



Appeal Decision

Site visit made on 30 November 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal Ref: APP/N5090/W/22/3295865

Annex Land to 765 Finchley Road, London NW11 8DS

- 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 Mr Alexander Beare against the decision of the Council of the London Borough of Barnet.
 - The application Ref 21/3598/FUL, dated 28 June 2021, was refused by notice dated 21 February 2022.
 - The development proposed is described on the application form as, "The proposal seeks development on annex land to 765 Finchley Road, London NW11 8DS to erect One Zero carbon stealth, energy efficient home with associated garden areas".
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Decision

1. The appeal is dismissed.

Application for costs

2. The appellant made an application for costs. This application for costs has been dealt with in a separate decision.

Main Issues

3. The main issues are:
 - the effect the proposed development on the character and appearance of the area;
 - whether the proposal is required to make provision for on-going access to the rear garden area for the residents of West Heath Place, for not carrying out the development approved by permission F/05021/10, and for associated monitoring costs; and
 - the effect of the proposed development on highway safety and whether adequate provision would be made for access for emergency services.

Reasons

Character and appearance

4. The appeal site primarily comprises an area of green space located to the rear of 1 Hodford Road (No 1), situated within Childs Hill in Barnet, which is a predominantly residential area.
5. The planning history of the site was summarised in appeal decision Ref APP/N5090/W/18/3210067. In short, the area of open grassland was originally

- part of the rear garden of No 1. It was subsequently sold as annex land relating to 765 Finchley Road (No 765), but was later separated from No 765.
6. As the site contains an area of green space and is located broadly between the communal garden of the block of flats at West Heath Place and the rear gardens of houses on both Hodford Road and Llanvanor Road, it has the visual appearance of being garden land, even though the site is privately-owned and is not designated as open space in land-use terms.
 7. A number of refusals for planning permission for residential development have been issued for the site. However, the appeal proposal is intended to offer a fresh approach, with an entirely new design put forward by a specialist sustainability architect and a design team which have previously created a series of prize-winning low energy residential projects at a variety of scales.
 8. I have had regard to the submitted townscape appraisal¹, and I have noted the qualifications and experience cited by its author. I have also carefully considered the computer generated images provided in the submitted Design and Access Statement. Whilst the townscape appraisal mentions that the site in its present condition makes no positive contribution to the townscape or visual value of its immediate or wider surroundings, this opinion contrasts with that of the Inspector in appeal decision Ref APP/N5090/W/18/3210067 who was of the view that the site makes a positive contribution to the pattern of development in the area through its sense of openness and tranquillity.
 9. In a similar vein, the Inspector in appeal decision Ref APP/N5090/W/18/3210067 quoted a previous Inspector's opinion that, "although not a visually prominent area of land to the wider locality, its contribution to the character and appearance of the area should not be underestimated in terms of providing a spacious and tranquil outlook to adjacent properties".
 10. I observed that the site still exhibits the qualities referred to by the previous Inspectors in that it conveys a tangible sense of openness and tranquillity in an otherwise fairly densely built-up area. As such, it serves a clear purpose in breaking up the mass of built form in the vicinity. It also continues the spacious pattern of development arising from the continuous presence of rear gardens along Hodford Road and Llanvanor Road. All these factors make an important contribution to the character and appearance of the local area.
 11. I observed that, despite the presence of trees around the perimeter of the grassed area of the site, the site is not visually isolated, but is in view from many surrounding properties, including from elevated viewpoints from the windows and some of the balconies of nearby blocks of flats. Indeed, I note that some local residents have referred to the value of the site in terms of its visual amenity. Similarly, whilst the site has little visual presence in the wider public realm, several of the computer generated images of the proposal in its context (provided in the submitted Design and Access Statement) show the windows of nearby properties facing directly towards the site.
 12. The proposed landscaping scheme would involve the planting of additional trees on site, in addition to shrubs, evergreen hedging, and heder helix ivy screening, amongst other planting. However, any new planting would likely

¹ The Townscape Consultancy (March 2022)

take some time to establish and mature and in any event considering the multiple elevated views of the site available from surrounding properties and that the 2 wings of the proposed new dwelling would extend very close to the rear gardens of properties on Llanvanor Road, these natural features would likely only shield the site and the proposed new dwelling from views from nearby properties by a limited extent.

13. The proposed new dwelling would incorporate a contemporary design, with 2 large wings emanating from a fair-sized central element, and banks of windows would directly face onto a patio and a garden area. In these respects, the design of the dwelling would be simple, legible, and distinctive. The incorporation of an extensive area of green roof, photovoltaic (PV) panels, and timber cladding, with high quality materials overall, would contribute to the attractiveness of the design, in that these natural and eco-friendly features would not appear out-of-place considering the garden areas adjacent to the site. Nevertheless, the proposed dwelling would cover a significant proportion of the site. Consequently, although it would not rise above a single-storey, it would constitute a considerable mass of built form relative to the site as a whole.
14. Due to the angle of the proposed PV roof, the entrance to the proposed new dwelling would be clearly marked. The thick rainwater gutter around the roof, which would extend around the whole of the proposed dwelling, would delineate the building as a whole. The proposed green roof would not be flat but rather would be composed of a series of distinct contours, which would contrast with the timber cladding and windows beneath. The large kitchen clerestory window and the array of PV panels on the central portion of the dwelling (which would both span the majority of the central portion of the dwelling) would also serve to highlight the presence of the building.
15. Considering these features, and the large footprint of the proposed new dwelling in its context, which as mentioned above would be in view from nearby properties, in my view the dwelling would not appear as a stealth home but rather would appear as a substantially-sized new dwelling when viewed from surrounding properties. It follows that, rather than enhancing its surroundings, as required by the National Design Guide, the proposed new dwelling would erode much of the existing sense of openness offered by the site. Similarly, the proposed new dwelling stretching across the majority of the site with an undulating roof form would appreciably diminish the spacious pattern of development, which, as mentioned above, forms a valuable part of the character of the area.
16. I am mindful of paragraph 44 of the National Design Guide, which provides that, amongst other things, well-designed places do not need to copy their surroundings in every way and it is appropriate to introduce elements that reflect how we live today, to include innovation or change such as increased densities, and to incorporate new sustainable features or systems.
17. In this respect, the site is not a 'gap' site on a street frontage where the replication of the appearance of dwellings on such a frontage would likely be appropriate. Rather, it is an undeveloped backland plot, adjacent to a long linear run of rear gardens on Hodford Road and Llanvanor Road, with blocks of flats present to the east of the site. Even so, considering the considerable footprint of the proposed new elongated single-storey dwelling in its location, it

would appear noticeably out-of-keeping with the established rows of semi-detached and detached dwellings which directly front much of Hodford Road and Llanvanor Road and which make up an important part of the character of the area.

18. Taking all of the above into account, whilst I note the opinion given in the townscape appraisal that the proposal would constitute an outstanding and innovative design and would help to raise the standard of design more generally in the area in terms of paragraph 134 b) of the National Planning Policy Framework (the Framework), for the above-mentioned reasons the design and layout of the proposal would not be adequately informed by the local pattern of development, as required by paragraph 6.6 of Barnet's Local Plan Supplementary Planning Document: Residential Design Guidance (2016). Hence, it would not fit in with the overall form and layout of its surroundings as required by paragraph 134 b) of the Framework.
19. Accordingly, the proposal would not result in a well-designed place, as advocated by paragraph 21 of the National Design Guide, nor would it conform to the 10 characteristics of beautiful, enduring and successful places set out in Part 2 of the National Design Guide and referred to in paragraph 34 of the National Design Guide.
20. The appellant has referred to pre-application advice given by the Council, in relation to a proposal for 2 residential units. As the plans for that scheme have not been provided, it has not been possible to make a meaningful comparison with the appeal proposal. In any event, I am not bound to fall in line with any previous decision or opinion of the Council. As, for the reasons given above, the landscaping scheme proposed would not adequately screen the site, whilst in principle a condition could be imposed requiring compliance with the landscaping scheme, this would not overcome the harm identified to the character and appearance of the area.
21. I therefore find that the proposed development would have an unacceptable and significantly harmful effect on the character and appearance of the area. Policy CS1 of Barnet's Local Plan (Core Strategy) (adopted 2012) (Core Strategy) does not state that the policy is not applicable to decision-making for smaller-scale schemes as opposed to large regeneration projects, and for the reasons given above the proposal would conflict with its aims that, amongst other things, the Council will seek the highest standards of urban design in order to generate development proposals of landmark quality and create an attractive environment for people who live in, work in or visit Barnet's areas of housing and economic growth.
22. The proposal would conflict with Policy CS5 of the Core Strategy which provides that, amongst other things, the Council will ensure that development in Barnet respects local context and distinctive local character creating places and buildings of high quality design.
23. Considering my findings above, with respect to the design of the proposal in relation to its context, the proposal would conflict with part a. of Policy DM01 of Barnet's Local Plan (Development Management Policies) (adopted 2012) (DMP) which provides that, amongst other things, all development should represent high quality design. The proposal would conflict with part b. of Policy DM01 of the DMP which provides that, amongst other things, proposals should preserve

or enhance local character and respect the pattern of surrounding buildings, spaces and streets.

24. The proposal would also conflict with paragraph 130 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Access to West Heath Place, permission F/05021/10, and monitoring costs

25. The appellant has confirmed that the owner of the appeal site had agreed, as part of a previous unsuccessful appeal, to provide a pedestrian access to West Heath Place. I note that the Inspector in appeal decision Ref APP/N5090/W/18/3210067 referred to a Unilateral Undertaking (UU) which would secure this.
26. Similarly, a number of local residents (including residents of West Heath Place), and a Director of West Heath Place (Freehold) Ltd, have referred to the need for a permanent path to be established, to allow individuals with mobility issues and disabled people (including wheelchair users) to easily access the communal amenity space at West Heath Place, and for the path to be used as a fire escape. Reference has also been made to bollards or a low wall being erected to separate the pathway from the accessway to the proposed new dwelling.
27. I have no reason to doubt the benefits that such a path would bring to the residents of West Heath Place and their visitors, including for disabled and older people. However, the dispute relating to the provision of this path appears to me to be a private matter relating to land ownership and access rights rather than being directly related to the proposed development in planning terms, particularly as the land in question lies outside the redline boundary for the appeal site. Indeed, the appellant has broached the possibility of resolving this issue directly with the adjoining occupiers on an informal basis, outside of the planning appeal process.
28. As such, taking account Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) which provides that, amongst other things, a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is directly related to the development, a planning obligation is not required in relation to this matter. It follows that associated monitoring costs are also not required to be secured via a planning obligation.
29. The submitted UU does not meet some of the requirements of Annexe N of the Procedural Guide: Planning appeals – England in that its pages are not numbered, and the first page of the document incorrectly refers to land at 698 Finchley Road, London, NW11 7NE. However, as these are minor typographical errors, I am satisfied that the UU would be effective and enforceable.
30. The UU contains obligations which would ensure that the cottage granted planning permission under Ref F/05021/10 would not be constructed in the event that the appeal development is commenced, which would ensure that the proposed accessway is not obstructed by a dwelling. The UU also contains a provision which would ensure that a Transport Contribution is paid to the

Council to ensure that the appellant would not be able to apply for a parking permit, which would ensure that nearby parking pressures are not exacerbated.

31. Accordingly, I consider that these obligations found in the UU are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. The UU would therefore comply with the relevant provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), and the tests for planning obligations set out in paragraph 57 of the Framework.
32. I therefore find that the proposal is not required to make provision for on-going access to the rear garden area for the residents of West Heath Place, nor for any monitoring costs, and that the proposal adequately ensures that the development approved by permission F/05021/10 would not be carried out if the appeal proposal were found to be acceptable in all other respects. In relation to this main issue no conflict would arise with Policies DM01 and DM17 of the DMP which collectively provide that, amongst other things, where appropriate, development will be required to improve pedestrian facilities in the local catchment area by funding improvements off-site.

Highway safety and access for emergency services

33. The proposal would provide 2 parking spaces within the accessway to the proposed new dwelling. The submitted Transport Technical Note² provides swept path analysis which demonstrates that a large estate car would be able to enter the accessway in reverse gear and exit to the highway in forward gear. The Council has queried whether the appropriate software has been used in the creation of the relevant drawing, but I have not been able to identify any abnormalities in this respect.
34. In any event, the conclusion of the Transport Technical Note that the parking spaces would be able to be accessed without a detrimental impact on the safety of road users is consistent with my observations made on site. I note that the Council have recommended that the scheme should be car-free, but as I have found above that the appeal proposal as it stands would not be harmful with respect to highway safety, this consideration does not change my findings. As the proposal would acceptably provide 2 off-street parking spaces, the question of a need for a legal agreement to mitigate any highway impacts of the proposed development does not need to be considered further under this main issue.
35. The Council have referred to a lack of details with respect to the proposed provision of electric bike parking and mobility scooters. However, these details could be required by condition, if the proposal were found to be acceptable in all other respects.
36. Whilst access for fire appliances is covered by the Building Regulations, paragraph 112 d) of the Framework provides that, amongst other things, applications for development should allow for access by emergency vehicles. Hence, this matter is of relevance to this planning appeal.
37. The Council have referred to the opinion of the London Fire Emergency services, given in the context of a previous planning application. However, their opinion has not been provided in relation to the proposal before me, and

² Transport Technical Note, Parking and Access Consideration (i-Transport LLP) (28 March 2022)

accordingly their stance is unclear with respect to the proposition, given in the submitted Fire Safety Report³, that the proposal is acceptable regarding fire service access because the access for a pumping appliance would be within 45 metres of all parts of the dwellinghouse or there is adequate mitigation by way of sprinkler heads. Additionally, the Council have not provided any specific evidence to rebut this proposition.

38. Therefore, on the basis of the evidence before me, and considering that if the proposal were acceptable in all other respects a condition could be imposed requiring compliance with the measures detailed in the Fire Safety Report (including with respect to the provision of a sprinkler system), I find that the proposal would be acceptable in relation to access for emergency services.
39. Drawing all of the above together, I find that the proposed development would have an acceptable effect on highway safety and that adequate provision would be made for access for emergency services.
40. The proposal would comply with Policy CS9 of the Core Strategy which aims to provide safe, effective and efficient travel. It would comply with Policy DM17 of the DMP which provides that, amongst other things, the Council will ensure that the safety of all road users is taken into account when considering development proposals, and will refuse proposals that unacceptably increase conflicting movements on the road network or increase the risk to vulnerable users. As Table 10.3 of The London Plan (published 2021) does not refer to outer London, where the site is situated, the proposal would also comply with Part A of Policy T6.1 of The London Plan which provides that, amongst other things, new residential development should not exceed the maximum parking standards set out in Table 10.3 of The London Plan.

Other Matters and Planning Balance

41. I note that the proposal has been subject to pre-application discussions with the Council, which has resulted in the present proposal. However, in terms of the planning merits of this appeal, this is a neutral matter, which does not weigh in favour of the proposal. As the owner's obligations put forward in the submitted UU would merely serve to ensure that the proposed accessway is not obstructed by a dwelling and that nearby parking pressures are not exacerbated, these are also neutral matters. The conduct of the Council during the processing of the planning application is not a matter that I can assess in the context of a planning appeal.
42. The proposal would support the Government's objective of significantly boosting the supply of homes by way of providing one new dwelling in a highly accessible location (with good access to public transport). Accordingly, it would constitute incremental intensification / densification and infill development on a presently unused and underutilised non-designated small site.
43. The proposal seeks to offer a climate neutral building, i.e. a building that makes no overall contribution to greenhouse gases and accelerating climate change, including in relation to the entire carbon footprint of the design, off-site procurement, site construction and occupation. To achieve this, the aim is for the building to have a very low embodied carbon footprint, high durability

³ Asserson: Fire Safety Report: Fire Safety Report for Finchley Road Site (HornerSalus Ltd) (28 March 2022)

- and flexibility to ensure a long working life, with a modest annual surplus of zero carbon energy generated on site.
44. Specifically, the proposed new dwelling would be built from traditional and natural materials, with many being UK-sourced and recycled (where reasonable and appropriate), to minimise the carbon footprint of the structure. The dwelling would be built with a sustainable construction system, which combines an energy-efficient modular frame structure with an integrated solar PV panel roof.
45. In practice, this would ensure that in addition to the dwelling's annual energy demand being met, a modest annual electric surplus would be exported to the national grid. This would displace fossil fuel centralised power generation, thereby creating sufficient carbon credits over the anticipated life of the dwelling to off-set the embodied carbon investment made. As a zero-energy bills home, running for much of the year on renewable energy, the proposal would also help to reduce fuel poverty.
46. The submitted Landscape Implementation and Review report⁴ indicates that the proposal would bring environmental benefits in terms of increased biodiversity and ecological enhancements, particularly in respect of the proposed green roof, which would also aid air quality. However, few details have been given to quantify the scale of these environmental benefits when set against the current condition of the site, which limits the weight which can be given to these matters in support of the proposal.
47. The above-mentioned considerations would be in compliance with a number of the Council's development plan policies, The London Plan, and relevant paragraphs of the Framework. In particular, the low-cost zero carbon nature of the proposal with the potential to create a surplus of zero carbon energy during its lifetime, and thereby contribute to the Government's net zero targets and the challenge of climate change, is a particularly important consideration that clearly weighs in favour of the proposal.
48. Nevertheless, ultimately the positive impacts of the economic, social, and environmental benefits as summarised above would be directly linked to the quantum of development involved in this appeal, which is for one dwelling only. All these benefits, when considered collectively, therefore provide only modest support for the proposal, resulting in no more than moderate weight in favour of the proposal.
49. I have found on the first main issue that the proposed development would have an unacceptable and significantly harmful effect on the character and appearance of the area. Considering that the Framework provides at paragraph 126 that, amongst other things, the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, I ascribe substantial weight to this harm.
50. Therefore, as a matter of planning judgement I find that all the matters advanced in support of the proposal, do not, either individually or collectively, outweigh the harm identified, nor the conflict with the development plan identified.

⁴ Landscape Implementation and Review (Enplan) (February 2022)

Conclusion

51. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR