense of enclosure for these properties.
21. Any windows proposed to the north west elevation would be obscure glazed. Views would be possible from the roof terraces and the proposed first floor walkway towards the dwellings at Deans Court. I understand the distance between these outdoor spaces and the nearby flats exceeds the 10.5m standard between habitable rooms and gardens for new development set out in the Residential Design Guide SPD. Taking into account the likely infrequent use of the walkway, the potential for screening and that the properties also have outdoor space at ground level, I am satisfied that the proposed development would retain an acceptable level of privacy for existing occupiers. Although I find that privacy would be acceptable, the lack of harm in this regard is a neutral factor which does not outweigh the harm to outlook and sense of enclosure detailed above.
22. Consequently, the proposed development would be harmful to the living conditions of the existing occupiers at Deans Court in terms of outlook and sense of enclosure. Therefore, in this respect, the proposed development would be contrary to Policy DM01 of the DMP which seeks adequate outlook for adjoining and potential occupiers, amongst other things. As well as the Residential Design Guide SPD which, in part, provides advice regarding safeguarding residential amenity.
23. Policy CS5 of the CS mainly relates to issues of character. Therefore, the policy set out above is more relevant to this main issue.

Biodiversity

24. The appeal site is immediately adjacent to the Deans Brook Site of Importance for Nature Conservation (SINC) which is important at a local level. It appears to me that in the vicinity of the site, the stream and riparian habitat are important features in this regard. There are also mature trees on and adjacent to the site, including TPO trees along the southern boundary.
25. The development seeks to minimise and mitigate the effect on biodiversity. Nevertheless, once the development is operational, even with the mitigation measures suggested, there would be potential for human disturbance to biodiversity due to the proximity of the development to the retained habitat as well as its permanent loss. There would also be disturbance to habitat during building works. The scale is quantified as small. On the other hand, there would be ecological improvements including the removal of rubbish on the site, planting on site which would increase the number of trees and shrubs and installation of wildlife boxes. For the reasons set out elsewhere in this decision

the loss of the TPO trees is unlikely. As such, overall, it has not been demonstrated that there would be unacceptable harm to the SINC.

26. Therefore, the proposed development would not harm biodiversity. As such, in this respect, it would be in accordance with Policies DM01 and DM16 of the DMP which, in part, seek the retention, enhancement or creation of biodiversity and requires that trees should be safeguarded. The London Plan 2016 has been replaced. I am not provided with the full details of the London Plan 2021 policies with regard to this matter. Therefore, I have relied on the DMP.

Other Matters

27. I understand planning permission was granted in 2010 for four additional garages on the appeal site. The scale, height and nature of the development is significantly different to that before me now and the permission has not been implemented. As such, this does not alter my conclusions.
28. The appeal scheme would bring the social and economic benefits of new housing including jobs and investment during construction, spending from new occupiers, and council tax income, albeit that would provide services for the new occupiers. I have no indication of any contributions towards local infrastructure via a planning obligation. The development would also provide an efficient use of previously developed land on a small site in an accessible location for low carbon housing and would make a contribution to the Council's targets for windfall housing. Nevertheless, given the size of the development such benefits are modest in scale.
29. On the other hand, I have identified multiple significant harms in relation to flood risk, character and appearance and the living conditions of existing occupiers. Therefore, the modest benefits do not outweigh this collective significant harm.

Conclusion

30. The proposal would not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

H Miles

INSPECTOR