
Appeal Decision

Site visit made on 12 November 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Appeal Ref: APP/N5090/W/19/3235958

Cobbetts, 93 Lyonsdown Road, New Barnet, Barnet EN5 1JT

- 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 A and K Verma against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/2771/FUL, dated 15 May 2019, was refused by notice dated 1 August 2019.
 - The development proposed is a replacement house.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement house at Cobbetts, 93 Lyonsdown Road, New Barnet, Barnet EN5 1JT in accordance with the terms of the application, Ref 19/2771/FUL, dated 15 May 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr and Mrs A and K Verma against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - a) The effect of the development on the character and appearance of the area;
 - b) Whether the development would provide satisfactory living conditions for future occupants; and,
 - c) The effect of the development on protected trees.

Reasons

Character and appearance

4. The appeal site lies in a residential area comprised largely of detached and semi-detached houses. Apart from a group on the opposite side of the road, which display some uniformity, the houses vary considerably in their design, so there is no overriding architectural style. The character of the area is therefore defined by the scale and density of the development, rather than by the

individual buildings. The houses are set back from the road, behind enclosed front gardens, and are generally substantial two-storey buildings with pitched roofs. There is an abundance of trees, both within gardens and in public spaces, giving the area a spacious suburban character.

5. The existing house is a red-brick two-storey house with a pitched tiled roof. It is set back from the road at a higher level, and therefore has some prominence in the street scene. Although the scale and form of the house is in keeping with the general character of the area, the building itself does not make a significantly positive contribution to the street scene.
6. The proposed replacement house would largely occupy the same position as the existing dwelling. It would therefore be set back from the road to the same extent. Although it would have second floor accommodation within the roofspace, it would still have the overall appearance of being a two-storey house. The ridge height would be 1.28 metres higher than existing, but this would only be a little higher than that of 91 Lyonsdown Road, and considerably lower than that of Willenhall Lodge. Consequently, the roof height would not appear out of step with surrounding development. It would be much higher at its southern end, where the existing house is single-storey, but there would still be a large gap between the resultant building and Willenhall Lodge. The general layout and scale of the replacement dwelling would therefore respect the existing character of the area.
7. The proposed mansard roof form would be different to that of the immediately surrounding buildings, which generally have ridged and hipped roofs. However, the overall proportions of the sloping roof elements and the vertical walls would be comparable with adjoining houses, and the flat roof between the roof slopes would not be readily visible in the street scene. The design allows the overall height of the building to be maintained at a level that is consistent with the street scene. In an area of diverse designs, the mansard roof would not be such a jarring feature that it would be harmful to the overall character of the locality.
8. Although there is considerable variety in the design of houses in the area, almost all of them have some form of gable or bay projecting from the front elevation. In principle, therefore, the proposed gable on the replacement dwelling would not be an uncharacteristic feature. It would be wider than many others, including that on the front of the adjacent house to the north, and, because of the mansard roof, it would have a different form. However, it would not project far from the front elevation, it would be set well back from the road, and it would be proportionate to the width of the overall house. It would contribute to the rhythm in the street scene when viewed in conjunction with the various gables and bays at 89 and 91 Lyonsdown Road. It would not therefore be an overly dominant or incongruous feature.
9. The fenestration of the proposed house would have a contemporary character, with undivided panes of glass and a variety of sizes and proportions. Whilst this would not conform with the more orthodox arrangements in surrounding properties, there is a wide range of window styles in the area. No 89 has bay windows with large panes and a very horizontal emphasis, whereas No 91 has a range of small-paned horizontal and vertical windows. There is no repeated pattern of windows in the row of dwellings, so the arrangement in the proposed house will not upset any existing order in the street scene.

10. Section 6 of the Council's Residential Design Guide Supplementary Planning Document (2016) (the RDG SPD) provides guidance on enhancing local character. It advises that respecting local character does not necessarily mean replicating it, but that great care should be taken when incorporating contemporary design into the existing urban fabric. In this case, the dwelling would be of a high-quality modern design, which is different to surrounding buildings. However, because it would respect the layout and scale of the established character of the area, it would sit comfortably with its neighbours.
11. I therefore conclude that the proposed house would not harm the character and appearance of the area. The development would therefore accord with Policies 3.5, 7.4 and 7.6 of the London Plan (2016); Policies CSNPPF, CS1 and CS5 of Barnet's Local Plan (Core Strategy) (2012) (the Core Strategy); and Policy DM01 of Barnet's Local Plan (Development Management Policies) (2012) (the Local Plan). In combination, these Policies seek to ensure that new housing is of high-quality design, that respects its context, and therefore preserves or enhances local character. I also find that the proposal would conform with the advice in the RDG SPD.

Living conditions

12. The proposed dwelling would have five bedrooms and a gross internal floor area of 381 sq. m. It would therefore far exceed the minimum space standards set out in the Nationally Described Space Standard¹, which is adopted via Policy 3.5 of the London Plan (2016). The NDSS also requires that the minimum floor to ceiling height is 2.3m for at least 75% of the Gross Internal Area. It is not in dispute that the entire house would have floor to ceiling heights that meet or exceed this requirement.
13. In a footnote to Table 3.3 of Policy 3.5 of the London Plan (2016) it is stated that a minimum ceiling height of 2.5m for at least 75% of the gross internal area is strongly encouraged, so that new housing is of adequate quality, especially in terms of light, ventilation and sense of space. This wording is reproduced in paragraph 2.2.3 of the Council's Sustainable Design and Construction Supplementary Planning Document (2016) (the SDC SPD), and Table 2.2 strongly encourages compliance. In this case 33% of the dwelling would have a ceiling height exceeding 2.5m, rather than 75%.
14. The encouragement in the Table 3.3 footnote, and the Council's SDC SPD, to provide a more extensive proportion of higher ceiling heights, is to address the unique heat island effect of London and the distinct density and flatted nature of most of its residential development. However, in this case the site lies in a relatively low-density suburban environment, with few flats. The Council does not dispute that the occupants of the dwelling would benefit from good outlook and would receive adequate daylight and sunlight. It is also accepted that the vertical and horizontal stacking of the rooms would comply with the RDG SPD. Furthermore, the 200 sq. m of outdoor amenity space that would be provided would be well in excess of the minimum level of provision required by Table 3 of the SDC SPD.
15. Bearing all these factors in mind, it would not be necessary to exceed the ceiling height requirements of the NDSS to ensure adequate light, ventilation and sense of space. I therefore conclude that the proposed development would

¹ <https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>

provide satisfactory living conditions for future occupants, so it would comply with Policy DM01 of the Local Plan, which seeks to protect Barnet's character and amenity. I also find there to be no conflict with the guidance contained in the RDG SPD or the SDC SPD.

Trees

16. There are trees near the southern and south western boundaries of the site, some of which are on adjoining land. Two of these trees are covered by a Tree Preservation Order; a hornbeam on the southern boundary and a beech in the garden of Willenhall Lodge. The application was accompanied by a BS5837:2012 Tree Survey, Arboricultural Implications Assessment & Method Statement (the Tree Survey). The Tree Survey classified the hornbeam as "B – moderate" and the beech as "A – good" under the BS5837 quality/retention categories. Other trees along these boundaries are classified as "U", which means their condition is such that any existing value would be lost within 10 years. These classifications have not been disputed by the council.
17. The Tree Survey concludes that the two protected trees, and two "U" classified trees, can be retained as part of the development. The Council does not dispute this conclusion regarding the hornbeam. However, in the case of the beech, the Tree Survey's conclusion is partly premised on the assumption that past excavation works, and the construction of a retaining wall on the boundary, will have curtailed root activity in the rear garden of the appeal site. Although there is no empirical evidence to demonstrate this, the submitted plans show that, in any event, there would only be a minor incursion into the theoretical Root Protection Area beyond the extent of the existing house and a previously approved extension. Bearing these factors in mind, it is not likely that the development would result in significant harm to the long-term health of the protected tree.
18. The existing house has a conservatory and numerous windows in the rear elevation looking towards the protected beech tree. Most of the windows in the proposed house would only be a little nearer the tree. The first-floor master bedroom and second floor games room windows, which would be closer, would have an outlook to the north east of the tree. The windows in the south elevation would be well outside the canopy of the hornbeam, and these rooms would also have windows in the front and rear elevations. There would not therefore be an increase in justifiable pressure to prune the protected trees in order to retain adequate living conditions for occupants of the building.
19. The footprint of the proposed house would not be significantly greater than that of the existing dwelling. Consequently, the available garden area would not be substantially reduced. The Consultant's Report to the Council suggests that residents would not be able to move about the whole property to avoid shade. However, this seems to be on the misconception that the building would provide flats. The occupants of the proposed house would have a very similar level of outdoor amenity to the occupants of the existing dwelling. The development would not therefore lead to increased harm to the living conditions of future occupants that would lead to pressure for protected trees to be pruned or removed.
20. For the above reasons, I conclude that the replacement house could be built without harm to the protected trees, and that there would not be an increase in post-development pressure for works to reduce or remove them. The proposal

would therefore accord with Policy 7.21 of the London Plan (2016) and Policy DM01 of the Local Plan, both of which seek to retain protected trees.

Other Matters

21. I have had regard to the other issues raised in a letter of representation regarding overlooking, highway safety and biodiversity. I am satisfied that the privacy of occupants of the residential property to the south would be safeguarded by a condition stipulating the use of obscure glazing in the side-facing windows at first and second floor level. Although the proposals would mean that there would be no on-site turning facility for vehicles, the driveway would be at a much shallower gradient than existing. I note that the Highway Authority had no objections to the proposal, and I have no evidence that it would result in any harm to highway safety. The proposals would not result in harm to biodiversity, and some gains could be achieved through a suitable scheme of landscaping.

