

DL



Appeal Decision

Hearing held on 17 May 2005

Site visit made on the same day

by **Isobel McCretton BA(Hons) MRTPI**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
409 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6572
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date:

10 JUN 2005

Appeal Ref: APP/N5090/A/04/1154464

2-8 Needl Crescent, Hendon, London NW4 3RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Simon Holdings against the decision of the Council of the London Borough of Barnet.
- The application Ref. W12942B/04, dated 8 March 2004, was refused by notice dated 28 April 2004.
- The development proposed is erection of 15 flats in 2 separate buildings following demolition of 4 houses.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Prior to the Hearing the appellants submitted an amended drawing (no. GA.01B) reducing the number of units from 15 to 14. This has implications for the provision of affordable housing. A unilateral undertaking was also submitted in respect of a financial contribution towards the educational costs arising from the development. I return to both these matters later in the decision, particularly the matter of affordable housing on which I consider the appeal turns.
2. It is evident that the appellants are dissatisfied with the pre-application advice obtained from the case officer which conflicted with the Council's ultimate reasons for refusal. Sworn affidavits were submitted to the Hearing as to the content of those discussions. However such advice is not binding on the Council and is not a matter for me in the determination of this appeal which I have considered on its own merits in the light of the official decision made by the Council and local and national planning policy.

Main Issues

3. I consider that the main issues in this case are:
 - the effect of the proposed development on the character and appearance of the area, and
 - the effect on the living conditions of adjoining residential occupiers in terms of loss of outlook.
 - whether or not affordable housing should be provided on the site

Planning Policy

4. The London Plan, adopted in 2004, sets out a significant London-wide need for affordable housing.

Appeal Decision APP/N5090/A/04/1154464

5. The development plan for the area is the London Borough of Barnet Unitary Development Plan (UDP) adopted in 1991. Policy G1 seeks to maintain and improve the character and quality of the Borough's environment while policies G18, H1.2 and T1.1 generally require development to be compatible with the established character of the local environment in terms of scale, form and other contextual design elements, impact on neighbouring properties and intensity of use and provide a satisfactory and harmonious relationship with existing buildings. Policy EDN1.1 states that the Council will ensure that the educational implications of housing development and other land use changes are properly co-ordinated with their consequent educational requirements.
6. The UDP is under review and the Revised Deposit Draft UDP was published in 2001. Policies GBEnv1, H16, D1, D2 and D3 broadly reflect adopted policies G18, H1.2 and T1.1. Policy D5 indicates that new development which does not provide adequate daylight, sunlight, privacy and outlook for potential and adjoining occupiers and users will be refused. Policy H5 gives a requirement for affordable housing on sites of 10 or more units gross or on sites of 0.4ha or more, and while policy H0 sets out a need for the provision of at least 4546 affordable homes to contribute to local and regional housing provision between 1997 and 2006. Policy CS8 requires developers to enter into a planning obligation to meet the extra educational costs incurred by the community as a result of the development where there is shortage of school places or where one would be created.
7. The review is now at an advanced stage with the UDP Inquiry Inspector's report having been published in October 2004. Pre-Inquiry changes revised policy H5 to set a requirement for affordable housing on sites of 15 dwellings. This has been accepted by the Inspector and accords with Government guidance. Policy H0 will be deleted as the figures are now out of date, a greater need for affordable housing having been subsequently identified. It appears that none of the other policies are subject to major change and so I accord them considerable weight.
8. The Council approved Supplementary Planning Guidance (SPG) on *Educational Needs Generated by New Housing Development* in 2000, and published draft SPG on *Affordable Housing* in 2000 giving further guidance on the way UDP policy will be applied to achieve affordable housing in practice.
9. Government guidance as set out in Circular 6/98: *Planning and Affordable Housing*, PPG3: *Housing* and the *Planning for Mixed Communities Consultation Paper* 2005 (which proposes amendments to PPG3 and to replace Circular 6/98) are also relevant to this decision.

Reasons

Character and Appearance

10. The appeal site is located on the western side of Neeld Crescent, about 45 metres from the junction with Vivian Avenue and comprises 4 detached houses and various outbuildings. The general area is predominantly residential with mainly detached and semi-detached houses in Neeld Crescent, together with 2 substantial blocks of flats towards the northern end. On the corner of Vivian Avenue there is also a three-storey block of flats (Trenchard Court), the garage court to which abuts the southern boundary of the appeal site. It is proposed to demolish the buildings on site and to erect 2 blocks of flats with underground parking for 24 cars, accessed at the southern end. A previous proposal for a single block of

Appeal Decision APP/N5090/A/04/1154464

14 flats with some surface parking on the site of 3 houses (2-6 Neeld Crescent) was dismissed on appeal in 2003 (APP/N5090/A/03/1113517). The appeal proposal seeks to overcome the reasons why that development proposal did not succeed.

11. The design of the 2 proposed blocks would reflect that of the various pairs of semi-detached houses in the vicinity and the frontage width of each block would also be similar. The ridge height would be a little below that of the adjoining house at no.10 and drop down again to the second block, and there would be gable and 'porch' details on the frontage, again reflecting detailing on other houses in the road. Although the depth of development on the site would be greater than at present, particularly when viewed from the south, I consider that the bulk and mass of the proposed blocks would not be obtrusive and overbearing in the street scene or out of character with the pattern of development in the wider area. As such I conclude that the proposal would not be detrimental to the character and appearance of the area or conflict with policies G1, G18, H1.2 and T1.1 of the UDP and the corresponding policies of the emerging Plan.

Living Conditions

12. The rearward projection of the proposed building adjoining no.10 has been reduced so that it does not impinge on a 45° line drawn from the nearest point of that property. In addition, at present no.8 on the appeal site projects considerably further into the rear garden than does no.10, and there are trees and tall evergreen shrubs (growing to about eaves height) along the common boundary within the garden of no.10 and therefore under the control of those occupiers. Given that a basement has previously been excavated on the appeal site at no.8, it seems to me that there would be little need for additional excavation work which would be likely to affect this planting and, in the event of planning permission being granted for the scheme, a condition could require a method statement for work close to the boundary to ensure that the trees and shrubs which screen the appeal site would not be unduly affected. I therefore consider that the outlook from no.10 would be little different from that which currently exists and there would not be an unacceptable loss of outlook for the occupiers.
13. The Council also sought to argue that the outlook for residents in Trenchard Court would be adversely affected, but at the site visit I saw that the proposed building would adjoin the garage court to that block, and so be away from any amenity area. Any windows in Trenchard Court would be about 20 metres from the flank wall of the appeal building so that in my opinion it would not appear overbearing and which would not contain any windows other than a high level roof light.
14. I therefore conclude that there would not be a harmful effect on the living conditions of the adjoining occupiers by way of loss of outlook, and as such the proposal would not conflict with policies H1.2 of the UDP and D5 of the emerging Plan.

Affordable Housing

15. The issue of affordable housing provision is the one upon which I consider the appeal turns. The scheme, as originally submitted, was for 15 flats, but to overcome the Council's reason for refusal in respect of affordable housing provision, prior to the Hearing the appellants submitted a proposed amendment which would reduce the number of units to 14, i.e. below the threshold which would trigger a requirement for affordable housing provision to be made.

Appeal Decision APP/N5090/A/04/1154464

16. While I appreciate the appellants' frustrations regarding officer advice on this matter, the original proposal clearly does not meet the requirements of emerging policy H5 as no affordable housing provision has been made. Although not yet adopted, I accord this policy significant weight as no post-Inquiry change is proposed, and it reflects Government guidance in Circular 6/98, PPG3 and the more recent draft guidance in *Planning for Mixed Communities* (2005). These all post-date the adopted UDP which contains no policy on affordable housing.
17. The Council has shown that while it is likely to be able to meet its targets for new housing provision in the Plan period, there will still be a significant and unmet need for affordable housing. This has not been disputed by the appellants. PPG3 requires the best use of urban land and states that a community's need for a mix of housing types, including affordable housing, is a material planning consideration which should be taken into account in formulating development plan policies and in deciding planning applications involving housing.
18. The proposed changes to planning policy given in *Planning for Mixed Communities* Annex A, para 15 indicate that local planning authorities may apply their policies on affordable housing to planning applications in respect of sites falling below the relevant site-size thresholds where they can demonstrate that those sites are capable of delivering more housing than proposed and would be above an appropriate site-size threshold. While this is, at present, draft guidance, in my view it carries forward the PPG3 requirement to make the best use of land and the need to meet identified housing needs and is therefore a material consideration.
19. Given that I have found the proposed blocks of flats acceptable in terms of siting and design, it seems to me that the site is quite capable of accommodating 15 units, and so has the potential to deliver an element of affordable housing for which there is a demonstrable need in the Borough. Therefore, despite the fact that the amended proposal would still meet the density requirements of PPG3, in the absence of any indication that the scheme would be unviable, I conclude that the proposed reduction to 14 units to avoid making affordable housing provision would not make the best use of this site and I do not accept it as an amendment to the submitted scheme.
20. I conclude that the site does not make proper provision for affordable housing and as such conflicts with national planning policy and emerging policy H5.

Other Matters

21. The Council has shown that there is shortage of school places in the Borough as a whole, particularly nursery school provision. As the proposed development contains family housing (2 bedrooms or more), as defined in the UDP, I consider that there is likely to be additional demand for school places as a result of the development. The appellants have put forward a unilateral undertaking to make a financial contribution for this purpose and I consider that it is appropriate and meets the requirements of policy EDN.1 and emerging policy CS8.
 22. Residents have expressed concern about additional on-street parking which would result from the development. However the proposal contains an underground car park for 24 cars. This is marginally above the maximum provision advised in PPG3, but offers scope to provide secure cycle storage to encourage the use of means of transport other than the
-

Appeal Decision APP/N5090/A/04/1154464

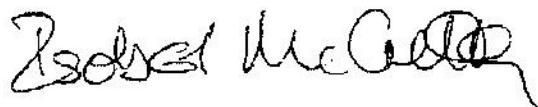
private car. The site is also within walking distance of shops and other services, buses and underground/train stations. I therefore consider that the level of parking provision would be adequate and there is no evidence before me to show that the development would result in unacceptable on-street parking.

Conclusion

23. While I find the built form of the development, parking provision and its effect on the living conditions of adjoining residents to be acceptable, I consider that these matters are outweighed by the fact that the site does not make the best use of urban land in failing to make provision for affordable housing for which there is a local need. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed.

Formal Decision

24. I dismiss the appeal.



INSPECTOR