



Appeal Decision

Site visit made on 18 July 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2023

Appeal Ref: APP/N5090/W/23/3314247

The former 70 High Street, Barnet, London EN5 5SJ

- 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 S Jodieri (70 High Street Barnet LTD) against the decision of the Council of the London Borough of Barnet.
- The application Ref 22/0835/FUL, dated 16 February 2022, was refused by notice dated 9 November 2022.
- The development proposed is described as "a proposal for the retention of and alterations to a three storey mixed use development of ground floor commercial use(s) and 6 apartments".

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission was granted for the demolition of a building on site and its replacement with a 3 storey building in July 2017¹. A 3 storey building is on site which replaced a building that was previously demolished. The existing building on site is the subject of an earlier appeal decision² which related to an enforcement notice. The appeal decision identified that the erected building and the earlier demolition was unauthorised. The enforcement notice was upheld, albeit varied, and planning permission was refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990. In summary, the upheld enforcement notice requirements are that the existing building be demolished and be replaced with a building that matches the original building that was previously demolished. Amongst other matters, the Inspector found that the existing 3 storey building resulted in harm to the character and appearance of the area including the Wood Street Conservation Area.
3. Subsequently, a planning application for the retention but alteration of the 3 storey building was refused by the Council³ for the following reason:

"The proposal alterations due to the unsympathetic and excessive height in relation to the neighbouring properties and prominent siting, would appear contrived, visually obtrusive and as an incongruous addition within the streetscene, detrimental to the character of the host site, adjacent neighbouring properties, and Wood Street Conservation Area. The proposal is considered contrary to Policy HC1 of London Plan 2021, policies CS1 and CS5 of

¹ Planning Application Reference 15/04358/FUL

² Appeal Decision Reference APP/N5090/C/21/3267195

³ Planning Application Reference 22/0835/FUL

Barnet's Adopted Core Strategy (2012), policy DM01, DM06 of the Adopted Development Management Policies DPD (2012) and the Adopted Residential Design Guidance SPD (2016)."

4. It is this proposal that is the subject of the appeal. In June 2023 and since the submission of said appeal, planning permission has been granted at the site for a further rendition of a mixed-use 3 storey building⁴.
5. Given this background and context the main issues are the effect of the proposed development upon the character and appearance of the area and whether it would preserve or enhance the character or appearance of the Wood Street Conservation Area.

Reasons

6. The appeal site is located within the Wood Street Conservation Area (CA). Within the CA there are landmark buildings such as the Church of St John the Baptist and Tudor Hall, each of which are listed. The CA contains historic and traditionally designed cottages and almshouses. Green spaces such as Ravenscroft Park and the many trees within the CA provides for a verdant character. High Street contains a variety of uses including shops and public houses and serves as a commercial centre. The many terraced buildings positioned at the back edge of the pavement together with the considerable depth of many of these buildings forms a dense built form. This pattern of development, the mixture of land uses, the traditional and landmark buildings and verdant nature of the area contributes positively to the character and appearance of the CA and its significance.
7. The existing 3 storey building towers over the adjoining locally listed 68 High Street and its large and exposed brickwork gable has an overbearing effect within the street scene. The existing building is higher than No 72 on the opposite side. Its upper storey windows are also set higher than those adjacent within No 72. Given that the street level lowers from No 72 toward No 68 and beyond, this greater height exhibited by the existing property is incongruous. Whilst the existing building is a terraced property, is set at the back edge of the pavement and has considerable depth, all of which is quite reflective of the CA, its inappropriate scale and appearance within the street scene harms the character and appearance of the CA.
8. In the proposal a high and exposed east facing gable would remain. The proposed building would have some step changes in height. The highest element would be reached in the middle section of the building. In particular, in views from High Street, east of the appeal site, significant proportions of this high middle section would be visible. In these views the extent to which this section of the building would be considerably higher than the roof slopes of No 68 beside it would be readily apparent. Although the roof would incorporate some pitched elements much of this gable wall would be flat and a pronounced and elongated eaves would be formed. Furthermore, the upper sections of this gable wall would be largely blank and featureless and largely devoid of design details or fenestration which could serve to break up its mass. Therefore, an unduly bulky and high expanse of blank gable wall would be formed. I accept that there are other exposed gables on buildings within the area but, for the above reasons, I have identified that the wall proposed would form an

⁴ Planning Application Reference 22/6023/FUL

unsympathetic feature and the presence of other gable walls does not justify this particular proposal.

9. In coming to this view, I acknowledge that it may be long established that a building has abutted No 68. I also have no compelling evidence to disagree with the appellant's submissions that the host property is more closely associated with the more modern buildings to the west of it. However, for the above reasons, I nevertheless find that the proposed gable wall would form an incongruous addition which would be harmful and unsympathetic to the street scene.
10. I accept that under the proposed development a number of amendments would be made to the existing building which would address some deficiencies in its current design and scale. Amongst these amendments, the building would be lowered including its frontage onto High Street. The outcome would be that the building and the windows within its upper storeys would be lower than at neighbouring No 72 and more appropriately reflect the manner in which the street slopes.
11. Despite these improvements in comparison to the existing building, that proposed would still result in harm. In forming an unsympathetic addition to the traditional terraced street of High Street the proposed development would also fail to preserve or enhance the character or appearance of the CA. The harm to the designated heritage asset would be less than substantial. Having regard to the statutory duty in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the harm to the designated heritage asset would be a matter of considerable importance and weight.
12. Consequently, for the reasons given, the proposed development would harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA. The proposed development would be contrary to Policies HC1 of the London Plan 2021 (LP), Policies CS1 and CS5 of Barnet's Local Plan Core Strategy Development Plan Document, September 2012 and Policies DM01 and DM06 of Barnet's Local Plan Development Management Policies Development Plan Document, September 2012. In summary, and amongst other matters, these policies seek to ensure that development is of high quality design which respects local character, including the scale and appearance of surrounding buildings and, conserves the significance of heritage assets. I also find that the proposed development would be contrary to guidance contained within the Supplementary Planning Document: Residential Design Guidance, October 2016 (SPD). The SPD, amongst other matters, sets out principles of good design and states that design that is considered inappropriate to its context or which fails to take opportunities to improve the character and quality of an area will not be accepted.
13. The appellant refers to the design policies D3 and D4 of the LP and paragraphs 124, 126, 130 and 134 of the National Planning Policy Framework (the Framework) which advise on achieving well-designed places and appropriate densities. However, given that I have identified that the proposed development would harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA, it follows that the proposed development would not be of high quality or represent the most appropriate form of development at the site. Therefore, I conclude that the

proposed development would not be compliant with these policies, nor would it be consistent with the aforementioned advice within the Framework.

Other Matters

14. The upheld enforcement notice requires that the existing building be demolished and be replaced with a building that matches the original building that was previously demolished. This therefore provides a fallback position. The original building included some traditional design features including its pitched roof. The building's height and fenestration distribution was sympathetic to the adjoining properties and the street slope. The original building would not exhibit the unduly bulky and high expanse of gable wall beside No 68 that would occur in the proposed development. I therefore cannot agree with the appellant that the rebuilding of the original building would result in harm to the CA.
15. The appellant also submits that had the original building made a positive contribution to the character or appearance of the CA, the Council would not have accepted its demolition in the first place. However, the evidence before me indicates that the Council did consider that the original building made a positive contribution to the CA but that its structural deterioration was a factor in the acceptance that the building could be lost for redevelopment. I also have no substantive evidence that the replacement building as required by the enforcement notice would not meet modern building standards.
16. The appellant's evidence submits the proposed development would not affect the settings of any listed buildings within the vicinity of the site. The Council have submitted no substantive evidence which indicates to me they disagree with these conclusions. I have no reason to come to a different conclusion. However, this lack of harm is neutral in the planning balance and does not outweigh the harm I have identified in respect of the main issues.
17. The appellant submits that the proposed development would not result in any harm by reason of, amongst other matters, its mixture of units, its effects upon the living conditions of neighbouring occupiers or highway safety. It is also put to me that the site has excellent access to facilities and public transport options whilst I note that the internal space standards set out within Policy D6 of the LP would be achieved. However, the absence of harm in relation to such matters is a neutral factor and weighs neither for nor against the proposal.
18. The appellant refers to the Community Infrastructure Levy (CIL). Even if the CIL has already been paid on this development it would not outweigh the harm I have identified in the main issues nor make the development acceptable in planning terms. Therefore, it is not a determinative factor in my decision.

Conclusion

19. In the main issues I have identified that less than substantial harm to the significance of the CA would result and that there would be conflict with policies within the development plan. The Framework confirms that great weight should be applied to the conservation of designated heritage assets. The Framework also sets out, at paragraph 202, that where a development proposal would lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

20. The development would provide a mixed-use development of ground floor commercial use and 6 apartments. The proposed development would make a valuable, albeit relatively modest, contribution to housing supply whilst the commercial occupation would contribute to the vitality of the High Street. The boost to housing supply would be compliant with Policy H1 of the LP which, amongst other matters, encourages the development of windfall sites in order to increase housing supply. The proposed development would also redevelop a relatively small brownfield site which is advocated by paragraphs 69, 119 and 120 of the Framework. These are benefits of the proposed development. I also acknowledge that through compliance with the enforcement notice, and by erecting the replacement building to match that demolished, equivalent benefits may not materialise.
21. However, I have already set out above that the rebuilding of the original building would not result in harm to the CA. This would not be the case in the proposal. The appellant refers to a High Court challenge of this earlier appeal decision. However, I have no substantive evidence before me which indicates that a challenge either remains ongoing or, that the claimant was successful. In the round, I therefore find that the requirements of the enforcement notice do not weigh in favour of the appellant.
22. I am also mindful of the planning permission granted in June 2023 (Planning Application Reference 22/6023/FUL). I have no reason to conclude that this alternative scheme does not provide a further fallback position with a real prospect of being delivered. The June 2023 approved scheme is a further rendition of the 3 storey redevelopment at the site and incorporates lower sections of the east facing gable wall. Unlike in the proposal the subject of the appeal, the Council have concluded that the June 2023 approved development would be respectful to the CA and would comply with relevant policies within the development plan. I have no reason to disagree with these conclusions. I give significant weight to this fallback position which demonstrates that it would be possible to deliver a redevelopment in other ways which would not result in the harm that would arise from the appeal proposals. In providing 7 rather than 6 apartments, I find it would deliver the greater benefits too.
23. This fallback position limits the weight of the benefits of the appeal proposal. Even if I were to set aside the fallback position and attribute significant weight to the benefits of the appeal proposals, the harm I have identified to the designated heritage asset is a matter of considerable importance and weight in my determination and the public benefits would still be insufficient to outweigh this harm.
24. Therefore, and although the proposed development would accord with various development plan policies, it would conflict with the development plan as a whole. I have had regard to other considerations material to the appeal including the content of the Framework but conclude that there are no such considerations of sufficient weight to indicate a decision other than one in accordance with the development plan. The appeal is therefore dismissed.

H Jones

INSPECTOR