



Appeal Decision

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2024

Appeal Ref: APP/N5090/W/24/3342248

105 West Hendon Broadway, Colindale, London NW9 7BN

- 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 Dartland Properties Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 21/4352/FUL.
 - The development proposed is described as 'Planning Application for the demolition of the existing building on site and construction of a building (with additional basement level) comprising residential homes (Class C3) with associated car and cycle parking, disabled parking bays and landscaping.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice includes a revised description of development for a '5-storey building plus rooftop plant rooms comprising of 35no. residential units (Class C3) with basement level car and cycle parking. Associated hard and soft landscaping, amenity space and refuse storage'. This together with the plans listed on the decision notice gives clarity on the proposed development that was before the Council when it made its decision. The appellant has also confirmed that they agree with this revised description. I have assessed the appeal on this basis.
3. Prior to the hearing a Unilateral Undertaking (UU) dated 1 July 2024 was provided by the appellant and the Council provided a 'CIL Compliance Statement' in respect of the obligations included. The Council confirmed at the hearing that the UU addresses reasons for refusal 3 – 8 on its decision notice and that it was no longer contesting the appeal in respect of those particular reasons. I have therefore defined the main issues on the remaining areas of dispute, and this reflects the discussions at the hearing.

Main Issues

4. The main issues are the effect of the proposed development on:
 - (i) the character and appearance of the area; and
 - (ii) the living conditions of occupiers of existing dwellings on Stuart Avenue, with particular regard to outlook.

Reasons

Character and appearance

5. West Hendon Broadway is a main arterial route which is characterised by a mix of commercial and residential uses. The appeal site (No 105) is occupied by a two-storey commercial unit with floor to ceiling glazing over both levels on its front elevation. A single storey MOT centre adjoins the site to one side at No 103. Between the other side of the site and Cool Oak Lane, there are two apartment buildings of more considerable scale with the immediate neighbour at 107 West Hendon Broadway (No 107) some six storeys in height. There is a predominance of brickwork to the facades of these residential buildings albeit they also incorporate grey cladding.
6. Opposite the site, on the other side of West Hendon Broadway, is a row of residential terraces which occupy an elevated position relative to the highway. To the rear of the site the two-storey dwellings on Stuart Avenue reflect a more modest residential scale. The greater scale of buildings on West Hendon Broadway form the backdrop to this street. Overall, while there is variety in the scale and appearance of buildings in the area, the appeal site evidently sits amongst West Hendon Broadway's larger scale commercial and residential buildings.
7. At the hearing, the Council confirmed that it had no objection in principle to a five-storey building in character and appearance terms, but it considered that the lift overruns would have the appearance of a sixth storey. Together with the window sizes incorporated in the design and the resultant solid to void ratio, the Council suggested that this would give the building a more dominant appearance when compared to the scheme considered under the 2019 appeal¹ which did not raise character and appearance concerns.
8. The proposed building's front elevation would consist of three distinct five-storey blocks faced in brickwork. The drawings demonstrate that the top of the 'lift overruns' would sit well below the roofline of the sixth storey at No 107 which spans most of the width of that neighbouring building. Due to their recessed position, narrow form compared to the brick sections of the building, and the pale tone of their aluminium external fabric, the 'lift overruns' would not give the building undue dominance on West Hendon Broadway.
9. Furthermore, the transition between the proposed building and the lower building at No 103 would not be dissimilar to that which presently exists between No 107 and the existing building at No 105. As a result, the scale of the proposed building would not appear incongruous within this section of West Hendon Broadway.
10. The delineation provided by the recessed sections and the consistent pattern of windows with deep set reveals would also ensure that the front elevation of the building would be visually distinctive. The entrance canopies and planting would provide further interest at street level. Consequently, the building's overall aesthetic would sit comfortably within the emerging context of apartment schemes to this side of the road. The building would also not appear out of context in the background of the residential streets which sit behind this side of West Hendon Broadway, which is already influenced by the greater

¹ Appeal Ref APP/N5090/W/18/3205752

scale of buildings on West Hendon Broadway. Indeed, the Council has also not set out any detailed written or verbal concerns in that respect.

