



Appeal Decision

Site visit made on 28 August 2024

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2024

Appeal Ref: APP/N5090/W/24/3340304

546 - 548 Finchley Road, London NW11 8DD.

- 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 BY Developments against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/3634/FUL.
 - The development proposed is demolition of the existing properties and the erection of a two storey building over basement, with rooms in the roof space to provide 9no. self-contained residential units, together with an outbuilding (gym) in the rear garden. Provision of 10no. parking spaces and 18no. cycle parking spaces at basement level. Associated landscaping and refuse & recycling facilities.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address in the banner heading is taken from the appeal form as it more accurately represents the site's red line boundary.
3. The properties at 546 and 548 Finchley Road have extensive planning histories. Of relevance here, permission was granted at No 546 for demolition of the existing building and the erection of a two-storey building with eight self-contained flats (20/2874/FUL). Additionally, permission was granted at No 548 for conversion of the existing dwelling into three self-contained flats including a single storey rear extension and roof extension (23/0786/FUL).
4. Following determination of the application subject to this appeal, permission was granted for demolition of Nos 546 and 548 and the erection of a two storey building with a basement and rooms in the roof space to provide nine residential units (23/5503/FUL), hereafter referred to as the approved scheme.
5. The Council has referred to the emerging Local Plan, but has not provided the document to me. I have therefore determined this appeal having regard to the adopted development plan.

Main Issues

6. The main issues in this appeal are the effect of the proposed development on:
 - a) the character and appearance of the area;
 - b) protected species; and
 - c) flood risk.

Reasons

a) Character and appearance

7. Located on Fernside adjacent to Finchley Road, Nos 546 and 548 are two-storey detached houses. Fernside comprises detached and semi-detached residential properties, partially screened from Finchley Road by vegetation. Beyond No 546, there is a large electricity sub-station set back from the road. The surrounding streetscene along Finchley Road includes semi-detached and detached houses, larger purpose-built flatted blocks, and converted properties.
8. The proposed development would comprise the demolition of the existing properties at Nos 546 and 548 and the construction of a two-storey building with basement and rooms in the roofspace to provide nine flats.
9. The existing buildings at Nos 546 and 548 differ in size, with No 546 having a larger footprint than No 548. The proposed development would have two main components replicating the existing properties to an extent, but would be linked. The larger component of the proposed development would be located at No 546 and would be deeper than the existing building at No 546. Though the approved scheme's rear projection would also be deeper than the existing building at No 546, it would not be as deep as that proposed in the appeal.
10. This proposed rear projection would be excessively deep and would give rise to a long, bulky flank elevation, which would be highly visible from the streetscene beyond the sub-station. It would not be hidden by trees or the sub-station. This would be dominant and obtrusive. Furthermore, the siting of the larger component further from 550 Finchley Road and neighbours along Fernside would not serve to reduce its likely impact or contribute to its 'marriage value' and would not be in keeping with Fernside's pattern of development.
11. The excessive bulk of the larger component would be exacerbated further by the flank elevation's poor articulation. The dull uniformity of this flank elevation would render it monolithic and disproportionate with its context when considering its proposed fenestration, roof bulk and scale in the round and when compared to the approved scheme.
12. The proposed hipped and crown roof would also be poorly articulated and broken up across the different building components and would appear excessively large and dominant within the streetscene. The proposed roof's dominance would be worsened by the poorly expressed dormer windows within the roofscape. It would also have an eaves height which would not be consistent with the rhythm of falling eaves heights along Fernside. The proposed roof would be significantly poorer than that of the approved scheme.
13. Indeed, the fenestration on the front and flank elevations and within the roof appears clumsy and would add to the proposed development's apparent bulk by reason of its design, size and siting, particularly when compared to the approved scheme. Although it is not unreasonable for the fenestration of a modern purpose-built development to differ from its older neighbour at No 550, this would not render the fenestration adequate.
14. The Council has also pointed to the size of the proposed outbuilding and lightwell and external staircase, the subdivision of the rear garden, the siting and size of the refuse store and the vehicular access ramp, which it claims

would further indicate the excessive nature of the proposed development. I note, however, that the majority of these features have been subject to approval as part of the approved scheme, albeit slightly amended in size and position to reduce harm.

15. Cumulatively, the proposed development's poor composition in terms of its massing, design and scale, would result in an incongruous and overly dominant building that would fail to respect the character and appearance of the area.
16. I walked along Finchley Road and adjoining roads and saw flatted developments of varying sizes, designs and ages of development, including Annabel Court and 847 - 851 Finchley Road. However, these are some distance from the site and it is not clear that any are comparable.
17. In conclusion, the proposed development would have a harmful effect on the character and appearance of the area, contrary to Policy D3 of the London Plan (2021) (LP), Policies CS NPPF, CS1 and CS5 of Barnet's Local Plan Core Strategy (2012), Policy DM01 of Barnet's Local Plan Development Management Policies (2012) (DMP) and the Residential Design Guidance Supplementary Planning Document (2016). These policies and guidance deal with sustainable development, optimising site capacity through a design-led approach, and having regard to protecting and enhancing Barnet's character and appearance.

b) Protected species

18. The Council's second reason for refusal relates to the level of information submitted in respect of the effect of the proposed development on protected species, in particular, the lack of a detailed bat mitigation strategy.
19. A Preliminary Ecological Appraisal (5 April 2023) and a Bat Emergence Survey Report (26 October 2023) were submitted with the application. The surveys found roosts, evidence of soprano pipistrelle and common pipistrelle bats commuting and foraging in the gardens, and noctule bats were heard. A Bat Mitigation Plan (Ref 1019 v3) was submitted with the appeal. The Council has confirmed its similarity to the bat mitigation for the approved scheme.
20. The presence of bat roosts would require a licence to avoid an offence under the Conservation of Species and Habitats Regulations 2010. There is no requirement for a licence to be provided prior to grant of planning permission, but the decision-maker must be assured that there would be a reasonable prospect of the licence being granted by Natural England.
21. The provision of housing is in the public interest and there is no alternative but to demolish the buildings with a licensed bat worker overseeing any works affecting bats. Other mitigation measures during and after construction would reduce risk to bats, including provision of a pole-mounted roosting box prior to works, landscaping works to benefit biodiversity, and provision of integrated bat boxes. These measures should maintain the species at a favourable conservation status. Based on these considerations, there is a reasonable prospect of a licence being granted. Consequently, the proposed development would not have an unacceptable effect on protected species.
22. I conclude that the proposed development would not have a harmful effect on protected species and would comply with the Natural Environment and Rural Communities Act 2006, LP Policy G6, and DMP Policies DM01 and DM16, which seek to safeguard protected species and mitigate impacts on biodiversity.

c) Flood risk

23. The Council's third reason for refusal relates to the level of information provided with regard to flood risk, with particular regard to surface water flooding. Notwithstanding that the site is located in Flood Zone 1, the Environment Agency's Long Term Flood Risk map indicates significant risk of surface water flooding, with a major overland flow route passing through the site. Additionally, a culverted watercourse runs beneath the site and it was uncertain at the time of the application as to whether there would be impacts on the watercourse's flow, with consequential effects elsewhere.
24. The appellant submitted a Flood Risk Assessment and SuDS Strategy Report (FRA20183.1 dated 15 January 2024) with the appeal. The Council has confirmed that the findings and mitigation measures within the Flood Risk Assessment and SuDS Strategy Report reflect those detailed in the Flood Risk Assessment for the approved scheme. The Lead Local Flood Authority recommended the approval of the approved scheme on flood risk grounds dependent upon Thames Water's confirmation on the proposed point of connection and discharge rate prior to commencement of construction. Accordingly, it appears that the Council no longer promotes the third reason for refusal and I have little reason to disagree, given the similarities between the flood mitigation for the proposed development and the approved scheme.
25. In concluding on this main issue, I find that the proposed development would not have a harmful effect on flood risk. It would therefore be compliant with Chapter 14 of the National Planning Policy Framework, LP Policy SI 12, and DMP Policy DM04, insofar as they deal with flood risk.

Other Matters

26. Local residents have raised various concerns. I have not dealt with these matters further as I am dismissing this appeal.

Balance and Conclusion

27. The appellant has provided information on the approved scheme, which represents a fallback position as it could be implemented, subject to discharge of conditions. As such, there is a real prospect that the approved scheme could take place and it therefore has significant weight. However, the proposed development would give rise to substantial harm to the character and appearance of the area. The approved scheme would not create such harm and would not therefore justify allowing the proposed development.
28. Notwithstanding the absence of harm in respect of bat mitigation and flood risk, the harm I have found with regard to character and appearance leads me to conclude that this appeal should be dismissed.
29. For the reasons set out above, the development conflicts with the development plan when read as a whole. There are no material considerations which would outweigh the identified harm, including the fallback position and the conflict with the development plan. Having had regard to all other matters raised, the appeal should be dismissed.

Joanna Gilbert

INSPECTOR