
Appeal Decision

Site visit made on 9 May 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 May 2017

Appeal Ref: APP/H1840/W/16/3163199

Land adjacent to Perwell Close, Bredon GL20 7LJ

- 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 E Coombes (Coombes Group) against the decision of Wychavon District Council.
 - The application Ref W/16/01288/PN, dated 24 May 2016, was refused by notice dated 20 July 2016.
 - The development proposed is a dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council and Bredon Parish Council advise that since the determination of the planning application, the Bredon Parish Neighbourhood Plan 2016-2030¹ (BPNP) has, following examination, progressed to the point where a referendum is scheduled for 8 June 2017. The appellant has had the opportunity to comment on any relevant aspects of the emerging Neighbourhood Plan during the course of the appeal.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the living conditions of future occupiers, with particular regard to privacy and outlook; and,
 - whether sufficient information has been provided to assess possible ecological effects on the adjacent stream, protected species and protected trees.

Reasons

Living conditions

4. The appeal site is located to the rear of Perwell Close on land that slopes fairly steeply down from the southern boundary. Beyond to the north lies a stream and woodland. The proposal is for a new modern dwelling which would be accessed via a shared roadway.

¹ (Referendum Version), February 2017

5. Windows on the southern elevation of the building would be limited. A 1.8 metre high fence on the southern boundary would limit views from the rear ground floor windows and gardens of the properties that line Perwell Close. Nevertheless, those measures would do little to prevent clear views from the numerous first floor windows of those houses, which would form a viewing gallery looking down on the length of the garden of the proposed development. Other parts, such as the entrance and parking area would also be overlooked from some of them.
6. A public footpath to the west, which shares the proposed access from Perwell Close, is immediately adjacent to the site boundary and would provide direct views towards windows and external areas from relatively short distances. The footpath then climbs to the north offering more elevated views although they are limited and filtered by existing trees on adjoining land.
7. Whilst the rear gardens of the properties along Perwell Close are overlooked by their immediate neighbours to a degree, that overlooking is not of the same order as the stepped gardens of the proposed dwelling being overlooked from above by occupants of a long line of properties, some of which also have balconies.
8. Furthermore, the proximity of the two-storey dwellings lining the southern boundary, in an elevated position above sloping land below, would have an enclosing and overbearing effect on future occupiers of the proposed development, especially when using the garden. It is the topography and particular location of the site that makes the relationship with the adjacent properties to the south different from that which might reasonably be anticipated in a built-up area.
9. Whilst there are some more private spaces such as the terraced area, the privacy issues could not be satisfactorily addressed by additional planting secured by condition, as the extent of planting that would be required would itself be likely to have an overbearing and confining effect. The effectiveness of such planting for screening purposes would also vary through the seasons. In addition, such extensive planting could also have an adverse impact on the living conditions of occupiers of dwellings along Perwell Close.
10. The above factors, lead me to conclude that the proposal would harm the living conditions of future occupiers, with regard to privacy and outlook. It follows that it would conflict with Policy SWDP 21 of the South Worcestershire Development Plan (SWDP)², which, amongst other things, seeks to ensure that development provides adequate levels of privacy and outlook.

Ecology

11. The Council has expressed concerns about the possible effects of the remodelling of the site and proposed sewage package treatment works (STW) on the nearby stream. That concern is of particular importance as the Council advises that the watercourse was identified, in a Preliminary Ecological Appraisal (PEA) carried out by NKM Associates,³ as potentially suitable for White Clawed Crayfish which are a protected species.⁴ According to the Council, they are also a species of 'principle importance' in terms of Section 41

² Adopted February 2016

³ Dated 2 October 2014

⁴ Schedule 5, Wildlife and Countryside Act 1981

of the Natural Environment and Rural Communities Act 2006 (NERC). That PEA recommended a specific survey for that species be carried out to assess any potential impacts, if it was present. However, no such survey was provided with the planning application.

12. The appellant has latterly provided a brief letter from NKM Associates, dated 14 March 2017, which states that, between 3 September 2015 and 19 October 2015, eight surveys of the stream were undertaken to confirm if crayfish were present and that no evidence was found to suggest they were. However, the letter is not a survey report and does not contain the types of information that would normally be expected such as details of methodology or the relevant knowledge, skills and experience of the surveyor. Therefore, it does not form the type or standard of survey recommended in the original PEA. I also note that the section 4 of the PEA states that June, July and August are the optimal months for carrying out such surveys whereas the surveys referred to in the letter were carried out in the months of September and October.
13. Paragraph 99 of ODPM Circular 06/2005,⁵ which is still current, advises 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 planning permission is granted. Otherwise, all relevant material considerations may not have been addressed in making the decision. Given that clear advice, I do not consider that it would be appropriate to deal with the matter by condition.
14. I note that the appellant has indicated that the STW, originally proposed, will not be required, as it is likely that a mains sewer running above the site could be used. In this case, given the pollution issues identified regarding the stream and the possible effects on protected species, more detailed information regarding the feasibility of the new arrangements would have been useful. However, that aspect could be dealt with by condition.
15. Although I understand that trees have previously been removed from the site, those that remain and those to the north are protected by Tree Preservation Orders (TPO)⁶. Whilst a Tree Survey Assessment (TSA)⁷ has been provided, it appears to have been conducted before any detailed development proposal had been settled, and, as the Council point out, existing trees and their root protection areas are not shown on any associated plans. The TSA advises that the site's trees are all situated towards the boundaries and describes them as, for the most part, well established landscape features.
16. Therefore, whilst information provided in relation to the footprint of the building was considered sufficient by the Council's Tree Officer, there is still a legitimate concern that the proposed changes in ground levels on the site and the construction of the dwelling and access areas could adversely affect protected trees.
17. The uncertainty about the proposed method of dealing with foul water drainage, combined with the lack of sufficient survey information in respect of specific protected species and protected trees is, cumulatively, unsatisfactory.

⁵ ODPM Circular: 06/2005 'Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.'

⁶ TPO Bredon No.2 2013 & TPO Bredon No. 1 1986

⁷ Trees and Construction BS5837 Tree Survey Assessment, October 2015 – NKM Associates

18. For these reasons and in the absence of definitive evidence to the contrary, I consider that a precautionary approach is appropriate and that the development would present a potential risk to protected species and protected trees. It follows, therefore, that the proposal cannot be properly assessed in terms of contravention of policies SWDP 22, SWDP 30 and SWDP 31 of the SWDP, insofar as they seek to safeguard protected species and biodiversity, ensure that appropriate drainage options are considered and avoid pollution. Furthermore, possible breach of the relevant TPOs cannot be properly considered. Neither can compliance with paragraphs 109 and 118 of the National Planning Policy Framework,⁸ which expresses similar aims to the SWDP policies, be confirmed.
19. I consider that as Policy SWDP 21, referred to in the Council's decision notice, is more directly focussed on design and character aspects it is not directly applicable to ecological matters.
20. Although various BPNP policies are referred to in the original Council Officer's report, none of those emerging policies were specifically cited in the Council's decision notice and reasons for refusal. As the BPNP has not passed the referendum stage, it is yet to form part of the adopted development plan for the area and, therefore, cannot be given full weight. Nevertheless, it has been examined and is scheduled for a referendum shortly and attracts significant weight due to its advanced stage. Policy NP14 of the emerging BPNP is relevant as it also seeks to protect biodiversity and supports SWDP policy SWDP 22. As the potential impact of the proposal on local biodiversity is unclear, it conflicts with that aspect of Policy NP14 of the BPNP.

Other Matters

21. The Parish Council also refer to conflict with the Bredon Village Design Statement 2011 (BVDS), referred to in Policy NP3 of the BPNP, which seeks to protect key open spaces. However, I note that, as the District Council points out, the appeal site is not one of the local green spaces or open spaces referred to in Policy NP13 of the more recent and emerging BPNP itself. In any case, the BVDS refers to the area by reference to public access via its public footpath. The District Council did not consider that the proposal would have a significant effect on landscape or loss of views from the public footpath. I have also considered those aspects and find that I share the District Council's view.
22. I am conscious that the proposal has attracted a significant number of objections from the Parish Council and members of the local community for a variety of reasons. I have dealt with the relevant planning matters above and believe that other issues raised were addressed in the original Council Officer's report.

Conclusion

23. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR

⁸ Published 2012