11. I conclude, the proposed development would have an acceptable effect on the character and appearance of the area. In that regard, it would comply with the requirements to respond to local context, distinctiveness and character and for high quality design in Policies D3 (Optimising site capacity through the design-led approach) of the London Plan (2021), CS1 (Barnet's place shaping strategy – protection, enhancement and consolidated growth – the Three Strands Approach) and CS5 (Protecting and enhancing Barnet's character to create high quality places) of Barnet's Local Plan (Core Strategy) (2012) (CS) and DM01 (Protecting Barnet's character and amenity) of Barnet's Local Plan (Development Management Policies) (2012) (DMP).
12. For the same reasons the proposed development would also accord with the guidance relating to character and appearance in the Barnet Local Plan Supplementary Planning Document: Residential Design Guidance (2016).

Living conditions of occupiers of existing dwellings on Stuart Avenue

13. The rear boundary of the appeal site adjoins the rear gardens of 24, 26 and 28 Stuart Avenue (Nos 24, 26 and 28). The gardens serving these dwellings are splayed such that they are widest next to the boundary with the appeal site. While the rear gardens are not small, the boundary wall and existing building at No 105 undoubtedly combine to form a substantial feature seen from windows and gardens to the rear of these properties.
14. Notwithstanding the above, on my post hearing site visit, I stood in the rear garden of No 26. I saw that the current rear façade of No 105 has fenestration at ground floor level only. The overall height of the building and the soft grey tones of its roof covering allow for good appreciation of, and assimilation with, the sky above particularly when seen from within the immediate vicinity of the rear elevation at No 26. Consequently, the existing building at No 105 has a muted presence and provides a suitably spacious aspect from the rear windows and more immediate garden areas to the rear of the dwellings at Nos 24, 26 and 28.
15. In contrast, while the proposed development would move built form away from the common boundary with properties on Stuart Avenue, at five-storeys it would be considerably greater in scale. Other than the lift overruns, the main five-storey roofline would be largely consistent, substantively spanning the full width of the appeal site at this height.
16. The proposed building would be set further away from the boundary with gardens on Stuart Avenue than the building that was dismissed under the 2019 appeal. However, in terms of the initial four-storeys, the increase in distance would not be substantial, particularly in the context of a building of such considerable scale and width. This is particularly the case given the recesses provided on these floors would be interspersed by a mix of balcony railings and solid balustrades which would somewhat diminish the extent to which the mass of these floors would be broken up.
17. Furthermore, as depicted in 'Section A-A' (Drawing No P-200 Rev D) and the floor plans provided, the deepest, more substantial parts of the fifth storey would only be set back a short distance from the floors below. Those parts of

the fifth storey would also be faced in the same yellow stock brick and this would accentuate the overall height of the proposed building.

18. No 105 transcends the rear boundary of No 26. On my site visit, I noted a ground floor rear addition at No 26 which extends towards the appeal site. As such its ground floor rear windows sit closer to and provide a more direct line of sight of the appeal site than other neighbouring properties on Stuart Avenue. I saw that these windows serve a kitchen, dining and living room area. It also has a patio area just to the rear of the extension.
19. The drawings and indicative interface distances provided by the appellant notably omit the rear extension and patio area at No 26. In the case of the second and third floors of the proposed building, they show a measurement of 30 metres (m) taken between a recessed section of those floors and the first floor of No 26. The substantial mass of the block, including the nearest sections of the fifth storey would in fact be closer to the rear extension and patio area at No 26 than the distances depicted.
20. At the hearing the appellants suggested that even if the rear extension at No 26 was factored in, a satisfactory relationship in terms of outlook would be achieved. However, the appellant has not provided greater detail either in written or verbal evidence on this relationship for example with more accurate measurements or drawings showing the precise proximity and relative levels between the nearest parts of the proposal and the ground floor rear extension and patio at No 26. In any case, from my own observations on site, the considerable scale of the proposed building together with its parallel alignment across the vista from the ground floor windows and patio area serving No 26 would feel uncomfortably close and overbearing.
21. In addition, and in contrast to the existing situation, due to the relative proximity and direct line of sight, the proposed building's five-storey rear elevation would also be intrusive to outlook when appreciated from the upper floor rear windows of No 26. As the building would partially extend across the rear boundary of No 24 and due to the angled relationship of the dwelling and garden at No 28, the five-storey building would have an imposing presence when appreciated from those properties, albeit the effects on outlook would not be as profound as those identified at No 26.
22. Overall, the proposed development would have comparable effects to those identified in the 2019 appeal decision. More specifically the building's rear elevation would be significant and visible for occupiers of Stuart Avenue from both home and garden.
23. The appellant's 'Design Statement in Relation to the Massing of the Proposed Building' (Design Statement) seeks to relate other factors into an assessment of outlook and I also heard verbal evidence in this regard. I understand that the proposed development would not contravene Barnet's Residential Design Guidance and Sustainable Design and Construction Supplementary Planning Documents (both 2016) in terms of recommended privacy distances. However, meeting guidance on privacy separation distances is distinct from an assessment of outlook.
24. Moreover, the diagrams provided in the appellant's Design Statement and separate statement of case do not show the relationship between the identified factors on the ground at No 26 nor do they accurately depict the precise profile

