



Appeal Decision

Site visit made on 10 October 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2023

Appeal Ref: APP/N5090/W/23/3320603

698 Finchley Road, London NW11 7NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Trevor Abrahamsohn of Flakevale Limited against the decision of the Council of the London Borough of Barnet.
- The application Ref 22/5116/S73, dated 17 October 2022, was refused by notice dated 20 February 2023.
- The application sought planning permission for 'demolition of the existing building and erection of a part single, part two and part five storey building comprising of office space (Use Class E(c)) at ground floor level with 9no. self-contained flats (comprising of 7 x 2 bed 2 x 3 bed units) on the upper floors; and 11 car parking spaces at basement level accessed via Hoop Lane, associated amenity space, refuse storage and cycle parking' without complying with a condition attached to planning permission Appeal Ref APP/N5090/W/22/3295028, dated 5 September 2022.
- The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Drawing numbers: AP03 Rev D - proposed elevations; AP02 Rev E - proposed floor plans; and AP04 Rev A - proposed sections.*
- The reasons given for the condition is: *I have imposed the standard conditions with respect to timeframe and approved plans as advised by the PPG for clarity and certainty.*

Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing building and erection of a part single, part two and part five storey building comprising of office space (Use Class E(c)) at ground floor level with 9no. self-contained flats (comprising of 7 x 2 bed 2 x 3 bed units) on the upper floors; and 11 car parking spaces at basement level accessed via Hoop Lane, associated amenity space, refuse storage and cycle parking at 698 Finchley Road, London NW11 7NE in accordance with the terms of the application, Ref 22/5116/S73, dated 17 October 2022, without compliance with condition number 2 previously imposed on planning permission reference APP/N5090/W/22/3295028, dated 5 September 2022, but subject to the conditions in the Schedule at the end of this decision.

Background and Preliminary Matters

2. Section F1 of the appellant's appeal form states that the appeal is against the refusal of permission, rather than against refusal of permission to vary a condition (section F2). However, the application form and the Council's decision were in respect of a variation of a planning condition. I have therefore treated the appeal on this basis, as described in the banner heading above.

3. The proposal relates to a scheme to demolish an existing building and replace it with a building of nine flats, granted on appeal¹ (the 2022 approval). The 2022 approval was based on amended plans. These showed that, on the elevations of the building facing Finchley Road and Hoop Lane, Flats 1, 2, 4, 5, 6, 7, 8 and 9, would have 'Juliet' balconies. These would consist only of a balustrade, without providing any usable amenity space. Flat 1 was approved with an additional protruding front balcony on a front-facing set-back wing. Flats 2 and 3 were approved with protruding corner balconies to the rear.
4. By seeking to vary condition 2, the proposal before me seeks to amend the plans of the 2022 approval, so that Flats 1, 4, 5, 6, 7, 8 and 9 would all have protruding balconies in place of the Juliet balconies. Flat 2 however would retain its Juliet balcony on its front elevation. The other previously approved balconies of Flats 1, 2 and 3 would be unaffected by the proposal.
5. The parties have commented on the findings of the other Inspector in determining the 2022 approval in respect of the appearance of the Juliet balconies. However, the protruding balconies now proposed were not before that Inspector, and so I shall reach my own conclusions on the proposal before me.

Main Issue

6. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

7. The site is in a prominent location at a corner of the junction of Finchley Road and Hoop Lane. Under the 2022 approval, the proposed building would have front elevations with a relatively uncomplicated form. The proposed balconies would add somewhat to the size and bulk of the host building, and therefore to its prominence, including when viewed from the existing roads and in association with each other.
8. However, the proposed balconies would be simple and open in their design. They would also project little forward than the hexagonal corner feature of the approved building, which would remain the focal point of its design. Furthermore, the proposed projecting balconies would break up the verticality of the 2022 approval, by adding detail, definition and interest to the appearance of the building. As such, the addition of the proposed balconies would not harmfully complicate or undermine the overall design of the building.
9. There are few current examples of balconies on existing buildings locally. However, some have been approved on the appeal building under the 2022 approval. Furthermore, although they have a different design, balconies have also been approved as part of planning permission² for a building adjacent to the appeal site, confirmed as being extant by a Certificate of Lawfulness³. In any case, the prominent corner location of the building and of the 2022 approval means that it has a degree of individuality, such that the proposed balconies would not detract from the surroundings of the site or from the street

¹ PINS reference APP/N5090/W/22/3295028, LPA reference 20/4194/FUL

² LPA reference F/01413/13

³ LPA reference 14/07378/192

scene as a whole. The result of the proposal is that the building would still have an attractive design.

