



Appeal Decision

Site visit made on 13 October 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

Appeal Ref: APP/T3725/W/20/3252299

Land off Birmingham Road, Warwick

- 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 Symonds and Newey against the decision of Warwick District Council.
 - The application Ref W/19/1572, dated 16 September 2019, was refused by notice dated 20 November 2019.
 - The development proposed is construction of two 2.5 storey dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the character and appearance of the area; the living conditions of future occupants; and, biodiversity and protected species.

Reasons

Character and appearance

3. The appeal site forms part of a wooded area with mature, mixed broadleaved and coniferous trees, which is covered by a Tree Protection Order (TPO). This wooded area is prominent due to its location adjacent to the highway and also provides a verdant landscape buffer to a number of dwellings to the south west of the A425. Notwithstanding some concerns over littering at the appeal site, individually and together with other nearby green infrastructure, it makes a positive contribution to the landscape character and visual amenity of the area and forms part of a soft edge to the urban area into Warwick.
4. In contrast, and irrespective of some attention to design, the proposal would introduce two sizeable dwellings on a site which is free of any significant built development. As a consequence of the proposed layout the rear elevations of the new dwellings would face the A425, providing a strong built form close to this road. This would be inconsistent with the prevailing arrangement of development, where buildings generally have frontages facing the A425 and are set-back from it, and in certain cases are screened by landscaping.
5. In particular, the proposal would result in the permanent loss of a substantial number of protected trees at the centre of the site. Although the appellant's arboricultural report proposes new landscaping and the long-term management

of retained planting, on the available information, it is not clear whether these would sufficiently mitigate the nature and scale of development proposed, whilst also retaining the contribution the appeal site makes to the landscape character and visual amenity of the area.

6. For the above reasons, the proposal would introduce an incongruous form of development which would not be in keeping with the prevailing pattern of development. The incongruity of the proposed development would be exacerbated by its prominent location. Although the proposal would be largely visible from vehicles passing the site, this does not diminish its impact on the area.
7. Consequently, the proposal would harm the character and appearance of the area and would be contrary to the design aims of Policies BE1 and NE4 of the Warwick District Local Plan 2011-2029 (LP) which amongst other matters seek to ensure that development will only be permitted which positively contributes to the character and quality of the environment through good layout and design, and positively contributes to landscape character. I also find conflict with Policy NE1 of the LP which seeks to protect, enhance and restore the district's green infrastructure assets.

Living conditions

8. There is nothing to suggest that the overall sizes of the proposed gardens would not be acceptable for the new dwellings. The appellant is also willing to plant a mature hedge along the rear boundary of the proposed dwellings to safeguard the privacy of future occupiers. This could be secured by a condition, if the appeal were to succeed.
9. Nevertheless, the proposed layout would place the new dwellings and their associated gardens close to the adjacent highway network comprising the A425, the A46, and the Stanks Island roundabout.
10. Most notably, the proposed dwellings would be located within 20 metres of a road with an average annual daily traffic flow of more than 10,000 vehicles. Therefore, in accordance with the Council's adopted Air Quality and Planning supplementary planning document ('AQ SPD') the proposal triggers the requirement for an air quality exposure assessment. The appellant's Air Quality Management Statement confirms that the proposed development could be subject to potential air quality exposure impact but suggests that this could be satisfactorily mitigated. However, for the type of development proposed, the Council's AQ SPD requires specific mitigation measures against air quality exposure impacts, in addition to the proposed plug-in vehicle charging points.
11. Consequently, in the absence of any appropriate mitigation against air quality exposure impacts, I cannot be certain that future residents of the development would not be exposed to air pollutants above the national objective levels.
12. Despite the appellant's assertions about noise in the vicinity of the appeal site and suggested measures for mitigating this, it has also not been clearly shown that the occupiers of the proposed development would not be exposed to undue noise disturbance. Given the proximity of the highway network to the appeal site, high levels of local traffic and the sensitive nature of the proposed use (residential), matters relating to living conditions are significant and cannot be left to conditions.

13. For the above reasons, I conclude that the proposal would fail to provide satisfactory living conditions for future occupants of the proposed development. Consequently, the proposal conflicts with Policy NE5 of the LP which states that development proposals will be expected to demonstrate that they do not give rise to soil contamination or air, noise, radiation, light or water pollution where the level of discharge, emissions or contamination could cause harm to sensitive receptors. The proposal is also contrary to Policy BE3 of the LP, which amongst other things requires all developments to provide acceptable standards of amenity for future users or occupiers.

Biodiversity and protected species

14. The proposal includes the permanent loss of part of a broad-leaved woodland and on the information before me, it has not been substantiated the proposal would not result in a net biodiversity loss. Although additional planting could be secured by condition, I cannot be certain that the suggested enhancements would bring a net gain in biodiversity.
15. The appellant also suggests that an offsetting payment can be made to compensate for any biodiversity loss. Nevertheless, in the absence of any legal agreement between the parties in respect of this, I am unable to attach any weight to this suggestion.
16. The submitted Preliminary Ecological Appraisal identifies that none of the trees at the site contain any obvious deadwood features likely to support roosting bats but also accepts that the dense ivy covering on many tree trunks could obscure such features. The appraisal also appears to acknowledge that small part of the site is likely to be used as a foraging habitat for bats and that the trees and shrubs at the site would support nesting birds.
17. Further, in the interests of safeguarding any roosts, the appraisal recommends a cautionary approach to be taken during any felling or tree surgery work carried out on them, to protect bats, along with the timing of such works in the interests of protecting nesting birds.
18. As such, the evidence provided suggests the presence of protected species. However, in the absence of a bat roost assessment survey of the trees, a bat activity survey and breeding bird survey, I cannot be certain as to the extent of the presence of protected species and the effectiveness of any suggested mitigation.
19. Paragraph 99 of Circular 06/2005 'Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System' advises that it is essential that the presence or otherwise of protected species that may be affected by a proposed development is established before planning permission is granted. The reason for this is to ensure that all relevant material considerations are addressed in making the decision. Despite the appellant's willingness to accept the Council's suggested conditions in relation to protected species, the Circular refers to the use of planning conditions in "exceptional circumstances" when surveys can be carried out after the grant of planning permission. No such exceptional circumstances have been demonstrated.
20. In light of the foregoing, the proposal would result in a net biodiversity loss and it has not been clearly shown that the proposal would not harm protected species. Therefore, the proposal is contrary Policy NE3 of the LP, which states

that development will be permitted provided that it protects, enhances and / or restores habitat biodiversity. In particular, the explanatory text to this Policy is clear that the loss of habitats and species whether from designated sites or not, is a key issue to be addressed. Consequently, I also find conflict with similar aims of the National Planning Policy Framework ('the Framework') for safeguarding habitats and wildlife.

Other matters

21. Whilst the Framework supports the efficient use of land, this is subject to safeguarding and improving the environment. Based on my findings on the main issues, this is not the case here. Given the modest scale of the proposal (two dwellings) any contribution to the Council's housing supply would be limited, as would be any associated benefits. Therefore, these matters and some local support for the proposal do not outweigh the harm I have identified and overall conflict with the development plan.

Conclusion

22. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR