



Appeal Decision

Site visit made on 27 February 2023

by David English BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Appeal Ref: APP/N5090/W/22/3306676

1 Albert Road, New Barnet, Barnet EN4 9SH

- 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 C/O UPP against the decision of the Council of the London Borough of Barnet.
 - The application Ref 21/5554/FUL, dated 14 October 2021, was refused by notice dated 21 April 2022.
 - The development proposed is the demolition of the existing buildings and erection of a part 4 storey, part 5 storey building to provide 9no. self-contained residential units, together with basement car park, cycle storage, external amenity space and refuse and recycling facilities.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Council raise matters which the appellant claims are additional to those presented in the reasons for refusal. These relate to the effects on the living conditions of future residents from noise arising from a car lift in the proposed development, odours from bins at adjacent public houses, and the lack of detail regarding refuse storage arrangements at the proposed development. Each of these matters are legitimate planning considerations in the context of the Council's reasons for refusal relating to the provision of acceptable living conditions for future residents. I address these, having regard to the appellant's response to the Council's statement of case, and set out my conclusion on each matter in my decision.
4. The Council's reasons for refusal include reference to a failure to provide adequate private or communal space for '*...7no of proposed units...*'. The description of development refers to '*...9no. self-contained residential units...*'. From the evidence, I have taken this discrepancy in the number of units referred to by the Council to indicate that it does not raise concerns about the adequacy of private or communal space for two of the nine proposed units. Nevertheless, I have considered the proposed development as a whole and I have defined the main issues accordingly.

Main Issues

5. The main issues are whether the proposed development would provide acceptable living conditions for future occupiers in respect of:
- the provision of private outdoor space;
 - the siting and design of the proposed communal play and amenity space (the communal outdoor space) having regard to noise and air quality; and
 - exposure to the risk of overheating.

Reasons

The provision of private outdoor space

6. There is no dispute between the main parties that the amount of private outdoor space proposed for some of the dwellings would be below the requirements set out in the Council's Local Plan Supplementary Planning Document: Sustainable Design and Construction (October 2016) (the SDC SPD).
7. Policy DM02 of the Barnet's Local Plan (Development Management Policies) Development Plan Document (September 2012) (the Local Plan DMP) requires, where appropriate, demonstration that development proposals comply with various standards, including those in the SDC SPD. Notwithstanding its age, this policy is generally consistent with the aims of the National Planning Policy Framework (the Framework) in respect of planning decisions ensuring safe and healthy living conditions and a high standard of amenity for future users. Accordingly, I afford this policy significant weight.
8. The SDC SPD appears to allow for alternative innovative solutions where outdoor amenity space standards cannot be achieved. However, the evidence before me does not demonstrate that the proposed development includes innovative solutions in this regard. The SDC SPD refers to the use of planning obligations where alternative solutions are not achievable. However, the Council indicates in their statement that the proposal does not meet their planning obligations tests, and I have not been provided with further evidence on this matter. I have therefore considered the proposal on the basis of the plans and supporting documents submitted with the planning application.
9. Reference is made in the Council's reasons for refusal to Policy D6 of The London Plan (March 2021) (the London Plan), but not by specific reference to the amount of private outdoor space required for each dwelling. Nevertheless, Policy D6 of the London Plan specifically requires a minimum of 5 sq.m. of private outdoor space for 1-2 person dwellings. This policy comprises the most up-to-date relevant development plan policy and I afford this substantial weight. The proposal fails to meet this requirement.
10. Modification to the design of the proposal as it evolved may have resulted in a reduction in the proposed amount of outdoor amenity space. However, those modifications sought to achieve improvements in the form and appearance of the proposal to meet other policy objectives, matters about which the Council raise no objection. It does not follow that changes to meet those other objectives justify a failure to meet private outdoor space requirements.

11. The proposal does make provision for communal outdoor space, some of the proposed flats would have more private outdoor space than expected to comply with minimum standards, and children's play space would be provided. However, three of the dwellings would have no private outdoor space. Nearby open space, notably at the Victoria Recreation Ground, would be of benefit to future occupiers. However, this open space and the communal outdoor space on site would not adequately compensate for the failure to meet the defined standards for private outdoor space.
12. Further, other outdoor open space and the communal outdoor space would not fulfil the valuable function provided by private outdoor space at each flat which is necessary for the reasonable enjoyment of the proposed dwellings by future occupiers of all ages. There is no overriding justification presented by the appellant to demonstrate why the proposal should not comply with the development plan in this respect. Aggregation of the amount of private amenity space proposed for individual flats, as a means of demonstrating an adequate overall provision for the proposed development, does not address the shortfalls in private outdoor space proposed at most of the flats.
13. On this main issue, I conclude that the proposed development would be harmful to the living conditions of future occupiers in respect of the provision of private outdoor space. Accordingly, the proposal fails to comply with Policy D6 of the London Plan, Policy DM02 of the Local Plan DMP, and the SDC SPD all of which require an adequate provision of private outdoor space to serve future occupiers of new dwellings.

Communal play and amenity space

14. The Council's reasons for refusal refer to the exposure of the proposed communal play and amenity space to unacceptable noise and poor air quality resulting in a sub-standard environment for future occupiers. The decision notice does not describe specific sources of noise or the cause or origin of poor air quality that give rise to the Council's concerns. However, the Council's statement of case sets out its concerns in further detail, these being: noise arising from people using the adjacent beer gardens at neighbouring public houses, from servicing and deliveries to those public houses, from plant at those public houses, and from the car lift in the proposed development; and poor air quality associated with cigarette smoke from people using the outdoor beer gardens at the adjacent public houses, and from odours associated with refuse collection from those public houses.
 - *Noise*
15. The appeal site is located on what is currently a relatively quiet one-way street that loops from Victoria Road around to the A110 East Barnet Road. The land on the opposite side of Albert Road to the appeal site appeared to be undergoing redevelopment at the time of my visit. However, other than a brief outline given by the appellant, I have not been provided with further details about those works and I have determined the appeal on the information before me and the findings from my site visit.
16. The proposal would be situated between two public houses: The Builders Arms which fronts onto Albert Road; and The Railway Bell which sits on the corner of Albert Road and fronts onto East Barnet Road. Both pubs have outdoor beer gardens. The Railway Bell has a large outdoor space containing a substantial

amount of seating, some of which is located along the boundary with the appeal site where there is a short section of fixed canvass roof covers facilitating use in all weather conditions. The Builders Arms has a much smaller open outdoor seating area to the front and a small covered outdoor seating area to the rear.

17. The communal outdoor space would be created on the roof of that part of the proposed development located towards the front of the appeal site close to Albert Road and adjacent to the beer gardens to either side. The communal outdoor space would be enclosed by a 1.7m high glazed acoustic barrier which would be positioned 1m from the common boundaries with the pubs either side, with natural planting proposed in that gap between the glazed acoustic barrier and the boundaries.
18. Noise associated with the railway line to the rear of the site is not a matter of concern raised by the Council. I am satisfied that noise associated with the proposed car lift could be addressed through conditions, and this is a solution recommended by the Council's Environmental Health Officer (the EHO), and one proposed in the Officer's report to the Planning Committee.
19. External plant at The Railway Bell was in use during my site visit undertaken in late afternoon. Whilst this provides only a snapshot in time, for the duration of my site visit of around an hour I did not find the noise arising from that equipment to be particularly noticeable above other background noise even at the boundaries of the site. It is unlikely that noise from this source would be so harmful as to dissuade or prevent future residents from using the communal outdoor space. My conclusion on this matter is consistent with the findings provided in the appellant's Noise Impact Assessment (the NIA).
20. Noise associated with servicing the pubs, including through deliveries and refuse collection, is likely to comprise short-lived events and these are commonplace in urban areas. I find it very unlikely that noise from this source would result in unacceptable harm to the living conditions of future residents.
21. However, the proposed communal outdoor space would be close to the beer gardens to either side of the site. The beer garden at The Railway Bell is a substantial size and it is likely that significant noise would be generated from customers using that area, especially in the evenings of summer months. This noise would be generated at times when future occupiers of the proposed development would reasonably expect to be able to use the communal outdoor space without harmful disturbance.
22. The NIA does conclude that noise arising from the external seating areas associated with The Builders Arms '*...would not be considered to be overly obtrusive within the local soundscape*'. However, no such conclusion is stated in respect of the external seating areas at The Railway Bell. Furthermore, while paragraph 7.2 of the NIA intends to deal with '*Areas of External Amenity*', it does not expressly address the effects of noise from those external sources specifically on the proposed communal outdoor space. While acoustic barriers may have been used successfully elsewhere, the NIA does not explain the extent to which the proposed glazed acoustic barrier would mitigate noise from the beer garden at The Railway Bell. Further, the NIA does not provide any comment on the extent to which the proposed natural planting would mitigate noise from that source.

