

Location **59-61 The Broadway London NW7 3DA**

Reference: **15/00179/FUL**

Received: 13th January 2015

Accepted: 14th January 2015

Ward: Mill Hill

Expiry 11th March 2015

Applicant: Mr

Proposal: Single storey rear extension to the rear and creation of service area.

Recommendation: Approve subject to conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans: F9D12-048A 150, 100, 200., 400, Rev A, 540, 520 Rev C, 530, 500 Rev A,

Reason: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).

- 2 This development must be begun within three years from the date of this permission.

Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 Before the building hereby permitted is first occupied the proposed window(s) in the west elevation facing No. 53 The Broadway shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.

Reason: To safeguard the privacy and amenities of occupiers of adjoining residential properties in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012) and the Residential Design Guidance SPD (adopted April 2013).

- 4 The materials to be used in the external surfaces of the building(s) shall match those used in the existing building(s).

Reason: To safeguard the visual amenities of the building and surrounding area in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012) and Policies CS NPPF and CS1 of the Local Plan Core Strategy (adopted September 2012).

- 5 a) No site works or development (including any temporary enabling works, site clearance and demolition) shall commence on site until a detailed tree felling / pruning specification has been submitted to and approved in writing by the Local Planning Authority.

b) All tree felling and pruning works shall be carried out in full accordance with the approved specifications under this condition and in accordance with British Standard 3998 (Recommendation for Tree Works).

Reason: To safeguard the health of existing trees which represent an important amenity feature in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012), Policies CS5 and CS7 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy 7.21 of the London Plan 2015.

Informative(s):

- 1 In accordance with paragraphs 186 and 187 of the NPPF, the Local Planning Authority (LPA) takes a positive and proactive approach to development proposals, focused on solutions. The LPA has produced planning policies and written guidance to assist applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered. The LPA has negotiated with the applicant/agent where necessary during the application process to ensure that the proposed development is in accordance with the Development Plan.

Officer's Assessment

1. Site Description

The application site comprises a double fronted retail unit of a three storey terraced property located on the north side of The Broadway. The property is located within the primary retail frontage of Mill Hill District Centre. The character of the area is formed by parades of retail units at ground floor, with residential or offices above. Currently the premises are occupied by an A1 use (a sports clothing shop) with residential above. The rear of the site is currently poorly maintained forming an area with no clear distinction between the servicing area of the retail unit and amenity space.

2. Site History

Reference: W11172

Decision: Refuse

Decision Date: 15/08/1997

Description: Change of Use from retail (A1) to food drink (A3)

Reference: W11172A

Decision: Approve with conditions

Decision Date: 14/01/1998

Description: Construction of single storey rear extension to retail units.

Reference: W11172C/02

Decision: Approved following legal agreement

Decision Date: 25 July 2003

Description: Conversion of two three-bedroom flats to four one-bedroom self-contained flats.

Reference: W11172D/06

Decision: Approve with conditions

Decision Date: 28/04/2006

Description: New shop front

Reference: W11172E/06

Decision: Approve with conditions

Decision Date: 13/06/2006

Description: New shop fascia sign

Reference: H/02804/12

Decision: Withdrawn

Decision Date: 26 October 2012

Description: Single storey rear extension to both retail units at ground floor following demolition of existing rear projections. Associated erection of new fencing and new access pathway. Change hours of use to 6.00am-11.00pm Monday - Friday.

3. Proposal

The application relates to the construction of a single storey rear extension, which is to be used in association with the introduction of a Tesco Express convenience store to the site. It is important to note that the proposal does not relate to a change of use to the property, as the existing A1 use of the unit would remain.

Currently the rear of the property has a stepped rear building line formed by two single storey flat roof rear projections, which are linked by a lower height infill extension. Behind these projections is the first floor terrace entrance to the flats above the retail unit. The application relates to the construction of a single storey rear extension from the existing single storey rear projections. It would measure 11.8 metres deep and 8.1 metres wide. A flat roof with a maximum height of 3.7 metres is proposed over. An obscure glazed window is proposed in the west flank adjacent to No. 57 The Broadway. Only a door is proposed in the rear elevation. The extension would be located a minimum of 1.7 metres from the boundary with No. 57 The Broadway and a minimum 1.3 metres from the boundary with No. 63 The Broadway. The extension would be used in conjunction with the A1 use of the unit.

The proposal includes formalising the space to the rear. An enclosed hard surfaced service yard is proposed adjoining the rear extension. This would measure 8.4 metres deep and 8.5 metres wide. The refuse bin and cage storage area would be located in this area. Beyond the service yard an area of amenity space some 9 metres deep would remain.

4. Public Consultation

Consultation letters were sent to 106 neighbouring properties. The application was also advertised on site.

9 responses have been received, comprising 6 letters of objection, 2 letters of support and 1 letter of comment.

A petition with 82 signatures has also been received which strongly opposes the proposed move of Tesco Express into Mill Hill Broadway. 28 of the signatures relate to the business owner/proprietors of Mill Hill Broadway who state that it is the Council's duty and moral responsibility to protect independent traders in Mill Hill Broadway.

The objections received (including from the Mill Hill Preservation Society and Mill Hill Neighbourhood Forum) can be summarised as follows

- Mill Hill Broadway already has sufficient convenience stores.
- Need to support local shops and increase diversity of shops. Rather have a Waitrose as better quality food
- Will have an impact on other similar businesses on Mill Hill Broadway, including local independents. Already a lot of competition, Tesco will increase competition, resulting in decrease in sales of other businesses, which is unfair to established businesses. A large chain store will have damaging and negative impact on local businesses, reduce local diversity and take money out of local economy.
- Tesco will detract from the character of The Broadway making it like every other high street.
- Gross overdevelopment of the site. Rear extension an overwhelming construction that would be out of keeping with the scale of the surroundings.
- Extension plus the service yard is creating a wholly different creature to that which currently exists. It is important to consider that there are flats above and to the side of the ground floor retail use.

- Land to rear of properties has never been commercial use, but historically been a garden, as evidenced by mature trees, which have been recently felled.
- Site is adjoined by long established gardens, which together provide much-valued oasis of greenery.
- Would be inconsistent and unfair to allow this application when an equivalent or lesser development in any other back garden would be refused.
- Extension of an unsympathetic design, will dominate views from all three sides, be out of character, the size, height and appearance would have a detrimental effect on adjoining residential neighbours, as well as flats above.
- Unacceptable intensification/infill of commercial use, bring noise and disturbance of commercial activity closer to residential neighbours, especially if activities take place in open service yard.
- Result in significant loss of amenity space in this built up location; detrimental to the existing residents. In particular service yard will inhibit residents ability to enjoy the little remains of the garden; the garden has been regularly enjoyed by the flats, where they have constructed a gazebo and rockery and enjoyed the seclusion of the now felled trees.
- The loss of the trees have already harmed the neighbouring occupiers amenity; Resulted in overlooking and loss of privacy for residents in Goodwyn Avenue and the flats above the proposal from the loss of screening.
- Request Committee attaches a condition to any planning permission that the remaining trees on the boundary are retained.
- Shame that rear access to the shops has over time eroded and results in loss of amenity in flats above shop.
- Concern with how space above extension would be used as might be overlooking issues at the rear.
- Plans are poor need more detailed elevations and how street elevation would be altered.
- Concerns regarding refuse and management of waste. Due to location and limited access there would be inadequate space to facilitate required wheelie bins and delivery cages, also concern regarding logistics and practicality of their collection.
- Waste in trolleys or bins must not be left on the pavement awaiting collection, but inside until collection lorry arrives outside.
- Already a problem with refuse, will lead to more rubbish on pavements resulting in an eyesore for the area.
- Lack of parking placing extra burden on already overcrowded Broadway area.
- Tesco should be required to use parking closer to Iceland and arrange with Iceland to ensure deliveries do not clash. Must not be allowed to block high street.

- Unacceptable increase from deliveries and collections in traffic congestion and delays, especially as area already congested in particularly at peak times.
- Condition should be placed on Tesco to ensure deliveries will be made in lorries that are no more than 8.5 metres in length and not articulated. A further loading bay should not be allowed.
- Delivery times should be restricted before 9.00am and 2pm to 3pm in the afternoon. Home delivery should not operate from the store as this would increase loading and unload in High Street.
- No transport management plan.
- Request details of proposed opening times and the granting of Licenses, which will affect local businesses.
- Object to change in hours of use to 6am to midnight due to noise and disturbance from the building and service yard activities such as deliveries and emptying of bins. The current operating hours are substantially less.
- Want to improve street scene, Tesco agreed to allow approval of shop front design when submitted.
- Council should improve high street by encouraging restaurants such as Bill's, thus allowing families to spend night out in their local area leading to more businesses for local shops.
- Consider having a deli or bakery, great that there is an old fashion butchers.
- Council should obtain feedback from residents, the residents would not want a Tesco Express, but The Broadway filled with good selection of stores to rival high streets in Belsize Park, Hampstead and St John's Wood.
- Although Tesco undertook some consultation in January they did not respond to comments raised until chased and then with an un-detailed response. Consultation carried out by Tesco considered to be a meaningless and a cynical exercise in PR.
- Doubtful whether Tesco likely to be a considerate or responsive neighbour.
- The plans have been amended with the chiller removed.
- There are land covenants shown on the registered title to the property that restrict development such as the sale of intoxicating liquors or noisy or offensive business and to prohibit nuisance or annoyance to neighbouring landowners or tenants. Tesco's should bring to attention of their lawyers and insurers.

The letters in support can be summarised as follows:

- Welcome the proposal.
- Since closure of Budgens, Mill Hill poorly served by stores selling fresh food at a reasonable price. M& S and independent shops sell at a premium price.

- Local residents of limited mobility and limited economic circumstance are unable to benefit from lower prices at nearest chain supermarkets in Edgware or Sterling Corner.
- Will be beneficial to local residents and may increase number of people making use of other shops in The Broadway.

A further letter of comment was also received from a supporter of the scheme who raised concern that the public consultation might be skewed by an email from local MP in which it implicitly encourages objection to the proposal.

Traffic and Transportation raise no objections to the proposed extension on highways grounds as it is not expected to have any detrimental impact on the public highway.

5. Planning Considerations

5.1 Policy Context

National Planning Policy Framework and National Planning Practice Guidance

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The National Planning Policy Framework (NPPF) was published on 27 March 2012. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

The Mayor's London Plan March 2015

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2031. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

- Relevant Core Strategy Policies: CS NPPF, CS1, CS5, CS6, CS9
- Relevant Development Management Policies: DM01, DM02, DM11

Supplementary Planning Documents

Sustainable Design and Construction SPD (adopted April 2013)

- Provides detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet.

5.2 Main issues for consideration

The main issues for consideration in this case are:

- Whether the use of the extension would have a detrimental impact on the retail vitality and viability of Mill Hill District Centre;
- Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality;
- Whether harm would be caused to the living conditions of neighbouring residents.

5.3 Assessment of proposals

Impact of extension on retail vitality and viability of Mill Hill District Centre

The property has been identified as falling within the primary retail frontage of Mill Hill District Centre. The Core Strategy states that developing the capacity of district centres for convenience shopping is critical to ensure access to goods and services at local level. Policy CS6 of the Core Strategy relates to District Centres and is therefore relevant to this application. It aims "to promote successful and vibrant centres throughout Barnet to serve the needs of residents, workers and visitors and ensure that new development is of an appropriate scale and character for the centre in which it is located" The policy also aims to promote the distribution of retail growth to meet the capacity for an additional 2,200 sq metres of convenience goods floorspace across Barnet by 2021-2026. Town Centres and Development Management Policy DM11 is also relevant as it seeks to direct any new development to the town centres.

It is important to note that the application does not relate to a change of use, as a convenience store such as Tesco Express would be classified as an A1 use, which falls within the same Use Class as the existing use. Therefore planning permission is not required for the use of the application site as a Tesco Express or any other supermarket chain. The applicant has indicated that the ground floor extension is required to improve the viability and function of the existing A1 floorspace and would be used as an A1 use. It is considered that as the extension would be used in conjunction with the main A1 use and would improve the operation of the use, that it would comply with local plan policy. It is considered that it would not result in the diminution of local shopping facilities

Impact on the character and appearance of the existing building, the street scene and the wider locality

Policy DM01 of the Development Management Plan aims to protect Barnet's character and amenity. it states that development proposals should be based on an local characteristics. Proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.

The proposed extension is of a significant size in terms of its depth. There are however other substantial rear extensions to shops units in the near vicinity, such as No. 55 The Broadway, which need to be taken into account when assessing the impact of the proposed extension on the character of the area. The extension has been set off the boundary and it is considered that the extension, designed with a flat roof, which would be no higher than the rear terrace area serving the flats above, reduces the overall impact of the extension, leaving the view of the architectural detailing of the terrace.

The character to the rear of the application site is mixed. A number of the shop units have extensions but there are also some areas, which appear as amenity space serving the flats above, some of which have been enclosed by fencing. The use of the land to the rear

of No.59-61 The Broadway has not been formalised. There is an open grassed area with a dilapidated gazebo, BBQ and some mature trees, which appears as amenity space this leads to the rear of the shop unit. The agent has advised that the flats above the retail unit have no right to use the amenity space to the rear, but the landlord does occasionally allow them to use the space out of courtesy. The proposal does include the construction of a service yard, resulting in an area of hard surfacing to the rear of the proposed extension to store bins and cages, which would be enclosed by a 1.8 metre fence. An area to the rear of the service yard is indicated to remain as soft landscaping. It is important to consider that the service yard area could be hardsurfaced with a fence of the proposed height at any time under permitted development rights.

On balance given the proposal would not be visible from the street scene, the existing rear extensions in the locality, that the area serves the rear of a retail parade in a primary retail frontage and that an area of soft landscaping would remain beyond the service yard, that the proposal would integrate satisfactorily with the character and appearance of the existing building and wider locality and comply with local policies.

Impact on living conditions of neighbouring residents

Policy DM01 of the Development Management Plan aims to ensure that development proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. At ground floor the application site is adjoined by other retail users, with residential above. Both ground floor retail neighbours have windows located on the rear wall of the property. The extension would project significantly beyond these windows and cause loss of light and reduce the outlook from these windows, however it is considered that given the retail use of the ground floor this relationship would be acceptable.

It is considered that the proposal would not result in an unacceptable loss of light, be visually intrusive or over bearing to the residential units above the shops as these are at first floor and would look down at the extension. The extension would extend by some 2.5metres beyond the start of the fenced off area of amenity space located to the rear of the plot which appears to belong to No. 63 The Broadway. The extension would not extend beyond the majority of this amenity space however so the relationship is considered acceptable.

The rear gardens of the properties of Goodwyn Avenue back on to the site. Although the extension and service yard may be visible from these gardens it is considered that given that the extension would be seen against the rear elevation of the existing building and that it would be set back some 17.5 metres from the rear fence, and that the service yard would be set back by some 9 metres, that the residential amenities of these neighbours would not be adversely affected.

In terms of noise and disturbance the formalising of the space to the rear to include a service yard may result in an increase in noise and disturbance. However given the distance between the application site and the properties in Goodwyn Avenue, the adjoining properties are already located within a District Town Centre where it would not be unreasonable to expect some level of noise and disturbance and that the service yard could be implemented under permitted development, it is considered that application could not be refused on the grounds of noise and disturbance.

5.4 Response to Public Consultation

The responses to the majority of the objections have been covered in the planning appraisal above. Additional responses include:

- Competition is not a material planning consideration. The Council has no planning powers to control whether an independent or a main chain supermarket occupies a premises.
- The trees on the site are not covered by a Tree Preservation Order, so can be removed without permission of the Council.
- A condition is proposed which would not allow the roof of the rear extension to be used as a terrace.
- Amended plans were received to show the rear elevations. No alterations are proposed to the frontage as part of this application.
- The application relates to the single storey rear extension. Bin collection cannot be controlled by this application as it relates to a rear extension to be used in conjunction with an existing use. The agent has indicated however that waste will be taken away with deliveries.
- Delivery times to the retail unit cannot be controlled by this application, as it does not relate to the overall use of the retail unit. The agent has indicated that deliveries will be via the front of the store and during "sociable hours" - normally between 8am and 10pm.
- The granting of Licences is not a material planning consideration and is not controlled by the planning legislation. The hours of opening can also not be controlled by this application, as it is not for a change of use to the property.
- A transport management plan is not required for an application of this size.
- The Council cannot comment on Tesco's consultation process and responses, as this was a private consultation and not part of the Council's consultation scheme.
- Land covenants are a private matter and are not under the control of planning legislation.

6. Equality and Diversity Issues

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and supports the Council in meeting its statutory equality responsibilities.

7. Conclusion

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposed development would have an acceptable impact on the character and appearance of the application site, the street scene and the locality. The development is not considered to have an adverse impact on the amenities of neighbouring occupiers. This application is therefore recommended