



Appeal Decision

Site visit made on 6 April 2021

by Peter D Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2021

Appeal Ref: APP/N5090/W/20/3262068
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 A Newington against the decision of the London Borough of Barnet Council.
 - The application Ref 20/1816/FUL, dated 13 March 2020, was refused by notice dated 29 June 2020.
 - The development proposed is demolition of existing dwelling and erection of a three storey dwelling with lower ground floor level. New boundary wall and gates.
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Decision

1. The appeal is dismissed.
2. An application for costs was made by Mr and Mrs Newington against the London Borough of Barnet Council. This application is the subject of a separate decision.

Procedural Matters

3. The site visit was arranged to include a visit to No 183A at the request of the neighbour. In the event the neighbour was not present at the site on 6 April 2021 when I arrived at the notified time and therefore I was unable to gain access to view the development from No 183A. However, construction on the appeal site was underway and the staging erected along the boundary with No 183A combined with the elevated location of the site hut at No 185 provided good vantage points from which to view the impact of the proposed development. The staging was marked out demonstrating the positioning of the proposed addition to the first floor. I am satisfied that my assessment gave a good understanding of the proposal without accessing No 183A itself.
4. It has been put to me by the third party objector at No 183A that as permission ref 20/3084/S73 is now under construction the proposal should be considered as an extension to the previously permitted house. Whilst this would have been a possible route for the appellant to take, he has chosen to apply afresh for an amended design for the whole house and confirmed that none of the works completed so far would prevent construction of the appeal proposal in the event that the appeal is allowed. Procedurally, I must determine the application on the basis on which it was submitted as an application for the whole house.

Main Issue

5. Most main elements of this application, other than the additional element to the first floor at the south end of the building and the slight adjustment to the lower
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floors bringing them slightly closer to the boundary with No 183A, already have planning permission won on appeal under ref 19/0648/FUL and slightly revised by permission ref 20/3084/S73. The Council has raised no issues in respect of the elements already permitted. It is clear from the Council's case officer report and appeal statement that its concerns relate solely to these additional elements and mainly that at first floor level. The main issue is therefore whether the additional elements to the proposed development over and above the permission ref 20/3084/S73 would have a detrimental impact on the living conditions of present and future occupants of No 183A West Heath Road in terms of proximity, outlook, light levels and privacy.

Reasons

6. The appeal site is located on the west side of West Heath Road, a residential road characterised by mainly individually designed detached houses in large plots. The plot boundaries to Nos 183A and 187 and the properties to the west in Finchley Road are well screened by hedging and trees.
7. At the time of my site visit the previous house on site at No 185 had been demolished and construction was well underway with excavations, laying out and foundations for construction of the new house permitted under refs 19/0648/FUL and as amended under 203084/S73.
8. The effect of the design set out in the appeal proposal compared to what has already been permitted on the site would change the relationship to No 183A on the south side of the site in two respects. First, the proposed bedroom at first floor level would be extended outwards by 2.0 metres beyond the permitted scheme matching the depth of projection on the north side of the proposed building and second, the lower ground and ground floor south wall would be marginally closer to the boundary with No 183A.
9. The ground floor level at No 183A and its balcony/terrace broadly equates to the ground floor level of the proposed house at No 185 and the terrace has 2 metre high privacy screens at either end. The proposed lower ground floor and ground floor rear projections were it not for the privacy screens, the topography and relative building levels, the proposed 'green wall' and the mature cypress hedging would represent a significant degree of enclosure to No 183A. However, permission has already been granted taking these factors into account and also accounting for the removal of the large swimming pool building that formerly existed extending deep into the plot along the boundary with No 183A. Although the appeal proposal would bring the lower ground and ground floor south flank wall slightly closer to No 183A at these lower levels, I am satisfied that the overall effect of this would not be significantly different to the already permitted scheme now under construction in terms of its impact on living conditions at No 183A.
10. In terms of the effects of the increased rearward projection at first floor level at the south end, however, the proposed design would add height and mass immediately adjacent to and above the balcony/terrace and the glazed rear elevation of the ground floor to No 183A. I note that the proposal would comply with the 45° rule in respect of the closest windows but nevertheless the loss of open sky above the terrace privacy screen and the increased height and mass of the rearward projection would be apparent from these windows and would be overbearing on the balcony/terrace and patio.

11. I acknowledge the proposal to install a green wall on this south side elevation which, while this might appear more attractive than conventional walling once it has matured, (and assuming it is appropriately maintained) would not reduce the impact of the additional mass and height at close quarters.
12. Much has been made of the effect of the neighbour's mature cypress hedging on the boundary in screening the proposed development at No 185 from the garden area of No 183A. Whilst this is true for much of the garden; closer to the house where the hedge stops, the screening effect would be lost.
13. I acknowledge that the principal outlook from the ground floor balcony/terrace of No 183A is not to the north and the main outlook over the west London skyline would not be affected. However, for people on the balcony/terrace or on the patio at garden level, the effect of the additional 2 metre depth and overall height and mass of this part of the proposed dwelling would be overbearing.
14. In respect of any impact on privacy, which remains a concern of the third parties, I note the conditions imposed on the extant permissions that would prevent the use of the flat roof area at first floor as amenity and sitting out space. Whilst I am concerned that with proposed sliding doors and full balustrades to this roof area it would be equipped to enable easy access, I accept that the controlling condition exists on the current permissions which are being implemented and it will be for the Council to enforce them. The potential for additional overlooking from this position, as a result of the appeal proposal, could be controlled in the same way were the appeal to be allowed.
15. Although it has also been put to me in third party objections that the appeal proposal would have an impact on light levels to No 183A I am not persuaded this would be the case. The additional mass of the new building would be located due north of No 183A, the terrace and patio to which would continue to have the same access to sunlight levels as is currently the case.
16. The *National Planning Policy Framework* (The Framework) at paragraph 127 requires development to ensure a high standard of amenity for existing and future users. The *Barnet Local Plan Development Management Policies* (BLPDMP) at Policy DM01 reflects this national advice where it requires (amongst other things) proposals to respect the scale, mass, height and pattern of surrounding buildings, and at e) to be designed with regard to adjoining occupiers and users.
17. The Council has produced the *Barnet Residential Design Guide* (BRDG) to guide development and help to implement the local Plan policies. It sets out the principles of good design in Part 2 one of which is to ensure that development does not reduce the amenity value of neighbouring occupiers. Part 2 generally does not refer to specific standards and the Council, in its assessment of the appeal proposal, has referred to the guidance from Part 3 on assessing 2 storey extensions close to boundaries. Although the appellants are critical of this approach, I am satisfied that the underlying message, to carefully consider height, mass and depth of projecting development close to a boundary with an existing building, is relevant and is good development management practice.
18. In this case for the reasons above, notwithstanding my conclusions with regard to privacy and access to light, the effect of the appeal proposal would be overbearing and would harm the living conditions of present and future occupiers of the

neighbouring property at No 183A contrary to the design objectives of policy DM01.

Other Matters

19. Three arguments have been put to me that in the appellants' view add weight to justify allowing the appeal.
20. First, I have been referred to the medical and care needs of the appellants' daughter who is intended to be the occupant of the first-floor bedroom and for whom the additional rearward projection is designed to allow a greater degree of space. Whilst I understand the importance of being able to provide the appropriate standard of care in a home environment, no evidence has been provided as to why a similarly large bedroom provision could not be provided elsewhere in what would be a very large house.
21. Secondly, I am invited to conclude that the revision to the design to increase the rearward projection would result in a symmetrical rear elevation where the north and south ends of the proposed house would be identical and therefore aesthetically more pleasing. Whilst this might have been of relevance in terms of a front elevation or one which is visible from the public realm, I attach only limited weight to the argument in this case given the fact that there would likely be only glimpsed private views into what is a contained rear garden area. Any aesthetic benefit of a more symmetrical rear elevation would be of insufficient weight to justify the proposed rearward projection and the effect it would have on the living conditions for occupants of No 183A as outlined above.
22. Thirdly, whilst I acknowledge that projecting flank walls appear to have been a feature in the vicinity of the appeal site, notably the relationship of No 183A to the previous house built on the appeal site and between 183A and its neighbour at No 183, I am not persuaded that this justifies continuation of a practice of allowing projecting flank walls that would result in overbearing relationships with existing properties.
23. None of these considerations therefore would justify an exception to the Development Plan policies and accepting the revised house design and allowing the appeal.

Conclusion

24. I have considered the matters before me and, for the reasons given above, I conclude that the appeal should be dismissed.

P. D. Biggers

INSPECTOR