



Appeal Decision

Site Visit made on 7 June 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/Y0435/W/20/3264504

Land adjacent No 4 Holmfield Close, Tinkers Bridge, Milton Keynes, MK6 3AB

- 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 Milton Holmfield Ltd against the decision of Milton Keynes Council.
 - The application Ref: 20/01597/FUL, dated 27 August 2020, was refused by notice dated 23 October 2020.
 - The development proposed is a 4 bedroom, 2 storey house with double garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's reason for refusal No.1 makes reference to Policy WS9 of the Woughton Community Neighbourhood Plan (2017)(NP). The Council have indicated that this is an error and should in fact refer to NP Policy WN9. The officer's report makes reference to NP Policy WN9 and the main parties have referred to this policy throughout their evidence. As such, I have determined the appeal on this basis.
3. The Council's reason for refusal No.2 does not specifically refer to the type of harm that would arise as a consequence of the appeal scheme. Nevertheless, the Council's Officer Report refers to the impact of noise and disturbance and the effect of shading from nearby trees. The appellant has addressed both of these issues and therefore I have considered the appeal on that basis.
4. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021 and the parties have been provided an opportunity to comment on the implications of this for their case.

Main Issues

5. The main issues are:-
 - i) the effect of the proposed development on the character and appearance of the area including its effect on trees;
 - ii) whether the proposed development provides adequate living conditions for future occupants with particular regard to noise, disturbance and light; and
 - iii) the effect of the proposed development on surface water drainage.
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Reasons

Character and appearance

6. Tinkers Bridge is a predominantly residential area characterised by a mix of dwellings of varying type and scale. Dwellings are generally closely-knit and arranged in terraces or clustered groups. Areas of open space with mature trees and vegetation provide beneficial respite from the built form and add an attractive, spacious and verdant quality to the area. The prevailing layout of properties within the area contributes a strong and uniform spatial pattern of development.
7. The appeal site forms part of the large rear garden of 4 Holmfield Close, a sizeable detached two-storey dwelling forming the end property of a linear group of detached properties. No. 4 comprises a generous sized plot that is mainly screened from public view by the existing vegetation. A boundary wall and fencing of approximately 2-3 metres in height, taking the appellant's measurements, which have not been disputed by the Council, encloses part of the site. Although the appeal site is not readily visible from the public domain, as a large green space with an absence of built form, the appeal site nonetheless makes a considerable positive contribution to the spacious and verdant character of the area.
8. In addition, the appeal site comprises a significant number of broadleaved and coniferous trees of which, several are protected by a Tree Preservation Order. Many of these trees are substantial in size and as a result they are widely visible from public vantage points. Consequently, they provide the area with a pleasant sylvan setting and make a significant contribution to the character and appearance of the locality.
9. As detailed within the Tree Survey a number of the trees are identified as category 'A' and 'B' trees that are in good and fair condition with an expected life expectancy of between 20-40 years. Albeit some are of lower quality, nevertheless, they add some value to this group of trees, which collectively, contribute positively to the overall visual amenity of the area.
10. Notwithstanding the appellant's Tree Survey, I have not been provided with an Arboricultural Impact Assessment (AIA), Method Statement (MS) nor Tree Protection Plan (TPP). Consequently, there is little clear evidence available to me detailing which, if any, trees need to be removed to accommodate the proposed layout, the extent of the impact of the proposed development on the root protection area of any tree to be retained, the mitigation required for any tree removal, nor any information concerning the method and sequencing of effective tree protection and retention during construction. The provided plans do not adequately assist to resolve these matters. Consequently, on the basis of the evidence provided, I cannot be certain that the proposed development would not significantly harm these trees including those that are protected.
11. According to the Tree Survey, many of these trees would be expected to live for many more years, and their premature loss would therefore be particularly regrettable. Their loss would significantly erode the visual contribution of this wooded area to the sylvan and verdant setting of the locality.
12. In addition, given the proximity of these trees to the proposed dwelling, a substantial part of the garden area would be shaded by the trees located within

the appeal site. Whilst the appellant argues that the amenity area would enjoy direct sunlight, this is not substantiated by a daylight/sunlight analysis carried out by a suitably qualified professional.

13. Trees can be perceived as a nuisance, notably by reason of the obstruction of light, and from falling leaves and debris. Although the Council would retain a degree of control over any proposed tree works by reason of the protection afforded by the TPO, but applications based on health and safety grounds, for example, would be difficult to resist. The appeal scheme is likely to subject the trees to additional pressure for pruning works or even felling, in order to bring more sunlight into the garden area of the new plot. The issue would only become more acute as many of these trees would continue to grow before reaching their optimum height which, in all likelihood, would compromise the longevity of specimens.
14. The appellant has suggested that a number of trees could be removed at any time. However, the appellant's desire to retain the trees undermines the likelihood of this occurring. Moreover, even if some trees were to be removed, several trees would still benefit from the protection of the TPO.
15. I have given consideration to whether an appropriately worded condition(s) could be imposed upon any grant of planning permission to require an AIA, MS and TPP prior to the commencement of development in order to secure a scheme of protection and maintenance. However, there is no clear evidence before me to demonstrate that tree protection methods would be capable of being implemented nor that they would adequately prevent adverse harm to the health of any tree. In this instance, a precautionary approach is appropriate as these matters should be addressed and considered at this stage and not by means of the imposition of a planning condition.
16. Overall, I find that there is a clear risk that the proposal would threaten the integrity and long-term future of trees included those with protection from the TPO. Accordingly, this would compromise the significant contribution they make to the character and appearance of the area.
17. By reason of the remote siting of the proposed dwelling with a considerable sized gap between the existing properties of Holmfield Close and Marshworth, the appeal dwelling would be an unwelcome departure from the prevailing pattern of development, thus harmfully eroding a feature that contributes positively to the uniform layout of properties within Tinkers Bridge. The proposal would therefore fail to integrate effectively with the rhythm and spatial pattern of the surrounding built form.
18. Notwithstanding the presence of landscaping along the site's boundaries, the harmful impact of the proposal would be readily apparent in views through the existing vegetation from the public domain including views from the canal and nearby footpaths. Despite the appeal building being of a height, scale and mass of other nearby dwellings and the use of a palette of materials that compliment the surrounding local character, these matters would not overcome the harm I have described above.
19. Overall, I conclude that the proposal would have a harmful effect on the established character and appearance of the area. It would conflict with Policies D1 and D2 of Plan:MK (2019)(LP) and NP Policy WN9. Among other things,

these policies require high quality development that maintains the distinct residential character of the grid squares by having special regard to layout.

20. There would also be conflict with LP Policies NE3 and NE4 insofar as these policies require development to maintain and protect biodiversity and where possible maintain existing ecological networks to avoid habitat fragmentation. The Framework confirms that the planning system should contribute to and enhance the natural and local environment. At paragraph 131 it is recognised that trees make an important contribution to the character and quality of urban environments. As such, planning decisions should ensure existing trees are retained wherever possible. Consequently, the appeal proposal would be in conflict with these aims of the Framework.

Living conditions

21. The proposed dwelling would be located close to the tree canopy along the southern and western boundaries of the appeal site. Consequently, large parts of the garden including terraced patio areas would be close to, if not underneath their spread. Although it is the appellant's case that the private amenity areas would enjoy direct sunlight, there is no daylight/sunlight analysis to corroborate this view. Based upon my observations and having had regard to the appellant's Tree Survey Plan, I consider that it is likely that the garden area will be heavily shaded for a large part of the day.
22. Additionally, habitable rooms that are proposed to the rear and side of the dwelling would be likely to be unduly gloomy. Dual aspect windows are proposed for some of the rooms. However, there is no clear evidence before me that demonstrates that this would satisfactorily mitigate this effect and, some rooms rely solely on one point of natural light entry. Overall, the proposal would lead to an unacceptable degree of overshadowing thus restricting sunlight and daylight and this would materially compromise the living conditions of future occupants of the proposed dwelling.
23. The proposed dwelling would be positioned in close proximity to the Groveway, at approximately 20 metres, taking the Council's measurements which have not been disputed by the appellant. At the time of my site visit, I observed the Groveway to be a heavily trafficked route used by a wide range of vehicles including, cars, vans and heavy goods vehicles. Despite the boundary trees being largely in leaf and the presence of a boundary wall and fencing, there was significant noise and disturbance emanating from the highway and audible within the appeal site. I appreciate that my visit provided only a snapshot of the usage of the road and the level of noise experienced within the appeal site, however, I have seen nothing to suggest that what I saw and heard was untypical.
24. Reference has been made to Part H of LP Policy NE6 in support of the appeal scheme. This policy requires development adjacent to, and within 100 metres of an existing major and heavily trafficked road, to be set back with landscaping measures to provide screening and acoustic barriers to protect the amenity of proposed buildings. However, the intervening landscape features do not to my mind, provide an adequate acoustic barrier and the appeal scheme is not satisfactorily set-back to avoid adverse harm arising.
25. As a result of the proposed layout of the dwelling, a number of windows serving habitable rooms, including several bedrooms, would be orientated

