
Appeal Decision

Site visit made on 29 July 2025

by **P Burley BA (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 November 2025

Appeal Ref: APP/N5090/W/25/3362120

Development Site at Rear of 148 To 172 High Street, Barnet EN5 5XP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andrews against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 24/2025/OUT.
 - The development proposed is described as 'Outline application for the erection of a 4-storey building comprising 8 flats (first, second & third floor), affordable ground floor commercial (Class E), associated car parking and infrastructure with landscaping reserved'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal must be determined having regard to the current adopted development plan. On 4 March 2025 the Council adopted a new local plan: the Barnet Local Plan 2021-2036 (BLP). This replaced Barnet's Local Plan (Core Strategy) Development Plan Document (September 2012) and Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012. Before determining this appeal I sought the views of the main parties in respect of this change in circumstances.
3. Following the submission of the appeal, the appellant submitted a unilateral undertaking (UU) dated 14 August 2025 pursuant to section 106 of the Town and Country Planning Act 1990 which includes provisions relating to affordable housing, sustainable transport / parking restrictions and affordable workspace. I provided the Council with an opportunity to comment on this.

Main Issues

4. The main issues are:
 - whether the appeal scheme would prejudice the delivery of planning permission 18/4700/FUL and the benefits secured through the associated section 106 agreement;
 - whether the reduction in the amount of employment space proposed, when compared with the previously-approved scheme for this site, has been adequately justified;
 - whether the appeal scheme would result in unacceptable highways impacts;

- whether suitable living conditions for the future residential occupiers of the development would be provided with regard to the amount of outdoor amenity space provided; and
- the effect of the appeal scheme on the living conditions of 166-168 High Street with specific regard to privacy and overlooking.

Reasons

Whether the appeal scheme would prejudice the delivery of planning permission 18/4700/FUL and the benefits secured through the associated section 106 agreement

5. The first reason for refusal is referring to planning permission 18/4700/FUL which covers a larger area of land than the appeal site. Much of what was approved under 18/4700/FUL has been built. The appeal scheme involves a building that would be in residential and employment use in the place of a building that would have been solely in employment use and on the same footprint.
6. Whilst the appeal scheme would not physically compromise the delivery of any other part of 18/4700/FUL in its officer report the Council says that a change of this significance to the scheme being implemented should be the subject of a further application for the whole site as it would prejudice the provision of the planning benefits secured through the original permission and associated section 106 agreement, stating that the addition of new residential units would require an amendment to the affordable housing calculation for the site as a whole.
7. However, there is nothing in 18/4700/FUL or the related section 106 agreement that requires this particular part of the development to be brought forward, and there is nothing before me to indicate that the benefits secured under that permission relating to the rest of land covered by 18/4700/FUL would not be brought forward if this site was redeveloped separately.
8. Furthermore, whilst the Council has said that the section 106 agreement relating to 18/4700/FUL could have been amended to incorporate any further planning permissions for the land to which it relates and that the UU is not the correct mechanism for dealing with the appeal site, it has not suggested that the UU cannot be used to secure any planning obligations in relation to the appeal scheme.
9. Therefore, I must consider this appeal scheme on its own merits. The appeal scheme falls below the threshold for affordable housing and therefore no affordable housing is required according to BLP Policy HOU01. Whilst the appellant has said that it would be prepared to offer one of the proposed flats as a shared ownership unit, I do not find this to be necessary to make the scheme acceptable in planning terms and, therefore, the provision of such affordable housing cannot constitute a reason for granting planning permission, per Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) (Regulation 122).

Employment Use

10. Prior to the grant of planning permission 18/4700/FUL there was a mix of uses on the wider site, including approximately 20 businesses amounting to about 4,000m² of employment floorspace. The wider site also benefitted from an extant planning

permission (16/2466/FUL) which included a significant reduction in the quantum of employment floorspace, to 779m², alongside the provision of 40 residential units.

11. The re-development of the wider site under 18/4700/FUL was approved on the basis that there was to be a re-provision of a similar amount of employment space as under 16/2466/FUL. However, the appeal scheme would lead to a further reduction in the amount of employment floorspace across the wider site, from 754m² to 210m², resulting the diminution of one of the key justifications for 18/4700/FUL. Given the planning history of the site, and the role of the 754m² in securing permission for the wider redevelopment, I consider that careful consideration must be given to any further reduction, not least to ensure that successive applications do not result in the erosion of the policy objective to maintain an appropriate supply of employment land.
12. Whilst the Council acknowledged that all of the 210m² was intended to be affordable workspace, it concluded that the marketing exercise that was undertaken to justify the reduction in the amount of employment space was not satisfactory.
13. BLP Policy ECY01 enables the loss of employment floor space and its replacement with alternative uses where it can be demonstrated that the commercial use is not viable and has been marketed for at least 12 months. Marketing must be through a commercial agent and set out a competitive price that genuinely reflects the market value of the property in relation to its use, condition, quality and location.
14. The appellant has submitted a copy of marketing particulars and a letter from an agent which notes where the property has been advertised. Whilst it is stated that it has been advertised for more than 12 months, no evidence has been submitted to demonstrate this, for example time-stamped / dated photographs or copies of advertisements. The appellant has also noted that there has been no viable interest in the employment space. However, no justification has been provided to demonstrate that the advertised price was competitive and genuinely reflected the market value of the property. Therefore, I consider that the reduction in employment space compared with the approved scheme has not been justified and consequently that the appeal scheme conflicts with BLP Policy ECY01.
15. The appellant has stated that its fallback position is to leave the site vacant indefinitely if the appeal is not allowed rather than deliver commercial floor space for which there is no demand. However, I have concluded that the appellant has not satisfactorily demonstrated that there is no demand for the commercial floor space and therefore I do not attach any weight to this argument.
16. The appellant has also stated that the provision of 210m² of affordable commercial floorspace, which would be secured by the UU, is a benefit of this scheme and would give the best chance of some commercial space being let out on the site. Whilst the Council has not commented on the proposed amount of affordable commercial floorspace, it has noted that the UU does not include an obligation to enter into an employment agreement with the Council as was agreed in relation to 18/4700/FUL. However, the Council has not set out any justification for such an employment agreement.
17. BLP Policy ECY02 seeks a minimum of 10 per cent of gross new employment floorspace to be affordable unless a viability assessment accompanying the

