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## Appeal Decision

Hearing held on 6 May 2015

Site visit made on 6 May 2015

by **G J Rollings BA(Hons) MA(UD) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 August 2015

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**Appeal Ref: APP/N5090/W/15/3003001**

**The Alexandra, 133 East Barnet Road, Barnet, Hertfordshire, EN4 8RF**

- 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 Opticrealm Limited against the decision of the Council of the London Borough of Barnet.
  - The application Ref B/02905/14, dated 28 May 2014, was refused by notice dated 24 November 2014.
  - The development proposed is the demolition of existing buildings and erection of three storey building including 12no. rows solar panels to roof, 15 off street parking spaces, refuse/recycling facilities and alterations to hard/soft landscaping to facilitate creation of 15no. self-contained flats.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of three storey building including 12no. rows solar panels to roof, 15 off street parking spaces, refuse/recycling facilities and alterations to hard/soft landscaping to facilitate creation of 15no. self-contained flats at The Alexandra, 133 East Barnet Road, Barnet, Hertfordshire, EN4 8RF in accordance with the terms of the application, Ref B/02905/14, dated 28 May 2014, subject to the conditions set out in the list attached as Annex A.

### Procedural Matter

2. Revised plans were submitted during the course of the appeal. They contain amendments which are minor in nature and do not amplify any of the issues identified by the Council in its refusal notice, or concerns raised by other parties. As such, I am satisfied that no parties are prejudiced by my acceptance of these revisions.

### Application for Costs

3. At the Hearing an application for costs was made by Opticrealm Limited against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

### Main Issues

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

- Whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to outlook, privacy, noise and disturbance, and the provision of outdoor space; and
- Whether the proposed affordable housing provision is appropriate.

## Reasons

### *Character and appearance*

5. The appeal site currently accommodates a former public house building in a poor state of repair, on the intersection of East Barnet Road and Victoria Road. The character of Victoria Road is different and more domestic in scale than that of East Barnet Road, although the immediate area around the site is mixed. The site is not within a town centre location as defined within the development plan, but this part of East Barnet Road has characteristics similar to those found in such centres, with a similar range of uses and a higher density of development.
6. The site terminates the view along East Barnet Road from its southern approach, and it is clear that the pub building acts as a 'landmark' both in terminating the view and acting as a visual signifier of the transition into East Barnet centre at this point. The proposed building would provide an appropriate design response along the main road frontages, performing a similar role to the pub building.
7. The relationship of the car park with the proposed building formed a reason for refusal. Amendments to the scheme have sought to address the Council's concerns, which included a sense of visual 'cramping' resulting from this relationship, manifested in design features such as balconies that would partially overhang car parking spaces.
8. I agree that that this elevation of the building would incorporate some features and an overall density that would cause it to appear more intense and urban than some of the surrounding development. However, I do not consider that these detract from the overall design. The height of the building would be proportionate to the open setting of the adjoining car park, and there would be opportunities for softening the interface with appropriate landscaping. Views of this part of the development from the public realm would be restricted or distant, and as such there would be no harmful impact on a wider scale.
9. The scale, massing and appearance of the development are not disputed by the Council, and I consider that the development would have a positive effect on the area's character and appearance. I therefore conclude that the proposed development would not have a harmful impact on the character and appearance of the area. There would be no conflict with *Barnet's Local Plan (Core Strategy) Development Plan Document (2012) Policy CS5*, or *Development Management Policies Development Plan Document (DMP) (2012) Policy DM01*. These policies seek the protection and enhancement of the area's character through the provision of high-quality development that appropriately responds to local characteristics.

### *Living conditions*

10. Some of the flats facing the car park area would have a single-aspect outlook, leading the Council to express concerns about the potential exposure of future

residents to a lack of privacy, poor outlook, and noise and disturbance generated by vehicle movements. At ground floor level, habitable rooms would open onto the landscaped buffer to the car park. Minimum separation distances between rooms and the car park would be at least 2.5 metres, which would provide an acceptable buffer. An appropriate landscaping scheme would provide an acoustic and visual screen that would not provide an unacceptable level of enclosure, or compromise the outlook or privacy of occupants. Although the upper floor dwellings would have a different layout and, in the case of one opening, a lesser separation distance, the vertical distance between the car park and these flats would limit any potential for harm to living conditions.

11. The outlook from the ground floor flat on the corner of the building closest to the street intersection was a further point of concern. The high wall proposed along much of the Victoria Road site boundary was originally proposed to enclose a bedroom of this flat, but the appeal plans shorten this wall and extend the landscaped corner boundary treatment to the area in front of the room's window. This would remove the previously unacceptable level of enclosure and provide a relatively unimpeded outlook. As such, there would be no harm to the occupiers' living conditions.
12. The Council's *Sustainable Design and Construction Supplementary Planning Document* (2013) (SPD) states that outdoor amenity space, including communal provision, shall be usable. Space that does not have a reasonable level of privacy is not considered to be usable. A large proportion of the proposed amenity space provision would abut the East Barnet Road frontage of the site, providing a setback and buffer between the road and the building, with the remainder to be laid out along the rear of the building, providing a similar buffer function between the building and the car park.
13. Due to their proximity to the habitable room windows of the proposed dwellings, neither of these areas would have a particularly high level of privacy. As such, the 'usable' area of space, as defined by the SPD, would be minimal. No opportunities for active recreation would be provided. However, there is the potential for some parts to be used by the occupants of the directly adjoining flats, functioning in a similar way to the balconies and terraces on the first and second floors. Along with the provision of balconies, this would provide the majority of residents with access to a fully or partially defensible area of amenity space. Nonetheless, some of the flats on the first and second floors would not have either, and occupants of these dwellings would therefore be without access to private amenity space.
14. The SPD recognises that higher density development might not always achieve the Council's standards, and suggests that a planning obligation to mitigate a shortfall of usable amenity space could be appropriate in such cases. Although this might have been acceptable at the time the appeal was lodged, the transitional period under which 'pooled' contributions that are capable of being funded through a Community Infrastructure Levy (CIL) has since ended. Although an exception can be made when there are less than five separate pooled contributions towards specific infrastructure, the Council advised at the Hearing that such an exception would not be likely to apply in this case. For these reasons, the possibility of mitigation through the use of a planning obligation is not appropriate.

15. Both main parties have provided examples of decisions where a shortfall of amenity space in developments sharing characteristics with the appeal scheme have had a bearing in the outcome. I have also taken into account other points raised by the parties, such as access to recreational opportunities and spaces in the surrounding area, and that prospective occupiers of this form of development may not require their own outdoor space.
16. These considerations do not negate that a minority of future occupants would not have access to private amenity space. However, I have weighed this against the favourable aspects of the development, as set out under the other main issues, and otherwise acceptable living conditions. As such, I do not consider that this issue alone would be sufficient to justify a dismissal of the appeal. I therefore conclude that, on balance, the development would provide acceptable living conditions for future occupants. There would be no conflict with Core Strategy Policy CS5 or DMP Policies DM01 and DM02, which together require development to provide acceptable living conditions for potential occupiers, amongst other factors.

#### *Affordable housing*

17. The policy framework under which the Council approaches affordable housing and relevant planning obligations is set out in Core Strategy Policy CS4 and DMP Policy DM10. These set a clear case for the provision of affordable housing in the borough, and more specific expectations and practice is set out in the Council's *Affordable Housing Supplementary Planning Document (2007)* and *Planning Obligations Supplementary Planning Document (2013)*. Against this policy background, the provision of an obligation would satisfy the three tests set out on paragraph 204 of the *National Planning Policy Framework*.
18. The viability appraisals/reviews provided by both main parties reached different conclusions regarding the development costs, and the expected sales values. The values are against a background of current trends which suggest a slightly depressed market within the area for this form of development, with similar development also recently or due to come to the market. On the basis of the on the evidence of alternative, similar developments, I consider the appellant's values to be the more compelling of the two scenarios. This is based on the number of examples and accuracy of the correlation between different developments, which informed realistic estimates of the expected sales values and likely future trends which are in line with those seen elsewhere in the north London area.
19. The costs supplied by the appellant take account of potential asbestos and contamination removal, and piling. These costs are fluid and account for a higher contingency. However, the appellant provided a revised costs estimate during the Hearing, which resulted in significantly higher amount available for the provision of affordable housing than was originally offered. As such, an amended and completed Unilateral Undertaking was provided after the Hearing. This offers the following options for the payment of an off-site affordable housing contribution to the Council:  
  
Option A: If a contribution towards open space provision is required, a fixed sum in respect of affordable housing, and a sum in respect of open space; and  
  
Option B: If a contribution towards open space is not required, a fixed sum in respect of affordable housing.

20. For the reasons that I set out in the previous section, I consider option A to be inappropriate. With regard to option B, the amount of the contribution would depend on whether the development qualifies for local CIL relief. The contribution offered by the appellant is significantly higher than the amount originally stated at the outset of the appeal, and in contrast to the original application in which no affordable housing contributions were considered appropriate.
21. Core Strategy Policy CS4 states that off-site provision should be considered only in exceptional cases. It is clear from the viability conclusions that on-site provision of affordable homes would not be reasonable or achievable. However, the development of a single tenure type within the development would generate a residual surplus that could be used to help fund the provision of affordable housing elsewhere in the area. This is preferable to no provision at all, and as such I consider off-site provision to be appropriate in this instance.
22. In summary, although the development would not achieve the Council's target proportion of affordable housing, it would contribute to the provision of affordable housing within the borough. I therefore conclude that, in this case, the proposed arrangements for the provision of affordable housing are appropriate. There would be no conflict with Core Strategy Policy CS4 or DMP Policy DM 10, for the reasons set out above.

