



Appeal Decision

Site visit made on 15 February 2024

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/N5090/W/23/3320810

84 West Heath Road, London, NW3 7UJ

- 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 Stuart Minty of SM Planning against the decision of London Borough of Barnet.
 - The application Ref 22/0228/FUL, dated 14 January 2022, was refused by notice dated 14 March 2023.
 - The development proposed is Demolition of existing building (Class C2) and erection of five storey (plus lower ground floor) building for use as a care home (Class C2) comprising living accommodation and ancillary communal space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Having reviewed the evidence I concluded that it was appropriate to consider the effects of the development on biodiversity and protected species and this is reflected in the wording of the main issues. The appellant was invited to submit further comments in this regard.

Main Issues

3. The main issues are the effect of the development on:
 - The character and appearance of the area;
 - Protected species and biodiversity; and,
 - Whether the development would have an adverse effect on highway safety and parking stress, sustainability and climate change, and local employment opportunities.

Reasons

Character and appearance

Site context

4. West Heath Road is characterised by large scale residential plots with dwellings of varying typology. There is significant mature vegetation associated with road boundaries on many of the plots, including the appeal site.

5. The site is occupied by Heathfields, a large Victorian villa built around 1880, which comprises two storeys above ground with roof accommodation, and which was last used as a school. The 19th villa has a confused aesthetic with individual features of merit including a baronial entrance, carved stonework and stone mullions, and a copper topped brick turret. To the rear, there is a large L-shaped brick extension of a rather bland and unremarkable late 20th century design.
6. The heritage assessment indicates that the villa was built within a far larger estate of woodland and pleasure gardens, but over time the larger plot has been subdivided and significantly reduced in extent. It is nonetheless largely screened from the road by a belt of mature deciduous and evergreen tree species of varying condition along the site's frontage. There is a further strip of mature trees along the site's south-eastern boundary which borders the rear gardens of dwellings on Westover Hill, as well as a group of trees in the site's north-western corner. These allow glimpsed views only into the site from neighbouring plots.
7. The appeal statement and townscape report¹ notes that West Heath Road is characterised by large plots, large footprints, buildings set back from boundaries, dense vegetation along the front boundary and brick walls with hedges above. These characteristics are evident singly or in combination along some sections of West Heath Road, but I noticed considerable variation along different sections and in particular, in the vicinity of the site. Nonetheless, the appeal plot is characterised by a comparatively large plot, a large building which is set back from the road, and dense vegetation on the front boundary.
8. The site and its immediate neighbours sit within an area defined as Linear Rural in the Barnet Characterisation Study (BCS). The BCS sets out a classification of built form based on typology.
9. This Linear Rural category is a small area which abuts the West Heath and which is defined as an area which has arisen from sporadic, piecemeal growth along country lanes, which are often later upgraded to take more traffic. There is no consistent house style or period, but the importance of planting, including trees and hedges is highlighted as a main contributor to urban form. Space along linear routes remains primarily enclosed by mature vegetations. I acknowledge that the BSC is not a design guide. Nonetheless, it is a useful tool when applying the development plan policies in relation to design and its effect on local context, and its use in that regard is referred to in Policy CS5 of the Local Plan (LP). Moreover, I agree that this classification broadly describes the typology of the area around the site.

Development

10. The townscape report notes that the site's developable area was informed by the tree surveys in order to avoid root protection zones (RPZs) and also to provide a 9 metre separation zone around the site. However, it is apparent that parts of the building, and some paths and circulation space would encroach into some RPZs. In addition, the two-storey projection on the building's south-eastern elevation would intrude into the 9 metre separation zone by some distance. The development would cover far more of the site than is currently the case, and would also extend to within a few metres of the canopies of some

¹ Appeal Statement for Townscape, Harrison Varma Ltd

trees on the road boundary. To the south-east, the car park would sit between the care home and the site boundary with almost no buffer. Notwithstanding that Heathfield's existing rear extension has been built over the notional RPZs of some protected trees on the south-eastern boundary, the car park would extend closer to the site boundary and those trees.

11. The care home would be five storeys tall with basement. Step backs on the 4th and 5th storeys would reduce mass and bulk above the third storey on some elevations. Nonetheless, the development would be four storeys high at the corner of Eden Close and West Heath Road, and would appear as four storeys along the elevation facing the road. There would therefore be a considerable increase in height, massing and bulk as well as a notable increase in site coverage and the spread of development, particularly towards the front of the site, compared to the current situation. The development would not maintain the existing architectural composition of the site which is the argument advanced in the appeal statement.
12. Notwithstanding that there would be some articulation with regard to set-backs on the elevations and step downs in height, there would be notable consistency of fenestration, both in size and geometric arrangement across almost all elevations. This would reinforce the perception of the building's overall size, massing and extent. It would appear incongruously and disproportionately large in this setting which would be reinforced by its prominent corner plot and elevation. I conclude that the development's overall height, scale, mass and spread across the site would represent overdevelopment and would fail to relate to or reflect the underlying building pattern.
13. The appeal statement and the townscape report set out that the care home would be surrounded by four and five storey residential development. This was not apparent at my visit. The BCS states with regard to the Linear Rural area that building heights range from 1-3 storeys. From the appeal site I could see nearby dwellings along Eden Close which appeared to be two storeys with roof accommodation, which also appeared to be the case for dwellings on Westover Hill which runs along the south-eastern plot boundary. This was also the case for the substantial mansion style dwellings on the other side of West Heath Road. Moreover, the height of some nearby buildings is confirmed from drawn details in the appellant's daylight report² in relation to potential overshadowing, and they are clearly not four or five storeys high.
14. With regard to the preponderance of more modern dwellings, this appeared to be very limited in the vicinity of the site. There is a line of contemporary blocks to the immediate south of the site, but even if they are perceived as one larger structure, as the townscape report suggests, they have fewer storeys than what is proposed.
15. The appellant's evidence suggests that some taller dwellings in the area are concealed by topography, but even if this is the case, the full height of the care home would not be concealed by topography.
16. As noted above, one of the characteristics of the area is the predominance of trees and hedges. It is argued by the appellant that this characteristic feature would be retained. However, a tree report provided by interested parties³ cites

² BVP, Daylight and Sunlight, May 2022

³ DPA Arboricultural Consultants, March 2022

BS5837:2012⁴ and notes that tree retention should achieve a harmonious relationship between trees and structures, that can be sustained in the long term. Where the relationship between trees and a development is not adequately considered, this can lead to harm to root systems, the decline of previously healthy trees, trees needing pruning to accommodate the building and construction, and pressure to remove or severely prune specimens to allow light and daylight into rooms and across amenity areas. Based on my experience, I see no reason to disagree with these statements.

17. Some rooms facing the road would be within a few metres of the canopies of retained trees along the road frontage. In my experience care home residents prefer sunlight and views to what is described as appealing greenery. As such, it seems very likely that these trees would come under pressure for removal or severe pruning.
18. During the appeal the appellant confirmed that the daylight report had taken evergreen trees into account when considering the ingress of light into residents' rooms. There is no indication of this in the report. In any case, most of the trees along the frontage are deciduous so I conclude that they were not taken into account in the light assessments for future occupiers.
19. The additional evidence from the arboricultural consultant submitted during the appeal refers to shade arcs in the Arboricultural Impact Assessment (AIA). However, there are no shade arcs shown on the plans in the AIA or any other plans that I can see. In any case, the advice given in BS 5837:2012⁵ regarding shade arcs is that they are based on the direction of shadow between May to September, and the shadows should be shown as the height of the tree. Between October and April, the sun would be lower in the sky and the shadows cast by trees would be significantly longer than the height of the tree.
20. Appendix 5 of the daylight report shows overshadowing to amenity areas but the key does not identify the date or time on which those shade patterns would be expected. In any case, a comparison of the shade patterns shown and the corresponding trees' height indicates that the length of the shadow cast is well short of the height of the tree. There are trees along the road frontage that are shown to be up to 20 metres in height, yet their shadows are shown as stopping well short of the building's south-western elevation. As such, the plan does not show the full extent of overshadowing caused by trees, whether in relation to the building or amenity areas, even at the particular time of day selected.
21. Having reviewed the relationship between the building and the retained vegetation I conclude that there would be significant overshadowing of some rooms, for long periods of time, at certain times of year. As such, the perceived or actual adverse impact on ambient light within the care home, and views out, could also lead to pressure for works to nearby trees.
22. Moreover, many of the existing trees are etiolated and leggy which in my experience encourages fears of failure in stormy weather, and which also leads to pressure for severe pruning or removal. Third party representations have also raised concerns in relation to seasonal debris. This can cause a perception

⁴ Trees in relation to design, demolition and construction - Recommendations

⁵ Trees in relation to design, demolition and construction - Recommendations

- of slip and trip hazards for older and less mobile people, which might also add to pressure for the removal of particular specimens.
23. The argument is advanced that the Council would be able to resist this pressure, but this is not guaranteed. It seems very likely to me that there would be pressure for tree works for a variety of reasons and this could lead to a significant diminution of existing trees on the site.
24. The arboricultural consultant advises that paths and patios areas would be constructed on RootBridge platforms. It is unclear how the level changes would be accommodated, or whether the platforms would slope to follow site levels. Nonetheless I appreciate that the impact of construction for paved areas over RPZs could be mitigated to some extent. However, my concerns regarding overshadowing, light, safety fears and seasonal debris remain.
25. It is proposed that conditions 6, 7 and 9 would provide adequate tree protection. These conditions require, respectively, the approval of details for the geometry of service runs, and the approval of a tree protection plan as well as that of foundation design where it might affect tree roots. However, the fact that tree roots might be affected at all is somewhat at odds with the design aims of identifying a developable area on the basis of the RPZs. The layout plan clearly shows encroachment into RPZs. The imposition and discharging of these conditions might limit the damage caused by construction but given the extent of works across the site and their proximity to the existing trees I am unable to conclude that the imposition of these conditions would ensure that site trees would be unaffected by the works.
26. This reinforces my concerns that it is unrealistic to presume that the trees along the site's boundaries would remain in their current form if the appeal was allowed, particularly as the building would dominate the site with very little space for a buffer between trees and the building, car park and amenity areas. This would allow greater intervisibility between the site and its surroundings. Furthermore, although there is a landscape plan for the site, given the proposed site coverage it is apparent from those plans that there are limited opportunities for replacement tree planting on a meaningful scale. Where new trees are shown on the plan their canopy spread is significantly less than that of a mature tree, which reinforces my concern in this regard.
27. The appellant has highlighted large scale development on another site on West Heath Road. This part of the road also appears to fall within the Linear Rural classification of the BCS. Nonetheless, large scale development in one part of the road does not automatically warrant similar scale development being built in other locations. There could be an adverse cumulative effect which would begin to make subtle changes to the underlying building pattern. In any case the BCS concludes that the challenge with regard to scale and massing, is to maintain the existing sense of small scale and fine grain development in the wide suburban area of the borough, and highlights that prevailing scale and massing should be protected in areas where there is consistent character. Although there is an underlying variety of design and form around the appeal site, there is some coherence in relation to scale, height, bulk and massing.
28. I conclude that the building would have an adverse effect on the character and appearance of the area as a consequence of its overall bulk, extent and spread across the site. The development's overall adverse visual impact would also be

aggravated by the likely diminution of site vegetation which currently provides some screening and is a key characteristic of the underlying building pattern.

29. The development would therefore be contrary to LP Policy DM01 which requires development to represent high quality design which should be based on an understanding of local characteristics, and should preserve or enhance local character and respect the appearance scale, mass, height and pattern of surrounding buildings, spaces and streets. There would also be conflict with the design aims of LP Policy CS5 which specifically references the use of BCS as a baseline guide for areas unprotected by conservation area status, and the Residential Design Guidance SPD which taken together require development to preserve or enhance local character and respect the appearance, scale, mass, height and patterns of surrounding buildings, spaces and streets. The development would also conflict with the design aims of LP Policy CS1, Policy D3 of the London Plan and Paragraph 11 of the Framework.

Biodiversity and protected species

Veteran Tree

30. The veteran oak, T37, is a category A tree, which is the highest classification under BS 5837: 2012. Natural England notes that although veteran trees may not be very old, they have significant decay features such as branch death and hollowing. These features contribute to exceptional biodiversity, cultural and heritage value. The Forestry Commission and Natural England's standing advice with regard to veteran trees, sets out they should be protected by a buffer zone of 15 times the diameter of the tree. The guidance goes on to state that buffer zones should consist of semi-natural habitats such as woodland or a mix of scrub, grassland, heathland and wetland.
31. The RPZ for T37 shown within the AIA has been shown on the drawing and within the tree schedule at 12 times the diameter. Nonetheless the AI includes evidence of a sample trench dug within T37's theoretical RPZ which did not reveal any roots. As such it seems likely that the actual roots are less extensive. However, the AIA also quotes the standing advice regarding development in buffer zones, and concludes that the hard surfacing and building proposed would not be considered appropriate. Given the ecological importance of veteran trees it is consequently unclear why the AIA then concludes that the impact of the works on the veteran oak would be low.
32. The plans show a 'compensatory area' for the oak's RPZ. However, veteran trees are in a state of senescence and decline, and are highly unlikely to have the vigour to expand their root zones.
33. I also noticed at my visit that the oak has a slightly elevated position in relation to the floor level of the rear extension. It is unclear to me how the ground levels would be retained to prevent root damage. Taking all these points into account, I am unable to conclude that the development would not result in the deterioration or loss of this veteran tree.
34. I have set above my concerns in relation to the limited space for additional or replacement planting. Although conditions are suggested, I am not satisfied that these would provide adequate protection as the conflict arises from the basic site layout.

Bat survey

35. The standing advice from Natural England with regard to protected species states that developers should submit enough information for local planning authorities to fully consider the effect of the development on protected species and their habitats. Circular 06/2005⁶ states that *it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.*
36. A preliminary ecological appraisal and preliminary roost assessment was undertaken in August 2020⁷. This confirmed that the veteran oak has moderate potential for roosting bats and that trees identified as having bat roost potential must be protected from works within the RPZ. The report states that where there is moderate potential, two further surveys are to be undertaken, one of which is to be between May and August⁸. However, the updated report⁹ appears to refer only to the low potential for bat roosts previously identified within the building and only one further survey was undertaken, in late September. The moderate roosting potential of the veteran oak is not mentioned. In any case, the guidance set out in the report notes that one further survey should be carried out between May and August. As such, it is clear that the updated survey did not fall within the guidelines for the investigation of sites with moderate roosting potential.
37. The Council's external consultee¹⁰ confirmed in February 2022 that two separate surveys were required before the application was determined and that one of these should be in May or August. It is unclear to me why the Council's internal consultee did not raise an objection in this regard¹¹ when the further survey was carried out outside this period. On the basis of what is before me it appears that the investigations have not been carried out in accordance with best practice and standing advice. I am unable to conclude that even with mitigation there would not be an adverse effect on protected species.
38. The report also notes the importance of retaining boundary vegetation to preserve linkages between vegetation stands and which provide routes for traversing bats identified as having high potential. The biodiversity impact report¹² notes that the site woodland is an important ecological resource for local biodiversity, but that with the creation of other habitats and woodland enhancement there would be a biodiversity net gain. Nonetheless, this appears to pre-suppose that the existing woodland areas would be retained, and I have set out above why I think this is unlikely. This could have an adverse effect on bat populations.
39. With regard to the veteran tree and protected species, the development would therefore fail to accord with LP Policy DM01 which requires development to contribute to biodiversity including the retention of existing wildlife habitat and trees, and the safeguarding of trees. There would also be conflict with Paragraph 186 of the Framework which states that development resulting in the loss or deterioration of irreplaceable habitats should be refused unless

⁶ ODPM, August 2005

⁷ Syntegra Consulting, Preliminary Ecological Appraisal Report, January 2021

⁸ Table 1, Syntegra Consulting, Preliminary Ecological Appraisal Report, January 2021

⁹ Syntegra Consulting, updated Preliminary Roost Assessment with Dusk Activity Survey Report, October 2022

¹⁰ Capita, 9 February 2022

¹¹ Senior Ecologist, 12 October 2022

¹² Syntegra Consulting, Biodiversity Impact Calculation Report July 2022

there are wholly exceptional reasons, and a suitable compensation strategy exists. There is nothing before me to indicate that this development represents an exceptional reason. Moreover, although I acknowledge that conditions could ensure the provision of bat boxes, and other minor biodiversity enhancements, this would not necessarily compensate for the deterioration in site vegetation and its contribution to local bat traversing and foraging routes. Although I give this conflict only moderate weight, it nonetheless weighs against the appeal.

Planning obligation

40. One of the reasons for refusal was that there was no mechanism to ensure the submission of a Travel Plan or monitoring costs, a Section 184 agreement, carbon offset or a Local Employment Agreement. I have a completed Unilateral Undertaking (UU) before me.
41. The need for a Travel Plan and monitoring fees, together with support for transport infrastructure are required by LP Policy DM17, and this is reinforced by LP Policy CS9 which requires the delivery of appropriate transport infrastructure. I am satisfied that the UU would address these requirements.
42. With regard to sustainability, the officer's report notes that the development would achieve the requisite carbon reduction targets and it would be acceptable and policy compliant. Nonetheless, the Council's statement requires the appellant to make a carbon offset payment. Reference is made to the Sustainable Design and Construction SPD but no further detail is given and I am unable to find any reference to carbon offset payments in this SPD. However, Policy 5.2 of the London Plan, supported by LP Policies CS5, CS13 and DM04, requires non-domestic buildings to be zero carbon by 2019 and where this is not achievable, requires a cash payment to secure the delivery of carbon dioxide saving elsewhere. There is a dispute between the parties regarding the sum involved, but as I have found harm in relation to the main issues it is not necessary for me to consider this further.
43. The Council has cited the Delivering Skills, Employment, Enterprise and Training from Development SPD and LP Policy DM14 with regard to the provision of employment opportunities. This document sets out that it applies to development that generates jobs through construction and/or end use. There is nothing before me to indicate that the development itself would represent a net loss of employment space, but the construction would generate jobs on a significant scale. In principle the need for support is accepted by the appellant, with dispute only in respect of the need to provide up-front payments. However, as I have found harm in relation to the main issues there is no need for me to consider this further.
44. As such, I am satisfied that contributions as set out are required to make the development acceptable in planning terms and contribute to the Council's monitoring costs. However, that mitigation would not outweigh the harm arising to character and appearance of the area, and biodiversity and protected species.

Other Matters

45. There would be eleven parking bays, with six allocated to staff and five used for visitors. The number of staff spaces has been informed by the expectation

that 40 per cent of the 15 full-time staff will drive to work. There would not be any other spaces available for visiting health care professionals.

46. The highway authority notes in its response that residents will not have their own vehicles, and presumably this could be a condition of residency. However, it does seem likely that a proportion of residents' visitors would drive to the site, and a provision of only five spaces seems low. Nonetheless, the surrounding area has comprehensive parking restrictions and in the event that the appeal was allowed, the UU could ensure that amendments were made to the Traffic Order to prevent the issue of additional parking permits for drivers associated with the development. As such on the basis of what is before me, I conclude that the development would not lead to significant on-street parking stress.
47. The Victorian Society proposes that the building should be considered to be a non-designated heritage asset. However, the building was not included in the latest list of non-designated heritage assets, updated by the Council in 2022.
48. Concerns have been raised by interested parties regarding Heathfields' retention. The evidence does not include a full condition survey or information regarding the financial viability of renovation. From my brief walk through internally, it did not appear to be beyond reasonable repair. However, I acknowledge the practical difficulties of conversion to a care home set out in the evidence¹³, and appreciate that even if the outer envelope of the building was retained, there would need to be significant reconfiguration internally to achieve rooms of an appropriate size, thermal insulation and services, amongst other considerations.
49. Interested parties have also raised concerns in relation to the care provider and how levels of care could be enforced. However, with this as with other concerns, as I have found harm in relation to the main services it is not necessary for me to consider this further.
50. The townscape analysis refers to the Redington and Frognaal Conservation Area (CA). However, although West Heath Road forms the northern boundary of the CA, which is within Camden, it appears to be some distance from the appeal site. Consequently, reference to the characteristics of the CA and its appraisal weighs neither for nor against this appeal and there is nothing before me to indicate that I need to consider the effect of the development on the CA.
51. I appreciate that the application was supported by officers. Nonetheless, Members took a different view, as they are entitled to do. I also appreciate that some of the concerns set above have been subject to agreements with the Council but this does not alter my reasoning or my conclusions.

Conclusion

52. The development would provide residential care facilities for a large number of elderly people which carries weight in favour of the appeal. However, I conclude that this would not outweigh the harm identified above in relation to the character and appearance of the area, and biodiversity and protected species.

¹³ Wolff Architects, September 2023

53. In the light of the above I conclude that the development would conflict with the local development plan and the London Plan, as well as national guidance and there are no material considerations of such weight to lead me to conclude otherwise. The appeal is dismissed.

A Edgington

INSPECTOR