



Appeal Decision

Site visit made on 30 January 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th February 2023

Appeal Ref: APP/N5090/W/22/3302861

7D High Street, Barnet, London EN5 5UE

- 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 KDL (UK) Ltd against the decision of London Borough of Barnet.
 - The application Ref 22/0699/FUL, dated 11 February 2022, was refused by notice dated 19 May 2022.
 - The development proposed is the demolition and redevelopment of the site to provide two new buildings comprising 7no. self-contained dwellings and a Class E (Commercial, business and service) use at the ground floor, with associated landscaping and other works.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition and redevelopment of the site to provide two new buildings comprising 7no. self-contained dwellings and a Class E (Commercial, business and service) use at the ground floor, with associated landscaping and other works at 7D High Street, London EN5 5UE in accordance with the terms of the application, Ref 22/0699/FUL, dated 11 February 2022, and the plans submitted with it, subject to the supplied Legal Agreement and conditions within the attached schedule.

Preliminary Matters

2. A S106 Legal Agreement has been submitted in evidence in the form of a Unilateral Undertaking¹ (UU). This prevents future occupiers of the proposed residential units from holding a resident parking permit associated with the Chipping Barnet Controlled Parking Zone (CPZ). I shall return to this later.
3. The Appellant has provided two sets of amended plans. These show different options for how matters of privacy could be managed between the residential blocks, with respect to the windows for flat E5. The first alternative to the proposed louvered windows shows the windows to be angled instead (option 2) and the second option shows them to be obscurely glazed (option 3). These options do not materially change the substance of the proposal and I am content to take both into account without causing prejudice to any party.

¹ S106 Legal Agreement, dated 3 February 2023

Main Issues

4. The main issues are:

- The effect of the proposed development on the living conditions of future occupiers with particular respect to outlook, privacy and access to external amenity space, and
- Whether the proposal would provide access to suitable and adequate parking for future occupiers and its effect on the free flow of local traffic.

Reasons

Living conditions

5. The site is within the Chipping Barnet Town Centre. This consists of retail and complementary uses at ground floor with a variety of commercial and residential uses above. In this context the occupiers of most flats above commercial units have limited access to outdoor private living space or to dedicated parking.
6. The proposed development would consist of two residential blocks, the first addressing the street (that I have assigned the designation of Block One) and the second set behind (Block Two). Block One would include four rear facing bedroom windows (serving flats E1-E4) at first and second floor. Block Two would have two bedroom windows at ground floor (serving flats E6 and E7) and a living room and bathroom window serving flat E5 at first-floor. Flats within Block One would have balconies to the rear. Separate gardens and a balcony would be provided for the flats of Block Two to their rear aspect.
7. The separation distance between Block One and Block Two would be around eleven metres, reduced to around nine metres from the balcony of flat E1. As such the space between the blocks would be relatively intimate due to the limited separation distance. The Council's Sustainable Design and Construction Guidance (2016) (SDCG) requires a separation distance of 21 metres to ensure adequate levels of privacy are provide between active elevations. However, the guidance also states that design solutions, through the layout of habitable rooms, window placement and building orientation should be used to address privacy and overlooking issues. Furthermore, the Council's Residential Design Guidance SPD (2016) (RDG) explains that shorter distances may be acceptable between new build properties where there are material justifications.
8. The first-floor flat, within Block Two, would include angled louvres to those windows that would face the rear of Block One, serving a bathroom and living room of flat E5. The louvres would prevent direct views into these rooms and would ensure that adequate levels of privacy would be provided. However, the louvres would also reduce the quality of the outlook from these windows. Nonetheless, an outlook from the bathroom would be less important due to typical privacy requirements, and the living room would be a dual aspect space. As such, the living room includes a large rear facing window that would provide an open aspect over the private balcony. These windows therefore meet the guidance of the Council's RDG in terms of outlook where habitable

rooms should include “at least one main window with an adequate outlook where walls or buildings do not appear overbearing”. Consequently, the outlook for occupiers of flat E5 would be acceptable and it is unnecessary to consider the merits of the alternative options advanced by the Appellant.