#### *Other issues*

23. The Council and appellant held different opinions as to whether the former could demonstrate that it had a deliverable five-year land supply. However, my decision to allow the appeal is based on the merits of the main issues that I have identified, and that no significant harm would result from the realisation of the development. As such, it is not necessary for me to reach a conclusion on this issue, although I do recognise the provision of new dwellings as a benefit and a contributor to the overall supply within the borough.
24. I have given consideration to the issues raised by other interested parties, including local residents. The possibility of the development intensifying the demand for local on-street parking spaces, and contributing to an increase in traffic congestion within the area, were raised by a number of respondents. However I do not have evidence to suggest that this development would result in congestion that would be detrimental to highway safety. Parking provided on the site is in accordance with the Council's policy requirements, and the location of the development close to public transport, along with provision of secure cycle parking, would be likely to encourage the use of more sustainable modes of travel. Conditions can be used to mitigate other concerns.

#### **Conclusion and Conditions**

25. Although the development would not wholly meet the Council's expectations in the areas of amenity space or affordable housing provision, it would provide a scheme of generally high quality that would be an appropriate addition to the area. I consider that, on balance, the benefits of the development are greater than and outweigh the level of harm. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

26. I was not provided with any suggested conditions prior to the Hearing. As such, the conditions listed within Annex A were agreed by the main parties during the event. I have applied the tests set out in the Planning Practice Guidance and found them to be acceptable. In some cases I have excluded demolition from the definition of development so that the condition could be considered, and if appropriate, discharged in a timely manner.
27. Conditions 1 and 2 are required in the interests of proper planning, and to ensure that the proposal is built in accordance with the plans showing the proposed details. Conditions 3 through 6 are necessary so that the character and appearance of the site and surrounding area is preserved. Provision of satisfactory living conditions for future residents of the development, and minimisation of light pollution, are additionally required with regard to the lighting scheme within condition 6. The same condition is also required to ensure that the drainage within these areas is designed appropriately.
28. Conditions 7 and 9 are required to ensure that the development would not have any harmful effects on highway safety. Finally, condition 8 is required to ensure that there are sufficient storage areas within the development for bikes and bins, in the interests of promoting sustainable transport modes, and to maintain the character and appearance of the area.

*G J Rollings*

INSPECTOR

Richborough Estates

## **ANNEX A – LIST OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 201-100 rev. 00; 401-201 rev. 10; 402-010 rev. 02; 402-200 rev. 08; 402-201 rev. 10; 402-202 rev. 10; 403-200 rev. 07; 403-201 rev. 14; 403-202 rev. 01; 402-203 rev. 06; 403-200 rev. 09; 452-100 rev. 03; 452-101 rev. 03; 452-102 rev. 05; 460-101 rev. 01; 460-102 rev. 04; 460-103 rev. 02.
- 3) No development, excepting demolition, shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development, excepting demolition, shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of permanent boundary treatment to be erected. The boundary treatment shall be completed before the building is occupied. Development shall be carried out in accordance with the approved details.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, and including a scheme of external lighting, shall be submitted to and approved by the local planning authority prior to the first occupation of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 7) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing No 401-201 rev. 10 for 15 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear.
- 8) No dwelling shall be occupied until the cycle parking and bin storage areas have been built and completed in accordance with the approved plans, and these areas are made available for use by residents of the development. These uses shall thereafter be permanently maintained and the areas used for no other purpose.
- 9) The proposed vehicular crossover from Victoria Road into the site shall incorporate visibility splays with dimensions to be agreed between the developer and the local planning authority. These shall remain free of obstructions at all times.

## **APPEARANCES**

### FOR THE APPELLANT:

Paul Carter	Paul Carter Planning
Tim Cockburn	Opticrealm Ltd
Dr Doug Birt	Douglas Birt Consulting
David Lees	Lees Munday Architects
Steve Hurworth	Walker Management
Chris Ruggles	Jeremy Leaf & Co.
Sue Khazoom	Jeremy Leaf & Co.

### FOR THE LOCAL PLANNING AUTHORITY:

Tanusha Naidoo	Principal Planner & Deputy Planning Manager
Mike Carless	Principal Planning Policy Officer
Tom Sykes	BNP Paribas Real Estate

### INTERESTED PERSONS:

David Howard	New Barnet Community Association
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## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Note on Barnet 5 year housing supply and future housing supply.
2. Supplementary table of comparable, recent sales and market values of nearby one and two bedroom flats.

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Amended and completed Unilateral Undertaking, dated 12 May 2015.