



Appeal Decision

Site visit made on 6 March 2024

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/N5090/W/23/3331138

99 Bow Lane, North Finchley, Barnet, London N12 0JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr A Covaci of DAC Properties Ltd against the Council of the London Borough of Barnet.
 - The application Ref is 23/0417/FUL, dated 31 January 2023.
 - The development is: subdivision of existing dwelling into 2 no. self-contained flats.
-

Decision

1. The appeal is allowed and planning permission is granted for subdivision of existing dwelling into 2 no. self-contained flats at 99 Bow Lane, North Finchley, Barnet, London N12 0JL in accordance with the terms of the application, Ref 23/0417/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. There is an emerging Local Plan (eLP). This Council has received the Inspector's main modifications. The eLP is not yet adopted and will be the subject of a further round of consultation. It could, therefore, be the subject of further modifications. Nevertheless, the main modifications provided by the Inspector following the Examination in Public provide a clear steer as to the likely wording of the eLP upon adoption. The eLP in combination with the main modifications is therefore a material consideration in the determination of the appeal. However, the Barnet Local Plan 2012 (LP) remains the statutory development plan until the replacement plan is adopted. As such, and because of the potential for further modifications, I give the eLP limited weight. I reflect this as appropriate throughout my decision.
3. I noted during my site visit that the building has already been subdivided into two self-contained flats and subsequently occupied. The appeal is therefore retrospective.

Main Issues

4. The Council failed to give notice of its decision within the prescribed period. An assessment of the proposal is included within the Council's appeal statement, culminating with two putative reasons for refusal. I have used this evidence to formulate the main issues of this appeal. Consequently, the main issues are:
 - whether the occupants have reasonable access to public transport and local services; and,
 - the effect on the living conditions of its occupiers, with particular regard to outdoor amenity space.

Reasons

Access to public transport and local services

5. Policy H1 of the London Plan 2021 (the LonPlan) states that boroughs should optimise the potential for housing delivery on sites with Public Transport Accessibility Levels (PTAL) 3 to 6. There is disagreement between the parties as to the PTAL assigned to the appeal site. The evidence before me is that the site falls within PTAL 2. However, the site is located adjacent to PTAL 3 grid square. Although situated in a PTAL 2 location, the north of Bow Lane is a short walk along Bow Lane itself to a PTAL 3. This short walk would not dramatically alter the preferences and behaviour of occupiers to not utilise the public transport offered in the vicinity of the appeal site.
6. More decisively, Policy H1 also states that sites will be optimised for the potential of housing delivery which are located within 800m distance of a station or town centre boundary. Uncontested evidence demonstrates that the appeal site is located within 800m of two designated town centres and other local amenities.
7. For the foregoing reasons, whilst not located in a PTAL 3 or higher, the development is located within 800m of two designated town centres and local amenities. It is also located a short distance away from a PTAL level 3, which is located further along Bow Lane. As such, the occupants have reasonable access to public transport and local services, and the development complies with Policy H1 of the LonPlan.
8. As drafted, Policy HOU3 of the eLP states that housing proposals will be supported where they are located within 400 metres of a town centre. However, the main modifications letter states that this is to be amended to 800 metres, which will conform to the requirements of the LonPlan. Therefore, I find that the development does comply with Policy HOU03 of the eLP, subject to its modifications.

Living conditions of occupiers

9. The ground floor apartment provides access to a rear garden space for its occupiers. In this configuration, this results in a significant space for the ground floor apartment, with no access available for the upper floor apartment. The upper floor apartment is split over two levels and provides three large bedrooms. The second floor of this apartment is serviced by a 13.5m² roof terrace to the rear. The Residential Design Guidance Supplementary Planning Document (SPD) 2016 requires proposals to provide 5m² of amenity space per habitable room. At 13.5m², the roof terrace which services the upper floor flat fails to comply with these space requirements.
10. In its draft form, Policy HOU03 requires direct access into a dedicated rear garden space for housing developments of three bedrooms. Therefore, the upper floor flat does not comply. However, the main modifications letter states that this is to be amended to conform to the LonPlan, which requires level access to access to forms of private outside spaces, which includes roof terraces.
11. However, Policy DM01 of the LP and the SPD requires proposals to be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. Additionally, Policy HOU03 of the eLP requires development to provide a good standard of living conditions and amenity for future occupiers in terms of privacy, daylight and outlook. The assessment of amenity space standards is therefore not limited to overall space size.

12. In this regard, given its elevated position above neighbouring properties, the roof terrace receives unobstructed sunlight during daylight hours with an uninterrupted outlook to the rear of the appeal site. Furthermore, the elevated location of the terrace to the rear of the property reduces the effect of noise on its users. Users will be visible to the occupants of neighbouring properties of Holdenhurst Avenue due to its location and prominent position to the rear. However, adequate separation distances between the properties ensure that this does not result in a harmful effect upon the privacy of the occupants of the upper floor flat.
13. Therefore, whilst not complying with the space standards set in the SPD, the space hosts an open viewpoint with a strong outlook, which receives limited disturbance from noise or overlooking from neighbouring properties. As such, the development provides adequate living conditions for occupiers and complies with the requirements of Policy DM01 of the LP, and the guidance found within the SPD. The development also conforms to the requirements in Policy HOU03, as suggested by the main modifications letter.
14. The appellant has included plans which were not included within the original planning application, following discussions between the appellant and the Council regarding the provision of private amenity space. These plans highlight how the rear garden could be subdivided to provide each flat with private rear amenity garden space. However, I have not found harm to the living conditions of occupiers, with particular regard to outdoor amenity space, as shown on the plans as submitted with the application. For this reason, I have not had regard to the revised plans, nor would it be necessary to attach a condition either requiring the revised plans be adopted or that the garden to be split.

Other Matters

15. Several comments were received from interested parties. In addition to matters I have dealt with above, concerns have been raised regarding the provision of car parking. Policy DM17 of the LP requires the provision of two car parking spaces for flat developments of two or three bedrooms. The block plan of the site indicates two car parking spaces and these could be secured by condition. As such, the development is acceptable in this regard and complies with DM17 of the LP.
16. Another concern is the effect on the character and appearance of the area with particular regard to the character of the street scene and the loss of a 4-bedroom house. Whilst this is a flatted development in an area of detached and semi-detached dwellings, other flatted developments are within the vicinity of the appeal site. Whilst possibly historic changes, these contribute to the character of Bow Lane even if this is in small numbers. Therefore, the development complies with Policy DM01 of the LP as this location is not just characterised by houses.
17. Concern has been raised with regard to the living conditions of the occupiers of the flats in relation to the location of bedrooms within the building. Policies contained within the LP do not stipulate as to the location of habitable rooms within developments. I also noted that these bedrooms were of a substantial size and provide occupants with appropriate living conditions. Therefore, the development complies with Policy DM02 of the LP, which requires proposals to demonstrate compliance with national and London wide standards in relation to housing.
18. A previous appeal was allowed for the construction of a side extension to the host dwelling. Comments suggest that the constructed development has not been completed in accordance with the approved plans. The Council and the appellant

were provided with the opportunity to comment on this matter. The Council has stated that it is satisfied that the constructed extension has been built in accordance with the approved plans, and I find no reason to disagree.

Conditions

19. I have applied a condition specifying the approved plans [1] in the interest of certainty and to safeguard the character and appearance of the area. Conditions regarding the submission and approval of a landscaping scheme [2] and the implementation of the landscaping scheme [3] have been applied to protect the character and appearance of the development site.
20. A condition regarding the retention of car parking spaces [4] has been applied. This is to ensure that adequate spaces are available to the occupiers of the flats. A condition requiring the submission of details of cycle parking and their retention [5] has been applied. This has been included to ensure that adequate cycling parking spaces are available to occupiers of the flats to support the use of sustainable modes of transport. Furthermore, a condition requiring details of the bins storage and recycle facilities to be submitted has been attached [6]. This condition is necessary in the interest of visual amenity.
21. A condition requiring the submission of Pre-completion Sound Insulation Test Certificates has been attached [7]. This is necessary to protect the living conditions of future and neighbouring occupiers. A further condition requiring the flats to include water saving and efficiency measures [8] has been applied. This condition has been amended as the proposed condition provided by the Council focused on building regulations requirements. As such, the requirements of the suggested condition would result in unjustified duplication. This condition as applied is necessary to reduce and conserve water consumption at the development site. Furthermore, an hours of construction operations condition [9] has been applied in the interests of protecting the living conditions of neighbouring residential properties.
22. Some conditions have been amended following a similar suggested condition from the Council. In addition, I have replaced the Council's suggested hard and soft landscaping condition with two conditions which require the submission of a landscaping scheme and its further implementation. These changes have been undertaken for clarity and to meet the six tests for imposing planning conditions.
23. The standard time limit condition requested by the Council has not been included in the Schedule of Conditions. As stated above, the appeal property has already been subdivided and subsequently occupied by tenants. It is therefore, retrospective. Therefore, I do not consider the inclusion of this condition necessary or relevant to this appeal.

Conclusion

24. For the reasons given above the appeal should be allowed.

J Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved drawings:
 - ELEVATIONS (Drawing Number PRO 03, dated JAN 23)
 - PLANS 1 (Drawing Number PRO 01, dated JAN 23)
 - PLANS 2 (Drawing Number PRO 02, dated JAN 23)
 - LOCATION & BLOCK PLANS (Drawing Number 04, dated JAN 23)
- 2) Within 3 months of the date of this decision, a scheme of landscaping shall have been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the lifetime of the development.
- 3) Following the discharge of condition 2, all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 4) The existing parking spaces and the access to the parking area from public highway shall be retained in accordance with the submitted planning application (as detailed on LOCATION & BLOCK PLANS, Drawing Number 04, dated JAN 23).

Thereafter, the parking spaces shall be used only as agreed and not be used for any purpose other than the parking of vehicles in connection with the approved development.
- 5) Within 3 months of the date of this decision, details of cycle parking including the type of stands, gaps between stands, location and type of cycle store in accordance with the London Plan Cycle Parking Standards and London Cycle Design Standards shall be submitted to and approved in writing by the local planning authority. Thereafter, the cycle parking spaces shall be provided and retained thereafter for the parking of bicycles.
- 6) Within 3 months of the date of this decision, details of enclosures for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in full accordance with the details as approved under this condition and retained as such thereafter.
- 7) Within 3 months of the date of this decision, copies of Pre-completion Sound Insulation Test Certificates shall be submitted to the local planning authority, confirming compliance with Requirement E of the Building Regulations 2010 (or any subsequent amendment in force at the time of implementation of the permission).
- 8) Within 3 months of the date of this decision, the development hereby approved shall have been constructed to have 100% of the wholesome water supplied to

them by the mains water infrastructure and each new dwelling shall be constructed to include water saving and efficiency measures to ensure that a maximum of 105 litres of water is consumed per person per day. Any use of grey water and/or rainwater systems needs to be separate from the potable (wholesome) water system. The development shall be maintained as such in perpetuity thereafter.

- 9) Construction works shall take place only between 08:00 and 18:00 between Monday to Friday, between 08:00 to 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

===== END OF SCHEDULE =====