
Appeal Decision

Site visit made on 29 June 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 30 July 2020

Appeal Ref: APP/P1805/W/20/3245957

Land to the rear of 34 & 36 Lickey Square, Barnt Green B45 8HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr/s McAlindon & Mr/s Mistry against Bromsgrove District Council.
 - The application Ref 19/01388/FUL, is dated 19 October 2019.
 - The development proposed is for 2 detached dwelling houses and associated vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for 2 detached dwelling houses and associated vehicular access at land to the rear of 34 and 36 Lickey Square, Barnt Green B45 8HB in accordance with the terms of the application, Ref 19/01388/FUL, dated 19 October 2019, subject to the conditions contained in the attached schedule.

Preliminary Matters

2. The above description of development has been taken from the submitted appeal form as it best represents the extent of the proposed works. I have omitted reference to the appeal land and extant planning permissions in the description as this is unnecessary detail that does not constitute development.
3. The appeal was submitted on 30 January 2020 as a result of the Council failing to make a decision within the statutory period. The Council has confirmed that had it retained jurisdiction to determine the application it would have refused planning permission, identifying the suggested policy conflicts and detailing their assessment along with relevant considerations.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the surrounding area; and
 - the living conditions of neighbouring occupants in 'The Badgers', with particular regard to privacy.

Reasons

Character and appearance

5. The appeal site comprises of the rear garden areas for both 34 and 36 Lickey Square with an access route extending between the two existing dwellings. These two existing dwellings, like other houses on Lickey Square, are both large and detached with varied designs and layouts. There is a clear pattern of rear gardens having been developed along Lickey Square and surrounding streets. There are also several examples of higher density developments than that of the appeal site. These can be seen on the cul-de-sac estates adjoining the site on Cleveland Drive, Stretton Drive and The Badgers. Given the variety of densities and surrounding layouts, the appeal proposal would accord with the mixture of scale and pattern of development in the area, particularly along Lickey Square.
6. The proposed dwellings would be two storeys in height and be designed with variations along the front and rear elevations to break up the visual mass of each building. The roof plane would similarly be broken up with such design features. Whilst of a varied design and form, the proposed dwellings appear to be comparable to the size of the existing dwellings at Nos 34 and 36. The gap between the proposed dwellings would be of an ample size to provide visual relief and avoid any cumulative harm from the new built form. As such, I am satisfied that the proposed dwellings would not appear dominant or harmful in this regard.
7. The sloped characteristics of the appeal site would limit potential views of the proposed development from the Lickey Square street scene. In addition, the existing dwellings, retained trees and boundary treatment towards the front of the property would provide screening. Any potential views would likely be along the proposed access driveway and would be limited to the roofline of the proposed dwelling rear of No 36. For these reasons, the proposal would not appear prominent within the Lickey Square street scene.
8. There are five trees, subject to a Tree Preservation Order (TPO), lining the current boundary between Nos 34 and 36 which would be removed. They currently contribute to the verdant character of the appeal site and its surroundings. However, there are only limited views of the five trees in question along Lickey Square and from other public vantage points. Based on my site visit observations and the photographic evidence submitted in Appendix 1 and 2 of the Council's statement of case, I note that most views of the subject trees, from both public and private land, are layered by the other protected trees lining the outer boundaries of the appeal site and along Lickey Square more generally. As such, the removal of the proposed trees would not in itself detrimentally harm the verdant characteristics of the appeal site, nor the visible treelined backdrop along Lickey Square or the surrounding area. Furthermore, ten replacement trees are proposed to mitigate the suggested loss of verdant character. These would maintain the soft landscape features and verdant character of the appeal site.
9. The Council's tree officer has raised concerns in respect of the protected trees to be retained along the boundary of the appeal site shared with dwellings fronting Stretton Drive. However, the submitted arboricultural impact assessment and method statement, and supporting tree protection plans, appear to detail appropriate methods to safeguard these trees throughout the

construction process and long term through the use of elevated slabs and no-dig construction in accordance with the relevant standards. I am therefore satisfied that there would be no significant risk to the health of these trees.

10. The risk of future occupants wanting to prune the protected trees to improve the degree of light experienced within the proposed dwellings is low. Whilst the boundary trees would cause some overshadowing at select times of the day and year, this would not be dissimilar to the levels experienced by existing occupants in the area given the surrounding verdant character. Notwithstanding this, the proposed dwellings have been designed to maximise accessibility to sunlight and daylight by locating habitable windows on the front and rear elevations and locating windows serving non-habitable rooms on the side elevations. The remaining trees will still be subject to the TPO and would therefore be at the Council's discretion to permit any pruning of these trees in the future. I am therefore satisfied that the proposed dwellings would experience acceptable access to sunlight and daylight, and would not put the remaining trees at undue risk of pruning in the future.
11. Accordingly, it is my view that the proposed development would not harm the overall character and appearance of the surrounding area. It would comply with Policy BDP19 and BDP24 of the Bromsgrove District Plan (DP) (adopted January 2017), Policies BD2, BD3 and NE3 of the Lickey and Blackwell and Cofton Hackett Neighbourhood Plan (LBCHNP) (adopted January 2020) and Paragraphs 127 and 170 of the National Planning Policy Framework (the Framework). Collectively, these policies seek, amongst other things, to deliver high quality development that is in keeping with the character and quality of the local environment, whilst retaining and integrating trees where appropriate as part of the overall green infrastructure network.

Living conditions

12. The Council has suggested that the proposed siting of the dwelling to the rear of No 36 may have an unacceptable impact on the living conditions of occupants at 18 The Badgers, by way of loss of privacy. The Council's High Quality Design Supplementary Planning Document (SPD) (adopted June 2019) serves as a guide to calculate the appropriate separation distance between habitable windows of properties that directly face each other. It specifies that a minimum separation distance of 21 metres is required and that where there is a gradient difference further distance may be required, with an additional two metres added for each metre difference in ground level as specified on Figure 4 of the SPD.
13. Whilst a specific longitudinal cross section for the proposed dwelling rear of No 36 has not been provided, it is my view that the details shown across the suite of proposed plans, including the site contours, alignment of both proposed dwellings, and the measured distance from the proposed dwelling rear of No 36 to the nearest extent of No 18, is sufficient to make a relatively informed assessment on this issue.
14. The proposed plans show an approximate distance of 37 metres from the ground floor level and 40 metres from the first floor level between the proposed dwellings and the nearest extent of Nos 17 and 18. This would accommodate for an approximate ground level change of seven to nine metres across the ground and first floor levels of the proposed dwellings and Nos 17 and 18 based on the SPD guidelines. I observed during my site visit that both

Nos 17 and 18 have lower grounds levels than the appeal site, with the rear garden of No 18 being distinctly lower than No 17 as well. Taking into account my site visit observations at both the appeal site and Nos 17 and 18, along with the details described on the plans of development, I am satisfied that the proposed dwelling rear of No 36 would be appropriately located in accordance with the SPD so as to avoid the loss of privacy for occupants at No 18.

15. The SPD also considers the presence of openings between properties and whether each dwelling is offset or directly facing each other to determine whether any harmful overlooking may occur. Neither of the proposed dwellings directly align with either Nos 17 or 18 The Badgers, creating a more acute line of site between the respective sets of properties by virtue of their offset positioning. The existing and proposed vegetation screening between the properties would further obscure any perceived views between the habitable rooms of the dwellings.
16. With respect to the proposed dwelling to the rear of No 34, I note that the Council has not raised any concerns with respect to the loss of privacy for occupants at 17 The Badgers. This is due to an extant planning permission over No 34¹ which allowed a comparably sized and located dwelling to that proposed under this appeal. On the basis of the separation distance shown on the proposed plans and the screening provided by existing and proposed vegetation along the shared boundary, I am similarly satisfied in this regard.
17. Accordingly, the proposed development would not harm the living conditions of neighbouring occupants in The Badgers. It therefore complies with the High Quality Design SPD, which seek to deliver development of a high quality design which does not adversely affect the living conditions of neighbouring occupiers, amongst other things.

Other Matters

18. The Council have confirmed that they cannot currently demonstrate a five year housing land supply. The presumption in favour of sustainable development therefore applies in accordance with Paragraph 11(d) of the Framework. I have therefore attributed significant weight to the positive contribution of the appeal proposal towards addressing this current shortfall.
19. I note the concerns raised by interested parties with respect to the potential increase of flooding and drainage water from the appeal site as a result of the proposed development. However, the Council indicate within their statement of case that the site is at low risk of fluvial flooding and that drainage can appropriately be dealt with under building regulations. I am therefore satisfied that such concerns can be addressed by an appropriate condition.
20. I note also the concerns regarding traffic generated by the appeal proposal and the safety of the proposed access to Lickey Square. The County Highway Authority have reviewed the proposed development and had no objection to the proposal subject to conditions. As the proposed dwellings would likely generate a small amount of traffic, I am similarly satisfied that the proposal would not amount to any harmful effects to the highway network, subject to conditions.

