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# Appeal Decision

Site visit made on 12 January 2023

**by A Hickey MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> February 2023**

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**Appeal Ref: APP/N5090/W/22/3304746**

**Garages Opposite Silverose House, Montrose Crescent, North Finchley  
London N12 0HD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
  - The appeal is made by Mr Robert Brunton against the decision of the Council of the London Borough of Barnet.
  - The application Ref 21/5141/FUL, dated 23 September 2021, was refused by notice dated 11 February 2022.
  - The development proposed is demolition of existing Class B8 former garages building and erection of a single storey building to provide office accommodation.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Following the publication of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, Use Class B1(a) became Use Class E(g)(i). As such, Policy DM14 of the Barnet's Local Plan Development Management Policies Document (2012) (DMPD) is inconsistent with the current legislation. Nevertheless, uses within the new Class E(g)(i) are consistent with those which the policy seeks to protect and therefore it would be reasonable to apply the new class to this policy.
3. The appellant has drawn my attention to Policy ECY01 of the draft Barnet Local Plan 2021-2036 in support of the provision of office space outside of Town Centre and edge of centre locations. The appellant indicates that there are no objections to this policy. However, having regard to paragraph 48 of the National Planning Policy Framework (the Framework) and given that the emerging plan has not yet been fully examined, I attach only minimal weight to it in my consideration of this appeal.
4. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the B8 use of the garages is lawful as claimed by the appellant. If the appellant wishes to ascertain whether the B8 use of the garage is lawful, they may make an application under section 191 of the Act.

## Main Issues

5. The main issues are:

- whether the appeal site is a suitable location for the proposed development having regard to local and national planning policy for the location of new offices; and
- the effect of the proposal on the character of the area.

## **Reasons**

### *Suitable location*

6. The appeal site is in a residential area, outside of any designated town or local centre. In such a location, Policy DM14 of the DMPD, amongst other criteria, states that all proposals for new office space should follow a sequential approach which considers town centre sites before edge of centre sites. Policy SD7 of the London Plan, also requires a sequential approach to such development demonstrating there is no suitable or soon to be available in-centre sites, before considering edge of centre, then out of centre sites.
7. Furthermore, the Framework highlights the role that town centres play within communities. It seeks to promote their long-term vitality and viability and directs main town centre uses, which include offices, to town centre, and then edge of centre locations before out of centre sites are considered.
8. Thus, to justify the provision of new offices in this location the appellant must be able to demonstrate through a sequential approach which town centre sites before edge of centre sites have been considered. The appellant has not provided a sequential test with the application or with this appeal and there is little before me to establish that there are no sequentially preferable sites for the office use.
9. In the absence of a sequential test or other supporting evidence to demonstrate the number of offices lost to residential uses through permitted development, I attached limited weight to the appellant's view that small office space in the town centre is not viable.
10. At the time of my site visit, the garages, appeared vacant with vegetation having grown across the frontage of one garage onto the front roof elevation of the second which would impact accessing either garage. I note the appellants' comments about the lawfulness of the use of the garages. However, there is no Certificate of Lawfulness provided to show that this is the case, and I am not persuaded by the limited evidence in this regard.
11. Overall, I conclude that it has not been shown that the appeal site is a suitable location for the proposed development having regard to local and national planning policy for the location of new offices. The proposal would conflict with Policy DM14 of DMPD and Policy SD 7 of the London Plan. The proposal would also fail to comply with requirements within the Framework to support the long-term vitality and viability of town centres.

### *Character*

12. The area surrounding the appeal site has a typical residential character arising from its formal layout of different housing and residential building types. Close by the appeal site, there is a place of worship however this is not uncommon in residential areas. At the time of my site visit, which I recognise is only a snapshot in time, Montrose Crescent was quiet in direct contrast to the

commercial activity of the North Finchley town centre fronting onto Ballards Lane and High Road.

13. The appeal site sits in a row of single-storey garages accessed from Montrose Crescent sited behind properties on Woodberry Gardens. Although the site is slightly set back and does not front many properties directly, it is part of the established residential area. There is a clear delineation in the change of character between the appeal site and the nearest cluster of commercial properties located on Ballards Road. The introduction of a commercial use onto the appeal site would harm the established residential character of the site and surrounding area.
14. At the time of my site visit, there was no evidence to suggest that the garages were being used for commercial purposes and no recent activity was evident. Consequently, I do not find the site has any existing commercial character. Furthermore, whilst in need of tidying up and vegetation cutting back the garages are not in a condition which substantially harms the appearance of the area.
15. The proposed siting of the building would integrate with the existing uniform layout and scale of other garages in this part of Montrose Crescent. Furthermore, the proposed design is functional and would respect the design features and materials found within the area. However, the proposed office use would have the potential to generate a different and more intensive level of activity than currently occurs. Particularly as the office, as shown on the plans provided, could accommodate up to 8 people. I have had regard to the appellant's suggestion that a condition could be used to restrict the hours of operation, but this would not overcome the potential significant increase in activity to the detriment of the residential character of the area. As such I find that the likely intensity of office use would result in unacceptable harm to the residential character of the surrounding area.
16. Consequently, the appeal proposal would conflict with Policy D3 of the London Plan, Policies CS NPPF, CS1 and CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document and Policies Policy DM01 and DM02 of the DMPD which together seek, amongst other things, new development responds to, and preserves and protects existing character. It would also be contrary to the provisions of the Council's Sustainable Design and Construction SPD.

## **Other Matters**

17. The evidence provided, by the appellant, identifies sporadic use of the garages for storage. I acknowledge the case law<sup>1</sup> brought to my attention however, the evidence before me of a B8 use of the appeal site is limited. Even if the existing garages could be used in the way suggested there is no evidence that the fallback position is a greater than theoretical possibility or that if the appeal is dismissed the fallback would be pursued. As a consequence, I find the suggested fallback position to have limited weight in the determination of the appeal.
18. In reaching my decision I have had regard to the fact that the appeal site is an accessible location and there would be some benefits from the provision of new jobs and the replacement of the garages with a building incorporating a green

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<sup>1</sup> Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314

roof that is energy efficient. However there is nothing before me to suggest that a site in a town centre or edge of centre location could not provide similar benefits.

### **Conclusion**

19. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, including the Framework and the suggested fallback, that outweighs that conflict.
20. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

*A Hickey*

INSPECTOR