



Appeal Decision

Site visit made on 29 October 2024

by C Livingstone MA(SocSci) (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 December 2024

Appeal Ref: APP/N5090/W/24/3344101

27 Daws Lane, Mill Hill, Barnet, London NW7 4SD

- 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 Sumit Agarwal against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/5533/FUL.
 - The development proposed is demolition of Nos 27-29 Daws Lane and the erection of a three storey building with rooms in roof space to provide commercial floorspace (Class E office space) at ground floor level and a 9 room HMO above. Erection of a part single part two storey detached building at the rear of the site, to provide 6no self-contained flats. Associated amenity space, refuse/recycle store and cycle storage.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs in relation to this appeal was made by the appellant against the Council of the London Borough of Barnet. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the development in the banner heading above was taken from Section E of the appeal form rather than the planning application form in the interests of clarity. The words 'amended description' have been removed as they do not relate to an act of development.
4. There are two extant planning permissions on the appeal site¹ (the previous permissions) for the demolition of the existing buildings on this site and their replacement with a three storey building with accommodation in the roof space to provide a ground floor office space and 4 no self-contained flats on the upper floors and the erection of a part single part two storey detached building to the rear of this to provide 3 no self-contained flats. The appeal proposal is similar to the previously approved schemes in terms of design, and they are a material consideration of significant weight.
5. The Council has referred in its decision to policies within the LB Barnet Draft Local Plan (Regulation 19)(2021) (BDLP). The BDLP is at regulation 24 stage. It will now be subject to a period of formal consultation. Although the new local plan is at an advanced stage and is a material consideration, at the current

¹ 21/1883/FUL and 22/2273/FUL

time it does not form part of the statutory development plan. As such, I give it only limited weight in my assessment of the appeal.

6. The National Planning Policy Framework (the Framework) was revised on 12 December 2024. As the changes do not materially affect the main issues in this case, the parties have not been invited to comment further. Where references are made to paragraph numbers of the Framework, these are references to the most recent version.
7. There is a dispute between the main parties regarding the capacity of the proposed House of Multiple Occupancy (HMO). The Council state that five of the bedrooms within the proposed HMO are larger and could potentially accommodate two people rather than one. However, no local planning policy regarding size of bedrooms and occupancy has been provided. Therefore, my assessment is based on the information submitted by the appellant that the HMO would be utilised as nine single occupancy rooms.
8. A tree report prepared by John Cromar's Arboricultural Company LTD, dated May 2024 and a Bat Survey Report prepared by Tim Moya Associates, dated September 2021, were submitted as part of the appeal. Interested parties have had an opportunity to review and make comments on the evidence submitted. Therefore, the Council or any interested parties would not be prejudiced if I accept this information.
9. In the Council's Statement of Case, it confirms that the submitted tree report addresses its sixth reason for refusal. It states that, in the event that the appeal is allowed, concerns regarding the impact of the development on the root system of neighbouring trees could be addressed with the imposition of a condition. Based on the evidence before me, I see no reason to disagree with the Council on this matter. In light of this the submitted tree report suitably addresses the Council's sixth reason for refusal and the main issues are framed around the six remaining reasons for refusal.

Main Issues

10. The main issues are:

- whether the site is suitable for use as a HMO having regard to development plan policies and the character of the area;
- whether the rear building would provide an appropriate mix of housing having regard to development plan policies;
- the effect of the proposal on the living conditions of the occupants of all neighbouring properties in regard to noise and disturbance and 44 Victoria Road and 25 Daws Lane in regard to outlook;
- whether the proposal would provide suitable living conditions for future occupants of Flats 2 and 3 in regard to outlook, light and outdoor amenity space; and
- whether sufficient information has been submitted to assess the impact of the proposal on biodiversity, with particular regard to bats.

Reasons

House of Multiple Occupancy

11. The appeal proposal brings together the previous permissions, with some changes, including the amendment of the type of accommodation proposed. This includes a nine room House of Multiple Occupancy (HMO), rather than two two-bedroom and two one-bedroom flats that were originally proposed within the building facing Daws Lane.
12. Policy DM09 of the DMP sets out circumstances where a new HMO will be encouraged, this includes where there is an identified need and where it would be easily accessible by public transport, cycling and walking.
13. The appellant has provided no substantive evidence, to demonstrate that there is an identified need for an HMO within the appeal site. Further, it is important that future occupants are able to access shops, services and places of employment without reliance on a private vehicle. Daws Lane is close to Mill Hill Town Centre and an area with a higher PTAL rating. Nevertheless, the appeal site is within an area with a PTAL rating of 2 which indicates that there is poor access to the wider public transport network, which would limit the accessibility of the site for future occupants.
14. Based on the evidence before me and my own observations the appeal site is located within an area with a mix of residential and commercial uses, and as detailed above, there is extent planning permission for the residential development of the site. As such, the proposal would not harm the character of the area and is in accordance with Policies CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document 2012 (CS) and D3 of the London Plan 2021 (LonP) in this regard, which requires that development proposals respond to the existing character of a place and respects local context. Notwithstanding this, an absence of harm in this respect does not outweigh the harm identified above regarding the principle of an HMO in this location.
15. For the reasons set out above it has not been demonstrated that the appeal site is a suitable location for an HMO having regard to development plan policies. Whilst the proposed HMO would not have an adverse impact on the character of the area this finding does not alter the harm that I have found in respect of the suitability of the site as a location for an HMO. Therefore, the proposal is contrary to Policy DM09 of Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP) and Policy CS1 of the CS. These policies seek to consolidate housing and economic growth in well located areas and allow new HMOs only when they, among other things, meet an identified need and are easily accessible by public transport.
16. Although Policies DM08 of the DMP and D14 of the LonP, are cited in the reason for refusal, as these policies relate to the Council's general dwelling size priorities and management of noise, they are not determinative in relation to this main issue.
17. The Council have also cited policy HOU4 of the BDLP, within its reason for refusal. I note that the wording of this policy shares similarities with Policy DM09 of the DMP in requiring that proposals for new HMOs must meet an identified need and be easily accessible by public transport.

Housing mix

18. As part of one of the previous extant permissions on the site² a part single part two storey detached building at the rear of the site was approved to provide three two-bedroom, four person units. The appeal proposal is to alter this building to provide six one-bedroom, one person units.
19. Policy DM08 of the DMP relates to the Council's position on its preferred housing mix and highlights the need for market housing with 3 or 4 bedrooms. Further, Policy HOU02 of the BDLP continues to support this position and also identifies a medium need for 2 bedroom market homes for sale or rent; however as detailed above I afford this policy only limited weight.
20. The previously approved scheme at the rear of the site may have provided dwellings that would have been larger and closer to the Council's preferences expressed in Policy DM08 of the DMP. However, this policy does not state that one-bedroom one person units would be unacceptable and there is no substantive evidence before me to demonstrate that there is no need for one bedroom units in the area.
21. For the reasons detailed above the rear building would not fail to provide an appropriate mix of housing having regard to development plan policies. While Policy DM08 of the DMP identifies four and three bedroom market homes as a priority this policy does not state that one bedroom homes would be unacceptable. The proposal is also in accordance with Policies CS4 of the CS and H10 of the LonP which seek to provide a mix of housing products and recognises that a higher proportion of one and two bed units are generally more appropriate in locations which are closer to a town centre.

Living conditions of neighbours

22. As well as changes to the type of accommodation proposed, the appeal scheme proposes some design changes when compared to the previous permissions. The changes include an increase of the width of the two storey section of the rear building and the introduction of a roof terrace with a high screen on an area that was originally approved as a green roof, at the rear boundary of the site. Other amendments to the design of the rear building include an increase in its size in places, bringing it closer to the rear elevation of neighbouring property 25 Daws Lane.
23. The back rear boundary of the appeal site also forms the back rear boundary of 44 Victoria Road, which has a long narrow back garden. There is currently a low, single storey brick building adjacent to the back boundary within the appeal site. The proposal includes the erection of a building containing six one bedroom units adjacent to the back boundary. As detailed above the proposed scheme would differ from that previously approved resulting in material changes to the design at the back rear boundary of No 44. Both the wider two storey element of the building and the high screen around the proposed roof terrace would significantly increase the scale and massing of development on the boundary with this property.
24. It is acknowledged that there is existing two storey development in the vicinity of the proposed rear building. However, there is no evidence before me to demonstrate that these buildings were approved under the current

² 21/1883/FUL

development plan. The existing development adjacent to the back rear boundary of No 44 is single storey. The length of the garden of No 44 would not ameliorate the impact of the scale and mass of the built form proposed which would be overbearing and have a harmful impact on the outlook of the occupants of No 44, particularly from their rear garden. Which would diminish their enjoyment of this space. As such, the proposal would have a harmful effect on the living conditions of the occupants of No 44 with regard to outlook.

25. Neighbouring property 25 Daws Lane (No 25) comprises of a dry cleaner on the ground floor with residential accommodation above. The rear windows of the residential accommodation within No 25 would face the front elevation of the rear building. As detailed above the proposed scheme would result in the rear building being closer to the rear of No 25, than the previously approved scheme. The resultant separation distance between the two buildings would be reduced, including at first floor level. The proximity of the proposed rear building would be such that occupants of No 25 would not experience a suitable outlook from the rear windows of this property. There is no evidence before me to suggest that the rear windows of No 25 do not serve habitable rooms. In light of this the proposed development would also have a harmful effect on the living conditions of the occupants of No 25 with regard to outlook.
26. The previous permissions and the appeal scheme would have the capacity to house a similar number of people. It is evident from the information before me that HMOs and single occupancy dwellings are not directly comparable to larger flats, mainly because they appeal to different client groups such as students and young professionals. Notwithstanding this, the level of activity of 15 adults living independently is unlikely to be significantly greater than that of 24 individuals living in smaller groups in larger flats.
27. The proposed roof terrace adjacent to the back rear boundary of No 44 would serve a one-bedroom one person flat. Given the modest capacity of this property it is unlikely that occupants would generate a level of noise and disturbance sufficient to harm the living conditions of the occupants of No 44.
28. The appeal site fronts on to a busy road and the surrounding area includes a mix of commercial and residential uses. This means that increased levels of noise and disturbance would be expected. Notwithstanding this, an absence of harm to the living conditions of neighbouring occupants in regard to noise and disturbance does not outweigh the harm identified in regard to outlook as detailed above.
29. For the reasons given, while the proposal would not harm the living conditions of the occupants of neighbouring properties in regard to noise and disturbance it would harm the living conditions of the occupants of No 44 and No 25 in regard to outlook. As such, the appeal scheme would be in conflict with Policies D3 and D6 of the London Plan 2021 (LonP) and Policy DM01 of the DMP. These policies seek to ensure that development is designed to allow for adequate outlook for adjacent occupiers, to maximise the useability of outdoor amenity space.
30. I find no conflict with Policy DM04 of the DMP and Policy D14 of the LonP which seek to manage and mitigate noise to improve health and quality of life.
31. Although Policies CS NPPF, CS5 and CS1 of the CS and DM09 of the DMP are cited in the reason for refusal, as these policies relate to the Council's general

compliance with the requirements of the Framework, its overarching design aims, its place shaping strategy and its requirements for HMOs, they are not determinative in relation to this main issue.

Living conditions of future occupants

32. The previous permission for the building within the rear of the site³ allowed for two flats on the ground floor, identified as Unit A and Unit B, which were dual aspect and served by generous amenity spaces to each side of the building. The appeal proposal would have a different layout on the ground floor to allow for four one-bedroom, one person units. Flats 2 and 3 would be single aspect and the windows would face the side elevation of neighbouring buildings. The amenity areas at the side of the rear building would be subdivided to provide each flat with an area of private amenity space. The external amenity spaces that would serve flats 2 and 3 would be small and narrow.
33. The close proximity to the neighbouring buildings on either side of the appeal site would result in an enclosed and poor outlook from flats 2 and 3. Further, the orientation of the proposed rear building and proximity of surrounding development is such that it is not clear that these flats would receive sufficient daylight. There is also no substantive evidence before me to demonstrate that this would be the case.
34. This would result in an unsatisfactory internal living environment for the future occupants of flats 2 and 3. The ground floor flats, within the previously approved scheme included windows in a similar position to the openings serving flats 2 and 3. However, as detailed above, these properties would have been dual aspect and included other windows facing both the side and the front of the appeal site which were set further back from neighbouring buildings.
35. The proposed external amenity spaces that would serve flats 2 and 3 would be small, narrow and enclosed by neighbouring development. The Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016 (SPD) sets minimum standards for the provision of outdoor amenity space within Table 2.3 at 5 square metres per habitable room for flats, with rooms exceeding 20 square metres counted as two. The plans before me are not annotated with the area of each room and external amenity space. As such it is not clear what the required external amenity spaces for flats 2 and 3 would be; or if the spaces proposed would meet the requirements of the SPD.
36. There is no clear evidence before me to demonstrate that the private external amenity space for flats 2 and 3 would meet the minimum area requirement. Also, the layout of these gardens combined with the close proximity of neighbouring buildings would impact negatively on their quality and usability and they could not be reasonably enjoyed as an area where occupants could sit, relax, socialise, and dry clothes in privacy. As such, flats 2 and 3 would have gardens that are low quality.
37. For the reasons detailed above the proposal would fail to provide suitable living conditions for future occupants of Flats 2 and 3 in regard to outlook, light and outdoor amenity space. The proposed development therefore conflicts with the requirements of Policies DM01 and DM04 of the DMP and Policies D3 and D6 of the LonP. These policies require development proposals to avoid the provision

³ 21/1883/FUL

of single aspect dwellings, allow for adequate daylight and outlook for potential occupiers and achieve indoor and outdoor environments that are comfortable and inviting for people to use. The scheme also conflicts with Policy DM02 of the DMP which requires compliance with the Council's Supplementary Planning Documents this includes the SPD.

38. Although Policies CS5 and CS1 of the CS, Policy DM04 of the DMP and Policy D14 of the LonP are cited in the reason for refusal, as these policies relate to the Council's overarching design aims, place shaping strategy, management of noise and environmental considerations for development they are not determinative in relation to this main issue.

Biodiversity

39. The appeal was submitted with a Bat Survey Report⁴. The report records the existing buildings as having low and moderate bat roosting potential, based on a scoping survey undertaken on 12th August 2021. As such I consider that there is a possibility of protected species being present in the locality.
40. Circular 06/2005⁵ states that "it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision". Ecological mitigation should only be employed where it is not possible to avoid the impact. Furthermore, mitigation measures should be specific to an identified harm.
41. Notwithstanding the appellant's statement of case. The findings of the submitted Bat Survey Report are based on surveys carried out over three years ago. Given the significant length of time that has passed, it is possible that the circumstances within the appeal site could have changed. Consequently, I am not able to fully understand the baseline ecological potential of the site. It is, therefore, not possible to know whether there would be an adverse impact on bats, whether there is an opportunity to avoid the impact, or what mitigation could be used.
42. The finer details of the mitigation strategy could be secured by condition, once the baseline and presence, or otherwise, of bats has been established. It is not appropriate to condition the requirements for a survey to establish the baseline. Given the advice in Circular 06/2005, without an up to date scoping survey I cannot be certain that any harmful effects arising from the proposal could be adequately avoided or mitigated.
43. In the absence of sufficient up to date information, it is not possible to ascertain the effect of the proposed development on biodiversity, with particular regard to bats. The proposal would, therefore, be contrary to the requirement of Policy DM16 the DMP and Policy G6 of the LonP which seek to ensure the retention and enhancement of biodiversity and supports the protection and conservation of priority species and habitats.
44. The Council has also referred to Policies CS NPPF of the CS and DM01 of the DMP in their reason for refusal. However, these policies relate to the Council's

⁴ Tim Moya Associates, Bat survey Report Emergence and Re-Entry Survey, September 2021

⁵ ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

general compliance with the requirements of the Framework and character and amenity. The only reference in DM01 to biodiversity relates to proposals for lighting schemes. Therefore, I do not find any conflict with Policy DM01.

Other Matters

45. The Council has raised no objection in relation to design, parking provision, refuse and cycle storage. However, the absence of harm in these respects, as well as in relation to housing mix, character and noise and disturbance, form neutral factors, weighing neither for nor against the proposal.
46. The scheme would provide several housing units and would make a positive contribution to the housing supply in the area. In so doing, the proposal would support the aims of the Framework which details the Governments objective of significantly boosting the supply of homes. There would also be associated economic benefits during construction.

Conclusion

47. The proposed development would comply with some policies in the development plan. However, the scheme would conflict with a number of policies in respect to the principle of an HMO at the appeal site, the living conditions of existing and future occupants and the effects of the proposed development on biodiversity. I therefore conclude that the proposal would conflict with the development plan as a whole. Material considerations do not indicate a decision otherwise than in accordance with the development plan.
48. For the reasons given above the appeal should be dismissed.

C Livingstone

INSPECTOR