



Appeal Decision

Site visit made on 9 May 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/N5090/W/21/3278585

204 High Street, Barnet EN5 5SZ

- 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 Greyclyde Investments Limited against the decision of London Borough of Barnet.
 - The application Ref 21/1858/FUL, dated 30 March 2021, was refused by notice dated 1 June 2021.
 - The development proposed is for the demolition of the existing building and construction of two storey building with rooms in the roofspace to provide 6no self-contained flats. Associated refuse/recycling store and cycle store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Barnet Draft Local Plan (2021) has been submitted for examination. Due to its early stage in the preparation process I have only afforded limited weight to its policies.
3. A Section 106 Legal Agreement, in the form of a Unilateral Undertaking¹, has been submitted in support of the appeal. This prevents the owners, and their successors in title and future occupiers of the site, from applying to the Council for a resident parking permit. I shall return to this later in my decision.

Main Issues

4. The main issues are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Monken Hadley Conservation Area;
 - The effect of the proposal on the vitality and viability of the town centre;
 - The effect of the proposed scheme on the living conditions of neighbouring occupiers of 208-212 High Street (No's 208-212) with particular regard to sunlight, daylight and outlook;
 - The effect of the proposal on the living conditions of future occupiers with respect to outlook and privacy; and
 - Whether the proposal would function well with respect to the provision of parking and the availability of on-street parking.

¹ Unilateral Undertaking, dated 7 February 2022

Reasons

Character and appearance

5. High Street consists of a range of commercial activities. Buildings vary in scale between one and three stories. Many of these are within narrow plots retaining the traditional historic character of the centre. The appeal site is within an island site, surrounded by public footways and highways, affording it high visibility in the local area. The existing building is single-storey. It includes a decorative shopfront with traditional stall risers and pilasters. The building complements local building styles and makes a positive contribution to the character and appearance of the surrounding area.
6. The appeal site is within the Monken Hadley Conservation Area (MHCA). In accordance with the statutory requirements² I am required to pay special attention to the desirability of preserving or enhancing the character and appearance of a conservation area. Furthermore, paragraph 199 of the National Planning Policy Framework (The Framework) requires great weight to be given to an asset's conservation when considering the impact of a proposal on its significance. The Council's MHCA Appraisal (2007) identifies that the area is a verdant, low-density area with a prevalence of large Georgian houses. The High Street (Area 4) has undergone a moderate degree of change to accommodate the evolving commercial needs of the area. The significance of MHCA seems to derive from its urban and tightly compact grain within a largely Victorian commercial area.
7. The proposed development would be a two-storey building with dormer windows. Its eaves and ridge lines would be higher than neighbouring buildings. Nevertheless, its overall scale would be commensurate with the height of several examples within the streetscene. This would enable the scheme to make a largely complementary contribution to the overall scale of development in the vicinity of the site, subject to the building integrating well with its surroundings architecturally.
8. The design of the building would be contemporary in style. The façade would be disaggregated into three elements. The central timber boarding would define the areas either side into a form with verticality that generally accords with the rhythm and width of several local buildings. However, the first-floor windows would be overt and disproportionate with the main façade and prominent in comparison to the design of the majority of local buildings. Furthermore, the scheme would include recessed areas at ground and first floor. These would be enclosed by railings that would, in combination, be strident and ungainly features that would dominate the front elevation.
9. Moreover, the proposed standing seam metal roof would encase both the front, rear and sides of the second floor. Although roof forms vary within High Street, the proposed roof would not be recessed from the building's front or sides or be set behind a parapet wall. Instead, the roof would rest directly above the shoulder wall of these elevations, creating an awkward join. The inclusion of wide dormers and a central crown roof would also be conspicuous within the streetscene. Therefore, the design components of the building would not form a satisfactory or coherent building. This effect would be emphasised due to the site's prominent position on an island site. The proposal therefore fails to

² Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

combine layout, form and character in a manner that would represent a well-designed form of development as sought by the National Design Guide.

10. Consequently, the proposal would not preserve or enhance the character or appearance of the conservation area. As such, the proposed development would conflict with policies DM01 and DM06 of the Barnet Development Management Policies Document (2012)(DMP), Policies CS1 and CS5 of the Core Strategy (2012)(CS), policies D1, D3, D4 and HC1 of the London Plan (2021), the Framework and the MHCA Character Appraisal. These policies seek, among other matters, for development to achieve the highest standards of urban design to create an attractive environment and conserve the significance of heritage assets.
11. The harm identified to the MHCA would be 'less than substantial'. Paragraph 202 of the Framework, states that where harm to a heritage asset would be 'less than substantial' this should be weighed against the public benefits of a proposal. The proposal would make use of previously developed land and provide housing in a town centre location. Nevertheless, the proposal would make a limited contribution towards the local economy both during and post construction. These would not outweigh the harm found to the conservation area, which the Framework identifies as irreplaceable resource.

Vitality of the high street

12. The appeal site is within the Council's designated secondary shopping frontage. Policy DM11 of the DMP seeks to maintain the vitality and viability of the town centre. Paragraph (b)(i) states that within secondary frontages proposals that would reduce the proportion of A1 uses below 65% would not be supported. Furthermore, Paragraph (b)(iii) of policy DM11 states that an A1 use will only be agreed to be removed if it can be demonstrated that there is no viable demand for the use.
13. Following the publication of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, Class A1 use became Class E(a) of Part A, Schedule 2. As such, whilst the policy is slightly inconsistent with the Order, its meaning is still clear and can be applied to this case. However, the lawful use of the appeal property was as an estate agent. This would have been A2 use and has now become Class E(c). Due to its narrow parameters, policy DM11(b) weighs neither for nor against the merits of the proposal.
14. The Framework seeks to ensure that the vitality of town centres is maintained through measures including to define appropriate uses in shopping areas. It recognises that residential use makes an important contribution to the vitality of a town centre. The submitted marketing details also show that even after prolonged advertising, the property has attracted limited commercial interest. Furthermore, the changes to the Use Class Order would have had a limited bearing on the robustness or outcome of this advertising. As such, whilst the proposal would cause a break in commercial use frontage, it would provide an active use that would promote the wider functions of the town centre.
15. Accordingly, the proposal would support the vitality of the town centre. This would therefore comply with the requirements of policy DM11 of the DMP, policies SD6, SD7 and E9 of the London Plan and the Framework for the above reasons.

Living conditions – existing

16. The Council's Sustainable Design and Construction SPD (2016) (SPD) includes guidance that seeks to safeguard residential amenity and requires design to take into account levels of sunlight and daylight. It recognises that the availability of daylight and sunlight contributes significantly to the quality of life of future and existing occupiers. Design led solutions to mitigate adverse effects are also encouraged by the Mayor's Housing SPG (2016). Here guidelines are encouraged to be applied flexibly for higher density development.
17. The appellant's daylight and sunlight report³ considers the effect of sunlight and daylight levels on neighbouring occupiers. In terms of daylight, it's Vertical Sky Component (VSC) assessment finds a moderate adverse impact and major adverse impact for the two side windows of No 212. It's No Sky Line Assessment (NSL) identifies that No's 208 and 212 would suffer a loss of daylight of 'minor adverse' to 'moderate adverse' respectively. In consideration of sunlight, it finds that the affected windows of No's 208 and 212 would pass the Annual Probable Sunlight Hours (APSH) Assessment as it would not fail all three of its associated tests.
18. No 208 has a west facing frontage. This would provides access to midday and afternoon sunlight. Although the London Plan advises that BRE guidelines should be applied flexibly in urban areas, I calibrate the loss of both daylight and sunlight to No 208 to be moderately adverse, despite the findings of the APSH Assessment. The proposed rear boundary wall would be significantly lower than the rear elevation of the existing building. The design would also increase the separation distance to the front of No 208. This would not materially improve this relationship due to the overall increase in height of the building on the plot. Although the occupiers seem to have knocked through the front and rear rooms, this would not meaningfully negate the effect of the proposal on overall daylight or sunlight levels. Accordingly, due to the overall scale and proximity of the proposed development, it would have a demonstrably harmful impact on the outlook, sunlight and daylight experienced by occupiers of No 208.
19. Turning to the effect on No 212, it is noted that the side windows of this property benefit from generous levels of daylight and sunlight. The side windows of the flat over-sail the single storey existing building. However, it is inconclusive that these are secondary windows. The property is within a high street where occupiers expectations for access to daylight and sunlight would be lower. Nevertheless, the appeal site is within an island location and occupied by a low-lying building where a sense of spaciousness exists. In this context, surrounding occupiers enjoy access to heightened levels of sunlight and daylight. Consequently, the flexibility identified by the Mayor's Housing SPG and other documentation is not without regard to the specific context of a site. Therefore, the loss of daylight and sunlight experienced by occupiers of No 212 would not be outweighed by the urban context of the site. Furthermore, due to its mass and proximity, the proposal would also result in moderate harm to the outlook of occupiers.
20. The property of No 210 is partially behind No 212 and otherwise has an outlook over the alleyway leading to High Street. As such, the sunlight and daylight