Conditions

22. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty. The Council has submitted a schedule of suggested conditions to cover other matters. I have considered these against the advice in the Planning Practice Guidance (the PPG). Where I have agreed that the conditions are necessary, I have altered some of them, in the interests of clarity and precision, to better reflect the guidance.
23. Submission of details of the external materials to be used is necessary to ensure that the house sits comfortably in its context.
24. Provision for bin storage and means of enclosure are shown on the approved plans. Any bins stored in the identified location would be accessible and hidden from public view by the proposed front boundary wall/fence. I see no justification for a condition requiring further details of either of these to be submitted.
25. The access and parking arrangements are acceptable to the Highway Authority. The necessary works to the public highway can be secured through other legislation, so I see no necessity for the submission of further details. However, I have imposed a condition to ensure that the access and parking are provided and retained. As no cycle storage facilities are shown on the plans, a condition is necessary to ensure that suitable provision is made for sustainable transport options.
26. I have considered whether the Council's suggested condition requiring a Demolition and Construction Management and Logistics Plan is necessary. Paragraph 55 of the National Planning Policy Framework (the Framework) says that pre-commencement conditions should be avoided unless there is a clear justification. The development proposed is of a relatively modest scale. The construction of the house is likely to result in some temporary disturbance to residents and inconvenience to traffic. However, this would be true of most development in a residential setting, so I am not persuaded that this provides the clear justification that is necessary for a pre-commencement condition.

27. Conditions requiring accessibility, water efficiency and a reduction in CO2 emissions are necessary to comply with development plan policies, and with the Framework's aims to achieve well-designed places and to meet the challenge of climate change.
28. The approved drawings show the proposed level of the house in relation to fixed points on surrounding buildings, so it is not necessary to impose a condition requiring the submission of further details of levels.
29. A condition requiring the submission of a scheme of landscaping is necessary to ensure that the development is assimilated into its setting, and that biodiversity gains can be achieved. To ensure that the development is carried out with due regard to the protected trees, I have imposed a condition requiring a method statement and means of tree protection to be approved and implemented.
30. The PPG advises that the blanket removal of permitted development rights to carry out small scale domestic alterations is unlikely to meet the tests of reasonableness and necessity. In the absence of any reasoned justification, I see no exceptional circumstances that would warrant the imposition of a condition to remove permitted development rights under Classes A to E of Part 1 of the Town and Country Planning (General Permitted Development) Order 2015.
31. The first and second floor windows in the north elevation of the house would overlook the balcony on the front elevation of 91 Lyonsdown Road at close quarters. They would therefore have a harmful impact on the privacy of the neighbouring occupants. As the relevant rooms also have other windows or a rooflight, it is reasonable to impose a condition requiring obscure glazing to the side-facing windows to avoid this harm. Similarly, the windows in the south elevation look towards windows in Willenhall Lodge at a distance below that which is recommended in the RDG SPD. Again, the relevant rooms are served by other windows, so a condition can reasonably be imposed to prevent overlooking.

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P-01, P-02, P011, P020, P200, P201, P202, P203, P204, P205, P206, P207, P209.

- 3) No site clearance, preparatory work or development shall take place until:
- a) a dimensioned tree protection plan in accordance with Section 5.5, and a method statement detailing precautions to minimise damage to trees 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; and,
 - b) the temporary tree protection shown on the tree protection plan approved under part a) of this condition has been erected around existing trees on site.

The approved tree protection shall remain in position until after the development works are completed, and no material or soil shall be stored within the fenced areas at any time.

- 4) Prior to building works proceeding above damp-proof course level, details or samples of the materials to be used in the construction of the external surfaces of the house hereby permitted shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details or samples.
- 5) Prior to building works proceeding above damp-proof course level, there shall have been submitted to and approved in writing by the local planning authority, a scheme of hard and soft landscaping.

Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the house; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

- 6) The house shall not be occupied until cycle parking facilities have been provided in accordance with a scheme that has first been submitted to, and approved in writing by, the local planning authority. The facilities shall thereafter be kept permanently available for the parking of bicycles.
- 7) The vehicular access and parking facilities shall be completed in accordance with the approved drawings prior to occupation of the house. The parking area shall thereafter be kept available at all times for the parking of vehicles.
- 8) The house hereby permitted shall not be occupied until the windows at first and second floor level in the north and south elevations have been fitted with obscured glazing, and no part of those windows that are less than 1.7 metres above the floor of the room in which they are installed shall be capable of being opened. Details of the type of obscured glazing

shall be submitted to and approved in writing by the local planning authority before the window is installed and, once installed, the obscured glazing shall be retained thereafter.

- 9) Prior to the occupation of the house hereby approved, details shall be submitted to, and approved in writing by, the local planning authority to demonstrate that it has been constructed incorporating carbon dioxide emission reduction measures, which achieve a 6% improvement 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 emission reduction measures shall be permanently retained thereafter.
- 10) The house 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. The water saving and efficiency measures shall be permanently retained thereafter.
- 11) Notwithstanding the details shown on the approved drawings, the house shall be constructed to meet all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010.