



Appeal Decision

Site Visit made on 11 May 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2021

Appeal Ref: APP/N4720/W/21/3267806

65A Pendas Way, Leeds, LS15 8HU

- 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 and Mrs Mark Elwen against the decision of Leeds City Council.
 - The application Ref 20/01658/FU, dated 11 March 2020, was refused by notice dated 6 November 2020.
 - The development proposed is described as: Erection of one detached dwelling house with associated car parking and amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties were given the opportunity to comment on the implications of the new Framework on the proposal. The Council provided comments on the changes in respect of trees and the appellants did not make any further comments. I have taken these comments into account and have determined the appeal with reference to the revised Framework.
3. The planning application form gives the appellants' surname as 'Elwin'. When the appeal was submitted, it was confirmed that the correct spelling is 'Elwen'.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on biodiversity; and
 - The effect of the proposed development on the living conditions of the occupiers of numbers 37 and 39 Pendas Walk, with particular regard to outlook and daylight and sunlight.

Reasons

Character and appearance

5. The appeal site is an area of vacant land to the rear of 65a to 77 Pendas Way. The surrounding area is comprised largely of mid-twentieth century buildings and is predominantly residential in character. The site would be accessed from

a service lane that runs to the rear of 67-77 Pendas Way, a two storey terrace of shop units with residential accommodation on the first floor situated at the junction of Pendas Way and Pendas Grove. This arrangement is mirrored by a similar short terrace on the opposite side of the junction.

6. In the surrounding area, the buildings are predominantly constructed of red brick under tiled, hipped roofs. It was apparent from the site visit that the immediately surrounding area was laid out and developed at the same time, as a planned development. This is evidenced by the wide landscaped central reservation to Pendas Grove, the symmetrical terraces of shop units fronting open space areas at the junction of Pendas Way and Pendas Grove, and the angled siting of houses at road junctions leading the eye around the corner into the next street. Pendas Way is a main road through the area with a network of joining streets leading off it, some terminating as culs-de-sac and others forming through routes. Within this network of streets, there are irregularly shaped development blocks with the houses forming a loose perimeter, punctuated by the gaps between the buildings. The dwellings front onto the street behind an enclosed front garden area, and generally have vehicular access directly from the highway serving in-curtilage parking.
7. There is a range of house designs present, comprising mostly semi-detached, two storey, houses and bungalows, with smaller numbers of terraced houses and detached bungalows. This notwithstanding, the dwellings in the area have similar materials and shared design features including hipped roofs, chimneys, a more horizontal emphasis to the fenestration, and similar solid to void ratios. Although a number of the properties have been extended or altered over time, their similar ages and shared design characteristics, combined with the street layout, give the area a pleasingly homogeneous character and appearance.
8. In contrast, the appeal proposal would have no street presence and would be accessed by way of a narrow service lane running around the rear of the terrace of shops and flats, which would be inconsistent with the prevailing built form of the area. The proposed dwelling would also have a pitched roof with gable ends, which would, similarly, be inconsistent with the hipped roofs of the surrounding buildings and which are one of the defining characteristics of the area. This would be exacerbated by the overall height of the proposed dwelling, approximately 8.4 to 8.5 metres to the ridge, which the Council state would be higher than other two storey buildings in the area. Whilst the appellant suggests that this is not an excessive height, it is not disputed that the new dwelling would be taller than its neighbours.
9. I did see that there are a very small number of hip to gable conversions in the surrounding area. Nonetheless, these are very much in the minority and are not a form of development that would justify the appeal proposal.
10. Although the built form on Pendas Way is such that views of the proposed new building would be screened, I observed during the site visit that it would be visible through the wide gap that exists between 77 Pendas Way and 18 Pendas Grove where the access lane and a single storey double garage separate the taller buildings. It would also be prominently visible through the gaps between, and above the roofs of, the bungalow dwellings at the northern end of Pendas Walk, to the west of the appeal site.
11. The layout of the area is such that the interior of the loose perimeter blocks consists of rear gardens separating houses backing onto each other. The

insertion of the proposed new dwelling within the interior of the block bordered by Pendas Way and Pendas Walk would result in an awkward visual juxtaposition of buildings that is not characteristic of the area and would be emphasised by the different roof form of the appeal proposal.

