



Appeal Decision

Inquiry Held on 19 July to 22 July and 26 July to 29 July 2022

Site visits made on 18 July and 28 July 2022

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19th August 2022

Appeal Ref: APP/N5090/W/22/3294689

Land formerly known as British Gas Works, Albert Road, New Barnet EN4 9SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Citystyle Fairview VQ LLP against the Council of the London Borough of Barnet.
 - The application Ref 21/3676/FUL, is dated 1 July 2021.
 - The development proposed is redevelopment of the site to provide 539 residential units (Use Class C3) within 13 buildings ranging from 4 to 7 storeys, with 267.1sqm of retail/commercial space and 112.7sqm of community space (Use Class A1/A2/A3/A4/B1/D1/D2) at ground floor, new public realm with communal landscaped amenity areas, alterations and additions to existing highways arrangements plus the removal of existing elevated footbridge and creation of new pedestrian routes, 334 car parking spaces (including car club and accessible provision) with basement and surface level provision, secure cycle parking, servicing and other associated development.
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Decision

1. The appeal is dismissed and planning permission for redevelopment of the site to provide 539 residential units (Use Class C3) within 13 buildings ranging from four to seven storeys, with 267.1sqm of retail/commercial space and 112.7sqm of community space (Use Class A1/A2/A3/A4/B1/D1/D2) at ground floor, new public realm with communal landscaped amenity areas, alterations and additions to existing highways arrangements plus the removal of existing elevated footbridge and creation of new pedestrian routes, 334 car parking spaces (including car club and accessible provision) with basement and surface level provision, secure cycle parking, servicing and other associated development is refused.

Procedural matters

2. I carried out an unaccompanied site visit of the area prior to the Inquiry on 18 July and an accompanied site visit on 28 July. At the latter I was joined by representatives of the appellant, the Council, and the New Barnet Community Association.
3. The original application was for 544 residential units ranging from four to eight storeys. This was however reduced to 539 residential units ranging from four to seven storeys during the application process, and all parties were agreeable to me using the latter numbers in the header to this decision.

4. The appeal is against non-determination. However, the Council issued three putative reasons for refusal. Of these, reason for refusal two, which concerned living conditions, was subsequently withdrawn. The third reason for refusal concerned the absence of a Section 106 Agreement. Such an agreement was submitted in draft form during the Inquiry and I received a signed and dated copy on 5 August 2022. This reason for refusal has therefore also fallen away, leaving the Council's first reason for refusal, relating to character and appearance, as their sole remaining objection to the scheme.
5. However, the New Barnet Community Association (NBCA) were also represented at the Inquiry as a Rule six party and they gave evidence on a number of, primarily, living condition and design matters. Their concerns therefore appear below as the second main issue.

Main Issues

6. Taking into account the foregoing, the main issues are therefore:-
 - a) The effect of the proposed development on the character and appearance of the area, and
 - b) The effect of the proposed development on the living conditions of future occupiers, with particular respect to design, sunlight and daylight, noise, overheating, parking, the quality and quantum of outdoor amenity areas, rubbish storage, the allocation of affordable housing and the proportion of family homes proposed.

Reasons

Character and appearance

7. The appeal site is an area of land, either side of, and including, Albert Road in New Barnet. Albert Road would form the approximate line of the Spine Road through the proposed development. The boundary to the west of the site is formed by a railway embankment whilst to the east of the site is the Victoria Recreation Ground. To the north is a gas works while the southern boundary of the site is formed by Victoria Road and an existing four storey block of apartments.
8. The site had generally been cleared except for several buildings to the southern end of the site which were in the process of being demolished at the time of my visits.
9. The proposed development would consist of 13 buildings ranging in height from four to seven storeys, with eight of the buildings containing seven storey elements. A four and a five storey block would face Victoria Road and there would then be three lines of blocks running in a south to north orientation more or less equidistant apart.
10. The Characterisation Study of the London Borough of Barnet (2010) (CS) provides an assessment and understanding of the characteristics of the borough's built environment and identifies the different architectural typologies and character areas in the borough. This document also forms part of the evidence base for the emerging plan. Whilst the CS is now over ten years old, it is a background study and the area has not changed so much over the past ten or so years that it can be construed to be out of date. Therefore, like my

colleague in a recent appeal¹, I consider it to be a helpful guide to the current character of the borough.

11. The CS explains that Barnet is predominantly suburban in character and that the borough is under increasing development pressure with a risk that this special suburban character could be undermined by inappropriate development. The document identifies five primary typologies and a further six secondary typologies. It goes on to say that the most predominant form of residential street typology in New Barnet is secondary C (suburban), and that there is an overall consistency of massing within the built form, with most residential units rising to two or three storeys at most.
12. The existing development to the west of the site, on the far side of the railway embankment, is generally two or three storey residential houses interspersed with shops and other businesses (with the odd four storey property). The layout of the roads in this area is almost of a grid design (roads include Bulwer Road, Leicester Road, Lytton Road and Plantagenet Road) with short no-through roads emanating from within the roads that form the grid. The road pattern to the south of the site is more varied and is bordered by two to four storey property with a variety of shops (some with residential properties over) and businesses. Directly to the south-west of the site are several smaller scale properties including two pubs and a two storey dwelling.
13. Further to the south-west, beyond the railway bridge, there are five taller properties (eight to ten storeys) bordering station Road and part of the A110. Opposite these, set back from the road, are a range of buildings up to four storeys. The east of the site is bordered by the Victoria Recreation Ground which in turn is bordered by two storey housing to the north, south and east.
14. The CS is generally correct therefore in informing that Barnet is generally suburban in character, with most properties in New Barnet rising to two or three stories (albeit with the exception of the taller buildings that I have identified above). Furthermore, the conclusions section of the CS also notes that *the challenge with regard to scale and massing is to maintain the existing sense of small scale and fine grain development in the wide suburban areas of the borough*.
15. My attention has also been drawn to the New Barnet Town Centre Framework (November 2010) (NBTCF). This, whilst accepting that the scale and massing of existing development is somewhat haphazard, describes the scale and massing of existing development beyond the main retail area of New Barnet as *more domestic, reflecting its classic suburban setting*. The NBTCF also notes within its objectives that advantage should be taken of brownfield sites such as the appeal site but also that an appropriate scale of development should be ensured. I acknowledge that the NBTCF is over ten years old but still give it considerable weight as a useful background guide.
16. The appeal site is relatively self-contained (particularly by the railway embankment to the west) and, apart from the southern boundary there is no immediately adjacent typology which could set a compelling precedent for the typology to be used within the site. The site can therefore be seen as one able to tolerate change as identified within the conclusions section of the CS. This section of the CS also acknowledges that larger planned development schemes

¹ APP/N5090/W/21/3271077

and concentrated areas of infill and redevelopment with conversion to flats will define their own typologies and scale.

17. However, whilst the appeal site is able to tolerate change and present its own typology, it should not do so in a way that completely ignores the surrounding context. In this case, as I have shown, the surrounding context is of generally two to three storey development to the west and south of the site, and the recreation ground, itself bordered by two storey housing to the north, south and east. In terms of the CS the typologies in evidence in the area are residential streets, residential estates, and the town centre. The proposed development would consist of blocks set primarily in straight lines almost equidistant apart, and as such would almost come under the CS description of a campus typology (large buildings set in landscaped open space).
18. The recreation ground has an open aspect and even the addition of the new leisure centre has done little to reverse this, being set to the east of the ground and being of only two to three storeys. Indeed, as the recreation ground is approached along the footpath from the south, the ground rises somewhat, giving the impression that the leisure centre is almost set down into the ground.
19. For viewers using the park the view of the proposed development would be of the longer elevations of blocks B2, C2, and D2. Block B2 would be six storeys whilst blocks C2 and D2 would be seven storeys, with their upper two storeys marginally set back. Due to the topography block B2 would also be set at a slightly higher level than the recreation ground. Whilst I acknowledge that there would be two gaps between blocks B and C and C and D, from many viewpoints within the recreation ground all that would be visible would be six or seven storey built form. I also note that the NBTCF recommends that the appeal site should provide new residential development to front the park that would create 'a new open edge and bring activity to the park'. The scheme as proposed would not achieve this, and the tree screening would not be sufficient to lessen the impact to an acceptable level.
20. I have already described the area to the west of the site, beyond the railway line, as being generally two, three and occasionally four storey residential development. There would be views of the proposed blocks (up to seven storeys) from Bulwer Road and Leicester Road. Whilst I acknowledge that the railway embankment would be between the viewer and the proposed development, I nonetheless consider that the views of the tall flat roofed blocks, juxtaposed with the existing residential scale generally pitched roof housing would once again be harmful to the overall character of the area. Once again I note that the NBTCF recommends that there could be up to 4/5 storeys along the railway line, to act as a buffer, with appropriate heights elsewhere to *reflect the low level suburban nature of the surrounding area*.
21. Overall, I consider that the sheer scale of the proposed development would cause a dislocation within the area, inserting an alien typology of larger mass and scale and disrupting any sense of continuity between the areas to the west and east of the site. To my mind the existence of the taller buildings in the town centre cannot be seen as a compelling precedent for such an intrusion. These latter buildings are only on one side of the road and there is a considerably greater distance between them and the four storey buildings opposite.

22. In arriving at this conclusion I am aware of the consented scheme on the appeal site, which is an important material consideration. I acknowledge that this scheme would itself change the character and appearance of the area. It would be however, of a smaller scale, with more varied typologies and a somewhat less dominating presence at the park edge (due to orientation and step-downs) and lower buildings at the western edge than that currently proposed. Whilst the Council have accepted a level of change in permitting the extant scheme, this does not seem to me to create a compelling precedent for even greater change.
23. I am also conscious that planning officers at both the Council and the GLA recommended approving the appeal scheme, which had been reduced in size from a previously refused scheme. This does not however lead me to an alternative conclusion.
24. The most up to date development plan policy in respect of character and appearance is policy D3 of the London Plan (March 2021) (LonP). This is entitled 'optimising site capacity through the design-led approach'. There are several sections to the policy including at D11) that *development should respond to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality*. The appellants considers that this renders the other local plan policies out of date, particularly by the inclusion of the word unique. They further consider that unless particular characteristics can be defined as special or valued they need not necessarily be protected.
25. I acknowledge that the new LonP makes clear that there is a housing crisis in London and promotes a fundamental transformation in how new homes are delivered, and that it promotes a more flexible approach, including higher density developments in well-connected locations.
26. However, I cannot accept that this approach should mean a complete disregard for wider context, even where a site is relatively self-contained, and nor do I consider that only such things as conservation areas and historical assets should be considered to be 'special' or 'valued'.
27. Furthermore, section D11) of policy D3 should not be read in isolation and I note that section D1) confirms that *development proposals should enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale appearance and shape*. The LonP also makes clear at paragraph 3.3.7 that special characteristics can include the *distribution of building forms and heights*. The National Design Guide (NDG) also advises at paragraph 43 that *well-designed new development is integrated into its wider surroundings, physically, socially and visually*.
28. The CS makes clear on page 8 that it is a document that attempts to define aspects of the built environment that make Barnet unique (my underlining). It goes on to say that the Council recognises that Barnet's suburban character is one of the borough's greatest assets.
29. The proposed development would cause a dislocation within the area in inserting an alien typology and disrupting any sense of continuity. This cannot be considered to enhance the local context or respond to special or valued features. Nor, with respect to the NDG, can it be considered to be well-designed. It would not, to my mind, strike an appropriate balance between

existing fabric and change, as stipulated in paragraph 3.1.7 of the LonP. Conflict with D3 therefore exists.

30. Conflict would also exist with Policy CS5 of Barnet's Local Plan (Core Strategy) September 2012 (LPCS). This requires that development respects local context and distinctive local character. I acknowledge that this policy is nearly ten years old and refers to now elderly design guidance. However the weight that I can give to this policy is dictated by paragraph 219 of the National Planning Policy Framework (the Framework), which informs that the weight to be given to it depends on its consistency with the policies within the Framework.
31. In this respect I note that paragraph 130c) of the Framework requires that development is sympathetic to local character, including the surrounding built environment. I also note that the National Design Guide (NDG) makes clear that well-designed development is influenced by, amongst other things, the characteristics of the existing built form and the elements of a place that makes it distinctive. This is not dissimilar to the advice given within the documents listed within policy CS5. Whilst I acknowledge that the earlier design guidance does not necessarily advocate a design led approach to the optimisation of site capacity, I am not persuaded that this alone is so fundamental that policy CS5 should attract reduced weight.
32. Policy DMO1 of Barnet's Local Plan (Development Management Policies) (LPDMP) is entitled Protecting Barnet's Character and Amenity. It requires, amongst other things, that proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings spaces and streets. I see nothing in the policy that would make it contrary to the Framework. Consequently I afford it full weight. The proposed development would be in conflict with both of these policies.

Living conditions - Sunlight and daylight

33. During the currency of the appeal the Building Research Establishment (BRE) issued a new edition of its guide 'Site layout planning for daylight and sunlight' (BRE 209 2022). This is a comprehensive revision of the 2011 edition, which it replaces. It should be read in conjunction with BS EN 17037 which introduces new tests and definitions to daylight and sunlight testing practices, based on target illuminances from daylight to be achieved over specified fractions of the reference plane.
34. The results of the assessment carried out by the appellant show that if a 150 Lux target for combined Living/Kitchen/Dining rooms is applied then 94% of the habitable rooms assessed can be considered to receive adequate daylight. Of the six percent of rooms that fail to achieve the target, four percent fail due to the presence of balconies above them.
35. However, this still indicates that overall six percent of the rooms tested (i.e. over 90 rooms) would, for a variety of reasons, receive less than adequate daylight. I will return to this matter in my overall conclusions on living conditions.

Living conditions - Noise

36. The long elevations of blocks G, F4, F3, F2, F1 and E would face the East Coast Main Railway Line. These flats (and those facing Victoria Road/East Barnet Road) would require a Mechanical Ventilation Heat Recovery (MVHR) System

installed to ensure adequate ventilation, due to the fact that internal noise threshold levels would be breached if the windows were to be opened.

37. Policy D14 of the LonP deals with noise. At section 5 it informs that development proposals should separate new noise-sensitive development from major noise sources (such as road, rail, air transport and some types of industrial uses) through the use of distance, screening, layout, orientation, uses and materials – in preference to sole reliance of sound insulation.
38. I acknowledge that the windows on these units would not be sealed and that a balance of many factors has to be achieved when designing in suburban and urban areas. I am also aware that all units would comply with the relevant standards. Nonetheless, it seems to me that having to resort to MVHR in over 100 units is not indicative of good design.

Living conditions - Overheating

39. Policy SI 4 of the LonP sets out a cooling hierarchy. This starts with reducing the amount of heat entering a building through a range of factors such as orientation, the use of high albedo materials, fenestration, insulation and the provision of green infrastructure and ends with the provision of active cooling systems. At the Inquiry it was confirmed that 221 of the proposed units would require active cooling systems.
40. The National Design Guide (NDG) at paragraph 150 states that well-designed buildings make the most of passive design strategies to minimise overheating and achieve internal comfort. These include:
- the layout and aspect of internal spaces;
 - insulation of the external envelope and thermal mass;
 - management of solar gain; and
 - good ventilation to reduce overheating.

They are supported by other measures where necessary (my underlining), such as mechanical ventilation with heat recovery for efficient ventilation in winter.

41. To my mind the necessity for active cooling systems in 221 out of 539 flats seems a large amount given that the provision of active cooling systems is the bottom of the hierarchy and the necessity for such should presumably be limited if the hierarchy is adhered to. I will return to this later in my decision.

Living conditions - Children's play space

42. The proposed development would provide 1857Sqm of play space, in a series of areas throughout the development, including 207sqm of 'play on the way'. The 12+ age group would be catered for in the Victoria Recreation Ground, by way of a financial contribution.
43. There would however be a shortfall of play provision for 5-11 year olds of about 13%. I also note that the 'play on the way' provision is essentially the verge area frontages to the blocks on the western side of the site. These are relatively narrow, are interspersed by the entrances to the blocks and have the Spine Road on one side. One section would be situated behind the substation building. How safe and usable these areas would be for younger children is a moot point and once again I will return to this in my overall conclusions on living conditions.

