



Appeal Decision

Site visit made on 13 September 2019

by Jamie Reed DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Appeal Ref: APP/N4720/W/19/3231919

Land adjacent to 15 The Valley, Alwoodley, Leeds LS17 7NL

- 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 Grahame White against the decision of Leeds City Council.
 - The application Ref 19/02800/FU, dated 7 May 2019, was refused by notice dated 21 June 2019.
 - The development proposed is described as 'Cube House – Low Impact Dwelling – three Storey. NB: No Trees are proposed to be removed as part of the proposed (100 m²) footprint dwelling'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site has a planning history, including a number of planning applications that were refused. One of these¹ was subsequently dismissed at appeal². The application that forms the basis of this appeal has been made to try and overcome the previous concerns raised.
3. The appeal is accompanied by a number of sets of plans, for varying forms of development on the site. It is clear from the application form that the originally submitted series of plans were 'Series 0932/2100' for a three storey, flat roof dwelling. This is reflective of the description of development on the Council's decision notice. However, the plans listed on the decision notice are for a two storey pitched roof form of development positioned further into the site; 'Series 0932/2300'. The Council has advised that it considered both of these sets of plans, receiving the 'series 0932/2300' during the course of the application process.
4. In addition to the above, further sets of plans accompany the appeal that show further variations of the proposal, including a single storey flat roof house 'Series 0932/2400' and a repositioned three storey flat roofed house 'Series 2500' which the appellant advises were sent to the Council for consideration. The appellant has requested that I also give consideration to these in reaching my decision.

¹ Application Ref No 17/04581/FU

² Appeal Ref No APP/N4720/W/17/3190022

5. However, these further sets of plans did not form the basis of the Council's decision and they introduce a number of changes that were not considered at the time the application was determined. Whilst I acknowledge that the amendments seek to address the Council's concerns, I cannot be satisfied that interested parties would not be prejudiced if I was to accept them. I have therefore determined the appeal on the basis of the two versions of plans that the Council considered, namely 'Series 0932/2100' and 'Series 0932/2300'.
6. On 11 September 2019, the Council adopted its Core Strategy Selective Review Plan (CSSRP). Both parties have had an opportunity to comment on this document and so have not been prejudiced.

Main Issues

7. The main issues are the effect of the proposal on:
 - the living conditions of prospective occupiers with particular regard to sunlight and outlook;
 - trees and biodiversity;
 - the living conditions of the occupiers of No 15 The Valley with particular regard to privacy and visual impact.

Reasons

Living conditions of prospective occupiers

8. The proposed dwelling has been specifically designed to address the unusual woodland context of the appeal site, which is located on the edge of an area heavily planted with trees. In order to achieve acceptable levels of sunlight and outlook, the proposed dwelling has been designed with rooms with far greater floor to ceiling heights when compared to a more standard form of development. As a result of this design, the dwelling's rooms would also feature far greater window heights than normal. A large number of the rooms would also be dual aspect, thereby allowing further opportunity for levels of sunlight to penetrate deep within the dwelling. The main ground floor living areas would also be largely open plan, which would further assist in this regard. As a result of these features, many of the rooms in the dwelling, particularly those in the front elevation and the side elevation that faces towards No 15 The Valley would achieve acceptable levels of sunlight. Outlook would also be good from those rooms in the front elevation, which would look onto a relatively open part of the site that would lie to the front of the dwelling.
9. It is noted that the Council has raised particular concern over the level of sunlight and outlook to the rooms in the rear elevation of the dwelling and also the side elevation that faces towards No's 19 and 19a The Valley. With the exception of a bathroom and a utility room, which wouldn't normally expect a good level of outlook, these rooms are dual aspect bedrooms. Whilst these may be in a part of the house that would be more shaded by the woodland which would result in lower levels of direct sunlight, the natural lighting levels would still be acceptable, due to the large amount of glazing. The outlook from these rooms onto the more shaded parts of the woodland would also be considered to be appropriate for the more tranquil nature of a bedroom, where occupiers would spend much of their time relaxing and sleeping.

10. As a result of these very generous room heights and window provisions, I conclude that sufficient levels of both sunlight and daylight would be able to be achieved throughout the dwelling. These design features would also afford satisfactory outlook for its occupiers, even in those rooms on the elevations that are closest to the more densely planted woodland areas.
11. Consequently, in respect of the living conditions of its occupiers, the proposal, either in its 'Series 0932/2100' or 'Series 0932/2300' iteration would therefore accord with Policy P10 of the Leeds City Council Core Strategy (CS) (2014). This requires proposals to be of a good design that contributes positively to the quality of life and wellbeing, whilst achieving satisfactory penetration of sunlight and daylight. It would also accord with saved Policies GP5 and BD5 of the Leeds City Council Unitary Development Plan Review (UDPR) (2006); and guidance within the Leeds City Council Neighbourhoods for Living Supplementary Planning Guidance Document (SPG) (2003). When read together, these require proposals to be of a high quality design that provide satisfactory levels of amenity, including penetration of sunlight and daylight to its occupants.

Trees and biodiversity

12. The Appeal Plot forms part of a wider area (the Woodland) that is protected by virtue of Leeds City Council Tree Preservation Order (no. 70) 1995 (TPO). The majority of the Woodland is contained by the rear gardens of surrounding residential properties. Within this main central area of Woodland is a structure known as Johnsons Shaft, which it is understood provides access to water tunnels deep below the site. It is likely that the existence of the shaft and tunnels has resulted in the land remaining undeveloped, when compared to the surrounding area. Over time, the area has become established as a Woodland, featuring many trees, wild shrubs and plants.
13. A corridor of the Woodland that allows access into its main central area extends out towards the street known as 'The Valley'. This corridor forms a roughly rectangular plot in between No's 15 and 19 The Valley, that is of a similar size to the other dwelling plots in the area. It is towards the rear of this plot (the Appeal Plot), where the proposed dwelling would be constructed.
14. It is noted that the Appeal Plot has been let to a local resident for a significant period of time as a garden area. From the limited information before me, it does not appear that this has been regularly used or maintained in recent years. It is nonetheless evident that as result of this long-standing garden use, the Appeal Plot is clearly less overgrown and contains far fewer trees than the larger Woodland area to its rear.
15. The entire Woodland area, including the Appeal Plot has been given its protected status due to the significant value that its relatively untouched nature brings to the surrounding residential area in terms of biodiversity and visual amenity. It is important at this point to understand the distinct difference between a Woodland TPO and group or individual TPO's. Whereas individual and group TPO's serve the purpose of protecting specific trees; a Woodland TPO protects the entire wooded area, recognising the importance of the entire habitat as a whole. This wider form of protection creates opportunity for biodiversity and for new trees to grow in natural succession, thereby maintaining the continual future and evolution of such an important natural asset.

16. The appellant acknowledges the important role that the Woodland can play in the context of the wider surrounding area in terms of visual amenity and biodiversity and has referred to the National Planning Policy Framework (the Framework), which acknowledges that the preservation of trees can be an essential element in contributing to the character of the landscape. He is keen to see improvements to the Woodland and has discussed its management at length with the Council.
17. A tree works application was recently granted on the premise that such works would help to manage the Woodland and would introduce features, such as hedgerows and additional trees that would be beneficial to the biodiversity of the area. The Council have been clear in their view on this matter and have stated that the decision regarding these works was based upon the perceived benefits that the management work proposed would bring to the Woodland and its biodiversity and was in no way seen as being an indication that the site would be capable of accommodating development of one form or another. I noted that a large portion of the Appeal Plot around where the proposal would be erected appeared much clearer in terms of tree cover and undergrowth when compared to the rest of the Woodland. The appellant advises that this is as a result of the recent management works and a desire to continue the garden use on the site.
18. The appellant has been keen to point out that no trees would need to be removed to allow the dwelling to be erected in the position chosen and that the land which the dwelling and its outdoor space would occupy would only account for around 10% of the total area of the Woodland. He further asserts that the building has been carefully designed to specifically respond to the unusual characteristics of the site and as such, considers the proposal would work in harmony with the Woodland. Whilst it is undeniable that a lot of thought has gone into the bespoke design of the dwelling and that the construction itself would have a minimal impact upon any existing trees, it is inevitable that any dwelling constructed in such a location would be harmful to biodiversity. This harm would arise from the increased levels of activity on the site arising from both the construction period and afterwards, when the dwelling would be occupied.
19. During the construction period, it is reasonable to expect that there would be more people present and therefore, increased levels of activity. Materials would be transported onto the site and would need to be stored temporarily before being fitted together to form the dwelling. Such activities would create additional levels of noise and ground disturbance, in this relatively untouched location, which would clearly be harmful to the biodiversity of the area.
20. Once completed, the occupation of the dwelling would lead to further disturbance to biodiversity, as the occupiers would be present on a daily basis. This would create an increase in the number of comings and goings to and from the site, with the occupiers, visitors and deliveries having to regularly make their way to the back of the Appeal Plot to access the dwelling. In the evenings, light levels on site would also be affected as a result of internal lighting spilling out into the surrounding area from the array of large windows present.
21. As well as the effects arising from the dwelling itself, it is also reasonable to expect that the occupiers would also make more frequent use of the garden

- area when compared to someone who doesn't live on site, who would be likely to visit on a less frequent basis. Occupiers could also own cats or dogs, who would inevitably use the garden area and may even stray into the wider Woodland, which would be likely to disturb wildlife. Again, it is clear that such changes, if introduced would be harmful to the biodiversity in this relatively untouched location.
22. The proposal would also lead to further pressures on the Woodland in the future. Such demands could arise as a result of future occupiers wanting to carry out tree works, to allow more light into the more shaded parts of the Appeal Plot or to alter the current ground conditions, so that they could make more meaningful use of the currently uneven and naturalised Woodland floor. Over time, such requests would become more likely, as the trees that are present continue to grow and increase in size.
23. The appellant asserts that he would not put such pressures on the Appeal Plot however and would actively play a part in its management, which he considers would be of benefit to the Woodland area and its biodiversity as a whole, if allowed to proceed. He explains that this management would arise from him paying an annual ground rent to the landowner, which would then be used to manage the Woodland. He suggests that such management could be undertaken by Alwoodley Parish Council. Whilst such an arrangement could indeed help to manage the Woodland, there are no guarantees before me that show that this would occur. As a result, other than the measures that are proposed as part of the proposal which is before me, such as bat and bird boxes, there is no certainty that the proposal would result in any long term, ongoing improvements to the Woodland or its biodiversity.
24. In any event, even if some form of agreement were to be put in place to agree such matters, this would still not overcome the disturbance that would arise from his daily presence on site, which would be harmful to biodiversity to a degree, as already explained. Furthermore, there are no guarantees that any successive occupiers would be inclined to manage the site in the same way as he intends to. It would also be unreasonable to impose any conditions to secure any such management measures, as it would be difficult to take any enforcement action in the event of non-compliance. Consequently, either with or without any management in place, it would be inevitable that if the proposal were to go ahead that the quality of the Woodland and the biodiversity value of the area around where the dwelling would be located would diminish over time.
25. Accordingly, I conclude that the proposal, in either its 'Series 0932/2100' or 'Series 0932/2300' iteration would have a harmful effect upon the Woodland and its value to local biodiversity. As a result, the proposal would be contrary to Policies H2, P10, P12 and G9 of the CS, in respect of trees and biodiversity. These Policies when read together require proposals to be of a high quality design whilst preserving, enhancing and protecting sites that have an intrinsic value for nature conservation. It would also be contrary to UDPR Policies GP5, BD5 and LD1, as well as Policy LAND2 of the Leeds City Council Natural resource and Waste Local Plan. These Policies require proposals to be of a high quality that protect their surroundings including existing landscapes and areas with trees.

Living conditions of the occupiers of No 15 The Valley

26. Due to the constrained nature of the Woodland site, the proposal would be located towards the back of the Appeal Plot in its south western corner. As a result, the proposed dwellings relationship to its neighbour at No 15 The Valley would be somewhat unusual, with the main front elevation of the proposed dwelling being in clear view from the rear elevation of No 15. The two dwellings would be positioned far enough apart from one another though to maintain an acceptable level of privacy for both sets of occupiers when within their respective dwellings. However, even though internal privacy could be technically achieved, there is still a likelihood that the occupiers of No 15 could nonetheless experience a perception of being overlooked from the appeal property, due to the unusually large expanses of glazing that they would be looking out onto. As a result, I consider the positioning of the proposal would be harmful to the privacy to the occupiers of No 15.
27. The proposed dwelling would also be located close to the shared boundary with No 15. Whilst the side windows of the proposed dwelling would be obscurely glazed to avoid any overlooking, this could still occur from the large windows in the front elevation, which would have clear and unrestricted views across No 15's rear garden area, which would be harmful to privacy. It would be unreasonable to restrict the outlook from these windows by obscure glazing, as doing so would be harmful to the living conditions of the prospective occupiers. In addition, the size of the proposal, so close to the rear garden of No 15 would have a dominating and overbearing visual effect upon this area, which would be harmful to the enjoyment of the garden by its occupiers.
28. The appellant has suggested that further planting along the boundary that the appeal site shares with No 15 would assist in screening the proposed dwelling and would help overcome any concerns in respect of privacy and living conditions. Such measures cannot be considered permanent however and as such, I can only attach little weight to this argument. The appellant has also referred to a development³ in the area where he used to live where he suggests overlooking occurred from a neighbouring balcony due to a lack of screening and questions how such an arrangement could have been allowed. Whilst I can appreciate his concerns in this regard, this previous scheme³ is not before me and does not alter the decision I have reached on the proposal that is before me.
29. Accordingly, I conclude that as a result of its positioning, the proposal, in either its 'Series 0932/2100' or 'Series 0932/2300' iteration would result in the overlooking from its front elevation windows into the rear garden area of No 15 The Valley. It would also result in an overbearing form of development. Such an arrangement would be harmful to the living conditions and privacy of the occupiers of No 15 The Valley. Consequently, the proposal would be contrary to Policy P10 of the CS and saved UDPR Policy GP5. These policies seek to achieve a high quality of design that protects the residential amenities of the area.

Other Matters

30. The appellant has made reference to an earlier application on the site⁴ which he advises was recommended for approval prior to being withdrawn. From the

³ Application Ref: 06/07572/FU

⁴ Application Ref: 30/315/96/OUT

limited information before me, I can see that such a recommendation was never issued and it appears that this application dates back a significant number of years ago. Even though such a recommendation may have been able to have been made in the past, I have not been made aware of any grant of planning permission. Furthermore, it is inevitable that matters such as national and local planning legislation will have changed since this time. As a result, this previous application has little bearing upon my decision.

31. Local residents have raised a number of concerns regarding the proposal, most notably relating to the changes in the appearance of the site in recent times, involving the loss of trees and planting. Whilst I acknowledge these concerns, I must also acknowledge that some of these changes would have come about as part of the agreed management programme. I am also mindful that there has been a legitimate and long-standing garden use within the appeal plot and whilst this may not have been as actively used in recent years when compared to the past, it is still nonetheless something that can occur on the site, provided that it does not interfere with the Woodland TPO. Clearly though, any works over and above the scope of the Woodland management or gardening activities would require further consent from the Council under the terms of the TPO. Whether or not the activities that have been occurring on site require such an application however are not part of this appeal and have no bearing on my decision.
32. With regard other concerns raised, including drainage, whilst I acknowledge these and the comments that the appellant has made on such matters, the appeal is being dismissed for other reasons and as such, these would not alter the decision that I have made.
33. The appellant has referred to a draft copy of the Alwoodley Neighbourhood Plan (ANP) from 2016 and has stated that the site was identified as having high value as green space but was subsequently not included in the ANP when it was 'made' in 2018. Whilst it is acknowledged that the Framework encourages land to be designated as Local Green Space, it is not uncommon for changes to be made during a plan making process. The reason why such a change was made is not a matter for me to consider in this appeal.
34. Whilst I note the frustrations the appellant has experienced with the Council to date in dealing with this matter, this has not had any bearing on the decision I have reached in this appeal.

Conclusion

35. I conclude that whilst I have found the proposal to be acceptable in terms of the living conditions that would be provided for its prospective occupiers in respect of sunlight and outlook, I have found clear harm in respect of the effects that the proposal would have upon the trees on the site and its biodiversity. I have also found harm with regards to the visual impact of the property and the effects it would have upon the privacy of the occupiers of No. 15 The Valley. For the reasons given above, the appeal is dismissed.

Jamie Reed

INSPECTOR