



Appeal Decision

Site visit made on 19 December 2023

by C Livingstone MA(SocSci) (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/N5090/W/23/3325337

48 Barnet Gate Lane, Barnet EN5 2AB

- 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 Ms Marjan Jahangiri against the decision of the Council of the London Borough of Barnet.
 - The application Ref 23/1002/FUL, dated 8 March 2023, was refused by notice dated 6 June 2023.
 - The development proposed is described as 'demolition of existing dwelling and replaced with a new dwelling, new metal fence on the front garden with new planting/landscaping, new bike storage, new associated level patio with steps.'
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and replaced with a new dwelling, new metal fence on the front garden with new planting/landscaping, new bike storage, new associated level patio with steps at 48 Barnet Gate Lane, Barnet EN5 2AB in accordance with the terms of the application, Ref 23/1002/FUL, dated 8 March 2023, subject to the conditions detailed within the attached schedule.

Preliminary Matters

2. An amended proposed section plan has been submitted as part of the appeal. It shows different internal floor to ceiling heights compared to the proposed section plan initially considered by the Council. The Council have had a chance to comment on the amended plan and confirm that the revised floor to ceiling heights would be acceptable. As the amended plan relates primarily to internal amendments and no fundamental external changes are proposed, and because the amendment would not cause any unlawful procedural unfairness to any parties, I accept the amended plan for consideration as part of the appeal proposal. The amended proposed section plan would address the Council's fourth reason for refusal.
3. The appeal submission includes an updated Preliminary Ecological Appraisal and Preliminary Roost Assessment¹ (Appraisal) which includes consideration of the proximity of the site to Arkley Field South Site of Importance for Nature Conservation (SINC), a non-statutory site of nature conservation. The Council have reviewed the Appraisal and confirm that they are satisfied that the proposal would be unlikely to result in either direct damage or indirect damage to the SINC. This addresses the Council's third reason for refusal.
4. The first reason for refusal, regarding character and appearance, includes reference to The London Plan (LonP) but does not refer to specific policies.

¹ By Arbtech Consulting Limited, Issue 2.1 dated 2 July 2023

However, the section of the delegated report titled 'Impact on the character of the area' refers to Policies D1, D3, D4 and D6. Policy D1 refers to the requirement of each Borough to prepare area assessments and plan for growth and is not directly relevant to the proposal. I have referred to the other policies in my reasoning below.

5. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

6. Taking the above into account, the main issues are:

- The effect of the proposed dwelling on the character and appearance of the area; and
- the effect of the proposed dwelling on the living conditions of the occupants of Nos. 46 and 50 Barnet Gate Lane with particular regard to outlook, sunlight and daylight.

Reasons

Character and appearance

7. The application site is located in a residential area defined by large properties with substantial plots. Barnet Gate Lane is curved and slopes slightly upwards towards the north. Properties in the street are staggered in places to maintain a consistent set back distance, reflecting the curve of the street. A defining characteristic of the area is the mix of traditional and modern architectural styles. This is reflected in the variance of the built form, roof types and fenestration, with modern properties including larger windows and feature glazing. Several properties have been replaced or extended to almost the entire width of their respective plots.
8. 48 Barnet Gate Lane is an example of an older and more modest property in the street. There is a staggered relationship and variance in ground level between the application site and neighbouring properties. As a result, the site is higher and stepped forward of the building line of 50 Barnet Gate Lane (No.50) and is lower and stepped behind the building line of 46 Barnet Gate Lane (No.46).
9. The proposal is for the demolition of the existing dwellinghouse and its replacement with a larger dwelling of modern design. Design details include a glazed gable in the centre of the front elevation, large four pane windows and a crown roof would include dormer windows to the sides and rear.
10. Although the proposed dwelling would be larger than the existing dwelling, its scale and massing would not be dissimilar to other properties on the street. As detailed above a defining characteristic of the area is the mix of architectural styles, and there are several examples of modern properties with similar proportions and design features. As such the proposed dwelling would reflect the scale, massing and design of other properties in the street and would respond well to local distinctiveness.

11. For the reasons detailed above the proposed dwelling would not have a harmful effect on the character and appearance of the area. Therefore the proposal is in accordance with Policies D1, D3, D4 and D6 of the LonP, Policies CSNPPF, CS1 and CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document 2012 (CS) and Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP). These policies are consistent with the Framework in that they require buildings and spaces to positively respond to local distinctiveness, deliver high quality and attractive design.
12. I note that the guidance provided within the Local Plan Supplementary Planning Document: Residential Design Guidance 2016 includes advice regarding the dimensions of extensions on existing dwellings. As the appeal proposal is for the erection of a replacement dwelling the advice provided within this SPD is not directly relevant to the proposal. However, even when taking the SPD into account, I find that the overall depth of the proposal and its rear projection would not harm the character or appearance of the area.

Living conditions of neighbours

13. The proposed dwelling would be stepped further forward of the front elevation of No.50, than the existing dwelling. The proposal would also result in a wider dwelling close to the boundary with each neighbour to the sides. Although the overall height of the proposed building would be only marginally taller than the height of the existing building, it would have higher eaves. To the rear, a single storey element would project beyond the rear elevation of No. 50.
14. While the front elevation would be stepped further forward from the existing building line the staggered relationship between the neighbouring properties would remain balanced. Further to this, properties in the area have large front gardens which engenders a sense of openness and the position of the replacement dwelling can be comfortably accommodated within the plot.
15. No. 50 is designed with an attached garage on the boundary with the application site, which would create a degree of separation between the proposed dwelling and the habitable accommodation within No.50. To the rear only a modest proportion of a single storey element of the proposal would project beyond the rear elevation of this neighbouring property. Therefore, given the established layout of the area, and the position and design of the proposed dwelling, it would not result in a loss of outlook or sense of enclosure to occupants of neighbouring properties including those at No.50.
16. The Daylight, Sunlight and Overshadowing Assessment (the DSOA) submitted in support of the application appears to relate to a previous proposal. As the appeal proposal is smaller than that previous proposal, it is reasonable to accept this assessment as any impact in terms of daylight, sunlight and overshadowing would be less than the previous larger proposal.
17. The DOSA follows the methodology set out by the British Research Establishment (BRE) in relation to both No.50 and No.46 and confirms that the previous proposal would 'not cause a noticeable change in light levels to existing occupants.' As part of the DOSA an overshadowing assessment was carried out on the rear gardens of No.50 and No.46 and found that that the previous proposal would comply with BRE requirements.

18. The DOSA does not consider the impact of the proposed development on the front garden of No.50. Planting within the front garden of No.48 includes several mature trees and shrubs. Furthermore, the position and orientation of the proposed dwelling to the north of No.50 are such that it is unlikely that the proposal would result in a harmful degree of overshadowing to the front garden of No.50 compared to the existing dwelling. No substantive evidence has been submitted to demonstrate that the proposed development would have a negative impact on occupants of neighbouring properties in terms of daylight, sunlight or overshadowing.
19. My attention has been drawn to concerns regarding the effect of the proposed development on the living conditions of occupants of No.46. The DOSA found no significant harm would be caused by a larger previous proposal to the living conditions of neighbouring occupants in these respects. Notwithstanding the findings of this assessment, based on my site visit and the evidence before me, the position and orientation of the proposed dwelling, coupled with the variance in ground levels between the application site and No.46, the proposal would be unlikely to have a harmful impact on daylight, sunlight and overshadowing or outlook at/from No.46. Further, the Council found that the proposed development would result in 'no significant amenity losses' in regard to the living conditions of the occupants of No.46 and I have no reason to disagree with the Council on this matter. The occupant of No.46 claims that the proposed dwelling would breach a 45 degree line from a rear window of their property, this may be the case. However, based on the evidence before me, including what I have seen on site, and taking in to account the variance in ground levels between each plot the proposal would not have a harmful impact on the living conditions of the occupants of No.46
20. For the reasons detailed above the proposed dwelling would not have a harmful effect on the living conditions of the occupants of Nos. 46 and 50 Barnet Gate Lane with regard to outlook, daylight and sunlight. The proposal is in accordance with Policy CS5 of the CS and Policies DM01 and DM02 of the DMP which require that development is designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers.