¹ LPA Reference: 19/00477/FUL

21. Concerns regarding noise and light pollution resulting from the proposed development are noted. However, in my view the levels introduced would be comparable to that already experienced in the surrounding area and would not amount to any harm to the living conditions of neighbouring occupants.

Conditions

22. In allowing the appeal development I have had regard to the conditions suggested by the Council, of which the appellant has had the opportunity to comment on. Where necessary I have amended the wording of the suggested conditions in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance (PPG) and the Framework.
23. Planning permission is granted subject to the standard three year time limit condition for implementation. In addition, it is necessary to specify the approved plans and documents in the interest of certainty. The approved documents include details for the protection of trees and protected species.
24. Conditions relating to the protection of trees, scheme of landscaping and external materials are necessary in the interests of the character and appearance of the area. Conditions requiring details be submitted for foul and surface water drainage are necessary to ensure drainage water is appropriately managed. A specific condition relating to bin storage is not necessary as locations are shown on the approved plans, and there is ample space within the appeal site nevertheless.
25. Conditions in respect of access are required in the interest of highway safety. However, I am not satisfied that the suggested visibility splays condition is necessary given the nature of traffic along Lickey Square and the access design for similar rear garden development along Lickey Square. Charging points are also necessary in the interest of minimising climate change. A specific condition relating to covered cycle storage is not considered necessary as this could readily occur within the garages for each dwelling. A condition removing permitted development rights is necessary in order to safeguard trees and the living conditions of neighbouring occupants.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed and planning permission granted.

J Gibson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (Dwg No Lickey/No34); Existing Site Plan (1:250, no reference); Proposed Site and Tree Plan (1:250, no reference); Site Levels Plan (1:500, no reference); Street Scene (1:250, no reference); Existing Tree Constraints Plan (Dwg No PRI17421-01B, Rev B, dated 06.07.2015); Floor Plans Plot 1 (1:100, no reference); Plot One Detached Garage (1:100, no reference, dated Sept 2019); Floor Plans Plot 2 (1:100, no reference); Plot 1 Elevations (four separate plans, 1:100, no reference, dated Sept 2019); Plot 1 & 2 Elevations (1:100, no reference); Section Through 34 Lickey Square (1:250, no reference); Tree Constraints Plan (Dwg No PRI17421-01E, Rev E, dated 09.12.2019); and Tree Protection Plan (Dwg No PRI22734-03, dated 10.12.2019).
- 3) The development hereby permitted shall be carried out in accordance with the details and recommendations in the following approved documents: Ecological Appraisal (Ref 2397-CWS-01, dated 8 July 2016); Tree Report (Ref PRI17421trE, Rev E, dated 16.12.19); Arboricultural Impact Assessment & Method Statement (Ref PRI22734aia-ams, dated 16/12/2019).
- 4) No development shall commence until a scheme of landscaping, including details of proposed tree and shrub plantings and treatment of all parts of the site not covered by buildings, shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the sizes, numbers, species and grade of all proposed trees/plants; and specifications to ensure successful establishment and survival of new planting.

The approved details of landscaping shall be carried out in the first planting season following the occupation of the buildings or the completion of the development, whichever is the sooner.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and in accordance with the approved details.

- 5) Prior to installation, full details of a scheme for foul and surface water drainage shall be submitted to, and approved in writing, by the Local Planning Authority. The details approved shall be fully implemented prior to the first occupation of the development and retained thereafter.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) the development hereby permitted shall not be enlarged, improved, altered or added to, including at the roof level, and no development of porches, buildings/enclosures/pools or hard surface areas incidental to the enjoyment of the dwellinghouse shall be carried out without the prior approval of the Local Planning Authority as part of an application in that regard.

- 7) Prior to their first installation, details of the form, colour and finish of the materials to be used externally on the walls and roofs of the dwellings hereby approved shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) The development hereby permitted shall not be occupied until the first five metres of the vehicular access into the development, measured from the edge of the carriageway, has been surfaced in a bound material. The access shall be retained in a bound material thereafter.
- 9) The development hereby permitted shall not be occupied until the vehicular access and visibility splays have been constructed or otherwise provided in accordance with the approved plans. The access shall be retained thereafter.
- 10) No dwelling shall be occupied until it has been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and the Worcestershire County Council Streetscape Design Guide. The electric vehicle charging point shall be retained for the lifetime of the development unless it is required to be replaced, in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.

End of Schedule