



Appeal Decision

Site visit made on 12 October 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th November 2021

Appeal Ref: APP/E5330/W/21/3268592

Land rear of 76 Vanbrugh Park, Blackheath, London SE3 7AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by MASCH Developments against Royal Borough of Greenwich Council.
 - The application Ref 20/1557/F, is dated 28 May 2020.
 - The development proposed is construction of a new part 2/part 2.5 storey over basement house fronting Heathway with off street parking and amenity space.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a new part 2/part 2.5 storey over basement house fronting Heathway with off street parking and amenity space at land rear of 76 Vanbrugh Park, Blackheath, London SE3 7AN in accordance with the terms of the application, Ref 20/1557/F, dated 28 May 2020, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The Government published a revised version of the National Planning Policy Framework (the Framework) in July 2021. The main parties had the opportunity to comment on any implications for the appeal of this change, and I am satisfied that no prejudice would be caused by my consideration of the appeal in light of the revised Framework.
3. The appeal scheme follows a previous planning permission¹ at the site for a detached dwelling which has expired. Whilst I have had regard to the previous planning permission, I have determined the proposal on its own merits.

Background and Main Issues

4. The Council did not make a decision on the planning application within the statutory period, and this has taken the jurisdiction to determine the application away from the Council. The Council considered the proposal at the Greenwich Area Planning Committee on 26 May 2021 where it was resolved that had an appeal not been lodged on the grounds of non-determination, it would have been minded to grant planning permission subject to conditions.
5. Having regard to the evidence before me, I consider that the main issues are:

¹ Council Ref. 16/0428/F

- The effect of the proposed development on the character and appearance of the area, including the Blackheath Conservation Area, the Buffer Zone to the Maritime Greenwich World Heritage Site and the setting of locally listed buildings; and,
- The effect of the proposed development on the living conditions of the occupiers of neighbouring properties; and,
- The effect of the proposed construction activities on the operation and safety of the highway at Heathway.

Reasons

Character and appearance

6. No 76 Vanbrugh Park forms part of a cohesive group of 3-storey mid-Victorian paired villas at Nos 49 to 79, which are locally listed. The appeal site comprises the end part of the existing rear garden of No 76, which fronts Heathway. This is a privately maintained, largely unmade road that is characterised by piecemeal development of dwellings in the rear gardens of the properties fronting Vanbrugh Park and St Johns Park. The appeal site is one of the few rear gardens fronting Heathway that have not been developed for housing. The dwellings are predominantly of 2 or 3 storeys in scale and display varied form and architectural design, including traditional and contemporary styles.
7. The appeal site is located within the Blackheath Conservation Area (the CA) and the Buffer Zone to the Maritime Greenwich World Heritage Site (the WHS). The Blackheath Conservation Area Appraisal 2013 (the CA Appraisal) states that Heathway is an informal back lane to the rear of Vanbrugh Park and St Johns Park, and that there is no historical significance other than the Coach House and the Little House. The CA Appraisal does not indicate that these properties are locally or nationally listed. I have had regard to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
8. The appeal scheme proposes the construction of a part 2 storey/part 2.5 storey dwelling with basement to the rear of No 76 Vanbrugh Park fronting Heathway. The proposed dwelling would sit comfortably in the Heathway street scene in the existing gap between The Little Coach House and the garage of No 77 Vanbrugh Park. I appreciate that no spacing would be retained to the side boundaries, however this is not unusual in Heathway, and the proposal would make efficient use of the land. The sizeable set-back from the front wall of the adjoining 2 storey property at The Little Coach House would ensure that the proposed dwelling would not appear unduly prominent in the street scene. Furthermore, the siting would cause no harm to the locally listed buildings in Vanbrugh Road because it would maintain a considerable separation and be viewed alongside the existing development in Heathway.
9. The design would adopt a contemporary approach, including a flat roof form, and large windows and panelling on the front elevation. Having regard to the varied architectural styles in Heathway, the contemporary design is acceptable. The two storey front wall would be roughly level with the ridgeline of The Little Coach House, and the top floor would be recessed significantly from Heathway behind a roof terrace with lightweight glazed balustrades. This would minimise

the bulk of the proposed building and ensure that it would appear in keeping with the scale of surrounding buildings. The overall massing would be well-broken through the stepping of the elevations, which would provide an attractive, well-proportioned appearance and a sympathetic relationship to adjacent buildings. The high quality external finishes, including grey bricks, anthracite grey aluminium window and door frames, and zinc cladding would further assist the standard of appearance. Taken together, the above factors ensure that the proposal would appear in keeping with the siting, scale, form and design of the buildings in its context and therefore preserve the character and appearance of the CA and nearby locally listed buildings. Furthermore, it would have no adverse effect on the WHS.

10. The Arboricultural Impact Assessment² (the AIA) submitted as part of the previous planning permission sets out that 5no trees (T2 – T6) are required to be felled to accommodate the proposed development. The appellant has submitted a review³, which supports the assessment, categorisation and recommendations of the original AIA. This identifies the Pagoda tree T6 as a Category B (moderate quality and value), Willow T2 as dead, and trees T3 – 5 as Category C (low quality and value) trees. Whilst these trees provide some greenery in the garden setting, I find that they are not of sufficient quality and amenity value to require their retention. The appellant proposes the planting of a Field Maple in the rear garden, which would provide adequate mitigation.
11. The proposed dwelling would result in a small incursion into the Root Protection Area of the Category B Silver Birch Tree T1, which is located within the grounds of No 77 Vanbrugh Park. The position of the boundary wall is likely to have prevented encroachment of significant roots into the appeal site and so I find that the proposal would not be detrimental to the health of the tree. Furthermore, the appellant's Arboricultural Method Statement⁴ (the AMS) sets out that a crown lift to 3 metres of the Silver Birch tree T1 is necessary to facilitate construction works and avoid damage to the tree. The Council's Tree Officer has raised no objection to the proposal, and I am satisfied that the proposed arboricultural works and protection measures would preserve the visual amenity and health of the retained trees, which could be secured by a planning condition.
12. For the above reasons, I conclude that the proposed development would preserve the character and appearance of the area, including the CA, the buffer zone to the WHS and the setting of locally listed buildings. The proposal would therefore accord with Policies D3, D4, HC1 and HC2 of the LP2021, Policies DH1, DH3, DH4, DH(h) and DH(j) of the Royal Greenwich Local Core Strategy with Detailed Policies 2014 (the Core Strategy) and guidance in the Blackheath Conservation Area Appraisal, which, amongst other things, require high quality design in all developments, and protect and enhance the heritage assets and setting of Royal Greenwich, including conservation areas, the Maritime Greenwich World Heritage Site, and locally listed buildings.

Living conditions

13. The Little Coach House: The information before me indicates that the lower ground floor of the proposed dwelling would extend approximately 7 metres

² Prepared by D F Clark Bionomique Ltd dated 7 October 2015

³ Prepared by Bourne to Garden dated 26 January 2021

⁴ Prepared by J.L. Denney dated 13 December 2019

beyond the rear elevation of The Little Coach House. This section would be sunk into the ground and so it would project only slightly above the boundary wall, which would minimise its visual impact. The first and second floor elements would extend around 3.7 metres and 2.7 metres respectively beyond the rear elevation of The Little Coach House, which would be quite modest. Having regard to the size of the proposed dwelling and its relationship to the main rear windows and garden of the neighbouring property, I find that the proposal would not cause a significant loss of daylight, sunlight or outlook to the habitable rooms or the adjoining garden. This is supported by the appellant's Daylight and Sunlight Assessment⁵, which was prepared in relation to the very similar previous planning permission and shows that there would not be a significant loss of daylight or sunlight.

