



Appeal Decision

Site visit made on 26 June 2024

by Peter D. Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29TH July 2024

Appeal Ref: APP/N5090/W/23/3334490
63A Union Street, Barnet EN5 4HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Roger Newell against the decision of the London Borough of Barnet Council.
 - The application Ref is 22/4382/FUL
 - The development proposed is demolition of the shop unit and erection of 1 self-contained dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the shop unit and erection of 1 self-contained dwelling at 63A Union Street, Barnet EN5 4HY in accordance with the terms of the application, Ref 22/4382/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Roger Newell against the London Borough of Barnet Council and this is the subject of a separate Decision.

Preliminary Matters

3. The proposal is chargeable development in respect of the Community Infrastructure Levy (CIL). The collection of the CIL contribution is undertaken by the relevant charging authority on service of a notice that planning permission has been granted in relation to chargeable development. As such, the requirement for and any enforcement of the payment of a contribution in relation to the development is not for consideration at this appeal.
4. Details of accident statistics for Union Street were submitted late in this appeal process but as these are strictly factual statistics relevant to my determination of the appeal I have decided to accept them.

Main Issue

5. The main issue is whether as a result of no provision of on-site parking and the absence of a legal agreement preventing occupiers from obtaining a resident's parking permit the development would result in parking stress and an adverse impact on highway safety.

Reasons

6. The appeal site occupies a small corner plot at the junction of Union Street with Coe Alley and stands within the Wood Street Conservation Area. It is currently occupied by a vacant, single storey, flat roofed, shop unit in a derelict condition which it is proposed to demolish prior to erecting the residential unit.
7. Coe Alley to the south of the site is developed on the south side with a terrace of small, two storey houses in a traditional style which overlook the site. Currently, a high solid fence and some self-set sycamores separate the appeal site from the lane and the houses.
8. The derelict shop unit also lies adjacent to No 63 Union Street and is adjacent to the gable end of Coe's Cottage on Coe Alley. No windows on these gables overlook the site.

Highway Safety

9. The proposed dwelling would fall within a Controlled Parking Zone (CPZ) where parking is restricted for resident permit holders only during the hours of 08.00-18.30 Monday to Saturday (Control Zone C). The appeal site is such that the dwelling would not have access to any off-street parking space.
10. Policy T6 of the *London Plan*, allows for car-free residential development in areas with a PTAL score of 5-6. Whilst the location is well served by several bus routes close by on Wood Street, The Avenue and High Street plus London Underground services at High Barnet Station all within walking distance, it only achieves a PTAL score of 3. For a location in Barnet with a PTAL score of 3 The *London Plan* requires a one bed dwelling to provide 0.75 parking spaces per unit. The *Barnet Local Plan Development Management Policies* (BLP) at Policy DM17 would require this size of unit to make similar provision.
11. Policy DM17 goes on to allow development with limited or no parking within a CPZ but, where there is insufficient capacity on street, the applicant will be required to enter into a legal agreement to restrict future occupiers from obtaining on street parking permits. It is on this basis that the Council has required a legal agreement to be submitted but no agreement is before me.
12. It has been put to me that the requirement for such an agreement is flawed in a number of respects. First that case law determines that the use of planning obligations in this way are not acceptable. Second that the obligation would not meet the tests required of it.
13. The case of *R (Khodari) v. Kensington and Chelsea RLBC* [2015] EWHC 4084 and EWCA Civ 333 established that planning obligations should relate directly to the use of the land and the use of planning obligations to prevent occupiers from obtaining a resident's parking permit was not an appropriate use of a planning obligation under S106. I note that the case officer's report states that a planning obligation under S106 of the *Planning Act 1990* would be required and, in that regard, if the intention was to base the agreement solely on the *Planning Act* the statement is contrary to the findings in the case law. However, both the reason for refusal in the decision notice and BLP Policy DM17 refer to the requirement for a legal agreement and not specifically a planning obligation under S106 of the *Planning Act 1990*. The same High Court case confirms that under Section 16 of the *Greater London Council (General Powers) Act 1974* the

Council could enter into a legal agreement restricting the ability of the occupants to obtain a resident's parking permit. In the absence of a completed legal agreement setting out the legal basis for the agreement I am therefore not persuaded that the Council's intention in its policy and decision was unlawful.

