



Appeal Decision

Site visit made on 28 March 2023

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/N5090/W/22/3310158

1 Mill Corner, Barnet EN5 4PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 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 and Dr Parvesh Patel against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/3432/S73, dated 30 June 2022, was refused by notice dated 22 August 2022.
 - The application sought planning permission for the demolition of the existing dwelling and garage and erection of a new two storey dwelling with basement level and detached garage. Relocation of the existing swimming pool (amended plans) without complying with a condition attached to planning permission Ref 21/0844/FUL, dated 16 July 2021.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, MSL17816-FP1, MSL17816-E01, MSL17816-FPG, MSL17816-E03, MSL17816-RP, MSL17816-E02, MSL17816-E04, 1000E, 1001D, 1002D, 1003D, 1004A, Heritage Statement (HCUK, June 2021 | Project Ref 06109A), Planning Statement (Bell Cornwell, June 2021), Archaeological Desk Based Assessment (HCUK, January 2021 | Project Ref 06109B), Tree Protection Plan (Arbtech TPP 01 RevB, July 2021), Arboricultural Method Statement (Arbtech, 8 July 2021), Arboricultural Impact Assessment (Arbtech AIA 01 RevB, July 2021), Tree Survey (Arbtech, 22 January 2021), Landscape Plan (Matthew Fountain Landscapes, Amended C, Planning 13 July 2021), Preliminary Ecological Appraisal and Preliminary Roost Assessment Survey (Arbtech, 07.07.2020).
 - The reason given for the condition is: 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).
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council have confirmed there is an error in the second reason for refusal on the decision notice. Reference should have been made to Policy G7 of the London Plan (2021) not Policy 7.21. I have assessed the appeal scheme on this basis. I saw at my site visit that development is underway but is not yet finished. As such, I have determined the appeal on the basis of the submitted plans.

Background and Main Issues

3. Planning permission for the erection of a new dwelling included a condition that the development should be carried out in accordance with the approved plans. The appellant seeks to vary it by amending the approved plans by enlarging the detached garage. The Council refused the variation of the plans on the basis that the enlargement of the garage would contradict the original approval and intention to retain gaps and openness between buildings, it would be detrimental to the living conditions of the neighbouring occupiers and there was insufficient information regarding the protection of a nearby tree.
4. Taking the above into account, the main issues are the effect that varying the condition would have on:
 - the character and appearance of the Monken Hadley Conservation Area (MHCA), including its effect on trees; and
 - the living conditions of the occupiers of 2 and 3 Mill Corner, with regard to daylight/sunlight and outlook.

Reasons

Character and Appearance

5. From the MHCA Character Appraisal Statement (2007) and my observations, the significance of the MHCA includes the 18th and 19th Century development of large Georgian houses set within extensive gardens which has created a green and leafy character with development at a low density. Trees are an integral part of the landscape and important to the character of the conservation area. The appeal site is within and contributes positively to the MHCA.
6. The garage that is now proposed makes no amendments to the front elevation and its openings, and the width and height of the garage would remain the same. An extension is proposed to the rear, bringing development closer to the dwelling. The garage would physically remain as a secondary and subordinate building and a gap between the garage and dwelling would be retained. Nonetheless, the enlarged garage, in bringing development closer to the dwelling, would erode the clear spacings around it, and would not relate positively to the prevailing character and appearance of the area.
7. While the extension itself is modest in size, overall, the enlarged garage would have a more dominant built form which would represent a marked visual change, contributing to a small, but nevertheless, detrimental effect on the character and appearance of the MHCA. This would be particularly experienced in views on approach to the appeal site. In reducing the gap between the garage and the dwelling the proposed development would appear, in these views, as if it were attached to the dwelling as a single structure. This would undermine the relationship of buildings and open spaces in the MHCA which contributes positively to its historical character.
8. Consequently, the proposed enlargement of the garage would fail to preserve or enhance the character and appearance of the MHCA. The harm that I have identified is 'less than substantial' harm. The National Planning Policy Framework (the Framework) requires that great weight should be given to the conservation of heritage assets, irrespective of the level of harm. Any harm to the significance of a designated heritage asset should also require a clear and convincing justification.

