



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/21/3279606

202 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 Koopmans Property Asset Management against the decision of London Borough of Barnet.
 - The application Ref 20/5512/FUL, dated 30 October 2020, was refused by notice dated 13 May 2021.
 - The development proposed is Demolition of existing car showroom and erection of a three storey plus basement building comprising of commercial use at ground floor and basement levels, 4no. self-contained duplex flats at first and second floor levels and 2no. mews houses to the rear with associated refuse storage and cycle store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has stated that 6 Nesbitts Alley has gained Prior Approval to be converted from office to residential use in 2018. During my visit No 6 appeared to be in use as offices. Nevertheless, it is recognised that the approval could still be implemented and as such I will take the potential alternative use into account in my decision.
3. A Unilateral Undertaking¹ (UU) has been submitted in support of the appeal. This Agreement requires the owners to ensure that future occupiers, and their successors in title, do not apply for a resident parking permit for local roads. The Agreement also stipulates the payment of a sum towards the improvement of the Council's existing open space. I shall return to this later.
4. 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.

Main Issues

5. The main issues are:
 - The effect of the proposal on the living conditions of future occupiers, with respect to privacy and access to external amenity space;

¹ Unilateral Undertaking dated 25 January 2022

- The effect of the proposed development on the living conditions of the occupiers of 6a Nesbitt's Alley (No 6a), with particular regard to privacy; and
- Whether the proposal would function well with respect to the provision of parking and the availability of on-street parking.

Reasons

Living conditions – proposed

6. The proposed dwellings would be located to the rear of the appeal site. House 1 would have rear and side windows. Whereas, House 2 would have only rear facing windows. Both of these would have rear views towards 206 High Street and 6a and 6 Nesbitts Alley. The separation distance would result in some limited overlooking from No 6 and 6a towards the rear windows of both proposed houses. Although, the distance between principal windows would be below the guidelines, this would be fairly minor and would be acceptable in this urban context. Furthermore, the proposed view control film (VCF), in combination with the comparatively oblique angles observed in most cases, would mitigate the limited harm identified. As such, future occupiers of both dwellinghouses would not suffer material harm to their privacy.
7. The courtyard to the side of No 6a provides an open area that would benefit occupiers of 'House 1' and provide its future occupiers with a reasonable outlook. However, No 6 includes a projecting wing that places this part of the building next to the alleyway. The windows that serve 'House 2' would be arranged in a cluster overlooking its small courtyard. Views from these windows would be dominated by the close and tall end elevation of this neighbouring wing. Accordingly, due to the proximity of this feature, future occupiers of 'House 2' would suffer a substantial sense of enclosure. This would demonstrably harm the outlook and sense of spaciousness experienced from both the windows and courtyard garden of this dwelling.
8. The Council's Sustainable Design and Construction SPD (2016) (SPD) seeks flats to have access to 5 sqm of outdoor amenity space, per habitable room and for houses, with 4 habitable rooms, to have access to 40 sqm. 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. Also, Policy D6 of the London Plan seeks flats to have access to 5 sqms of private outdoor space for 1-2 bedroom dwellings and one sqm extra for each additional occupant unless there are higher standards within a Council's Development Plan.
9. The courtyards of the proposed houses would be of limited size, substantially below the Council's standards. When accommodating cycle and bin storage these would be further constrained. Consequently, despite recognising the restricted nature of the site, the proposed courtyards would be poor quality spaces of limited use.
10. The proposed flats would have no access to external space. However, the size of these units would be comparatively generous. Moreover, due to its high street location, future occupiers of the building would have easy access to local amenities. These benefits would assist the flats in off-setting the deficiency of private external space. Furthermore, the UU secures the payment, among

other matters, towards improvement of the Council's public open space. The sum offered would appear to meet this guidance and would be of a scale and kind that would be commensurate with the scale of development. As such, this would support the absence of outdoor space required by occupiers of the flats in accordance with the Council's SPD. However, this provision would not address the substandard provision of external space proposed for the houses where an on-site provision would be necessary.

11. Furthermore, although the site is close to several areas of open space, this would not adequately mitigate the on-site shortfall. Future occupiers of the dwellinghouses, especially families, would more greatly gain from an on-site provision of private outdoor space.
12. Accordingly, the proposed dwellings would create poor living conditions for future occupiers with respect to a poor outlook for house 2 and the provision of inadequate external amenity space for both houses. Consequently, the proposal, in regard to its effect on future living conditions, would conflict with policies D3 and D6 of the London Plan 2021, policy CS5 of the Barnet Core Strategy 2012 (CS), policies DM01 and DM02 of the Barnet Development Management Policies Document (2012)(DMP), the Council's Residential Design Guide (2016), Sustainable Design and Construction SPD and the Mayor's Housing SPG. These policies seek, among other matters, for development to be designed to allow adequate outlook for potential occupiers and users.