towards the highway, together with outdoor private amenity areas. Notwithstanding that part of the highway is elevated above the appeal site, there is no clear evidence before me to demonstrate that future occupants of the proposed dwelling would not be adversely affected as a result of vehicular noise and disturbance within a number of rooms within the dwelling. This situation would be worsened during summer months when windows are likely to be opened to aid ventilation. Similarly, the quality of outdoor private amenity space is likely to be considerably reduced thus limiting its useability.

26. My attention has been drawn to a number of dwellings situated along Congreve. However, from the limited details provided about these schemes, I do not know how, or against what policies, they were assessed by the Council. I therefore do not consider them to be directly comparable with the appeal proposal. In any event, I have assessed the scheme before me on its own merits and in the light of current planning policy. Moreover, the presence of dwellings that experience noise and disturbance from Groveway does not provide justification for poor design.
27. On the basis of the evidence before me, I conclude that the appeal scheme would result in a significantly unacceptable standard of living conditions for future occupants of the proposed dwelling with regards to noise, disturbance and light. Thus, it would conflict with LP Policy D5 insofar as it seeks to ensure that development does not cause an adverse impact on residential amenity.

Surface water drainage

28. The proposed development is considered to be a 'more vulnerable' class of development in terms of flood risk and the site is situated within Flood Risk Zone 1 where there is a less than 1 in 1,000 year annual probability of flooding. The site is within an area with a very low risk of surface water flooding.
29. Nonetheless, LP Policy FR2 states that new development is required to incorporate a sustainable drainage system (SuDS). It goes on to say that all surface water drainage proposals for new development must include full details of the means of achieving future management, maintenance and adoption of the system, prior to the approval of any planning permission, to ensure that it will function effectively over the lifespan of the development. Furthermore, it is expected that space will be set aside for, among other things, SuDS and used to inform the overall layout of development sites.
30. Consequently, in the absence of any information concerning the strategy for surface water drainage at the appeal site, I find it cannot be demonstrated that appropriate drainage can be achieved and the proposal would fail to satisfy the requirements of LP Policy FR2.
31. I have given consideration to whether an appropriately worded condition could be imposed upon a grant of planning permission. However, given the constraints of the appeal site with a considerable number of trees including protected trees, there is no certainty that appropriate drainage can be delivered on site. It is therefore inappropriate to allow this matter to be resolved by a condition.
32. Thus, the proposal would be contrary to the provisions of LP Policy FR2, the requirements of which are set out above.

Other Matters

33. The appeal site is sustainably located within the settlement boundary and is served by local amenities, transport links and services. The proposal would make use of under-utilised previously developed land and contribute a family dwelling towards housing supply. There would be some improvement to access and manoeuvring space for emergency vehicles. The proposal would minimise the use of water, provide electric vehicle charging points and use of sustainable materials and low energy heating and lighting, all of which contribute to the environmental aims of the Framework. However, one additional dwelling and its associated benefits would be very limited in scale.
34. The appeal dwelling would exceed the Nationally Described Space Standards. It would provide adequate parking and an acceptable outlook for future occupants. The outdoor amenity space would be an acceptable size. No adverse harm has been identified with regards to the living conditions of neighbouring occupants and highway safety. The scheme makes adequate provision for storage and collection of refuse. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
35. The appellant suggests that the appeal dwelling would be capable of being delivered quickly and as a custom and self-built dwelling. Government policy is strongly supportive of this type of development. However, there is no evidence before me that supports the proposal would be self-built. In the absence of such evidence, there would be no restriction preventing the scheme from evolving into a different type of development. I therefore attach minimal weight to this benefit of the proposed scheme.
36. Reference has been made to the manner in which the Council conducted the application process. However, this is not an issue for me to determine as part of this appeal. I have determined the appeal before me on its individual planning merits.

Conclusion

37. In accordance with s.38(6) of the Planning and Compulsory Purchase Act, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The benefits of the proposed scheme would carry modest weight, and in my view, these do not outweigh the significant harm that would arise as a result of the appeal scheme.
38. Accordingly, for the reasons given above, the appeal is dismissed.

E Brownless

INSPECTOR