



Appeal Decision

Site visit made on 1 July 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2022

Appeal Ref: APP/N5090/W/22/3292516

70 Shurland Avenue, East Barnet, Barnet EN4 8DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Tony Beels against the decision of London Borough of Barnet.
 - The application Ref 21/5313/OUT, dated 6 October 2021, was refused by notice dated 13 January 2022.
 - The development proposed is part demolition of existing garage and erection of new building to the rear to provide 3 no. self-contained flats, associated amenity space, provision of off-street parking.
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Decision

1. The appeal is allowed and outline planning permission is granted for part demolition of existing garage and erection of new building to the rear to provide 3 no. self-contained flats, associated amenity space, provision of off-street parking at 70 Shurland Avenue, East Barnet, Barnet EN4 8DD in accordance with the terms of the application, Ref 21/5313/OUT, dated 6 October 2021, subject to the conditions contained in the attached schedule.

Preliminary Matters

2. The application was made in outline with all matters other than access, layout and scale reserved for future consideration. I have determined the appeal on this basis. I have taken the submitted plans into account for indicative purposes only where they relate to matters other than access, layout and scale.

Main Issues

3. The main issues are the effect of the proposed development on 1) the character and appearance of the area, and 2) the living conditions of occupants of surrounding residential properties with specific regard to noise and disturbance.

Reasons

Background

4. There is an extant outline planning permission on the appeal site that was granted at a previous appeal¹. This previous appeal granted outline planning permission for the demolition of the existing garage and construction of new detached dwelling. Like the current appeal, matters of access, layout and scale

¹ APP/N5090/W/20/3258831

were submitted at the outline stage. The approved development is of a very similar layout, scale and point of access to the current appeal.

5. Although since this previous appeal decision, the Government has published a revised National Planning Policy Framework (the Framework) and the Mayor of London has published a new London Plan, there is no substantive evidence that either the situation on, and surrounding the appeal site, or the relevant considerations, have changed significantly in the interim. Although I am not bound by the previous Inspectors findings and have considered the appeal proposal on its own individual merits, the decision and its findings are a material consideration which I have given significant weight.
6. There would also appear to be a reasonable prospect of the previous permission being implemented if the appeal is dismissed. I have not seen any evidence to the contrary. Therefore, I give the fallback position significant weight.
7. Despite being of a very similar layout, scale and access, the current proposal does however differ as it is for three self-contained dwellings, an increase of two dwellings over and above the consented scheme.

Character and appearance

8. The appeal site forms part of the rear and side garden area of No. 70 Shurland Avenue, which is a two-storey end of terrace dwelling set within a relatively spacious landscaped plot, with a number of trees and other mature planting within and immediately adjacent to the site. At the rear, the site slopes steeply downwards from Shurland Avenue towards the residential properties on Cranbrook Road.
9. The surrounding area is characterised by its variation of three storey flats and two storey terrace houses. The evidence, and my observations on my site visit, shows that the majority of residential properties in Shurland Avenue are made up of flats. The flat accommodation comprises three storey purpose-built blocks with parking courtyards and pockets of amenity space, with the houses having a traditional front and rear garden arrangement with frontage off-street parking. There is thus a wide range of housing styles and variety in the design, density and appearance of the properties that gives the area a mixed well-established residential character.
10. In terms of the effect of the proposed development on the appearance of the area, the significant weight I have given to the extant consent and the very minor differences in the physical attributes of the proposed development lead me to conclude that there would be no greater harm from the current proposal to the appearance of the area than the consented scheme. I am also mindful that appearance has been reserved for future consideration.
11. There are some minor differences to the proposed layout. These are primarily in relation to the position of the entrance hall and the provision of off-street parking. In terms of the entrance hall, this has moved slightly forward from its previous position, closer towards no. 70 Shurland Avenue. I do not consider that such a minor repositioning causes harm to the character and appearance of the area. In terms of the proposed off-street parking bays these would be directly accessed from Shurland Avenue in a manner similar to the driveways of the terraced properties. They are shown to be surrounded by indicative

landscaping, and I do not consider that these cause harm to the character and appearance of the area.

12. As outlined above, the proposed development has the notable difference of providing for three dwellings as opposed to the one dwelling in the consented scheme, an increase of two further dwellings. Although there would be a difference in character from having three dwellings as opposed to one, given the variation in styles in the street, where there is a strong emphasis of flats, I do not consider that the proposed development comprising three flats would be out of character or cause harm to the character of this area of mixed residential properties.
13. I acknowledge that, as the Council have highlighted, the appeal site is located on a section of Shurland Avenue that currently comprises what appear, single family dwellinghouses. It is pertinent however that the appeal site is at the end of the terrace, beyond which are three storey blocks of flats. I therefore do not consider that it would represent a harmful incursion into the part of the street that comprises dwellinghouses. The dwellinghouses would remain discernible in their own right.
14. The proposed layout shows proposed parking areas, amenity space and refuse and cycle storage facilities. None of these appear cramped or squeezed into the site and I therefore do not agree with the Council's view that the development would be an over-intensive use.
15. I therefore conclude that the proposed development would not cause harm to the character and appearance of the area. It would comply with Policies CS1 and CS5 of the Barnet Local Plan (Core Strategy) Development Plan Document (2012), Policy DM01 of the Barnet Local Plan (Development Management Policies) Development Plan Document (2012), Policy D3 of the London Plan (2021) and guidance contained within the Residential Design Guidance Supplementary Planning Document (2016). Collectively, these policies seek to ensure, amongst other things, that development is of a high quality and standard of design, based on an understanding of local characteristics and should preserve or enhance local character.

Living conditions

16. The proposed development would be set back from the rear elevations and the shared common boundaries of the neighbouring properties at Nos. 70 and 72 Shurland Avenue to the west and Nos. 48, 50 and 52 Cranbrook Road to the east of the site. The proposed development would be set back and stepped down below the rooms and the gardens at the rear of Nos. 70 and 72. The rear elevations and gardens at the rear of Nos. 48, 50 and 52 would be separated from the appeal site by a number of outbuildings, a high closed boarded fence and mature vegetation along the boundaries.
17. I observed on my site visit that the noise environment is dominated by the trains using railway lines to the west of the appeal site. They are also audible at the lower levels of the appeal site. This noise is in addition to the general comings and goings of residents and their domestic activities.
18. The development would lead to some increase in noise and disturbance, including above that which would be generated by the consented scheme, although it is by no means precise to assume that the noise and disturbance

from three small flats would inevitably be three times greater than that from the large dwelling of the consented scheme. The noise from general comings and goings would however be primarily confined to the site frontage and side where it would be of a similar nature to the nearby flats and thus not unusual in its context.

19. There would be a level of noise and potential disturbance from the use of the amenity space associated with the development however this would not be unusual in a residential area such as this. The design of the development being at a lower level would also serve to contain some of the noise breakout.
20. There is no substantive evidence before me to demonstrate that the proposed development would result in unreasonable levels of noise and disturbance.
21. I therefore conclude that the proposed development would not cause unreasonable harm to the living conditions of occupants of surrounding residential properties with regard to noise and disturbance. It would comply with Policy CS5 of the Barnet Local Plan (Core Strategy) Development Plan Document (2012), Policy DM01 of the Barnet Local Plan (Development Management Policies) Development Plan Document (2012) and guidance contained within the Residential Design Guidance Supplementary Planning Document (2016). Collectively, these policies seek to ensure, amongst other things, that developments provide adequate amenity for adjoining and potential occupiers.

Other Matters

22. Representations have made the argument that the grant of planning permission would set a precedent for other similar developments. However, no directly similar or comparable sites to which this might apply have been put forward nor are any apparent in the evidence or from my observations on site. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.
23. I note comments were received in relation to the loss of garden space. Although this did not form one of the Council's reasons for refusal, I consider that the host property would maintain an acceptable quantum of outdoor amenity space. Objections have referred to the proposal resulting in the loss of a family dwelling. There is nothing in the evidence to suggest this would occur as a result of the development.
24. There is no substantive evidence that the proposed development would lead to unacceptable pressure on doctors, schools or other local services, or that there would be an unacceptable impact on the local area from waste generated by the proposed development.
25. Reference is made to the potential damage and loss of existing trees on the site. This did not form one of the Council's reasons for refusal. Furthermore, landscape is a matter reserved for future consideration. Either way, there is nothing before me to suggest that the appeal should be dismissed for this reason.
26. Representations refer to the light levels for future occupants being unacceptable. Although appearance is reserved for future consideration, the indicative plans, insofar as they relate to appearance, demonstrate that the

main living room areas could have large southerly facing windows. The Council in their consideration of this aspect of the development did not raise objection and I have no reason to form a different view.

27. A number of representations refer to the highway impacts of the development in relation to parking and increased traffic. Such matters were not contained in the Council's reasons for refusal. I find that such highways matters are not pertinent to the main issues, and I am not presented with any substantive evidence that the proposed development would have an unacceptable impact on highway safety or produce residual cumulative impacts on the road network which would be severe.
28. Construction would cause some noise and disruption, but this would be temporary and would be mitigated by a Construction Method Statement which could be the subject of a condition.
29. Due to the distances that would be maintained from surrounding residential properties, the proposal would not result in any significant loss of privacy for the occupants of neighbouring houses. The submitted plans, insofar as they indicatively show the appearance of the development, demonstrate how windows could be sited to avoid direct overlooking.
30. Representations regarding the need for housing are not pertinent to the main issues and I am not provided with any substantive evidence that would lead me to conclude that the development should be prevented on this basis.
31. There is no evidence before me to suggest that the development would be at risk of flooding or lead to an increased risk of flooding elsewhere, nor is there any evidence that there would be an unacceptable impact on biodiversity, as inferred in the Ecology comments that the development has limited impact on biodiversity at a local level. Biodiversity enhancements may be secured by condition.
32. Representations that the development is purely for profit and queries over land ownership and covenants are not land use planning matters. Similarly, in this case the significance of the resulting value of the development is of limited weight.

Conditions

33. In addition to the standard time limit condition and the submission of reserved matters, I have imposed a condition requiring that the development is carried out in accordance with the approved plans insofar as they relate to access, scale and layout. This is for the avoidance of doubt and in the interests of certainty.
34. The Council has suggested several conditions which I have considered against advice in the Framework and Planning Practice Guidance (PPG). As a result, I have amended some of them for consistency, clarity and omitted others.
35. As details of appearance and landscaping are reserved for future consideration, conditions relating to external materials, boundary treatments and submission of a landscaping scheme are not necessary at this stage.
36. To ensure that the development is carried out at suitable levels in relation to the highway and adjoining land having regard to drainage, gradient of access,

the safety and amenities of users of the site, the amenities of the area and the health of any trees or vegetation, a condition is necessary requiring the submission of levels. It is required prior to commencement to ensure that such aspects are agreed from the outset.

37. In the interests of living conditions of occupiers of surrounding residential properties conditions requiring that; no windows are inserted into the east elevation of the development; the submission of a construction method statement; and a limitation of the construction hours, are necessary. The construction method statement is required to be submitted prior to the commencement of the development to ensure that the measures are in place for the duration of the development.
38. A condition relating to cycle parking and cycle storage facilities is necessary in the interests of highway safety and to promote sustainable transport. A condition relating to the refuse and recycling storage facilities and collection is necessary in the interests of amenity and promoting sustainable waste management.
39. Conditions relating to the recommendations of the appellant's submitted Preliminary Ecological Appraisal Survey and the submission of a lighting strategy are necessary for the protection and enhancement of potential biodiversity and protected species.
40. Conditions are also necessary to ensure the dwellings are and remain water efficient and incorporate carbon reduction measures in order to meet the requirements of the London Plan and the Mayor of London's Housing Supplementary Planning Guidance (2016) where they exceed the minimum standards set out in the Building Regulations. A condition is also necessary to ensure that the development meets the accessibility needs of future occupants.
41. The PPG recommends that conditions to remove permitted development rights should only be imposed in exceptional circumstances, which does not apply in this case. As such this condition is not necessary.

Conclusion

42. The proposed development would accord with the development plan. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) As it relates to matters of access, layout and scale (hereby approved) the development hereby permitted shall be carried out in accordance with the following approved plans; Location Plan – Drawing Number 351.PF.04A; Elevations and Section as Proposed – Drawing Number 351.PF.03A; Plans as Proposed – Drawing Number 351.PF.02A.
- 5) No development shall take place until details of the levels of the buildings in relation to the adjoining land and highways and any other changes proposed in the levels of the site have been submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the details as approved under this condition and retained as such thereafter.
- 6) Before the development hereby permitted is first occupied, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in full in accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 7) Before the development hereby permitted is first occupied, details of cycle parking and cycle storage facilities shall be submitted to and approved by the local planning authority. The development shall be implemented in full in accordance with the details as approved prior to the first occupation and shall be permanently retained thereafter.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction;
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
- 9) Demolition or construction works shall take place only between 0800 and 1800 on Monday to Friday and 0800 and 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

- 10) Notwithstanding the provisions of any development order made under Section 59 of the Town and Country Planning Act 1990 (or any Order revoking and re-enacting that Order) no windows, other than those expressly authorised by this permission, shall be placed at any time in the east elevation, hereby approved or to be approved as part of any future reserved matters application.
- 11) Prior to the first occupation of the new dwellings (Use Class C3) hereby approved they shall all have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach should be used to determine the water consumption of the proposed development. The development shall be maintained as such in perpetuity thereafter.
- 12) Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new flats (Use Class C3) permitted under this consent at least 10 per cent of dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) shall meet Building Regulation requirement M4(3) 'wheelchair user dwellings'. All other dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) shall meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings'. The development shall be maintained as such in perpetuity thereafter.
- 13) Prior to the first occupation of the development hereby approved it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 10 % in carbon dioxide emissions when compared to a building constructed to comply with the London Plan (2021). The development shall be maintained as such in perpetuity thereafter.
- 14) The development hereby permitted shall be carried out in accordance with the ecological and protected species mitigation and enhancements measures as recommended in the submitted Arbtech Preliminary Ecological Appraisal Survey – 70 Shurland Avenue, Barnet, Greater London EN4 8DD and shall be retained thereafter.
- 15) No external lighting shall be installed until a lighting strategy has been submitted and approved by the local planning authority. The strategy must be designed and used to minimise impacts on bats and their insect food. All exterior lighting should follow the guidance of the Bat Conservation Trust. The development shall be implemented and thereafter maintained in accordance with the approved details.

-----End of Conditions Schedule-----