14. What is more critical to this case is whether any such agreement would be necessary and reasonable. Policy DM17 makes it clear that these restrictions are only required in the event that parking capacity in the CPZ is inadequate. The BLP is clear that ordinarily development proposals need to demonstrate through a parking survey that on street capacity would be available therefore negating the need for a legal agreement. However, in the absence of such a survey, if the Council wished to justify a dismissal in this appeal, I would have expected it to have provided the requisite evidence in default. No such evidence is before me.
15. In the absence of parking beat surveys from either party I have considered the parking situation on site in CPZ zone C during the site visit. The visit was carried out between 12.00 and 13.00 on a weekday (26 June 2024). At that time in the middle of the control period it would be reasonable to assume that parking would be at a premium with no spaces available. However, the reverse was true. In Union Street in the area between the appeal site and the United Reform Church to the east (ie within 100 metres of the appeal site) 6 spaces were available and in a slightly extended distance beyond that point a further 2 spaces. In Stapylton Road, between Union Street and The Drive junctions, there were 3 spaces available and in the length of Thornton Road within 200 metres of the site there were 10 spaces available. All these locations are in CPZ Zone C. I accept that this is a snapshot and that at other times e.g. overnight parking demand may be higher but the CPZ does not control parking overnight and there is nothing to suggest that any other weekday would have a higher number of parked cars than I observed. During the time of my observation there was also no evidence of vehicles competing for spaces and in doing so restricting the free and safe flow of traffic.
16. Furthermore there is nothing in the accident statistics obtained by the appellant from Transport for London to suggest that parking stress, vehicles moving around looking for or manoeuvring into spaces was resulting in a higher incidence of accidents. The accident statistics show only two minor accidents on Union Street over the last five years one at each end of the road in association with the junctions. I note the point that an absence or low level of accidents are not necessarily helpful in determining whether parking stress is impacting on highway safety but nevertheless it is one indication.
17. Finally, notwithstanding the PTAL rating of 3, this site is in close proximity to all the facilities and services of Chipping Barnet including public transport, cycle storage is to be provided and there is nothing to suggest that occupants would not choose or be able to occupy the unit on a car free basis.
18. I have been referred by the council to two appeal decisions where the Inspectors dismissed the appeals in part due to the absence of a controlling legal agreement. However, I am not persuaded that these cases are directly similar to the appeal case. In respect of APP/N5090/W/23/3315243 the number of units proposed is greater than in the appeal case and there was evidence of

parking stress. In the other, APP/N5090/W/20/3246831, although only one dwelling unit was involved the Inspector himself was of the opinion that there was inadequate on street parking capacity-again not the case in the appeal before me. I therefore have determined this appeal case on its own merits.

19. In short, in the absence of any evidence that refutes my own observations on site, there is nothing to suggest, were a future occupant of the new dwelling to acquire a permit and seek to park on Union Street or surrounding streets within CPZ zone C, that there would not be capacity to accommodate them during the hours the CPZ controls. That being the case, and the low observed level of parking stress on Union Street and the adjacent streets, the proposal would not result in parking stress and would be unlikely to result in an adverse impact on pedestrian and highway safety. The test in the *National Planning Policy Framework* (the Framework) in this respect is a 'high bar' and development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. For the reasons above and evidence of capacity there is nothing to suggest that.
20. I am satisfied therefore that a legal agreement is not necessary in this case in the context of BLP Policy DM17. The absence of the restriction on the ability to obtain a resident's parking permit would not contribute to undue parking stress nor adversely affect highway safety.

Other Matters

21. Section 72(1) of the *Listed Buildings and Conservation Areas Act 1990* requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The single storey commercial building on the appeal site has been part of the character of Union Street as a mixed use residential and commercial area for many years but in its current dilapidated state it detracts from the appearance of this part of the Conservation Area. The appeal proposal has been designed to echo the scale, mass and height of the shop unit and other than the central pitched roof the unit would be at or slightly lower in height compared to the shop unit. It would also pay close attention to details and materials in keeping with the Conservation Area character. The development of the site as proposed would not harm the significance of the Wood Street Conservation Area, indeed, resolving the future of this derelict site in an appropriate design would enhance the Conservation Area. In this respect the proposal would be compliant with the Framework's policy on heritage assets and also accord with BLP Policy DM06 seeking to preserve or enhance heritage assets.
22. Third parties have raised a number of concerns broadly around the impact of the proposal on living conditions for neighbouring occupants. First, concern has been expressed about the impact of refuse and recycling storage on Coe Alley. The design shows that bins will be stored in a screened unit. Full details of this are not provided on the drawings submitted but this could be appropriately controlled along with bike storage through the imposition of a condition.
23. A second point has been raised regarding impacts on overlooking and outlook and that the development would be overbearing on Coe Alley. Only one window to the bathroom would face directly onto Coe Alley. Ordinarily such a window would be obscure glazed anyway for the occupant's benefit but this can be conditioned to ensure that it is. In terms of outlook, currently the properties in

Coe Alley look out onto a high, solid timber fence and self-set sycamores behind it. The proposal, although admittedly to a slightly larger footprint than the existing shop unit, would still result in a more open feel to the alley with the fence and sycamores removed and only waist height screening to the cycle and waste storage enclosures. This would benefit the ground floor outlook from the Coe Alley properties. The proposal would be at or slightly lower than the height of the present shop unit other than the small centrally placed pitched roof and the outlook from first floor windows would be over the green sedum roofscape again providing a more open outlook than is currently the case with the tree screening. I am satisfied therefore that the development would not be overbearing.

24. A neighbouring occupant has also raised a point regarding drainage to the new dwelling and the fact that in the past it has been dependent on drain runs through neighbouring properties. However, I am satisfied that this would be appropriately resolved through the building control process were the appeal to be allowed and permission granted.
25. It has been put to me that siting an air source heat pump on the roof would be inappropriate in the Conservation Area but such a proposal is not shown in the revised submitted drawings.
26. Finally, concern has been expressed about what is considered to be the inadequacy of the proposed private amenity space (PAS) and concern that there should be no use of the flat roof as amenity space. It is accepted that the site is restricted in what it can offer as PAS. However, in this case, a small patio/terrace would be provided and the site itself is only approximately 100 metres from public open space at Ravenscroft Gardens. No opportunity to access the roof is shown in the submitted plans and therefore there is no reason to impose a condition restricting use of the roof in this way.

Conclusions and Conditions

27. I acknowledge that ordinarily the BLP at Policy DM17 would require a legal agreement to be in place on developments in the CPZ without off street parking provision to restrict future occupants from acquiring a resident's parking permit where there is inadequate on-street capacity. However, given my assessment of the parking capacity in the immediate vicinity within CPZ zone C I am not persuaded that in this case such a restriction is necessary. An occupant's vehicle parked with a permit in zone C could be accommodated without aggravating parking stress and therefore would be unlikely to result in harm to highway safety. Moreover, even had I concluded that there was a degree of conflict with Policy DM17, given the absence of a legal agreement, it would be outweighed by the significant benefit for the Conservation Area as a result of resolving the future of this derelict site and enhancing the area with the design proposed.
28. The Council has proposed a number of conditions in its appeal questionnaire. I have considered these in the light of the advice in the Framework and *Planning Practice Guidance*. A condition requiring development to be carried out in accordance with the submitted plans is necessary in the interest of certainty.
29. In order to safeguard the character and appearance of the Conservation Area a condition needs to be added requiring details of external materials to be submitted to and approved by the Council.

30. In order to protect the living conditions of neighbouring occupants and ensure highway safety during demolition and construction works a Demolition and Construction Management and Logistics Plan and control over working hours will be required and I impose conditions to this effect.
31. Given the restricted nature of the site and proximity of neighbouring houses it is important that the storage areas for cycles and refuse and recycling are appropriately designed. The plans show indications of these but the detail of these facilities needs to be controlled. The Council proposes separate conditions to control cycle and refuse storage but in practice there is no reason why this cannot be achieved by one condition. I have therefore amalgamated them.
32. In order to ensure construction follows sustainability principles two conditions are necessary - one in respect of water management and efficient use of the water supply and the other in respect of achieving reduction in CO² emissions. The appellant has made the point regarding the second matter that this should be left to be controlled through Building Regulations. However, the London Plan at Policy SI 2 looks to go further than the Building Regulations require and therefore the Council's proposed condition is justified.
33. Ensuring that the housing stock is accessible and adaptable to accommodate the needs of any occupants is important and a condition requiring the development to be constructed in accordance with Part M4(2) of Schedule 1 to the Building Regulations 2010 is necessary and reasonable.
34. Finally, in order to protect the living conditions of future occupants two conditions are necessary. A condition is required to ensure the bathroom window, as permitted, is obscure-glazed and a condition must be imposed requiring completion of the private amenity space. The appellant has proposed that the condition relating to the private amenity space should be worded to allow for the submission and approval of details and, inasmuch as no specific details of the space have been provided, I agree that the condition should be amended accordingly.

P. D. Biggers

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: EX 10 Rev A; EX 11 Rev A; EX 12 Rev A; EX 13 Rev A; PR 00 Rev A; PR 20 Rev B; PR 21 Rev C; PR 22 Rev B; PR 24 Rev B; PR 33 Rev B.
- 3) a) No development other than demolition and below ground works shall take place until details of the materials to be used for the external surfaces, including windows, doors, rainwater goods of the building, and hard surfaced areas hereby approved have been submitted to and approved in writing by the Local Planning Authority.

- b) The development shall thereafter be implemented in accordance with the materials as approved under this condition.
- 4) a) 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, but not be limited to, 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 of 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.
- b) The development shall thereafter be implemented in accordance with the measures detailed within the statement.
- 5) 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 8.00 am or after 1.00 pm on Saturdays,
Before 8.00 am or after 6.00pm pm on other days.
- 6) a) Before the development hereby permitted is first occupied, details of enclosures and facilities for the storage of cycles, recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point for refuse collection shall be submitted to and approved in writing by the Local Planning Authority.
- b) The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 7) Prior to the first occupation of the new dwellinghouse (Use Class C3) hereby approved it shall have been constructed to have 100% of the wholesome water supplied to it by the mains water infrastructure provided through a water meter. The 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 used to determine the water consumption of the proposed development. Any use of grey water and/or rainwater systems needs to be separate from the potable (wholesome) water system and needs to meet the requirements and guidance set out in Part G of the Building Regulations.

Water management arrangements shall be retained in perpetuity thereafter.

- 8) Prior to the first occupation of the development hereby approved it shall be demonstrated that the dwelling has been constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 10% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations.
- 9) Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellinghouse (Use Class C3) permitted under this consent it shall have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future).
The accessibility and adaptability measures shall be retained in perpetuity thereafter.
- 10) Before the building hereby permitted is first occupied the proposed window to serve the bathroom shall be glazed with obscure glass only and shall be permanently fixed shut with only a fanlight opening. It shall be permanently retained as such thereafter.
- 11) a) Before the development hereby permitted is first occupied, details of the private amenity space hereby permitted including boundary treatment and screening shall be submitted to and approved in writing by the Local Planning Authority.
b) The private amenity space shall be implemented in accordance with the approved details and retained as such thereafter.