



Appeal Decision

Site visit made on 12 December 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2024

Appeal Ref: APP/N5090/W/23/3323017

158 High Street, London EN5 5XP

- 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 CMJ Properties Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/5167/FUL, dated 18 October 2022, was refused by notice dated 20 December 2022.
 - The development proposed is described as “additional floors at first and second floor level to provide 2no self-contained flats. External alterations including provision of new windows. Associated cycle store.”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party’s interests would be prejudiced by my taking this approach.
3. There are discrepancies between the proposed layout plans and proposed elevation plans, insofar as the window positionings do not match. However, these do not affect my considerations on the main issues.
4. The appellant has submitted a planning obligation in the form of a signed Unilateral Undertaking (UU) dated 11 October 2023. The appeal site lies within a Controlled Parking Zone (CPZ). The Council’s third reason for refusal related to the absence of a legal agreement to mitigate the highway and car parking impacts of the proposed development. The appellant has submitted a complete, signed and dated UU as part of this appeal, which sets out restrictions on residents and visitors parking permits within the CPZ. The Council have confirmed in their appeal statement that such an agreement would address their third reason for refusal.

Main Issues

5. Since the Council’s concerns in respect of the third reason for refusal have been addressed, the main issues are:

- the effect of the proposed development on the character and appearance of the area, and
- the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with particular regard to outlook.

Reasons

Character and appearance

6. No 158 is a three storey building fronting High Street. There is a commercial unit at ground floor and residential use on the upper floors. The appeal relates to a two storey, flat roof building to the rear of the frontage building which is in residential use (the appeal building). The frontage building and appeal building are both located within Chipping Barnet Town Centre, where building heights along High Street are predominately two and three storeys high. A substantial development, known as Brake Shear House, lies to the rear of the appeal building. It is the largely uniform buildings heights that contribute to the character and appearance of the area.
7. The frontage building largely screens the appeal building from High Street, although it is visible from the access serving Brake Shear House. The change in land levels across the appeal site is modest, however towards Brake Shear House they become more pronounced.
8. The proposed development seeks to increase the height of the appeal building through the creation of two additional storeys, to create a four storey high building with a flat roof. These works would also increase its scale and bulk, resulting in a building that would appear overly tall and dominant. Combined with the appeal buildings proximity to High Street, the appeal scheme would result in an imposing and incongruous form of development, at odds with, and detrimental to, the prevailing character of the area.
9. The appellant argues that the works to the appeal building would reflect the height of Brake Shear House, including the lift overhang, and that the appeal proposal would remain subservient to this neighbouring building. I observed during my site visit that the appeal building is viewed in the context of Brake Shear House, which is a substantial development in respect of its mass, height and scale. However, Brake Shear House is further from and at a lower level than High Street, when compared to the appeal building. Consequently, Brake Shear House does not have a dominant or imposing impact on the views from the access to it or High Street, but such harm would arise in respect of the appeal scheme for the reasons which I have set out above.
10. Planning permission, Council ref 21/1725/FUL, has previously been granted for an additional storey at second floor, to provide one self contained flat (the 2021 scheme). This scheme would create a three storey high building and would comprise a fallback position if the appeal proposal does not go ahead. The difference in height between the approved scheme and the appeal scheme is significant and, in the absence of substantive evidence to the contrary, it would be substantially more prominent and dominant in the street scene. Thus, the two schemes are not directly comparable, and the fallback position does not therefore provide a justification for the appeal proposal.

11. The well-articulated design and use of good quality materials, which could be secured by condition, are noted, however, these positive aspects are not sufficient to overcome the harm which I have identified.
12. While the proposed design might be an enhancement when compared with the appearance of the appeal building, nevertheless the appeal scheme, by virtue of its proposed height, scale and bulk would harm the character and appearance of the area.
13. For these reasons, the proposed development would result in unacceptable harm to the character and appearance of the area, contrary to Policies CS NPPF, CS1 and CS5 of Barnet's Local Plan Core Strategy Development Plan Document September 2012 (CS), Policy DM01 of Barnet's Local Plan Development Management Policies Development Plan Document September 2012 (DMP) and the guidance within the Local Plan Supplementary Planning Document: Residential Design Guide October 2012 (RDG). Collectively, these policies and guidance document seek to ensure, among other things, that development helps to protect and enhance Barnet's character and respects local context and distinctive local character. It is also contrary to the Framework which seeks, among other things, to ensure development is visually attractive and sympathetic to local character.

Living conditions

14. There are a number of windows at first and second floor and within the roof space of the frontage building, that serve two residential units. These windows face directly towards the appeal site. Due to its staggered rear elevation, two first and second floor windows within the frontage building would be within close proximity to the proposed building.
15. Both the RDG and the Local Plan Supplementary Planning Document: Sustainable Design and Construction October 2016 (SDC) seek to ensure residential amenity is safeguarded. The SDC states bedrooms, living rooms and kitchens should have a reasonable outlook in order to protect existing and future occupants. No further guidance defining what constitutes a reasonable outlook, or any suggested separation distances, are provided.
16. Although the site is in a town centre location where there are higher densities, the appeal scheme extends the full width of the site and would increase the height of the appeal building to four storeys. While noting the appeal scheme is for one additional storey above the 2021 scheme, it would, nevertheless, be markedly higher when compared with this fallback scheme.
17. While the appellant contends there would be no impeded outlook upwards and at an oblique angle from these windows within the frontage building, little substantive evidence demonstrating this has been submitted. Therefore, having regard to its height, width and orientation, together with its proximity to the rear of the frontage building, the proposed development would result in a visually dominant form of development that would materially affect the outlook for the occupiers of the frontage building.
18. Having regard to the proximity and orientation of other neighbouring properties and given the elevation of Brake Shear House facing the appeal building does not contain primary windows of the units it serves, the appeal scheme would

not materially affect the living conditions of other neighbouring occupiers, with particular regard to outlook.

19. For these reasons, the proposed development would result in unacceptable harm to the living conditions of the occupiers of the frontage building, with particular regard to outlook, contrary to DMP Policy DM01 and the guidance within the RDG and SDC. Collectively, these policies and guidance documents seek to ensure, among other things, development proposals are designed to allow for adequate outlook for adjoining occupiers. It is also contrary to the Framework which seeks, among other things, to ensure high standard of amenity for existing users.
20. The Council have referred to CS Policy CS5 within their reason for refusal. This policy relates to protecting and enhancing Barnet's character. As this policy does not refer to living conditions of future occupiers, with regard to outlook, it is not relevant to the main issue.

Other Matters

21. The proposal would make a modest contribution towards the supply of housing in the Borough and support the Government's objective of significantly boosting the supply of homes, in a town centre location close to local facilities and transport. The Framework is also supportive of small and medium sized sites, such as this, which can make important contribution to meeting the housing requirement of an area and are often built out relatively quickly. The appellant further advises the proposal would have 100% of its water supply through water meters, secure cycle storage for two cycles, sound insulation to comply with Building Regulations and appropriate private refuse collection.
22. The appellant advises the development would comply with Policy S12 of the London Plan 2012, in respect of 10% carbon dioxide emissions, which is over that required by Building Regulation requirements, and would provide a good standard of accommodation, in respect of compliance with space standards. These aspects are neutral matters in the planning balance.
23. While these benefits weigh in favour of the proposal, given the scale of the proposed development, even cumulatively, these benefits attract limited weight and they do not outweigh the harm that I have identified.

Conclusion

24. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR