
Appeal Decision

Site visit made on 17 May 2022

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/N5090/W/21/3282579

**Edgehill Manor, Highwood Hill, Marsh Lane to Totteridge Common,
London NW7 4HP**

- 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 Sameer Khatri against the decision of the Council of the London Borough of Barnet
 - The application Ref 21/0763/FUL, dated 12 February 2021, was refused by notice dated 16 July 2021.
 - The development proposed is the demolition of existing Edgehill Manor, garage and outbuilding and the construction of a new dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Reason for refusal four alleges that insufficient information had been submitted with the application to assess the effect of the proposal on protected species and that undue harm could be caused to species such as bats. A bat emergence survey was submitted with the appeal which satisfies the Council's concern. On this basis, the Council has confirmed that it does not wish to defend the reason, but has suggested conditions to ensure that the proposal would not harm protected species. I see no reason to disagree with this approach and have framed the main issues accordingly.

Main Issues

3. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness and purposes of the Green Belt;
 - the effect of the proposal on the character and appearance of the Mill Hill Conservation Area, including the loss of a locally listed building;
 - the effect of the proposal on the character of the area with regard to the loss of protected trees;
 - other considerations;
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- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal?

Reasons

Whether inappropriate development?

4. The appeal site falls within the Green Belt (GB). Paragraphs 147 and 148 of the Framework state that inappropriate development is, by definition, harmful to the GB and that substantial weight should be given to any such harm. Paragraph 149 advises that new buildings in the GB should be regarded as inappropriate with specified exceptions. Exception (d) allows for a replacement building provided that it is 'in the same use and not materially larger than the one it replaces.' The existing and proposed buildings would both be used as single dwellings.
5. London Plan (LP) Policy G2 and Policies CS1 and CS7 of Barnet's Local Plan Core Strategy 2012 (CS) seek to protect the GB. Policy DM15 of the Council's Development Management Policies 2012 (DM) requires, among other things, proposals in the GB to comply with relevant Framework policies.
6. The appellant has provided figures for the volumes and floor areas of the existing and proposed buildings as well as two existing and one proposed outbuildings. The Council does not dispute the accuracy of these figures. The appellant points to case law which finds that 'building' can refer to more than one building provided that they 'can sensibly be considered together in comparison with what is proposed to replace them¹.' In this case, the existing outbuildings which the appellant seeks to include in its comparison of the existing and replacement buildings are in ancillary use as a garage and a gym. They are located close to the existing main building and the site of the replacement building. As such, I consider that it would be appropriate to include them in the comparison.
7. The appellant has also included a proposed outbuilding which has the benefit of a certificate of lawfulness for use as ancillary accommodation (Application ref: 20/3867/192). Although I have no reason to doubt the appellant's intention to construct this building if this appeal is dismissed, there is case law which indicates that the size of a proposed building should not be taken into account in the comparison of existing and replacement buildings². The same judgement does allow for proposed buildings to be considered as a fallback position and I do this below.
8. Having regard to these findings, the replacement building would be some 40% larger than the existing measured by volume and just over 20% larger by floor area. The parties agree that there is no quantitative definition of 'materially larger' in national or development plan policy. The Council's Residential Design Guidance (October 2016) does not provide directly relevant advice on replacement dwellings. Nevertheless, the comparison is about size, rather than visual impact or impact on openness. In this case the volume measurement is particularly relevant since it captures a three-dimensional comparison of the existing and replacement buildings. I consider that an increase of some 40%

¹ Tandridge DC v SSCLG & Syrett [2015] EWHC 2503; paragraph 61

² Athlone House Ltd v SSCLG [2015] EWHC 3524 (Admin); paragraph 42

by this measure would amount to a 'materially larger' replacement building. Consequently, the proposal would be inappropriate development in the GB.

Openness and purposes

9. Framework paragraph 137 advises that openness is an essential characteristic of the GB and DM Policy DM15 presumes against replacement buildings which would adversely impact on the openness of the GB or the purposes of including land within it.
10. The additional volume of the replacement building would be evident mainly in its increased two-storey depth over its full width, but also in the increased bulk of the roof. This would be higher than the existing roof over much of its width. This would reduce the spatial component of openness by increasing the bulk of built development. Visually, the loss of openness would be apparent in views to the replacement building from the entrance gate and adjacent footpath.
11. Conversely, the removal of the existing outbuildings would have a beneficial effect on openness by reducing the bulk and spread of built development. However, visually, the effect would be curtailed because the existing outbuildings are at a lower level than the additional bulk of the replacement building and the gym is not visible in public views. Moreover, the proposed parking courtyard, although not roofed and lower in height than the existing outbuildings, would enclose an area broadly comparable in size to those buildings with a walled structure. As such, it would reintroduce some of the spread of built development at the site.
12. The certificate of lawfulness proposed outbuilding would be substantial in size, but located a considerable distance from the main dwelling in a well screened and visually discreet part of the site. As such, its effect on the visual component of openness would be limited, although spatially it would reduce the openness of the site as a whole. Taking the implementation of this outbuilding into consideration as a fallback position, I find that the proposal would have a neutral effect on GB openness.
13. In terms of the purposes of the GB, the Council refers to Framework paragraph 138(a) and (c) which seek to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment. The first reason for refusal also alleges harm to the rural character of the GB and cites DM Policy DM01 which requires proposals to preserve and enhance local character. The proposal would be contained within an established residential curtilage and the built development would occupy the same location and, broadly, the same footprint as the existing buildings on the site. Consequently, its effect on the purposes of including land within the GB and its rural character would be negligible.
14. Nevertheless, the proposal would be inappropriate development. While it would have negligible effects on openness and the purposes and character of the GB, Framework paragraph 148 advises that substantial weight should be given to any harm to the GB. Nor would the proposal accord with LP Policy G2, CS Policies CS1 or CS7 or DM Policy DM15.

Conservation area and locally listed building

15. The Mill Hill Conservation Area (CA) covers an extensive area and a variety of land uses, spaces, built forms and architectural styles. The Council's Character

Appraisal Statement sub-divides the CA with the appeal site falling into the Nan Clarks Lane/Highwood Hill character area. The characteristics of Highwood Hill include modest cottages set behind picket fences with a 'notable collection' of larger villas and mansion houses providing a striking contrast. The Character Appraisal also notes that fine trees, informal planting and hedges characterise the boundaries of the larger properties. The appeal property falls squarely within this description and consequently contributes positively to the significance of the CA.

16. The building itself is locally listed which, the appellant advises, was for its aesthetic merits, intactness and architectural interest. The building was added to the list in 1986 and also included when the list was reviewed in 2019. The building dates from around 1905. It was designed by a notable architect (T E Collcutt) who had national as well as local recognition, although it is not one of his most celebrated works. Objectors to the proposal have also noted some local historic interest deriving from the persons who commissioned and subsequently lived in the building as well as its use as a nurses' home for a period. I note that English Heritage recently found that the building did not meet the criteria for statutory listing.
17. The appellant argues that the value of the building itself has been eroded by a series of alterations, additions and the sub-division of the original plot. The sub-division of the original plot still leaves the building sitting within substantial, well planted, grounds and reasonably generously spaced to the adjoining property (The Limes). The sub-division has not, therefore, undermined the contribution of the property to the CA. The alterations and extensions to the building itself vary in quality and appropriateness to the original design. Those that are less appropriate are fairly readily distinguishable from the original building. Nevertheless, I agree with English Heritage that the overall effect does rather dilute the original design and composition. The alterations and additions therefore detract from, but do not entirely negate, its heritage interest.
18. While some of the alterations may be reversible, that is not the proposal in this case. Although no evidence has been provided on the criteria used for the 2019 review of the local list, it is relevant that the building was retained despite the alterations and additions.
19. Even taking those matters into account, the appellant accepts that the building has some heritage significance based on its aesthetic value and wooded setting. To that I would add some historic interest deriving from the association with T E Collcutt. Framework paragraph 203 advises that, in weighing applications that affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
20. The replacement building would occupy the same position on the site as the existing building and the frontage width would be similar. The proposal would retain the wooded setting of the building. That said, I have already found that the replacement would be more bulky, that the additional depth would be apparent in views from the front gate and adjacent footpath and that this would not be mitigated by the removal of the existing outbuildings. I recognise that the design and appearance of the replacement building reflect something of the character of the substantial houses in the CA. However, there is little to

suggest that the replacement building would have any particular architectural distinction and, of itself, it would have a neutral effect on the CA. Although the significance of the existing building as a much-altered non-designated heritage asset is limited, the scale of the loss caused by demolition would be total. Balancing this against the neutral effect of the replacement building, would result in harm to the non-designated heritage asset.