9. A canopy is proposed to the front of flats E6 and E7. This would mostly obscure views between the windows of the ground floor of Block Two, and the first and second floor balconies of Block One. This would ensure that adequate levels of privacy would be provided within the bedrooms of flats E6 and E7. Although the canopy would limit and enclose the outlook from these windows somewhat, the effect would not be so substantive as to be materially adverse. Furthermore, due to the floor-to-ceiling height of the commercial unit in Block One, views from the first-floor windows of Block Two would be at a lower vantage and would not materially overlook internal rooms of flats E1-E4.
10. Accordingly, the proposal would not adversely affect the living conditions of future occupiers. As a result, the proposal would deliver acceptable living conditions for future occupiers with respect to privacy and outlook.
11. Flats E2, E3 and E4 would have relatively small balconies, ranging from 8sqm to 15sqm. These would not meet the Council’s requirement where its SDCG seeks 5 sqm of outdoor amenity space per habitable room for flats. Nonetheless, it also recognises that higher density development, such as flats, may not always be able to meet these standards. Two of these flats also would fail to meet the reduced requirement sought by policy D6 of the London Plan. Nevertheless, numerical requirements should not be slavishly applied as it is also important to consider the characteristics of the proposal and its context.
12. The balconies of flats E2 and E4 would only be marginally smaller than that sought by policy D6 and would provide outside areas that would be practical in shape and utility offering good amenity for occupiers. Therefore, these balconies would be of sufficient size to accommodate some garden furniture, providing useful additional amenity space, and would achieve a minimum depth of 1.5 metres. Also, the flats of Block One are constrained by the efficient design of the site which makes best use of the site in an innovative configuration of units.
13. Furthermore, the proposal would be within easy access of a number of parks and recreation areas that are within a 5-minute walk of the site. This would supplement the needs of occupiers who wish to access recreational outdoor space. I am therefore unpersuaded that the scheme would provide inadequate living conditions for future occupiers, in terms of its access to outdoor space, and instead find that this provision would be appropriate for its town centre location.
14. Consequently, the proposal would accord with, policies DM01 and DM02 of the Council’s Development Management Policies DPD (DP), the Council’s Sustainable Design and Construction SPD (2016) and the Council’s Residential Design Guidance SPD (2016). These policies seek, among other matters, for development to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users and provide suitable outdoor amenity space. The Council also identify that the proposal would be contrary to a policy of the London Plan but has not stated which policy. As such, I find no identified conflict.

Car parking provision and demand

15. DP Policy DM17 requires parking provision for residential development to be provided at a maximum provision of "1 space, to less than 1 space, for development consisting of flats". This policy also explains that within a CPZ, where it can be demonstrated that insufficient parking capacity exists, an applicant will be required to enter into a legal agreement to restrict future occupiers from obtaining a resident parking permit.
16. The highway is relatively busy and roadside parking is prevented by double yellow lines. Roadside parking along adjacent residential roads, such as Bedford Avenue and Normandy Avenue, are restricted by the CPZ to residential permit holders for part of the day. During my visit, on a weekday morning, I observed that the parking spaces within these residential roads were mostly occupied. Although offering only a snap-shot in time, this indicates that any additional demand for resident parking would impose significant pressure on the limited parking available.
17. The site is within Barnet Hill High Street and has a Public Transport Accessibility Level (PTAL) rating of 5, being 'very good'. The proposal would provide parking hoops for fifteen bicycles within the central courtyard and no vehicle parking. Being within a high street location, and having a good PTAL rating, it seems unlikely that residential occupiers would require access to a private car to access goods or services. Furthermore, the UU would ensure that new occupiers would be unable to apply for a resident parking permit, thus ensuring that parking demand would not increase through the operation of the development or exacerbate local parking pressure.
18. Consequently, the proposal would have an acceptable impact on the local highways, with no material impact on the free flow of traffic on local roads and would function well. Accordingly, the proposal would comply with policies T1 and T2 of the London Plan, CS policy CS9 and DP policy DM17. These policies seek, *inter alia*, for development to provide appropriate parking that would meet maximum standards and manage parking provision within CPZs.

Legal Agreement

19. The UU includes the obligation to preclude future occupiers of the residential units, and their successors in title, from applying for a resident parking permit within the CPZ. It also provides a CPZ Contribution to enable amendments to be made to its Traffic Regulation Order (TRO) to accommodate the restrictions of the UU and offers a monitoring sum.
20. The Council has explained that a contribution is necessary to amend the TRO in accordance with its Planning Obligations SPD. However, whilst this enables the Council to obtain a financial contribution to implement parking controls, the Council has not explained what measures would be necessary to justify the sum, as the purpose of the UU is simply to preclude the occupiers of certain properties from obtaining a permit. Based on the evidence it appears that this objective would not require alterations to any local road markings or roadside signage. I am therefore unconvinced that any measures either 'on the ground' or through adjustments to the TRO would be necessary, as required by

paragraph 57 of the National Planning Policy Framework (the Framework), to warrant the payment of a sum.

21. Furthermore, as no contribution would be necessary, I am also unconvinced that a monitoring sum would be required. Accordingly, neither the contribution nor the monitoring sum would meet the tests for planning obligations set out in regulation 122 of the CIL Regulations. In contrast, and for the avoidance of doubt, I am satisfied that the requirement to preclude future occupiers from obtaining a resident permit would be necessary and would satisfy the requisite tests.

Other Matters

22. The Appellant's Daylight and sunlight Assessment² identified that the proposal would retain daylight and sunlight levels to an extent that would satisfy the Building Research Establishment (BRE) Guidelines. The Assessment shows that one first-floor window, at 7C High Street, fails to meet sunlight criteria by a small level (0.78 rather than 0.8) resulting in a negligible breach. Other windows within this building would experience a reduction in daylight but are already compromised due to the proximity of existing built form. The Assessment also considers the effect of daylight on the rear windows of 7E High Street and Lawn Mansions, these satisfy the BRE guidelines showing no material adverse effect on daylight levels. Furthermore, the sunlight assessment shows that those windows that face within 90 degrees of south comply with the BRE criteria for annual and winter availability. Accordingly, the proposal would not make an appreciable difference to sunlight or daylight levels received by neighbouring windows.
23. The environment to the rear of the existing building shows a number of residential properties that are close-knit, with some intervisibility evident between existing private spaces. As such, a moderate level of overlooking already takes place. It is recognised that some windows, to the side elevation of 7C High Street, serve residential units. This includes the patio area of flat 9, which is overlooked by a kitchen and bedroom window, in a recessed section of the elevation. Also, a further flat includes a bedroom window at first floor level that overlooks the site. Consequently, whilst the proposed balconies would provide some views towards neighbouring windows, overlooking opportunities would be limited due to the proposed balcony screening. Furthermore, due to the separation distance and orientation of the balconies these would offer only oblique views towards neighbouring windows. Accordingly, overlooking would be limited, resulting in no material change to neighbour's living conditions in terms of privacy.
24. Furthermore, flat 4 7C High Street, has a side window at second floor level that overlooks the site. The submitted photograph shows that this window is at a high level in a living room and provides daylight and sunlight but no direct outlook, due to its position in the room. It also seems that this window is a secondary source of light to the living room. The roof plan (PL-103 B) and cross section drawing (PL-202 rev B) shows that the design includes a lightwell adjacent to this window. This would accommodate the window to ensure that occupiers would not experience a loss of light. The plans do not show how the lightwell would create a neat waterproof seal to the adjacent building. However, this further detail could be specified through detailed drawings

² Daylight and sunlight to neighbouring buildings, by BVP, dated January 2022

secured by a condition. As a result, the outlook would not be substantially changed and occupiers of this flat would not experience a material reduction in daylight or sunlight.

25. The proposed flats would meet Nationally Described Space Standards and would provide access to sufficient areas of outdoor amenity space. The scheme would also make effective use of the land as advanced by the Framework. Furthermore, the proposal would not adversely affect the living conditions of neighbouring occupiers. As a result, the scheme would not represent overdevelopment as asserted by some interested parties.
26. The proposed development would include mechanical ventilation. Noise arising from this equipment could be mitigated through the imposition of a suitably worded condition. The proposal would create a courtyard to the rear of the frontage buildings within close proximity of neighbouring residential windows. Nonetheless, the noise and activity associated with the proposal would be unlikely to be substantially greater than that created by the existing uses if they were fully occupied.
27. The existing building is two-storey and stands within a row of largely three-storey buildings. It is therefore a relatively squat building within the streetscene. Its scale, in combination with its limited design interest, means it makes only a neutral contribution to the character and appearance of the area. The proposed building is of a scale that follows and complements the height of neighbouring buildings. It would also include several design features that would enable it to make a positive contribution to the street. As such, there is no compelling reason to require the retention of the existing building.
28. The proposal includes the provision of green roofs, these would increase the bio-diversity value of the site. The plans show that residential occupiers would not have access to these areas. Occasional access would be required for maintenance purposes. However, the details of access and maintenance are not disclosed by the Appellant. These details could be required by condition to ensure access to the green roofs would not harm neighbour's living conditions.
29. The proposed commercial space is relatively small and located within an existing high street. Furthermore, parking requirements of the commercial space would be limited and could be accommodated within existing parking provision within the town centre. The residential units would operate as car-free development. As such, the proposal would have a minimal impact on local traffic levels.
30. The proposal would enable the redevelopment of the site. This would make more efficient use of the site with considerate development and would be located within an accessible location. Interested parties have compared the proposal to reusing the existing building, suggesting that the latter would result in lower carbon impacts. Nevertheless, whilst this may be correct, it would relate to a proposal not before me and, as such, is of limited relevance to this proposal.
31. Interested parties have raised concerns with respect to the effect of demolition of the structural integrity of the adjacent buildings. This is a matter not governed by planning policy and would be addressed in due course through the building regulation process.

Conditions

32. The Council has not provided a list of suggested conditions. Nevertheless, I have deemed that conditions would be necessary for the proposal to be acceptable in planning terms. Conditions with respect to the commencement period and approved plans would be required in accordance with the advice of the Planning Practice Guidance.
33. It would also be necessary for conditions to be imposed with respect to details of glazing attenuation, contamination assessment, refuse/recycling storage, internal sound insulation and mechanical ventilation. These are required in the interests of the living conditions of future occupiers and to accord with the recommendations of the Appellant's Noise Assessment and the Council's Environmental Health Team.
34. It would also be necessary to require details of a Construction Management Plan, access and maintenance of the green roofs, mechanical ventilation and balcony screens to protect the living conditions of existing occupiers. Also, details would be necessary of the screening panels, to be installed to the sides of the balconies, in the interests of the privacy of neighbouring residents. A condition would also be necessary to require the full details of the proposed lightwell to ensure it would protect the light received by the side living room window of flat 4, 7C High Street and to secure an effective design solution.
35. Conditions to require details of hard and soft landscaping and materials would be necessary in the interests of the character and appearance of the area.
36. It would also be required for a condition to seek details of the cycle parking to ensure this would promote sustainable transport. Furthermore, details of air pollution mitigation measures would be required to satisfy the requirements of the Council's SDCG and the Framework to improve air quality for future occupiers.

Conclusion

37. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed, and planning permission granted subject to the certified UU and the attached conditions.

Ben Plenty

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (drawing No. SLP-100), Block Plan (Drawing No. BP-100), Proposed Site Plan – Roof (Drawing No. PL-50 rev B), Proposed First Floor GA Plan (Drawing No. PL-101 rev C), Proposed Second Floor GA Plan (Drawing No. PL-102 rev B), Proposed Third Floor GA Plan (Drawing No. PL-103 rev B), Proposed Elevation 1 (Drawing No. PL-200), Proposed Elevation 2 (Drawing No. PL-201 rev B), Proposed Elevation 3 (Drawing No. PL-202 rev B), Proposed Elevation 4 (Drawing No. PL 203), Proposed Elevation 8 (Drawing No. PL-204 rev C), Proposed Site Plan - Ground Floor (Drawing No. PL-51 rev B), and Proposed Ground Floor GA Plan (Drawing No. PL-100 rev C).
- 3) No development or site works shall take place on site until a 'Demolition and Construction Management and Logistics Plan' has been submitted to and approved in writing by the Local Planning Authority. The Plan submitted shall include: i. details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures; ii. site preparation and construction stages of the development; iii. details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials; iv. details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway; v. the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works; vi. a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance; vii. noise mitigation measures for all plant and processors; viii. details of contractors compound and car parking arrangements; ix. details of interim car parking management arrangements for the duration of construction; x. details of a community liaison contact for the duration of all works associated with the development. The development shall thereafter be implemented in accordance with the measures detailed within the statement.
- 4) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to

and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 90 days of the report being completed and approved in writing by the local planning authority.

- 5) No development, other than demolition works, shall take place until details of the materials to be used for the external surfaces of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the materials as approved under this condition.
- 6) No development, other than demolition works, shall take place until details of the lightwell adjacent to Flat 4 of 7C High Street, have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate how access to daylight will be maintained upon the completion of development to result in a design feature that would be both effective and simple. Once agreed the approved design shall be incorporated into the final design and fully installed prior to the occupation of the residential units.
- 7) Notwithstanding the details submitted with the application and otherwise hereby approved, prior to the occupation of the development, details of: (i) A Refuse and Recycling Collection Strategy, (ii) Details of the areas to be used for the storage of recycling bins; and (iii) details of collection points for refuse and recycling, shall be submitted to and approved in writing by the Local Planning Authority. The approved refuse and recycling facilities shall be provided in accordance with the agreed details before the development is first occupied and the development shall be managed in accordance with the agreed strategy in perpetuity once occupation of the site has commenced.
- 8) Prior to first occupation of the hereby approved development, a scheme of hard and soft landscaping to the courtyard area and green roofs including species, planting heights, densities, shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be fully implemented prior to the first occupation of the residential units.
- 9) No development, other than demolition works, shall take place until details of the access and maintenance of the green roofs shall be submitted and approved in writing by the Local Planning. The agreed access routes and maintenance regime shall be fully implemented and remain operational for the duration of the approved use.
- 10) No development, other than demolition works, shall take place until details of the proposed glazing attenuation shall be submitted and approved in writing by the Local Planning Authority prior. The approved details of glazing shall be installed prior to the first occupation of any residential unit and maintained in perpetuity.
- 11) No development, other than demolition works, shall take place until details of the proposed mechanical ventilation and extraction plant shall

be submitted to and approved in writing by the Local Planning Authority. The equipment shall be installed in full accordance with the approved specification prior to the first occupation of any part of the approved development and maintained in perpetuity.

- 12) No development, other than demolition works, shall take place until details of internal insulation material to be installed between floors and walls, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the residential units.
- 13) No development, other than demolition works, shall take place until details of the obscure glazing/screening proposed on the sides of the balconies shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be installed prior to the occupation of the residential units and maintained in place for the duration of the approved development.
- 14) No development, other than demolition works, shall take place until details of air pollution mitigation measures shall be submitted and approved in writing by the Local Planning Authority. The approved air pollution measures shall be installed prior to the occupation of the residential units and maintained in place for the duration of the approved development.
- 15) No development, other than demolition works, shall take place until details of the proposed cycle parking area shall be submitted to and agreed in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the occupation of the residential units.

End of conditions