10. For the reasons given above, I conclude that the proposal would have an acceptable effect on the character and appearance of the area. As such, it would comply with policies CS1 and CS5 of the Barnet Local Plan Core Strategy, adopted September 2012. These require the highest standards of urban design that respects local context and character. Similarly, there would be no conflict with the presumption in favour of development contained in BLP Policy CS NPPF.
11. Policy DM01 of Barnet's Local Plan Development Management Policies, adopted September 2012, seeks high quality design that preserves local character and the appearance of buildings, spaces and streets. Policy D3 of the London Plan, adopted March 2021, aims to optimise site capacity through a design-led approach, including by positively responding to local distinctiveness. The Residential Design Guidance Supplementary Planning Document, dated October 2016, makes similar requirements. For the reasons I have already given, the proposal would also comply with these policies.

Other Matters

12. Local residents raised concerns about highway safety, and the encroachment and effects of the balconies on the footways below. A planning condition can be used to secure a scheme of lighting to ensure adequate safety and security for footway users. I see little reason why the balconies or people using them would be unduly distracting to drivers. I therefore find no adverse highway safety effects from the proposal.
13. I have considered the effects of the proposal in terms of noise, disturbance and privacy to nearby properties. However, the distances between the balconies and the nearest properties would be sufficient to ensure that occupiers would have adequate privacy. The site is close to a busy junction where a degree of noise already occurs. There is little reason to believe that noise or disturbance from users of the balconies would be excessive or intrusive. I am therefore satisfied that the living conditions of nearby occupiers would not be unduly affected by the proposal.
14. Concerns have also been raised about the 2022 approval, the absence of biodiversity net gain and the basement excavation that formed part of that approval. However, the 2022 approval would remain regardless of the outcome of the appeal before me. My consideration has therefore focused on the variation proposed, specifically in relation to the protruding balconies.
15. The site is close to a Grade II Listed Building, the Roman Catholic Church of St Edward the Confessor. The Hamstead Garden City Suburb Conservation Area (CA) is located nearby. The Council does not dispute that the proposal would have no adverse effect on the character or appearance of the CA or its setting, or on the special architectural or historic interest of the listed building or its setting. I see no reason to disagree. Concerns have been raised regarding loss of light to the windows of the church, but the proposal would be little different in this respect from the 2022 approval. This does not therefore change my overall conclusions.

Conditions

16. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the Planning Practice Guidance (PPG). The PPG indicates that a grant of planning permission under section 73 should not extend the time period for implementation and so I shall impose a condition on this basis.
17. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have no evidence that these conditions have been discharged and so I shall repeat the previous conditions, but with an amended condition 2 reflecting the revised scheme.
18. To ensure that the protruding balconies do not adversely darken the space below, thus causing a fear of crime, a planning condition can be used to secure details of a lighting plan. A condition can also be used to ensure secure doors and windows, to protect future occupiers of the proposal against anyone using the balconies to gain access to the flats to commit crime.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed and a new planning permission granted without the disputed condition but with a revised version of condition 2, the additional conditions I have referred to above, and retaining those non-disputed conditions from the previous permission.

O Marigold

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved must be begun within three years from the date of the appeal decision reference APP/N5090/W/22/3295028 for planning permission reference 20/4194/FUL, dated 05/09/22.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Drawing numbers: AP03 Rev G (proposed elevations); AP02 Rev G (proposed floor plans); and AP04 Rev A (proposed sections).
- 3) No development, other than demolition works, shall take place until details of the materials to be used for the external surfaces of the building and hard surfaced areas hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the materials as approved under this condition.
- 4) No development or site works shall take place on site until a 'Demolition and Construction Management and Logistics Plan' has been submitted to and approved in writing by the Local Planning Authority. The Demolition and Construction Management and Logistics Plan submitted shall include the following:

- i. details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures;
 - ii. site preparation and construction stages of the development;
 - iii. details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
 - iv. details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway;
 - v. the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;
 - vi. a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
 - vii. noise mitigation measures for all plant and processors;
 - viii. details of contractors compound and car parking arrangements;
 - ix. details of interim car parking management arrangements for the duration of construction;
 - x. details of a community liaison contact for the duration of all works associated with the development. For major sites, the Statement shall be informed by the findings of the assessment of the air quality impacts of construction and demolition phases of the development. The development shall thereafter be implemented in accordance with the measures detailed within the statement.
- 5) Notwithstanding the details submitted with the application and otherwise hereby approved, prior to the occupation of the development, details of:
- i. A Refuse and Recycling Collection Strategy,
 - ii. Details of the areas to be used for the storage of recycling bins; and
 - iii. details of collection points for refuse and recycling,
- shall be submitted to and approved in writing by the Local Planning Authority. The approved refuse and recycling facilities shall be provided in accordance with the agreed details before the development is first occupied and the development shall be managed in accordance with the agreed strategy in perpetuity once occupation of the site has commenced.
- 6) Notwithstanding the submitted parking layout plan, prior to the commencement of the development, a detailed parking layout plan showing the dimensions of the proposed access shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the off-street parking spaces shall be used only as agreed and not to be used for any purpose other than the parking and turning of vehicles in connection with the approved development in perpetuity.