21. I have already found that that asset makes a positive contribution to the significance of the CA. It follows that the proposal considered in the round would be harmful to the CA. The degree of harm would be less than substantial.
22. Framework paragraph 202 requires this harm to be weighed against the public benefits of the proposal. The appellant has put forward a number of claimed public benefits. I have already dealt with the quality of the replacement building, the consolidation of built development on the site and the effect of GB openness.
23. In terms of the improved sustainability of the replacement building, limited evidence has been provided to quantify such benefit or to demonstrate that similar benefit could not be achieved through works to the existing building. Nor has the effect on carbon emissions of demolition and re-building been quantified. Therefore, I can give minimal weight to this claimed benefit. The non-implementation of the proposed outbuilding would lead to a minor loss of GB openness. There is no firm evidence to suggest that its construction would cause other public harm. It follows that non-implementation would result in a limited public benefit. It is not necessary to consider the optimum viable use of the heritage asset since the asset in question is a conservation area and the use of the appeal site within it would not change. Overall, therefore, the public benefits of the proposal would not outweigh the less than substantial harm to the CA. Although the degree of harm would be at the lower end of the spectrum, I am required to give considerable importance and weight to the desirability of preserving or enhancing the character or appearance of the designated area.
24. Consequently, the proposal would not accord with Framework paragraphs 199, 202 or 203. It would also conflict with LP Policy HC1, CS Policy CS5 and DM Policy DM06 which, among other things, require proposals to conserve the significance of heritage assets, by being sympathetic to the assets' significance and their appreciation within their surroundings. There would also be conflict with DM Policy DM01 to the extent that it requires proposals to preserve or enhance local character.
25. Policy DM06 also sets out a presumption in favour of retaining all locally listed buildings. While I have some sympathy with the appellant's contention that this approach is not consistent with the balanced judgement required in the consideration of non-designated heritage assets by Framework paragraph 203, that does not affect my overall conclusion on this issue.

Protected Trees

26. Much of the appeal site is covered by a Tree Preservation Order, including three oak and two holly trees to the rear of the existing building which are proposed for removal. The appellant's Tree Survey and Arboricultural Impact

Assessment finds the trees (references T85, T86, T87, T88 and T89) to be of low quality (Category C). This is not disputed by the Council.

27. The trees are visible over the existing outbuildings from the front entrance gate and adjacent footpath. However, they are seen against the backdrop of a far greater number of mature trees of at least the same height. As such, the proposed loss of the five trees would not materially affect the contribution which the wooded character of the site makes to the character of the CA or to the setting of the building. Nor would the loss of the trees in question affect the substantial planting along the front boundary of the appeal site which is identified as an important contributor to the character and appearance of the CA in the Character Appraisal Statement.
28. The Council also refers to the effect of the loss of the trees on longer range views, including those in the vicinity of Folly Brook. Again, however, the effect would be barely perceptible due to the presence of the extensive wooded area between the trees to be removed and those views. Nor is there substantive evidence to show that the trees are of particularly high ecological value.
29. Taking into account also that there would be an opportunity to require the planting of replacement trees in the event that the appeal was allowed, I find that the loss of the protected trees would not have a harmful effect on the character and appearance of the area. As such, this element of the proposal would not conflict with LP Policy G7 or DM Policy DM01 insofar as they require trees to be valued and safeguarded.

Other considerations

30. I have already found that the replacement building is not particularly architecturally distinctive and would have a neutral effect on the CA. Its additional depth compared with the existing building would be apparent from a limited public viewpoint. The siting, bulk, design and appearance of the replacement building would not, therefore, amount to a benefit of the proposal. Taking into account both the appeal proposal and the non-implementation of the proposed outbuilding there would be a neutral effect on GB openness and a negligible effect on the purposes of including land within the GB. That does not amount to a positive benefit in favour of the proposal.
31. I have also found that it has not been adequately demonstrated that the proposal would have quantifiable benefits in terms of energy use and carbon emissions.

Green Belt balance

32. The proposal would not lead to loss of openness or conflict with the purposes of the GB. Moreover the loss of five trees would not be harmful to the character and appearance of the area. Nevertheless, the proposal would be inappropriate development and Framework paragraph 148 advises that such development should not be approved except in very special circumstances. Furthermore, the proposal would cause less than substantial harm to the CA. I am required to give significant weight to both of these considerations.
33. Overall, I find that the other considerations in this case do not clearly outweigh the GB and other harm. Looking at the case as a whole therefore, I consider that the very special circumstances necessary to overcome the GB harm have not been demonstrated. The proposal, therefore, would conflict with LP Policy

G2, CS Policies CS1 and CS7 and DM Policy DM15 and Framework paragraphs 137, 147, 148 and 149. There would also be conflict with LP Policy HC1, CS Policy CS5 and DM Policy DM06 and Framework paragraphs 199, 202 and 203. As such, the proposal would not amount to sustainable development and would also conflict with Framework paragraph 12 and CS Policy NPPF.

Conclusion

34. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR