



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: 13th November 2024

Appeal Ref: APP/N5090/W/24/3345138

47 Algernon Road, London NW4 3SY

- 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 Ben Sharer c/o Landview Properties against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/2287/FUL.
 - The development proposed is for residential development of 8 new homes comprising 2 detached houses, 4 semi-detached houses and 2 flats with associated private amenity, cycle and refuse storage and landscaping across the site.
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Decision

1. The appeal is allowed and planning permission is granted for residential development of 8 new homes comprising 2 detached houses, 4 semi-detached houses and 2 flats with associated private amenity, cycle and refuse storage and landscaping across the site at 47 Algernon Road, London NW4 3SY in accordance with the terms of the application, Ref 23/2287/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The postcode used in the banner heading and formal decision above has been taken from the decision notice, this has also been used in the appeal form as this represents the correct postcode.
3. The Council has referred to an emerging Local Plan at Examination. I have not been provided with information on the status of the emerging Local Plan nor has a copy of the emerging Local Plan been supplied and nor has any draft policies been referenced in the decision notice or officer report. I have therefore given this very limited weight and determined this appeal with reference to policies from the existing adopted development plan.

Main Issues

4. The main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the area, and
 - whether the proposed development would make adequate arrangements for parking.

Reasons

Character and appearance

5. The appeal site is a triangular shaped vacant parcel of land. The site is bounded by the rear gardens of terraced and semi-detached part two and three storey residential properties that front Station Road to the north and Montagu Road to the south. To the north east of the appeal site is a post-war flatted development of five and six storeys.
6. Surrounding dwellings predominantly use a mix of brick and render with pitched roofs, but are of different ages and styles with examples of vertical and horizontal fenestration arrangement and asymmetric roof forms. The varying age, size and design of dwellings in the vicinity of the appeal site contributes positively to the varied character and appearance of the area.
7. While the surrounding residential development is predominantly linear in layout, the scheme would not be reflective of this. I note that originally the scheme proposed a terraced layout, however through extensive pre-application discussions with the Council this was amended. Submitted information detailing the historical evolution of the site shows that the layout of the site has always differed to the surrounding context. The self-contained nature of the site, lack of visibility within the street scene and varying form of surrounding development means that this site is able to accommodate dwellings of a modern design and layout that does not directly replicate the character of the surrounding area.
8. The size and scale of the proposed dwellings respond positively to the sloping topography and environs of the site, with the taller three storey building containing the proposed flats sited closer to the existing flatted development to the north east. Given the surrounding height of built form, the overall scale of properties would be in keeping with those in the wider area and would not appear incongruous in its surroundings.
9. The siting and size of the dwellings allows for the provision of adequate private rear amenity space of a size similar to other gardens in the vicinity, with landscaped areas to the front. There is adequate spacing between the different blocks of development. Taken as a whole, the layout would not appear cramped or represent an overly intensive development, with the density of development appropriate to the size and constraints of the site.
10. In terms of design and appearance, the use of gable pitched roofs and brick would reflect surrounding properties. Whilst some of the roof forms would be asymmetrical and contain flat sections, this would be a modern interpretation of some roof forms seen in the vicinity. Although the use of contemporary materials including aluminium windows and zinc cladding are not prevalent in the surrounding area, they would create a modern high quality design. The muted colour palette of the materials would ensure that the proposal does not appear visually jarring or intrusive for a contemporary development in a self-contained site and gives the overall scheme a cohesive appearance, including house 6.
11. The side elevations of the proposed dwellings would be particularly visible from the rear of properties which border the appeal site. Side elevations of residential dwellings generally have more limited detailing. However, the

variation in building lines, use of set-backs, gaps between dwellings, recessed and projecting brickwork, high level vertical and horizontal fenestration and the pitched roofs successfully assists in reducing the bulk of the proposed development. It also assists in breaking up the massing of the brickwork, providing visual interest to the appearance of the scheme, whilst ensuring no adverse harm to living conditions of neighbouring occupiers.

12. Whilst two of the proposed dwellings have internally facing blank façades, both of these are side elevations, and the relationship would not be unusual in a residential context. Indeed, similar relationships as seen between house 5 and house 6, can be seen in the surrounding area, for example at 42-44 Algernon Road. I do not consider these blank facades to adversely affect the character of the proposed development.
13. For the reasons above, I conclude that the siting, size, scale and design of the proposal would not harm the character and appearance of the area. The proposal is therefore in accordance with Policy D3 of the London Plan (2021), Policies CS1 and CS5 of the Barnet Local Plan Core Strategy (2012) (CS) and Policy DM01 of the Barnet Local Plan Development Management Policies (2012) (DMP) and the supporting information in the Supplementary Planning Document: Residential Design Guidance (2016). These seek to ensure, amongst other matters, that development conserves and enhances the distinctiveness of Barnet and respects local context and character.

Parking

14. The proposed development would not provide any parking provision except for allowing access for delivery vehicles. This could result in future occupiers parking on surrounding streets which are already heavily parked and within a controlled parking zone, reducing the capacity for resident permit parking.
15. The appellant accepts the Council's position on this matter whereby a legal agreement is sought to restrict access for future occupiers from applying for on-street parking permits and a travel plan condition. I will come back to the travel plan condition later in the decision letter.
16. At the time of the Council's decision, a legal agreement had not been submitted. However, during the appeal process the appellant submitted a completed Unilateral Undertaking (UU) signed and dated 20 September 2024. The UU restricts future occupiers and their successors in title from obtaining a residential parking permit. It includes a Highways Contribution of £2738.94 for a Traffic Management Order (TMO) and a monitoring fee of £119.60 towards monitoring the obligations contained within the UU.
17. Whilst the Council have explained that a highways contribution is needed for a TMO they have not explained what measures would be necessary to justify the sum, as the purpose of the UU is to preclude occupiers of the properties from obtaining a parking permit. While the Council did suggest some amendments to the wording of the UU they have not provided any information, evidence or suggested that alterations would be needed to the existing CPZ or indeed whether additional road markings or road signage would be required. I am therefore not persuaded that any measure either on the ground or through adjustments made via a TMO would be necessary, as required by paragraph 57 of the National Planning Policy Framework (the Framework) and regulation 122 of the CIL regulations, to warrant the payment of this sum.

18. Given that I have found a highways contribution would not be necessary, I find that a monitoring sum is also not necessary. Accordingly, neither the contribution nor the monitoring sum would meet the tests for planning obligations set out in regulation 122 of the CIL Regulations and Paragraph 57 of the Framework.
19. In contrast, the requirement to restrict future occupiers and successors in title from obtaining a resident parking permit is necessary. As such I am satisfied that this is acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to it, in compliance with the tests set out in regulation 122 of the CIL Regulations and Paragraph 57 of the Framework.
20. The Council originally requested a sum of £5,000 in addition to the forementioned money. Little justification was put forward for the £5,000. The Council have since confirmed that this money is no longer required. As such, I deem that payment of the £5,000 set out in the UU as a travel plan monitoring fee is not necessary and would also not meet the requisite tests.
21. Given the UU, the appeal proposal would make adequate arrangements for parking and the development would not have an adverse impact upon parking provision within the area. The proposal would therefore accord with Policy DM17 of the DMP. This, amongst other matters, states that residential development may be acceptable in areas with limited or no parking whereby applicants enter into a legal agreement to restrict future occupiers from obtaining street parking permits. It would also accord with Policy CS9 of the CS which seeks safe, effective and efficient travel, in part through parking management measures.

Other Matters

22. Several letters of objection have been submitted. They raise various concerns in addition to those addressed above, including loss of light, privacy and outlook; traffic issues; ground stability, increased rodents, light pollution, noise concerns, property devaluation, refuse concerns, air pollution and rights to light. Many of these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, subject in some instances to conditions or planning obligations were permission to be granted.
23. The fenestration arrangement with high level windows, the pitched roofs sloping away from surrounding property boundaries and the layout and separation distances of the proposed dwellings means that they would not lead to an unacceptable overbearing effect, loss of privacy or outlook for existing residents. A submitted sunlight and daylight assessment also demonstrates that there would be no harmful impacts in terms of daylight and sunlight received by existing neighbouring properties. I have no reason to dispute this. The Council also had no concerns in respect of these matters finding no development plan conflict.
24. Concerns have been raised regarding traffic impacts. However, the development does not provide any vehicle parking and future residents will not be able to apply for a parking permit thus not increasing demand for parking places during the operating hours of the CPZ. Furthermore, the site is close to bus stops and Hendon Train station thus is relatively accessible via other

sustainable transportation methods. Given these factors it is considered that the development will not cause adverse traffic problems.

25. I have not been presented with compelling evidence to demonstrate that the appeal proposal would compromise the ground stability of nearby properties or result in an increase in rodents or light pollution. Consequently, these matters do not lead me to a different overall conclusion.
26. I have no substantive evidence to demonstrate that the development once occupied would result in adverse noise and disturbance that would be any different to what one would expect in a residential area. Furthermore, the mechanical ventilation systems proposed would require a noise assessment which can be secured via a condition. Any disturbance during construction would be for a temporary period only and could be mitigated by a condition requiring a construction management plan.
27. Matters relating to property values are noted, but I am required to consider the planning merits of the case and the effect of a development on property values is not generally a planning consideration.
28. Details of acceptable refuse storage and collection can be secured via a condition.
29. Concerns are noted regarding possible air pollution. Given that the site is on the edge of an air quality focus area, conditions can be included to incorporate air pollution mitigation measures.
30. There is little evidence to substantiate the claims regarding the existence or nature of any private rights to light. In any event, it is a well-founded principle that the planning system does not exist to protect purely private interests. Any private rights to light would have a separate means of redress in law.

Conditions

31. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance ("the PPG"), as well as the appellant's comments. Where necessary I have made changes to the wording or ordering of conditions in the interests of precision and clarity.
32. In addition to the standard time limit condition (1), a condition requiring the development to be carried out in accordance with approved plans is needed in the interests of proper planning and for the avoidance of doubt (2). I have added a condition concerning materials to ensure a satisfactory appearance and to safeguard the character of the area (3).
33. Conditions 4 to 13 are pre-commencement conditions which the appellant has agreed to in writing. A condition requiring the submission of a construction and demolition management plan and construction environmental management plan is necessary to maintain highway and pedestrian safety, safeguard the living conditions of nearby residents and to protect biodiversity during construction (4,5).
34. To ensure the proposal would provide acceptable living conditions for future occupants a condition is necessary requiring a scheme of noise mitigation measures to be submitted (6).

35. Conditions are necessary to ensure existing trees are adequately protected during construction (7,8,9,10).
36. A condition requiring a contamination risk assessment report is necessary to ensure the development can be implemented and occupied with regard to environmental and public safety (11). Conditions requiring air quality assessments are necessary for these reasons but also to ensure acceptable living conditions for future occupiers (12,13).
37. In the interests of providing certainty, highway safety and acceptable living conditions for neighbouring occupiers, a condition is necessary requiring details of finished floor levels and roads (14).
38. I have imposed a condition requiring a scheme of hard and soft landscaping. While some details have been submitted regarding planting, further details of landscaping are needed and to ensure that planting is replaced should they die or be removed. This is necessary to ensure certainty and to respect the character and appearance of the area (15).
39. To avoid disturbance to nocturnal species and nearby residents, a condition is necessary to maintain control over the design of any future external lighting (16). To enhance biodiversity, a condition is necessary to install ecological enhancement features (17).
40. In the interests of sustainable construction, conditions are necessary to ensure that elements of carbon saving and water efficiency measures are incorporated into the development (18, 19). A condition is also necessary to ensure that the development meets the changing needs of future occupants requiring that the proposed dwellings are accessible and adaptable (20).
41. To ensure that the development provides opportunities for sustainable transport modes, a condition is necessary to ensure that the development provides secure cycle parking provision (21).
42. A condition requiring the scheme to adhere with Secure by Design principles is necessary in the interests of the safety of future residents (23).
43. In the interests of highway safety and living conditions of future occupiers a condition is necessary to ensure suitable provision for the storage and collection of refuse (24).
44. A condition requiring a noise report in relation to the air source heat pumps is necessary to protect the living conditions of neighbouring residents (25). For the same reasons a condition restricting construction hours (28) and details of privacy screening (22) are also necessary. A condition requiring all non-road mobile construction machinery to comply with specific emission standards is also necessary for highway safety and living conditions of neighbouring occupiers in relation to air quality (26).
45. Given the site constraints and surrounding neighbouring properties, the removal of specified permitted development rights (27) are necessary to protect the living conditions of neighbouring occupiers. However, I do not find removal of Class D of Part 1 of Schedule 2 and Class A of Part 2 of Schedule 2 is justified in respect of the above reasoning nor in respect of the character and appearance of the area and as such it would not be reasonable or necessary to impose.

46. I have considered the Council's suggestion for a Travel Plan condition. I have had regard to Policy DM17 of the DMP which at part e) outlines that for significant trip generating developments the Council will require a satisfactory travel plan to be developed and maintained. Given the scale of the development and that the appellant's Transport Report has confirmed that the appeal scheme would not generate a significant number of vehicular trips, I find this condition is not necessary.
47. Conditions related to green roofs, air conditioning units and boilers have not been imposed as the proposal does not include these. I have also not imposed a condition requiring plant to meet certain decibel levels as no information as to what 'plant' refers to is before me, this condition is therefore not precise.
48. A condition requiring a before and after survey of the highway is unnecessary for a scheme of this size, furthermore the Council have not referenced a policy requirement for such a condition.

Conclusion

49. For the reasons given above, and having regard to all other matters, I conclude that the proposal would comply with the development plan as a whole. The appeal is therefore allowed.

T Bennett

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

2129-P001-S2-P1,
2129-P100-S2-P1,
2129-P101-S2-P1,
2129-P102-S2-P1,
2129-P103-S2-P1,
2129-P200-S2-P2,
2129-P202-S2-P2,
2129-P203-S2-P2.
- 3) No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the buildings and hard surfaced areas hereby permitted have been submitted to and approved by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development including site preparation works, demolition or construction work shall commence until a Demolition and Construction Management and Logistics Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall include the following:
 - i. details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site, on-site car parking arrangements and security procedures;
 - ii. site preparation and construction stages of the development;
 - iii. details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
 - iv. wheel washing facilities;
 - v. measures to control the emission of dust, noise and vibration arising from demolition and construction works;
 - vi. noise mitigation measures for all plant and processors;
 - vii. details of a community liaison contact for the duration of all works associated with the development.

The approved Demolition and Construction Management and Logistics Plan shall be adhered to throughout the demolition and construction period for the development.
- 5) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include: Site information (including ecological features), programme of works, details of any

temporary hoarding and fencing, ecological avoidance and mitigation measures and construction exclusion plan.

The approved CEMP shall be adhered to throughout all works.

- 6) No development shall take place until a scheme of proposed noise mitigation measures against externally generated traffic/mixed use noise has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in their entirety prior to the commencement of the first occupation of the development and retained as such thereafter.
- 7) No development shall take place until the temporary tree protection measures shown on 'Arboricultural Impact Assessment & Tree Protection Strategy ref: MDJAC-22.90-AIA-01' (dated March 2023) have been erected around existing trees on site.

These shall remain in position until after the development works are completed and no material or soil shall be stored within fenced areas and/or construction exclusion zones at any time. The development shall be implemented in accordance with the protection plan and method statement as approved.

- 8) No development shall take place until details of the location, extent and depth of all excavations for services (including but not limited to electricity, gas, water, drainage and telecommunications) in relation to trees on and adjacent to the site have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 9) No development shall take place within the root protection area of trees to be retained until details of foundation design have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 10) No development shall take place until details of the no-dig construction technique for the construction of the approved hardstanding have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 11) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
 - i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii. the site has been remediated in accordance with the approved measures and timescale; and
 - iii. a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
- ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.

- 12) No development shall take place until an air quality assessment report including air quality impacts of the demolition, construction and operational phases of the development and a scheme for air pollution mitigation measures shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development and retained as such thereafter.
- 13) No development shall take place until an air quality neutral assessment report shall have been submitted to and approved in writing by the local planning authority. The report shall include all calculations and baseline data. If the report shows that the site does not conform to the air quality neutral benchmark requirements, then a scheme of offset measures shall be submitted to and approved in writing by the local planning authority prior to development. The approved measures shall be implemented prior to the first occupation of the development and retained as such thereafter.
- 14) No development shall take place until full details of the finished floor levels, of the proposed buildings, roads and footpaths in relation to existing ground levels and adjoining land and highways have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 15) Prior to occupation of the development a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - i. the position of any existing trees and hedges to be retained or removed;
 - ii. details of all tree, hedge, shrub and other planting proposed including proposed species, plant sizes, position and planting densities and
 - iii. means of enclosure and boundary treatments.

The landscaping works shall be carried out in accordance with the approved details before the end of the first planting and seeding season following occupation of the development; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 16) Prior to the installation of external lighting, other than in private gardens, full details including height, design, location and intensity shall be submitted to and approved in writing by the local planning authority. The artificial lighting scheme shall be in accordance with Bats Conservation Trust Guidance Note 08/18 Bats and artificial lighting in the UK Bats and the Built Environment series.

- 17) Prior to the first occupation of the development, details of the location of at least 3 x hedgehog highways (13cm x 13cm gaps) at the base of boundary treatment and the specification, location, height and orientation of the recommended ecological enhancement features including 2 x purpose built integrated bat roost boxes, 1 x Woodstone bird nest box, 2 x swallow nest cup, hedgehog homes and purpose built log piles shall be submitted to and approved in writing by the local planning authority. All approved biodiversity enhancement features shall be installed prior to first occupation of the development in accordance with the approved details and retained thereafter.
- 18) Prior to first occupation of the development, all dwellings shall have been constructed to have 100% of the wholesome water supplied to them by the mains water infrastructure and each new dwelling shall be constructed to include water saving and efficiency measures to ensure that a maximum of 105 litres of water is consumed per person per day. Any use of grey water and/or rainwater systems needs to be separate from the potable (wholesome) water system. The development shall be maintained as such in perpetuity thereafter.
- 19) Prior to first occupation of the development, it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 10% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.
- 20) Prior to first occupation, the dwellings hereby permitted shall be constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace it).
- 21) Prior to first occupation of the development, details of cycle parking including the location of cycling parking spaces and cycle storage facilities shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 22) Prior to the first occupation of the development details of privacy screens to be installed for balcony and terrace areas shall be submitted to and approved in writing by the local planning authority. The screens shall be installed in accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 23) Prior to the first occupation of the development, information detailing how the development would adhere to the principles of Secure By Design shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented and retained in accordance with the approved details thereafter.
- 24) No development above ground level shall take place until full details of the refuse storage and collection arrangements shall have been submitted to and approved in writing by the local planning authority. The approved arrangements shall be implemented and retained as such thereafter.

- 25) No development above ground level shall take place until a report to assess the likely noise implications of the air source heat pumps (including mitigation measures) shall have been submitted to and approved in writing by the local planning authority. The equipment shall be provided in accordance with the approved report and mitigation measures prior to the first occupation of the buildings and retained as such thereafter.
- 26) All Non-Road Mobile Machinery (NRMM) of net power of 37kW and up to and including 560kW used during the course of the demolition, site preparation and construction phases shall comply with the emission standards set out in chapter 7 of the Mayor of London's supplementary planning guidance "Control of Dust and Emissions During Construction and Demolition" dated July 2014 (SPG), or subsequent guidance. Unless it complies with the standards set out in the SPG, no NRMM shall be on site, at any time, whether in use or not, without the prior written consent of the local planning authority.
- The developer shall keep an up to date list of all NRMM used during the demolition, site preparation and construction phases of the development on the online register at <https://nrmm.london/>
- 27) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, AA, B, C, E and F of Part 1 of Schedule 2 to the Order shall be undertaken within the area of the site hereby approved.
- 28) Construction works shall take place only between 8.00am and 6.00pm on Monday to Friday, 8:00am and 1:00pm on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

****End of conditions****