14. Regarding privacy, I appreciate that the proposed rear balcony would enable some views across the garden of The Little Coach House. However, the balcony would be accessed from the bedroom rather than the main living area, which would be likely to limit its use. Furthermore, the modest size of the balcony and its setting in from the side wall would restrict the extent of overlooking into the neighbouring property. In the context of the site's location in an urban area where there is mutual overlooking of gardens, and having had regard to the above considerations, I find that the habitable windows and rear balcony of the proposed dwelling would not cause an unacceptable loss of privacy.
15. I note that the proposed front roof terrace would be positioned adjacent to a bathroom rooflight in the western elevation of The Little Coach House. However, views from the terrace towards this window would be severely restricted by the proposed balustrades and the position of the rooflight below them. The proposed balustrades could be secured by a planning condition and so the proposal would not cause an unacceptable loss of privacy to the neighbouring occupiers.
16. The Little House: The Little House is located on the opposite side of Heathway. Having regard to the modest width of the proposed dwelling, its siting to the north of the neighbouring property, and the degree of separation that would be provided, the proposal would not cause a significant loss of daylight or sunlight to the habitable rooms of The Little House. Furthermore, the scale of the proposed dwelling would be in keeping with other buildings in the street scene, and the recessed siting of the top floor would reduce its visual impact. Taking this into account, together with the sympathetic set-back of the dwelling from the road (including a sizeable step back from The Little Coach House), I find that the proposal would not appear overbearing or cause a significant loss of outlook to the front windows of The Little House. Furthermore, the proposed front windows would overlook the street and maintain an acceptable separation to The Little House.
17. The height of the proposed balustrades, at around 1.6 metres, and the opaque glass would restrict views from the second floor roof terrace towards the front windows of The Little House, which would protect the privacy of the occupiers of the neighbouring property. The height and opacity of the balustrades could be secured by a planning condition.
18. Nos 75, 76 and 77 Vanbrugh Park: The proposed dwelling would maintain a distance of over 30 metres from the rear elevations of these properties. At this

⁵ Prepared by T16 Design dated January 2016.

level of separation, the proposal would not cause a significant loss of daylight, sunlight, outlook or privacy to the habitable windows and main outdoor amenity areas (the part of the garden closest to the rear of the building) of these properties. No 77 has a garage adjacent to Heathway, and I appreciate that the presence of the proposal would create a visual change towards the end of the neighbouring garden. Nevertheless, given the considerable length of the garden and the distance maintained to habitable windows, the impact arising from the proposal would be limited. I acknowledge that the proposed rear balcony would enable views across the end part of No 77's garden, however the appeal site is located in an urban area where a degree of overlooking of gardens is to be expected. Given the modest size of the balcony and its location adjacent to the end of No 77's long garden, I do not consider that this would cause an unacceptable loss of privacy.

19. No 3 Heathway: The proposed dwelling would be separated from this property by the rear garden of No 77 Vanbrugh Park. Accordingly, the proposal would not cause a significant loss of daylight, sunlight or outlook to the habitable windows or garden of No 3. Furthermore, the absence of windows in the side elevation of the proposed dwelling, together with the sizeable separation of the rear balcony, would ensure that the proposal would not cause a significant loss of privacy to the occupiers of this property.
20. For these reasons, I conclude that the proposed development would not cause significant harm to the living conditions of the occupiers of neighbouring properties. The proposal would therefore accord with Policy D6 of the LP2021 and Policy DH(b) of the Core Strategy, which state that developments will only be permitted where it can be demonstrated that the proposal does not cause an unacceptable loss of amenity to adjacent occupiers by reducing the amount of daylight, sunlight or privacy they enjoy or result in an un-neighbourly sense of enclosure.

Effect on Heathway

21. Heathway is a narrow, unmade private road, which presents complexities for the construction of the proposed development. The appellant has submitted a detailed Basement Construction Method Statement and a Construction Method Statement, which provides information of the time scale and phases of construction works, along with proposed mitigation measures to reduce the impacts associated with construction activities. Amongst other things, this includes details relating to the routing of construction vehicles, the number/duration of deliveries, procedures for deliveries, timing of deliveries outside peak hours, size/type of delivery vehicles, hours of working, communication with residents, and a complaints procedure.
22. I have had regard to the concerns from local residents and I appreciate that construction works may cause some disruption. Construction vehicles would inevitably cause obstruction in Heathway, however the duration would be short-lived. The mitigation measures are extensive and reasonable, which would minimise construction impacts as far as possible. This could be secured through the imposition of a planning condition. The impacts associated with construction works would be temporary, and this is a quiet road that does not experience high volumes of traffic. I am satisfied that the measures would avoid significant adverse impacts on highway safety and the living conditions of the occupiers of neighbouring properties.

23. For these reasons, I conclude that the proposed construction activities would be adequately mitigated so as to minimise its effect on the operation and safety of the highway. The proposal would therefore accord with Policy T7 of the LP2021 and Policy E(a) of the Core Strategy, which, amongst other matters, state that during the construction phase of development, inclusive and safe access for people walking or cycling should be prioritised and maintained at all times, and planning permission will not normally be granted where a proposed development would have a significant adverse impact on the amenities of adjacent occupiers as a result of unacceptable emissions. It would also accord with paragraph 111 of the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

24. In addition to the above main issues, I have had regard to other matters raised by interested parties. In terms of wildlife interests, there is no substantive evidence before me that there is a reasonable likelihood of stag beetles and/or bats being present on the appeal site. Consequently, I am not persuaded that any protected species would be threatened by the proposed development.
25. Agreements for works to boundary walls are a civil matter. The Basement Impact Assessment⁶ (the BIA) has been carried out by suitably qualified persons and provides a detailed assessment of ground conditions, an impact assessment of the basement, and recommendations. There is no substantive evidence before me to doubt the conclusions of the report.
26. The Council indicates that the single on-site parking space to the front of the property would be acceptable and I see no reason to take a different view. Sufficient cycle storage would be provided in the rear garden, which could be secured by condition. The traffic generation from one dwelling would be small and would have no adverse effect on the safety and operation of the highway. The appellant has demonstrated that the constraints of the site prevent compliance with every aspect of Building Regulation optional requirement M4(2) accessible and adaptable dwellings, and this is not disputed by the Council.

Conditions

27. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.
28. Conditions relating to the external materials of the proposed dwelling and landscaping are necessary in the interests of the character and appearance of the area and to integrate the development with its surroundings. Landscaping is a pre-commencement condition in the interests of proper planning and to prevent any potentially abortive works. A condition to require the installation of refuse and recycling storage is necessary to ensure satisfactory provision of these facilities and to protect the visual amenity of the area. Furthermore, a condition to require a secure storage facility for 2 bicycles is necessary to encourage the use of sustainable transport.

⁶ Prepared by Gabriel GeoConsulting Limited dated April 2018

29. Conditions necessitating the development to be implemented in accordance with the proposed tree protection measures, and to require the planting of a replacement Field Maple tree, are needed to protect the visual amenity of the area.
30. Conditions requiring the proposed parking space and mirror to be provided are necessary in the interests of highway safety.
31. In order to mitigate the impact of the development on the environment and to reduce emissions, conditions relating to water efficiency, rainwater recycling system, green roof and boiler emissions are required, in accordance with Policies SI 1 and SI 5 of the LP2021 and Policies DH1, H5, OS4 and E(f) of the Core Strategy.
32. A condition to require the installation of a 1 metre high opaque glass balustrade to the rear first floor balcony and a 1.6 metre high opaque glass balustrade to the second floor terrace is necessary to protect the privacy of the occupiers of neighbouring properties.
33. Conditions to control the hours of working and require the implementation of the Construction Method Statement and Basement Method Statement are necessary to protect the living conditions of the occupiers of neighbouring properties and to mitigate the effect of construction works on the operation of the highway. The Council has raised no objection to the contents of the BIA, which was prepared in April 2018. However, it suggests than an up-to-date BIA should be secured by a planning condition. The BIA is extensive and carried out by competent persons. Having regard to the short period since the report was carried out for purposes of ground investigation, I do not consider that an updated BIA is necessary. Nevertheless, I have imposed a condition to require the development to be constructed in accordance with the recommendations contained in the BIA. The appellant indicates that party wall awards will be made with adjoining neighbours, which is a civil matter covered by legislation outside the planning system.
34. I am satisfied that there is justification to remove permitted development rights for the erection of an enlargement or porch under the provisions of Schedule 2, Part 1, Class A and Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015 to preserve the character and appearance of the area, to protect the living conditions of the occupiers of neighbouring properties and maintain an adequate front parking area. The Council has also requested the removal of permitted development rights for the erection of outbuildings under Class E. However, having regard to the reasonable size of the garden and the size limitations placed on outbuildings under Class E, I am not persuaded that there is sufficient justification for this.
35. The Council has suggested a condition that the development shall comply with Building Regulations requirement M4(1) set out in Approved Document M. However, this is mandatory for all new dwellings unless one of the optional requirements M4(2) or M4(3) applies, therefore this suggested condition is not necessary. Furthermore, a condition relating to ecological surveys is not necessary as this is a minor development and there is no substantive evidence before me that there is a reasonable likelihood of protected/priority species

being present on the appeal site. Should protected species be encountered, there are protections provided by other legislation⁷.

Conclusion

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

C Osgathorp

INSPECTOR

⁷ The Conservation of Habitats and Species Regulations 2017 as amended.

Schedule of Conditions

- 1) The development to which this permission relates shall be begun within a period of three years commencing on the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

1097-E2-0001-PL02, 1097-E2-0010-PL03, 1097-E2-0020-PL03, 1097-E2-0050-PL01, 1097-E2-0550-PL01, 1097-E2-0551-PL01, 1097-E2-0552-PL01, 1097-E2-0553-PL01, 1097-E2-0554-PL01, 1097-E2-0555-PL02, 1097-E2-1000-PL01, 1097-E2-1001-PL02, 1097-E2-1002-PL01, 1097-E2-1003-PL02, 1097-E2-1004-PL02, 1097-E2-1100-PL01, 1097-E2-1101-PL01, 1097-E2-1102-PL01, 1097-E2-1103-PL01, 1097-E2-1104-PL01, 1097-E2-1201-PL01, 1097-E2-1202-PL01, 1097-E2-1203-PL01, 1097-E2-1204-PL01, Arboricultural Method Statement (prepared by J.L.Denney and dated 13/12/2019), Arboricultural Impact Assessment (prepared by D F Clark Bionomique Ltd and dated 07/10/2015), Letter from Bourne to Garden dated 26/01/2021), Tree Protection Plan (DFCP 3697 TPP), Tree Survey Plan (DFCP 3697 TPP), Basement Impact Assessment (prepared by Gabriel GeoConsulting Limited and dated April 2018), Basement Construction Method Statement (Rev. D), Construction Method Statement (Rev. E), Daylight & Sunlight Assessment (prepared by T16 Design Ltd and dated January 2016), Design & Access Statement (prepared by E2 Architecture and dated 21/05/2019), Planning Statement (prepared by E2 Architecture and dated 27/05/2020), Details of Replacement Tree from ref. 20/0063/SD (dated 12/02/2020) and Planning Statement Addendum - Dispensation of M4(2).
- 3) The development shall be constructed in those materials as submitted namely:
 - Bricks – Van de Moortal Grey Brick (Brick S)
 - Top Floor Cladding and Front Door Roof Canopy - VMZINC Natural Zinc
 - Windows and Door Frames – Anthracite Grey Aluminium
 - Waste and Recycling Store – Cedar Slats and Posts
 - Bicycle Store – Tiger Pent Wooden Storeand in full accordance with the approved plans.
- 4) Notwithstanding the provisions of Schedule 2, Part 1, Class A and Class D 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 alteration of the dwelling hereby approved consisting of an enlargement or porch shall be carried out.
- 5) The on-site parking space provided shall be completed prior to the first occupation of the dwelling and used only for that purpose and no development whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification) or not shall be carried out as to interfere with such use.
- 6) Notwithstanding the hours of construction as outlined in the Construction Method Statement and the Basement Construction Method Statement, the hours of construction permitted in associated with the development shall be as follows:

- Monday to Friday – 9am to 6pm
 - Saturday – 8am to 1pm
 - Sunday and Bank Holidays – No working
 - No works on site will be permitted or carried out outside these hours.
- 7) Notwithstanding condition 6 in respect of the hours of construction, the development shall in all other respects be implemented in accordance with the details outlined in the Construction Method Statement and the Basement Construction Method Statement.
- 8) The proposed development shall be constructed in accordance with the recommendations contained in the Basement Impact Assessment prepared by Gabriel GeoConsulting Limited and dated April 2018.
- 9) Details of all hard and soft landscaping arrangements including surface treatment and means of enclosure; shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. The hard landscaping shall be completed before the dwelling is first occupied. The soft landscaping shall be completed within 12 months, or by the end of the first planting season, after the completion of the development to the satisfaction of the Local Planning Authority.
- 10) A Field Maple tree (*Acer campestre*) measuring 10-12cm in diameter and 3 – 3.5 metres in height shall be planted in the rear garden of the proposed dwelling within 12 months, or by the end of the first planting season, after the completion of the development to the satisfaction of the Local Planning Authority. The replacement tree shall be sourced and planted according to '*BS 8545:2014 Trees: from nursery to independence in the landscape. Recommendations*'.
- 11) The refuse and recycling facilities shall be implemented in accordance with the approved drawings prior to the first occupation of the development.
- 12) The development hereby permitted shall comply with Regulation 36(2)(b) of the Building Regulations 2010 (as amended by the Building Regulations (Amendment) Regulations 2015/767) and as set out in section G2 of the Building Regulations Approved Document (110 litres per person per day).
- 13) Full details of the green roof which shall be compliant with GRO Green Roof Code 2014 shall be submitted to and approved in writing by the Local Planning Authority prior to the implementation of the relevant part of the development hereby approved. The submitted information should include the following:
- A report from a suitably qualified ecologist specifying how the living roof has been developed for biodiversity with details of landscape features and a roof cross section; and
- The green roof should be comprised of, but not necessarily limited to, the following:
- i Biodiversity based with extensive/semi-intensive soils
 - ii. Substrate which is commercial brick-based aggregate or equivalent with a varied substrate depth of 80 -150mm planted with 50% locally native herbs/wildflowers in addition to sedum, include additional features such as

areas of bare shingle, areas of sand for burrowing invertebrates, individual logs or log piles, and an area suitable for Black Redstarts

iii. parts a and b must be addressed within a single submission document.

The development shall not be occupied until the green roof has been carried out strictly in accordance with the details approved. The green roof shall be maintained as such thereafter.

- 14) a) A minimum of 2 secure and dry cycle parking spaces shall be provided within the development as indicated on the plans hereby approved.

b) The cycle store hereby approved shall be implemented in accordance with the approved drawings.

c) All cycle parking spaces shall be provided and made available for use prior to occupation of the development and maintained thereafter.
- 15) The boilers to be used in the development hereby approved shall have dry NO_x emissions not exceeding 40 mg/kWh (0%) and shall be installed prior to the first occupation of the development and shall be retained for the lifetime of the development.
- 16) No development above ground level shall take place until details of the rainwater recycling system demonstrating the maximum level of recycled water that can feasibly be provided have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details, completed prior to the occupation of the development, and retained thereafter.
- 17) Prior to the first occupation of the development, the proposed mirror fitted at the vehicular access point shall be installed in accordance with the approved drawings. The mirror shall be retained thereafter.
- 18) Prior to the first occupation of the development, the balustrade to the rear first floor balcony shall be in situ to a height of 1 metre and shall be finished in opaque glass, the glass balustrade to the second floor terrace shall be in situ to a height of 1.6 metres and shall be obscured glass. Each glass balustrade shall thereafter be maintained in good order and shall not be replaced without first obtaining the written consent of the Local Planning Authority.
- 19) The development hereby approved shall be implemented in accordance with the Tree Protection Measures as set out in the approved plans.