

Location 35 - 37 Brent Street London NW4 2EF

Reference: 22/2138/FUL Received: 21st April 2022
Accepted: 25th April 2022

Ward: Hendon Expiry 20th June 2022

Case Officer: Daniel Wieder

Applicant: Foframe Properties Ltd

Proposal: Installation of windows at ground and first floor levels to the south elevation

OFFICER'S RECOMMENDATION

Refuse

AND the Committee grants delegated authority to the Service Director – Planning and Building Control to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chair (or in their absence the Vice-Chair) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1 The proposed windows by reason of their positioning would prevent the redevelopment of the neighbouring site and provision of housing contrary to DM01 and housing delivery policies DM08 of the Development Management Policies DPD (2012).

Informative(s):

- 1 In accordance with paragraphs 38-57 of the NPPF, the Council takes a positive and proactive approach to development proposals, focused on solutions. To assist applicants in submitting development proposals, the Local Planning Authority (LPA) has produced planning policies and written guidance to guide applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered.

The applicant did not seek to engage with the LPA prior to the submission of this application through the established formal pre-application advice service. The LPA has discussed the proposal with the applicant/agent where necessary during the application process. Unfortunately the scheme is not considered to accord with the Development Plan. If the applicant wishes to submit a further application, the Council is willing to assist in identifying possible solutions through the pre-application advice service.

OFFICER'S ASSESSMENT

This application is being heard at committee due to an extremely rare set of circumstances.

The Local Planning Authority is currently assessing two applications awaiting determination:

- o 22/2138/FUL: 35 - 37 Brent Street, London, NW4 2EF
- o Installation of windows at ground and first floor levels to the south elevation
- o 22/2650/FUL: Newstead Court, 33 Brent Street, London, NW4 2EF
- o First floor extension to provide 1no self-contained flat and terrace. Associated cycle store. New privacy screen and terrace. New security roller shutters, refuse area and access door to flats.

Each application has an impact on the other as both sites are adjacent to each other.

The impact that the proposed residential development at 33 Brent Street will have on the windows of the proposed commercial development at 35-37 Brent Street and the impact that the proposed commercial development 35-37 Brent Street will have on the amenities of the occupiers of the residential development at 33 Brent Street are material considerations and matters to be determined in the public interest and not just a matter of private interest for the respective applicants.

This application is also being brought to committee on the basis that there are 6 objections.

1. Site Description

The application site concerns a three-storey commercial office building, located on the western side of Brent Street, A502, within the ward of Hendon.

The site is located within the Brent Street Town Centre. Structurally connected to the commercial block, at the fore of the site fronting Brent Street, is a three-storey residential block of flats, Newstead Court.

There are no protected trees on site, or on adjacent land, nor does the application site lie within a conservation area or contain a locally or statutory listed building.

The site has a PTAL of 3 and is located within flood zone 1.

2. Relevant Planning/Site History

Reference: 20/2492/FUL

Address: 35 - 37 Brent Street, London, NW4 2EF

Decision: Approved subject to conditions

Decision Date: 30 July 2020

Description: Change of use of ground floor B1 offices for medical, healthcare and counselling services (D1)

Reference: 22/2134/FUL

Address: 35 - 37 Brent Street, London, NW4 2EF

Decision: Withdrawn

Decision Date: 20 June 2022

Description: First and second floor extension to south elevation

Reference: 22/2650/FUL

Address: Newstead Court, 33 Brent Street, London, NW4 2EF

Decision: Pending Consideration

Decision Date: N/A

Description: First floor extension to provide 1no self-contained flat and terrace . Associated cycle store. New privacy screen and terrace. New security roller shutters, refuse area and access door to flats.

3. Proposal

The application seeks the permission for the installation of windows at ground and first floor levels to the south elevation, facing St. Peters Court.

4. Public Consultation

Consultation letters were sent to 117 neighbouring properties.

6 comments have been received, comprising 6 objections and 0 comments in support.

Of those 6 objections comments received, 5 were signatories on a single petition document - all residents of adjoining Newstead Court.

The objections received are as follows:

- This would encroach on the privacy of neighbours and allow people to view into the windows of surrounding properties.
- Previously when refurbishment work was carried out at these premises, works began very early and well before the permitted 8am start time for construction work. I fear that this would re-occur.
- Concerned that the proposed windows will invade the privacy of the neighbouring occupiers.
- As neighbouring flats have no gardens, occupiers use the hardstanding as outdoor 'garden' space, putting up tables, chairs, paddling pools for the children etc.
- Having windows on this elevation would make us uncomfortable as people could look at and watch us and our children playing.
- If approved, we request that a condition be attached requiring windows to be obscure glazed; thus providing extra light and ventilation without harming our privacy.

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 in 2021. 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, creates better places in which to live and work and helps make development acceptable to communities.... being clear about design expectations, and how these will be tested, is essential for achieving this'. 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 2021

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 2050. 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.

The new London Plan which sets out the Mayor's overarching strategic planning framework for the next 20 to 25 years was adopted on the 2nd March 2021 and supersedes the previous Plan.

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, CS4, CS5, CS9, CS10, CS15
- Relevant Development Management Policies: DM01, DM02, DM08

The Council's approach to extensions as set out in Policy DM01 is to minimise their impact on the local environment and to ensure that occupiers of new developments as well as neighbouring occupiers enjoy a high standard of amenity.

Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers.

Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

Barnet's Local Plan (2012)

Barnet's Draft Local Plan on 26th November 2021 was submitted to the Planning Inspectorate for independent examination which will be carried out on behalf of the Secretary of State for the Department of Levelling Up, Housing and Communities. This is in accordance with Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2021 (as amended).

The Regulation 22 Local Plan sets out the Council's draft planning policy framework together with draft development proposals for 65 sites. The Local Plan 2012 remains the statutory development plan for Barnet until such stage as the replacement plan is adopted and as such applications should continue to be determined in accordance with the 2012 Local Plan, while noting that account needs to be taken of the policies and site proposals in the draft Local Plan and the stage that it has reached.

Supplementary Planning Documents

Residential Design Guidance SPD (adopted October 2016)

- Sets out information for applicants to help them design an extension to their property which would receive favourable consideration by the Local Planning Authority and was the subject of separate public consultation. The SPD states that large areas of Barnet are characterised by relatively low-density suburban housing with an attractive mixture of terrace, semidetached and detached houses. The Council is committed to protecting, and where possible enhancing the character of the borough's residential areas and retaining an attractive street scene.

- States that extensions should normally be subordinate to the original house, respect the original building and should not be overly dominant. Extensions should normally be consistent in regard to the form, scale and architectural style of the original building which can be achieved through respecting the proportions of the existing house and using an appropriate roof form.

- In respect of amenity, states that extensions should not be overbearing or unduly obtrusive and care should be taken to ensure that they do not result in harmful loss of outlook, appear overbearing, or cause an increased sense of enclosure to the adjoining properties. They should not reduce light to neighbouring windows to habitable rooms or cause significant overshadowing, and should not look out of place, overbearing or intrusive when viewed from surrounding areas.

Sustainable Design and Construction SPD (adopted October 2016)

- 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 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.
- Other material considerations

5.3 Assessment of proposals

Impact on character and appearance of the existing site, street scene and surrounding area:

Policy DM01 of Barnet's Development Management Policies Document DPD (2012) states that development proposals should be based on an understanding of 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 development is for the introduction of 8 large, glazed panels at ground floor and 3 smaller windows at first floor level.

Officers note that the southern elevation, as existing, features windows on the second storey. The addition of windows at first and ground floor would therefore not be at odds or appear incongruous within its surroundings.

Officers consider that the proposed windows would indeed enhance the appearance of the existing blank walls and improve the visual appearance of the building.

Overall, it is considered that the proposed development would preserve the local character and respect the appearance, scale, mass, height and pattern of the surrounding buildings, spaces and streets, in accordance with Policy DM01 of Barnet's Development Management Policies Document DPD (2012).

Impact on amenity of neighbouring occupiers:

Barnet's Residential Design SPD provides clear guidance with regard to what is expected from new developments to ensure that the amenity of neighbouring occupants is not harmfully impacted. With regard to this application, the key concern is whether the proposal would result in any degree of overlooking to neighbouring sites and if overshadowing, loss of outlook and loss of light would occur as a result of the development.

Throughout the lifetime of the application 1no window at the first floor level, that was situated closest to the periductular rear wall and first floor windows of Newstead Court, has been removed, in order to ensure that no harmful overlooking or loss of privacy would be caused to the occupiers of Newstead Court.

The proposed windows at ground and first floor level on the south elevation, would be situated directly overlooking the garden and rear elevations of buildings in St Peters Court.

However these windows would be a distance of 13m from the communal garden and at a distance of almost 50m up to the rear habitable windows of St Peters Court.

Barnet's Sustainable, Design and Construction SPD (2016), Table 2.4, states that "in new residential development there should be a minimum distance of 21 m between properties with facing windows to habitable rooms to avoid overlooking, and 10.5 m to a neighbouring garden".

The current application is for commercial premises, where far shorter distances are generally acceptable. The garden of St. Peters Court is a communal garden, and in any case the proposed windows would be at a significant distance, far exceeding that even required for residential development.

Overall, officers are satisfied that the proposed windows would not give rise to any harmful amenity impact in regard to loss of privacy and overlooking.

During the neighbour consultation process, objections were raised due to the concern of overlooking onto the hardstanding area directly in the front of the south elevation wall, which is utilised by residents of Newstead Court as outdoor amenity space.

Following a site visit, officers observe that this area comprises an access road from Brent Street, 4 marked car parking spaces and a refuse area.

This area of hardstanding directly in front of the South elevation wall does not appear to be within the demise of the office block. The petition document received from occupiers of the flats of adjoining Newstead Court, states: "We appreciate that this space should be used for cars, but we have all been here for over 10 years and none of us drive so it makes sense to make good use of that space. When the weather is hot, we often gather out here" and contained photos showing this area being used for play by children.

On a visit to the site, officers noted that the parking spaces are clearly marked, with bollards at the front, and adequate signage advising that this is private parking space. There was no indication at that time that the area was used for recreation and outdoor amenity space. The 3 historic google street view images available, May 2016, April 2018 and May 2019 similarly show the space used for parking and refuse.

Notwithstanding that the applicant has stated this area has been used informally as outdoor amenity space, this area is clearly designated for parking and is not particularly suitable for amenity space nor is it private. Officers would thus find that the proposed windows would not give rise to any material harm as a result of overlooking this parking area.

In assessment, officers are of the opinion that the development is not considered to prejudice the residential amenities of neighbouring properties in terms of loss of light, outlook and privacy; therefore, in this regard, it is not in compliance with Policy DM01 of Barnet's Development Management Policies DPD.

Other material considerations:

During the assessment of this application officers have noted the application submitted for a first-floor extension at Newstead Court, to provide 1no self-contained flat and terrace, ref: 22/2650/FUL.

This application was validated on the 18th of May 2022, less than a month after the current application was validated on the 21st of April 2022, and before the neighbour consultation period had ended.

The proposed extension at Newstead Court is shown to extend directly across the south elevation of the adjoining commercial block, which as existing is currently a blank wall. For context, were the proposed windows in situ, the proposed extension of Newstead Court would extend directly in front of and obstruct the windows at ground and first floor.

Each application should be determined on its own merits having regard to the provisions of the development plan, so far as material to the application, and to any other material considerations (as per section 38 (6) PCPA 2004 and section 70(2) of 1990 Act).

The task of a local planning authority, therefore, is to consider the planning merits of each application for planning permission. Generally, land may be developed in any way which is acceptable for planning purposes and so the planning legislation does not place a duty on a local planning authority to check whether one planning application submitted to them for planning permission will impact adversely on another extant planning application. However, where a local authority does become aware that a proposed scheme submitted to them will impact adversely on another scheme subject of an extant planning application before the authority, the circumstances become such that the authority cannot simply ignore that fact when determining such an application.

It is recognised in planning law that the impact of a proposed development on the amenities of neighbouring properties or existing and future occupiers or users of the proposed development itself is a material consideration which a local planning authority is required to have regard to when determining a planning application.

The impact the proposed residential development at the neighbour's site will have on the windows of the commercial development and the impact the proposed commercial development will have on the residential development at the neighbouring site are material considerations and matters to be determined by the Council in the public interest and not just a matter of private interest for the respective applicants.

Officers must therefore have consideration for the fact that were the proposed windows approved, the proposed extension at Newstead Court, which would be due to extend directly in front of the proposed windows, would be an unacceptable form of development and likely refused.

Core Strategy Policy CS4: Providing Quality Homes and Housing Choice in Barnet, and Policy DM08 of Barnet's Development Management Policies seek to provide where appropriate a mix of dwelling types and sizes in order to provide choice for a growing and diverse population for all households in the borough.

When balancing the current application and the neighbouring application at Newstead Court, as material considerations in the assessment of each other, officers would consider that the provision of 1no additional residential unit is given greater priority and preference by Barnet's Local Policy then the provision of additional windows to an existing commercial unit, which can still operate without these additional windows.

The benefit of the residential unit would thus outweigh the benefit provided from the proposed windows; as such officers would consider that the current application should be refused.

5.4 Response to Public Consultation

- The main planning considerations have been addressed throughout the body of the report.
- Officers do not consider that the proposed windows on the southern elevation would give rise to any harmful degree of overlooking or loss of privacy, either to the hardstanding space in front, nor the garden/residents of St Peters Court.

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 relevant material considerations into account, the current application is considered unacceptable by reason of their positioning would prevent the redevelopment of the neighbouring site and provision of housing, which is given greater weight and preference by Barnet's Local Policy than the provision of additional windows to an existing commercial unit.

Therefore, the current application is not compliant with Barnet planning policies and is recommended for REFUSAL.