23. The PPG provides advice on dealing with noise when determining planning applications. Paragraph 006¹ of the PPG states that '*...where external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended*'. It goes on to advise that '*...public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night.*' An existing noise source can become susceptible to nuisance legislation if residential premises are introduced into its vicinity, and this concern is expressed in general terms in the Council's statement of case.
24. The Council states in the Committee Report that the EHO raises no objection to the proposed development subject to the imposition of various planning conditions. However, while the evidence notes the EHO's lack of objection in respect of noise from the nearby railway, and from plant and machinery associated with the proposed development, I have not been provided with evidence to demonstrate that the EHO specifically considered the matter of noise arising from the beer gardens adjacent to the site. The NIA does not provide a satisfactory conclusion regarding the effects of noise associated with the use of the beer garden at The Railway Bell, and it fails to explain the likely effectiveness of mitigation associated with the proposed acoustic barrier or the proposed planting. Therefore, while the EHO may not have raised objections to the proposal, this does not justify development that would cause harm to the living conditions of future occupiers in respect of noise from that source.
25. The NIA demonstrates that internal noise levels within the proposed flats would not be unacceptably harmful. However, the NIA fails to demonstrate that the effects of noise generated by customers using the beer garden at The Railway Bell would be satisfactorily mitigated. Due to its proximity, noise from that beer garden would at times be likely to be unacceptably harmful to future occupiers' reasonable enjoyment of the proposed communal outdoor space.
 - *Air quality*
26. Smoking in enclosed public places has been prohibited for some years and it is therefore reasonable to anticipate cigarette smoking taking place in the beer gardens at both pubs. Given the proximity of the communal outdoor space to those beer gardens it is reasonable to assume that smoke and odours from cigarettes would drift towards that space. This would contribute to poor air quality. The evidence before me does not demonstrate that these effects would not be harmful or that cigarette smoke and odours would dissipate before reaching the communal outdoor space. In general terms this would be detrimental to future occupiers' reasonable enjoyment of the communal outdoor space. This would be exacerbated in the summer months when greater use of the beer gardens for longer periods is likely to happen.
27. Information provided by the appellant does not demonstrate that planting around the edges of the communal outdoor space would adequately mitigate harmful effects of cigarette smoke arising from use of the beer gardens. These effects may also arise on the private balconies, but this is not a matter referred to in the Council's reasons for refusal.
28. The fact that a block of flats at 9 Albert Road was permitted next to The Builders Arms does not in itself justify allowing the proposal before me and, in

¹ PPG Paragraph: 006 Reference ID: 30-006-20190722

any event, on the basis of the information before me the proposed development has not been shown to be directly comparable with that scheme. Future residents being aware of the presence of pub beer gardens adjacent to the proposed flats would not justify allowing harmful development.

29. The extent to which unacceptable harm would arise to future occupiers from odours on bin collection days is a matter of judgement. Refuse collection is a normal part of everyday life in urban areas and the evidence does not demonstrate that existing arrangements have been found to be harmful in respect of generating unacceptable odours in the past. Refuse collections from the pubs are likely to be short-lived events and they would not be unusual as regular events in this urban context. I am satisfied that this would not be a source of unacceptable harm to air quality in respect of future residents' use of the communal outdoor space.

- *Conclusion on the effects of noise and air quality*

30. The Council's Local Plan Supplementary Planning Document: Residential Design Guidance (October 2016) (the RDG SPD) states that '*The fundamental design considerations for amenity space should be its quality and usability*'. The proposal would not meet this expectation in respect of the usability of the proposed communal play and amenity space due to unacceptable levels of noise and poor air quality that would arise from the use of the neighbouring beer gardens.
31. On this main issue, I conclude that the proposed development would not provide acceptable living conditions for future occupiers in respect of the siting and design of the proposed communal play and amenity space having regard to noise and air quality. Accordingly, the proposal fails to comply with Policies D6, D14 and S4 of the London Plan, Policy DM02 of the Local Plan DMP all of which, in summary, require development proposals to maximise the usability of outside amenity space, avoid significant adverse noise impacts on health and quality of life, and incorporate good-quality play provision for children of all ages. The proposal would also conflict with the SDC SPD and the RDG SPD in these respects.

