



Appeal Decision

Site visit made on 19 April 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

Appeal Ref: APP/X5210/W/22/3306789

529 Finchley Road, London NW3 7BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Nick Dha against London Borough of Camden.
 - The application Ref 2021/2539/P, is dated 17 May 2021.
 - The development proposed is described as 'extension of existing building to provide 5 No. x 1 bedroom flats and alteration of existing A1 retail space.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is against the Council's failure to determine the planning application within the relevant statutory timeframe. However, I have had regard to the Council's statement which provides clarity in terms of the reasons the Council would have refused planning permission for the proposed development, had it been able to do so. As the Council has clarified that a financial contribution towards public highway works is not required, this is not a matter in dispute between the parties and has therefore fallen away.
3. A daylight/sunlight assessment was submitted at the final comments stage of the appeal. As this amounted to new information, accepting it would have been prejudicial to the interests of the Council and interested parties, namely neighbouring occupiers who may have wished to comment on the contents of the document. Although this is an appeal against non-determination, the evidence before me indicates that the appellant was aware of the Council's concerns regarding the need for a daylight/sunlight assessment during the determination of the application, such that it would have been reasonable to anticipate this being an issue in the appeal. Turning away the assessment was therefore proportionate in this instance.
4. A Unilateral Undertaking (UU) was also submitted at the final comments stage. The Council was given the opportunity to comment on the contents, but no response was forthcoming. This matter will be dealt with later in my decision..
5. A drawing of the north-eastern elevation of the proposed development is absent from the plans that were before the Council and are now before me. Having regard to the overall scale and position of the proposed extension as shown on the proposed site plan, floorplans and elevations, I am satisfied that there is sufficient detail to properly assess the impact of the proposal.

Main Issues

6. The main issues so far as relevant to this appeal are the effect of the proposed development upon;
 - i) The character and appearance of the area, including the impact on trees;
 - ii) The living conditions of neighbouring occupiers at 529a and 529b Finchley Road with particular regard to light and outlook;
 - iii) Whether the proposal would provide suitable living conditions for the future occupiers of the proposed dwellings with regard to internal space for Units 3 and 5, and adequate light and outlook in respect of unit 5;
 - iv) Whether the proposal would result in an unacceptable loss of a family sized dwelling and provision of an appropriate housing mix to meet the needs of the Borough;
 - v) Whether the loss of commercial floorspace and service yard would be harmful to the functionality of an existing employment use;
 - vi) Whether the proposal would make adequate provision towards affordable housing; and
 - vii) Whether the proposal would secure a car-free housing scheme.

Reasons

Character and Appearance

7. Occupying a corner plot at the junction of Finchley Road (A41) and Burrard Road, the appeal site consists of a 3-storey end of terrace building, with an empty shop and rear service yard at ground floor level and residential accommodation above. The ground floor unit forms part of a small parade of commercial premises in an otherwise residential area.
8. Finchley Road is a wide, dualled road with additional bus lanes, such that it has a spacious character punctuated by occasional street trees which soften the dense urban environment. Buildings are of varying scales and architectural styles but with a unifying material palette of red brick and light-coloured render. Burrard Road is narrower with the scale of buildings reducing away from Finchley Road and street trees occurring less frequently.
9. The immediate context of the appeal site includes taller buildings, namely the approximately 4-storey building at No 527 Finchley Road on the opposite corner of Burrard Road and the 3-storey building of No 2 Ingham Road to the rear. Visually from Burrard Road, the design of the proposed extension including incremental step changes would enable the retention of the hierarchy of the taller 3-storey host building facing the wider street of Finchley Road.
10. The appeal property is a red bricked building with a balanced ratio of wall to window including attractive detailing such as cambered lintels and projecting string coursing and quoins. This architectural detailing would be followed through onto the proposed extension which would add interest to the building, along with the stepping down in height and set-backs within the Burrard Road elevation, that would minimise the overall scale of the development. The articulation of the ground floor elevation with 2 doors and 2 windows as well as

a projecting brick coursing to the corner, would provide an improvement to the street environment given the presence of the existing tall boundary wall.

11. From the evidence before me, it is unclear as to why the duplicating of features of the existing building would be inappropriate. The visual success of the extension would largely depend on the materials used and the manner in which the architectural detailing is executed. However, given the clear expression of such matters within the submitted plans, there is nothing before me to suggest that the proposal would not amount to a high-quality development that reflects the character of the host building.
12. The extent or visibility of any glass balustrades that would be installed to the proposed roof terraces is unclear from a comparison of the proposed elevation and visual drawings. The Council's concerns with regard to the reflectivity of the glass is acknowledged. However, as the Council indicates that railings or trellising may be considered acceptable, this is a matter that could reasonably be dealt with by way of condition, were the proposal to be acceptable in all other regards.
13. Of a typical workaday character, the rear yard area is not particularly attractive and whilst currently undeveloped, it does not perform the function of open space. In this regard the impact of the proposed development has been overstated. The height and proximity of the side elevation facing Burrard Road would not be any more dominant than the existing flank elevation of the host building and adjoining boundary wall. It would be typical of development in a dense urban location such as this. I therefore find that the proposed development would be of an appropriate design and scale.
14. Two trees are located within the pavement adjacent to, but outside of the appeal site. Prominent and attractive features, they contribute positively to the street scene of Burrard Road. Their height and maturity results in the crown spread of the trees overhanging the appeal site. Given that the root area of a tree is usually contiguous with its crown spread, it is possible that the roots of the trees extend below the rear service yard. Although an existing area of hardstanding is present, this area would be disturbed by excavations for the foundations and services of the proposed development.
15. In the absence of an arboricultural impact assessment, I cannot be certain that the proposed development would not harm the existing trees. There is no evidence to support the assertion that the trees are hardy because of their location within the pavement. Mature trees can be less tolerant of root damage and therefore, the lack of a consultation response from an arboricultural specialist does not change my view on this. Moreover, this is not a matter that could be adequately controlled by condition given that mitigation measures may be required to address any impact, for example raft foundations. Tree pruning would not address the impact of excavations on the root protection areas.
16. For the above reasons, the proposed design of the proposed development would be acceptable. However, I am not satisfied that the impact on the adjacent trees has been properly considered. The proposed development could therefore, harm the character and appearance of the area over time. Hence, it would fail to accord with Policies D1 and A3 of the Camden Local Plan 2017 (CLP), which require new development to respond to natural features and retain existing trees including those within the public highway.

Living Conditions of Neighbouring Occupiers

17. Two outriggers form a small 'u-shaped' alcove area between the appeal property (No 529) and No 529a Finchley Road at first and second floor level. I visited on a bright, sunny spring afternoon when the rear facing windows belonging to the first and second floor flats of No 529a were receiving direct sunlight. The proposal to extend the outrigger belonging to the appeal property would result in the deepening of the alcove. Being to the south-west, and a combination of 2 and 3-storeys in height, the proposed extension is likely to result in a significant loss of afternoon sunlight particularly to the first floor habitable windows and to a lesser but no less significant extent, the second floor habitable windows both within and outside of the alcove. Direct sunlight currently afforded to the rear facing habitable windows of the flats within No 529b are also likely to be similarly affected, given the proposed height and position of the proposed extension. The loss of direct sunlight is likely to make the internal rooms more gloomy, negatively affecting the living conditions of the existing occupiers of the flats within No 529a and 529b.
18. Ambient daylight to the habitable rooms of the flats within No 529a may be affected given the tunnel effect that would be created by the proposal. Whilst the door and windows on the side elevation of the outrigger belonging to the first floor flat within No 529a are obscure glazed, they will still provide a source of natural light to the rooms within. In the absence of any substantive evidence to the contrary, for example a daylight and sunlight assessment, I cannot be certain that the daylight and sunlight received by the rear facing windows of the flats within No 529a including those within the alcove, would not be reduced to an unacceptable degree.
19. The proposed north-western elevation of the extension would not be set back from the existing outrigger, nor articulated with any windows or doors. The tall, blank elevation would present a foreboding structure in severe proximity to the boundary with No 529a, such that it would be oppressive to the occupants of the adjoining flats at first and second floor level. This is less likely in terms of the impact on the outlook from the flats within 529b, given the greater separation distance from the appeal site.
20. As the flank elevation of No 2 is directly to the rear, the proposal would effectively box-in and severely curtail the outlook from the rear habitable rooms belonging to the flats at No 529a, as well as those within the host building itself. It would also loom over the terrace to the first floor flat of No 529a which contained an outdoor table and chairs and washing, indicating its importance to the occupiers as a small area of outside space. Whilst occupants of dwellings do not have a right to a view, outlook contributes towards the standard of living conditions experienced by the occupants of a particular property. It is therefore an important and somewhat standard planning consideration in respect of new development adjoining existing dwellings.
21. There is no substantive evidence before me to demonstrate that the existing flats are dual aspect. To suggest that the proposed extension is sufficiently set back from the existing windows of adjacent properties, is to woefully understate the impact of the proposed development. The appeal site is within a densely developed urban area. This does not however, justify new development occurring at any cost to the living conditions of neighbouring occupiers.

22. Limited evidence is before me of the circumstances of the development on the corner of Ingham Road (Fortune Green Road development), specifically the original context of the site and the location of existing dwellings, including the position of windows to habitable rooms. Based on the information presented, it would appear that the original arrangement of buildings did not include windows to habitable rooms recessed into an alcove, formed by 2 existing outriggers. Even if the circumstances could be considered comparable, that does not justify the harm I have identified that would arise in respect of this particular proposal, which has been considered on its own merits.
23. The proposal would have an adverse effect on the living conditions of the occupants of the first and second floor flats belonging to No 529a with regard to daylight, sunlight and outlook. It would also be harmful to the daylight and sunlight afforded to the occupants of the flats within 529b. The proposal would therefore conflict with Policy A1 of the CLP which amongst other things, seeks to ensure that the amenity of neighbours is protected.

Living Conditions of Future Occupiers

24. Policy H6 of the CLP confirms, amongst other things, that all proposals for new dwellings will be required to comply with the Nationally Described Space Standards (NDSS)¹. These are minimum standards.
25. Unit 3 would have a separate bedroom and would not therefore be a studio. With an internal area of 45sqm², it would fail to meet the minimum floorspace requirement of 50 sqm for a 1-bedroom flat. Conflicting values have been provided in respect of the proposed floor area of Unit 2. Even if the appellant's best-case scenario of 56sqm was taken,³ Unit 5 would still fail to meet the NDSS' minimum floorspace requirement for a 2-storey dwelling of 58 sqm. Whether or not the proposed dwelling would have a large open plan dual aspect living area with bathrooms on both floors, the NDSS does not make provisions for floorspace to be offset by layout and outlook. The provision of accommodation above a shop does not preclude the need to achieve the required space standards.
26. No section drawings are before me to demonstrate whether the proposed flats would meet the minimum floor to ceiling height of either the NDSS or Policy D6 of the London Plan (2021) (LP). This policy explains that the standard is to ensure that new dwellings are of a high quality in terms of space and daylight, whilst avoiding overheating and overshadowing.
27. Likewise, without a section drawing I cannot be certain of the position of the proposed rooflight to the bedroom of Unit 5, and whether this would provide a degree of outlook for the future occupants that may wish to use the bedroom for other purposes such as working from home. However, in the absence of any evidence to the contrary, the provision of 1 south-westerly facing rooflight would provide a sufficient level of natural daylight and direct sunlight given the limited size and head height to the attic bedroom, to meet the needs of the future occupants.

¹ Department for Communities and Local Government document, 'Technical Housing Standards – Nationally Described Space Standard' 2015.

² As cited by the appellant in their statement of case.

³ As cited by the appellant in their statement of case.

28. Whilst the Council is concerned that the internal spaces of the proposed flats are poorly planned with long corridors, they are not excessively so and are to some extent, typical of single-storey living layouts. Provided that the flats meet the requirements of the NDSS in all other regards, the proposed arrangement of circulation space within the flats would not lead to a poor standard of accommodation.
29. Whilst sufficient daylight and sunlight would be provided to the bedroom of Unit 5, there is insufficient information to demonstrate that adequate outlook would be achieved. Furthermore, the proposed development would not create suitable living conditions for the future occupants of Units 3 and 5 with regard to internal space. The proposal would conflict with Policies H6 and A1 of the CLP and Policy D6 of the LP which aim to ensure the provision of high-quality homes in respect of the provision of space and amenity of occupiers. It would also fail to comply with the NDSS which aims to improve the standard of residential development through prescribing space standards.

Loss of a Family-Sized Dwelling and Whether Appropriate Mix of Housing

30. Policy H7 of the CLP seeks to ensure that the Borough's housing stock provides for a range of housing needs and sizes, but with priority given to particular tenures and size of dwellings. 2 and 3 bedroomed open market dwellings are given high priority, while 1-bedroomed dwellings attract a lower priority.⁴ The supporting text to Policy H7 at paragraph 3.190 of the CLP acknowledges that most developments will include some homes that have been given a lower priority level. However, all of the dwellings proposed would be of the lower priority, and a 3-bedroomed family-sized dwelling would also be lost. As such, the scheme would fail to prioritise the provision of larger dwellings or secure a range of homes of different sizes, as acknowledged by the appellant in their statement of case. No substantive evidence has been presented to demonstrate that the appeal site could not accommodate a mix of dwelling sizes or that a design solution to the provision of amenity space could not be found.
31. Reference is made to Policy 6 which appears to be a typing error relating to Policy H6 of the CLP. It is suggested that the appeal site is below the 0.5 hectares threshold for provision to meet particular housing needs. I agree that is the case here. However, reference to housing needs means particular types of housing such as self-build plots or housing for older people. It does not negate the need for new housing developments to provide a range of homes as required by Policy H7 of the CLP.
32. The proposal would result in the loss of a family-sized dwelling and would not provide an appropriate mix of dwellings to meet the housing priorities of the Borough. Consequently, it would fail to comply with Policy H7 of the CLP as set out above.

Functionality of Employment Use

33. The existing ground floor retail unit⁵ would be reduced in size by 21sqm and the rear service yard would largely be lost to the proposed extension. There is no evidence that a particular end-user would be taking up occupation of the unit post-development, and no marketing or viability evidence has been submitted to demonstrate a lack of demand for a commercial premises and

⁴ Table 1 of Policy H7 of the CLP.

⁵ Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended).

yard of this size and type. It is likely that the loss of the service yard and reduction in floor area would limit the potential commercial uses that the premises could be put to under class E, for example a restaurant or leisure use. It may reduce the flexibility of the premises and thus stay empty, rather than attracting a new use. If this were to occur, it would be harmful to the vitality of the shopping parade to which it belongs and the service function it provides to local residents.

34. Whilst it is suggested that the ground floor unit could be serviced from Finchley Road to the front, there is no evidence to demonstrate that this would be workable in practice or that this is the case for the remainder of the units within the terrace. Finchley Road is a red route where vehicles are not permitted to stop between 07:00 and 19:00 hours Monday to Saturday, in recognition of the highly trafficked nature of the road and importance as a main bus route. The restrictions on stopping are likely to be a hindrance to the servicing of the commercial premises, although I recognise that some time limited car parking could take place further up the street beyond the appeal site. Nevertheless, the unloading of a vehicle would require the operative to navigate around the mature street tree and street furniture within the pavement to the front of the unit. Given these constraints, the servicing of the premises from Finchley Road is likely to be difficult, as well as potentially hazardous to the free flow of pedestrians and vehicular traffic.
35. The proposed development would reduce the functionality of the existing employment use that would be harmful to the vitality and viability of the shopping parade. The proposal would therefore be contrary to Policy TC2 of the CLP which seeks to maintain a range of shops and other suitable uses to provide variety, vibrancy and choice.

Affordable Housing Provision

36. Policy H4 of the CLP seeks to maximise the supply of affordable housing with a strategic target of 3,500 additional affordable homes by 2030/31. All developments of 1 or more dwellings are expected to make an affordable housing contribution, calculated on a sliding scale linked to the gross floorspace created. In this case, a contribution of 4% affordable housing would be required, amounting to £33,000.
37. Paragraph 64 of the National Planning Policy Framework (the Framework) and the Planning Practice Guide⁶ (PPG) both advise that affordable housing should only be sought for major residential developments, major meaning more than 10 dwellings or a site area of more than 0.5 hectares. This is a material consideration of significant weight. However, the supporting text to Policy H4 of the CLP addresses this matter, advising that the requirement for affordable housing provision within the Borough is high and there is no viability basis for a higher threshold.⁷ In the absence of contrary viability evidence from the appellant, there is clear justification in this instance to depart from the Framework and PPG.
38. The contribution sought by the Council towards affordable housing would therefore be necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonable in scale and kind to

⁶ Paragraph: 023 Reference ID: 23b-023-20190901.

⁷ The Camden Strategic Housing Market Assessment (SHMA) and the Camden Local Plan Viability Study.

the development in light of the sliding scale. The appellant has submitted a UU to secure the required financial contribution. Whilst I have reservations about the payment of the contribution being triggered on occupation of the proposed dwellings, rather than prior to the commencement of the development, the Council has not raised any objection.

39. Consequently, an appropriate mechanism to secure a financial contribution towards the provision of off-site affordable housing has been provided. The proposal would therefore accord with Policies DM1 and H4 of the CLP which seek to use planning contributions to support sustainable development.

