



Appeal Decision

Site visit made on 25 July 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2022

Appeal Ref: APP/N5090/W/21/3287489

197 - 201 Ballards Lane, London N3 1LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Greyclide Investments Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref 21/4500/PNV, dated 29 July 2021, was refused by notice dated 8 October 2021.
 - The development proposed was originally described as upwards extension by two storey to provide 12 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 20, Class AA of the GPDO establishes that new dwellinghouses on detached buildings in commercial or mixed use are permitted development subject to several restrictions and conditions. For development to be permitted it must satisfy the limitations set out at paragraph AA.1 and the conditions at AA.2. Compliance with the limitations at AA.1 is not an issue in dispute between the main parties. I do not have evidence that leads me to take a contrary view.
3. In determining an application, the local planning authority must take any representations made into account and to have regard to the National Planning Policy Framework (the Framework) so far as relevant to the prior approval matters, as if the application were a planning application. The same approach will be taken in deciding the appeal.
4. The reasons for refusal relate to Policies CS5 and CS9 of Barnet's Local Plan Core Strategy (2012), Policies DM01 and DM17 of Barnet's Local Plan Development Management Policies (2012) as well as Residential Design Guidance Supplementary Planning Document (2016) and Planning Obligations Supplementary Planning Document (2013). The principle of development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan as there would be for development requiring planning permission. I have therefore only taken into account these policies insofar as they are relevant to the prior approval matters under consideration.

5. Since the submission of the planning appeal, a High Court judgement¹ has been issued. The main parties have commented on that judgement in their submissions, and I have determined the appeal accordingly.

Main Issues

6. The main issues are whether, or not, prior approval should be granted having regard to:
- the external appearance of the building (AA.2(1)(e));
 - impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light (AA.2(1)(g)); and
 - transport and highways impacts of the development (AA.2 (1)(a)).

Reasons

External appearance

7. The appeal site contains a three-storey building comprising offices and residential flats. The building is located on a corner plot at the junction of Ballards Lane and Gruneisen Road. The legal judgement confirms that external appearance is not limited to the impact on the subject property itself, but also neighbouring premises and the locality.
8. Adjacent to the appeal site is the Place Park development which was the former Finchley police station. This comprises a residential development which is four storeys in height on Ballards Lane and is also located to the rear of the appeal site. Beyond this development, to the south west, are commercial buildings which in this section of Ballards Lane are primarily two-storey in height. To the north east of the appeal site are predominantly two storey residential terraces. Opposite the appeal site is a large area of public space, known as Victoria Park, which provides a welcome break in the built development.
9. Ballards Lane is a long road, and the appellant has drawn my attention to numerous taller buildings within the wider area. I observed on my site visit that there is a cluster of large, tall buildings close to Finchley Methodist Church. These buildings generally have a greater set back from the road compared to the host building. The appeal site has extremely limited visual connection with these taller buildings, and those highlighted by the appellant, given the separation distance.
10. Thus, this part of Ballards Lane is not characterised by large, tall buildings and has a greater connection with generally two and three storey buildings, which vary in type and form, and Victoria Park. Given the depth and width of the existing building, compared to the generally smaller scale buildings nearby, the host building is prominent within this section of Ballards Lane.
11. The proposed development would result in the existing shallow pitched roof being replaced by an additional two floors with a flat roof. The fourth floor would match the design of the storey below and the top floor would be set back with a contrasting brick which would help to reduce the massing of the proposal.

¹ CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC [2022] EWHC 208 (Admin)

12. The proposed development would significantly increase the massing of the building, which is already a prominent building, due to the additional height and bulk proposed. The proposed five-storey building would appear significantly taller and bulkier than the nearby primarily two and three storey buildings which have a generally consistent height in this part of Ballards Lane, as well as the Park Place development. For these reasons, the proposed external appearance would be out of keeping and unduly obtrusive with the host building and the locality due to the proposal's height, scale and massing. The development would therefore fail to assimilate appropriately to its surroundings due to its prominence and poor relationship to neighbouring buildings
13. In relation to this main issue, the appellant has drawn my attention to appeal decisions². In the Avenue Court decision, the Inspector states that the development would not be the tallest building in the vicinity and the wider street scene there is an irregular roofscape and little overall consistency in the height of buildings. The Austin House case highlights that the principle of development is established through the grant of permission by the Order, and a building of greater scale would naturally occur from additional storeys.
14. The appeal decisions cannot be directly compared to the scheme before me. I have found that buildings in this part of Ballards Lane generally have a consistent height, and the appeal site has extremely limited visual connection with the taller buildings. In any case, each case is treated on its own merits, and I have made a planning judgement based on the site specific context on the ground.
15. For these reasons, the proposal would have an unacceptable and harmful effect on the external appearance of the building (AA.2(1)(e)). As such, there would be conflict with paragraphs 120 and 130 of the Framework which supports upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well designed.

Neighbouring amenity

16. As stated above, there are a number of residential properties close to the appeal site. The appeal building already contains windows which face towards those properties. The proposed development would introduce new windows in the additional storeys which would be visible from residential units along Ballards Lane and Gruneisen Road, including the north-western block of the Park Place development and 205-207 Ballards Lane. The legal judgement confirms that impact on amenity is not limited to overlooking, privacy or loss of light.
17. The appellant states that the scheme is in accordance with the Council's Residential Design Guidance Supplementary Planning Document (2016) in relation to the buildings to the rear. They also highlight that the London Housing SPG includes similar guidance distance and the Council considered that a separation distance of 21m was sufficient in the Park Place scheme.
18. The road separates the appeal site and Nos 205-207. The appellant asserts that these buildings comprise studio and bedsit flats and outline the rooms with

² Including APP/N5090/W/21/3283645 and APP/Z5630/W/21/3282035

windows facing the appeal site as well as the level of sky plane. I recognise that the buildings have windows to the front and rear. In addition, given the height difference, views from the proposed upper level windows would be oblique.

19. Having said that, the proposal would appear unduly dominant and imposing when viewed from nearby residential units. It would increase the perception of overlooking and the outlook from the windows would be dominated by the development and the scheme would have an overbearing impact, particularly in relation to the two-storey dwellings to the east. This is due to the distance to nearby residential units and the proposed increase in height, scale, massing and additional windows.
20. For these reasons, based on the evidence presented, the proposed development would have an unacceptable and harmful impact on the amenity of neighbouring premises (AA.2(1)(g)).

Transport and highway impacts

21. The proposed development would result in the addition of 12 residential flats and does not propose parking. The scheme includes cycle storage, and the appeal site is within walking distance to bus stops and tube stations. Highways have requested a Controlled Parking Zone permit restriction is imposed to discourage car ownership and to mitigate the impacts of the lack of on-site parking to serve the new residential units.
22. The Council states that the units need to be secured as parking permit free through a legal agreement to ensure that there is no harmful impact on the streets. The appellant asserts that the Council does not dispute the findings of the parking beat survey and there is sufficient on-street parking capacity to accommodate the parking demand arising from the additional flats.
23. The appellant's transport statement is dated July 2021 and at the time the surveys were carried out, it appears that the Park Place development was being constructed. It is unclear whether that development, which appears to be now complete, has impacted the findings of the study. Local residents have suggested that there has been an impact. Therefore, I cannot be sure that the survey results are reliable due to the change in circumstances in the local area and that there is sufficient parking space to cater for the parking demand arising from the proposal.
24. Consequently, on the basis of the information presented, I cannot be certain that the scheme would not result in an unacceptable increase on-street parking stress. In the absence of an up-to-date survey or legal agreement securing appropriate mitigation and contribution towards necessary amendments to the Traffic Management Order, the appellant has not robustly demonstrated that the development would not have an adverse impact on local highway conditions.
25. For these reasons, based on the evidence presented, the proposed development does not satisfy the condition relating to transport and highways impacts of the development (AA.2 (1)(a)).

Other matters

26. The appellant highlights that the reason for the introduction of the permitted development rights is to boost the supply of homes by utilising airspace above existing buildings and aligns with the Framework which seeks to make effective use of land. My considerations are limited to the provision of the GPDO, and the other matters highlighted do not change my findings on the main issues in this appeal.

Conclusion

27. For the reasons given above, I conclude that the appeal does not succeed.

L M Wilson

INSPECTOR