

Appeal Decision

Site visit made on 14 June 2023

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal Ref. APP/N5090/D/23/3314563 83 Winnington Road, London N2 0TT

- 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 V Levin against the decision of the Council of the London Borough of Barnet.
 - The application ref. 22/2102/HSE, dated 19 April 2022, was refused by notice dated 19 October 2022.
 - The development proposed is described on the application form as "*Lower Tennis Court/Rear Garden Ground Level*" and more comprehensively on the Council's decision notice and the appeal form as "*Lowering (sic) and resurfacing of the existing tennis court/rear garden ground level and excavation and formation of piles/retaining walls*".
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Decision

1. The appeal is allowed and planning permission is granted for "*Lowering and resurfacing of the existing tennis court/rear garden ground level and excavation and formation of piles/retaining walls*" at 83 Winnington Road, London N2 0TT in accordance with the terms of the application ref. 22/2102/HSE, dated 19 April 2022, subject to the conditions contained in the Schedule provided at the end of this Appeal Decision.

Preliminary matters

2. Even though they are not listed on the decision notice, it is evident from the Council's Delegated Report (DR) that the revised drawings submitted by the appellant in July 2022 were considered during the processing of the application. I have taken those drawings into account. The key changes are that the tennis court would be lowered by 1.46 m as revised rather than by 2.36 m as originally proposed. This would roughly match the ground level in the adjacent garden of no. 85. The back retaining wall, which is currently about 2.5 m above the level of the tennis court, would reach a height of about 4 m instead of a height of about 5 m as originally proposed.

Main issue

3. The appeal site lies within the Hampstead Garden Suburb Conservation Area (HGSCA). There is a degree of overlap between the 2 reasons for refusal on the decision notice: the alleged harms to the character and appearance of the HGSCA and to trees of special amenity value and hedge borders. Given that
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trees and hedges contribute fundamentally to the distinctive character and appearance of the HGSCA, I prefer to set out a single main issue as follows.

4. I consider the main issue to be the effect of the proposed development upon the character and appearance of the HGSCA, with particular regard to the visual impact of the proposed alterations to the land levels and retaining wall and to the potential impact of those alterations on trees of special amenity value and hedge borders.

Reasons

5. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (s72 of the Act) requires that when assessing proposals for new development within a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
6. In reaching this decision I have had regard to the HGSCA Character Appraisal. The HGSCA is internationally renowned as one of the finest examples of early 20th century domestic architecture and town planning and for the way in which mature landscape features have been incorporated into the built environment.
7. Many of the detached houses on the eastern side of Winnington Road are sizeable and have generous rear gardens which back onto the extensive grounds of the houses in The Bishops Avenue which runs at a notably higher level than Winnington Road. As such, there is a fall of over 4 m from the back of the tennis court at the rear (eastern) end of the appeal site down to Winnington Road. Apart from the tennis court, the site, which is somewhat narrower than the adjoining residential plots to the north and the south, has been cleared following the demolition of 2 former dwellings. It is awaiting redevelopment with a large new build house which would include a basement stretching under part of the tennis court.
8. It would appear from the existing section drawing that the original topography through the site away from the road was characterized by a fairly gradual upward slope. However, upon reaching the tennis court the levels suddenly jump up about 1.46 m. I am told that various greenhouses were demolished in the early 1990s and that the works to create the tennis court and the existing retaining wall were undertaken in the 1990s. It seems likely that the land that now contains the tennis court was raised and levelled at some point to create the bases for the greenhouses and/or a level surface for the tennis court itself.
9. The reduced levels as revised would not be on such a scale that they would fundamentally change the underlying landform and topography of this area. If anything, they would tend to provide a gradual level transition through the site that would more closely approximate the likely original landform and levels.
10. Even as revised, the scheme would expose a higher retaining wall to the rear boundary which would reach about 4 m above the proposed level of the surface of the tennis court, about 1.5 m deeper than the existing retaining wall. Ultimately, the retaining wall would be at the rear of the dwelling and be well hidden away from the public realm. There would be no direct impact on the streetscape. If there were to be any glimpsed distant views of it from Winnington Road, it would be seen against a backdrop of mature trees and other vegetation growing on higher land beyond the rear boundary of the site.

11. In any event, it is proposed to apply a silicone render to all the bare concrete blockwork walling including the back retaining wall, thus softening the current rather stark and unattractive appearance. I saw that ivy currently grows over the top of the existing back retaining wall reducing its visual impact. There is no reason why a perimeter hedgerow could not be provided around 3 sides of the tennis court, including in front of the back retaining wall, as shown on the illustrative landscape plan and sections at Appendix 7 of the appellant's Statement of Case. This could be controlled through a planning condition. The appellant is right to draw attention to how successful such hedge screening can be by reference to the landscaping work that has been carried out in front of the embankment and brickwork retaining wall on the back boundary of 85 Winnington Road.
12. Subject to appropriate screen planting measures being agreed, implemented and maintained, I consider that the physical alterations to the land levels and retaining wall would, in themselves, have an acceptable visual effect on the rear garden landscape hereabouts within the HGSCA.
13. The Council's commentary in the DR on the matter of the trees and hedging, unlike the section relating to the visual impact of the works, does not refer to the revised plans. Nonetheless, I have had full regard to what is presented there and taken into account the 2 separate independent Arboricultural Impact Assessment reports prepared by Landmark Trees (LT), submitted with the application and Trevor Heaps (TH), submitted with the appeal, focussing on the revised drawings and including an Arboricultural Method Statement and a Tree Protection Plan. The DR identified concerns about the potential harm to a cedar tree protected by a Tree Preservation Order and to a beech boundary hedge.
14. The cedar tree stands in the grounds of no. 81 close to the northern boundary of the appeal site and the north-western corner of the tennis court. I am not convinced the revised plans show any notable drops in level in the garden of the proposed house on the appeal site immediately to the west of the tennis court. The trial pit findings in the LT report showed minimal rooting growing south-east towards the tennis court, where the excavations would require a minor incursion of less than 5% into the tree's Root Protection Area. Cedars have a good tolerance to root pruning. These circumstances do not point to a significant negative impact upon the tree, even when the approved development at no. 81 is taken into account. The TH report goes on to describe the tree protection measures proposed, including the initial hand dig construction methods in proximity to the cedar tree.
15. There is an attractive, albeit overgrown, beech hedge on part of the site's northern boundary. It appears to end just before the tennis court is reached. It is desirable to preserve this natural feature. Based on the levels shown on the revised plans in the garden of the proposed house on the appeal site near to the site's northern boundary, this hedge is exceedingly unlikely to be placed under any serious danger from the proposed works. It would suffice to erect protective fencing and lay ground protection as indicated in the TH report.
16. With appropriate basic tree protection measures and working methodology being put in place following the TH report, I reach the view that this is an arboriculturally defensible scheme. With suitable planting of the perimeter hedgerow and other selected planting, there is every prospect that the natural

landscape within the HGSCA would actually be enhanced as a result of the development.

17. I conclude on the main issue that the proposed development would preserve the character and appearance of the HGSCA, with particular regard to the visual impact of the proposed alterations to the land levels and retaining wall and to the potential impact of those alterations on trees of special amenity value and hedge borders. As the development would be an example of high-quality design, preserve the character and appearance of the HGSCA and pay sufficient regard to the natural landscape, there would be no conflict with the aims of s72 of the Act, Policy G7 of the London Plan 2021, Policies CS NPPF, CS1, CS5 and CS7 of Barnet's Local Plan Core Strategy 2012 or Policies DM01, DM06 and DM15 of Barnet's Local Plan Development Management Policies 2012. There would be respect for the National Planning Policy Framework insofar as it relates to achieving well-designed places and conserving and enhancing the historic and natural environments and for the Council's Supplementary Planning Documents on Residential Design Guidance and Sustainable Design and Construction and the HGSCA Character Appraisal and its incorporated design guidance.
18. In the Council's Questionnaire, 3 planning conditions were suggested. In addition to a condition setting a time limit for the commencement of development, a condition requiring that the development is carried out in accordance with the relevant approved drawings (as revised) and documents is necessary as this provides certainty. There is no existing building to match in terms of materials, so, in the interests of preserving the character and appearance of the HGSCA, the materials to be used in the construction of the external surfaces of the development should be as stated on the submitted application form or approved drawings.
19. It will be evident from my reasoning that protection of existing trees and hedging is necessary in terms of visual amenity and preserving the character and appearance of the HGSCA; this can be accomplished through a condition that places reliance upon the Arboricultural Method Statement and Tree Protection Plan in the TH report. For the reasons already given, a condition is imposed to secure agreement on an appropriate new landscaping plan, the implementation thereof and any replacement planting that may subsequently be needed.
20. For the reasons given above and having regard to all other matters raised, including the absence of objections from local residents and local organisations and how the scheme would reduce the level of overlooking from the tennis court into the rear garden of no. 85, I conclude that this appeal should be allowed.

Andrew Dale

INSPECTOR

Schedule of Planning Conditions

- 1)** The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2)** The development hereby permitted shall be carried out in accordance with the following drawings and documents numbered or titled: LP; BP01; ASL02 Rev A; ASX01 Rev A; *Arboricultural Impact Assessment Report* by Landmark Trees dated 15 March 2021; and *Arboricultural Impact Assessment Method Statement & Tree Protection Plan (to BS:5837 2012)* by Trevor Heaps dated 6 January 2023.
- 3)** The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as stated on the submitted application form or approved drawings.
- 4)** Operations on site in connection with the construction of the development hereby permitted shall not be carried out except in accordance with all the details within the *Arboricultural Impact Assessment Method Statement & Tree Protection Plan (to BS:5837 2012)* by Trevor Heaps dated 6 January 2023. All tree and hedge protection methods detailed in that document shall not be moved or removed, temporarily or otherwise, until all works have been completed and all equipment, machinery and surplus materials have been removed from the site, unless the prior written approval of the Local Planning Authority has first been sought and obtained.
- 5)** The lower tennis court hereby approved shall not be finally fitted out for tennis or brought into use until a scheme of proposed landscaping, closely following the illustrative landscape plan and sections on drawing no. SK01 found at Appendix 7 of the appellant's Statement of Case, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a full planting specification which shall include tree, hedging and shrub sizes, species and numbers and locations of all proposed species, as well as a timetable for the planting. The scheme shall be carried out as approved. Any trees, hedging and shrubs which die, are removed, uprooted, significantly damaged, become diseased or malformed within 5 years from the completion of planting shall be replaced during the nearest planting season (1st October to 31st March inclusive) with vegetation of the same size, species and quality as previously approved.

End of Schedule