



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: 22nd August 2023

Appeal Ref: APP/N5090/W/23/3317453

Peaberry Court, 87 Greyhound Hill, Hendon, Barnet, London NW4 4JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr N Khiroya (Blue Box Developments Limited) against the decision of the Council of the London Borough of Barnet.
- The application Ref 22/1442/OUT, dated 18 March 2022, was refused by notice dated 31 January 2023.
- The development proposed is internal alterations to 10no. existing flats; upwards extension of an additional two floors and front, side and rear extensions at third, fourth, fifth floor and roof levels to create 40no. additional self-contained flats. Ground to roof front extension to main entrance for the provision of a lift. Provision of plant equipment on the roof. Replacement of existing brick and render facade with new brick and render facade. Provision of balconies, private and communal amenity areas and associated cycle storage and refuse. Reallocation of existing car parking spaces in the basement. Landscaping to be a reserved matter.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered from that on the planning application form. The wording on the appeal form matches that on the Council's decision notice. The wording provided on the appeal form more accurately describes the development proposed and, therefore, I have used this description in the banner heading above.
3. Outline planning permission is sought with access, appearance, layout and scale included for consideration at this stage. The matter of landscaping only is reserved for future consideration. I have determined the appeal on this basis. A CGI image of the frontage of the proposed development has been submitted and is contained within other documents. This image includes depictions of some boundary walls and planting which do not exist on site at present. For the avoidance of doubt, I have treated this image as illustrative only.
4. Following the Council's decision, a unilateral undertaking (UU) has been submitted. One purpose of the UU would be to secure viability review mechanisms which, dependent upon the outcome, may necessitate a financial contribution towards off-site affordable housing provision. A financial contribution towards carbon reduction measures within the Council's administrative boundary is also proposed via the UU. Finally, the UU includes a commitment to energy efficiency performance data monitoring of the development proposed with, as necessary, the undertaking of measures to

address any underperformance. I comment on these obligations later in my reasoning.

Main Issues

5. The main issues are whether the appeal site provides a suitable location for the development proposed having particular regard to the development plan's policies relating to tall buildings and the effects of the proposed development upon the character and appearance of the area.

Reasons

6. Peaberry Court is a multi-storey building containing mainly flats but also some commercial units set above a basement parking level. The central portion of the building is the tallest and the elements that flank either side step down in height. The local area is predominantly residential in character though it includes other land uses. Residential properties to the surrounds of the site are lower than Peaberry Court, generally 2 to 3 storeys in height.
7. Policy D9 of the London Plan, March 2021 (LP) states that development plans should define what is considered a tall building for specific localities and should determine if there are locations where tall buildings may be an appropriate form of development. The policy sets out that tall buildings should only be developed in locations that are identified as suitable for them but, also identifies criteria against which the impacts of any tall building should be assessed.
8. Policy CS5 of Barnet's Local Plan Core Strategy Development Plan Document, September 2012 (CS) provides a definition for tall buildings - those comprising of 8 storeys or 26 metres in height. Policy CS5 states that such tall buildings may be appropriate within specific locations which the policy lists and, that outside of these specific locations, proposals for tall buildings will not be supported. The appeal site is not within one of those specific locations identified within Policy CS5. Like Policy D9 of the LP, Policy DM05 of Barnet's Local Plan Development Management Policies Development Plan Document, September 2012 (DMP document) states that tall buildings will not be considered acceptable unless situated within a location identified as being suitable for them but, again, includes specific design and impact related criteria that tall building proposals are required to meet.
9. In the proposal additional floors of accommodation would be added to the existing Peaberry Court building and an 8 storey building would be formed. In so doing a tall building, as defined within Policy CS5 of the CS, would be developed within a location not specifically identified as being suitable for their development.
10. The 8 storey building proposed would tower over the 2 to 3 storey properties that are within the surrounds of the site. I accept that the existing Peaberry Court building is already taller than these properties. It is also situated on a corner plot closely-by to key approaches into London and, therefore, provides a form of landmark function. However, the contrast in the height and scale of Peaberry Court and its townscape surroundings would increase so substantially in the proposal that it would appear unduly large and thereby out of keeping. This effect would be harmful and would outweigh any benefit derived from emphasising its landmark function or the creation of framed or focused views.

11. I acknowledge that there are groups of taller buildings in locations such as Colindale and, to the east, at the Middlesex University campus. It may also be the case that in these locations planning permission has been granted for further multi-storey buildings. I accept that in some viewpoints, such as from Sunny Hill Park, some concentrations of existing taller buildings are visible including in the background to the appeal site. In some other views, such as from Colindale, some screening of the appeal site is provided by existing buildings, landscaping and embankment. However, it is also appreciable within local views that the existing taller buildings are set some considerable distance away from Peaberry Court and that those buildings that more closely surround the host property are much lower in height. Furthermore, unlike the appeal site, Colindale is a strategic area specifically identified within Policy CS5 of the CS as being suitable for tall buildings. Between Colindale and the appeal site there is the M1, the multi-laned A41 and railway lines which further serve to disconnect these two areas.
12. Therefore, the 8 storey building, as a tall building isolated from other tall buildings and set amongst much lower buildings, would appear incongruous. In coming to this view, I accept that the enlarged building would not be 8 storeys for its entirety and would include stepped elements. Even so, the building would still constitute an 8 storey building within a location not specifically identified as being a suitable location for such buildings and the stepped elements incorporated would not sufficiently mitigate the harm that would be caused by the building's increased scale and mass.
13. The existing building does exhibit signs of weathering and ageing. In the proposal the extensions to the building and new elevational treatments would address this whilst I have no reason to conclude that the materials and several other detailed design elements within the scheme would not be of high quality nor respectful to the host building and its context. Existing trees may not be lost whilst a detailed landscaping scheme could also be devised at the reserved matters stage. However, these detailed elements of the design of more merit would not be sufficient to outweigh the harm that would be caused by the enlarged building's scale and mass. Furthermore, it has not been shown to me that the development proposed provides the only available option to address those elements of the building showing signs of weathering or deterioration.
14. The appellant refers to the series of design criteria included within Policy DM05 of the DMP document. There is no disagreement between the appellant and the Council that the design of the proposed development would demonstrate compliance with some of this criteria. This would include that an active street frontage would be provided, no heritage assets nor their settings would be harmed and, specific Local Viewing Corridors would not be adversely affected. I have no reason to come to a different conclusion. However, given the enlarged building's height and scale would be out of keeping with its surrounds, the proposal would fail to successfully integrate into the existing urban fabric and, therefore, conflict with criterion ii.
15. A new local plan for Barnet is emerging and the appellant refers to Policy CDH04 of that plan in relation to tall buildings. However, it is not clear to me that this policy will not be the subject of further change during the adoption processes of the emerging plan, nor has it been shown to me that the proposed development complies with its content as a whole. In such circumstances, Policy CDH04 is of limited weight in my determination.

16. For the reasons given, the appeal site does not provide a suitable location for the development proposed having particular regard to the development plan's policies relating to tall buildings and the effects of the proposed development upon the character and appearance of the area. As a result, the proposed development would be contrary to Policies D3 and D9 of the LP, CS5 of the CS and DM01 and DM05 of the DMP document. In summary, and amongst other matters, these policies state that tall buildings should be developed in locations that are identified as suitable for them and identify specific criteria that tall buildings are required to meet including that they successfully integrate into the existing urban fabric and make a positive contribution to the local townscape. These policies also set out that development proposals should enhance local context by delivering buildings that respond to local distinctiveness and character.
17. The Council's first reason for refusal also refers to Policy D1 of the LP. This policy principally focuses upon the undertaking of area assessments and preparation of development plans for London boroughs and, consequently, I find that it is not particularly relevant to the harm I have identified. The Council also refer to Policy CS NPPF of the CS, but this policy outlines an approach to decision taking which aligns with the guidance contained within the National Planning Policy Framework (the Framework) and, again is largely irrelevant to the specific harm I have identified.

Other Matters

18. I note that planning permission has been granted¹ at the appeal site which would enlarge the host building to a partly 6 storey building. A further application² which would enlarge the host property to 7 storeys received a resolution for the grant of planning permission subject to the completion of a Section 106 legal agreement.
19. However, given that the evidence before me indicates that the latter proposal does not have planning permission, that scheme cannot be undertaken and, therefore, I can only attribute very limited weight if any at all to that proposal. Even if that scheme now has planning permission, given it would not create an 8 storey building, a building meeting the definition of a tall building within the development plan would not be formed. Being a larger building, the appeal proposals would also result in greater effects upon the character and appearance of the area. These factors serve to distinguish the appeal scheme from the 7 storey building scheme.
20. Planning permission has been granted for the 6 storey building and I have no compelling evidence to conclude that there is not a greater than theoretical possibility that it could be implemented. However, once again, given that scheme would not deliver an 8 storey building and, the effects upon the character and appearance of the area would not be comparable, the same development plan conflict I have identified in the appeal proposals would not arise.
21. The appellant also submits to me that the appeal proposals would represent a more deliverable scheme on viability grounds than those which would deliver fewer storeys of development. Whilst this may be the case, this does not

¹ Planning application reference 21/6726/OUT

² Planning application reference 22/1437/OUT

provide sufficient justification for the harm that would be caused to the character and appearance of the area and the conflict that would arise with development plan policies. Therefore, for the above reasons, the alternative 6 and 7 storey schemes have limited bearing upon my decision.

