



Appeal Decision

Site visit made on 18 May 2024

by A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2024

Appeal Ref: APP/N5090/W/23/3331674

32 Finchley Lane London NW4 1DL

- 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 Mr J Adler against the decision of London Borough of Barnet.
 - The application Ref: 22/5352/FUL dated 03 November 2022 was refused by notice dated 19 July 2023.
 - The development sought is Retention of single storey building and use by a bereavement charity for Shemira and storage of Shiva furniture (Sui Generis)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The building which is the subject of the appeal is used to accommodate furniture which is required for religious purposes ('Shiva') in connection with Shemira, the watching of a deceased person up to the point of burial. The building is also used on occasions for the purpose of Shemira.
3. The appellant explains that the facility is intended to meet an essential need of the local Jewish community; firstly for the storage of furniture and prayer books employed in the process of mourning and secondly, in circumstances where there is a delay in burial or where that cannot take place in a home, for attendance upon the deceased person until the time of burial. The building contains a refrigerated room to address that eventuality. The latter would be for a very short period as Jewish religious rules requires burials to take place as quickly as possible.

Main Issues

4. The main issues are:
 - The effect of the building and its use on the character and appearance of the surrounding area;
 - the effect of the use upon the living conditions of local residents, including those living at 32 Finchley Road; and
 - the effect of the use upon highway safety.

Reasons

Character and appearance

5. The appeal site is located to the rear of 32 Finchley Lane, a house in multiple occupation (a 7 room HMO), in a predominantly residential area. The building which is the subject of the appeal (the Building), along with a line of neighbouring garages associated with properties on Finchley Lane, fronts onto Aprey Gardens, a residential street with a strong suburban character for the majority of its length.
6. The appellant states that the Building was originally constructed as a garage/store ancillary to the use of No.32 but was unused and subsequently separated for the current purpose. Consequently, its single storey flat-roofed form is visually consistent with its immediate setting in the street having the appearance of a domestic garage approximately 6m wide x 6m external depth on plan. The site was previously occupied by a single garage, now demolished. The Building has a side pedestrian access and two roller shutter doors opening, directly adjacent to the footpath, onto Aprey Gardens. Between the Building and No.32 a small garden area remains for use of residents of the HMO.
7. The Council's reasons for refusal refer to the subdivision of the plot as failing to respect the pattern of surrounding buildings and places. Although the Building's appearance and built form is wholly consistent with that of a brick-built domestic double garage, being of a similar size and scale to those on either side, the application documents¹ makes clear the use of that Building is distinct and individual, not ordinarily incidental or ancillary to, or comprised within, any residential use. Further, the subdivision likely interferes with the storage and collection of waste and reduces access to private amenity space for residents of No.32 since it is disconnected from Aprey Gardens.
8. Whilst the storage of modest quantities of furniture is of itself unlikely to be an obtrusive activity in a residential area, overall the effect of the works, which I note include the formation of an inner 'Shemira' room and the provision of cooling equipment, is to create a separate planning unit in a use which by its distinct and unusual character has a dominating effect upon the residential area within which it is situated.
9. The appellant suggests the activity at the appeal site is 'rare and hardly visible' and of a 'modest and low-key' nature, however, regardless of frequency in use, there is a direct conflict between the actual use and that which would be presumed from the Building's outward appearance and this emphasises the discordant character of the use in this residential area. Although the appellant suggests other houses may be subdivided or have a partial commercial use such that garages at the rear are (or may appear to be) used independently, this does not of itself reduce the harm I identify.
10. I therefore conclude, notwithstanding my conclusions as to the visual compatibility of the building's appearance, that the development fails to protect the calm suburban character of the locality in which it is situated, doing so in conflict with policy CS5 of Barnet's Local Plan Core Strategy (2012) (BLPCS) and policy DM01 of the Local Plan Development Management Policies DPD

¹ As to being 'sui generis' and with the red-line plan excluding No.32

(2012) (DMDPD) which seek to ensure development respects local context and distinctive local character and demonstrates an understanding of local characteristics.

Residential amenity

11. The construction of the much larger building with its incidental space has significantly reduced the outdoor amenity space for use of residents of the HMO.
12. Although the appellant points to the position of the building as being at the rear of No.32 and its neighbours, the appeal site lies close to the eastern end of Aprey Gardens and its junction with First Avenue, and in its continuation to the south and west is lined on either side by family-sized homes. Aprey Gardens provides a likely route for local residents and other pedestrians between Finchley Lane and parts of the area to the south west of the appeal site. A Methodist Church lies close to the junction with Aprey Gardens and family dwellinghouses are nearby, one of which directly overlooks the street immediately in front of the appeal site where unloading could take place.
13. Concerns are expressed as to the impact upon wellbeing of local residents, particularly children, of coming across the sight of a deceased person being moved between a vehicle and the building, or awareness of a deceased person possibly being in close proximity to passers-by. These concerns are likely heightened by the character and appearance of the building itself. Unlike a building which presents as having community, ceremonial or religious functions where such activities would be unsurprising, the movement of a deceased person in or out of what appears to be a domestic garage is at best, incongruous, and to those of a sensitive disposition or unfamiliar with the practice of Shemira, potentially alarming.
14. The appellant has provided a management plan (MP) which seeks to address such matters and thereby reduce the impact on surrounding occupiers and passers-by. This advises that such movements would be limited to 'when there is no other option', also limiting hours to avoid times around school opening and closing. There are a number of other measures in the MP, including a designated person to ensure compliance and that '*the vehicle² must be backed up right into the garage to ensure the 'meis'³ can be unloaded out of view of members of the public*'. Although this language might suggest the vehicle would be wholly concealed within the building, it is not demonstrated how that would be achieved. Moreover, it would be difficult to control these movements by way of planning conditions.
15. The appellant has not provided a description of the 'designated vehicle' or its size or more details of the (un)loading method, but objectors suggest that there have been occasions when it has been necessary to unload on the street and this is confirmed by the appellant, blaming improper parking. Although the appellant used screens at that time and the Council actively enforce against illegal parking, this is a circumstance which may recur given the proximity of the Building to the public highway. Consequently, the objective of the MP to keep loading/unloading out of view of members of the public may not be practical in every case.

² Meaning the designated vehicle referred to on the MP

³ Meaning the deceased person

16. The charitable status of the organisation and the evidence of the appellant is that the development serves the local community. Policy DM13 of the Barnet Development Management Policies Local Plan (2012) (DMPLP) makes clear that whilst community facilities should be located in residential areas, 'new community or educational uses will be expected to protect the amenity of residential properties'.
17. The impact of the use is discordant with the calm residential character of AG and adjoining parts of First Avenue, including that of No.32. Whilst the appellant argues that the events described would occur 'not more than once or twice in a month', it would be difficult to enforce and therefore it could not be controlled by planning conditions. Moreover, the ever-present *possibility* of a deceased person being moved through, or lying behind, a roller-shutter door close to passers-by is a perception which is intrusive and potentially upsetting to users of this residential area.
18. Consequently, notwithstanding potentially modest levels of activity and the provisions of the MP, the introduction of the use described within a residential area is harmful to the living conditions of residents, particularly those who overlook or regularly pass the appeal site. I therefore conclude that there is significant conflict with Policy DM13 of the DMPLP which seeks to protect residential amenity from the impacts of new community uses.

Highway safety

19. The appeal site frontage incorporates a dropped kerb as would be appropriate if it were a domestic garage. The host property (No.32) is a house in multiple occupation or subdivided into flats offering, it would seem, no expectation of parking on site⁴ and users will likely park on surrounding streets. At the time of my visit⁵ some parking was available in Aprey Gardens although First Avenue provided limited opportunities. Spaces on Finchley Lane were limited and strictly controlled to short duration/residents. Whilst the loading and unloading would cause a degree of temporary obstruction, that would also be the case from time to time if the subject building were simply a well-used domestic garage because the doors open directly onto the street with no significant set-back.
20. The appellant has indicated that the number of users is small and volunteers are local and may walk to the facility. Aprey Gardens did not appear to be a heavily trafficked road when I visited the site and anyone coming across a temporary obstruction as described has a ready alternative route. Plainly a vehicle will be used for what is to be transported and not all users will walk to the site, but in these circumstances I conclude that the use would not have an adverse effect on highway or pedestrian safety. The effect of the use on highway safety will be negligible. I therefore conclude that the use for which permission is sought does not conflict with Policy DM17 of the Local Plan Development Management Policies DPD (2012) or with Policy T4 of The London Plan which seek management of parking provision and to mitigate the impacts of development.

⁴ The frontage to 32 Finchley Lane provides only pedestrian access and the rear frontage is, as described, occupied by the appealed building.

⁵ On a Saturday morning

Conclusion

21. I have concluded that the development unacceptably impacts upon the character of the residential area surrounding the appeal site and that the use that has been introduced unacceptably harms the living conditions and well-being of neighbouring users and passers-by due to the open setting of the building in proximity to the highway. Whilst I have concluded that that the effect upon highway safety would be negligible given the nature and timing of the use, this does not outweigh the harms I have identified on the other main issues. Consequently, having regard to all matters raised, I conclude the development for which permission is sought conflicts with the development plan as a whole such that the appeal must fail.

Andrew Boughton

INSPECTOR