



Appeal Decision

Site visit made on 28 January 2025

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2025

Appeal Ref: APP/N5090/W/24/3348397

42A Algernon Road, Hendon, Barnet, 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 Martin Cunningham against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 24/1808/FUL.
 - The proposed development is the subdivision of ground floor flat into 2no. self contained units and erection of single storey side extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 and there would be no unfairness as a result. Where references are made to paragraph numbers of the Framework, these are references to the most recent version.
3. The Council has advised that the draft Barnet Local Plan (DBLP) is at Regulation 24 stage, and it is understood that modifications to the DBLP, following examination, have been the subject to a period of formal consultation. The Council has referred to DBLP Policy HOU3 in regard to one of the main issues, I will address the weight to be attached to that policy in my decision below.

Main Issues

4. The main issues are:
 - Whether the proposed development would provide future occupiers with satisfactory living conditions, with particular regard to the proposed floorspace; the layout of Flat B, and the outdoor space for proposed Flat B; and,
 - Whether the proposed development would make adequate arrangements for parking.

Reasons

Living conditions – future occupiers

Floorspace

5. The appellant has said the proposed subdivision and extension of the existing flat would create 2 no.1-bedroom 1-person flats, each having a floorspace of 39 square metres. However, the proposed layout shows both proposed flats have a main living space, that includes a double bed, each providing up to 2 bed spaces. Whilst the appellant maintains that the proposals are 1-person 1– bedroom flats, the layout does not include a single bed and the proposed layout indicates that they could each be occupied by 2 persons. As such it would not be unreasonable to assess the proposed new flats on this basis.
6. Policy D6 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP) states dwellings must provide at least the minimum floorspace as set out in its accompanying Table 3.1, which for a 2-person 1-bedroom dwelling is 50 square metres. The exact same minimum floorspace is also stated in Annex 2 of the Council's Residential Design Guidance, Supplementary Planning Design Guidance, dated October 2016 (RDGSPD), and within the Council's Sustainable Design and Construction, Supplementary Planning Document, dated October 2016 (SDCSPD) regarding a 2-person 1-bedroom dwelling. LP Policy D3 also seeks to ensure development delivers an appropriate amenity for future occupiers.
7. Even taking the appellant's size of the flats at 39 square metres each, which is above the floorspace sizes calculated by the Council, both proposed flats would be significantly below the minimum size required for a 2-person 1-bedroom flat. In addition, the size of the proposed flats would be contrary to LP Policy D6, the RDGSPD and the SDCSPD, and would provide future occupiers with inadequately sized accommodation that would be cramped and harmful to their living conditions.
8. The Council has referred within its documentation to conflict with BDLP Policy HOU3, in relation to the requirement for the original building the subject of the conversion needing to have at least 135 square metres of floorspace, for the conversion to provide a 3-bedroom property with at least 4 bed spaces, and for all new dwellings to have at least 61 square metres of floorspace. The proposal would not meet these requirements of Policy HOU3.
9. Paragraph 49 of the Framework advises that weight to be attached to emerging policies depends on the stage of its preparation (the most advanced the more weight that can be attributed to it); the extent of unresolved objections; and its degree of consistency with the Framework. The DBLP is understood to have been examined and be at an advanced stage, and there has been consultation on main modifications, which includes changes to Policy HOU3. However, I am unclear whether there were any unresolved objections to the policy. It is noted that the policy seeks to manage residential conversions and the redevelopment of larger homes and has the strategic aim of maintaining housing choice in the Borough, which would not be inconsistent with the Framework. Nevertheless, it is not the adopted development plan, and in view of the above, I attach modest weight to it at most at this stage.

Internal layout – proposed Flat B

10. The SDCSDPD says internally the layout can help mitigate the impact of noise through amongst other measures avoiding stacking rooms with similar uses to avoid unnecessary noise disturbance. In addition, the RDGSPD states the vertical stacking of rooms between flats should prevent bedrooms overlapping living rooms, kitchens and bathrooms on other floors.
11. The floor plans indicate that the first floor flat would include a living room which would be directly above the bedroom/living space of Flat B. Therefore, unacceptable levels of stacking would result. To mitigate this, the appellant is proposing noise insulation between the respective flats, and has stated that once the first floor flat becomes vacant (also said to be owned by the appellant and understood to be occupied by a tenant) it would be internally re-configured to address this stacking issue.
12. The appellant's intention to re-configure the first floor flat is acknowledged. However, a scheme of noise insulation should in this case be sufficient to adequately mitigate any unacceptable noise and disturbance caused by the proposed layout and comply with the objectives of the RDGSPD and SDCSOD of preventing unacceptable noise to future occupiers. This could be the subject of a suitably worded condition, in the event I was minded to allow the appeal.

Outdoor space – proposed Flat B

13. LP Policy D6 says where there are no higher local standards a minimum of 5 square metres of private outdoor space should be provided for a 1 or 2 person dwelling. Both the RDGSPD and the SDCSPD also say that each proposed flat should be served with 5 square metres of private amenity space. In addition, LP Policy D3 seeks to achieve indoor and outdoor environments that are comfortable and inviting for people to use. The RDGSPD says all dwellings should have access to outdoor amenity space that is not overlooked from the public realm and provides a reasonable level of privacy, and its accompanying Table 1.2 sets a minimum requirement of 5 square metres for flats, and says outdoor amenity space which does not have a reasonable level of privacy will not be considered to be usable. Policy DM01 of Barnet's Local Plan, Development Management Policies, Development Plan Document, dated September 2012 (DMP) requires development to provide privacy for future occupiers
14. The appellant has indicated that outdoor space for Flat B can be provided in front of the property and the area would measure 15 square metres, above the minimum size outlined above. I saw on my site inspection that the area in question slopes up to the front elevation of the appeal property and is currently used for bin storage. The pavements along both Algernon Road and Montagu Road directly run alongside this space, and the junction between the two roads, is in very close proximity. In addition to passing vehicles, there are likely to be pedestrians and other pavement users regularly travelling directly passed it. The proposed outdoor space for Flat B would not be private space, as such it could not function as private amenity space for future occupiers as proposed by the appellant.
15. Although the appellant has said that they could enclose the space with a row of tall, dense shrubs or hedges along the property boundary, no specific details of this have been provided to demonstrate how this could be satisfactorily be undertaken with appropriate species. Furthermore, in the absence of satisfactory

details to demonstrate otherwise, there would be concern at the possible effects that tall boundary treatments could have on the character and appearance of the area and for the outlook of future occupiers of Flat B itself.

16. On the information provided it has not been demonstrated that there is suitable private outdoor amenity space for the future occupiers of Flat B, as such the proposal would be harmful to future occupiers living conditions.

Conclusion

17. The proposed internal layout subject to a noise insulation condition could provide satisfactory living conditions for future occupiers of Flat B. However, the proposed floorspaces would be significantly below the minimum size required for a 2-person 1-bedroom flat as set out above, and the proposed outdoor space for Flat B would not be private. In these respects, the proposals would conflict with the relevant parts of LP Policies D3 and D6 and DMP Policy DM01 that seek to provide an appropriate amenity, privacy, minimum sized accommodation, and private amenity space to ensure satisfactory living standards for future occupiers.
18. The conversion of the existing flat and the proposed floorspace for both flats would also conflict with DBLP Policy HOU3, for the reasons outlined above. Although, I attach modest weight to this conflict, and it is ultimately not determinative in this case.
19. The Council referred to Policy CS5 of Barnet's Local Plan, Core Strategy, Development Plan Document, dated September 2012 (CS) in its reason for refusal, that policy is mainly focussed on the effect of development on the character and appearance of the area, I did not find it to be directly determinative on this main issue.

Parking

20. I saw on my site inspection that the appeal site is located within a Controlled Parking Zone (CPZ), and resident parking permits are required to park on the street at certain times. I have also been made aware the site has a Public Transport Accessibility Level of 3 and is very close to Hendon train station and bus stops. No off-street parking is possible as part of the proposed development.
21. DMP Policy DM17 says the applicant will be required to enter into a legal agreement to restrict future occupiers from obtaining on street parking permits, where it can be demonstrated that there is insufficient capacity on street and no off-street parking is proposed. LP Policy T6 states car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport, and LP Policy T4 requires proposals do not add to road danger.
22. I saw on my site inspection that there were parking bays on one side of Algernon Road, and to both sides of Montagu Road. Although only a snapshot in time, there were no spaces available on Algernon Road near to the appeal site, although there were a small number of available spaces on Montague Road, at the time of my visit which was during the working day. However, there may well be little or no available spaces during the evening and night times. In view of this and the policy background I am content that it would be reasonable and necessary to require the

proposal to be car free development, so it does not add to parking pressures and congestion in the immediate area.

23. It is noted that the appellant has said they are willing to enter into a legal agreement to secure the proposal as car -free development, but no legal agreement has been provided to achieve this. Although it is noted the site is well-connected and that secure cycle storage could be provided and that not all occupiers may wish to own and use a car, these arguments are insufficient to address the policy requirement for the development to be car free development, and prevent unacceptable parking stress and congestion.
24. I therefore conclude that in the absence of a legal agreement to secure the proposed development as car free development, the proposal is likely to unacceptably add to parking stress in the immediate area, and conflict with the relevant requirements of DMP Policy DM17 and LP Policies T4 and T6, which are set out above.
25. The Council also referred in its reason for refusal to LP Policy T6.1 and CS Policy CS9. Policy T6.1 is mainly concerned with on-site parking requirements for new development, and Policy CS9 sets out the broad strategic approach to transport matters in the Borough. As such I did not find these policies to be directly determinative on this main issue.

Other Matters

26. The appellant has referred to an appeal decision¹ for a site nearby that was allowed for 8 no. new dwellings, which they say is similar to the appeal scheme. Whilst it is noted the car parking issue has some similarities, there was a legal agreement provided in that case which the Inspector could take into account. The weight the Inspector attached to the DBLP is also noted, and I have set out above the weight I can attach to it, based on the information before me, at this time. The other main issue on that appeal related to character and appearance, which is much different to the other main issue on this appeal. Consequently, that appeal decision and its issues are not entirely comparable, and they have not led me to conclude differently regarding the appeal proposal before me.
27. Reference has also been made by the appellant to two planning decisions made by the Council. However, I do not have sufficient information to properly consider them or whether they are comparable to the appeal proposal.
28. It is noted that the proposal would have matching materials to ensure a complimentary finish to the host property, this would likely be a requirement of the development plan and is a neutral factor.

Planning Balance and Conclusion

29. Although the layout of the proposed development would not be harmful to the living conditions of future occupiers of Flat B, subject to a noise insulation condition, the floorspaces of both flats would be significantly below the minimum floorspaces required, and its outdoor space would not be private, as such there would be harm to the living conditions of the future occupiers of both flats. In addition, without a legal agreement to ensure the development is car free development there would likely be unacceptable parking stress and congestion in

¹ Ref. APP/N5090/W/24/3345138

the immediate area. As such the proposal would not comply with the development plan, I attach significant weight to this conflict.

30. In addition, there would be some conflict with Policy HOU3 of the BDLP, however, for the reasons set above, this attracts only modest weight at most.
31. It is recognised that the proposal would contribute towards Governments objective of significantly boosting housing supply and contribute towards economic development through its construction works, and that its future occupiers could contribute to the local economy. The proposal would also facilitate the development of a small site in a well-connected area and make an effective use of land. However, these benefits given the scale of the proposal, being for a net gain of one flat are limited. Nevertheless, they do to a limited extent weigh in favour of the proposal.
32. To conclude, the proposal would conflict with the requirements of the development plan when taken as a whole, and there are no other considerations, including the Framework and those raised by the appellant, that outweigh this conflict. Accordingly, the proposed development is not sustainable development and for the reasons outlined above the appeal should be dismissed.

A Hunter

INSPECTOR