Car-free Development

40. Policies T1 and T2 of the CLP, seek amongst other things, to promote a sustainable pattern of development, reducing dependency on the private car and managing parking demand such that all new developments are required to be car-free.
41. I observed that the appeal site is located within a Controlled Parking Zone subject to a Traffic Regulation Order (TRO). On-street car parking was prevalent and the creation of 5 new dwellings could lead to increased demand and parking congestion which would be harmful to highway safety, as well as the character and appearance of the area.
42. The proposed development does not make any provision for on-site car parking and in this regard, it would be car free. Future occupiers would have access to local shops and services on foot and public transport options can be found nearby. Cycle parking provision would also be provided on site. Consequently, the future occupiers of the dwellings would not be dependent on private cars to meet their transport requirements. Nevertheless, these locational aspects would not necessarily prevent the desire of future occupants from owning or using a private car for daily purposes.
43. As there is no information before me as to how the TRO works, I cannot be sure that there are controls outside of the planning system to ensure that the proposed development would be car-free. Nevertheless, the submitted UU would secure the development as car-free. The UU is directly related to the proposed development, fairly and reasonably related in scale and kind and necessary to ensure that the future occupiers are not entitled to apply for a residents parking permit, or to buy a contract to park in a Council controlled car park. Whilst I have concerns over the reasonableness of the enforceability of the relevant clause, given it would require someone to vacate their home if they held a parking permit, the Council has not raised any concerns.
44. The layout of the proposed development, and the provision of an appropriate mechanism to secure the development as car-free would therefore be in accordance with Policies T2 and T2 of the CLP.

Other Matters

45. The appeal site lies outside but adjoining the boundary of the Redington and Frogna Conservation Area (CA). This area extends north-eastwards away from the appeal site on the opposite side of Finchley Road. It comprises 19th and early 20th century buildings in leafy streets with strong townscape characteristics. The Council does not object to the proposal on the grounds of any harm to the setting of the CA. Given that the proposed extension would be

behind the existing building fronting Finchley Road, I am inclined to agree. The setting of the CA would therefore be preserved.

46. The Council advises that its Housing Delivery Test results demonstrate a recent under provision of housing delivery. As such, it confirms that the relevant policies for the supply of housing should not be considered up to date and paragraph 11(d)ii of the Framework should therefore be applied.
47. For the reasons given above, the proposal would be contrary to Policies D1, A1, A3, H6, H7 and TC2 of the CLP and Policy D6 of the LP, in respect of poor living conditions for future and neighbouring occupiers, the impact on trees and the functionality of an existing employment use and the loss of a family-sized dwelling and inadequate mix of housing. These policies are consistent with the Framework which seeks to ensure well-designed places that acknowledge the important contribution of trees to the character and quality of urban environments, a high standard of amenity, and the need for a mix of homes and employment sites for different needs. Whilst the Framework and the LP encourage the efficient use of existing land in meeting the need for homes, particularly on small sites, this is not unqualified and relies on the proposal meeting the policy requirements when read as a whole. Significant weight is therefore attached to the cumulative conflict with these policies.
48. The proposal would deliver a number of benefits. The delivery of 4 (net) dwellings of an appropriate design in an area where there is good access to facilities, services and public transport would contribute importantly but nonetheless modestly, to the local supply of housing. The improvement to the appearance of the service yard, setting aside the implications for the commercial unit, would also be of benefit. The scheme would further make a contribution towards the provision of affordable housing in the Borough, via a modest financial contribution.
49. Consequently, the adverse impacts of granting permission would significantly and demonstrably outweigh the modest benefits of the development, when assessed against the policies in the Framework, taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development. The policies in the Framework do not outweigh the conflict with the development plan and I am therefore led to a dismissal of the appeal.
50. The Council has suggested that a legal agreement would be necessary to secure energy and sustainability statements that demonstrate how the development would minimise future energy consumption and be resilient to climate change as required by Policies CC1 and CC2 of the CLP. No such provisions are made within the submitted UU.
51. In any event, the PPG⁸ advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. The Council has not explained why an obligation is required, nor how it would meet the tests set out at Article 122 of the CIL Regulations. I see no reason, based on the information before me, as to why this matter could not be addressed by way of a planning condition for which Policies CC1 and CC2 would provide the necessary justification, were I minded to allow the appeal. Given

⁸ Paragraph: 003 Reference ID: 23b-003-20190901.

my findings in respect of the main issues, it is not necessary to consider this matter further.

52. The evident frustrations with regard to the delays in the processing of the planning application and the failure of the Council to issue a decision within the given time period are noted. Nevertheless, this is a matter for the main parties.

Planning Balance and Conclusion

53. I have found that the proposal would amount to car-free development, would contribute towards affordable housing provision and would not be harmful in respect of the design of the proposed extension. The absence of harm is, however, neutral in the planning balance. The benefits of the scheme in this instance, do not outweigh the harm identified in respect of the effect of the development on the character and appearance of the area with regard to trees, the impact on the living conditions of future and existing occupants, the loss of a family-size home and the inadequate mix of homes, as well as the loss of employment space. There are no material considerations that lead me to determine the proposal otherwise than in accordance with the development plan. The appeal is dismissed.

M Clowes

INSPECTOR