



Appeal Decision

Site visit made on 13 August 2019 and 22 October 2019
by Conor Rafferty LLB (Hons), AIEMA, Solicitor (Non-practising)

Decision by AU Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: **31 October 2019**

Appeal Ref: APP/N5090/W/19/3230655

185 West Heath Road, Hampstead, London, NW3 7TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Newington against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/0648/FUL dated 4 February 2019, was refused by notice dated 30 April 2019.
 - The development proposed is the demolition of existing dwelling and erection of new three storey dwelling with lower ground floor level and new boundary wall and gates.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing dwelling and erection of new three storey dwelling with lower ground floor level and new boundary wall and gates. in accordance with the terms of the application, Ref 19/0648/FUL, dated 4 February 2019, subject to the conditions in the attached Schedule.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. The effect of the proposed development upon the living conditions of the occupants of nearby properties regarding outlook and privacy.

Reasons for the Recommendation

4. The appeal site is situated on the residential street of West Heath Road between No. 183A to the south and No. 187 to the north. The rear boundary adjoins the lower rear gardens of Finchley Road, separated by a cypress hedge. The site currently comprises a detached dwelling house with the appearance of a two-storey building from the front and, due to the sloping ground level, a four-storey building when viewed from the rear.
5. The proposal relates to the demolition of the existing property and the erection of a new three storey dwelling with lower ground floor level, along with a new boundary wall and gates. It has been designed following a previously refused planning application for a similar development and represents a reduction in

both the depth of the building line and the amount of glazing to the rear when compared with the previous scheme.

6. It is agreed between the parties that the principle of replacing the existing dwelling with a new house is acceptable. The overall maximum height of the proposal would be slightly lower than the ridge of the current house, albeit that elements of the roof level at the rear of the property would be higher. Similarly, the overall width of the property will remain the same as the existing dwelling, with the exception of these additions to the roof level. A lower ground floor level would also form part of the proposed development, but due to its sunken nature and the sloping ground levels it is not considered that this element would impact on the amenities of the occupiers of surrounding dwellings.
7. With regards to No. 183A, the ground floor level of the proposal would extend approximately 4 metres from the rear elevation at 183A, which represents a significant reduction from the current dwelling when taking into account the existing swimming pool building. It is recognised that the height of the proposal's ground floor level would be greater than the current swimming pool structure, but that, along with its reduction in depth, a planted privacy screen and wall would be installed.
8. The first-floor level of the proposal would extend approximately 0.5 metres further than the rear first floor of No. 183A. Two rear projections would be installed at this level, with a balcony on the northern side and a green roof on the southern side at the boundary with No. 183A. This green roof would not be used as a terrace and would be accessed only for the purposes of maintenance, which would be the subject of a condition attached to any planning permission granted. It would include balustrades and privacy screens to allow for symmetry with the northern balcony when the property is viewed from the rear.
9. The second-floor level of the proposal would extend approximately 6 metres further than the existing second floor rear wall level at No. 183A. However, while a green roof and balcony would be installed at this level, these would not extend along the entire rear elevation of the property and as such would not be immediately adjacent to the boundary with No. 183A.
10. As observed on the visit to No. 183A West Heath Road, the proposal would not have an unduly adverse effect on the privacy of the occupiers of this dwelling. It is recognised that a certain level of overlooking exists from the current dwelling, and that the proposal incorporates numerous rear projections which could also have the potential to overlook the rear amenity space of No. 183A. However, the rear projection in closest proximity to the boundary with No. 183A is a green roof rather than a balcony, which will be accessible only for maintenance. The ground floor terrace along the boundary will be lined with a 1.8 metre planted screen and wall, and the plans show that no projection is to be installed on the southern side of the second floor of the proposal. Furthermore, the windows on the side elevations facing No. 183A are to be glazed with obscure glass. While balconies would be installed at the first and second floor of the proposal, these are of a sufficient distance to ensure that there is no unduly adverse effect on the privacy of the occupiers of No. 183A.
11. With regards to No. 187 the ground, first and second levels of the proposal would extend further beyond the existing rear elevations closest to No. 187.

The northern side of the proposed dwelling would also include a balcony at first floor level, and a green roof at second floor level. While the green roof would only be accessed for maintenance purposes, the balcony would be accessible at all times by the occupiers of the appeal property.

12. However, due to the distance between the proposal and the main residence at No. 187, there would not be an adverse impact on the outlook or privacy of the occupiers of No. 187. This conclusion is further supported by the presence of the intervening trees between the properties, which would provide amply screening of the new dwelling from both the main property and the double garage present at No. 187.
13. In addition, the proposal would not have an unduly adverse effect on the outlook experienced by the occupiers of No. 183A. While the width of the roof level to the rear has been increased and the proposal represents an increase in floorspace, the overall height of the building is comparable to the existing dwelling, and it is not considered that the roof additions are sufficient to render the proposal overbearing or unduly dominant when viewed from No. 183A. The presence of the proposed planting along the boundary will also ensure that the lower levels of the house will be partially screened, such that the outlook from No. 183A is not dominated solely by the built form of the proposal.
14. With regards to the Finchley Road properties, there is ample glazing on the rear of the proposal that would allow views from the development in the direction of the rear elevations on Finchley Road. The varied evidence submitted states that the proposal would be set between 40 and 50 metres from these properties or, due to the large rear gardens, between 13 and 16.5 metres from the boundary with the rear amenity spaces. Due to the sloping land levels at the appeal site, these dwellings are at a lower level than the proposal. This may affect the perceived height of the development when viewed from the rear of properties on Finchley Road.
15. However, it is not considered that the proposal would have an adverse impact on the outlook or privacy of the occupiers of the properties on Finchley Road. Despite the high level of glazing, it is considered that the distance between the proposal and the properties on Finchley Road is sufficient to avoid overlooking and to ensure that the property would not appear overbearing, particularly given the fact that it is lower in height than the current dwelling on the appeal site. While the proposal is in closer proximity to the rear amenity space of these properties than the dwelling houses, the presence of hedging along the boundary would provide adequate screening from this level such that this garden space could still be enjoyed by occupants.
16. Residents of nearby properties have also raised concerns regarding overshadowing and a loss of daylight as a result of the proposal due to its increased scale when compared with the current dwelling. However, no substantial evidence has been raised in this regard. Having taken into consideration the scale and siting of the proposal, and the loss of light study submitted by the appellant, it is not considered that the level of light experienced by these properties would be materially reduced.
17. I find that the overall size, scale and design of the proposed development would be appropriate in its context. The proposal does not have an unduly negative impact upon the living conditions of the occupants of nearby properties regarding outlook and privacy and with the assistance of the

proposed screening would not appear dominating or oppressive from neighbouring properties. It complies with CS1 and CS5 of the Council of the London Borough of Barnet (Core Strategy) Development Plan Document dated September 2012; Policy DM01 of the Council of the London Borough of Barnet (Development Management Policies) Development Plan Document dated September 2012; the Local Plan Supplementary Planning Document on Residential Design Guidance dated October 2016; and the Local Plan Supplementary Planning Document on Sustainable Design and Construction dated October 2016.

Other considerations

18. Residents of neighbouring properties have referred to similar developments which have been refused by the Council in the nearby area. However, limited further information has been provided on the nature of these developments or their comparability to the current proposal. In any event, this proposal should be assessed on its own site-specific circumstances.

Conditions

19. The Council has suggested several conditions be imposed and I have considered these against the advice in the Planning Practice Guidance. Where necessary these have been amended for clarity's sake.
20. In addition to the standard time limitation condition, in the interests of certainty, a condition requiring that the development be carried out in accordance with the submitted plans is imposed. The appellant agrees to certain pre-commencement and pre-occupation conditions. These are imposed to require submission and approval of aspects of the development that are not fully described in the application. This includes the requirement for suitable details of building levels, external materials, a Demolition and Construction Management and Logistics Plan, a tree protection plan, details of the proposed car lift, details of the boundary treatments and details of the balcony and terrace areas. These are to ensure a satisfactory form and finish of development and to safeguard both local interests and the character and appearance of the site and surroundings.
21. The appellant disagrees with suggested condition 6, which relates to landscaping. It is contended that the condition should be pre-occupation condition. However, given the importance of screening and landscaping in ensuring that the proposal would not adversely impact the living conditions of nearby residents, details should be submitted pre-commencement of building operations.
22. In the interests of sustainability and to ensure compliance with policy, a condition is necessary and reasonable to require cycle storage and parking spaces and to build the property with the correct water infrastructure and carbon dioxide reduction measures. However, conditions relating to Building Regulations are unnecessary as these are matters controllable by way of different legislation and would thereby give rise to duplication.
23. Conditions removing permitted development rights are unjustified given the size and location of the plot. However, a condition limiting construction hours is necessary in order to safeguard the living conditions of residents. For the same reasons, conditions are also imposed in relation to obscure glazed windows,

and terraces at the development which would have the potential to overlook neighbouring properties.

Conclusion and Recommendation

24. For the reasons given above, and having had regard to all other matters raised, I recommend that the appeal is allowed.

C Rafferty

APPEAL PLANNING OFFICER

Inspector's Decision

25. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree and conclude that the appeal should be allowed subject to the conditions listed below.

A U Ghafoor

INSPECTOR

Schedule of Conditions

1. The development hereby permitted must be begun within three years from the date of this permission
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1801 S 01 Rev - Existing Location and Block Plan;
 - 1801 S 02 Rev - Existing Roof Plan;
 - 1801 S 03 Rev - Existing Plans;
 - 1801 S 04 Rev - Existing Front and Rear Elevations;
 - 1801 S 05 Rev - Existing Side Elevations;
 - 1801 AP01 Rev - Proposed Block Plan;
 - 1801 AP02 Rev - Proposed Site Plan;
 - 1801 AP03 Rev - Proposed Lower Ground Floor Plan;
 - 1801 AP04 Rev - Proposed Upper Ground Floor Plan;
 - 1801 AP05 Rev - Proposed Upper Floor Plans;
 - 1801 AP06 Rev - Proposed Roof Plan;
 - 1801 AP07 Rev - Proposed Front Elevations;
 - 1801 AP08 Rev - Proposed Rear Elevations;
 - 1801 AP09 Rev - Proposed Side Elevations;
 - 1801 AP20 - View from 183A Rear Garden;
 - 1801 AP21 - View from 183A Rear Balcony;
 - 1801 AP22 - View from 183A Rear Roof Terrace;
 - 1801 AP23 - Green Wall example of proprietary system;
 - Tree Report - by Tretec;
 - Planning Statement prepared by Michael Burroughs Associates; and
 - Sustainability Report prepared By Charlton Brown Architects.
3. No development shall take place until details of the levels of the building, road and footpath in relation to the adjoining land and highway and any other changes proposed in the levels of the site have been submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.

4. No development other than demolition works shall take place until details of the materials to be used for the external surfaces of the building and hard surfaced areas hereby approved have been submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
5. No development or site works shall take place on site until the demolition and construction management and logistics plan (hereinafter called the scheme,) has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include the following details:
 - (i) details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures
 - (ii) Site preparation and construction stages of the development;
 - (iii) Provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
 - (iv) Details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway;
 - (v) The methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;
 - (vi) A suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
 - (vii) Noise mitigation measures for all plant and processors;
 - (viii) Details of contractors' compound and car parking arrangements;
 - (ix) Details of interim car parking management arrangements for the duration of construction;
 - (x) Details of a community liaison contact for the duration of all works associated with the development.

The development shall thereafter be implemented in accordance with the approved scheme.

6. A scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to and agreed in writing by the Local Planning Authority before the development hereby permitted is commenced. All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.

7. Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.
8. Before the development hereby permitted is first occupied cycle parking spaces and cycle storage facilities shall be provided in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the details as approved under this condition and the spaces shall be retained for cycle parking in accordance with the approved details.
9. The site shall not be brought into use or first occupied until details of the means of enclosure, including boundary treatments, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details before first occupation or the use is commenced.
10. Construction works shall take place only between 0800 to 1800 on Mondays to Fridays, and between 0800 to 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
11. The dwellinghouse hereby approved shall have been constructed to have 100% of the water supplied by the mains water infrastructure provided through a water meter and the new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach should be used to determine the water consumption of the proposed development.
12. Prior to the first occupation of the development hereby approved it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or doors other than those expressly authorised by this permission shall be constructed on the side elevations facing 183A and 187 West Heath Road.
14. Notwithstanding condition 13 above, before the building hereby permitted is first occupied, the proposed windows in the side elevations facing 183A and 187 West Heath Road shall be glazed with obscure glass only and shall be retained as such thereafter.
15. No site works or development (including any temporary enabling works, site clearance and demolition) shall take place until a dimensioned tree protection plan in accordance with Section 5.5 and a method statement detailing precautions to minimise damage to trees on the application and adjoining sites in accordance with Section 6.1 of British Standard BS5837:

2012 (Trees in relation to design, demolition and construction - Recommendations) have been submitted to and approved in writing by the Local Planning Authority.

16. No site works (including any temporary enabling works, site clearance and demolition) or development shall take place until the temporary tree protection shown on the tree protection plan approved under this condition has been erected around existing trees on site. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas at any time. The development shall be implemented in accordance with the protection plan and method statement as approved under this condition.
17. Notwithstanding the details shown on the approved drawings, before the development hereby permitted is first occupied, details of all balcony and terrace areas and associated privacy screens to be installed shall be submitted to, and approved in writing by, the Local Planning Authority. The screens shall be installed in accordance with the approved details before first occupation or the use is commenced whichever is sooner and retained as such thereafter.
18. No development other than demolition works shall take place until details of the proposed car lift hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
19. Notwithstanding the approved plans referred to above, the flat roof areas hereby permitted shall not be used as a balcony, roof garden or similar amenity area.