of the building. In any case, even if the sky would be discernible from the ground floor rear facing windows and patio serving No 26, for the reasons already set out, the proposed building would have an overriding dominance. Furthermore, while I acknowledge that soft planting could be provided between the proposed building and the boundary with properties on Stuart Avenue, this would take time to establish and, in any case, would be unlikely to fully screen the development, or reduce the dominance of the upper parts of the building.

25. There was a discussion at the hearing in respect of whether adequate or high-quality outlook was required, having regard to the relevant parts of the development plan and the National Planning Policy Framework (the Framework). However, the harm to outlook that I have identified indicates that neither an adequate or high standard of amenity would be provided. This is particularly so in the case of No 26 where there would be a significant degradation of outlook from existing levels.
26. At the hearing the appellant drew my attention to the scale and mass of the building at No 107. However, the layout of that building and its relationship with neighbouring dwellings in terms of distances and relative alignment is not the same as the site-specific relationships at No 105 including the more acute effects that would result to the quality of outlook for occupiers of No 26.
27. I understand that a two-storey extension to the existing building at No 105 was granted planning permission in 2015². However, as far as I am aware that permission is no longer extant. In any case, it is distinct from the five-storey building before me which for the reasons described would be unacceptable.
28. I conclude, the proposed development would result in significant harm to the living conditions of occupiers of existing dwellings on Stuart Avenue, with particular regard to outlook. In that regard it would conflict with the requirements for sustainable development, to protect and enhance the gardens of residential properties and to allow for adequate outlook for adjoining and potential occupiers and users in Policies CSNPPF (National Planning Policy Framework – Presumption in favour of sustainable development), CS1 (Barnet’s place shaping strategy – protection, enhancement and consolidated growth – the Three Strands Approach) and CS5 (Protecting and enhancing Barnet’s character to create high quality places) of the CS and DM01 (Protecting Barnet’s character and amenity) of the DMP.
29. For the reasons set out, the proposal would also not meet the requirements for a high standard of amenity for existing and future users at paragraph 135 of the Framework.
30. The Council’s reason for refusal relating to this main issue also refers to Policy DM02 (Development standards) of the DMP. This policy refers to a broad range of documents and the Council has not explained in its verbal or written appeal submissions the specific reason it considers conflict would arise. In any case, this does not diminish the conflict identified with other policies of the development plan and the Framework.

Other Matters

31. The Council is satisfied that the UU provided by the appellant would deliver the planning obligations required in association with the development. Having

² LPA Ref H/02159/13

regard to the 'CIL Compliance Statement' provided by the Council, I have no reason to conclude differently in terms of the policy justification for these contributions. I acknowledge that the proposed development would deliver 35 dwellings in a sustainable location, albeit no case has been put to me that the Council is not meeting its housing requirements. There is also no dispute that all the technical housing standards would be met for occupiers of the proposed development. Even so, these matters do not justify the harm identified under the main issue and the conflict with the development plan.

Conclusion

32. I have concluded that the proposal would have an acceptable effect on the character and appearance of the area. However, the proposed development would result in significant harm to the living conditions of occupiers of existing dwellings on Stuart Avenue, with particular regard to outlook. In that regard the proposal would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

33. Therefore, for the reasons given above, the appeal should be dismissed.

M Russell

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Jan Donovan – Director at Rolfe Judd Planning

Ben Church – Senior Planner at Rolfe Judd Planning

Christine Hereward – Solicitor at Hereward & Co Solicitors

Robert O'Hara – Architect at ROH Architects

David Azouri

FOR THE LOCAL PLANNING AUTHORITY:

Allissa Fawcett – Principal Planning Officer

Edith Leung – Senior Planning Officer

INTERESTED PARTIES:

Mr Salvatore Cala – Current tenant of the appeal site

Mr Valdet Arifi

DOCUMENTS SUBMITTED AFTER THE HEARING:

Certified copy of completed Unilateral Undertaking dated 1 July 2024.