³ Daylight and Sunlight Assessment, by Herrington Consulting Ltd, dated March 2021

levels received by its front facing windows and its outlook would be largely unaffected by the proposal.

21. Accordingly, the proposed scheme would have a significant adverse effect on the living conditions of occupiers of No 208 by reason of loss of outlook, sunlight and daylight and No 212 with respect to a loss of sunlight and daylight. Consequently, the proposal would conflict with policy D6 of the London Plan, policy CS5 of the CS, Policy DM01 of the DMP, the Council's Residential Design Guide, Sustainable Design and Construction SPD (2016) and the Mayor's Housing SPG (2016). These policies, inter alia, seek development to be designed to allow for adequate daylight, sunlight and outlook for adjoining occupiers and users and to provide sufficient daylight and sunlight to surrounding housing that is appropriate for its context and would minimise overshadowing.

Living conditions – proposed

22. The Council's SPD also explains that to protect privacy window to window distances should be a minimum of 21 metres between facing windows and neighbouring habitable rooms. It also recognises that screening can reduce overlooking in some circumstances and that shorter distances may be acceptable between new build development if justification can be given. It states that in higher density schemes innovative design solutions could be employed to avoid overlooking.
23. The proposed rear and side windows would consist of a combination of obscure glazing, high level windows and carefully located clear panels. This would be largely adequate to ensure the privacy to future occupiers within habitable rooms. However, the proposed rear courtyard gardens would be substantively overlooked from existing first floor windows of No's 208 and 210 over a short distance. Moreover, due to the requirement for privacy, the proposed obscure glazing and high-level windows, future occupiers would have a poor outlook to the sides and rear of the building. Furthermore, the front outlook from the ground floor flats would be onto the highway. Although these windows would be set behind a short recess behind railings, the outlook would be onto a public space without meaningful separation.
24. I am mindful of the appellant's local examples of restricted inter-relationships between residential developments, but I am unconvinced that these are so similar as to create a clear precedent to allow the proposal. Also, other residential properties within High Street, are largely set within wide footways where passing pedestrians would be less likely to pass immediately adjacent to windows. In contrast, the proposed development would place habitable windows close to the footway with a marginal area of defensible space separating these areas.
25. The rear courtyards of the proposed scheme would be harmfully overlooked and the outlook from most side and rear facing windows would be adversely constrained. Consequently, the proposed development would not function well and would create poor quality living conditions for future occupiers, with respect to privacy and outlook.
26. Table 2.3 of the Council's Design and Construction SPD seeks a total of 70 sqm of external amenity space for the proposal. The guidance also states that where the standards, for high density flatted development are not met, the

Council will seek a Planning Obligation to offset such a shortfall. Policy D6 of the London Plan seeks flats to have access to 5 sqms of private outdoor space for 1-2 bed dwellings unless there is a higher local borough standard.

