

F/04523/09



## Appeal Decisions

Inquiry held on 14 & 15 September 2010

Site visit made on 16 September 2010

by **Chris Frost** BSc(Hons) DipLD FLI CBiol  
MBS MRTPI

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

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Decision date:  
27 October 2010

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### Appeal A Ref: APP/N5090/A/10/2126020

**886-902 High Road, North Finchley, London N12 9RN**

- 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 Jardine (North London) Ltd against the decision of the Council of the London Borough of Barnet.
- The application Ref F/02361/09, dated 8 June 2009, was refused by notice dated 5 October 2009.
- The development proposed is a revised application to erect a part 4, part 5 storey building comprising: 1753sqm ground floor A1/D1 (library/doctor's surgery) floorspace; 72 flats on upper floors; a 72 bay car park; and 150 bay cycle park accommodated within a basement level accessed via Friern Watch Avenue. Following the demolition of an existing Furnitureland store.

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### Appeal B Ref: APP/N5090/A/10/2127011

**886-902 High Road, North Finchley, London N12 9RN**

- 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 Jardine (North London) Ltd against the decision of the Council of the London Borough of Barnet.
- The application Ref F/04523/09, dated 10 December 2009, was refused by notice dated 18 February 2010.
- The development proposed is the erection of a part 2 and part 5 storey building comprising: 1628sqm ground floor A1 or D1 (library/medical/health facility) floorspace; 65 flats over upper floors; a 72 bay basement car park; and 136 cycle park accessed via Friern Watch Avenue. Following the demolition of an existing Furnitureland store.

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### Decision Appeal A

1. The appeal is dismissed.

### Decision Appeal B

2. The appeal is dismissed.

### Procedural Matters

3. Since the application was made, various inconsistencies in the plans were discovered. For the sake of clarity these were resolved and amended plans were issued prior to the Inquiry. As no attempt has been made to amend the substance of the scheme, I will determine the appeals on the basis of the amended plans that were placed before the Inquiry.
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4. In the case of Appeal A the relevant plans are given as:

T5727/1 -Topographical Survey  
T5727/3 - Elevational Survey  
T527/4 - Elevational Survey  
P001J - Location and Site Layout  
P004 - Existing Elevations 1  
P005 - Existing Elevations 2  
P006 - Existing Elevations 3 High Road  
P007 - Existing Elevations 4 High Road  
P008 - Existing Section  
P010 - Proposed Site Plan  
P110 J - Proposed Basement Plan  
P111Ja - Proposed Ground Floor Plan  
P112J - Proposed First Floor Plan  
P113J - Proposed Second Floor Plan  
P114J - Proposed Third Floor Plan  
P115J - Proposed Fourth Floor Plan  
P116J - Proposed Roof Plan  
P200Ja- Proposed Sections  
P300Ja - West (Front) Elevation  
P301Ja - North and South Elevations  
P302Ja - East (Rear) Elevation  
P400J - Perspective View 1  
P401J - Perspective View 2

5. In the case of Appeal B the relevant plans are given as:

P001S - Site Plan  
P002 - Aerial Photographs  
P003A - Existing Ground Floor Plan  
P004 - Existing Front and Rear Elevations  
P005 - Existing Side Elevations  
P006 - Site Photographs  
P110S - Proposed Basement Plan  
P111S - Proposed Ground Floor Plan  
P112S - Proposed First Floor Plan  
P113S - Proposed Second Floor Plan  
P114S - Proposed Third Floor Plan  
P115S - Proposed Fourth Floor Plan  
P116S - Proposed Roof Plan  
P117S - Proposed Ground Floor Plan  
P200S - Proposed Sections  
P201S - Proposed Section Details  
P300S - Proposed West (Front) Elevation  
P301S - Proposed North and South Elevations  
P302S - East (Rear) Elevation

6. A Section 106 Unilateral Undertaking has been entered into in respect of each of the appeal schemes.

### **Main issues (Appeals A & B)**

7. The main issues are: a) whether the appearance, character and quality of the area would be adequately respected; b) whether the living conditions of neighbouring occupiers in Friern Watch Avenue and Mayfield Avenue would be significantly harmed by reason of enclosure, overlooking and loss of privacy; c) whether adequate living conditions would be provided for potential occupiers with regard to private and communal outdoor amenity areas; and d) whether contributions towards various physical and social infrastructure improvements would be necessary and adequate to support the impact of the proposed development.
8. At the start of the Inquiry the Council announced that in its view issues c) & d) could be satisfactorily addressed by the use of conditions and planning obligations. Agreement had been reached on these matters and accordingly the Council no longer intended to pursue reason for refusal No. 3 in relation to Appeal A nor reasons for refusal Nos. 3 & 4 in relation to Appeal B. However, the Finchley Society made no such concessions relating to conditions and obligations.

### **Reasons (Appeals A & B)**

#### **Design and Appearance**

9. The site is located on the east side of High Road (formerly the Great North Road) at the northern end of North Finchley town centre. The character of the High Road is defined by a combination of its shopping frontages and other commercial uses. Some of these are housed in more traditional buildings dating from the 1930s and earlier and others in more modern buildings dating from the late 20<sup>th</sup> Century. There is some intermittent tree planting along the High Road. East and west of the High Road are residential streets some belonging to the 1920s and 1930s, with others of an older vintage. The appeal site is located between Mayfield Avenue and Friern Watch Avenue which are largely composed of semi-detached dwellings dating from around the 1920s. These have front and rear gardens and there are street trees along each Avenue.
10. The site is currently occupied by an art deco building with a 3-storey frontage with a former picture house to the rear. The proposals would replace this with a modern building of 5-storeys, the upper storey of which would be set back from the main façade. The Council are not critical of the High Road frontage, although others, including the Finchley Society do criticise this aspect of the proposed schemes. They regard the schemes as representing an alien form of development, unrelated to the surroundings that fail to take the opportunity to enhance the character of the location. It is further suggested that the pallet of materials would add to the prominence of the building which is regarded as being excessive in height.
11. I accept that in each case the proposed building would make a significant and even prominent contribution to the street scene. However, it seems that this could be said of the existing building, which appears to be generally well regarded (although it is now dilapidated). I also accept that what is proposed would gain prominence as a result of its size, its height and its contrasting pallet of materials. However, there are buildings nearby of equal or greater

height. Also, while many of the more modern buildings have a uniformity that results from the predominant use of brick, this should not preclude the use of a wider pallet where this is carefully and sensitively handled. Here, the variety of materials proposed would draw attention to a new and relatively prominent addition to the High Road but the contrasts would be deliberate and generally well organised. While there is room for alternative opinions, there is no overriding reason to reject the scheme on the grounds of its general appearance.

12. The site could no doubt be satisfactorily redeveloped in a low key fashion that would largely avoid adverse comment. However, by redeveloping the whole frontage between Mayfield Avenue and Friern Watch Avenue, the schemes appear to seek to grasp an opportunity to create a building with character and attitude that would possess its own vitality and interest. This is not a conservative approach to urban design but there is no reason to regard this negatively. The Council accepts that this site is capable of accommodating the frontage designs that are proposed, along with the change of character that this would bring and this appears to be a reasonable response to this aspect of the proposals.
13. The aspects of the building that concern the Council (along with others) are the layout and the appearance of its flanks along Mayfield Avenue and Friern Watch Avenue. At present the relatively shallow depth of the main building gives way to an open yard. In Friern Watch Avenue this abuts the side boundary of No.1, in Mayfield Avenue this abuts an access road leading to the rear of No.2 and other properties in both Friern Watch Avenue and Mayfield Avenue. The proposed buildings would occupy these spaces and furthermore would project forward of the building line in both Mayfield Avenue and Friern Watch Avenue. This is considered unsatisfactory in view of the loss of space and the resulting building mass that would be imposed closer to the sides of residential properties.
14. With regard to the open areas at the sides of the existing building, these were latterly hard surfaced service yards that remain exposed to views from the street. Both the yards and the abutting rear portions of the buildings do not appear as particularly attractive areas and accordingly could be said to detract from the appearance of the street scene. However, they do serve to provide separation between the existing building and the residential streets behind and that this is a positive feature that aids in achieving a successful transition between the High Road and its more modest residential side streets.
15. The achievement of a successful transition between the High Road frontage and what lies behind is a key consideration in determining the acceptability of any scheme for the redevelopment of this site. The current building achieves this by providing space, although this is not wholly successful as this presents a back yard area to view that also exposes some of the less attractive parts of the existing building. The current schemes would have more presentable flank elevations but would occupy the current open areas and would more closely encroach upon the residential properties to the rear.
16. The Finchley Society consider that an essential element that should be respected is that of the building line in Mayfield Avenue and Friern Watch Avenue and they point to local examples where this has been achieved (such

as Highwood Avenue, Fredericks Place and the north side of Mayfield Avenue). Respecting the building line can often help in providing a satisfactory transition, but it should not rule out other solutions and I note that the superstore building in nearby Ravensdale Avenue adopts a different approach.

17. Here, neither of the schemes seek to respect the building line in the side streets and as a result they would impose themselves more markedly on the street corners and restrict views to a certain extent. However, this in itself does not prevent a successful transition from being achieved and the current pavement depth, which is relatively generous, would be retained thereby retaining some degree of continuity.
18. A further, important, aspect of achieving a successful transition is concerned with the height of buildings and their separation. Here the separation achieved in the Appeal A scheme is around 9m in Friern Watch Avenue (reducing to around 8m at first floor level) and around 9m in Mayfield Avenue. With the Appeal B scheme the separation achieved in Mayfield Avenue would be around 11m and in Friern Watch Avenue this would increase to around 10m. If these schemes were seeking to provide further semi-detached houses these distances could be judged to be generous. However, this judgement cannot be applied to the type of building that is now proposed as the height and mass of the proposed buildings is a critical factor.
19. In the Appeal A scheme the height of the rearmost part of the proposed building would be around 10m which is similar to the ridge height at No. 1 Friern Watch Avenue. In Mayfield Avenue the new building would be slightly lower than the 9m ridge height at No. 2. The depth of the nearest block in Friern Watch Avenue would be around 16m and in Mayfield Avenue about the same. The combination of height and depth coupled with the proximity to the smaller scale residential properties would not achieve a comfortable nor acceptable transition and this represents a significant failing of the Appeal A scheme.
20. The Appeal B scheme seeks to address some of these concerns by reducing the height of the rearmost part of the proposed building. Accordingly the height of the nearest face to No. 1 Friern Watch Avenue would be around 8m and in Mayfield Avenue nearer to 7m (each would be coupled with greater separation distances). The remainder of the proposed building would then rise towards High Road, although differently to the Appeal A scheme. The transition achieved by the Appeal B scheme would pay sufficient regard to its surroundings so as to achieve an acceptable result in the particular context that is presented at the head of Friern Watch Avenue and Mayfield Avenue. While local concerns remain, it seems that the details that are presented provide a sound basis for considering that the streetscape would be sufficiently acknowledged and adequately respected. Accordingly, there is insufficient reason to reject this scheme on the basis of its impact on the townscape in this location.
21. The saved local policies in the London Borough of Barnet Unitary Development Plan upon which the Council relies are: GBEnv1, GBEnv2, H16, D1, D2, D3 & D4. Those in the London Plan are: 2A.1, 3A.6, 4B.1 & 4B.8. These policies are generally concerned with achieving a high standard of design that respects the local context. The Council focuses on the treatment of the site along the side

streets and finds them lacking in quality and appropriateness. In the case of Appeal A, for the reasons already set out, it seems that the treatment proposed would be unsatisfactory and accordingly in conflict with the requirements of these policies in terms of design and layout. In the case of the Appeal B scheme greater respect is shown for the site's context and as a result the design meets the need to respond to this adequately. Accordingly, it is reasonable to conclude that the requirements of the design policies are met by the Appeal B scheme.

22. Wider local concerns are expressed relating to design and appearance and these reject the notion that the proposed building as a whole would be appropriate and compliant with design policies. However, as already explained, there are sound reasons to support a different conclusion and in the case of the Appeal B scheme, it seems reasonable to conclude that it would comply with the relevant policies concerned with design and appearance.

### **Living Conditions**

23. The concerns expressed by the Council relate to the perception that the building would have an overbearing presence that would be visually obtrusive and result in an unacceptable sense of enclosure, overlooking and loss of privacy to neighbouring properties. Where these properties are is not specified although the evidence suggests that these are at 1 Friern Watch Avenue and 2 Mayfield Avenue and to a lesser extent properties further to the east. Certainly the properties at Nos. 1 & 2 would be most vulnerable to the consequences of the proposals in each appeal, although further properties in both streets would also be affected.
24. The creation of the conditions expressed by the Council would arise from a combination of factors that include the proximity, height, depth and orientation of the building. Considering the vulnerability of the nearest properties, there is a need to respect their situation. In regard to the Appeal A scheme the nearest part of the proposed building to 1 Friern Watch Avenue would be about 8m away. It would be about the height of the roof ridge at No.1 and would extend from well in front of the house to just beyond its rear face. With this combination of factors, fears that this would unacceptably compromise the living conditions of occupiers appear to be well founded. In Mayfield Avenue the proposed building would be about 9m away with similar depth but above the ridge height of No. 2. Again fears that this would unacceptably compromise living conditions seem well founded.
25. With the Appeal B scheme the nearest part of the proposed building to 1 Friern Watch Avenue would be about 10m away with a height nearer to the eaves height of the house with a similar Depth to the Appeal A scheme. These changes would ameliorate the effect of the building. While this may not remove local concerns, it appears to be sufficient to achieve a relationship that would not be sufficient to justify rejection of this amended scheme. In respect of 2 Mayfield Avenue the degree of separation would increase to 11m with a height reduced by about 2m but again of similar depth to the Appeal A scheme. Again this does not appear to justify rejection of the scheme.
26. A further local concern that is shared by the Council relates to overlooking and privacy. This arises from the array of balconies and windows on the rear, east

facing elevation. However, there would be no direct living room to living room conflict. The main area of conflict would be towards private rear garden areas in Mayfield Avenue and Friern Watch Avenue, although the separation distances that would be achieved would respect those set out in the Council's standards which are set out in saved Unitary Development Plan policy H17. Additional measures are incorporated in the Appeal B scheme that includes planting and window boxes.

27. It is not unusual for some loss of privacy to arise when new housing is proposed, but it is important to limit this so as not to introduce over-intrusive situations. Here, in view of the degree of separation achieved, the level of intrusion does not appear to be so serious that it would suggest that either scheme would be unacceptable for this reason, although the Appeal B scheme offers far better protection.
28. The policies cited by the Council in relation to these issues are saved policies GBEEnv2, D1, D4, D5, H16 & H17 from the Adopted Barnet Unitary Development Plan and policies 2A.1, 3A.6 & 4B.1 of the London Plan. These are concerned with a range of matters including the protection of living conditions. The relationship of the Appeal A scheme to its nearest neighbours suggests that living conditions would be harmed as a result of the proximity and bulk of the proposed building. This would not accord with saved policy GBEEnv2 in that the quality of the environment of existing residents would not be adequately respected. This would amount to over-development that would be contrary to saved policy D4 and fail to preserve adequate residential amenity contrary to saved policy H16. These failings suggest that planning permission for the Appeal A scheme should be withheld.
29. The Appeal B incorporates changes that are designed to mitigate the harm that has been identified with the Appeal A scheme. These are sufficient to overcome the failings of the earlier scheme.

### **Amenity Space**

30. The Council has indicated that its concerns relating to non-compliance with guidance on amenity space within the development could be overcome by means of contributions that would be spent on existing public spaces within the Borough. On the basis of contributions that have been offered, the Council failed to pursue reason for refusal No. 3 in relation to Appeal B. There was no reason for refusal on these grounds for Appeal A.
31. The Finchley Society are not satisfied with this approach and feel that the improvement of existing areas that are removed from the site would not satisfy the needs of occupiers as these would not provide on-site areas that would more directly meet those needs.
32. The minimum provision for gardens or amenity space is set out at saved policy H18 of the Unitary Development Plan. This amounts to 5sqm per habitable room for flats, although proposals in or near town centre sites may be exempt from this requirement if alternative amenities are provided.
33. These schemes are characterised by a shortfall in the provision of gardens or amenity space and some flats would have no private amenity space. The site is also well removed from local parks which might serve to fulfil some of the

needs of the development. I accept that the site is classified as a town centre site where it could be acceptable to make a provision that is less than that which is normally regarded as a minimum. A town centre site that adjoins a public park may well fall into that category. However, in this case the site is well removed from local areas of open space. In these circumstances, and despite the Council's final view on the matter, it seems inappropriate to accept the inadequacies and also inappropriate to accept that improvement to spaces that are well removed from the site would adequately compensate for on-site inadequacies. Accordingly, while the Council appears to be ready to accept that contributions would form an acceptable mechanism to enable inadequacies to be accepted, the circumstances of this case, which are highlighted by the Finchley Society, indicate that it would be inappropriate to accept either scheme in view of the inadequacies relating to gardens or amenity space.

34. Concern was also expressed in regard to the design of the scheme in that some flats would have no direct access to communal garden areas. This would mean that residents would need to leave the building in order to gain access to these private areas. This is particularly unsatisfactory and would compromise the utility of such spaces for some residents. PPS3 refers to these matters at paragraph 16 second indent, which makes clear that good access should be provided to community and green open spaces and to private outdoor space.
35. It appears that both schemes fail to meet the space requirements of saved policy H18, and despite its town centre location there are good reasons arising from the separation of the site from local open spaces to reject the suggestion that on-site inadequacies could be compensated by way of contributions.
36. The Finchley Society also point out that the site is located within an area where a deficiency in open space exists. However, saved policy H20 provides a mechanism for making contributions towards local provision as a substitute for providing public spaces on site. At paragraph 8.3.3.10 the Unitary Development Plan suggests that on sites of less than 0.5ha, provision will always be in the form of a financial contribution. On this basis I accept that the contributions offered would meet the requirements of saved policy H20 as this site is well below 0.5ha in area.

### **Unilateral Undertakings**

37. Unilateral Undertakings are sometimes necessary to address planning issues and overcome objections. However, Regulation 122 of the Community Infrastructure Levy Regulations 2010 makes it unlawful for a planning obligation to be taken into account in a planning application if it does not meet 3 tests. These are: whether the obligation is necessary to make the development acceptable in planning terms; whether it directly relates to the proposed development; and whether it is fairly and reasonably related in scale and kind to the proposed development.
38. In these cases a number of matters are addressed in the submitted Unilateral Undertakings. These are: an education contribution; a libraries contribution; a health contribution; a public realm improvements contribution; a Friary Park/Swan Lane Open Space contribution; a monitoring costs contribution; affordable housing provision (subject to a review mechanism); and a travel plan. On the basis of these (along with suggested conditions) the Council did



not pursue reason for refusal No. 3 in the case of Appeal A and reason for refusal No. 4 in the case of Appeal B.

39. There is no reason to suggest that the affordable housing provision or travel plan requirement would fail the statutory tests. In relation to libraries, additional residents are likely to place additional demands on library services. Accordingly, it seems reasonable to regard this additional demand as directly related to the proposed development and in the light of saved Unitary Development Plan policy CS2, which is concerned with securing community and religious facilities, a contribution would make the development acceptable in planning terms. The parties have no dispute concerning the amount offered and I have no reason to doubt that it is fairly and reasonably related in scale and kind to the proposed development. Accordingly, the library contribution appears to pass the statutory tests. Applying similar reasoning to the education contribution and health contribution leads to a similar conclusion on the basis of saved policy CS8 for education and CS13 for health.
40. The Friary Park/Swan Lane Open Space contribution is offered in view of the shortfall in garden or amenity space. I have already concluded that it would be inappropriate to accept the shortfall in provision. The proposed contribution would be used to improve open spaces that are well removed from the site. This would not address the needs of occupiers for private amenity areas or provide a reasonable substitute for such space as the open areas that exist are well removed from the site. On this basis the contribution would fail to make the proposals acceptable in planning terms and it would not be directly related to the needs that would be generated by the development. The amount of the contribution cannot therefore be assessed as reasonable as it would fail to meet the needs of the development. Accordingly, the statutory tests are not met and I am unable to take this contribution into account.
41. The Public Realm Improvements contribution arises from saved policy H20 and would help towards meeting additional demands on public open spaces created by the occupiers of the development. I have no reason to doubt that the contribution would be fairly and reasonably related in scale and kind to the proposed development. Accordingly, the statutory tests are met and the contribution is necessary to meet the additional demands created by the development.
42. Monitoring costs are those expended in monitoring compliance with the obligations. Where compliance is related to ensuring the development is acceptable in planning terms (in this case all categories save the Friary Park/Swan Lane Open Space contribution) the first test would be met. As costs would arise from the implementation of the scheme, they are directly related to the development and the second test would be met. There is no dispute over the amount and there is no reason to doubt that it would be fairly and reasonably related in scale and kind to the proposed development.

### **Conclusions on Appeal A**

43. There are shortcomings associated with this scheme in terms of its design and appearance, its effect on living conditions and the shortfall of garden or amenity space. These suggest that planning permission should be withheld and there are no overriding factors that suggest otherwise.

### **Conclusions on Appeal B**

44. This scheme was worked up to try to overcome criticisms levelled at the Appeal A scheme. Some of these changes have been successful and have overcome objections relating to design and appearance and the effect on living conditions. However, inadequacies remain in relation to garden or amenity space and, in the case of some flats, this would result in the absence of balconies or poor accessibility to on-site communal areas. The offer of contributions would not address these problems. Accordingly, this scheme also fails and again there are no overriding factors that suggest otherwise.

*Chris Frost*

**Inspector**

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mark Westmorland-Smith of Counsel      Instructed by the London Borough of Barnet

He called

Mr Clive Townsend      Principal Planner LBB

### FOR THE APPELLANT:

Stephen Morgan of Counsel      Instructed by Nicholas Taylor and Associates

He called

Andrew Neale BSc Dip      Neale and Norden Limited, Architects  
Arch RIBA

Nicholas Taylor MA      Principal of Nicholas Taylor & Associates  
MRTPI

### FOR THE FINCHLEY SOCIETY:

Peter Pickering      Finchley Society Planning Committee  
Robert Newton      Finchley Society Environment Forum

### INTERESTED PERSONS:

Cllr Alan Schneidermann      Ward Councillor  
Jan Piechowicz      Local Resident  
Harold Rosenberg      Local Resident

## **DOCUMENTS**

### **General Documents**

- Document 1 Attendance Lists
- Document 2 Letter of Notification and Circulation List
- Document 3 Letters from local residents
- Document 4 Opening Statement for the Appellant
- Document 5 Unilateral Undertakings
- Document 6 Council's Closing Submissions
- Document 7 Appellant's Closing Submissions

### **Core Documents**

- Document CD1 Statement of Common Ground (final version)
- Document CD2 Extracts from the Unitary Development Plan
- Document CD3 Extracts from the London Plan
- Document CD4 Saved Plans Direction
- Document CD5 Inquiry Note on Planning Obligations and appended guidance and appeal decision

### **Proofs of Evidence**

- Document LBB/1/P Council's Proof of evidence from Mr Clive Townsend
- Document LBB/1/A Appendices to Mr Townsend's Evidence
- Document LBB/1/S Mr Townsend's Summary
- Document JNL/1/P Appellant's Proof of Evidence from Mr N P Taylor
- Document JNL/1/A Appendices to Mr Taylor's Evidence
- Document JNL/1/S Mr Taylor's Summary
- Document JNL/2/P Appellants Proof of Evidence from Mr Neale
- Document JNL/2/A Appendices to Mr Neale's Evidence
- Document JNL/2/S Mr Neale's Summary
- Document FS/1 The Finchley Society's Proof of Evidence with appendices
- Document AS/1 Notes produced by Cllr Schneidermann

### **PLANS**

- Plans A Appeal A Application Plans
- Plans B Appeal B Application Plans
- Plans C Superseded Plans