

## Appeal Decision

Site visit made on 20 September 2016

**by John Dowsett MA DipURP DipUD MRTPI**

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

**Decision date: 7<sup>th</sup> November 2016**

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**Appeal Ref: APP/N5090/W/16/3153155**  
**124 Friern Park, North Finchley, London N12 9LN**

- 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 Mr Y Shahar of Legacies of London (Friern) Limited against the decision of the Council of the London Borough of Barnet.
  - The application Ref: 15/06884/FUL, dated 10 November 2015, was refused by notice dated 4 February 2016.
  - The development proposed is demolition of the existing dwelling and construction of a new three storey property with 8no. self-contained flats with balconies and terraces and patio. Associated parking and cycle storage, landscaping, refuse storage and amenity space.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing dwelling and construction of a new three storey property with 8no. self-contained flats with balconies and terraces and patio. Associated parking and cycle storage, landscaping, refuse storage and amenity space at 124 Friern Park, North Finchley, London N12 9LN in accordance with the terms of the application, Ref: 15/06884/FUL, dated 10 November 2015, subject to the conditions in the attached schedule.

### Procedural matter

2. During the course of the planning application the scheme was amended. The original description on application form included underground car parking which was removed before determination. The application description was changed to that used on the decision notice and which I have used for the purposes of the appeal.

### Main Issues

3. The main issues in this appeal are:
    - The effect of the proposed development on the character and appearance of the area; and
    - The effect of the proposed development on the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance.
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## Reasons

### *Character and appearance*

4. Friern Park is a long, mostly residential, street. It is composed primarily of two and three storey buildings of a wide variety of ages and built form, ranging from single detached houses to large blocks of flats. There is also a diverse assortment of materials and, in addition to hipped and gabled roofs, a number of flat roofed buildings are present. As such the street has no strong, defining, architectural characteristics.
5. The proposed building is of a fairly traditional design, that includes architectural elements and materials that are present elsewhere in the street. Although the proposed building would be taller than the house that it would replace, there are other buildings in the street which are also taller than the existing house. It is proposed to lower the ground levels on the site which would result in the new building being perceived as being the same height as the neighbouring building at number 122a Friern Park. Whilst the new building would be taller than the short terrace of 126-130 Friern Park, this is set behind where the front wall of the new building would be and the height difference would consequently be less evident.
6. The proposed building would have a relatively deep plan. I note the Council's point that where existing houses have a deep plan form, roof forms and lower heights of rear additions break up the overall mass. However, I saw on my site visit that there are flat roofed blocks in the immediate vicinity of the appeal site which have comparable depth of plan and that elsewhere in the street there are blocks with very long continuous ridges. Friern Park is not within a conservation area and none of the adjacent buildings are Listed. The architectural diversity of the street is part of the character of the area. Within this context I do not consider that the design, height, and massing of the proposed building would be inconsistent with its surroundings.
7. The proposed development would introduce parking onto what is presently the rear garden area of the house, although this would not occupy the whole area and a communal garden would be formed in addition to there being a small private garden for one of the units. It is not suggested that inadequate outdoor amenity space is being provided for the development. As the car parking is to the rear of the proposed new building, it would not have any significant effect on the street scene. Although it would introduce parking and associated activity to the rear of the building, this would largely be concealed by the boundary fences and the sense of openness experienced at the rear of the adjoining houses would not be significantly altered. Whilst the proposal would result in the loss of some garden area, this of itself, would not warrant refusing planning permission.
8. I saw on my site visit that there are other examples of parking at the rear of flatted developments on Friern Park. Whilst I note the Council's point that these parking areas were created in either larger gardens or as part of the redevelopment of several plots, parking at the rear of developments is nevertheless an established feature in the area and, as previously noted, the Council is not contending that the development would result in an inadequate level of amenity space for the future occupiers. Therefore this would not be inconsistent with other developments in the street.

9. The Council suggest that the proposed development is an over-intensification of the residential use of the site based on units per hectare densities identified in the London Plan in relation to the Public Transport Accessibility Level (PTAL) rating for the area. Based on the sites PTAL rating, Table 3.2 of the London Plan suggests a density of 150–200 habitable rooms/ha, and 50–75 units/ha for the appeal site. The density of the proposal would be 154 habitable rooms/ha and 77units/ha which is marginally above the suggested densities in the London Plan.
10. Density alone cannot be the determining factor in assessing the quality of a scheme and, indeed, the supporting text to the relevant policy in the London Plan states that these densities are broad ranges and should not be applied mechanistically. The proposed development only marginally exceeds the guideline density and, as I have found that the design of the building is not inconsistent with its surroundings, I do not find the Council's argument that the proposal is an overdevelopment of the site a compelling one.
11. I therefore conclude that the proposed development would not cause harm to the character and appearance of the area. It would comply with the relevant requirements of Policies CS1 and CS5 of the Core Strategy; DMP Policy DM01 and the Barnet Residential Design Guidance SPD which seek to ensure that new development is of a high standard of design that has regard to the local context. It would also be consistent with the requirement of the National Planning Policy Framework (the Framework), which seeks a high standard of design in all new developments.

*Living conditions of adjoining residents*

12. It is common ground between the parties that the proposed development will not cause harm to the living conditions of the occupiers of neighbouring properties due to matters of loss of privacy, loss of outlook, overshadowing or loss of light. The Council's reason for refusal focusses solely on detriment caused by noise and disturbance arising from the proposed car parking area to the rear of the development.
13. The appellant has submitted a noise assessment with the appeal which concludes that the noise levels generated by the use for parking cars would only result in minimal increases in noise levels and that the resultant noise levels would be well within the guidelines contained in the British Standard. The noise assessment also recommends the provision of an acoustic fence to further mitigate possible noise from vehicle movements. However, as the noise levels would not exceed the guidelines in the British Standard, it is not necessary to require its installation through a planning condition.
14. The Council, whilst contending that increased vehicle movements will give rise to harmful levels of noise and disturbance, has not submitted any technical evidence in respect of noise to challenge the findings of the noise assessment. Nor has it challenged the assumed number of vehicle movements that the noise assessment is based on.
15. It is suggested that vehicle movements at night, when drivers are using headlights, will cause increased disturbance. Currently the rear garden is enclosed by a mix of timber fences and hedges, all of which are a minimum of approximately 1.8 metres high. A fence of this height would block car headlights from shining into adjoining garden areas or windows at the rear of

neighbouring properties. Whilst the headlight beams of vehicles turning into the access from Friern Park would potentially sweep across the frontage of the neighbouring property at number 126, this would be fleeting and, as the house is set well back from the carriageway, any disturbance resulting from this would not, in my view, be sufficiently severe as to warrant refusing planning permission on this ground alone.

16. In the absence of any substantive evidence to the contrary, I conclude that the proposed development would not cause harm to the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance. The development would comply with the requirements of Core Strategy Policy CS5; DMP Policy DM01; the Barnet Residential Design Guidance SPD; and the Barnet Sustainable Design and Construction SPD which seek to ensure that new development protects the living conditions of existing residential occupiers. It would also be consistent with the requirements of the Framework, which seeks a good standard of amenity for all occupiers.

### **Other matters**

17. The proposed development would provide 8 car parking spaces, which is in line with the Council's car parking standards, and whilst the development would result in additional vehicles movements to and from the site, Friern Park has a wide carriageway and is not heavily trafficked and, consequently, I am satisfied that the development would not cause harm to highway safety in the area. No substantive evidence has been submitted by either party in respect of local housing need, and whilst the proposed development would result in the loss of a family sized house, it would lead to an increase in overall housing supply which would be consistent with the objective of the Framework to boost the supply of housing. I note that the Council have not raised any concerns in respect of these matters.
18. It is suggested that the existing house on the site is a non-designated heritage asset that is worthy of protection, and that it has been put forward for inclusion on the Council's local list. At present the building has no local or national protection and the Council have not identified it as a non-designated heritage asset in their evidence. The Planning Practice Guidance recognises that a substantial majority of buildings have little or no heritage significance and only a minority have enough heritage interest for their significance to be a material consideration in the planning process. I am mindful of the fact the Council have an established local list that is up to date, and given the age of the building, had it been considered to have significant heritage interest, it would already have been included on this. Whilst the existing house is a relatively attractive, old building, it is not a non-designated heritage asset and I can give only very limited weight to this point.
19. Whilst the garden area will have some biodiversity value, there is no substantive evidence that the proposed car parking area will lead to a significant loss of habitat or affect any protected species. I am satisfied that an appropriate landscaping scheme would mitigate any harm that might arise from a loss of part of the garden area to car parking.

### **Conditions**

20. I have had regard to the list of conditions suggested by the Council. In order to provide certainty as to what has been granted planning permission I have

attached a condition specifying the approved drawings. The application contains only general details of the proposed external materials, boundary treatments and refuse storage. In order to ensure that the development is in keeping with the surrounding properties, it is necessary it attach a condition requiring details of these to be submitted for approval. Similarly, the application only contains general details of landscaping and, consequently, in order to ensure that appropriate landscaping is provided, a condition requiring the full details to be approved is necessary. As the landscaping condition should identify any trees on the site to be retained it is necessary that the landscaping conditions are pre-commencement.

21. In order to ensure that the development does not have an adverse effect on the privacy of neighbouring occupiers it is necessary to attach a condition requiring that details of the privacy screens shown on the drawings are approved and the screens installed. For the same reason, it is also necessary to attach a condition requiring that the secondary windows in the side elevations of the building are fitted with opaque glazing.
22. The proposal involves lowering the ground levels of the appeal site. Full details of these have not been provided and in order to ensure that the development is implemented as proposed it is necessary to attach a condition requiring the finished levels to be submitted for approval. As this is fundamental to the setting out of the building it is necessary for this condition to be pre-commencement.
23. As the proposal is for the redevelopment of a site within an existing residential area, in order to ensure that any disturbance to existing residents is minimised, conditions restricting the hours of working at the site and to manage the operation of the construction site are required. As the site management method statement is required to cover the whole construction period, this condition must be pre-commencement.
24. The Council's development plan contains policies which seek to ensure that new development is accessible, water efficient, and minimise carbon dioxide emissions. On 1 October 2015 new optional national technical standards came into force, which allow such conditions to be imposed with reference to the nearest equivalent national technical standard. The Councils suggested condition on water efficiency specifies 105 litres per person which is not the figure specified in the optional requirement in the Building Regulations. I have therefore amended the wording to reflect the 110 litres figure in the Building Regulations optional requirement.
25. The Council's suggested condition relating to carbon dioxide emission reduction refers to Target Emission Rates in the 2010 edition of the Building Regulations. Following the introduction of the optional technical standards local planning authorities have the option to set additional technical requirements exceeding the minimum standards required by Building Regulations in respect of access and water efficiency, and an optional nationally described space standard. Where there is an existing policy relating to energy efficiency and carbon dioxide reduction, or which references the now withdrawn Code for Sustainable Homes, it is possible to impose a condition requiring a level of energy performance equivalent to that in the Code for Sustainable Homes. Policy DM02 of the DMP does not refer to a specific Code Level that would be sought in new developments and Policy 5.2 of the London Plan relates only to major

developments. On this basis I do not consider that there is sufficient justification that this condition is necessary and it would, in any event, duplicate the requirements of the building regulations.

26. The Council have suggested a condition requiring Sound Insulation Test Certificates to be submitted, however, this is not covered by the optional technical requirements and replicates the requirements of the Building Regulations. No substantive reason is given as to why this condition is required in order to make the development acceptable and is it therefore does not meet the test of being necessary in order to allow planning permission to be granted.
27. The Council have also suggested a condition preventing the change of the approved scheme to other uses falling within Use Class C3 or C4. The reason cited for the condition is to enable the Local Planning Authority to exercise control of the type of use within the category in order to safeguard the amenities of the area. This is not supported by any evidence which would show that the other uses within Use Class C3 or C4 would cause harm. The Planning Practice Guidance is clear that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider that the reason suggested by the Council is, of itself and in the absence of any evidence to demonstrate harm, sufficient to demonstrate exceptional circumstances and the condition does not pass the test of necessity.

### **Conclusion**

28. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the conditions discussed above.

*John Dowsett*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; 124FP-PP1-01 Rev B (Existing Section and Site Plan \_Proposed Site Plan); 124FP-PP1-02 Rev D (Proposed Floor Plans); 124FP-PP1-03 Rev C (Proposed Floor Plans); 124FP-PP1-04 Rev D (Proposed Elevations); and 124FP-PP1-05 Rev D (Proposed Sections).
- 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels, the adjoining land and highway and any other changes proposed in the levels of the site have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved levels.
- 4) No development other than demolition works shall take place until details of the materials to be used for the external surfaces of the building and hard surfaced areas, as well as boundary treatments hereby approved have been submitted to, and approved in writing by, the Local Planning Authority. Thereafter the development shall be implemented in accordance with the materials and details as approved under this condition.
- 5) No development or site works shall take place on site until a 'Demolition & Construction Method Statement' has been submitted to, and approved in writing by, the Local Planning Authority. The Statement shall provide for: access to the site; the parking of vehicles for site operatives and visitors; hours of construction, including deliveries, loading and unloading of plant and materials; the storage of plant and materials used in the construction of the development; the erection of any means of temporary enclosure or security hoarding and measures to prevent mud and debris being carried on to the public highway and ways to minimise pollution. The development shall thereafter be implemented in accordance with the measures detailed within the statement.
- 6) Demolition or construction works shall take place only between 08:00 and 18:00 on Mondays to Fridays, 08:00 and 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7) Before the development hereby permitted is first occupied, details of enclosed and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter the development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such.
- 8) A scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions

- of any soft landscaping, shall be submitted to and agreed in writing by the Local Planning Authority before the development hereby permitted is commenced.
- 9) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.
  - 10) Any existing trees shown to be retained, or any trees or shrubs to be planted as part of the approved landscaping scheme, which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.
  - 11) Before the building hereby permitted is first occupied the proposed windows in the side elevations facing 122 and 126 Friern Park shall be glazed with obscure glass only and shall be permanently fixed shut with only a fanlight opening and shall be retained as such thereafter.
  - 12) Before the development hereby permitted is first occupied, details of privacy screens to be installed shall be submitted to and approved in writing by the Local Planning Authority. The screens shall be installed in accordance with the details approved under this condition before first occupation or the use is commenced and retained as such thereafter.
  - 13) Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new flats permitted under this consent they shall all have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be maintained as such thereafter.
  - 14) Prior to the first occupation of the new flats hereby approved, they shall all have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new flat shall be constructed to include water saving and efficiency measures so that mains water consumption would meet a standard of 110 per head per day or less. The development shall be maintained as such thereafter.