Other Matters

21. Concerns have been raised regarding the potential for the proposal to have a harmful impact on bats. Existing dwellings are a potential habitat for bats, which are identified as a European Protected Species. A Bat Emergence Survey Report (Arbtech Consulting, August 2022b) found no bat roosts at the site and makes recommendations to avoid any potential harm to bats. The Council are satisfied that the development would not have a harmful impact on bats or an established bat roost and I agree with this assessment, subject to the recommendations of the Bat Emergence Survey Report, which is incorporated within the Preliminary Ecological Appraisal and Preliminary Roost Assessment.
22. The proposed planting scheme details the removal of a tree that is subject to a Tree Preservation Order. The Council's Arboriculture Department are satisfied that the removal of the tree and the proposed planting scheme is acceptable. Following my site visit and noting the tree in question I agree with their findings on this matter.

Conditions

23. I have considered the suggested conditions against the tests set out in the Planning Practice Guidance and paragraph 56 of the Framework. Where appropriate, I have adjusted the wording to improve precision and enforceability.
24. I have attached conditions relating to the time limitations for the commencement of the development, compliance with the approved plans, proposed external materials and site levels in the interests of clarity and certainty and to protect the character and appearance of the area.
25. I have attached a condition requiring the approval of details of a Demolition and Construction Management and Logistics Plan in the interests of highway safety and the residential amenity of the occupants of neighbouring properties.
26. In order to ensure the proposed development would meet the needs of future occupants I have attached conditions relating to the adaptability of the proposed dwelling, the provision of cycle parking facilities, and waste and recycling storage facilities.
27. In the interests of visual amenity, I have included a condition relating to the provision, implementation and maintenance of a hard and soft landscaping plan and the protection of existing trees on the site.
28. In the interests of both visual amenity and the living conditions of the occupants of neighbouring properties conditions requiring the approval of details and the erection of means of enclosure. For the same reasons, on account of the size of the proposed dwelling and its close relationship to neighbouring properties, there is clear justification for the removal of permitted development rights for extensions and windows only.
29. Conditions requiring compliance with the submitted Preliminary Ecological Appraisal and Preliminary Roost Assessment, installation of bird and bat boxes, the installation of low impact lighting and the control of the period of site clearance are required in the interests of biodiversity and ecology.
30. I have included conditions in relation to the connection of the development to mains water infrastructure, the implementation of water saving measures and the implementation of carbon dioxide emission reduction measures in order to ensure the proposed dwelling is sustainably constructed.
31. A condition requiring the implementation of the proposed access and parking spaces is required in order to ensure highway safety.
32. A condition requiring refuse collection arrangements to be in place prior to occupation of the proposed dwelling is unnecessary and has therefore been omitted.

Conclusion

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

C Livingstone

INSPECTOR

Schedule of 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 approved plans: 04 (Rev A), 97, 98 (Rev A), 99, 100, 101, 102, 103, 105 (Existing Rear Elevation), 105 (Existing Side Elevations), 110, 200, 201 (Rev A), 203 (Rev A), 204 (Rev A), 205 (Rev A), 206 (Rev A), 210 (Rev A).
- 3) No development other than demolition shall commence until details of the materials to be used in the construction of the external surfaces and hard surfaced areas of the proposed development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4)
 - a) No development shall take place until details of the levels of the building, road and footpath in relation to the adjoining land and highway and any other changes proposed in the levels of the site have been submitted to and approved in writing by the Local Planning Authority.
 - b) The development shall thereafter be implemented in accordance with the details as approved under this condition and retained as such thereafter.
- 5)
 - a) The dwelling hereby permitted shall not be first occupied until, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection have been submitted to and approved in writing by the Local Planning Authority.
 - b) The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 6)
 - a) The dwelling hereby permitted shall not be first occupied until cycle parking spaces and cycle storage facilities have been provided in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.
 - b) The development shall thereafter be implemented in accordance with the details as approved under this condition and the spaces shall be permanently retained thereafter.
- 7)
 - a) The dwelling hereby permitted shall not be first occupied until details of all means of enclosure, including boundary treatments, have been submitted to and approved in writing by the Local Planning Authority.
 - b) The development shall be implemented in accordance with the details approved as part of this condition before the first occupation of the dwelling hereby permitted and retained as such thereafter.
- 8) The dwelling hereby permitted shall not be first occupied until it has been constructed to have 100% of the wholesome water supplied to it by the mains water infrastructure provided through a water meter. In addition,

it 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 with a fittings based approach used to determine the water consumption of the proposed development. Any use of grey water and/or rain water systems needs to be separate from the potable (wholesome) water system and needs to meet the requirements and guidance set out in Part G of the Building Regulations.

- 9) The dwelling hereby permitted shall not be first occupied until it has been constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 10 % 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 be maintained as such in perpetuity thereafter.
- 10) Notwithstanding the details shown in the drawings submitted, the dwelling hereby permitted shall not be first occupied until it has been 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 future). The development shall be maintained as such in perpetuity thereafter.
- 11) a) No development or site works shall take place on site until a 'Demolition and Construction Management and Logistics Plan' has been submitted to and approved in writing by the Local Planning Authority. The Demolition and Construction Management and Logistics Plan submitted shall include, but not be limited to, the following:
 - i. details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures;
 - ii. site preparation and construction stages of the development;
 - iii. details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
 - iv. details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway;
 - v. the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;
 - vi. a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
 - vii. noise mitigation measures for all plant and processors;
 - viii. details of contractors compound and car parking arrangements;
 - ix. details of interim car parking management arrangements for the duration of construction;

x. details of a community liaison contact for the duration of all works associated with the development.

b) The development shall thereafter be implemented in accordance with the measures detailed within the statement.

- 12) No site works or development (including any temporary enabling works, site clearance and demolition) shall take place until the temporary tree protection measures shown on 'Tree Protection (and Planting) – Construction' Drawing Number 04 (01.03.2023) approved have been erected around existing trees on site.

The protection specified in 'Tree Protection (and Planting) – Construction' Drawing Number 04 (01.03.2023) shall remain in position until after the development works are completed and no material or soil shall be stored within fenced areas and/or construction exclusion zones at any time. The development shall be implemented in accordance with the protection plan and method statement as approved.

- 13) The development shall be implemented in accordance with the recommendations in the Preliminary Ecological Appraisal and Preliminary Roost Assessment (Amended 2.1). Any works carried out in accordance with those recommendations shall be retained and maintained thereafter.
- 14) The dwelling hereby permitted shall not be first occupied until details (including specification, location, and orientation) of biodiversity enhancement measures to include 1 x Habibat Bat Box, 1 x Schwegler swift box, 1 x Schwegler 1SP Sparrow Terrace, 1 x Hedgehog Home and 1 x insect hotel have been submitted to and approved by the Local Planning Authority.

The dwelling hereby permitted shall not be first occupied until the approved biodiversity enhancement measures have been installed/constructed in accordance with the approved details and the guidance outlined within 'Designing for Biodiversity A technical guide for new and existing buildings (RIBA)'.

- 15) The dwelling hereby permitted shall not be first occupied until details of Low Impact Lighting have been submitted to and approved by the Local Planning Authority. Any artificial lighting scheme including off street lighting, shall be in accordance with Bats Conservation Trust Guidance Note 08/18 Bats and artificial lighting in the UK Bats and the Built Environment series.
- 16) All vegetation clearance shall be carried out outside of the active nesting bird season (March 1st to August 31st inclusive).
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements or windows otherwise permitted by Classes A,B,C or D of Part 1 of Schedule 2 of that Order shall be made to or constructed in the dwelling hereby permitted.
- 18) a) The dwelling hereby permitted shall not be first occupied until a scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions of

any soft landscaping, has been submitted to and agreed in writing by the Local Planning Authority.

b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following the occupation of the dwelling hereby permitted or completion of the development, whichever is sooner.

c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

- 19) The dwelling hereby permitted shall not be first occupied until the proposed parking spaces within the parking area as shown in drawing no. 210 (REV A) submitted with the planning application and the access to the parking area from public highway have been provided. The access to the parking spaces shall be maintained at all times.

The parking spaces shall not be used for any purpose other than the parking and turning of vehicles in connection with approved the development.

**** END OF CONDITIONS ****