

RECEIVED: 2 July, 2009

WARD: Kilburn

PLANNING AREA: Kilburn & Kensal Consultative Forum

LOCATION: 117, 119A & 119B, Malvern Road, London, NW6

PROPOSAL: Amendment to reserved-matters planning permission 07/1950, dated 26/09/2007, pursuant to condition 3 (appearance) of outline planning permission 06/2144 (granted on appeal 14/05/2007) for erection of a four-storey and five-storey building consisting of 58 residential units (13 studio flats, 27 one-bedroom flats, 15 two-bedroom flats and 3 three-bedroom flats), 20 of which would be affordable, along with provision for 12 car-parking spaces and refuse stores, to change the design/appearance of the building, in order to allow the ground-floor and first-floor windows on the rear elevation to be clear-/plain-glazed, rather than the originally approved obscure-glazing

APPLICANT: Michael Shanly Homes

CONTACT:

PLAN NO'S:

- 1076_P_10.01 B.
- 1076_P_11.02 AW.
- 1076_P_11.03.
- 1076_P_11.04 A.
- 1076_P_11.05.
- 1076-pln-106 AW.
- 1076-pln-107 AW.
- 1076-pln-109.
- 1076-pln-110.

RECOMMENDATION

Refuse.

EXISTING

The application site is on the western side of Malvern Road and was previously occupied by a Mercedes Benz garage and car showroom. It is currently in the process of being developed for 58 flats.

The site had been, up until the end of 2005, occupied by two Locally Listed Buildings (Nos. 117 and 119 Malvern Road) but is now cleared of all buildings. The background to the loss of these buildings is set down in the "History" section of this report.

The area around the site is predominantly residential in character, comprising small groups of terraced properties on the southwestern side of Malvern Road, many of which have subsequently been converted to flats. On the opposite side of Malvern Road is a part two- and part three-storey

elderly person's block (John Perrin House) along with a local park. Malvern Road is a no-through-road to the north of the site and Kilburn Park Junior School and Carlton Vale Infant School are located adjacent to the turning head. The rear boundary of the application site forms the boundary between Brent and the City of Westminster. As a result, the residential properties in Saltram Crescent are in Westminster.

The application site falls within the South Kilburn New Deals for Communities (NDC), now Neighbourhood Trust, area.

PROPOSAL

This application is yet another amendment to a reserved-matters application (07/1950) that was approved in September 2007. That particular application approved details relating to design, landscaping, external appearance and formation of new vehicular and pedestrian means of access to the residential development, following an outline planning consent 06/2144 (which was granted on appeal 14/05/2007).

The approved development that is being built out relates to the erection of a four-storey and five-storey building consisting of 58 residential units (13 studio flats, 27 one-bedroom flats, 15 two-bedroom flats and 3 three-bedroom flats), 20 of which would be affordable, along with provision for 12 car-parking spaces.

In every respect, the building under construction complies with the details that the Council have previously approved, but the applicants now seek to vary one aspect of it. This involves the change of the design and appearance of the building at first floor level in order to allow the use of clear/plain glass rather than the obscure glazing originally approved in the rear elevation. The change relates to 14 windows.

Members may remember that they were asked consider a similar change to the windows at ground floor level at their June Committee meeting under application 09/0749.

HISTORY

This site was previously occupied by a locally listed building and has a long history of applications. A 2006 scheme for residential development was allowed at appeal, following a Public Inquiry, and this decision has become a material consideration in determining the way that Officers must consider subsequent proposals on the site.

The history is set out below:-

04/1340 - Demolition of 119A & B Malvern Road, change of use of 117 Malvern Road from car-servicing garage into 8 self-contained flats with associated external alterations to facilitate this, erection of a 4-storey block containing 12 self-contained flats with balconies, erection of a 4-storey block containing 20 self-contained flats with balconies, provision of 10 car-parking spaces, provision of associated landscaping and amenity space, alterations to existing vehicle access and creation of new vehicle access onto Malvern Road. Refused 23 July 2004.

05/1043 - Demolition of the locally listed building at 117 Malvern Road. Consent granted 6 October 2005.

No. 117 was a three storey red brick Victorian mansion, originally designed as a house but used as offices associated with the garage and showroom use. Officers considered that the building was worthy of protection, having architectural merit, and attempted to serve an Article 4 Direction on the site, bringing the demolition of the building, which otherwise could be carried out at any time, under planning control. However, the Government Office for London (GoL) decided that the Council should not use Article 4 Directions for this purpose. English Heritage had re-confirmed that the building was not worthy of statutory listing and it was not sited within a Conservation Area. In these circumstances, the demolition of the building should not be resisted and this took place towards the end of 2005.

06/0132 - Outline Planning Permission for erection of a four-storey and five-storey building, consisting of 60 residential units (11 studio flats, 32 one-bedroom flats, 16 two-bedroom flats and 1 three-bedroom flat), provision for 12 parking spaces, refuse stores and associated landscaping (matters to be determined: siting and means of access). This application was refused at the Planning Committee on 29 March 2006.

Although the applicants originally appealed against the refusal of this application, they subsequently withdrew that appeal.

06/2840 - Demolition of existing building and erection of 4 storey building comprising 53 self-contained dwelling units consisting of 10 studio flats, 28 one-bedroom flats, 11 x two-bedroom flats and 4 x three-bedroom flats (37.7% to be affordable purposes). Provision of 58 bicycle storage spaces, 8 car-parking spaces, 4 motorcycle spaces, bin stores, alteration to existing vehicular access, hard and soft landscaping to site. Refused 13/12/2006.

06/2144 – Outline planning permission for erection of a four-storey and five-storey building consisting of 58 residential units (13 studio flats, 27 one-bedroom flats, 15 two-bedroom flats and 3 three-bedroom flats), 20 of which would be affordable, along with provision for 12 car-parking spaces, refuse stores and associated landscaping (matters to be determined: siting and means of access only): revised application following refusal of planning application 06/0132 which proposed 60 flats. Refused at Planning Committee on 31 October 2006.

As stated above, the decision was appealed and the appeal allowed. For the information of Members, this development provided for the following in a Section 106 Unilateral Undertaking:

- A contribution of £161,107, due on material start and index-linked towards the following local infrastructure provision:
 - £100,170 towards Education facilities in the Borough;
 - £30,000 towards a new crossing and safety measures on Carlton Vale, and to offer 1 years Car Club membership to all 1st occupiers at the developers cost;
 - £31,000 toward improving South Kilburn Open Space, should this be unavailable other local open spaces to be agreed.
- The removal of the right of new residents to apply for parking permits (“Car Free”)
- A requirement to implement sustainability measures implemented on TP6 Form "Sustainability Checklist" submitted with the application and officer comments measures to ensure that a "Very Good", rating has been achieved on EcoHomes and the 50% threshold is met.
- Join and adhere to the requirements of the Considerate Contractors scheme
- Provide Affordable Housing.

07/1950 -Approval of reserved matters relating to design, landscaping, external appearance and formation of new vehicular and pedestrian means of access to residential development, pursuant to outline planning permission 06/2144 (granted on appeal 14/05/2007) for erection of a four-storey and five-storey building consisting of 58 residential units (13 studio flats, 27 one-bedroom flats, 15 two-bedroom flats and 3 three-bedroom flats), 20 of which would be affordable, along with provision for 12 car-parking spaces and refuse stores. Granted at the Planning Committee of 25 September 2008.

09/0749-Amendment to reserved-matters planning permission 07/1950, dated 26/09/2007, pursuant to condition 3 (appearance) of outline planning permission 06/2144 (granted on appeal 14/05/2007) for erection of a four-storey and five-storey building consisting of 58 residential units (13 studio flats, 27 one-bedroom flats, 15 two-bedroom flats and 3 three-bedroom flats), 20 of which would be affordable, along with provision for 12 car-parking spaces and refuse stores, to change the design/appearance of the building, in order to allow the ground-floor windows on the

rear elevation to be clear-/plain-glazed, rather than the originally approved obscure glass (as per agent's e-mail dated 3 June 2009). Granted at Planning Committee on 17 June 2009.

POLICY CONSIDERATIONS

Brent Unitary Development Plan 2004

BE2 Townscape: Local Context & Character
BE9 Architectural Quality

Supplementary Planning Guidance Note SPG17 "Design Guide for New Development."

South Kilburn Supplementary Planning Document (SPD) Adopted April 2005

Provides comprehensive and detailed design guidance for new development within the SKNDC (now South Kilburn Neighbourhood Trust) area. Produced following the adoption of the SKNDC Masterplan. The SPD provides general guidance on how the aspirations of the Masterplan are to be implemented across the area, but also makes reference to specific sites. It indicates that the application site is appropriate for a residential development.

SUSTAINABILITY ASSESSMENT

Not applicable.

CONSULTATION

Adjoining occupiers were notified about the application on 14 July 2009. A site notice was posted on the site on 27 July 2009 and a press notice was published on 23 July 2009, advertising the application as "Of Public Interest". No comments have been received in response to this consultation exercise.

City of Westminster have been consulted about the application, but no response has been received at the time of drafting this report.

REMARKS

Reserved matters including design, landscaping, external appearance and formation of new vehicular and pedestrian means of access to this residential development were previously approved (07/1950) following an Inspector's appeal decision allowing an outline consent for 58 flats. Although this proposal seeks to vary only one single element of the details previously approved by 07/1950, the application is technically a "Major Case" as it relates to a development of 58 flats which is currently under construction.

As indicated above, Members were asked to consider a similar case in June 2009 (09/0749) when the applicants asked if 10 of the ground floor windows in the rear elevation could be changed from obscure glazing to clear glass. At that time Members agreed that there would be no increase in overlooking or loss of privacy as a result of the change and granted consent. In response to a request from Officers, the applicants reconfirmed in an e-mail dated 3 June 2009 that the proposal only related to the ground floor.

In the report to Members, Officers stated that:-

"To be clear, this conclusion (that the scheme was acceptable) only relates to the ground-floor windows and in the event that future proposals to remove the obscure glazing at upper-floor levels were to come forward, it is unlikely that they would be considered as favourably, certainly at second-floor level. This is because such a proposal would be likely to result in a loss of amenity (as compared to the approved scheme) for existing, and future, residents. The applicants have given no indication that they intend to pursue this proposal, but Officers consider that it is worth giving a view at this stage in the event that it is contemplated in the future".

This latest application now does actually relate to the 14 windows in the rear-facing first floor of the building currently under construction that were approved at appeal as being glazed in obscure glass. These windows serve a total of 7 flats. At the time of the original appeal scheme, the bottom three floors all had a number of windows obscure-glazed so as to minimise the likely loss of privacy that would be experienced by residents of Saltram Crescent to the rear. The appeal Inspector concluded that a combination of splayed windows, obscure glazing and the setting back of certain parts of the rear of the building would ensure that the relationship between this development and the houses behind would be acceptable. The Council at the time raised this as a specific objection to the scheme, but the Inspector took a different view, albeit that he considered that the arrangements proposed were somewhat contrived.

Officers considered in June 2009 that it would be acceptable to allow the change to the ground floor. Whereas there has always been concern about how the proposed flats would relate to existing residents, the situation was considered to be different at ground-floor level and Officers considered in 09/0749 that the use of clear glazing in all windows would have no additional impact on anyone living nearby. The rear boundary of the site is formed by a high wall and there is consequently no prospect of people looking out of their ground floor windows and into either the buildings or the gardens in Saltram Crescent.

Officers consider that the situation is different as far as the first floor accommodation is concerned. The site has been visited and Officers were able to look out of the windows in the first floor units. For clarity, clear glazing has already been installed in the windows the subject of this application. It is considered that there is insufficient distance between the rear of the application building and the back of the Saltram Crescent properties in order to meet the guidance expressed in the Council's adopted SPG17. Members will be aware that SPG17 normally seeks a distance of 20 metres between windows, although the document does acknowledge that there may be instances where a reduced distance could be allowed. In this case, the separation distances are as follows:-

- approx. 14.6 metres to the rear wall of No.109 Saltram Crescent.
- approx. 15.4 metres to No's 105 & 107 Saltram Crescent.
- approx. 13.0 metres (at an oblique angle) to No.103 Saltram Crescent.

The gardens to these properties are very short (4.0 metres in one instance and significantly less than 10.0 metres in the rest) and the concerns expressed above are intensified by this fact. Officers consider that the loss of amenity caused by overlooking from the windows would have a greater impact because it needs to be seen in the context of the small gardens that are already impacted upon by the approved building. As a result, this relationship is unacceptable and it is considered that there will be a loss of privacy to existing residents. As indicated above, the Inspector in his original decision letter on the allowed residential scheme (paragraph 31) acknowledges that although he thinks that the solutions proposed to prevent loss of privacy (eg: oblique angles) and comply with Council guidance were somewhat contrived they overcame concerns about relationships with existing residents. To remove the obscure glazing as is proposed here would fundamentally impact on his balanced assessment.

The applicants have submitted a section to demonstrate, in their view, that there would be no impact from the proposed changes, but this is not the relationship that Officers saw on site. The view out of the first floor windows allowed a clear view straight into the windows of Saltram Crescent properties and this view was not restricted by the high rear boundary wall which does have an impact on outlook from the application building. Members will appreciate that people do not look out of a window in a single plane and that any linear "line of vision" (which is shown on the applicants own section) fails to take account that people can look up as well as straight out of their windows.

As a result of the limited distance between proposed and existing windows, and given the finely balanced assessment by the appeal Inspector, Officers have to recommend the application for refusal on the basis of non-compliance with SPG17.

REASONS FOR CONDITIONS

RECOMMENDATION: Refuse Consent

CONDITIONS/REASONS:

- (1) The proposed development incorporating the use of clear glass rather than the previously approved obscure glazing at first floor level would, by reason of its proximity to the rear boundary and numbers of windows involved, have an unacceptable impact on the amenities of occupiers to the rear of the site, impacting to a significant degree on privacy and outlook. As a result, the proposal would be contrary to policy BE9 of the adopted Brent Unitary Development Plan 2004 and the Council's Supplementary Planning Guidance SPG17: "Design Guide for New Development."

INFORMATIVES:

None Specified

REFERENCE DOCUMENTS:

- Brent UDP 2004
- South Kilburn SPD 2005
- SPG17 & SPG19.

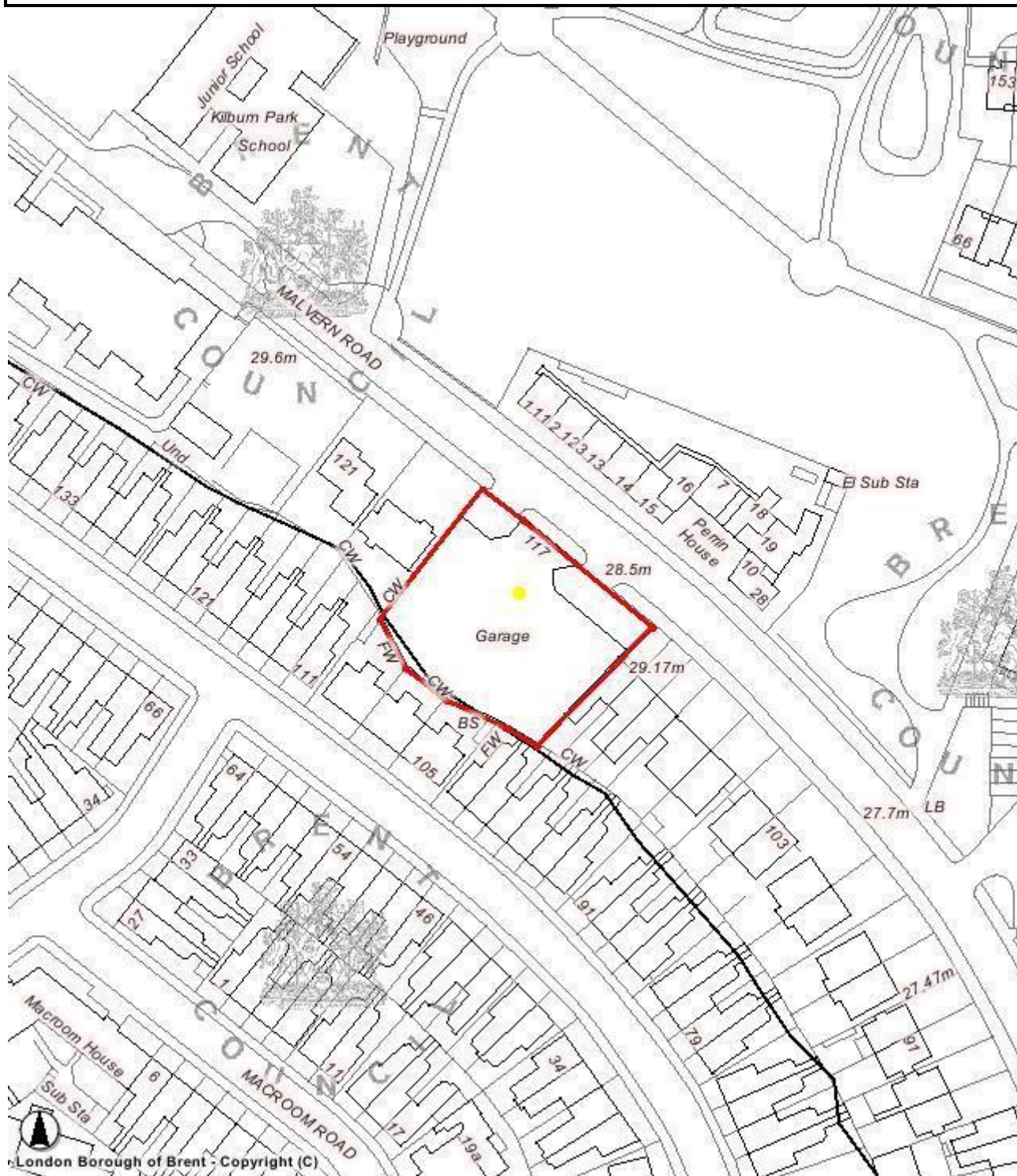
Any person wishing to inspect the above papers should contact Andy Bates, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5228



Planning Committee Map

Site address: 117, 119A & 119B, Malvern Road, London, NW6

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