



Appeal Decision

Site visit made on 10 September 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal Ref: APP/P1805/W/19/3231619

Rigby Hall, Rigby Lane, Bromsgrove B60 2EW

- 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 William Burton of Pineapple Homes Midlands Ltd against the decision of Bromsgrove District Council.
 - The application Ref 18/01562/FUL, dated 13 December 2018, was refused by notice dated 19 March 2019
 - The development proposed is full application for the development of 2no. dwellings within the grounds of Rigby Hall.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During determination of the appeal, the Council has confirmed that its Residential Design Guide Supplementary Planning Guidance referenced on the refusal notice has now been replaced by the 'High Quality Design Guide' Supplementary Planning Document (SPD) adopted in June 2019. I have taken this into account in my decision.

Main Issues

3. The main issues in this appeal are:
 - The effect of the proposed development on the setting of Rigby Hall, a non-designated heritage asset;
 - The effect of the proposal on the living conditions of future occupiers with particular regard to overshadowing from existing trees, and
 - Whether any future threat to fell any of the protected trees would harm the character and appearance of the area.

Reasons

Setting of Rigby Hall

4. The appeal site is within the grounds of Rigby Hall (the 'Hall') on the western edges of Bromsgrove. The Council states that the building is of local historic interest that would meet criteria for the Local Heritage List, as set out in the Council's adopted Local Heritage List Strategy (2016). Policy BDP20 of the adopted Bromsgrove District Plan (BDP) and the Council's SPD further advise

that the Council does not have a definitive list of non-designated heritage assets and that non-designated assets are not limited to those on an identified Local List.

5. Rigby Hall was built in 1838 for a notable nail manufacturer George Ellins, and later occupied by a salt merchant John Corbett. The Hall has a simple elegance with a stuccoed facade and a large porch with Doric columns, overhanging hipped roof, decorative soffits, mansard roof and ornate dormer windows. There are a number of mature trees along the site's western boundary and within the grounds in front of the house, including a large and imposing Wellingtonia approximately 35 metres tall. The trees are each protected by a Tree Preservation Order (TPO). Rigby Hall and its grounds are an example of one of the villas and small estates synonymous with the burgeoning wealthy middle class in Bromsgrove at the time. Its significance is therefore derived from its age and historic interest reflecting the economic, industrial and social development of Bromsgrove.
6. The Hall and appeal site are accessed via a shared gravel driveway off Rigby Lane. The drive gently curves to reveal the imposing principal elevation of the Hall, and continues past the appeal site and Hall to the coach house area to the north east, where new residential development is under construction. Rigby Hall itself has recently been converted from offices into six apartments. The appeal site was latterly the office car park, but is currently the construction compound and site office and is screened by a tall timber fence that has been erected along the edge of the driveway. Despite these interventions, the subdivision of the estate over time and presence of newer development, the appeal site and trees still give the Hall its spacious landscaped grounds, which contribute to the character and appearance of the Hall and its setting as a gentleman's small estate.
7. The proposal is to build 2 detached two-storey dwellings in the grounds, diagonally opposite and facing the principal elevation of the Hall. Each dwelling would have a rear garden and off-site parking spaces to the side. Both gardens would be within the canopies and Root Protection Areas (RPAs) of the various trees. The trunk of the Wellingtonia would be within the rear garden of Plot 2 close to the boundary between the two gardens, but its canopy and RPA would encroach the garden of Plot 1.
8. The dwellings would be positioned in a straight line in close proximity to the edge of the driveway. They would also be sited close to each other with little gap between them. This would create an almost single mass of built form with a long continuous roofline. The bulk and mass would be exacerbated by both dwellings having almost identical front elevations, albeit different footprints. The combined width of the two dwellings would also be greater than the width of the principal elevation of the Hall itself. As a result, the proposal would create an uncomfortable and unduly dominant relationship with the Hall, compounded by the proximity to the Hall itself. Furthermore, due to the curve of the driveway, the proposed dwellings would come into view first and would dominate the vista and reduce the spacious 'estate' setting to the Hall.
9. The design of the dwellings would be modern and deliberately different to the Hall to avoid pastiche. There would be a simple palette of materials of brick and tile with simple fenestration intended to reflect the relative simplicity of the Hall. The dwellings would also incorporate some detailing in the form of a

narrow band of stone, rafter feet and a ground floor hipped roof extension across the width of the property to reflect the entrance porch to the Hall. However, the dwellings would remain substantially suburban in their form and design, at odds with the simple grandeur of the old Hall. Furthermore, the large expanses of brickwork on the front elevations, coupled with larger brick gable end of Plot 1 closest to the site entrance, would be visually discordant, particularly as these elevations are close to the edge of the drive.

10. Whilst the grounds of the Hall have been divided up over time and other development has been built, such as a school to the southeast, a complex of 20th century housing to the north west and new housing under construction in the grounds, none are read side by side so starkly with the principal elevation of the Hall. Furthermore, none sever the grounds from the Hall and its principal elevation to the same degree. By removing the landscaped frontage setting, even if it was once a gravelled area and no longer laid to lawn, the 'villa and small estate' concept would be lost.
11. I find the proposed dwellings would be of an inappropriate size, scale, orientation and design resulting in an unsympathetic and unduly dominant form of development. As a result, there would be significant harm caused to the setting of the Hall thereby reducing the significance of the non-designated heritage asset. Accordingly, the proposal would conflict with the BDP Policies BDP19 and DPD 20, which seek, amongst other things, to ensure high quality design and that development sustains or enhances the significance of heritage assets, including their setting.

