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# Appeal Decision

Site visit made on 2 July 2024

**by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB**

**an Inspector appointed by the Secretary of State**

**Decision date: 16<sup>th</sup> August 2024**

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**Appeal Ref: APP/M5450/W/23/3326855**

**283-295 Adrian Court, Pinner Road, Harrow, HA1 4HL**

- 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 Vipul Kotecha at Sandkot Ltd against the decision of the Council of the London Borough of Harrow.
  - The application Ref is P/1264/22.
  - The development proposed is described as, 'demolition of flats and garages and erection of 35 apartments in 2 apartment blocks comprising a mix of 3 bedroom, 2 bedroom, 1 bedroom and studio apartments, with associated car parking & landscaping'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. Updated drawings were submitted with the appeal<sup>1</sup> that show balconies to Flats B07, B12 and B17. Having had regard to the Holborn Studios judgement<sup>2</sup>, the changes would not amount to a fundamental change and parties would not be prejudiced by my having regard to these drawings in my assessment of the appeal.

## Main Issues

3. The main issues are:
  - whether the proposal would accord with the Council's development strategy for garden land;
  - the effect of the proposal on the character and appearance of the area;
  - whether the proposed development would provide a suitable living environment for future occupiers with regard to outlook, privacy, private amenity space and security;
  - whether the proposal would provide adequate parking provision; and
  - the effect of the proposal on flood risk.

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<sup>1</sup> Drawing 20020-GAA-ZZ-ZZ-DR-T-2002 Rev P12, 20020-GAA-ZZ-ZZ-DR-T2003 Rev P12, 20020-GAA-ZZ-ZZ-DR-T-2004 Rev P07 and 20020-GAA-A1-XX-DR-T-2102 Rev P08

<sup>2</sup> Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

## **Reasons**

### *Garden land*

4. To the front of the existing building lies a grassed area and car parking space. At the rear of the site lies private amenity areas and garages with parking spaces.
5. Policy CS1A of the Harrow Core Strategy February 2012 (CS) directs new development towards The Harrow and Wealdstone Intensification Area, town centres and strategic previously developed sites. CS Policy CS1B states that garden development will be resisted.
6. The supporting text notes that private gardens are excluded from the Government's definition of previously developed land. The text goes on to say that in view of their local importance and the propensity for such sites to lead to unmanaged incremental growth, the spatial strategy directs the Borough's development needs to be met on previously developed sites and therefore the Council will resist development on garden land.
7. The Supplementary Planning Document Garden Land Development Adopted April 2013 (SPD) clarifies that garden land means any land within the curtilage of a building the principal use of which is residential and that the definition includes communal gardens to blocks of flats.
8. Proposed Block A would occupy the floorspace of the existing building as well as the grassed amenity area to the front. Proposed Block B would largely occupy the rear of the site in the space currently occupied by the garages and parking area as well as some of the garden areas.
9. The SPD states that communal parking courts and garage blocks within the curtilage of housing estates and purpose built blocks of flats will not be treated as garden land. However, as both Blocks A and B encroach onto the grassed amenity space, the proposal would constitute development on garden land. While I note the pre-application responses from the Council, from the evidence the proposal would not meet any of the exceptions to the restrictions on development on garden land set out in the SPD.
10. Consequently, the proposal would not accord with the Council's development strategy for garden land as it would conflict with CS Policy CS1B and the SPD which resist development on garden land.

### *Character and appearance*

11. Pinner Road is a busy road that is primarily residential in character. While the dwellings opposite the site are largely semi-detached and terraced two storey traditional style dwellings, the side of the road adjacent to the site has a more varied character, with blocks of flats, including the appeal site and single and two storey parade of shops nearby. As the buildings are mostly two or three storeys with moderate set-backs, the area has a pleasant spacious feel. The existing building is three storeys but given its generous set back from the pavement, is in keeping with the spacious character of the area.
12. Kotecha House adjacent to the site is five storeys, significantly taller than the buildings either side. However, as the building steps back above the second

storey, the massing does not appear overly bulky or prominent when viewed with the adjacent buildings.

13. Block A would be five storeys in height, a significant increase from the existing building at three storeys. Four of the storeys would extend across most of the width of the site, while the top floor would have a modest set back on all sides and a different cladding to the rest of the building. However, as the building would have significantly greater massing than the existing building, the proposal would reduce the spacious character of the area.
14. Moreover, the building would be set forward of the existing building line as well as that of Kotecha House. The increased massing, especially at the upper floors, would therefore appear prominent from Pinner Road, particularly when viewed alongside No 275 Pinner Road despite the difference in setback. Therefore, the proposal would visually dominate the adjacent buildings and have an unacceptably discordant effect on the pleasant character of the area. The limited areas of soft landscaping both at the front of the site and between the two blocks would detract from the pleasant character of the area. A condition requiring the communal amenity area to be laid to grass would not mitigate this harm.
15. The gap in the ground floor to provide access to the basement and Block B would partially breakdown the massing of the building. I also note the detailed design of the building including protrusions in the side elevations, cutback in the corner of the building closest to No 275 Pinner Road and use of materials including brick banding as well as the design of the fenestration. However, this would not mitigate the bulky appearance of the upper floors and overall massing of the building.
16. I note the building at No 319 Pinner Road. As the top floor is pitched away from the street and the main part of the building is around three storeys in height, this building does not appear unduly prominent in the street scene and is not directly comparable with the appeal scheme. It is also separated from the site by a two storey building such that it would not be largely seen in the same views.
17. Block B would be set to the rear of the site and would therefore have no street frontage. However, its massing would be largely screened from views from the street. In addition, buildings sited between the railway tracks and the buildings along Pinner Road appear to be a feature of the surrounding area, thereby forming part of the local pattern of development. Accordingly, while Block B would be taller than the surrounding properties, it would not harm the character and appearance of the area.
18. Consequently, the proposal would harm the character and appearance of the area. Therefore, it would conflict with Policy D3 of The London Plan The Spatial Development Strategy for Greater London March 2021 (London Plan), CS Core Policy CS1, Policies DM1, DM22 and DM 23 C of the Harrow Development Management Policies Local Plan (2013) (DMP) which together seek development that enhance local context and character, a high standard of design and hard and soft landscaping appropriate to the character of the area.

### *Living environment*

19. The two proposed buildings would be a similar height and would be sited directly opposite each other. The Appellant considers that on the whole the proposal meets the minimum separation distances between habitable rooms of dwellings of 18-21m recommended in the Mayor of London's Housing SPG (SPG). However, from the evidence, it appears that only the upper floors would comfortably meet the requirement. In any event, given the orientation and height of the buildings as well as the separation distances, the view from the blocks would be dominated by the opposing block of flats such that the living environment of future occupiers in terms of outlook would feel oppressive.
20. In terms of privacy, as the blocks would be directly opposite each other and given the separation distances, views would be gained into several windows of the opposing building. While the distance from the windows serving balconies to the windows on the opposite block may meet the minimum requirement of 18m, the balcony areas would nonetheless be overlooked by a number of windows in the opposite block. There would therefore be an undue reliance on internal screening and the proposal would not provide a suitable living environment in terms of privacy.
21. With regard to security, no gates have been indicated on the plans to prevent non-residents from accessing the basement or communal areas between the two blocks. Accordingly, as no locations or design of the gates have been submitted, their effectiveness in terms of mitigation against risks of crime and disorder or the effect on the character and appearance of the area cannot be assessed. Therefore, a condition relating to the provision of gates and security systems would not be appropriate, and future occupiers would be adversely affected with respect to security.
22. The windows of Block B that face the rear of the site would overlook railway tracks. However, the separation distance between the rear of the building and the railway would be substantial. While some future occupiers may find the railway tracks and passing trains unsightly, given the separation distance, the view would not be dominated by the railway and the landscaping to the rear of the site and the sky would also be visible. Accordingly, the living environment of the future occupiers of the flats facing the rear of the site would not be oppressive in this particular respect.
23. While Flat B.07 would be sited near the adjacent bus depot, it would not directly face the depot building. The depot would be to one side of the view and, as with the other rear facing flats of Block B, there would be outlook in other directions such that the view would not be oppressive. The window in the protrusion of the flat would have a narrow view between the depot and the proposed building. However, this would not be the primary window and the living environment inside the flat would be acceptable as a result.
24. The updated drawings show private amenity spaces of at least 5sqm for all the proposed flats. While the area for communal amenity space would be limited, there is no minimum standard for communal areas and the proposal would provide a suitable living environment in this particular respect.
25. Consequently, the proposed development would not provide a suitable living environment for future occupiers with regard to outlook, privacy and security. Therefore, the proposal would conflict with London Plan Policies D3, D6 and D11, CS Core Policy CS1, DMP Policies DM1 and DM2 which together seek a

high standard of residential design, outlook, privacy and amenity as well as safe and secure neighbourhoods and measures to design out crime.

#### *Parking provision*

26. The proposal would provide 14 parking spaces whereas the Council's has stated a requirement of 18 spaces. A parking survey was conducted in May 2023 which found that there were at least 46 spare parking spaces in the study area and maximum parking stress was calculated as being 73%. In addition, there are bus stops near the site with services to Harrow town centre.
27. Accordingly, the proposal would not result in an unacceptable impact on highway safety or severe residual cumulative impacts on the road network. The living conditions of neighbouring occupiers would also not be unacceptably affected as result of the proposed parking provision.
28. Moreover, I note that the Council's assessment is based on census data from 2011 and the proposal would not exceed London Plan maximum car parking requirements.
29. Given the above, the submitted unilateral undertaking would not meet the test of necessity set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
30. Consequently, the proposal would provide adequate parking provision. Therefore, it would not conflict with London Plan Policies T6 and T6.1, CS Core Policy CS1 of the Harrow Core Strategy (2012), and DMP Policies DM42 and DM43 which relate to parking standards and resist over-development of sites with low public transport accessibility rating and that would create significant on-street parking problems.

#### *Flood risk*

31. Although the majority of the site lies in flood zone 1, the rear of the site is identified as being within fluvial flood zone 3A and 3B. Accordingly, the site is at high risk of flooding. Further explanation of the flood level calculations were provided with the appeal that determine the surface water flood level as 55.7mAOD. When applying the councils recommended freeboard allowance of 300mm, the proposal would require the Finished Floor Level of sleeping accommodation to be set at 56.0mAOD or above. I see no reason why Finished Floor levels could not be secured via a suitably worded condition.
32. Clarification of Floodplain Compensatory Storage was provided with the appeal which refines the surface water floodplain compensation. The proposed compensation strategy includes lowering the play area and courtyard to 55.4mAOD which would provide a volume of 67.5m<sup>3</sup>. While this is lower than the storage volume proposed by the Council, from the evidence before me, I have no reason to conclude that the proposal would exacerbate the risk of flooding within the site or increase the risk and consequences of flooding elsewhere. As such, I consider that flood risk could be adequately mitigated by suitably worded conditions.
33. Consequently, the proposal would not adversely affect flood risk. Therefore, it would not conflict with London Plan Policies SI 12 and SI 13, CS Policy CS1, DMP Policies DM9 and DM10 which together seek sustainable drainage and development that minimise and mitigate flood risk.

### **Other Matters**

34. The existing building comprises 7 flats. Accordingly, the proposal would contribute 28 additional dwellings to the local housing supply. Future occupiers would provide social and economic benefits through contribution to the local community and there would be temporary economic benefits during the construction phase. I also note the pre-application discussion between the Appellant and Council. However, given the harm identified above, these matters have not altered my overall decision.
35. I note the consultation version of the Framework and Written Ministerial Statement (WMS) issued in July 2024. The consultation version of the Framework is not adopted policy and is subject to change. In addition, I recognise that the WMS sets out proposals to support more brownfield development. Given the harm identified above, these matters have not altered my overall decision, and parties have not been prejudiced in this respect.

### **Conclusion**

36. For the reasons given above, the proposal would conflict with the development plan as a whole and in the absence of material considerations to indicate otherwise, the appeal is dismissed.

*R Sabu*

INSPECTOR