



Appeal Decision

Site visit made on 21 October 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2024

Appeal Ref: APP/N5090/W/24/3345688

138 High Road, London N2 9ED

- 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 Tony Forgione against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/4531/FUL.
 - The development proposed is for a Partial conversion of the existing building into 3no. self-contained flats including first and second floor rear extension. Associated refuse/recycling/cycle storage [AMENDED DESCRIPTION AND DRAWINGS].
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Tony Forgione against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development has been taken from the decision notice as this more accurately describes the proposal. I note that this has also been used in the appeal form.
4. The Council has an emerging Local Plan and they have stated that following examination, Main Modifications to the emerging Local Plan went out to public consultation. As I have not been provided with details of which policies are subject to any unresolved objections, I afford the emerging Local Plan only limited weight.

Main Issues

5. The main issues in the appeal are:
 - whether the proposal would provide satisfactory parking arrangements and the effect on highway and pedestrian safety;
 - whether the proposed development would provide acceptable living conditions for future occupants with particular regard to outside amenity space;
 - the effect of the proposed development on the living conditions of neighbouring occupiers at 136A and 136B, with particular regard to outlook and light; and

- the effect of the proposed development on the character and appearance of the host property and area.

Reasons

Parking and highway safety

6. The Council have indicated that the proposal would require up to two additional parking spaces over the existing situation. Whilst the site lies within a Public Transport Accessibility Level (PTAL) 3 area and is a short walk from East Finchley underground station and close to bus services, as no off-street parking is proposed, it could result in vehicle displacement to surrounding streets for vehicle users. The road outside the appeal site is subject to short stay parking restrictions and Leicester Road close to the appeal site is within a Controlled Parking Zone (CPZ). Limited information has been provided to indicate that the surrounding streets could accommodate an increase in parking demand. At the time of my visit, whilst only a snapshot in time, the surrounding streets had limited parking availability.
7. The appellant has indicated that they would be willing to enter into a legal agreement to remove the right of occupants of the properties to apply for a parking permit. This is an approach which the Council have also suggested to overcome the shortfall in parking spaces. However, no such agreement is before me.
8. To ensure that the development does not contribute to parking congestion, I am satisfied that a planning obligation is necessary. Without a planning obligation, I consider that the development would lead to unacceptable effects on parking and congestion in the area, such as poor parking and inhibiting the free flow of traffic as vehicle users locate a parking space, which would be detrimental to highway and pedestrian safety.
9. Accordingly, in the absence of a legal agreement, I conclude on this issue that the proposal would not provide satisfactory parking arrangements and would therefore have an adverse effect on highway and pedestrian safety. Consequently, it would conflict with Policy CS9 of the Barnet Local Plan Core Strategy (2012) (CS) and Policy DM17 of the Barnet Local Plan Development Management Policies (2012) (DMP). Collectively these policies seek to provide, safe, effective and efficient travel including promoting cycling and walking, as well as requiring a legal agreement to restrict future occupiers from obtaining on street parking permits. The proposal would also fail to comply with Policies T4, T6 and T6.1 of the London Plan (2021) (LP) which taken together, seek to reduce the impact of new development on car parking.

Living conditions – future occupants

10. The Barnet Supplementary Planning Document: Sustainable Design and Construction (2016) (SDC) outlines standards for the provision of external amenity space, requiring 5 square metres of external space per habitable room for flats. While the SDC is guidance only, Policy DM02 of the DMP requires development, where appropriate, to comply with the Supplementary Planning Documents and references the SDC in relation to the provision of outdoor amenity space. I therefore attach significant weight to the standards it requires.

11. Policy DM01 of the DMP is clear that development should retain outdoor amenity space, and Policy D6 of the LP similarly emphasises the importance of private, outside space.
12. The Residential Design Guidance Supplementary Planning Document (2016) (RDG) requires that sufficient functional amenity space should be provided for all new houses and flats wherever possible. In this case it is not possible for flats 2 and 3. The SDC also recognises that it may not always be possible to provide amenity space to the standards outlined in flats. However, it goes on to say that where the standards cannot be met and an innovative design solution is not possible, a Planning Obligation will be sought. This would be for a financial contribution to improve the quality of the nearest appropriate public open space. There is no obligation before me.
13. I acknowledge that external amenity space would be available for future occupiers of flat 1, however none would be provided for future occupiers of flats 2 and 3. I note the availability of nearby open space close to the appeal site including a children's playground and Cherry Tree woods. However, the use of such space is not the same as private outdoor space which the development plan advocates and could be used to support the needs of future occupiers such as sitting out, hanging washing or storing and placing residential paraphernalia. In this regard, the absence of such space would unduly impact the living conditions of future occupiers, reducing their enjoyment of the accommodation provided.
14. The appellant has referred to a lack of private amenity space at nearby properties which have been granted planning permission. I do not have the full details of the examples referenced so I cannot be sure of the full circumstances which lead to their approval or if Planning Obligations were sought. I therefore find that they do not provide adequate justification to allow the appeal, which I have determined on its own individual merits.
15. For the reasons above, I conclude on this issue that the proposal would not provide acceptable living conditions for future occupants. Consequently, it would conflict with Policy D3 of the LP. This, amongst other matters, seeks development which provides appropriate amenity and comfortable outdoor environments. It would also conflict with Policy D6 of the LP, Policies DM01 and DM02 of the DMP, the SDC and RDG all of which seek outdoor amenity space.

Living conditions – neighbouring occupiers

16. The blank side elevation of the first and second floor proposed rear extension would face side kitchen windows on an existing rear extension at No 136A and 136B High Road. Given the limited setback of the proposed extension from the existing extension at No 136A and 136B, the proposal, due to its proximity and height, would have an adverse effect on the outlook from and light entering the kitchens of these properties. However, based upon the representation received from the occupier of No 136A and the original officer report, it appears that the internal configuration of the two properties differ, with No 136A having an additional larger kitchen window at the rear. As the primary outlook and light source would come from the larger window on the rear elevation, which would be unaffected by the proposal, I consider the proposed extension would not detrimentally affect the living conditions of the occupiers of this property to a harmful degree. I note the Councils statement of case suggests an alternative

floor layout to No 136A and No 136B to that described above, based on an extant permission. I have little information before me on this permission and whether the scheme has been implemented. As such I have afforded this limited weight. Furthermore, Figure 3 of the statement of case would seem to suggest that the extant scheme as a whole has not been implemented.

17. Turning to 136B High Road, the side kitchen window appears to be the only window to this room and consequently the closeness of the proposed extension would have an unduly harmful effect on the outlook from and light entering this room. There has been disagreement between the parties as to whether the kitchen is a habitable room and thus should not be afforded the same levels of light, outlook and privacy as bedrooms and living rooms. I note the General Permitted Development Order does not define a kitchen as a habitable room, however the SDC does define a kitchen as a habitable room when larger than 13 square metres. No substantive evidence has been submitted to indicate that the kitchen is smaller than this and without evidence to the contrary I have treated the kitchen as a habitable room. In any case it would still be a room that future occupiers would spend time in preparing meals. With very limited outlook and natural light this would not provide for pleasant living conditions for future occupants.
18. The appellant contends that the windows on the side elevation of No 136 have been installed without regard to future development of the appeal property. While I recognise these windows are a constraint, the development must nevertheless have regard to the existing built environment.
19. On this issue, whilst I find that the proposal would not have an adverse effect on the living conditions of neighbouring occupiers at No 136A, I conclude that the proposal would have an adverse effect on the living conditions of the occupiers of No 136B in relation to outlook and light. Consequently, it would conflict with Policy D6 of the LP which, amongst other matters, requires development to provide sufficient daylight and sunlight to surrounding properties. It would also conflict with Policy DM01 of the DMP which requires adequate daylight, sunlight and outlook for neighbouring properties and the RDG which has similar aims.

Character and appearance

20. The appeal site is located on a mixed commercial and residential street where properties typically comprise of retail and business premises on the ground floor, with flats above. Many of the properties in the vicinity of the appeal site have undergone a variety of extensions and modifications at the rear. The appeal property is currently vacant. However, the ground floor was previously a restaurant with residential accommodation on the first and second floor. The character and appearance of the area is therefore mixed.
21. The proposal would create a flat on the ground floor and two additional flats on the first and second floors. While ground floor flats may not be prevalent in the area, given that a retail unit, albeit small, would be retained on the ground floor facing High Street, the proposal would still reflect the prevailing character of the road.
22. Despite the proposed first and second floor storeys of the rear extensions being visible from Leicester Road, they would be set in from the boundary with No 136, thus assisting in mitigating the difference in eaves height between the

proposal and No 136. It would have a hipped roof and ridge height set significantly lower than the host dwelling. Together these would successfully assist in reducing the bulk of the development and it would appear as a subservient addition. It would be marginally set back from the rear elevation of a similar extension at the neighbouring property at No 136 and would be of a similar scale. The use of materials and fenestration that would reflect the existing property would further assist in ensuring the proposal would not appear out of keeping in the context of its surroundings.

23. Whilst the ground floor single storey extension would extend into a large proportion of the existing outdoor amenity space, there would still be enough left for future occupiers of the ground floor flat. The amount of built form would be reflective of surrounding properties that front High Road and thus, whilst the depths of the rear extensions would be contrary to the guidance set out in the RDG, I find that in the site specific circumstances the technical breach of the guidance on character grounds would be acceptable.
24. For the above reasons, the proposed development would not result in overdevelopment of the site and there would be no harm to the character and appearance of the host property or area. It would therefore accord with Policies CS1 and CS5 of the CS, Policy DM01 of the DMP, Policies D3 of the LP, guidance within the RDG and SDC. Collectively, these seek to ensure, amongst other things, that development is in accordance with Barnet's place shaping strategy and that development protects, enhances and is sympathetic to local character. It would also accord with the aims of the Framework in so far as it seeks development that reflects the character of the area.

Planning Balance and Conclusion

25. The proposal would contribute to the housing stock and would make use of the space above existing premises, an approach advocated by the Framework. This weighs in favour of the scheme. However, the Framework also seeks a high standard of amenity for existing and future users. While the proposal would not harm the character and appearance of the host property and area, it would result in unsatisfactory parking arrangements and harm to the living conditions of neighbouring and future occupiers.
26. Accordingly, the proposed development 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. The appeal is therefore dismissed.

T Bennett

INSPECTOR