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## Appeal Decision

Site visit made on 7 July 2020

**by Thomas Hatfield BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> August 2020**

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**Appeal Ref: APP/G4240/W/20/3251412**

**Land Adjacent to Devon House, Currier Lane, Ashton-Under-Lyne,  
Tameside OL6 6TE**

- 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 A Savage of Drake Hall Limited against the decision of Tameside Metropolitan Borough Council.
  - The application Ref 19/00181/FUL, dated 28 February 2019, was refused by notice dated 29 October 2019.
  - The development proposed is described as "*development of 1no. semi-detached properties (2no. units)*".
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Mr A Savage of Drake Hall Limited against Tameside Metropolitan Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. No site address is provided on the planning application form. The site address given above is therefore taken from the Decision Notice.
4. Revised plans were submitted with the appeal that propose minor alterations to the side and rear windows of the dwellings, and a repositioning of the stone wall across the site frontage. The Council has had the opportunity to comment on these plans through the appeal process, and I do not consider that any other party would be prejudiced by my acceptance of them. I have therefore taken the revised plans into account in my determination of this appeal.

### Main Issues

5. The main issues are:
  - (a) The effect of the development on highway safety;
  - (b) The effect of the development on nearby protected trees; and
  - (c) Whether the development would result in a significant loss of open space.

## Reasons

6. The Council is unable to demonstrate a deliverable 5 year supply of housing sites as required by the National Planning Policy Framework ('the Framework'). In these circumstances Paragraph 11 of the Framework states that 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. I return to this matter in my Overall Balance and Conclusion, below.

### *Highway safety*

7. The proposed dwellings would be served by a single point of access onto Currier Lane, in close proximity to a bridge over the railway line. There is a significant gradient in the road leading from the top of the bridge down towards the proposed site entrance.
8. There is a dispute between the main parties regarding the necessary visibility splay for the proposed site access. In this regard, I note that TA 22/81 'Vehicle Speed Measurement on All Purpose Roads' has now been withdrawn and is no longer current government guidance. Its replacement, CA 185 'Vehicle Speed Measurement', does not support the application of a 2.5 mph reduction to dry weather measurements, and instead it specifies a 2.5 mph increase to speeds recorded in wet weather. Accordingly, current guidance therefore favours the Council's methodology. In addition, whilst the appellant questions whether the gradient would result in a significant increase in stopping distance, no specific corrections or alterations to the Council's calculations are suggested. In these circumstances, I consider that the evidence before me favours a visibility splay of 2.4 x 35 metres.
9. A number of drawings have been submitted that illustrate different ways to achieve an appropriate visibility splay to the west. In particular, a revised plan submitted with the appeal indicates that the stone wall across the site frontage could be re-positioned in order to achieve a visibility splay of 2.4 x 33 metres. However, this splay would cut through the bridge parapets which are outside of the appellant's control. Once this is accounted for, the splay reduces to 2.4 x 30 metres, which would be 5 metres below the necessary Y distance. Moreover, this splay assumes an offset into the carriageway of 0.5 metres, which is contrary to the measurements illustrated in Manual for Streets ('MFS'), and for which only limited justification has been provided.
10. Another suggested approach would involve significantly lowering the attractive stone wall across the site frontage. However, this arrangement would achieve the same visibility of 2.4 x 30 metres to the west. It would also result in the loss of a significant part of the boundary wall, which is a traditional feature that contributes to the character of the street.
11. MFS recommends a 2.4 metre X distance in most built-up situations, although it states that a minimum X distance of 2 metres may be considered in some very lightly-trafficked and slow-speed situations. In this regard, a speed survey has been submitted by the appellant that is based on recorded speeds along the street on a single day in June 2019. However, this survey does not accord with CA 185 which states that "*speed measurements shall comprise a minimum of two individual speed measurement periods, undertaken on different days of the week, and at different times of the day*". Moreover, it

states that "*a minimum of 200 vehicles speeds shall be recorded during each individual speed measurement period*". These stipulations are largely unchanged from previous guidance. Whilst it is asserted that a sample size of 200 vehicles would be difficult to achieve in this location outside of peak hours, it is unclear why a second survey was not undertaken. This limits the weight I can attach to the speed survey in establishing whether this area consists of a low speed or lightly trafficked environment. In any event, I note that the speed survey found that the majority of vehicles travelling in an eastbound direction were driving above the speed limit. Accordingly, I do not consider that there is sufficient evidence to justify a 2 metre X Distance in this case.

12. My attention has been drawn to research cited in Manual for Streets 2 ('MfS2'), which was unable to demonstrate a direct link between risk of injury collisions and a failure to provide the recommended visibility at priority junctions. Accordingly, MfS2 advises that a reduction in visibility below recommended levels will not necessarily lead to a significant problem. In this case, however, the proposed visibility splay would be significantly below a 35 metre Y distance. Moreover, there is a significant downhill gradient towards the site, and the available evidence suggests that passing vehicles exceed the speed limit in this location. Local residents also refer to rat running following the upgrading of the railway bridge. In these circumstances, I do not consider that a relaxation of the visibility splay is justified.
13. It is asserted that existing properties to the east have similar access arrangements, which has not resulted in any accidents in recent years. However, those properties are generally further away from the bridge than the appeal proposal, and it is unclear how intensively their off-street parking areas are used. Whilst the appellant states that the existing site access would be improved, its use would also be significantly intensified.
14. It is suggested that traffic calming measures could be introduced in order to reduce speeds along Currier Lane. However, there is already a speedhump over the bridge and this does not appear to deter speeding according to the submitted survey. Moreover, the proposed vehicle-activated signs would be outside of the appeal site on land owned by the Highway Authority. In this regard, the Highway Authority has not indicated that it would consent to this, nor is it clear that there are suitable and effective locations along the road to position these signs. In these circumstances, I do not consider that this matter is capable of being dealt with by condition.
15. The proposed parking layout includes a tandem arrangement with a shallow turning head. In this regard, the submitted tracking indicates that turning within this area would be very tight, with little margin for error, and it is unclear whether a larger saloon car would be able to manoeuvre so as to enter/leave in a forward gear. This would be particularly difficult for cars parked in the westernmost spaces (for which no tracking has been provided), which would be unable to manoeuvre into the turning head in the same way. In my view, this arrangement would encourage reversing back out onto the street, which would raise further highway safety concerns.
16. Separately, plan Ref SCP/190350/F07 illustrates that adequate pedestrian visibility splays can be achieved. However, that does not alter my other concerns regarding highway safety, as set out above.

17. For the above reasons, I conclude that the development would prejudice highway safety. It would therefore be contrary to Policies T1 and H10 of the Tameside Unitary Development Plan ('UDP') (2004). These policies seek to ensure, amongst other things, that new development provides a safe and suitable access and layout.
18. It is asserted that Policy T1 is inconsistent with the Framework as it seeks to "*improve safety for all road users*" (my emphasis), whereas the Framework simply requires that safe and suitable access to the site is achieved. However, any inconsistency between Policy T1 and the Framework in this regard is relatively minor in my view, and I attach significant weight to Policy T1.

#### *Protected trees*

19. The appeal site is covered by a group Tree Preservation Order (TPO), which also extends beyond the site boundary to the north. Part of the site was cleared in 2016 to allow for the construction of a temporary compound to facilitate engineering works to a nearby railway bridge. However, the rear part of the site was not cleared during this process and it retains a number of mature trees. These are individually attractive and form part of a larger wooded area that contributes significantly to the area's leafy character. In this regard, Currier Lane is characterised by mature trees and planting along its length, a number of which are subject to TPOs.
20. The trees at the rear of the site would be incorporated into the back gardens of the new properties. In particular, the rear garden to the westernmost dwelling would be dominated by mature trees and the canopies would be in close proximity to the property itself. This would restrict light and outlook to its rear facing windows, which would be likely to cause resentment and lead to pressure to remove or lop these trees once the dwelling was occupied.
21. A Daylight, Sunlight and Overshadowing Assessment<sup>1</sup> has been submitted with the appeal. This concludes that none of the rear windows in either dwelling would achieve the 'vertical sky component' criteria set out in BRE guidance. Whilst these rooms would exceed the minimum 'average daylight factor' (ADF) measurement with supplementary electric lighting, this exceedance would be marginal. This illustrates the potential annoyance that the trees may cause should future residents wish to achieve a better standard of daylight. In this regard, I note that the BRE Guidance states that a 2% ADF measure would result in only a partly daylit space. Moreover, the proximity of the trees to the rear of the properties would also restrict outlook and views from the upper windows, which would be an additional source of annoyance.
22. With regard to the rear garden areas, the submitted assessment concludes that these would exceed the minimum BRE criteria relating to overshadowing. However, the protected trees would be positioned across the centre of the rear garden to the westernmost property, and close to the house itself. This would make it difficult to establish a traditional garden and lawn area at the rear without removing further trees. Any lawn or flowerbeds that were created would also be partially overshadowed by the canopies, and this would be exacerbated by the position of the rear garden to the north of the dwelling. Whilst some garden space is proposed at the side of this property, it would be next to the street and would therefore have less privacy. This area also slopes

