



Appeal Decision

Site visit made on 12 November 2024

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

an Inspector appointed by the Secretary of State

Decision date: 21 January 2025

Appeal Ref: APP/N5090/W/24/3346184

61-63 East Barnet Road, Barnet, London EN4 8RN

- 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 Patel against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 24/0485/FUL.
 - The development proposed is demolition of existing building(s). Construction of 2 No retail units and 9 No residential dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. 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.
4. Barnet's draft new Local Plan 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 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.
5. An Internal Daylight and Sunlight Report prepared by Syntegra Consulting, dated May 2024, (Internal Daylight and Sunlight Report), was submitted as part of the appeal as well as drawing Nos (02) 103 A, (02) 104 A and (02) 105 A. 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.

Main Issues

6. The main issues are:
 - the effect of the development on the character and appearance of the area;

- the effect of the development on the living conditions of the occupants of neighbouring properties with regard to privacy and outlook; and
- whether the development would provide suitable living conditions for future occupants in regard to daylight.

Reasons

Character and appearance

7. Existing development in the area comprises of a variety of built forms and building types including four storey residential flats on Sambroke Square, commercial sheds and retail and business units with residential accommodation above.
8. The appeal site is part of a parade of two storey properties with retail and business units on the ground floor. The units include flat roofed, single storey, projecting sections that form a strong and consistent building line up to the edge of the footway. Although detached at first floor level the existing building is attached at the ground floor and reflects the other properties in the parade in terms of height, scale and massing. The simple pitched roof form of the properties in the group is relatively unaltered, which contributes positively to the consistency of the group overall and its contribution to the character and appearance of the area.
9. The appeal scheme is for the erection of two buildings following the demolition of the existing building on the appeal site. One of the buildings would front East Barnet Road and would include two retail units on the ground floor with four residential units above. The other building would be positioned to the rear of this and would include five residential units.
10. The main body of the building at the front of the scheme would be significantly higher and wider than the other buildings in the group. As a result, it would appear overly large in terms of scale and massing. This would impact negatively on the consistency of the established built form of the group as existing.
11. There is a small step up in the roof height between Nos 57 and 59 East Barnet Road. However, the difference is modest and much less than the height increase that would result from the front building. Further, the varied heights of buildings in the wider area does not justify the loss of the uniformity of the built form of the group of properties that the appeal site is a part of.
12. On the front elevation of the parade, the recessed first floor level is unaltered. This allows for a clear delineation between the single and two storey elements and is another contributing factor to the consistent built form of the group as a whole. The proposed front building would include a first floor roof terrace on the front elevation, which would be bound by a parapet wall and glass balustrade. The frontage development along East Barnet Road is varied in places and includes external terraces. However, front roof terraces are not a design feature of the group that the appeal site forms part of. The introduction of a terrace on the principal elevation of the front building would result in an incongruous addition that would disrupt the uniformity of the group and have a harmful impact on local distinctiveness and the character and appearance of the area.
13. The incorporation of a parapet wall and the set back of the roof terrace may reduce its visual impact in closer range views. However, these design elements would not mitigate the harm identified above, in longer range views along East Barnet Road.

14. The front building would also include a large dormer on the rear elevation, an inset section in the centre in the rear would reduce its bulk to a certain extent. Nevertheless, as it would extend over half the width of the rear roof slope and the majority of its length it would dominate the pitched roof form of the building and, despite the inset section, appear overly bulky.
15. Dormers of the scale proposed are not a common feature within the area of the appeal site. I note neighbouring property No 59 is an exception, when compared to the other properties within the group that the appeal site is part of. As details of the planning history of this dormer have not been submitted, I cannot be certain that it was approved under the current local development plan. As such, a dormer of the scale proposed would not reflect the established character and appearance of the area.
16. With the exception of the flats on Sambroke Square, the buildings that are within the immediate area of the appeal site are mostly single and two storeys. The proposed rear block of flats would be three storeys high and considerably taller than most neighbouring buildings. Existing development, and the variance in ground level may screen the building from some longer range views. However, the neighbouring garage forecourt is open and would allow clear unobstructed views from the public realm. When viewed from East Barnet Road the juxtaposition between the rear block and the neighbouring single storey garage would emphasise the scale and prominence of the rear building, which would appear overly large.
17. A four storey block of flats on Sambroke Square neighbours the back of the appeal site and is part of a larger housing development that is designed to front on to a residential cul-de-sac off Victoria Road. This building is set back from both Victoria Road and East Barnet Road and its height is balanced by the layout, height and distance of neighbouring buildings. In light of these factors, it is not directly comparable to the appeal proposal.
18. Although taller, the pitched roof of the three storey building would reduce the bulk of the built form when compared to the previously refused scheme¹, which included a flat roofed, building in a similar position. Nevertheless, the proposed building would be significantly taller and unduly large in comparison to the surrounding built environment.
19. For the reasons detailed above the proposed development would have a harmful effect on the character and appearance of the area. Therefore, the scheme would be contrary to Policy D3 of the London Plan 2021 (LonP), Policies CS1 and CS5 of Barnet's Location Plan (Core Strategy) Development Plan Document 2012 (CS) and Policies DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP) which aim to create a quality environment and deliver buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape; respects local context and preserve or enhance local character.

Living conditions of neighbours

20. The flats on Sambroke Square, are set at an angle close to the back rear boundary of the appeal site. A small irregular shaped amenity area, which serves these flats,

¹ 23/3461/FUL

separates the appeal site from its rear elevation. Based on the evidence before me the rear elevation of these flats includes windows which serve habitable rooms.

21. The proposed rear block of flats would have a pitched roof and extend over almost the full width of the appeal site in close proximity to the back rear boundary. The rear elevation would be varied, stepping out in the centre, and includes several windows that serve habitable rooms.
22. The Supplementary Planning Document: Residential Design Guidance 2016 (RDG SPD) states that 'in new residential development there should be a minimum distance of about 21 metres between properties with facing windows to habitable rooms to avoid overlooking.' The Council state that there would be a separation distance of between 15 and 19 metres between the windows of the rear elevation of the rear block of flats and the flats on Sambroke Square. This would represent a significant shortfall in the Council's required separation distance between habitable windows, to ensure the privacy of neighbouring occupants is maintained.
23. The rear windows on the Sambroke Square flats would be angled slightly in relation to the rear elevation of the proposed rear block. However, based on the proposed plans I cannot be certain that a clear line of sight could not be achieved to windows serving habitable rooms in the Sambroke Square flats. Given the limited separation distance, it is likely that the angle between the existing and proposed windows would be insufficient to ensure that the development would not have a harmful effect on the privacy of neighbouring occupants.
24. The proposed boundary would be of sufficient height to mitigate potential overlooking issues at ground floor level only. The assessment of this appeal is based on the plans before me. However, while the use of obscure glazing in the windows of the rear elevation, or expanding the stair core, may prevent potential overlooking issues; I cannot be certain that they would provide suitable living conditions for future occupants of the proposed flats.
25. The RDG SPD also states that new residential development should be a minimum of 10.5 metres from neighbouring gardens. The Council state that the proposed rear block of flats would fall short of this distance, in relation to the rear garden of the flats on Sambroke Square. Due to the variance of the rear elevation, parts of the proposed rear building may achieve a separation distance of 10.5m. However, the RDG SPD specifies a 'minimum' separation distance of 10.5m should be achieved. Based on the evidence before me I have no reason to disagree with the Council in this regard.
26. Development within the rear of the appeal site as existing comprises of single storey sheds. As detailed above, the pitched roof of the rear building would reduce the bulk of the built form when compared to the previously refused scheme². Nonetheless, the appeal scheme would result in a significant built form in terms of scale and massing in close proximity to a large section of the shared back rear boundary with the flats on Sambroke Square. This would result in a sense of enclosure and have an overbearing impact on the occupants of Sambroke Square when using their rear amenity area.
27. The flats on Sambroke Square may be closer than 10.5 m to the boundary of the appeal site. However, the planning history of this development is not before me and

² 23/3461/FUL

therefore I cannot be certain that the circumstances that applied to that development are directly comparable to the appeal before me. A large proportion of the development that forms the context of the site is characterised by residential dwellings with long rear gardens, the layout of which allow for a suitable separation distance between dwellings and neighbouring gardens. Therefore, there is no material justification sufficient to warrant a shorter separation distance in this instance.

28. For the reasons detailed above the proposed development would have a harmful effect on the living conditions of the occupants of neighbouring properties with regard to privacy and outlook. Therefore the proposal would be contrary to Policy D3 of the LonP, Policy CS5 of the CS and Policies DM01 and DM02 of the DMP which require that development proposals should be designed to allow for adequate privacy and outlook for adjoining occupiers; protect and enhance the gardens of neighbouring properties; and accord with relevant development standards.
29. The proposal would also fail to meet the standard set by the guidance provided by the SDC SPD and the RDG SPD which set a recommended minimum distance between windows serving habitable rooms and the distance between new developments and neighbouring gardens.
30. Policy D6 of the LonP sets housing quality and standards primarily for future occupants and is not determinative in my assessment of the living conditions of neighbouring occupants with regard to privacy and outlook.

Living conditions of future occupants

31. Proposed residential units 5, 6, 7, 8 and 9 include bedrooms that would be served by two narrow windows, one at a high level on the side elevation in close proximity to the boundary of the appeal site and one on the rear elevation.
32. The Internal Daylight and Sunlight Report submitted as part of the appeal concludes that the bedrooms in units 5, 6, 7 and 8 would fail to meet target daylight levels. As such, these bedrooms are likely to be gloomy and considerably less exposed to daylight than typically expected. It is acknowledged that ordinarily bedrooms are primarily used at night and a lower daylight level may be beneficial to individuals that work in the evening and sleep through the day. However, given the size of each unit, it is likely that future occupants would also use the bedroom spaces through the day and low light levels would impact negatively on their quality of life.
33. The findings of the Internal Daylight and Sunlight Report indicate that the living area of units 5, 6, 7 and 8 would exceed minimum daylight requirements. However, achieving suitable daylight levels in this room does not ameliorate the harm identified in regard to daylight levels in the bedrooms, as identified above.
34. Further, Supplementary Planning Document: Sustainable Design and Construction 2016 (SDC SPD) is a material consideration and Table 2.4 states that glazing to all habitable rooms should not normally be less than 20% of the internal floor area of the room. There is no substantive evidence before me to demonstrate that the scheme would meet the standard set by this guidance.

35. For the reasons detailed above the proposed development would fail to provide suitable living conditions for future occupants in regard to daylight. Therefore, the proposal would be contrary to Policies DM01 and DM02 of the DMP which require that development proposals should be designed to allow for adequate daylight for potential occupiers and users and accords with relevant development standards.
36. The proposal would also fail to meet the standard set by the guidance provided by the SDC SPD and the RDG SPD which set a recommended minimum window to floor area ratio and note that providing good daylight to the home not only contributes to a more pleasant living environment, but also has the potential to reduce energy requirements for lighting and heating.

Other Matters

37. The appeal scheme before me is a resubmission of a preceding application refused by the Council³. I appreciate that the appellant has attempted to overcome the concerns previously raised but the amendments would still result in a proposal that would be contrary to the development plan for the reasons I have already outlined.
38. The Council raised no concerns regarding the principle of the development, the amenity standards of future occupants in regard to internal space standards, outdoor amenity space and also the safe and efficient operation of the highway network. Based on the evidence before me I have no reason to disagree with the Council on these matters. However, the absence of harm in these respects form neutral factors in my assessment of the appeal, weighing neither for nor against the development.

Conclusion

39. The proposal would provide nine housing units in a suitable location where there is an identified need, there would also be associated economic benefits during construction. The scheme would maximise the use of the site and make a modest contribution to the housing supply in the area. In so doing, the proposal would comply with Policies H1 and H2 of the LonP, which amongst other things, set housing targets and encourage the development of small sites in order to meet London's housing needs. While the benefits of the scheme are acknowledged, given the limited number of additional dwellings proposed this carries moderate weight.
40. However, as detailed above I have found that the proposal would have a harmful effect on the character and appearance of the area and living conditions of neighbouring occupants and would fail to provide acceptable living conditions for future occupants. This is not outweighed by the benefits I have identified. As such the proposal would not accord with the development plan when taken as a whole. Furthermore, there are no material considerations that indicate that the appeal should be determined other than in accordance with the development plan.
41. For the reasons given above the appeal should be dismissed.

C Livingstone

INSPECTOR

³ 23/3461/FUL