9. The enlarged garage is required to enable the inclusion of a plant room to serve the swimming pool, however there is no clear evidence to demonstrate that the enlarged garage is the only way to meet the appellant's requirements. Moreover, this is a largely private benefit of the scheme and therefore carries limited weight in favour of the development. In having special regard to the desirability of preserving and enhancing the character and appearance of the MHCA, overall, there are no public benefits sufficient to weigh against the permanent harm that would arise to the significance of the heritage asset.
10. For the reasons given, the variation of the condition would harm the character and appearance of the MHCA, in conflict with policies CSNPPF, CS1 and CS5 of Barnet's Local Plan Core Strategy (2012) (CS) and policies DM01 and DM06 of Barnet's Local Plan Development Management Policies (2012) (DMP). Amongst other things, these policies seek development that improves the economic, social and environmental conditions in Barnet, including protecting and enhancing Barnet's heritage and character, through development being based on an understanding of local characteristics.
11. It is also contrary to the guidelines set out in the Residential Design Guidance Supplementary Planning Document (SPD) (2016) and Sustainable Design and Construction SPD (2016) in relation to good design and enhancing local character.
12. The garage as originally proposed is shown on the approved Tree Protection Plan to be situated within the Root Protection Area (RPA) of Tree 4 (T4) and it was identified that arboricultural supervision was required in relation to the installation of a piled foundation to ensure T4 would be protected. I note that details have already been provided and the relevant condition discharged, albeit this information relates to the original garage.
13. The appellant is committed to protecting T4, the proposed extension would not bring development any closer to T4 and the appellant says that the extended garage would not require any change to the approved piled foundation design. Moreover, the Tree Plan doesn't appear to show the RPA extending to the rear of the garage or in the location of the proposed extension. As such, it is unlikely that the RPA would be affected and therefore the tree would be protected. Moreover, a condition could be imposed were the appeal to be allowed to secure details of the foundation design of the extended garage, in the interest of protecting the tree.
14. Accordingly, the variation of the condition would not be harmful to T4 and accords with Policy G7 of the London Plan (2021), policies CS5 and CS7 of the CS and Policy DM01 of the DMP, insofar as these policies require proposals to respect and enhance the distinctive natural landscapes of Barnet, contributing to biodiversity through the retention of existing trees.

Living Conditions

15. The garage is located adjacent to the shared boundary with 2 and 3 Mill Corner. Given the modest extension, located away from these properties, the appeal proposal would not result in a noticeable difference in the built form to the extent that it would appear as an oppressive feature. It would also not largely infill the gap in views from these properties. The distance to the shared boundary and height of the garage would remain unchanged by the appeal scheme. Accordingly, it seems unlikely that there would be any significant

effect on outlook or daylight/sunlight levels for the occupiers of these properties.

16. As such, varying the condition would not cause harm to the living conditions of the occupiers of 2 and 3 Mill Corner, with regard to daylight/sunlight and outlook, and would accord with Policy DM01 of the DMP which requires development to be designed to allow for adequate daylight, sunlight, and outlook for adjoining occupiers.
17. It would also be in line with the safeguarding residential amenity guidelines set out in the Residential Design Guidance SPD and Sustainable Design and Construction SPD.

Other Matters

18. I note the support comment from an interested party which appears to be related to the decision to relocate the dwelling to preserve the drainage system and is therefore a neutral matter in the determination of this appeal. The appellant has expressed frustrations with the Council's handling of the application. However, this has not affected my consideration of the planning merits of the case.

Conclusion

19. While the proposal would not be harmful to the living conditions of neighbouring occupiers, my above findings in relation to character and appearance bring the proposal into conflict with the development plan, read as a whole. There are no material considerations that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR