



Appeal Decision

Site visit made on 19 May 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 June 2020

Appeal Ref: APP/G4620/W/19/3242951

Land to the rear of 1 - 29 Sean Dolan Close, Rowley Regis B65 8AD

- 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 Dr Manoj Prasad – Doc Web Limited against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/19/63452, dated 24 July 2019, was refused by notice dated 6 November 2019.
 - The development proposed is residential development comprising 4No 2B/3P flats & 5No 3B/5P houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the address from the Council's decision notice and the appellant's appeal form which give the precise location of the site as land to the rear of 1 – 29 Sean Dolan Close. The appeal form also provides the postcode.
3. The description of the proposals on the application forms abbreviated the proposal to '4No 2B/3P flats & 5No 3B/5P houses'. The submitted plans and the description of development on the Council's decision notice confirm the proposal is for 4 x two-bedroomed flats and 5 x three-bedroomed houses and I have considered the appeal on this basis. I have removed the words 'on vacant land' from the description as this is not a description of development.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area including woodland covered by a Tree Preservation Order (TPO);
 - the living conditions for occupiers of neighbouring dwellings; and
 - biodiversity having regard to the site's location within a Site of Local Importance for Nature Conservation (SLINC).

Reasons

Character and appearance

5. The appeal site is an irregular shaped plot, substantially covered by woodland which is protected by a group Tree Preservation Order (TPO) (TPO/127/W2).

The abundance of trees forms part of a verdant soft landscaped character to the outer edge of Sean Dolan Close. The appeal site provides a distinct buffer between properties on Sean Dolan Close and the boundaries of residential properties on Yew Tree Lane. House types on Sean Dolan Close mainly consist of two-storey semi-detached dwellings, some with dormers serving the roof space. Dedicated off-street parking is generally provided to the side of dwellings with planting to front gardens often providing gaps between neighbouring driveways.

6. The appellant contends that the TPO was applied many years ago without a detailed assessment of the trees. I acknowledge that the Tree Survey Assessment (May 2019) (TSA) before me does not identify any of the trees as being of high quality and value on an individual basis. Even so, the TSA only identifies a relatively small proportion as being in such a condition that the recommendation is to fell. My observations on site were that as a group, the trees retain a collective visual quality which makes a positive contribution to the character and appearance of the area.
7. The buildings would be of a similar scale to existing dwellings on Sean Dolan Close. However, the density and layout of the development necessitates access to a rear parking court and not all dwellings would be provided with their own distinct driveway. This would be contrary to paragraph 2.5 of the Sandwell Metropolitan Borough Council Revised Residential Design Guide (2014) (SPD) which states amongst other things that parking courts cannot be used to jointly serve car parking for individual family dwellings. The built footprint including hard surfacing would extend into the centre of the site. The appellant's tree constraints plan illustrates that this would result in extensive tree removal. This would appear as a substantial incursion into the woodland TPO. As a result, the integrity of the TPO in terms of its collective visual quality would be severely diminished, altering the soft landscaped character and appearance of the site to one dominated by buildings and hard surfacing.
8. Whilst some trees within the site are shown as being retained, these would mainly be to gardens serving the proposed terraced block of 3 dwellings. Opportunities for replacement planting are likely to be limited on the appeal site by the extent of hard surfacing and the need to retain space between tree canopies and windows on the proposed buildings. The appellant suggests trees could be planted in woodland that they own but no specific details have been provided as to how this would mitigate the visual impact on the site itself. I am not therefore persuaded by the evidence before me that replacement planting could adequately compensate for the extensive tree loss proposed or the consequential impact on the character and appearance of the area.
9. My attention has been drawn to two planning applications¹ relating to the original outline and reserved matters planning applications for the development of Sean Dolan Close. The appellant contends that particular development also involved the loss of trees protected by a TPO. However, whilst a subsequent application² allowed for some tree works including removal of some self-seeded trees, the evidence before me indicates that site predominantly related to a cleared area last in use as a playing pitch. The previous development was also supported by ecological surveys and a S106 Agreement securing enhancement/management of the SLINC and woodland. These factors indicate

¹ LPA Refs DC/07/48757 and DC/09/51104

² LPA Ref DC/08/50312

that the collective visual merits of the TPO were an integral part of the comprehensive design of the area. I am therefore not persuaded that the appeal proposal is directly comparable.

10. To conclude, the proposal would have a harmful effect on the character and appearance of the area. Consequently, in that regard, the development would be contrary to Policy ENV3 (Design Quality) of the Black Country Core Strategy (2011) (CS) and SAD EOS 9 (Urban Design Principles) of the Sandwell Metropolitan Borough Council Site Allocations and Delivery Development Plan Document (2012) (DPD).

Living conditions for neighbouring occupiers

11. The SPD includes amongst other things that a minimum separation distance of 14 metres should be provided between opposing two-storey gables and rear facing windowed elevations.
12. The gable end of the semi-detached dwellings would sit in close proximity to the rear boundaries of dwellings at Nos 26 – 28 Yew Tree Lane. The Council's report confirms the distance would be less than that set out in the SPD and my observations on site confirmed this is likely to be the case. These neighbouring dwellings have clear glazed windows to their rear elevations facing towards the boundary with the appeal site. Nos 26 and 27 also have conservatories to their rear elevations. The gable would only partially encroach into land parallel with the rear boundaries of Nos 26 and 28. As such the impact on outlook for occupants of these particular dwellings would be marginal. However, the development would be particularly overbearing for the occupiers of No 27 Yew Tree Lane given the side gable of the proposed building would span the full width of the rear boundary in close proximity to the garden and windows serving this neighbouring property.
13. To conclude, the proposal would result in material harm to outlook for occupiers of No 27 Yew Tree Lane. Consequently, in that regard, the proposal would have a harmful effect on the living conditions of neighbouring occupiers and would be contrary to Policy ENV3 (Design Quality) of the CS and SAD EOS 9 (Urban Design Principles) of the DPD.

Biodiversity

14. The evidence before me suggests that the site forms part of a SLINC and the appellant does not dispute this. As such the site is recognised as having value from a nature conservation perspective. Whilst I have not been provided with any substantive information from the parties in terms of the specific ecological value of the site, its heavily planted nature indicates that it is likely to provide habitat potential. I also note that the Wildlife Trust confirmed in their comments on the planning application that there are numerous records of badgers having been recorded within the SLINC.
15. The appellant suggests the proposal would not harm any species. However, the extent of tree removal and degree to which the site would be occupied by buildings and hard surfacing suggests that the size of the SLINC would be reduced and some change to the habitat potential of the site is inevitable. An Ecological Assessment of the site has not been provided. I am therefore not persuaded that the potential impacts of the proposal on ecology are fully understood. Furthermore, without this information the extent to which suitable

mitigation measures might be required or could be achieved cannot be ascertained.

16. To conclude, it has not been demonstrated that there would be no harm to the SLINC or that suitable mitigation could be provided. Consequently, in that regard, the proposals would be contrary to Policy ENV1 (Nature Conservation) of the CS which includes amongst other things that SLINC's will be protected from development proposals which could negatively impact upon them and that adequate information must be submitted to ensure the likely impacts of a proposal can be fully assessed.

Other Matters

17. The appellant contends that the Council did not request amendments to the proposal. Whether or not this is the case, this would not be a matter to be considered in an appeal made under Section 78 of the Act.
18. For the reasons set out under the main issues, there are material differences between the appeal proposal and the examples put forward by the appellant. I am therefore not persuaded that the Council has been inconsistent in its decision making.
19. The appellant suggests that there is a demand for starter homes, that house prices are increasing and that there are difficulties in recruiting key workers including to work in the local hospital. However, there is no substantive evidence before me to demonstrate that the Council is not meeting its housing delivery requirements, nor that it does not have a demonstrable five-year housing land supply. I am therefore not persuaded that other material considerations indicate a decision should be taken other than in accordance with the Development Plan which for the reasons set out, the development would clearly conflict.
20. The appellant suggests that steps were taken in the design process to allow for easy access of vehicles and that the development would not increase traffic significantly. However, I note that the Council did not refuse the proposals on highway safety grounds. This matter does not overcome the conflict with the development plan set out under the main issues.

Conclusion

21. For the reasons given, the appeal is dismissed.

M Russell

INSPECTOR