Living conditions

12. The appellant has produced Tree Shadow Plots¹ using arboricultural software. The results show that the gardens are free of shade or partially shaded at certain times of the day. Between 2-4pm most of the gardens, in particular for Plot 1, would be in shade. The report acknowledges that the tree-shading model does not take account of irregular canopy shapes or gaps and does not indicate the amount of sky light that would be visible from the properties. I also note the appellant's comments about the trees close to Dovecote Cottage.
13. From my observations on site, the trees currently provide a dense boundary screen, with the Wellingtonia towering up from the middle of the site. The conifer trees along the boundary with the school serve to further enclose and darken the site. The presence of so many trees in close proximity to each other and the proposed dwellings, together with their height and alignment south of the dwellings, would reduce light levels and cause overshadowing of the proposed dwellings and rear gardens. Furthermore, the trees would create an enclosed and somewhat oppressive environment for the occupiers of the proposed dwellings, even with some sunlight coming through the trees at certain times of the day and year. Overshadowing would likely be worse in the summer when all the trees are in leaf, but in the winter the evergreen Wellingtonia would continue to reduce light and cause overshadowing.
14. The Council's SPD advises that amenity space within the canopy of trees is not included as part of usable garden. Whilst the Council has not raised concerns about the size of the gardens *per se*, the canopies and overshadowing that the

¹ Marlow Consulting Ltd report dated 12 June 2019

trees would cause for much of the year would affect the general usability of the garden.

15. In my view the trees and their overshadowing would harm the living conditions of future occupiers. Accordingly, the proposal would be in conflict with BDP Policies BDP1 and BDP19, which seek amongst other things, to encourage sustainable development and high quality design. It would also be contrary to the advice in the Framework paragraphs 117 and 122 which seek to balance the need for homes with improving the environment and securing well-designed places.

Character and appearance

16. The Wellingtonia towers above the other trees and is visible when approaching the site from the adjacent housing estate, and provide an attractive setting to the Hall. Furthermore, the boundary trees provide a dense, attractive and verdant backdrop to the adjacent housing and surrounding area. They also provide mutual screening with properties on Rigby Lane.
17. Future occupiers may well be made fully aware of the TPOs and would choose to live on the site because of the surrounding trees. However, as both gardens would be within the RPA of the trees including the Wellingtonia, this would have limitations on what future occupiers could do in their gardens. Therefore, future occupiers may not have fully considered, at the time of moving in, the seasonal variations of the trees, the potential overshadowing, the lack of useable garden, the spread and growth of the trees, or the reality of safety and maintenance issues that could arise. As a result, this could lead to pressure from future occupiers to cut back, or even fell, the preserved trees in the longer term.
18. I accept that there may have been gravel and some ground compaction over time, and the appellant's tree report indicates the trees are in good health and would not be easily damaged. The Council's tree officer has not raised any objection, subject to various conditions. However, future occupiers may well bring different expectations and demands on their gardens and the trees within and surrounding them.
19. Even though the Council would have to sanction any future felling or other tree works, I find that there would be a likelihood of requests that would put the trees under threat. Their loss would have an adverse impact on the setting of the Hall and on the wider character and amenity of the area. Accordingly, the proposal would be in conflict with BDP Policies BDP1 and BDP19, which seek amongst other things, to consider the impact on visual amenity, encourage a quality environment and the retention of trees which are properly integrated into new development.

Other Matters

20. I am aware that residents at Dovecote Cottage were not aware of the proposed development, having bought their property after the consultation process. The Council has confirmed it undertook the necessary statutory consultation with letters to properties and a site notice. I am satisfied that the necessary consultations took place. Nearby residents also raise some other issues. However, in view of my conclusions on the main issues there is no need for me to address these in the current decision.

21. The fact the Council raised no objections to the conversion of Rigby Hall to flats, or to the new houses in its grounds, does not mean the Council cannot now refuse the appeal proposal, as each planning proposal has to be determined on its merits in light of its context.

Planning Balance and Conclusion

22. The Council is unable to demonstrate a housing land supply in excess of five years. In such circumstances, paragraph 11 of the Framework states that policies most important for determining applications are out-of-date and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
23. Paragraph 197 of the Framework requires the effect of an application on the significance of a non-designated heritage asset to be taken into account when determining the application, and that a balanced judgement will be required regarding the scale of any harm and the significance of the heritage asset.
24. The harm I have identified would be reasonably localised. There would be some environmental benefits from the energy efficient houses and some economic benefits to the construction industry and local spend from future occupiers. The proposed 2 dwellings would offer a very modest uplift in housing numbers.
25. However, I find these benefits, alone or in combination, would be limited and the adverse impacts of granting planning permission on the setting of the non-designated heritage asset would significantly and demonstrably outweigh the limited benefits. Furthermore, there would be harm to the living conditions of future occupiers and to the character and appearance of the area.
26. For the reasons set out above, having regard to all matters raised, I conclude the proposed development conflicts with the development plan read as a whole, and there are no material considerations to justify the development. The appeal should be dismissed.

K. Stephens
INSPECTOR