Living conditions – existing

13. The Council's SPD provides guidance to safeguard residential amenity. This explains that 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. Design led solutions to mitigate adverse effects are also encouraged by the Mayor's Housing SPG (2016). Here guidelines are slightly broader, seeking a separation distance of 18-22 metres, and are encouraged to be applied flexibly for higher density development.
14. The appeal site consists of a former car showroom that addresses High Street. Behind this building is Nesbitts Alley which is a narrow footpath that provides access to dwellings and the rear of commercial units. To the rear of the site is a restaurant and hotel. Attached to this is No 6a, that seems to be a dwelling. This has windows that look onto Nesbitts Alley. An office building, next to No 6a, is recessed behind a small courtyard. This courtyard is overlooked by side windows of No 6a and 'Cullips House'.
15. The proposed scheme would consist of both two and three storey elements. The two-storey component to the rear includes a staggered rear elevation, with windows being recessed within a secondary building line. The rear section of the building would contain two single aspect dwellings, the ground floor windows, serving both living rooms, would look into small courtyard areas. Through railings, these windows would gain a narrow view of Nesbitts Alley. The living room window and a bedroom of 'dwelling 1' would provide only limited and oblique views into the windows of No 6a.

16. The office building of No 6 is around 18 metres from the habitable room windows of Houses 1 and 2. Although in office use, I have considered the effect on this as if it were residential due to the extant Prior Approval. The separation distance is shorter than that required by the Council's SPD but only marginally less than that sought by the Mayor's Housing SPG. Due to the proximity of the development to the neighbouring uses the proposal would result in some, albeit modest, harm to the living conditions of the occupiers of No 6a and potential future residential occupiers of No 6 as a result of overlooking.
17. The rear elevation would include several design measures to reduce overlooking. This includes the size, location and orientation of rear windows and the proposed use of VCF. This product would enable certain views from translucent to transparent depending on the observers viewing angle. This product placed within a double-glazed unit would, in combination with the design features of the proposal, mitigate the identified limited harm caused by overlooking to a degree where no material harm would occur.
18. It is important that the bedroom provide occupiers with an outlook including clear glazing, nevertheless the VCF, would assist to reduce views from the window of occupiers within the building beyond and vice versa. These details could have been specified through the agreement of a suitably worded condition had I been minded to allow the appeal.
19. Consequently, the proposal would not result in material harm to the living conditions of neighbouring occupiers, including No 6a, with respect to a loss of privacy. Accordingly, with respect to the effect on neighbouring development, the proposal would comply with policy D6 of the London Plan (2021), policy CS5 of the CS, policy DM01 of the DMP and the Council's Design Guide, Sustainable Design and Construction SPD and the Mayor's Housing SPG. These policies seek, among other matters, for development to safeguard residential amenity.

Provision of car parking

20. The proposal does not include any parking provision. Parking availability around the site is limited. High Street offers short term parking for shoppers. Most surrounding roads are subject to a Controlled Parking Zone (CPZ). During my visit, although only offering a snap-shot in time, I noted that short term parking was readily available but access to unrestricted roadside parking was limited.
21. Policy DM17(g) of the DMP, sets maximum parking standards. The policy also 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.
22. Due to the existence of the CPZ and my own observations it seems that parking capacity on 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.

23. Accordingly, the proposal would comply with policy DM17 of the LP and the Planning obligations SPD for the above reasons.

Other Matters

24. 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. High Street (Area 4) has undergone a relatively intrusive degree of change to accommodate its evolving commercial needs. Its significance seems to derive from its urban and tightly compact grain with a largely Victorian commercial area.
25. The proposed development would replace a building, whilst of some local interest, makes only a neutral contribution to the character of the MHCA. The proposed scheme would reflect the general scale and mass of existing local buildings and would consist of architectural detailing that would suit its context. As such, the proposal would preserve the character and appearance of the conservation area.
26. The site is close to 151-153 High Street, a grade II listed building. In accordance with my statutory duty³ I am also required to pay special attention and have regard to the desirability of preserving the setting of listed buildings. This brick two-storey building originates from C17. Its significance derives from its architectural interest and from its contribution to the high street setting. The proposed scheme would make a positive contribution to the character of the street and therefore would preserve the setting of the listed building.
27. The appellant's daylight and sunlight assessment⁴ identifies that all surrounding windows, that face within 90 degrees of due south, pass the appropriate sunlight tests. The Assessment also recognises that the front facing ground and first floor windows of No 6a would suffer a reduction in diffused daylight. However, taking into account the surrounding town centre environment, these shortcomings are relatively minor. Consequently, the proposed development would maintain adequate daylight to these windows.

Conclusion

28. 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 dwellings would make a relatively limited contribution to local housing supply.

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

³ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁴ Daylight and Sunlight Report, by Right of Light Consulting dated November 2020

29. Whilst the scheme would preserve the character of the conservation area, the adverse effect of the proposal on the living conditions of future occupiers would result in significant and demonstrable harm that would 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