- 7) Notwithstanding the submitted parking layout plan, prior to commencement of the development, a stage 1 safety audit of the proposed vehicular access and basement car park layout shall be submitted to and approved in writing by the Local Planning Authority. The development shall be operated in accordance with the agreed safety audit.
- 8) Before the permitted development is occupied, details of parking management plan shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall only be operated in accordance with the approved parking management plan.
- 9) Prior to the occupation of the development full details of the electric vehicle charging points to be installed in the development shall be submitted to and approved in writing by the Local Planning Authority. These details shall include the provision of a minimum of two active and two passive electric vehicle charging points. The development shall be implemented in accordance with the approved details prior to first occupation and thereafter be maintained as such.
- 10) Prior to first occupation of the hereby approved development, a scheme of hard and soft landscaping to the front forecourt area, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, has been submitted to and agreed in writing by the Local Planning Authority.
- 11) No development, other than demolition works, shall take place until details of the location, extent and depth of all excavations for services (including but not limited to electricity, gas, water, drainage and telecommunications) in relation to trees on and adjacent to the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with details approved under this condition.
- 12) No site works or development (including any temporary enabling works, site clearance and demolition) shall take place until a dimensioned tree protection plan in accordance with Section 5.5 and a method statement detailing precautions to minimise damage to trees in accordance with Section 6.1 of British Standard BS5837: 2012 (Trees in relation to design, demolition and construction - Recommendations) have been submitted to and approved in writing by the Local Planning Authority. No site works (including any temporary enabling works, site clearance and demolition) or development shall take place until the temporary tree protection shown on the tree protection plan approved under this condition has been erected around existing trees on site. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas at any time. The development shall be implemented in accordance with the protection plan and method statement as approved under this condition.
- 13) No development, other than demolition works, shall take place until a noise assessment to assess the effect of noise on the development and measures to be implemented to address its findings has been submitted to and approved in writing by the Local Planning Authority. The report shall include all calculations and baseline data and be set out so that the Local Planning Authority can fully audit the report and critically analyse

the content and recommendations. The measures approved under this condition shall be implemented in their entirety prior to the first occupation of the development and retained as such thereafter.

- 14) The level of noise emitted from any mechanical ventilation plant incorporated into the development hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.
- 15) The level of noise emitted from the specify machinery plant hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.
- 16) Prior to the occupation of the proposal, the applicant shall provide details of Secure by Design measures to the Local Planning Authority to obtain Secure by Design accreditation. The measures, once agreed, shall be incorporated into the proposal prior to its first use.
- 17) The development shall be installed with water sprinklers. These shall be fully operational prior to the occupation of the building and retained thereafter.
- 18) No development, other than demolition works, shall take place until full details of the fire access facilities and arrangements have been submitted to the Local Planning Authority, in consultation with London Fire Brigade Authority. The details hereby approved shall be implemented and retained thereafter.
- 19) No development, other than demolition work, shall take place until a Drainage Strategy detailing all drainage works to be carried out in respect of the development hereby approved and all Sustainable Urban Drainage System features to be included in the scheme has been submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall not be first occupied or brought into use until the drainage works and Sustainable Urban Drainage System features approved under this condition have been implemented in their entirety.
- 20) Prior to the first occupation of the new dwellinghouse(s) (Use Class C3) hereby approved they shall all have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach should be used to determine the water

consumption of the proposed development. The development shall be maintained as such in perpetuity thereafter.

- 21) No piling shall take place until a Piling Method Statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local Development Management planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
- 22) No construction work resulting from the planning permission shall be carried out on the premises at any time on Sundays, Bank or Public Holidays; before 08:00 or after 13:00 on Saturdays; or before 08:00 or after 18:00 on other days.
- 23) No development, other than demolition work, shall take place until a scheme of proposed air pollution mitigation measures is submitted to and approved in writing by the Local Planning Authority. The approved mitigation scheme shall be implemented in accordance with the approved details before any of the development is first occupied or the use commences and shall be retained as such thereafter.
- 24) No development, other than demolition work, shall take place until details of the levels of the building, roads and footpaths in relation to the adjoining land and highways and any other changes proposed in the levels of the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the details as approved under this condition and retained as such thereafter.
- 25) The development hereby approved shall not be occupied until a lighting plan for the balconies has been submitted to and approved in writing by the Local Planning Authority, and the approved plan has been implemented. The development shall thereafter be maintained in accordance with the approved plan.
- 26) The development hereby approved shall not be occupied until windows and doors serving the balconies hereby approved have been installed to a rating of PAS24:2016. The windows and doors shall thereafter be maintained in accordance with the approved details.

End of Conditions