application demonstrates that it would undermine the deliverability of the development. In this case all of the commercial floorspace would be affordable. Whilst the appellant is at liberty to exceed the 10 per cent that is sought by policy, more than 10 per cent is not necessary to make the development acceptable in planning terms and, therefore, according to Regulation 122, the exceedance cannot constitute a reason for granting planning permission for the development. Nevertheless, the appeal scheme would comply with BLP Policy ECY02 because 10 per cent of the new employment floorspace would be affordable.

Highways

18. The Council decided that the appeal scheme would not address the highways impacts of the development because there was no legal agreement to restrict future occupiers from obtaining residents' parking permits. On the basis of the UU the Council has noted that it is satisfied that this reason for refusal can be removed. Having reviewed the UU I am satisfied that the restrictions relating to parking permits would address the highways impacts of the appeal scheme and therefore that it would comply with BLP Policy TRC03 which relates to parking management and with Barnet's Planning Obligations SPD (2013) insofar as it relates to restricting future occupiers from obtaining car parking permits through a legal agreement.

Living Conditions of Future Occupiers of the Proposed Dwellings

19. Whilst the Council concluded that the proposed development would fail to provide an adequate level of outdoor amenity space for the proposed residential units, the appellant has stated that the BLP, which was adopted after the Council made its decision, sets out reduced requirements compared with the standards in the now-superseded Development Management Policies Document DPD and the associated SPDs relating to Residential Design and Sustainable Design and Construction. As such, it has said that it would be possible to meet the requirements of the BLP without affecting the layout of the proposed flats.
20. However, I do not have drawings before me to demonstrate how this would be achieved and, therefore, I am unable to conclude that the appeal scheme complies with BLP Policy CDH07 and the related Table 10 which set out the minimum amount of outdoor space that should be provided in association with self-contained residential developments.

Living Conditions of Occupiers of 166-168 High Street

21. The Council has said that the window of the living area to unit 7 on the third floor of the appeal scheme would face the rear windows of 166-168 High Street, which is in residential use, at a distance of approximately 12m. It has also said that the roof terrace associated with unit 7 would be positioned at a distance of approximately 5.5m from the rear windows of 166 High Street.
22. When I visited the site it appeared that whilst there was approximately 5.5m from the western edge of the appeal site to the closest part of 166 High Street, that part of 166 High Street is a ground floor commercial unit. The closest windows of the residential units on the upper floors are further to the west, indicating that there would be a greater distance between the window of unit 7 and the rear windows of 166-168 High Street. On the basis of the distance that I observed I consider that

the appeal scheme is unlikely to give rise to unacceptable harm to privacy as a result of views from the window of unit 7.

23. The appellant has also submitted a drawing which illustrates where a screen could be placed to prevent overlooking from the roof terrace. I consider that this would address the issue of overlooking and could be secured by way of a planning condition. Thus, the appeal scheme would comply with BLP Policy CDH01 insofar as it seeks to achieve acceptable levels of privacy for nearby occupiers.

Other Matters

24. The appellant has stated that BLP Policy TOW01, which promotes the vitality and viability of Barnet's town centres, emphasises the need for residential uses in order to retain and improve the vibrancy and vitality of town centres. Whilst that policy would support residential development on the appeal site given that it is located in a designated centre, it does not override the need to first demonstrate that BLP Policy ECY01 has been satisfied.

Planning Balance

25. Given the need for new housing generally, I attach significant positive weight to the delivery of 8 residential units. The ability of the appeal scheme to comply with policies which seek to secure acceptable living conditions for the occupiers of 166-168 High Street is a neutral component in the overall balance as is the mitigation of the scheme's transport impacts. Similarly, and for the reasons set out above, the proposed affordable housing and affordable commercial floorspace are neutral considerations.
26. However, there would be a significant decrease in the employment potential of the site compared with the approved scheme and this reduction has not been fully justified. In addition, the absence of evidence to demonstrate that the proposed dwellings could be provided with sufficient private outdoor space is a negative component of the overall planning balance.
27. Taken together, I consider that these impacts outweigh the benefits, that the appeal scheme conflicts with the development plan taken as a whole, and that there are no other material considerations which suggest that an alternative conclusion should be reached.

Conclusion

28. For the reasons given above the appeal should be dismissed.

P Burley

INSPECTOR