



## Appeal Decision

Site visit made on 4 December 2024

**by Joanna Gilbert MA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 January 2025**

**Appeal Ref: APP/N5090/W/24/3345445**

**Heathside High Preparatory School, 84 West Heath Road, Barnet, London NW3 7UJ.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Stuart Minty of SM Planning against the decision of the Council of the London Borough of Barnet.
- The application Ref is 22/3958/FUL.
- The development proposed is demolition of existing building (Class C2) and erection of three storey (plus lower ground floor) building for use as a care home (Class C2) comprising living accommodation and ancillary communal space.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of development on the application form refers to a five-storey (plus lower ground floor) building, while the appeal form and decision notice refer to a three-storey (plus lower ground floor) building. I have considered the appeal for erection of a three-storey (plus lower ground floor) building as the amended scheme was subject to consultation and determined by the Council.
3. A previous application 22/0228/FUL for the demolition of the existing building (Class C2) and the erection of five storey (plus lower ground floor) building for use as a care home (Class C2) comprising living accommodation and ancillary communal space was refused and dismissed at appeal<sup>1</sup>.
4. An application for permission to apply for statutory review on the previous appeal was refused on 12 June 2024. The dismissed appeal was subject to a renewed application for permission to apply for statutory review<sup>2</sup>. The judgment<sup>3</sup> confirms that looking at this decision as a whole, the Deputy Judge of the High Court failed to see that a changed position in relation to the Oak tree (T37) could make a difference to the outcome, due to the Inspector's other findings. I have had regard to the judgment and the previous appeal decision as material considerations.
5. Barnet's Draft Local Plan is at examination. I have not been notified that it has been adopted. I have therefore had regard to current development plan policy.

<sup>1</sup> APP/N5090/W/23/3320810, decision issued 12 March 2024.

<sup>2</sup> One ground only was pursued on renewal, namely, that the Inspector made errors in her assessment of the effect of the proposed development on a veteran oak tree and that any one of those errors was fatal to her decision.

<sup>3</sup> 84 WHR Limited v Secretary of State for Levelling Up, Housing and Communities and the London Borough of Barnet [2024] EWHC 2358 (Admin).

6. A completed and signed unilateral undertaking dated 17 September 2024 was submitted by the appellant. I have taken this into account in my decision.
7. The revised National Planning Policy Framework (NPPF) was published on 12 December 2024. Both main parties have had the opportunity to comment on the NPPF and I have had regard to their comments in reaching my decision.

### **Main Issues**

8. The main issues in this appeal are a) the effect of the proposed development on the character and appearance of the area, and b) whether the proposed development would make adequate provision for community and infrastructure needs.

### **Reasons**

#### *a) Character and appearance*

9. Running between Hampstead and Finchley Road, West Heath Road is a winding road characterised by large plots with large dwellings of varied architectural styles, sizes and ages. Existing buildings vary from older villas and detached houses to modern apartment blocks. The unifying feature is the significant tree cover and mature vegetation abutting the boundaries of numerous plots.
10. Eden Close, a short private road with large houses, lies north and north-east of the site and is accessed along the site's boundary. Further housing is south and east of the site along Westover Hill. Adjoining the site, four three-storey modern buildings front West Heath Road and Westover Hill. On the opposite side of West Heath Road, 63 and 67 West Heath Road (Oracle Apartments and Oak Lodge) are modern apartment blocks, while The Oren is under construction at 114 – 120 West Heath Road to the north.
11. Located on an incline on West Heath Road adjacent to Eden Close, the site is prominent within the streetscene due to its elevated nature and position on a slight bend. It is presently occupied by a large red brick villa dating from the 1880s. The villa has a somewhat confused and altered architecture, including a large pitched roof, a copper-roofed brick turret, tile hanging, large gables, carved stonework, and stone mullions. It appears that the site has been subject to significant change. When first built, the villa was sited in extensive grounds, including pleasure gardens. The grounds have reduced to the building's immediate environs. Though the site remains one of the larger plots locally, it is now more suburban in grain. Behind the imposing, older villa building, an unremarkable 20<sup>th</sup> century L-shaped two-storey brick extension extends over much of the site's remaining depth. The building is set back above the road and is partially screened from the road behind evergreen and deciduous trees, vegetation, and a fence. Trees along the site's south-eastern boundary are protected by a Tree Preservation Order.
12. The appellant's heritage assessment confirms that the site does not lie within a conservation area and the existing building is neither statutorily nor locally listed. The Secretary of State for the Department for Culture, Media and Sport declined to list the building in April 2022, while the Council updated its local list recently and the building was not included on the local list at that time. The appellant has referred to the Redington/Froggnal Conservation Area in neighbouring Camden, but the site falls outside this conservation area.

13. The Barnet Characterisation Study 2010 (BCS) describes roads such as West Heath Road as forming part of the linear rural development typology. This typology stems from sporadic, piecemeal growth along country lanes or tracks, which are later widened or straightened for traffic yet retain their informal character. Within the typology, there is no consistent house type or period and materials and styles are equally diverse. More recent houses tend to be on narrower plots. A key characteristic in the typology is the dense belts of trees and vegetation that line streets and give a high level of privacy and exclusivity to properties. The BCS describes houses along West Heath as being quite large with a greater abundance of detached housing on large plots becoming semi-rural in character. I find that the linear rural development typology appears applicable to the typology of buildings and streets locally.
14. The proposed development would remove the existing building and provide a three-storey building with a basement. This would be two storeys lower than the proposal dismissed at appeal. The proposed development for a care home would have 62 bedrooms across ground, first and second floors.
15. Though taller than parts of the existing building, the proposed development's overall height would be similar or lower than several other buildings along West Heath Road. In addition, the proposed development would be much lower than the previous dismissed scheme and would be lower than the highest point of the existing building. Indeed, there is taller five to six storey flatted development at 51, 63 and 67 West Heath Road, and at The Oren.
16. Though these buildings are also tall, the buildings at 51, 63 and 67 West Heath Road assimilate relatively well with their neighbours on West Heath Road. The Oren was still under construction at the time of my site visit so it was difficult to see fully how it would assimilate with its surroundings, but it appeared to have a greater setback from the streetscene than the proposed development.
17. However, the proposed development would project further forward in the site than the existing building and would have a wide front elevation which would extend further to the west than the existing building. This would bring built form further across the site towards Eden Close. Despite the reduction in the proposed development's height, the proposed development's siting would considerably increase the massing and bulk of built form on site, and would bring a disproportionately wide building close to the site's frontage.
18. Despite recessed and projecting elements providing articulation of the proposed development's front elevation and notwithstanding the light afforded by large windows, the proposed development's consistent fenestration and overall architectural composition would reinforce the proposed development's massing and bulk. The overall massing and bulk and considerable site coverage would be rendered more prominent by the site's raised position above the road and adjacent to the bend in the road. This prominence would be greater when the treed boundary was not in leaf. Consequently, the proposed development would be incongruous, bulky, and visually discordant in a sensitive and prominent location.
19. The BCS notes the characteristic preponderance of trees and vegetation that line streets in the linear rural typology. The appellant contends that this characteristic would be retained as part of the site and that the Arboricultural

Impact Assessment<sup>4</sup> (AIA) indicates that there would be minimal impact on trees with only eight of 48 trees on site being removed or pruned to accommodate the proposed development. While tree T37<sup>5</sup> was the subject of considerable discussion in the previous appeal and the aforementioned judgment, I have focussed my attention on the trees on the site's frontage in relation to the character and appearance of the area.

20. The Inspector for the previous appeal noted the provision of a report<sup>6</sup> on behalf of interested parties which cited British Standard BS5837:2012<sup>7</sup>. This report noted that tree retention should achieve a harmonious relationship between trees and structures, that can be sustained in the long term. It went on to confirm that where the development is designed inconsiderately, this can cause harm to root systems, early decline of previously healthy trees, trees requiring pruning to accommodate the building, and pressure to remove or prune trees to allow sunlight and daylight to habitable rooms and amenity spaces.
21. As in the previous appeal, bedrooms, dining rooms and several suites on the site's frontage would have their only windows positioned within a few metres of the canopies of retained trees along the road frontage. I concur with the previous Inspector that sunlight and views may be preferable to care home residents than appealing greenery. Certainly, it would be reasonable to expect that care home residents would spend more time than the average person in their bedrooms or suites as these rooms represent their sole private space. Accordingly, this would likely lead to pressure to remove or reduce in size the trees along the site's frontage to reduce shading and increase views.
22. The appellant's Daylight and Sunlight Report (March 2023) (DSR) confirms that the proposed development would receive good daylight since 89% of all habitable rooms would achieve BRE's 2022 criteria. The DSR asserts that sunlight availability would vary in response to aspect and the relevant rooms would adhere to BRE's criteria or the London Plan's recommendation. However, the bedrooms for future occupiers would be, in the majority of cases, the only private space available to those occupiers and would include seating, indicating that the rooms would be used as living rooms as well as bedrooms if the occupiers did not wish to use the communal living or dining areas or found it difficult to do so due to their health. As such, it is unclear whether a minimum daylight provision of 100 lux for bedrooms or 150 lux for living rooms should be applied in this instance as the guidance confirms that "where a room has a shared use, the highest target should apply...". Indeed, the DSR applies 100 lux to all bedrooms within the proposed development.
23. The DSR also confirms that the site is surrounded by many trees and a significant number appear to be evergreen which they have included within their modelling. However, beyond reference to the tree survey<sup>8</sup>, there is no clear indication as to how the evergreen trees were taken into account in terms of light to the numerous habitable rooms proposed. Many of the trees along the site's frontage are deciduous species. No mention is made of any consideration of the effect of deciduous trees on light in the DSR.

---

<sup>4</sup> Ref: KYN/84WHR/AIA/01h dated 17 March 2023.

<sup>5</sup> Tree T37 is situated to the rear of the existing building adjacent to the site's boundary with Westover Hill properties.

<sup>6</sup> Ref: DPA-9099-140322-Arbicultural Objection.

<sup>7</sup> Trees in relation to design, demolition and construction – Recommendations.

<sup>8</sup> Referred to in the DSR as Tree survey issued by Wolff Architects Ltd on 13.01.2022:  
- 0525-11-01\_84 West Heath Road Masterplan REV C.dwg.

24. The appellant's AIA refers at 2.4.2 and 4.2.2 to shade constraints. Mention is made of a site plan with shade constraints overlain onto it. However, as for the previous appeal, there are no shade arcs or constraints shown on the AIA plans or any other plans before me. As noted in the AIA, shade arcs are based on shadow patterns of 1 x tree height between May and September and between 1000 and 1800 daily. Between October and April, the sun would be lower in the sky and shadows cast by trees would be longer.
25. The DSR provides an indication at Appendix 5 (but also numbered 6) of overshadowing to the main amenity area on 21 March and 21 June. Despite the AIA indicating the height of trees along the site's frontage, it appears that the length of the shadows cast in the overshadowing plans would be short of the frontage trees' height. As in the previous appeal, the full extent of overshadowing caused by trees does not appear to have been shown. Therefore, it has not been adequately demonstrated that the proposed development would not result in the overshadowing of some rooms by nearby trees, thereby leading to pressure to remove those trees or reduce them in size. Not only would the loss of frontage trees eradicate one of the area's defining features, but it would increase the proposed development's prominence in the streetscene.
26. Furthermore, given their proximity to amenity space outside the proposed development's frontage, it is also likely that seasonal leaf drop would cause hazards for less mobile residents, risking slips and falls. I also note the leggy nature of some of the frontage trees, which may give rise to actual failure or perception of likely failure of branches in stormy weather. These factors would also contribute to the pressure to remove or reduce the size of existing trees.
27. The appellant has provided a letter from Joel Michaels Reynolds<sup>9</sup>. This refers to the DSR and outlines the importance of making the best use of land, optimising site capacity, and making a flexible approach to applying policies or guidance relating to daylight and sunlight as per paragraph 130 c) of the NPPF and the London Plan 2021. Reference is made to the BRE Guidance<sup>10</sup>. However, this does not alter my concerns that the proximity of windows along the site's proposed front elevation to the frontage trees would likely lead to pressure to remove or reduce in size those trees.
28. Rootbridges would support the proposed patio areas and paths on site and reduce any impact on the root systems of adjacent trees. This would include areas of rootbridging adjacent to the proposed building's frontage close to the trees along the site's frontage. While this would be positive in protecting the root systems, this would not alter my concerns about pressure to prune or remove these trees due to their shading effects. Furthermore, the introduction of other conditions or obligations on tree protection, woodland landscape management, and landscaping would not satisfactorily address issues surrounding the likely future of the frontage trees.
29. Notwithstanding officer support for the application, members of the Council's Planning Committee took an opposing view. So long as members' concerns are appropriately substantiated, it is not unreasonable for them to take a different view from their professional officers.

---

<sup>9</sup> Ref: DR/RM/We10).

<sup>10</sup> 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice BR209/ 2022 3<sup>rd</sup> Edition.

30. Reference has been made to an earlier appeal<sup>11</sup> nearby, where the Inspector found there is little uniformity in the properties in the surrounding context. However, the appeal decision has not been provided to me. In any event, each case should be considered on its own merits.
31. I conclude that the proposed development would have a detrimental effect on the character and appearance of the area. Consequently, it would fail to comply with London Plan Policy D3, Policies CS1 and CS5 of Barnet's Local Plan Core Strategy (2012)(CS), Policy DM01 of Barnet's Local Plan Development Management Policies (2012)(DMP), and the Council's Residential Design Guidance Supplementary Planning Document (2016)(SPD).
32. London Plan Policy D3 seeks to optimise site capacity through the design-led approach and respond to existing character by identifying the special and valued features and characteristics unique to the locality. CS Policy CS1 sets out a place shaping strategy and seeks the highest standards of urban design. CS Policy CS5 looks to respect local context and distinctive local character. DMP Policy DM01 requires proposals to preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets. It also states that existing trees should be adequately protected and safeguarded. The Residential Design Guidance SPD outlines how local character, the existing pattern of development, and development's scale, massing and height should be considered.

*b) Infrastructure*

33. The second reason for refusal relates to the lack of a formal undertaking to secure community and infrastructure requirements. The appellant has entered into a unilateral undertaking, which I have considered against the tests at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and NPPF paragraph 58. These are that the obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.
34. CS Policy CS9 seeks appropriate transport infrastructure, while DM Policy DM17 expects development to take account of travel impact and parking standards. The Council's Planning Obligations SPD (2013) also sets out requirements to mitigate transport impacts. Contributions are secured towards the cost of amendments to the Traffic Order for the Controlled Parking Zone. It also restricts access to parking permits, unless holding a Disabled Person's Badge. This is to mitigate on-street parking impacts from the proposed development.
35. Additionally, the secured highway works would involve dropped kerbs, tactile paving and upgrading the site access. A detailed specification is to be submitted and a Highway Agreement is to be entered into under the Highways Act 1980. Furthermore, the undertaking secures a Travel Plan co-ordinator and a Travel Plan, including reporting and monitoring.
36. CS Policy CS13 and DMP Policy DM04 require all major development to reduce carbon emissions consistent with the Mayor's energy hierarchy targets. The Council's Sustainable Design and Construction SPD (2016) confirms that any shortfall in meeting carbon offsetting requirements should be provided off-site

---

<sup>11</sup> APP/N5090/A/04/1149384

or by contributions. A contribution is therefore necessary to mitigate a shortfall of carbon reductions through delivery of carbon offset projects.

37. DMP Policy DM14 and the Council's Delivering Skills, Employment, Enterprise and Training from Development through S106 SPD (2016) deal with the provision of employment opportunities. The SPD requires a Local Employment Agreement, including a local labour target, apprenticeships, work experience, and use of local businesses in the supply chain. In the event of a failure to meet the requirements, the undertaking sets out financial penalties.
38. Monitoring of obligations is also necessary to ensure that they are spent appropriately and delivered. All of the aforementioned financial contributions and non-financial obligations meet the tests and provide necessary mitigation to address the impact of development, with the exception of the Woodland Landscape Management Strategy which I address below.
39. The undertaking requires a Woodland Landscape Management Strategy. Following the proposed development's occupation, the woodland landscape would need to be managed in line with the approved strategy. However, the Planning Practice Guidance<sup>12</sup> advises that a condition should be used where it is possible to do so rather than an obligation. Consistent with Section 7 of the undertaking, if I had been allowing the appeal, I would have imposed a condition instead of finding Schedule 8 of the undertaking to be necessary.
40. In conclusion, the proposed development would make adequate provision for community and infrastructure needs. It would be compliant with CS Policies CS9 and CS13, DMP Policies DM04, DM14 and DM17, the Planning Obligations SPD, the Delivering Skills, Employment, Enterprise and Training from Development through S106 SPD, and the Sustainable Design and Construction SPD. These policies and guidance are set out above. CS Policy CS5 is referred to in the reason for refusal but it is unclear how it relates to this main issue.

#### *Planning balance*

41. The benefits of the proposed development would include making effective use of a previously developed site in C2 use within a borough with limited land and resources. Furthermore, it would assist in achieving the Government's aim of significantly boosting the supply of housing. In particular, there is a shortage of suitable housing for our ageing population and the proposed development would provide accommodation for over 60 elderly residents.
42. The Knight Frank Assessment (May 2024) considers current care home supply within a 2.5 mile catchment area and finds a need for 1,555 bedspaces in modern purpose-built care homes within that catchment to 2033, 1,310 of which are needed prior to 2028. Given existing and future planned supply, there is demand for 954 additional bedspaces to 2033, 709 of which are required before 2028. A similar exercise has been undertaken for dementia care with a demand of 749 bedspaces in the same area, and an expected undersupply of 137 bedspaces to 2028 which would increase to 253 bedspaces to 2033.
43. Where care homes are provided, this frees up houses within the local market, including larger houses suitable for families. Furthermore, care home provision can save on adaptation of unsuitable housing and can assist in reducing

---

<sup>12</sup> Paragraph: 21a-011-20140306.

pressure on in-home care provision. Care home residency can also be positive in reducing social isolation for older people. Additionally, the proposed development would provide local employment. Though biodiversity net gain requirements would not formally apply due to when the application was submitted, the proposed development would provide a net gain of over 13%.

44. In addition to outlining the above benefits of the proposed development, the appellant has drawn my attention to NPPF paragraph 125 c) which states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. Furthermore, the appellant has highlighted the removal from the NPPF of what was paragraph 130 in the 2023 NPPF, which made reference to the possibility that significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be wholly out of character with the existing area.
45. Taken together, the proposed development's benefits have substantial weight.
46. The second main issue in respect of provision for community and infrastructure needs would be adequately addressed by means of the signed and dated unilateral undertaking. As this would address the effects of the proposed development, this matter is neutral in the planning balance.
47. I have found that there would be harm to the character and appearance of the area resulting from the proposed development. That harm stems from both the bulk and massing of the proposed development in a sensitive context, but also in relation to the retention of trees along the site's frontage. Given the importance placed on planting by the BCS, with trees and vegetation highlighted as a main contributor to urban form, it is of key importance that the trees along the site's frontage are retained and I have found that this has not been adequately demonstrated. I find therefore that substantial harm would be caused as a result of the proposed development.
48. The benefits would not therefore outweigh the harm I have found. As such, the proposed 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 should therefore be dismissed.

### **Other Matters**

49. A wide range of concerns have been raised by interested parties. However, I have not dealt with these matters in detail as I am dismissing the appeal for other reasons.

### **Conclusion**

50. For the reasons given above, the appeal should be dismissed.

*Joanna Gilbert*

INSPECTOR