Living conditions – parking provision

44. Car parking provision is dictated by policies T6 and T6.1 of the LonP and policy DM17 of the LPDMP. Policy DM17 of the latter document requires a higher level of parking provision than that given in policy T6.1. However, this policy pre-dates policies T6 and T6.1 by 9 years and section 38(5) of the Planning and compulsory Purchase act 2004 makes clear that the latest policy should be given precedence. It follows that the proposed development should be assessed against the policies in the LonP.
45. Policy T6.1 gives maximum residential parking standards based on the Public Transport Accessibility Level (PTAL) rating for a particular site. For a site in outer London with a PTAL rating of 2-3 the maximum parking provision should be 0.75 spaces per dwelling for 1 and 2 bed dwellings and 1 space per dwelling for 3+ bed dwellings. These parameters would give a maximum parking provision of 434 spaces. The proposed scheme would provide 334, of which 4 would be spaces for car club cars. Overall, this gives a figure of about 0.61 spaces per dwelling.
46. However, policy T6 makes clear that car parking should be restricted in line with levels of existing and future public transport accessibility and connectivity. Furthermore, it stresses that car-free development should be the starting point for all development proposals in places that are well connected by public transport, with developments elsewhere designed to provide the minimum necessary parking. The appeal site is within about a 12 minute walk of New Barnet Railway Station and several bus stops. Furthermore, the town centre has a good range of facilities including a supermarket and a gym and the appellant considers that the car club spaces each effectively replace 17 private spaces. From the evidence before me therefore, the car parking provision would be adequate and would accord with policies T6 and T6.1.
47. There was some discussion at the Inquiry regarding the PTAL rating for the site, due to its size. However, given the proximity of New Barnet railway station and various bus stops to the site, I am satisfied that a PTAL rating of 3 provides a fair reflection of the actual public transport accessibility.

Living conditions – refuse storage and collection

48. Refuse areas for blocks B1, B2, C1, D1, and D2 would be within the basement area and the refuse areas for the remaining blocks would be on the ground floor. The NBCA have concerns regarding the complexity and expense of the proposed system and in this respect, I note that the information for developers provided by the Council on the Provision of Household Recycling and Waste Service recommends that bins are not stored underground, but are stored at street level to enable efficient collection. However, the collection of the bins would be the responsibility of the management company, and I am not persuaded from the evidence before me that having to move bins from the basement would be so much more onerous than moving them from the ground floor. Overall I do not consider that conflict with policy D6 (B) of the LonP has been evidenced.

Living conditions – allocation of affordable housing

49. At paragraph 3.6.7 the LonP makes clear that housing developments should be designed to maximise tenure integration. The NDG also recommends that,

where different tenures are provided, they are well integrated and designed to the same high quality to create tenure neutral homes and spaces.

50. In the appeal scheme the affordable housing would be located within seven of the blocks (counting F3, F2 and F1 as one block). Five blocks would be private only, and three would be mixed. I acknowledge that the majority of the affordable housing would be located along the railway line and to the front of the site, but from the overall evidence before me, do not consider that a conflict with the development plan occurs in relation to this issue.

Provision of family housing

51. Policy DM08 of the LPDMP requires that development should 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. It makes clear that for socially rented housing, homes with three bedrooms are the priority, while for market housing homes with four bedrooms are the priority.
52. In respect of affordable housing the proposed development would contain 73 three bedroom properties. I also note that the emerging local plan seeks to treat well-designed two bedroom properties of between 70sqm and 79sqm gross internal area as family homes. In the absence of specific evidence setting out local need for the various house types I conclude that no conflict with policy DM08 occurs.

Conclusion on the issue of living conditions

53. I have found that there would be no conflict with the development plan in respect of the provision of family housing, the allocation of affordable housing, parking provision or refuse storage and collection. However, I have also found that six percent of the rooms tested (i.e. over 90 rooms) would receive less than adequate daylight. Also, due to noise problems, MVHR would be required in over 100 of the proposed homes and 221 of the proposed homes would require active cooling systems. In respect of children's play space provision, there would be a deficit of play space within the scheme itself and I have concerns regarding the suitability of the play space actually provided.
54. I also note that, as the majority of the flats are just compliant with the Nationally Prescribed Space Standards, the 221 units requiring active cooling systems could conceivably have a proportion of their floorspace taken up with these systems. Furthermore, nearly 30% of the flats would be single aspect, and I note that the LonP states at D6 3.6.5 that *single aspect dwellings are more difficult to ventilate naturally and are more likely to overheat, and therefore should normally be avoided*.
55. I acknowledge that in any particular scheme there has to be a certain flexibility, compromise and trade-offs related to its context when combining the various policy requirements for amenity provision, and that some mitigation is unavoidable. I also recognise that this is particularly true of flatted developments, especially in large cities.
56. However, whilst none of the above issues are necessarily fatal to the scheme in isolation, taken together they do not indicate to me that the scheme can be considered to be of good design, as required by the Framework at paragraph 126 and the NDG, particularly at paragraph 125 where it is stipulated, amongst

other things, that well designed homes have good ventilation and avoid overheating.

57. Policy D3 of the LonP requires that development proposals should achieve indoor and out-door environments that are comfortable and inviting for people to use. Policy DM01 of the LPDMP requires that all development represents high quality design. Conflict exists with both of these policies.

Planning balance

58. I have found that the proposed development would conflict with policies D3 of the LonP, CS5 of the LPCS and with DM01 of the LPDMP in terms of character and appearance. I have also found that it would conflict with policies D3 and DM01 in respect of living conditions. There would also be conflict with the NDG and the Framework with respect to good design.
59. Against this has to be balanced the benefits of the scheme. These would be substantial. The need for new housing is acute and the LonP makes clear that development must make the best use of land and optimise the capacity of sites. The proposed development would provide 539 new homes of which 35% (calculated by habitable rooms) would be affordable. The new homes would have a social benefit and there would of course be an economic benefit from the development, with jobs created and more people to put money into the local economy in the longer term and the financial benefit of the new homes bonus. There would also be a biodiversity net gain.
60. However, whilst the benefits of the scheme would be substantial, they do not, to my mind, outweigh the conflict with the development plan, the Framework and the NDG that I have identified.

Conclusion

61. Therefore, for the above reasons, and having taken into account all other matters raised, I conclude that the appeal should be dismissed.

John Wilde

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Edward Grant	Of Counsel
He called	
Mr Dominic Duffin	London Borough of Barnet

FOR THE APPELLANT:

Mr Reuben Taylor	QC
He called	
Mr Ian Dix	Vectos
Mr Simone Pagini	Gordon Ingram Associates Chartered Surveyors
Mr Colin Pullan	Lambert Smith Hampton
Mr Barnaby Evans	Turley
Mr David Yates	Syntegra Consulting
Mr Simon Slatford	Lichfields

INTERESTED PERSONS:

Ms Fiona Henderson	New Barnet Community Association (Rule 6 party)
Mrs Karen Miller	New Barnet Community Association
Councillor Simon Radford	
Councillor Edith David	
Mr Robin Bishop	
Mr Colin Bull	
Councillor Dr Phillip Cohen	
The Rt Hon Teresa Villiers MP	

DOCUMENTS HANDED IN DURING THE INQUIRY

- 1 List of attendances for the Council
- 2 Opening statement by the Council
- 3 Opening statement by the appellant
- 4 Opening statement by New Barnet Community Association
- 5 List of Council evidence in chief documents
- 6 Email dated 21 June 2022 from GLA
- 7 List of documents to be used by NBCA in cross-examination of Mr Pullan
- 8 Statement from the Rt Hon Teresa Villiers MP
- 9 List of documents to be used by NBCA in cross-examination of Mr Yates
- 10 Statement from Councillor Dr Philip Cohen
- 11 List of documents to be used by NBCA in cross-examination of Mr Evans
- 12 Statement from Councillor Simon Radford
- 13 Statement from Councillor Edith David
- 14 Statement from Mr Robin Bishop
- 15 Statement from Mr Colin Bull

DOCUMENT RECEIVED AFTER THE INQUIRY (by agreement)

1 Completed Section 106 Agreement dated 4 August 2022