



Appeal Decision

Site visit made on 25 May 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/H1840/W/21/3270285

Liberty Leisure Centre, Saxon Way, Wychbold WR9 7TB

- 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 Keith Owen of Liberty Leisure against the decision of Wychavon District Council.
 - The application Ref 20/01075/FUL, dated 3 June 2020, was refused by notice dated 11 December 2020.
 - The development proposed is construction of office space for use by Liberty Leisure and 4 en suite single bedroom accommodation.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The revised National Planning Policy Framework (the Framework) was published 20 July 2021 and introduced a number of revisions that may be pertinent to the proposal. Consequently, the main parties were given an opportunity to comment on the revised Framework and any subsequent implications that may have emerged.

Main Issues

3. The main issues are the effect of the proposal on:
 - (a) living conditions of neighbouring occupiers in relation to light, outlook and privacy;
 - (b) drainage;
 - (c) the character and appearance of the area;
 - (d) highway safety; and
 - (e) biodiversity.

Reasons

Living Conditions

4. Unit 22 Saxon Way is located in relatively close proximity to the north east of the site. The neighbouring occupiers therein currently enjoy unobstructed levels of outlook from first floor windows at the front of their building. This is largely due to the access road directly outside the building's frontage, which creates appreciable separation with the other buildings opposite. Furthermore, the site in this case comprises an area of open space, which is forward of the building's frontage and therefore also helps create a sense of openness, contributing to the outlook of neighbouring occupiers.

5. The proposal would introduce a two storey building that sits forward of the existing building line adjacent. It would not be staggered behind the building line, like other buildings in the adjacent row. Moreover, it would extend forward to such an extent that it would appear to breach the 45-degree code, which in essence is a design standard that seeks to preserve the living conditions of neighbouring occupiers.
6. Consequently, it would protrude forward of the building line to the extent that it would have overbearing and overshadowing effects, harming the outlook, and reducing the amount of daylight currently enjoyed by neighbouring occupiers. This is notwithstanding the relative scale of the building, which is smaller than the leisure centre and comparable to residential buildings nearby. It is the combination of scale and siting that is most problematic in this case.
7. The shadow analysis presented by the appellant is not clear in its legibility. Consequently, it is not possible to fully assess the contentions and relative merits of avoiding shadowing to the rear of Unit 22 specifically. Furthermore, notwithstanding the relationship between Unit 22 and its other immediate neighbours, the proposal needs to be considered in the context of its own effects on the prevailing outlook of neighbouring occupiers.
8. Other dwellings along Amphlett Way are relatively further afield to the west of the site. Based on my site visit, this distance in and of itself would appear to help mitigate potential overlooking from the proposal. Nonetheless, the predominance of windows and doors in the proposal are located in the eastern elevation of the building, facing away from Amphlett Way, with a lesser number of windows in the western elevation of the building facing Amphlett Way.
9. Of the windows in the western elevation, those on the ground floor would not result in overlooking because of intervening boundary treatments. Those at first floor level, within the relevant 10 metre separation buffer, would serve a non-habitable room and therefore any glazing could be obscured through the use of a planning condition, mitigating any potential for overlooking. Altogether the privacy of neighbouring occupiers at Amphlett Way would be preserved.
10. Overall, notwithstanding my findings on overlooking along Amphlett Way, the proposal would still generate harmful overbearing and overshadowing effects on the outlook and daylight currently enjoyed by neighbouring occupiers at Unit 22 Saxon Way. Consequently, the proposal would be in conflict with Policies SWDP21 and SWDP35 of the South Worcestershire Development Plan 2016 (SWDP). Among other things, these policies seek to preserve the living conditions of neighbouring occupiers.

Drainage

11. Part of the site takes in a swale that is fundamental to the drainage strategy associated with the original development of the wider site, which comprised the leisure centre and residential dwellings in the immediate vicinity. It was a major development in planning terms and any further drainage implications presented in this case need to be duly considered. There is no evidence that the drainage strategy included capacity above and beyond that required for the original development. For example, additional capacity that would be capable of supporting future development. The swale might not be identifiable on aerial imagery, but this is not conclusive of its drainage function or lack thereof.

12. The proposal would erode part of the swale. Logically, the capacity of it would be reduced as a result. Furthermore, the proposal would deliver additional hard standing, and this would change the volume of surface water entering the swale. In this context, there is insufficient evidence submitted in support of the proposal, and I am unable to conclude that there is available capacity within the existing drainage network to reduce the size of the existing swale. Both in the context of supporting existing development and accommodating additional surface water generated by the proposal.
13. In terms of requiring further information by way of planning condition, I first need to be satisfied that a solution is achievable in principle. In this context, I cannot be certain that the land surrounding the existing swale is sufficient to accommodate whatever increase in capacity is required to deal with surface water generated by the proposal. Overall, I am unable to conclude that the proposal would not have harmful effects on drainage. Consequently, I cannot conclude that it would be in accordance with Policies SWDP28 and SWDP29 of the SWDP, which among other things requires development to mitigate flood risk by managing surface water drainage.

Character and Appearance

14. The site is located directly adjacent to residential development and a leisure centre, which includes associated internal uses such as a gym, among other things. The dwellings comprised in the residential development are typically two storeys in height and either arranged as semi-detached or terraced buildings. They are designed to incorporate both pitched roofs and flat roofs, and a mix of materials such as timber, brick and render. Generally speaking, the dwellings are modest in size on proportionate plots with modest rear garden areas.
15. The leisure centre building is juxtaposed against these dwellings. It is significantly larger in scale, departs from the pattern of development and uses contrasting materials in its construction, comprising metallic cladding and large amounts of glazing. It is visible from the majority of vantage points within the wider site and along Saxon Way. Consequently, the existing dwellings are viewed within its setting.
16. The built environment of the site is located within a parkland context, where there are a significant number of mature trees populating the locality amongst rolling topography. This is reflective of the site's location within the wider grounds of the former Wychbold Hall which was located in a formalised parkland setting and demolished in 1995. Consequently, the remainder of the parkland setting surrounding the site is important for sustaining an appropriate degree of openness as part of the wider built environment.
17. The site itself comprises an area of land that generally presents itself as scrub grassland with no particular individual aesthetic value. It is a relatively small area of land within the wider site, and there are other larger areas of public open space that make a greater and more important contribution to the parkland setting. For example, the land directly south of the leisure centre building, directly to the north east of Saxon Way and directly to the north west of Saxon Way, behind the existing dwellings at the site.

18. These parcels of land are larger, include significant numbers of mature trees and are located on the periphery of the built environment to help form a parkland backdrop to existing buildings within the site. Consequently, based on how the wider setting is currently established, I cannot conclude that the site in this case makes more than a limited contribution to the parkland environment.
19. The proposal would introduce a building for offices and holiday accommodation. It would not be wholly residential in character, with a contrasting pattern of development, but would display similar materials to the existing dwellings nearby. The existing leisure centre establishes a mixed use vernacular at the site and provides important context within which other buildings are viewed.
20. Consequently, the proposal would contribute to this mixed use vernacular whilst its more modest scale would ensure it did not dominate the street scene, remaining subservient to the existing leisure centre and wider residential development when taken as a whole. In essence, the presence of the leisure centre means that the proposal's pattern of development would not look incongruous within the wider context. Furthermore, given that the site makes a limited contribution to the parkland setting, the proposal would not erode the wider landscape character.
21. I acknowledge the Council's position that the previous planning permission has not been fully implemented. However, there is no evidence that this should preclude future proposals from delivering development that is otherwise acceptable in planning terms. Furthermore, there is no evidence of a breach of planning control, nor is there evidence that the Council has started enforcement action and altogether I have no basis to conclude that there is a reasonable prospect that the trees would be forthcoming in any event.
22. If anything, the lack of expedience in enforcement action brings into question the contribution of the site and need for trees therein. Moreover, even if the lack of tree planting in this particular part of the wider site did detract from the landscape character, it seems reasonable that as part of the proposal, there is potential to secure additional tree planting as a measure to soften the prevailing and potentially forthcoming built form, creating betterment. This could be secured by planning condition.
23. Overall, the proposal would have an acceptable effect on the character and appearance of the area. It would comply with Policies SWDP21, SWDP25 and Policy SWDP35 of the SWDP, which among other things seek to ensure that proposals come forward in a well-designed manner.

Highway Safety

24. The site is located adjacent to residential development, which is served by private parking arrangements, and the leisure centre which is served by what appears to be more public parking arrangements. The transient nature of leisure centre users suggests that there would be a reasonable degree of turnover and availability in parking spaces throughout the day.
25. The proposal is for a relatively limited form of development and the potential demand for car parking would also appear limited in this context, at least in relative terms compared to the existing leisure centre and residential development. Consequently, it is likely that the demand for additional parking could be absorbed by the existing leisure centre's parking arrangements.

26. Even if this was not the case, and the proposal gave rise to some indiscriminate parking on the highway, there is no evidence that the residual effects of this would be severe. In this context I am mindful of Paragraph 111 of the Framework, which sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual impacts on the road network would be severe.
27. Moreover, given that Liberty Leisure are in control of the land associated with the leisure centre parking and the proposal in this case, I see no reason why a parking management plan, including bicycle storage provision, could not be devised and secured by planning condition.
28. This would ensure that the limited additional parking demand is absorbed by existing parking provision and mitigate highway safety concerns, whilst also addressing any potential for cumulative effects from other proposals. For example, the parking management plan could designate existing parking spaces or require users of the site to stagger their attendance, among other things.
29. Overall, in the context of mitigation measures, the proposal would not have an unacceptable effect on highway safety as any residual effects could be dealt with by planning conditions. It would not therefore conflict with Policies SWDP4 or SWDP21 of the SWDP or Paragraph 111 of the Framework, which among other things require proposals to come forward without compromising highway safety.

Biodiversity

30. There is no cogent evidence put forward by the Council to substantiate their contention that habitats or species are likely to be present or inhabit the site, including its vicinity, or that it is important for wider connectivity. Ecological surveys do not appear to have been required by the Council during the application's validation nor is there any evidence of consultation responses from relevant Council departments or technical consultees advising that such surveys were central to deciding the application.
31. I am mindful of Circular 06/2005, which states that the presence of a protected species is a material consideration. However, it goes on to state that, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species or supporting habitats being present and affected by the development. Furthermore, Planning Practice Guidance¹ establishes that an ecological survey will be necessary in advance of a planning application, but only if the type and location of development could have a significant impact on biodiversity. As with other supporting information, local planning authorities should require ecological surveys only where clearly justified.
32. In this context, there is no evidence before me demonstrating there is a reasonable likelihood of species or supporting habitats being present, or that the proposed development would generate a significant impact on biodiversity therein. For example, the site would appear as nondescript scrubland with no obvious biodiversity value.

¹ Paragraph: 018 Reference ID: 8-018-20190721

33. The swale holds no water and cannot give rise to aquatic biodiversity, and even if the secondary swale does hold water, it is not clear what habitat connectivity exists or how this affects the swale in question here. Moreover, there is no explanation as to what species or habitats might inhabit the swale to substantiate the dispute. Consequently, without substantive evidence I cannot conclude that the proposal would have a harmful effect on biodiversity or conflict with Policy SWDP22 of the SWDP, which among other things seeks to conserve and enhance the natural environment.

Other Matters

34. The Section 106 Agreement relates to the foregoing planning permission at the site. It is not clear whether it is a barrier to planning permission in this case. Ultimately, the full details are not in front of me but as I am dismissing the appeal for other reasons, I have not probed the matter further with the parties.
35. The appellant has provided an analysis of the planning officer report and matters that do not necessarily appear to be disputed by the Council in their reasons for refusal or their statement of case. I have only dealt with the main matters in dispute under the appeal.
36. The site is an open area of land that could hold some value as recreational open space which is a different matter from character and appearance considered under the relevant main issue. However, it is unclear to what extent it is relied on in this way, especially considering the playing fields directly to the north east of the site. Consequently, any limited harm from its loss would be offset in this context.
37. Although the proposal would appear to give rise to socio-economic benefits relating to leisure and tourism, the tangible extent of such benefits has not been fully established. For example, there does not appear to be a formal assessment of market conditions or of the existing leisure centre's viability, demonstrating what weight the socio-economic benefits should be given in the planning balance. Consequently, I can only give them limited weight under the appeal.
38. There is no evidence in front of me demonstrating that the presumption in favour of sustainable development has been triggered under Paragraph 11 of the Framework.

Conclusion

39. Even though the proposal would be acceptable in relation to character and appearance, highway safety and biodiversity, it would still remain unacceptable in relation to living conditions and drainage. Consequently, the appeal is dismissed.

Liam Page

INSPECTOR