Risk of overheating

32. The appellant submitted a Summertime Overheating Analysis report (the SOA) in support of their appeal. This seeks to address the Council's concerns regarding overheating and ventilation as expressed in the third reason for refusal. Although the SOA has not been subject to wider publicity and consultation, the Council confirms it has had the opportunity to review its contents. The SOA is a technical report, it has been prepared following the appropriate guidance, and I am satisfied that the interests of parties would not be prejudiced by my considering the content and conclusions in the SOA when determining the appeal.
33. My understanding of the Council's position is that an 'energy strategy' should be submitted in support of the proposal in order to comply with development plan policies. Policy SI 4 of the London Plan only requires major development proposals to be accompanied by an energy strategy. However, the SOA does not purport to be an energy strategy in the terms described in part B of Policy SI 4 of the London Plan. Moreover, the SOA simply concludes, by reference to relevant assessments, that the proposed development would not require

mechanical ventilation to create comfortable living conditions for future occupiers. These conclusions provide information that is relevant and necessary in considering whether the proposal conforms with other development plan policies that seek to ensure the creation of comfortable living conditions in residential development. I am satisfied that the information provided in the SOA adequately addresses these requirements.

34. On this main issue, I conclude that the proposed development would provide acceptable living conditions for future occupiers in respect of exposure to the risk of overheating. Accordingly, the proposal complies with the requirements set out in Policies D3 and D6 of the London Plan, Policy CS13 of the Barnet's Local Plan Core Strategy Development Plan Document (September 2012) (the CS), and Policies DM01 and DM02 of the Local Plan DMP in respect of avoiding overheating, ensuring energy efficiency, minimising any wasted heat or power, and delivering appropriate amenity by achieving indoor environments that are comfortable for people to use.
35. Policy CS4 of the CS concerns the provision of quality homes and housing choice but does not include matters specifically relevant to the risks of overheating. Policy DM04 of the Local Plan DMP addresses related issues in respect of targets for the reduction of carbon dioxide emissions but only in respect of major development. Neither of these policies are relevant to this main issue.
36. The SOA demonstrates that mechanical ventilation systems would not be needed to create comfortable living conditions for future occupiers. The development has been designed to minimise adverse effects on the urban heat island as required by Policy SI 4 of the London Plan, this is accepted by the Council, this matter is no longer in dispute, and I need not consider it further.

Other Matters

37. The Framework encourages the effective use of land in meeting the need for homes, including providing a variety of housing types. However, this encouragement is not unqualified, particularly in respect of ensuring safe and healthy living conditions. The proposal would be of benefit in contributing to the delivery of additional housing in the area. Given the scale of the proposed development and the intention to provide family sized accommodation, I attribute moderate weight to this benefit. However, this benefit would not outweigh the significant harm I have identified that would arise to the living conditions of future occupiers.
38. Contrary to the statements by the Council, the submitted plans show details of refuse storage arrangements at the proposed development. The plans show an area set aside for bin storage at the ground floor of the proposed development. Any further details regarding this matter could adequately have been addressed through planning conditions had I been minded to allow the appeal, and this is recognised in the Officer's report to the Planning Committee.
39. The decision taken by the Council differs from the recommendation made by Planning Officers. However, the Council has expressed cogent and reasonable concerns about the effects the proposed development would have in respect of the main issues I have identified. A planning committee comprising well-informed elected representatives is entitled to reach a different conclusion to that recommended to them by their advisors based on the information put

before them and their appreciation of local circumstances relevant to the proposal. I have not been provided with evidence to suggest that the Planning Committee was not familiar with all matters relevant to their deliberations on this case.

Conclusion

40. While I have concluded that harm would not arise in respect of the effects of exposure to the risk of overheating, I have concluded that harm sufficient to justify dismissing the appeal would arise to the living conditions of future occupiers in respect of the provision of private outdoor space and as a result of noise and poor air quality affecting the communal outdoor space. For the reasons given above, having had regard to the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

David English

INSPECTOR