



# Appeal Decision

Site visit made on 1 October 2010

by **Michael J Muston BA(Hons) MPhil**  
MRTPI

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

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**Decision date:**

**22 October 2010**

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## Appeal Ref: APP/N5090/A/10/2128913

### 94 Audley Road, London NW4 3HB

- 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 Yoav Tal against the decision of the Council of the London Borough of Barnet.
- The application (Ref H/00318/10), dated 11 January 2010, was refused by notice dated 9 March 2010.
- The development proposed is refurbishment, internal alterations, two storey plus basement side and rear extensions to the existing main building to accommodate three self-contained maisonettes and four self-contained flats, involving the demolition of the existing side structure.

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### Application for Costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

### Decision

2. I dismiss the appeal.

### Main Issues

3. I consider the main issues in this case to be the effect of the proposal on:
  - the character and appearance of the area,
  - the living conditions of occupiers of adjoining residential properties,
  - the demand for car parking in the area, and the consequent effect on highway safety,
  - the provision of education and health services.

### Reasons

#### *Character and appearance*

4. The appeal property is a substantial detached building on the corner of Audley Road and Graham Road. The proposal would involve the demolition of some existing extensions to the rear of the building and a sizeable structure set to the side and rear of the property adjacent to the boundary with No 19 Graham Road. A three storey extension (at basement, ground and first floor levels) would be constructed on the Graham Road elevation, set back slightly from the main front elevation of the building and a part two (basement and ground
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- floor) and part three storey (basement, ground and first floor) extension to the rear.
5. Overall the mass of built form on the site would increase, particularly at basement level, and the Council considers that this would harm the character and appearance of the area. The extension on the Graham Road frontage, set further forward than the existing structure to be demolished, would make the appeal premises appear larger when seen from Graham Road. However, I consider that this extension has been well designed. It incorporates details from the existing building and in my opinion provides an appropriate step down between the main building and 19 Graham Road, which is set further down the slope.
  6. I observed on my site visit that both 94 and 96 Audley Road opposite are substantial buildings providing something of a feature on the corner of Audley and Graham Road. In my view, the proposed extensions to the appeal property, insofar as they can be seen from public viewpoints, would enhance the property's contribution to the street scene. I do not consider that the proposed mass of the extensions would cause any harm in this respect.
  7. The property has a lawful use as a hotel and has been used in recent years as bedsits. The proposal would result in comings and goings from the premises that would be different from those that the lawful use would generate. However, I do not consider that these differences would cause any material harm to the character of the area. I conclude that the proposal would not have an adverse effect on the character or appearance of the area, and would comply with saved Policies GBEnv1, GBEnv2, D1, D2, D4 and H16 of the adopted Barnet Unitary Development Plan (UDP) 2006 in this respect.

*Living conditions of neighbours*

8. The Council considers that the use of the building as proposed, including the proposed extensions, would result in increased noise and disturbance being suffered by nearby residents. Some of the proposed units would have two or three bedrooms and could well attract families and visitors. I accept that the noise that may arise from the use of and comings and goings to and from the units would be different from the lawful use of the buildings on site. However, I am not convinced that the disturbance caused to nearby residents would necessarily be greater from the proposed use of the building. I have no convincing evidence before me to suggest that this would be the case.
9. I also noted on my site visit that the area around the appeal site is a residential area comprising both houses and flats. I consider that the noise associated with the use of residential units similar to those proposed here must already be an established feature of the area. I do not consider that, even if any increased noise does emanate from the appeal site as a result of the proposal, it would cause any material harm to the site's neighbours.
10. The occupiers of an adjacent residential unit are concerned, in addition to the matters raised by the Council in its statement, that the bulk of the extensions would be harmful and that the proposal might result in overlooking. In my view, the proposed extension would be no more overbearing than the existing situation, which includes a large coach-house building on the boundary with 19

Graham Road. The window arrangement would not, in my opinion, materially increase any overlooking of neighbouring properties compared to the existing situation, subject to the imposition of appropriate conditions along the lines of those suggested by the Council.

11. I conclude that the proposal would not have an adverse effect on the living conditions of occupiers of adjoining residential properties, and would comply with saved Policy H16 of the adopted Barnet Unitary Development Plan 2006 in this respect.

#### *Car Parking*

12. The adopted UDP sets parking standards for new residential development in Policy M14, at a rate that seeks to encourage the use of non-car modes. However, it accepts that in some residential areas restricting car parking may simply displace demand into the area surrounding a development. Paragraph 7.3.35 of the UDP says that, in assessing parking provision, the Council will have regard to the likelihood of parking occurring on-street and any detrimental effect on highway conditions and road safety. It says that the Council may wish to see complementary controls implemented to prevent the displacement of parking demand onto surrounding streets, and that development will be expected to fully or partially fund such controls.
13. The appeal proposal provides for 2 car parking spaces on site, which is less than Policy M14 requires. The site is within the West Hendon Controlled Parking Zone (CPZ). Surrounding streets have parking bays where all day parking is only available for those with parking permits. It seems to me that, for this control to be effective, it is necessary for there to be some spare capacity in these spaces. I am told that the bays around the appeal site are already heavily subscribed. If parking is displaced from the appeal site and occupiers of the proposed units are able to apply for parking permits, I can see that demand for spaces may well exceed supply. This could potentially lead to residents struggling to find a parking space near their home or even to parking taking place in more dangerous locations, such as near corners.
14. The Council has proposed that the appellant should enter into a Section 106 agreement to prevent residents in the proposed development from purchasing residential permits for the CPZ. This would require an amendment to the Traffic Regulation Order (TRO). In his appeal statement, the appellant does not dispute the necessity for this element of the proposed Section 106 agreement or the sums involved, but suggests that the matter could be dealt with by condition. However, in his final comments, the appellant says that the sum requested by the Council has no justification.
15. I accept the appellant's point that I have not been provided with any calculation as to why a sum of £2,000 is required to amend the TRO. However, in order to ensure that parking demand does not ultimately cause highway safety problems in the surrounding area, I agree with the Council that a restriction preventing residents in the development from purchasing parking permits is required. I also agree with the Council that, as set out in paragraph 7.3.35 of the UDP, this should be at least partly funded by the development.

16. The appellant has submitted a draft unilateral undertaking that seeks to deal with this matter. However, this is clearly marked as being for discussion purposes only and is not signed or dated. In order to take a Section 106 agreement or unilateral undertaking into account in reaching my decision, it would need to be both signed and dated. As submitted, it does not achieve its stated purpose and I cannot give it any weight. I have therefore considered whether the matter could be dealt with by the imposition of a condition, as suggested by the appellant, and by the Council at application stage.
17. A condition requiring that a Section 106 agreement be entered into would be contrary to the advice in Circular 11/95 on the use of conditions and paragraph B51 of Circular 05/05 on planning obligations. These both say that permission cannot be granted subject to a condition that the developer enters into a planning obligation under section 106 of the Act or an agreement under other powers. I have considered whether a condition could be imposed that did not specifically require the submission of an obligation, by referring to "a scheme" or "arrangements". However, this would fail the test of precision set out in Circular 11/95. I therefore conclude that a legal agreement is required to deal with this matter.
18. Despite the best intentions of the appellant, I do not have such an agreement before me and do not consider that the matter can be satisfactorily resolved through the imposition of a condition. I therefore conclude that the proposal would have an adverse effect on the demand for car parking in the area, and a consequent adverse effect on highway safety, contrary to saved Policies M14 and IMP2 of the adopted Barnet Unitary Development Plan 2006.

#### *Education and Health Services*

19. The Council has also refused the application on the grounds that it does not include a formal undertaking to meet the extra education and health service costs and monitoring costs. The reason for refusal cites Supplementary Planning Documents (SPDs) dealing with Planning Obligations, Contributions to Education and Contributions to Health. I have been sent the first of these. The other two are referred to by both main parties, but I have not been sent copies of either.
20. Policy CS2 of the UDP says that the Council will enter into planning obligations, where appropriate, to secure the provision of community facilities. Policy CS8 says that, where a residential development creates a need for additional school places, the Council will seek to enter into planning obligations with the developer to secure contributions to their provision. However, neither these policies, the SPD on Planning Obligations nor the Council's statement explain whether a contribution to either health or education facilities is necessary in this case.
21. The appellant argues in his final comments that neither the Education nor the Health SPD provides the necessary justification that I am seeking. However, I do not have either of these documents before me, so cannot comment further. The onus is on the Council to justify the need for contributions at appeal. From the evidence before me, I have to conclude that the proposal, even without a signed and dated Unilateral Undertaking, would not have an adverse effect on the provision of education and health services, and would comply with saved

Policies CS2 and CS8 of the adopted Barnet Unitary Development Plan 2006 in that respect.

*Other Matters*

22. Local residents have raised a number of other matters in letters of objection to the Council and to the Inspectorate. I have considered all the points raised but do not consider that they outweigh my conclusions on the main issues.

**Conclusions**

23. I have concluded that the proposal would not have an adverse effect on the character or appearance of the area, on the living conditions of occupiers of adjoining residential properties or, from the evidence before me, on the provision of education and health services. However, I have also concluded that it would have an adverse effect on the demand for car parking in the area, and a consequent adverse effect on highway safety. I consider this to be sufficient grounds to warrant dismissing the appeal.

*Michael J Muston*

INSPECTOR