27. The scheme would provide a courtyard garden for the two ground floor units and balconies for the two units at first floor. No external space would be available for the two second floor dwellings. The internal sizes of the units would meet the Nationally Described Space Standards, but without a meaningful over provision of space. As such the deficiency of external space for the second-floor flats, especially the two-bed flat, would not be offset by the provision of generous internal space.
28. Despite the flats at ground and first floor meeting the numerical requirements of the London Plan, these areas of private space would be enclosed. The ground floor courtyards would be adjacent to a boundary wall and surrounding buildings, creating constrained and overlooked spaces. The first-floor balconies would be adjacent to High Street which would also reduce their usefulness as pleasant spaces. The on-site provision of external space would therefore make only a limited contribution towards the needs of future occupiers. I am cognisant that future occupiers would benefit from the site's high street location and the relatively close proximity of public open space. Nevertheless, the under provision of external space, small size of units and absence of a contribution towards improvement to local public open space would result in a scheme with inadequate provision of external space.
29. As a result, the proposed development would create poor quality living conditions for future occupiers with respect to privacy, outlook and an absence of sufficient quality external private space. Accordingly, the proposal would not comply with policies D3 and D6 of the London Plan, policy CS5 of the CS, policies DM01 and DM02 of the DMP, the Council's Residential Design Guide, Sustainable Design and Construction SPD (2016) and the Mayor's Housing SPG (2016). These policies, inter alia, seek development to be designed to allow for adequate privacy and outlook for potential occupiers and users and to provide outdoor environments that are comfortable and inviting for people to use.

Provision of car parking

30. The proposal does not include any parking provision. High Street offers short term parking for shoppers. Most surrounding roads are subject to a Controlled Parking Zone (CPZ). Parking availability around the site is therefore limited. Furthermore, during my visit, although only offering a snap-shot in time, short term parking was readily available but access to unrestricted roadside parking was limited.
31. Policy DM17(g) of the DMP identifies that residential development without sufficient parking provision could be acceptable if on-street parking capacity exists. Where no capacity is found, the policy requires that within a CPZ, an applicant enters into a legal agreement to restrict future occupiers from obtaining a resident parking permit.
32. Due to the existence of the CPZ and my own observations it seems that parking capacity of local roads is extremely limited. As such, the submitted Legal Agreement and its provisions with respect to resident parking permits is justified and necessary. The UU would ensure that future occupiers would not apply for a resident parking permit, resulting in the provision of car free

development. Therefore, the proposal would have no material impact on parking stress in the surrounding area.

33. Policy T5 of the London Plan requires cycle parking to be provided in line with the standards listed at Table 10.2. The proposal would include space for the parking of 6 bicycles within its hallway. This is less than the cycle parking provision required by the London Plan. However, further cycle parking could be required by the imposition of a condition, within the rear courtyards, had I been minded to allow the appeal. On this basis, the cycle parking provision would be adequate taking into account the limited likely occupancy of the units, the constrained nature of the site and its town centre location.
34. Accordingly, the proposal would comply with policy DM17 of the LP, Policy T5 of the London Plan and the Planning obligations SPD for the above reasons.

Other Matters

35. 210 High Street is identified by the Council as a Locally listed building. However, the Planning Practice Guidance requires the identification of Non-Designated Heritage Assets (NDHA) to be based on sound evidence, explaining the criteria used. This building is not identified as such within the Council's MHCA Appraisal and the Council has not clearly explained its significance. Consequently, based on the evidence before me, I am unconvinced that this building would qualify as a NDHA.

Conclusion

36. The Framework seeks to boost the supply of housing. The proposal would deliver new housing on a brownfield site within a town centre location. Nonetheless, the provision of six flats would make a relatively limited contribution to local housing supply.
37. The scheme would not preserve or enhance the character of the conservation area and would result in demonstrable harm to the living conditions of neighbouring and future occupiers. These impacts would result in conflict with the development plan when taken as a whole. Therefore, for the reasons given, I conclude that the appeal should not succeed.

B Plenty

INSPECTOR