12. Policy H2 of the Leeds Core Strategy Selective Review 2019 (the Core Strategy) addresses development on unallocated sites and sets out that greenfield land should not be developed if it makes a valuable contribution to the visual, historic and/or spatial character of an area. The Council considers that the appeal site is a greenfield site and that it contributes to the visual character and openness of the area.
13. There is no substantiated evidence before me in respect of the past uses of the site. From the site visit, there were some indications that it may have previously had some use as a garden area. However, it is also clear from the submitted evidence, particularly the photograph in the Arboricultural Assessment that, prior to the removal of the trees, the site had been subject to a considerable period of natural regeneration. Based on what I saw and the evidence that I have, the appeal site would fall outside of the definition of previously developed land set out in the Framework and would be considered as a greenfield site for the purposes of Policy H2. From the information contained in the Arboricultural Assessment, prior to the removal of the trees, the appeal site would have made a positive visual contribution to the area by providing a wooded backdrop to the surrounding buildings. This visual contribution has, however, been diminished by the removal of trees, although I am mindful that the trees in question were not subject to a tree preservation order.
14. This notwithstanding, even in its current condition the appeal site contributes to the perceived sense of space within the interior of the development block that results from the separation of the buildings by rear garden areas, and this would be noticeably eroded by the insertion of the proposed large, detached, house.
15. Although, taken in isolation the design of the proposed dwelling is not inherently objectionable, the Framework is clear that new development is expected to add to the overall quality of an area and be sympathetic to local character including the surrounding built environment. Policy P10 of the Core Strategy echoes this, expecting proposals for new development to be based on a thorough contextual analysis and provide good design that is appropriate to its location, scale, and function.
16. The Design and Access Statement (DAS) submitted with the proposal contains only a very cursory analysis of the surrounding area and very little information regarding how the design of the development takes that context into account. Whilst reference is made to pre-application advice and a previously refused scheme on the site, other than a brief summary, the details of these are not included within the DAS or in other submissions. Consequently, it is not at all clear what design principles and concepts have been applied to the development, or how design of the proposed dwelling was arrived at.
17. Details of the proposed external materials are not specified in the application. Whilst the use of materials that match those of the surrounding area could be secured through a planning condition, the basic form and massing of the proposed dwelling, together with the proposed location, are such that it would

not integrate well with its surroundings and, taken as a whole, would be harmful to the established character and appearance.

18. I therefore conclude that the proposed development would cause harm to the character and appearance of the area. It would not comply with the requirements of the Framework; Policies H2 and P10 of the Core Strategy; and Saved Policies GP5 and BD5 of the Leeds Unitary Development Plan Review 2006 (the UDP). When read together, these policies expect new development to be of a high standard of design that has regard to, and is informed by, its context and preserve the visual character of the area.

The effect on biodiversity

19. Policy LAND 2 of the Leeds Natural Resources and Waste Local Plan 2013 (the NRWLP) expects new development to conserve trees wherever possible and seeks replacement tree planting where trees are to be removed to facilitate development. Saved Policy LD1 of the UDP seeks to protect existing vegetation, including shrubs, hedges, and trees in landscaping schemes for new development. Core Strategy Policy G9 seeks to improve biodiversity and, taken together, Policy P10 and Policy P12 seek to ensure that the character quality and biodiversity of Leeds' townscapes and landscapes is conserved and enhanced. These policies are consistent with the Framework which states that trees make an important contribution to the character and quality of urban environments, and that existing trees should be retained wherever possible.
20. The appeal site is currently unused vacant land, although I observed during the site visit that there are indications that, in the past, it may have been used as a more formalised garden area. From the submitted evidence, including the Arboricultural Assessment, the site contained a number of trees. However, at the time of my site visit many of these had been removed and, consequently, I was unable to determine whether the Arboricultural Assessment reflected the size and condition of these trees.
21. The trees identified for removal by the Arboricultural Assessment are generally assessed as being established trees in good or fair physiological and structural condition, with more than 30 years life expectancy, and there is little explanation as to why these have been assessed as Category C trees of low quality and value. Similarly, there is little indication either in the Arboricultural Assessment or the DAS that the appeal scheme was designed taking into account the existing trees on the site. The Arboricultural Assessment concludes that the remaining trees will not affect the development but does not assess the effects of the loss of tree cover.
22. Large and established trees have a substantial ecological and biodiversity value due to their age and size, allowing such things as the support of larger, or more diverse, insect populations and providing more nesting opportunities for birds. This value is lost when well established trees are removed.
23. The submitted drawings do show a small number of replacement trees but there is no indication of the numbers or species. Different tree species will have different ecological and biodiversity values and there is no substantive evidence that would indicate that the proposed replacement trees would have a similar value to those that would be lost were they to become properly established.

24. Even if the existing trees had not already been removed, the development as proposed does not allow for their retention. This would result in a net biodiversity loss and there is no evidence before me that would demonstrate that the appeal proposal would provide suitable replacement planting and landscaping to compensate for that loss.
25. The effect on the visual appearance of the area referred to in the reason for refusal has been assessed under the first main issue.
26. I have noted the appellants' point that the site has been subject to fly tipping and antisocial behaviour, however, residential development is not the only potential solution to allow the land to be secured or well maintained.
27. I therefore find that the proposed development would cause harm to the biodiversity value of the area. It would not comply with the relevant requirements of Core Strategy Policies G9, P10 and P12; UDP Saved Policy LD1; NRWLP Policy LAND 2; or the Framework. Whilst the reason for refusal refers to Saved Policy GP5 of the UDP, this policy is very generalised and does not make specific mention of ecological or biodiversity matters and, consequently, is not directly relevant to this issue.

Living conditions of neighbouring occupiers

28. The Council have not raised any concerns regarding loss of privacy or overlooking of neighbouring properties. From what I have read and from what I saw when I visited the site, I have no reason to find differently. The Council's principal concern, as set out in the Decision Notice, is in respect of overshadowing and overdominance of the rear gardens of numbers 37 and 39 Pendas Walk which are bungalow dwellings located to the west of the appeal site.
29. No technical evidence in respect of the effect of the proposed dwelling on overshadowing has been submitted by either party. It is not argued that the proposal will result in overshadowing or loss of light to habitable rooms within the neighbouring properties. Due to the relative positions of the proposed new dwelling and the neighbouring properties, the proposal may result in some overshadowing of parts of the rear garden areas of the properties at 37 and 39 Pendas Walk at certain times of the day and at certain times of the year. This would, however, be limited to parts of the morning and would potentially be more noticeable during the late autumn, winter, and early spring when the sun is lower in the sky.
30. Although some overshadowing of the neighbouring gardens is likely to occur, there is no evidence that would indicate that it would affect substantial parts of the garden areas or that it would be other than for a short period until the sun moved to new position. Consequently, I do not consider that any overshadowing that would occur would be so significant that it would make the neighbouring properties less pleasant to live in or significantly diminish the enjoyment of the garden areas.
31. I saw when I visited the site that the properties at 37 and 39 Pendas Walk have relatively long rear gardens. The proposed new dwelling would not be directly behind either of these existing bungalows.
32. I have noted the guidance set out in the Council's Neighbourhoods for Living Design Guide 2003 (the Design Guide) with regard to how far from property

boundaries new development should be located. This guidance is provided primarily in the context of preventing overlooking of existing properties and I note that the Council have not raised any concerns regarding the position of the proposed new dwelling relative to the boundary in respect of this matter. The Design Guide makes no specific reference to outlook from neighbouring properties.

33. Whilst the proposed new dwelling would be visible from the gardens of 37 and 39 Pendas Walk and from the properties themselves, due to the length and extent of these garden areas, despite its greater height the proposed new dwelling would not appear unduly dominant or overbearing.
34. I therefore conclude that the proposed development would not cause harm to the living conditions of the occupiers of numbers 37 and 39 Pendas Walk, with particular regard to outlook and daylight and sunlight. It would comply with the relevant requirements of the Framework; Core Strategy P10; Saved Policies GP5 and BD5 of the UDP; or the Design Guide which, taken together, expect new development to protect the amenity and living conditions of the occupiers of adjoining properties.

Conclusion

35. I have found that the proposed development would cause harm to the character and appearance of the area and would have an adverse effect on the biodiversity value of the area. It would consequently conflict with relevant policies in the development plan that are important for determining the application. These are to my mind important matters, such that the proposed development would conflict with the requirements of the development plan when taken as a whole, notwithstanding that it complies with other policies in the plan.
36. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. Whilst the Framework seeks to significantly boost the supply of housing, this is not an objective to be pursued at any cost. It is not argued that the development plan policies which are most important for determining the application are out of date or that the Council cannot demonstrate a deliverable five year supply of housing.
37. The appeal proposal would cause significant and enduring harm to the character and appearance of the area and reduce the biodiversity value of the area. The provision of a single new dwelling would not be sufficient to justify this harm and no other material considerations have been raised that would indicate that a decision should be made other than in accordance with the requirements of the development plan.
38. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR