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## Appeal Decision

Site visit made on 5 September 2016

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

**Decision date: 2<sup>nd</sup> November 2016**

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**Appeal Ref: APP/N5090/W/16/3146858**

**84 Uphill Road, Mill Hill, London NW7 4QE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Steve Mattey against the decision of the Council of the London Borough of Barnet.
- The application Ref 15/06297/S73, dated 8 December 2015, was refused by notice dated 19 February 2016.
- The application sought planning permission for 'Demolition of existing dwelling house and erection of 2 no. detached dwelling houses with rooms in roof space. Relocation of existing vehicular access and creation of a new vehicular access. Provision of off-street parking; garden amenity and associated landscaping' without complying with conditions attached to planning permission Ref H/02901/12, dated 6 December 2012.
- The conditions in dispute are Nos 1, 4, 6 and 10 which state that:
  - (1) The development hereby permitted shall be carried out in accordance with the following approved plans: site plan, sample photographs, arboricultural report, arboricultural report-supplemental update sheet dated 4<sup>th</sup> October 2012, design and access statement, landscape plan, TPP/84URMH/010B, 1353.P.04A, 1353.P.03A, 1353.P.01, 1353.P.02A, 1353.P.07B, 1353.P.05A, 1353.P.06, 1353.P.08, letter from Dave Clarke dated 26 October 2012 and Unilateral Undertaking dated 28 Nov 2012.
  - (4) Before this development is commenced, details of the levels of the building(s), road(s) and footpath(s) in relation to adjoining land and highways(s) and any other changes proposed in the levels of the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such details as approved.
  - (6) Before the development hereby permitted is brought into use or occupied the site shall be enclosed except at the permitted points of access in accordance with details previously submitted to and approved in writing by the Local Planning Authority.
  - (10) A scheme of hard and soft landscaping, including details of existing trees to be retained, shall be submitted to and agreed in writing by the Local Planning Authority before the development, hereby permitted is commenced. This should include details of the replacement planting for the 2 protected oak trees to the front of the property approved under application 00590/12/H and the replacement planting for the proposed felling of the protected trees to the rear of the site.
- The reasons given for the conditions are:
  - (1) For the avoidance of doubt and in the interests of proper planning.
  - (4) To ensure that the work is carried out at suitable levels in relation to the highway and adjoining land having regard to drainage, gradient of access and the amenities of adjoining occupiers and the health of any trees on the site.
  - (6) To ensure that the proposed development does not prejudice the appearance of the locality and/or the interests of the locality and/or the amenities of occupiers of adjoining residential properties and to confine access to the permitted points in the

interest of the flow of traffic and conditions of general safety on the adjoining highway.

- (10) To ensure a satisfactory appearance to the development.
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## **Decision**

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling house and erection of 2 no detached dwelling houses with rooms in roof space. Relocation of existing vehicular access and creation of a new vehicular access. Provision of off-street parking; garden amenity and associated landscaping at 84 Uphill Road, Mill Hill, London NW7 4QE in accordance with the terms of the application, Ref H/02901/12, made on the 6 December 2012, without complying with condition nos 1, 4, 6 and 10, but subject to the conditions set out in the schedule attached to this Decision and all the other conditions attached to planning permission Ref H/02901/12, granted on 6 December 2012, so far as they subsist and are capable of taking effect.

## **Procedural Matters**

2. The works have already been carried out and hence the application is retrospective and I have dealt with the appeal on this basis. An amended landscape plan (drawing number LP/84URMH/020 GI dated July 2016) has been submitted which seeks to address an error in the site levels shown on the plan subject of the appeal (Drawing number LP/84URMH/020 G dated October 2015). The amended plan does not fundamentally alter the nature of the proposal and I do not consider that the interests of anyone would be prejudiced by accepting the Plan.
3. Evidence was submitted at the final comments stage relating to soil surveys and sampling. The evidence seeks to clarify the ground and soil conditions and consequently, I do not consider that the interests of anyone would be prejudiced by accepting it. The Council were given the opportunity to comment on both the revised plan and the additional evidence. I have, therefore, dealt with the appeal on this basis.
4. The property which previously occupied the appeal site was number 84 Uphill Road which is reflected in the address of the original application and subsequent appeal proposal. However, the appeal properties which now occupy the site are referred to as numbers 80 and 82 Uphill Road and I have, therefore, utilised this numbering in my reasoning.

## **Preliminary Matters**

5. The decision notice for the planning application which is the subject of this appeal refers to the submission of details pursuant to condition 17 (Code for Sustainable Homes), although I note that this is not referred to on the planning application forms. However, the Council have confirmed that a Final Code Certificate has been issued certifying that Code Level 3 has been achieved for both dwellings and that these certificates have been submitted to and approved by the local planning authority. The Council confirms that this satisfies condition 17. From everything I have seen in submissions and on my site visit I have no reason to disagree.
6. The Council confirm in the delegated officer report that the changes to the access at the front of the properties are acceptable and in keeping with the character and appearance of the area. From everything I have seen in submissions and on my site visit I have no reason to disagree. However, the Council point out that they would require amended elevational drawings to reflect the changes from the front

of the properties at street level. However, I can only consider the proposal and plans which are before me and I have found those plans to be acceptable. If further plans are required in order to regularise any discrepancies between the approved plans and what has actually been built then this will be a matter for the appellant and the Council to resolve.

## **Background and Main Issues**

7. The appeal relates to a planning application<sup>1</sup> which sought planning permission for the variation of condition 1 (plans), condition 4 (levels) condition 6 (means of enclosure) and condition 10 (landscaping) pursuant to planning permission H/02901/12 (the 'original permission') for the demolition of an existing dwelling and the erection of 2 detached dwelling houses with associated works.
8. The planning permission was refused on the grounds that the proposed changes to landscaping and levels would be harmful to the character and appearance of the application site and vicinity; would be detrimental to the health of the existing retained tree which is subject to a tree protection order; and that the proposed changes to the landscaping would fail to provide adequate growth potential for the proposed trees bordering the site, limiting their potential to make a valuable contribution to the character and appearance of the outdoor amenity area as well as facilitating the privacy of the site.
9. Taking the above into account I consider that the main issues in this case are:
  - The effect on the character and appearance of the site and surrounding area;
  - The effect on the existing retained tree which is the subject of a Tree Preservation Order;
  - The effect on the growth potential of the proposed trees bordering the site; and
  - The effect on the living conditions of the occupiers of no 78 Uphill Road, 86 Uphill Road and Tretawn Park with specific reference to privacy.

## **Reasons**

### *Character and appearance*

10. The appeal site was formerly a large detached property located on the east side of Uphill Road which is predominately residential. The site has been subdivided and two new dwellings erected numbers 80 (no 80) and 82 (no 82) Uphill Road. The area is characterised by large detached houses set in spacious plots. The rear gardens of surrounding properties have significant natural foliage and mature trees. Properties have large driveways/gardens to the front with mature trees and shrubs creating a verdant and attractive street scene. There are several tree preservation orders on the appeal site.
11. Various discharge of conditions applications were submitted to the Council subsequent to the approval of the original permission. Details submitted for condition 4 (Levels), condition 6 (means of enclosure), amongst other conditions, were granted approval under application reference H/04744/12 and details submitted for condition 10 (Landscaping) were approved under application reference H/05030/14 (hereafter referred to as 'the approved landscaping plan'). However, the works have not been carried out in accordance with those details. A revised landscaping plan (LP/84URMH/020 G) was submitted as part of this appeal

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<sup>1</sup> Planning application reference 15/06297/S73

which included a number of changes to the landscaping when compared to the approved landscaping plan. This has been superseded by a further revised plan (LP LP/84URMH/020 GI) which is the basis upon which I shall consider the appeal.

12. The Council are concerned that the techniques which have been used to alter the levels may have resulted in heavy clay soil being the surface layer which would not be conducive to growth. Concerns are also raised regarding the soil conditions within the narrow planting beds. The soil survey/investigation confirms that soil conditions in the front and rear gardens and the planting beds are conducive to growth. I deal with this in greater detail as part of my reasoning for main issue 3. Nonetheless, it provides an important context for the assessment of the first main issue as it demonstrates that the ground/soil conditions will enable the landscaping which has been planted to flourish.
13. Planting in the front garden of no 80 is similar to that proposed in the approved landscaping scheme with the exception of bed E and F which have diminished in size. Nevertheless, the extent and nature of tree planting remains broadly the same as the approved landscaping plan. I, therefore, consider that the planting in the front garden of no 80 planting will mature sufficiently to provide a level of landscaping consistent with that of surrounding front gardens.
14. Due to the revisions to the access and driveway to the front of number 82 the amount of hard standing has increased and as a consequence proposed planting beds a and b have significantly diminished in size, although I note that the number of trees has actually increased overall. In addition, I consider that the species of trees are appropriate to their setting. Whilst the planting beds are smaller than originally proposed I, nevertheless, consider that the trees, once matured, would be consistent with those in the front gardens of surrounding properties.
15. Turning to the rear gardens, there has been an increase in the surface area of the patio at both no 80 and no 82 when compared to the approved landscaping plan; however, I consider that the proportion of hard surface to soft landscaping is reasonable given the overall size of the garden. The appellant has introduced a stepped element composed of a wooden retaining wall and steps which extend across the full width of the gardens which has resulted in an engineered and unnatural appearance as opposed to the originally intended more natural graduated approach. The change in levels is greatest at number 80, although the landscaping at the side of the steps softens the impact to a degree. This feature, nevertheless, weighs against the scheme.
16. Furthermore, the use of artificial grass at the top end of the garden introduces an alien material which contrasts markedly with the natural grass of the lower gardens and that of surrounding gardens. However, taking into account the extent of the hard surface area previously occupied by the tennis court I consider that the artificial grass is a neutral factor in my Decision. Furthermore, once the planting on the side and rear boundaries of the appeal site has matured, there would be limited views of both the stepped element and the artificial grass.
17. Whilst the planting along the flank boundaries is not as substantial as originally proposed, the density and species of trees and shrubs are appropriate for a domestic garden and consistent with that of the surrounding area. I consider that, on balance, the planting scheme, once matured, would contribute to the character and appearance of the area.

18. Planting to the rear of no 80 is broadly consistent with that of the approved landscaping plan. The substantial crown of the mature Oak which is subject to the TPO provides substantial screening. Although the proposed Lawson Cypress has not been planted I consider that the Holly and Hawthorn hedge together with the Hornbeam will in time provide sufficient screening for the properties to the rear. I have concerns regarding the section of Yew hedge which has turned brown and appears to have suffered from its position below the Oak. This will need to be monitored and replaced (as required by condition) if it continues to degenerate.
19. It was originally proposed to plant 3 Lawson Cypress, 2 English Oak trees and 1 Cedar tree on the rear boundary of no 82 which were intended to provide a mix of evergreen and deciduous specimen and provide landscaping to the rear. Whilst I agree that the row of closely spaced Leylandii do not provide the same diversity of species, they are, nevertheless, a common feature of domestic gardens. I also note that the revised landscaping plan has included two additional English Oaks to the rear of the garden which once matured would introduce greater diversity. Whilst a better mix of deciduous and evergreen trees would be desirable I do not consider that this would be sufficient to warrant refusal of the scheme on its own.
20. The Council are concerned that the revised landscaping plan does not mitigate for the loss of the trees which were subject to the Tree Preservation Order (TPO). I consider that the two Oak trees which have been planted in the front gardens will, once matured, mitigate the loss of the Oaks which were subject to the TPO.
21. In the rear gardens, the Cypress and Oak which are subject to the TPO remain and appear to be healthy. The TPO also records 1 Beech (T11) and two groups of trees which have been felled. Group 7 included 4 trees: 1 Birch, 1 Atlantic Cedar and 2 Monterey Cypress. Group 8 included 8 Lawson Cypress. Both group 7 and 8 were centred around the tennis court. These were removed with consent from the Council as part of the original planning application. The approved landscaping plan lists the trees which were to be replacement trees for the loss of the TPO trees, as does the revised landscaping plan. Whilst there has been a slight change in species, the number and distribution of replacement trees is consistent with that proposed in the approved landscaping plan. I am, therefore, satisfied that sufficient replacement trees have been planted to mitigate for the loss of the felled TPO trees.
22. I noted a number of properties in the area which have tennis courts and swimming pools which result in a large area of hard surface area within their gardens. Furthermore, once the landscaping on the boundaries has matured, there will be restricted views of the rear garden. On balance, I consider that the revised landscaping scheme will in due course provide a satisfactory standard of landscaping consistent with that of surrounding domestic gardens.
23. Consequently, I conclude that the revised landscaping scheme will not harm the character and appearance of the area. It does not, therefore, conflict with Policy DM01 of the Development Management Policies Development Plan Document (DPD) 2012 which seeks to protect Barnet's character and amenity; requires development proposals to include hard and soft landscaping and provide an appropriate level of new habitat including tree and shrub planting; and safeguard trees.
24. The development does also not conflict with Policy CS5 of the Core Strategy (CS) Development Plan Document (2012) which seeks to ensure that development respects local context and distinctive local character creating places and buildings of high quality design. Furthermore, no conflict arises with the Residential Design

Guidance Supplementary Planning Document April 2013 which seeks to ensure that new development provides appropriate landscaping, retaining existing trees and incorporating locally native species into the scheme where possible.

### *Tree Preservation Order*

25. The appeal site is subject to the Uphill Road Tree Preservation Order (TPO). A Cypress tree situated in the rear garden of no 82 Uphill Road is protected by the TPO and was retained as part of the development scheme. The appellants suggest that the setting of the Cypress is much improved on the revised scheme due to the removal of the former dwarf retaining wall from the historic tennis court which is no longer impacting on the roots and water table of the tree. The Council are, nevertheless, concerned that the tree is showing signs of stress. A soil sample was undertaken in the vicinity of the Cypress on the lower rear lawn and it shows that the area was free draining and that there were no signs of anaerobic condition. The topsoil contained organic matter conducive to good plant growth. I noted on my site visit that there were no visible signs of deterioration of the tree. I am, therefore, satisfied that the development has not had a harmful effect on the protected Cypress.
26. An Oak tree is situated to the rear of no 80 which is also protected by the TPO. A soil sample was undertaken in the vicinity of the Oak which showed that the soil was free draining and that there were no signs of anaerobic material or contaminants. It also showed that there was existing loam soil which contained organic matter conducive to good plant growth. There were no visible signs of deterioration in the tree's health at the time of my site visit.
27. The Council is concerned that the Norway Spruce situated in the front garden of no 80 has been adversely affected by an increase in hard surface area as a result of the second access point. I noticed on my site visit that the crown appeared relatively sparse which would lend support to the Council's view.
28. Figure 2 of the appellant's final comments shows that the driveway is outside the root protection area of the tree. The driveway has been constructed of permeable material which is free draining and with sufficient soil pore spaces to allow water to percolate through and for tree roots to exploit. A soil sample was undertaken in the front border of no 82, in the vicinity of the Spruce which showed that the area was free draining and had good quality top soil.
29. Whilst I share the Council's concerns, there is no evidence before me that the changes to the access and driveway have resulted in harm to the tree. The condition of the tree will need to be monitored and in the event that the tree dies, a replacement tree will be required to be planted by legislation.
30. I, therefore, consider that there is no evidence before me to demonstrate that the revised landscaping scheme or methods of work have resulted in harm to the trees which are subject to the Tree Preservation Order. It is not, therefore, contrary to Policy DM01 of the DPD, CS5 of the CS or the SPD.

### *Growth Potential*

31. The Council is concerned about the techniques which have been used to alter the levels which it considers have resulted in heavy clay sub-soil being the surface layer. In response to the Council's concerns the appellant has submitted a revised landscaping plan showing the correct site levels. I note that the levels of the original garden were undulating and that the area of the former tennis court has

been raised to produce a level garden area. Topsoil has also been used to create a more even surface.

32. The appellant has since submitted a soil survey/investigation which involved 12 trial holes being dug throughout the rear gardens. The position of the trial holes were agreed with the Council before proceeding.
33. This survey confirmed that there were no anaerobic soil conditions or visual or odorous signs of contamination. It demonstrated that there was a good depth of top soil, some of which was made up of the original formation level of the garden and at the site of the former tennis court and raised planters new topsoil has been used of a sufficient depth.
34. The underlying soil conditions within the site consist of topsoil over clay. There were issues of water logging within the former garden area which was partly addressed through a surface water pipe which flowed under adjacent gardens in Uphill Road. Further drainage measures have helped to alleviate water logging and ponding issues within the site.
35. Some of the trees planted as part of the original garden layout were planted directly into clay and subsequently failed. New tree pit designs have been used to overcome this problem and together with the drainage measures have created suitable growing conditions for trees in the garden area.
36. Concerns are also raised regarding the use of narrow planting beds which would not allow existing and replacement trees and plants to fulfil their growth potential. The appellant has clarified that the planters alongside no 86 Uphill Road were required as part of a Party Wall agreement that prevents any excavation within 3.0m of the retaining wall there. The appellant points to the planters to the rear of no 82 being over 3.0m in width. The soil samples demonstrate that there is sufficient top soil within the planting bed to provide conditions which are conducive to growth.
37. On the basis of this evidence and in the absence of evidence to the contrary I am satisfied that the planting which has taken place has suitable growing conditions to enable it to mature. The revised landscaping scheme is, therefore, not contrary to Policy DM01 of the DPD, CS5 of the CS or the SPD.

#### *Living conditions*

38. The approved landscaping plan indicated 3 Lawson Cypress trees, 2 English Oak trees and 1 Cedar tree and the approved shrub area on the rear boundary of no 82 were intended to provide high quality screening to properties at the rear, Tretawn Park. Instead the implemented scheme includes closely spaced Lawson Cypress planted as a hedge. The soil survey shows that growing conditions are suitable and whilst there may need to be selective thinning of the trees to enable growth I am satisfied that the trees will provide effective screening in due course. I consider that the significant crown of the Oak together with the hornbeam and hedges provide significant screening on the rear boundary of no 80. The revised scheme would not, therefore, have a harmful effect on the privacy of occupiers of properties in Tretwan Park.
39. The planting on the flank boundaries of the site has been reduced in comparison to the approved landscaping plan. However, the soil survey demonstrates that the soil structure of the planting beds will enable growth. Whilst the level of planting is reduced in comparison with the approved planting scheme I,

nevertheless, consider that the landscaping will become an effective screen over time.

40. I, therefore, conclude that the revised landscaping scheme would not harm the living conditions of the occupiers of neighbouring properties. The development does not, therefore, conflict with criteria e of Policy DM01 of the DPD which states that development proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. Furthermore, no conflict arises with Policy CS5 of the Core Strategy and the SDP which seeks to ensure that development proposals provide adequate privacy.

## **Conditions**

41. The guidance in the Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission should also repeat the relevant conditions from the original planning permission unless they have already been discharged as a new permission is effectively being created. Paragraph 1 of this Decision, therefore, states that the appeal is allowed and planning permission is granted for the proposal in accordance with the terms of the application, ref H/02901/12 without complying with conditions numbers 1, 4, 6 and 10, but subject to the conditions set out in the schedule attached to this decision and all other conditions attached to planning permission H/02901/12 granted on 6 December 2012, so far as they subsist and are capable of taking effect.
42. As the application is retrospective the standard time limit condition is not necessary. I have replaced condition 1 with a new condition requiring the development to be carried out in accordance with the approved revised landscaping plan and also the plans which were subject of the original application. This provides the appellant flexibility to apply for a subsequent application for a minor material amendment.
43. Condition 4 of the original permission required details to be submitted of the levels of the buildings, roads and footpaths in relation to adjoining land and highways and any other changes proposed in the level of the site to be submitted and approved to the local planning authority. This is a pre-commencement condition and I understand that the condition has been discharged. Revised levels have been submitted as part of this appeal and I have found those to be acceptable. Those details are reflected on the revised landscaping plan and condition 1 requires the development to be carried out in accordance with those details. As the matter is now covered by condition 1 there is no need to carry forward this condition.
44. Condition 6 of the original permission required the site to be enclosed except at the permitted points of access in accordance with details previously submitted to and approved in writing by the local planning authority before the development is brought into use. This is a pre-occupation condition and I understand that the condition has been discharged. Revised details have been submitted as part of the appeal and I have found those details to be acceptable. Those details are reflected on the revised landscaping plan and condition 1 requires the development to be carried out in accordance with those details. As the matter is now covered by condition 1 there is no need to carry forward this condition.
45. I have replaced condition 10 with a condition requiring that the scheme of hard and soft landscaping shall be carried out in accordance with the details contained in the approved landscaping plan drawing no LP/84URM/020 G1. I have also added a retention clause to ensure the retention of the approved landscaping in

the interests of the long term character and appearance of the area. I have retained the reference number of the condition attached to the original permission for ease of reference. Conditions 11 and 12 of the original permission relating to the implementation of the landscaping scheme and requiring the replacement of trees which are removed, die, become severely damaged or diseased within five years of the completion of development still apply.

### **Conclusion**

46. For the reasons stated above, the appeal should be allowed subject to the conditions set out in the Schedule attached to this Decision and all other conditions attached to planning permission Re H/02901/12 granted on 6 December 2012, so far as they subsist and are capable of taking effect.

*Caroline Mulloy*

INSPECTOR

## **Schedule**

### **Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:  
Site plan, samples photographs, arboricultural report, arboricultural report-supplemental update sheet dated 4 October 2012, design and access statement, Landscape Plan-LP/84URMH/020 G1, TPP/84URMH/010B, 1353.P.04A, 1353.P.03A, 1353.P.01, 1353.P.02A, 1353.P.07B, 1353.P.05A, 1353.P.06, 1353.P.08, letter from Dave Clarke dated 26<sup>th</sup> Oct 2012 and Unilateral Undertaking dated 28<sup>th</sup> Nov 2012.
  
- 10) The scheme of hard and soft landscaping shall be carried out in accordance with the details contained in approved landscaping plan drawing no LP/84URMH/020 G1 and maintained thereafter. This should accord with the details of the replacement planting for the 2 protected Oak trees to the front of the property approved under application 00590/12/H and the replacement planting for the proposed felling of the protected trees to the rear of the site.