



Appeal Decision

Site Visit made on 11 May 2021

by R Walmsley BSc, MSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2021

Appeal Ref: APP/Q4625/W/20/3263602
Former Lido, Park Avenue, Solihull, B91 3EJ

- 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 Barney McElholm of Elegant Developments Ltd against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2019/02724/PPFL, dated 21 October 2019, was refused by notice dated 11 September 2020.
 - The development proposed is erection of 5 no. two storey dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The list of drawings on the Council's decision notice does not accurately reflect the drawings that were considered when the Council decided the planning application. However, the appellant clarifies the drawings considered and from the evidence before me, I am satisfied that the Council has seen and commented on these drawings. My decision has been made on the same basis.
3. During the course of the appeal the main parties have had an opportunity to respond to the issues raised by third parties. On this basis I am satisfied that no party has been prejudiced by me proceeding with the appeal.

Main Issues

4. These are:
 - (i) the effect of the proposal on the character and appearance of the area, and;
 - (ii) the effect of the proposal on the setting of nearby listed buildings and on the character and appearance of the Malvern Hall and Brueton Avenue Conservation Area Conservation Area.

Reasons

Character and appearance

5. The houses in Park Avenue are generously sized and are set within equally good-sized plots that have wide frontages. The overall form of this street is uniform with properties fronting the street. This uniformity gives way to a more open form of development at the end of Park Avenue. The appeal site is

appreciated in this context. The appeal site, being overgrown, provides a verdant backdrop to the sixth form centre and connects strongly with Malvern Park.

6. The layout of the proposed development is not a relaxed or logical evolution of its site context. The houses are awkwardly juxtaposed to the building lines of the stable blocks. Plots 4 and 5 are small with narrow frontages which do not reference the more spatial forms of residential development in Park Avenue or the larger forms of development on the school site. Much of the activity relating to the site would be inside, given the position of the front doors and parking area, reinforcing the development's indifference for site context. Linked-detached and semi-detached houses are not a form of housing which is characteristic of the area. Altogether, the development would appear awkwardly juxtaposed to its surroundings and therefore would appear incongruous and harmful to the spatial qualities of the area.
7. The attention to architectural detailing and materials to reflect development in the area does not overcome the harm relating to the development's layout and poor relationship to its surroundings. The development would be screened by trees. However, the visual qualities of a site is only one aspect of good design. It is equally important that the form and layout evolves from and respects site context, particularly given the impermanent nature of landscaping.
8. Tree T10 is visually prominent in views along Park Avenue towards the appeal site. The tree, being mature and exhibiting vigour, contributes positively to the verdant character of the area and provides an attractive setting to the buildings that are seen in the context of this tree. The loss of the tree, therefore, would have a harmful effect on the character and appearance of the area.
9. The evidence before me states that the tree could remain in situ for a minimum of 20 years; this is not an indiscernible amount of time and indicates that the health of the tree is not a reason to justify its removal. The replacement tree proposed would not occupy as prominent a location in relation to Park Avenue as the existing tree. Furthermore, being a cedar, its canopy would not be as voluminous or verdant as the sycamore. Therefore, irrespective of the replacement tree being large at the time of planting, it would not compensate for the harm found. The National Planning Policy Framework (2021) (the Framework) has recently been updated to emphasise the importance of trees in defining the character and quality of urban environments and suggests that trees should be retained where possible. The development would not be compliant with this approach. Nor would the development be compliant with Policies P10 and P14 of the Local Plan (2013) which seek, amongst other things, to protect the natural landscape and safeguard important trees.
10. All in all, the development would have a harmful effect on the character and appearance of the area, contrary to Policy P15 of the Local Plan (2013) which, amongst other things, seeks development that conserves and enhances local character.

Setting of listed buildings and Conservation Area (CA)

11. As the site is concerned with the setting to listed buildings and the Malvern Hall and Brueton Avenue Conservation Area (CA), I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA in accordance with the statutory duty under s72(1) of the

- Planning (Listed Building and Conservation Areas) Act 1990, and to consider the impact of the proposal on the setting of the listed buildings under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
12. The stable blocks are grade II listed. A common room connects the two stable blocks. The effect of this more recent building on the integrity of the listed buildings is a matter of judgment. Its design contrasts noticeably with the listed buildings but the integrity of the stable blocks and as an adjunct to the hall has not been lost. Furthermore, despite more recent developments around the listed buildings, the stable blocks are still appreciated as such.
 13. The stable blocks are within a relatively spacious and open setting which is a common feature of much of the land south of Park Avenue and Brueton Avenue which includes Malvern Hall. The stable blocks are viewed in this open setting from multiple vantage points within the school site. From outside the site, the northern stable block is most visible, in views looking south along Park Avenue. Here, the architectural detailing of the building, together with the space around it sets the building apart from those around it.
 14. There is a history to the appeal site which links the appeal site with the stable blocks and the wider estate to include Malvern Hall. Despite the site being overgrown, the lido remains in situ and therefore retains historical value. The trees on the appeal site provide a pleasing verdant backdrop to the stable blocks. In all, the appeal site contributes positively to the historical and visual setting of the stable blocks which I have found to be significant.
 15. The development would introduce a notable amount of built development within an uncomfortable distance of the stable blocks. For the reasons set out above, the new dwellings would also be an incongruous adjunct to these listed buildings in visual terms. The materials and architectural detailing proposed does not compensate for this harm. The adverse effects of the development on the setting of the listed buildings would be less than substantial, but nevertheless of considerable importance and weight.
 16. Although the Council refers to a listed wall, there is limited evidence from either party about it. The wall is mostly obscured from view by built development and vegetation and therefore it is difficult to appreciate it visually. Nonetheless the wall has historical characteristics, owing to its association with the former estate.
 17. It is not clear what the appellant intends for the listed wall. However, rear gardens would adjoin the wall which in contrast to the overgrown condition of the site, would improve the visibility of the wall and therefore enhance its setting. The development would, therefore, have a positive effect on the setting of the listed wall.
 18. The appeal site adjoins the southern boundary of the CA. The appellant raises concern for shortcomings in the designation of the CA. As local authorities are responsible for designating CA's, it is not within the remit of this appeal for me to assess or comment on its validity.
 19. There is little evidence before me which explains the significance of the CA. However, the appeal site is outside the CA with a small proportion of it adjoining the CA's boundary. Furthermore, given the rather secluded character of the site, behind existing built form, the site has little visual or functional

- connection with the CA. The appeal site, therefore, makes limited contribution to the CA's character and significance.
20. The new housing would be equally secluded in relation to the CA. A development of 5 houses would increase traffic movements along Park Avenue but this would not be out-of-keeping with the existing activities on this residential street. Given the limited contribution of the site to the character and significance of the CA, the replacement of the sycamore tree with a cedar would be immaterial. As such the proposal would not have a harmful effect on the character and appearance of the CA.
21. I have, however, found that the adverse effects of the development on the setting of the stable buildings would be less than substantial. Paragraph 196 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
22. The development would provide economic benefits, including jobs during construction and supporting local services and facilities. The development would also contribute to the Council's housing stock and need for housing which, if it is true that the Council cannot demonstrate a 5-year housing land supply, carries moderate weight as a public benefit. I have also found that the development would benefit the setting to the listed wall in visual terms. In giving importance and weight to the less than substantial harm and in having special regard for the desirability of preserving the setting of the listed buildings, the modest benefits identified would not outweigh the harm.
23. In giving special consideration to the desirability of preserving or enhancing the character or appearance of the CA and the setting of the listed buildings in accordance with the clear expectations of sections 72(1) and 66(1) the Planning (Listed Buildings and Conservation Areas) Act 1990 respectively, I find that the development would preserve the character and appearance of the CA but would be harmful to the setting of the listed buildings. As a result of the harm found to the listed buildings, the development would not comply with paragraph 193 of the Framework which anticipates that great weight be afforded to the conservation of heritage assets, including their setting, nor Policy P16 of the Local Plan (2013) which, amongst other things, seeks development that preserves or enhances heritage assets.

Other considerations

24. The appellant asserts that the Council cannot demonstrate a 5-year housing land supply. If true, in accordance with the Framework, 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.
25. The proposal would make a modest contribution towards the provision of housing, being a development for five houses. The appeal site is in an accessible location close to services and facilities, including public transport and schools. This attracts moderate positive social benefit. The development would make use of a derelict site which attracts moderate weight in favour of the appeal. There would also be moderate positive economic benefits from the proposal in the form of jobs within the construction industry and the associated

supply chain, and increased spending from future occupants in local shops and businesses.

26. I am referred to two appeals in Solihull which relate to character and appearance and housing supply. I have no details about these appeals to make any comment regarding precedent. Nonetheless, each case must be decided on its own merits, according to the facts and circumstances pertaining to that case, and it is on this basis that I have decided the appeal.

Conclusion

27. Even if I were to conclude that there is a shortfall in the five-year housing land and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. I conclude, therefore, that the proposal would fail to satisfy the requirements of the Act and paragraph 192 of the Framework, and it would not be in accordance with the development plan, when read as a whole. For the reasons set out above, and having considered all matters raised, the appeal is dismissed.

R Walmsley

INSPECTOR