22. The submitted UU seeks to address the requirements of the Council in these regards and the Council's second reason for refusal. It is not necessary for me to look at the UU in full detail given that the proposal is unacceptable for other reasons.
23. However, the appellant cites benefits that would be derived from the UU through the viability review mechanisms in relation to a financial contribution towards off-site affordable housing and, the financial contribution towards carbon reduction measures. The appellant further cites that the energy efficient homes that would be provided and the contribution toward the Community Infrastructure Levy (CIL) would also be benefits of the proposal.
24. If I were to take the stance that the submitted UU is acceptable and meets the requirements of the Framework and the CIL Regulations, should a financial contribution be forthcoming and be utilised to deliver affordable homes, then it would be assisting to meet an identified and outstanding housing need and, therefore, would be a benefit. However, as this contribution would be the subject to the review clauses it may also not come into fruition and in such circumstances no such benefit would be derived from the proposal. I note that Policy SI2 of the LP requires major developments to be net zero-carbon. As the development proposed would not achieve this, the proposed financial contribution towards carbon reduction measures would be to off-set this shortfall so that the proposed development would be compliant with Policy SI2. Even so, this contribution would be utilised towards carbon reduction elsewhere which otherwise may not take place. Some benefit would therefore derive from this. However, the energy efficiency of the homes to be provided within the site would not in itself be a benefit as they would be necessary to adhere to development plan requirements.
25. Although a CIL contribution may be derived from the development, I am mindful that the Planning Practice Guidance sets out that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body and it is not clear to me how, in this case, the CIL contribution may be utilised. Regardless, such a contribution would not outweigh the harm I have identified in the main issues nor make the development acceptable in planning terms.
26. 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, highway safety implications, its effects upon flood risk, drainage and air quality. The new flats which would be formed would comply with and, even exceed, some building standards including in relation to internal and external space. It is also put to me that the site is within an accessible location and the existing ground floor commercial units would be retained within the development. However, the absence of harm in relation to such matters is a neutral factor and weighs neither for nor against the proposal.
27. Public objections received during the determination of the planning application may have been low in number and the proposal has also received letters of

support. However, this does not render the proposal acceptable nor overcome the harm I have identified in the main issues. I also note that during the appeal process the responses from interested parties raise objections to the development on various grounds. However, since I am dismissing the appeal, it is not necessary for me to address these matters.

Conclusion

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
29. The appellant refers to the housing crisis and states that there is a shortage of housing within the Borough. In providing 40 new flats, the proposed development would make a valuable contribution to housing supply and provide a choice of new homes. If a financial contribution towards affordable housing emerged this would also be a benefit. The proposed development would also redevelop a brownfield site. In so doing, the proposal would comply with some policies within the development plan. This would include Policy H1 of the LP which, amongst other matters, encourages the development of windfall sites in order to increase housing supply. For the same reasons the proposed development would also be compliant with some advice within the Framework including that at paragraphs 60 and 69.
30. In the proposal 10 existing flats would be altered and enlarged so that they would meet current minimum space standard requirements and be served by new fenestration improving living conditions for the occupants. An additional lift would be introduced into the building which would increase its accessibility for users. A financial contribution towards off-site carbon reduction measures is proposed via the UU. These are benefits of the proposed development.
31. On the other hand, in the main issues I have identified that the appeal site would not provide a suitable location for the development proposed having particular regard to the development plan's policies relating to tall buildings and the effects of the proposed development upon the character and appearance of the area.
32. These adverse effects of the development are considerable. Even in a scenario whereby paragraph 11(d) of the Framework is engaged, these adverse effects are sufficient to significantly and demonstrably outweigh the aforementioned benefits of the development when assessed against the policies in the Framework taken as a whole.
33. Therefore, and although the proposed development would accord with various development plan policies, the development would conflict with the development plan taken as a whole. This conflict is not outweighed by other considerations, including the Framework. In conclusion, for the above reasons, having taken account of the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

H Jones

INSPECTOR