



Appeal Decision

Inquiry held on 17-18 March 2009

Accompanied site visit made on 18 March

by **P E Dobsen MA (Oxon) DipTP MRTPI FRGS**

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

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Decision date:
7 April 2009

Appeal Ref: **APP/N5090/A/08/2087340** **7-11 Victoria Road, East Barnet EN4 9PH**

- 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 Tesco Stores Ltd. against the Council of the London Borough of Barnet.
- The application (Ref N09569E/08) is dated 12 February 2008.
- The development proposed is "erection of new 3-storey building comprising 392 sq.m. Class A1 floorspace at ground floor and basement level and 2 residential flats at first and second storey level".

Decision

1. I allow the appeal, and grant planning permission for the erection of a new 3-storey building comprising 392 sq.m. Class A1 floorspace at ground floor and basement level and 2 residential flats at first and second storey level, at 7-11 Victoria Road, East Barnet EN4 9PH, in accordance with the terms of the application, Ref N09569E/08, dated 12 February 2008, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Noise from mechanical equipment emitted from the site shall have a rating level measured as a 15 minute LAeq 1m. from the nearest noise sensitive façade at least 5dB below the background noise level measured as a 15 minute LA90 at any time. The measurements and assessments shall where appropriate be made according to BS4142:1997.
 - 3) Within two months of the installation of the mechanical equipment referred to in condition 2, a full noise impact assessment shall be undertaken to demonstrate compliance with condition 2 and shall be submitted for the written approval of the local planning authority.
 - 4) No development shall take place until full details of the levels of the building, roads and footpaths in relation to adjoining land and highways have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.
 - 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby

- permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) The Class A1 retail use hereby permitted shall not be open to customers outside the following times: 0700 hrs. to 2300 hrs. daily.
 - 7) No deliveries shall be taken at or despatched from the site outside the hours of 0800 to 1030 hrs. and 1700 hrs. to 1900 hrs. on weekdays nor at any time on Sundays, Good Friday, Christmas Day, Boxing Day and New Years Day.
 - 8) The air conditioning units providing heating and cooling to the sales floor and cash office shall only operate between the hours of 0700 hrs. and 2300 hrs.
 - 9) No development shall take place until an initial design stage assessment by an accredited assessor for the Code for Sustainable Homes and an accompanying interim certificate stating that each dwelling has been designed to achieve Level 3 of the Code has been submitted to, and approved in writing by, the local planning authority. No dwelling shall be occupied until it has been issued with a final Code certificate of compliance.
 - 10) The non-residential development hereby permitted shall be built to a minimum standard of "very good" according to the BREEAM (Building Research Establishment Environmental Assessment Method), and certification of this shall be submitted to the local planning authority before the development is first occupied.
 - 11) No demolition or construction work shall be carried out on the site at any time on Sundays, Bank or Public Holidays; before 0800 hrs. or after 1300 hrs. on Saturdays; or before 0800 hrs. or after 1800 hrs. on other days; unless previously approved in writing by the local planning authority.
 - 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works

Deemed Reasons for Refusal

2. Although the Council did not determine the application within the prescribed period, it subsequently determined that it would have refused it for the following 2 reasons: "(1) The proposed development would provide insufficient off-street parking provision (sic) to the detriment of highway and pedestrian safety and the free flow of traffic, contrary to policies GParking, M11, M12 and M14 of the adopted Unitary Development Plan (2006); (2) The proposed development, by reason of its size, bulk, height and design would form a visually intrusive feature detrimental to the character and appearance of the row of terraced properties it would form part of and the street scene in general, contrary to policies GBEnv1, GBEnv2, D1, D2, D7 and H16 of the adopted Unitary Development Plan."

Main issues

3. From this, from the evidence and representations, and from my inspection of the site and its surroundings, I consider that there are 2 main town planning issues in the appeal. These, in the light of the relevant planning policies, are: i) whether the lack of car parking provision for the proposed development would lead to conditions prejudicial to highways safety or to the free flow of traffic; and ii) the effect of the proposed development upon the character and appearance of the area, and the local street scene.

Reasons

4. The appeal site is located on the north side of Victoria Road in East Barnet, adjacent to its junction with Albert Road. Thus its main frontage is to Victoria Road, with a return frontage to Albert Road (east side). It includes 2 vacant and dilapidated 2-storey Victorian terraced properties (Nos 7-9 Victoria Road), both formerly in mixed commercial/residential use, which would be demolished. Together, these currently form a short terrace with No. 5 to the west, which lies outside the site. Within it, there is also a vacant site (11 Victoria Road) adjacent to the east, which contains scaffolding in use to shore up No. 9, and which is surrounded by a temporary hoarding. It is agreed that the whole site lies within, and at the north eastern end of the New Barnet District Centre, as defined in the Barnet Unitary Development Plan (UDP) proposals map.
5. The site and its surroundings are more fully described in a Statement of Common Ground [SCG, Doc 5], and (particularly) in the appellants' proofs of evidence. The SCG also gives details of the appeal proposals (which are shown in drawings 3182/P100, P103A, P201A and P501A), and outlines the site's planning history, with particular reference to a previously refused application by Tesco Stores Ltd. for a somewhat larger mixed-use redevelopment scheme.
6. In addition, the SCG sets out the planning policy context. The development plan comprises the London Plan (2008) and the (saved) Barnet UDP policies. There is no dispute as to the relevance or interpretation of the applicable policies, and no need for me to describe them further here. Certain well-known national policy guidance - notably in PPS 1, PPS 3, PPS 6 and PPG 13 - is also germane to the appeal, and I have given it due weight. I have in particular noted the advice on parking in chapter 3 of PPG 13.

7. The application was refused by the Council's members contrary to a positive recommendation by its officers. A borough councillor appeared at the inquiry to oppose it on parking and traffic grounds, and she was supported by 2 local residents, including a representative of the New Barnet Community Association.
8. I note that there are no retail policy/PPS 6 issues raised by the application, and that both parties agree that the 2 residential units proposed would make a small but useful contribution to meeting LB Barnet's housing needs. The site is long disused PDL - previously developed land - and it is agreed that its redevelopment with a mixed use scheme would in principle be desirable, and in accordance with the UDP.
9. *Issue i) – parking:* The proposed development does not make any provision for on-site car parking. It does however propose the use of about 4-5 existing, on street echelon parking spaces in Albert Road as a dedicated loading bay for store deliveries during certain times of day (normally 0800 hrs. to 1030 hrs. and 1700 hrs. to 1900 hrs). It is agreed that these spaces, which are in regular and unrestricted use, would be "lost" to local residents, visitors etc. during those times of day.
10. The Council conducted local parking surveys early in 2009 in connection with this appeal. It says that the survey results demonstrate a high degree of parking pressure in the vicinity (i.e. within 300 m.) of the appeal site, and in and around the New Barnet district centre in general. In particular, owing to the significant incidence of unlawful parking (on crossovers, yellow lines etc.) there are at times more parked vehicles than lawful parking spaces to accommodate them. This situation of parking-pressure is particularly acute on Fridays, and is generally related to the near proximity of New Barnet railway station, which generates some commuter parking. The Council maintains that it would be exacerbated by any additional parking demand generated by the development - both its retail and its residential elements - and by the aforementioned loss of existing car parking spaces.
11. To counter this, the appellants rely in part upon the advice in para. 51 of PPG 13 that local authorities should not require developers to provide more spaces than they themselves wish, other than in exceptional circumstances. They say that there are no such circumstances in the New Barnet centre. More generally, they argue that to provide off-street parking would not only be impracticable on this small and tightly constrained site, but would tend to generate additional car-borne visits to the store, over and above what would be expected from a "car-free" development.
12. It seems to me that the Council and the appellants are taking 2 almost irreconcilable stances on this matter of parking. Whereas the Council says that the failure to provide on-site car parking would only increase parking congestion in the area, with attendant problems for the safety and free flow of traffic, the appellants argue the opposite - that, far from preventing such problems, such provision would actually make matters worse. But the Council is not saying that the site should not be redeveloped, nor that the amount of retail floorspace proposed (392 sq.m.), or the 2 residential flats, are for any reason excessive, or contrary to UDP policies. Pressed under cross-examination, its witness suggested that 5 on-site spaces might be appropriate for this proposal.

13. I think that the appellants are correct to assert that a major thrust of urban transport policy, both in national policy guidance and in local (London Plan and UDP) policies, is towards curbing the use of the private car. It is very well established, as recognised in PPG 13, that providing off-street parking tends to do the opposite – i.e. to encourage more trips by car. In this case, the store would be a Tesco Express, a common and widespread format which is demonstrably aimed at local, top-up (as opposed to bulk-buy) shopping for which walking, cycling and public transport alternatives to the car are all practicable options. Therefore, in line with the advice in para. 52 of PPG 13, I agree with the appellants that in this situation there is no requirement to meet any notional minimum parking standard (such as the 5 spaces suggested by the Council’s witness). On the contrary, while a delivery bay is essential (and would be provided, along with a new pedestrian crossing), I see no policy-driven necessity to provide off-street car parking.
14. But would this lead to unacceptably congested or hazardous traffic conditions locally? Despite the views of the Council and the 3rd party objectors, I am not persuaded that it would. While there is undoubtedly some evidence of parking congestion in the vicinity of the site – and in New Barnet in general – it is no worse than many other centres in London of comparable size. And, as the appellants pointed out, there is no CPZ (controlled parking zone) in place in New Barnet, a fact which does not support the view that it has egregious parking problems. Moreover, for the relatively few car-borne visitors to the store, there are nearby usable car parks (e.g. Sainsburys) within the district centre, as well as the available on-street parking.
15. Given these factors, and the thrust of the advice in PPG 13, I consider that this is a proposal which should not be required to provide on-site parking. While there might be some additional parking demand generated (neither party has made a proper estimate of this), this could normally be accommodated elsewhere in the vicinity of the site. While this additional parking demand might reasonably be counted as a disadvantage of the development, in the planning balance it would be outweighed by its undoubted benefits – in particular, the significant contribution it would make to the retail vitality and viability of the district centre, its contribution to the local housing stock, and, not least, its contribution to the regeneration and environmental enhancement of a prominent but semi-derelict district centre site.
16. *Issue ii) – the proposal’s effect on the character and appearance of the area:* At the inquiry, the Council’s planning witness confirmed that its objections to the development on these grounds were largely confined to its effect on the street scene when viewed in relation to No. 5 Victoria Road. In a nutshell, it says that the new building would appear poorly related to this building, both in its size and scale, and in its architectural detailing, resulting in an alien and discordant element in the street scene.
17. For their part, the appellants produced a painstaking analysis of the historical evolution of the local townscape, leading to the current situation in which the New Barnet centre contains a wide variety and mix of buildings, with no particular scale or building style predominating, and with many juxtapositions of buildings strikingly different in ages, height, scale, materials, and architectural style and quality.

18. I find the Council's objections in this matter both exaggerated and forced. To my mind and eye, what is most striking about 5 Victoria Road - apart from its current state of dilapidation - is its extreme ordinariness. (The same applies to Nos. 7-9, which would be demolished, and to Nos.1-3, which would remain unaffected by the development.) These very mundane Victorian mixed use buildings lack any architectural distinction or particular merit, and they make no positive contribution to the local townscape. Although the concept is usually applied to architecturally listed buildings (which these are plainly not) they have no particular "group-value", and do not even form an unbroken or uniform terrace. It follows that they do not set any compelling design parameters for the redevelopment of the appeal site.
19. And yet it seems to me that the appellants are not proposing a building which is radically different in scale or building style, but one which - to an almost surprising degree - "respects" these very undistinguished neighbours. Thus, while it incorporates a third mansard storey and is slightly higher than No. 5 at ridge level, it would not be significantly out of scale with it. Its 3-storey part, containing the 2 upper floor flats, would not project significantly further to the rear. And even the division into a commercial ground floor with residential use above, the related fenestration, and the proposed external materials would echo those of the older buildings.
20. In short, I find this to be a well-mannered new building which, far from appearing discordant or alien in the street scene, would represent a positive new addition which would enhance the local area. This site, which has long been vacant and falling into semi-dereliction, is crying out to be redeveloped, and to my mind the building proposed would be wholly appropriate and unobjectionable in design terms. This would be fully in accordance both with UDP design policies, and with the national design advice in PPS 1, PPS 3 etc.
21. In summary, I find that the proposed development would not significantly compromise highways safety or the free flow of traffic, and would not harm the character or appearance of the area. Since there are no other material planning issues, I allow the appeal.
22. I do so subject to 12 agreed conditions, although I have modified some of them in the interests of clarity and economy, and better to accord with the advice in Circular 11/95, *The Use of Conditions in Planning Permissions*.
23. This permission is also subject to a signed and completed planning obligation [Doc 4] concerning the provision of the new loading bay in Albert Road, and a zebra crossing in Victoria Road, which I agree are both essential infrastructure requirements for the new store. The obligation would also provide monies towards local education facilities and libraries. The Council has confirmed that all these items would be in accordance with its policies and with Circular 05/2005 *Planning Obligations*, and I have no reason to think otherwise.
24. I have considered all the other matters raised at the inquiry, but there are none which alter or outweigh my findings on the 2 main issues.

Paul Dobsen INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr. A. Booth of counsel, instructed by Ms. C. Hayes, solicitor to LB Barnet

He called

Mr. C. Townsend Principal planner
Mr. M. Bartlett BSc MSc Section manager for traffic and development
CMILT MIHT

FOR THE APPELLANT:

Mr. S. White barrister

He called

Mr. M. Roe BA MTP CgMs Consulting
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Mr. N. Bridges BSc Ettwein Bridges Architects
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Mr. R. Lyons MSc CMILT Pinnacle Transportation Ltd.

INTERESTED PERSONS (objecting to proposals):

Councillor J. Tambourides Member for East Barnet, 47 Hampden Way,
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Mr. D. Howard Representing New Barnet Community
Association, 48-50 Victoria Road, New Barnet
EN4 9PF
Mr. J. Dix 13 Pinns Brook Drive, New Barnet EN4 9RU

DOCUMENTS

- 1 Lists of persons attending the inquiry
- 2 Letter of notification of inquiry
- 3 Additional documents/plans put in by the appellants
- 4 Signed and completed S106 unilateral planning obligation, put in by the appellants
- 5 Statement of Common Ground (SCG)

PLANS

- A The application plans (as listed in decision)