



Appeal Decision

Site visit made on 28 September 2021

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2021

Appeal Ref: APP/N5090/W/21/3269287

Site of Former Orchard House, 12 Totteridge Village, Whetstone, London, N20 8JP

- 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 Oliver Clegg of Boom Construction Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/3709/S73, dated 10 August 2020, was refused by notice dated 7 October 2020.
 - The application sought planning permission for new replacement dwelling comprising of basement ground, first floor with accommodation in roof space without complying with a condition attached to planning permission Ref 15/05972/FUL, dated 5 May 2016.
 - The condition in dispute is No 1 which states that:
*(1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing Nos. 1483.P.OS Rev 0, P.01 Rev 0, P.04 Rev D, P.05 Rev E, P.06 Rev B,
Written Scheme of Investigation for Archaeological Monitoring by CGMS dated February 2016, Arboricultural Report by David Clarke dated April 2016.*
 - The reason given for the condition is:
(1) For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling comprising of basement, ground, first floor with accommodation in roof space at Site of Former Orchard House, 12 Totteridge Village, Whetstone, N20 8JP in accordance with the application Ref 20/3709/S73 dated 10 August 2020 without complying with condition No 1 set out in planning permission Ref 15/05972/FUL granted on 5 May 2016 by the Council of the London Borough of Barnet, but otherwise subject to the conditions set out in the attached schedule.

Background and Main Issue

2. Planning permission was granted for a replacement dwelling at the site on 5 May 2016, subject to a number of conditions. Condition 1 of that permission requires the development to accord with the approved plans. The appeal seeks

to vary this condition in order to allow for a series of alterations to be made to the approved design.

3. In that context, the main issue is the effect of varying the disputed condition on the character or appearance of the Totteridge Conservation Area.

Reasons

4. The appeal site is located within the Totteridge Conservation Area, which encompasses a historic residential area clustered around the A5109. Many of the surviving properties date from the 18th and 19th centuries, and comprise large, detached houses in substantial plots. These properties reflect the influx of wealthy residents during this time, attracted by fine views and spacious grounds. The significance of the conservation area stems from its large number of well-preserved buildings and spaces that reflect the historic development of the area.
5. A number of elements of the current proposal were approved under a separate permission (Ref 19/1144/S73). In this regard, the Council's objections to the development are limited to the revised rear fenestration, and the introduction of an open lightwell, staircase, and associated landscaping at the rear. At the time of my site visit the development was at an advanced stage of construction and both the proposed rear fenestration and lightwell had been installed.
6. In contrast to the previously approved rear fenestration, the current proposal includes large bi-fold glazed doors at ground floor level, and modern elongated windows at first floor level. However, the rear elevation of the property has little visibility in the surrounding area and it is not visible from the road. Existing trees and boundary planting also serve to restrict views of it from neighbouring properties. Whilst the proposed rear fenestration is modern in appearance it is broadly in keeping with the host property, which is a modern new build dwelling, albeit one that has been sensitively designed to respect its context. I further note that other recently consented properties in the vicinity have modern glazing designs at the rear. In these circumstances, I consider that any effect arising from the proposed fenestration on the character and appearance of the conservation area to be negligible.
7. The previously approved schemes at the site contained covered lightwells, whereas the current proposal includes an open lightwell and staircase. This is positioned around 5 metres from the rear elevation and occupies almost the full width of the dwelling. It is proposed to plant hedgerows around the lightwell, which would significantly limit its visibility beyond its immediate surroundings. In my view, this lack of visibility, and its position at the rear of a modern dwelling, would not result in any harm to the wider conservation area. Similarly, the proposed hedging would have little visibility outside of the garden and it would not be an intrusive or discordant feature in my view.
8. Paragraph 12.4 of the Barnet Residential Design Guide Supplementary Planning Document ('SPD') states that "*open lightwells and sunken terraces will be resisted*". The appeal proposal clearly conflicts with the SPD in this regard. However, SPDs are guidance rather than policy, and in this case I do not consider that any significant harm would arise from the proposed lightwell. In my view, this lack of harm outweighs the conflict with this part of the SPD.

9. For the above reasons, I conclude that varying the disputed condition would preserve the character and appearance of the Totteridge Conservation Area. It would therefore accord with Policies CS NPPF, CS1, and CS5 of Barnet's Local Plan Core Strategy (2012), and Policies DM01 and DM06 of Barnet's Local Plan Development Management Policies (2012). It would also accord with the National Planning Policy Framework with regard to designated heritage assets.
10. My attention has been drawn to Barnet's draft Local Plan (Reg 19) Publication, which was approved for consultation in June 2021. However, that document has not yet been examined, and it is unclear from the information before me whether relevant policies are subject to any unresolved objections. In these circumstances, I attach only limited weight to the emerging Local Plan.

Other Matter

11. A Grade II listed wall runs obliquely through the rear garden to No 59 and close to the north western corner of the proposed lightwell. Whilst this is not referred to in the reason for refusal, the Council's Delegated Report states that the development would cause undue harm to the listed wall's setting. The wall dates to the late 17th century and as such it significantly predates the surrounding properties in this part of the conservation area. It originally enclosed part of the walled garden to Poynters Hall, and it serves as a reminder of this former 17th century mansion house. However, its surroundings have changed significantly since that time and its current context says little about the history of the wall. Moreover, it runs close to a number of other nearby properties, and in my view, it now has a relatively narrow setting.
12. Whilst part of the proposed lightwell would be relatively close to the listed wall, it would be subterranean in nature. It would therefore maintain the openness of the garden area surrounding the listed wall and would not adversely affect an appreciation of it. Visibility of the lightwell would also be limited by the proposed hedging around it. For the reasons set out above, this hedging would be broadly sympathetic to its surroundings in my view. Accordingly, I consider that the development would preserve the setting of the Grade II listed wall.

Undisputed Conditions

13. The Officer Report states that conditions 2, 3, 4, 6, 7, and 10 to permission Ref 15/05972/FUL have been discharged. However, I have attached a condition that requires the details approved under application Ref 17/2500/CON to be implemented. Furthermore, a time limit condition is unnecessary, as the development has already commenced. I have also replaced condition 9 to permission Ref 15/05972/FUL with 3 new landscaping conditions, which are necessary in order to protect the character and appearance of the area, and to screen the proposed lightwell.
14. Planning Practice Guidance is clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have limited information before me about the status of some of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition, but substituting for it another, and restating those undisputed conditions that are still subsisting and capable of taking effect.

Thomas Hatfield

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1483.P.OS Rev 0; 3451.P.05 Rev 1; 3451.P.03 Rev 1.

Pre-occupation conditions

- 2) Prior to the first occupation of the development, details of the proposed soft landscaping surrounding the lightwell, including specie, density, and height, shall be submitted to and approved in writing by the Local Planning Authority. All planting or seeding comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the dwelling or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 7 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.
- 3) Prior to the first occupation of the development, a scheme of hard landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the dwelling and shall thereafter be retained as such.
- 4) Prior to the first occupation of the development, details of the means of enclosure, including boundary treatments, and the method of installation, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the dwelling or the completion of the development, whichever is the sooner.
- 5) Prior to the first occupation of the dwelling, 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 thereafter be maintained as such in perpetuity.
- 6) Prior to the first occupation of the dwelling, it shall be constructed to have 100% of the water supplied to it by the mains water infrastructure provided through a water meter. 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. A fittings based approach should be used to determine the water consumption of the proposed development. The development shall thereafter be maintained as such in perpetuity.
- 7) Notwithstanding condition 1, prior to the first occupation of the dwelling it shall be constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in the future), with the exception of the provision of lifts. The development shall thereafter be maintained as such in perpetuity.

Other conditions

- 8) The temporary tree protection shown on tree protection plan TPP/OH12TVL/010 D shall be erected around existing trees on site within one week of the date of this planning permission and the areas enclosed by the protection shall be cleared of all materials/rubble/temporary buildings and structures/containers etc. 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.
- 9) No tree works shall take place on site until a detailed tree felling/pruning specification has been submitted to and approved in writing by the Local Planning Authority. All tree felling and pruning works shall be carried out in accordance with the approved specifications under this condition and in accordance with British Standard 3998 (Tree work – Recommendations).
- 10) 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 development otherwise permitted by Classes A, C, D, E, F, G of Part 1 of Schedule 2 of that Order shall be carried out within the curtilage of the dwelling hereby approved.
- 11) The property hereby approved shall be used as a self-contained unit as shown in the approved drawings under Class C3 and no other purpose (including any purpose in Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, with or without modification).
- 12) The scheme of soft landscaping to the front forecourt shall be implemented in accordance with the details approved under application reference 19/1144/S73.
- 13) The development hereby approved shall be implemented in accordance with the details approved (Ref 17/2500/CON) via Conditions 2, 3, and 4 of permission Ref 15/05972/FUL.