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<sup>1</sup> REC, Ref AQ108831R1 (March 2020)

away towards the railway line. It would therefore be unlikely to be used as frequently as the rear garden area.

23. In combination, these factors would be likely to create significant additional pressure to remove trees once the dwellings were occupied. Whilst future works to the trees would require consent, their visibility from public vantage points would be restricted by the new dwellings and so unauthorised works would be more difficult to detect. The close proximity of the retained trees to the dwelling could also affect the Council's ability to resist future applications to lop or fell the trees.
24. I note that the Council's Arboricultural and Countryside Estates Officer does not raise these matters in their written response to the application. However, both the Council's Officer Report and Statement of Case raise these matters and they are valid planning considerations in my view.
25. For the above reasons, I conclude that the development would significantly undermine the longer term existence and visual contribution of the protected trees. The development would therefore be contrary to Policy N5 of the Tameside UDP (2004), which seeks to ensure that new development does not result in the unnecessary loss of, or damage to, existing trees of amenity value.

#### *Open space*

26. The appeal site is designated as Protected Green Space under Policy OL4 of the Tameside UDP. This Policy states that built development will not be permitted on such sites unless one of 4 exception criteria are met. In this case, none of the exception criteria would apply and the development would therefore be contrary to this policy. Moreover, my attention has been drawn to a recent appeal decision<sup>2</sup> that also considered a development proposal relating to a Protected Green Space site. That Inspector concluded that Policy OL4 is generally consistent with Paragraphs 97, 100 and 127 of the Framework, and I see no reason to take a different view.
27. As set out above, the appeal site was entirely covered with trees prior to 2016. From the information before me, it is unclear whether the removal of these trees benefited from consent<sup>3</sup>, or whether there is any requirement to replant the site. I further note that an agreement entered into by the engineering firm indicates that the site was to be hard surfaced after the compound was removed. In any case, there is no indication that the Council has taken action to secure the restoration or replanting of the site.
28. At present, the cleared part of the site largely consists of hardstanding and it was used for informal parking at the time of my visit. It is not publicly accessible and serves no recreational function. In its current condition, the cleared part of the site is not particularly attractive and its contribution to the character and environmental quality of the area is limited to views across it to the trees at the rear, and the attractive boundary wall along its frontage. The surrounding area is not of particularly high density, and in my view, the cleared part of the site no longer performs a significant greenspace function. Whilst

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<sup>2</sup> APP/G4240/W/18/3216380

<sup>3</sup> The appellant states that the trees were "unlawfully cleared". Whilst the Council list approval Ref 15/00108/TPO in the relevant planning history, little detail regarding that case has been provided and so it is unclear precisely what it relates to.

the Council state that there remains an opportunity for the site to be replanted with trees, there is no indication before me as to how this would come about.

29. As set out above, the development would be contrary to Policy OL4 of the Tameside UDP (2004) as it would not meet any of the exception criteria set out in that policy. However, in its current condition, the appeal site no longer serves a greenspace function and its contribution to the character and environmental quality of the area is limited. In my view, and based on the evidence before me, these considerations outweigh the failure of the development to comply with Policy OL4. Accordingly, the development would not result in a significant loss of open space in this case.

### **Overall Balance and Conclusion**

30. As set out above, the development would prejudice highway safety and would undermine the longer term existence and visual contribution of the protected trees at the rear. Set against this, the proposal would make a small contribution towards the deficient supply of housing land, on a previously developed site within the existing urban area. It would also generate some economic benefits during the construction phase and through local expenditure by future residents. In view of the current shortfall in housing supply, I give these considerations moderate weight.
31. On balance however, and taking all matters into consideration, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits. The material considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.
32. For the reasons given above I conclude that the appeal should be dismissed.

*Thomas Hatfield*

INSPECTOR