



Appeal Decision

Site visit made on 14 March 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2022

Appeal Ref: APP/P1805/W/21/3282619

Land at Rigby Hall, Rigby Lane, Bromsgrove

- 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 Will Burton against the decision of Bromsgrove District Council.
 - The application Ref 21/00648/FUL, dated 12 April 2021, was refused by notice dated 13 July 2021.
 - The development proposed is for a detached property on existing car park land adjacent to Rigby Hall.
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Decision

1. The appeal is allowed, and planning permission is granted for a detached property on existing car park land adjacent to Rigby Hall at Land at Rigby Hall, Bromsgrove, in accordance with the terms of the application, Ref 21/00648/FUL, dated 12 April 2021, and the plans submitted with it, subject to the conditions within the attached schedule.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area, including Rigby Hall, a non-designated heritage asset.

Reasons

3. The majority of development on Rigby Lane is residential in character. The appeal site is part of a larger area of land, with Rigby Hall ('The Hall') in its centre and modern development located close to its rear and side. The adjacent housing consists of two culs-de-sac that result in a relatively free-form pattern of development. The appeal site is overlooked by the frontage of the Hall and is within a wooded area. This area is largely grassed with a tree and hedge screen enclosing the site from most views from the highway and adjacent school. The site area is further enclosed by fencing that separates it from the frontage of the Hall. Nonetheless, the site is otherwise open and thus contributes to the spacious sense of arrival within the frontage of the Hall.
4. The Council has designated Rigby Hall as a non-designated heritage asset (NDHA), that would meet the criteria of the Local Heritage List as set out in its Local Heritage List Strategy (2016). Paragraph 203 of the National Planning Policy Framework (The Framework) states that in weighing applications that affect a NDHA a balanced judgement is required having regard to the scale of harm or loss and the significance of the heritage asset.

5. Rigby Hall is an imposing two storey Victorian villa in the Italianate style. It was built in 1838 and includes a stuccoed façade, a large porch with Doric columns, decorative soffits and a mansard roof that incorporates ornate dormer windows. It is a wide and imposing building with fine architectural detailing. The appellant's Heritage Assessment¹ illustrates that the Hall once stood within a comparatively large estate. Rigby Hall and its original estate is an example of the villas and small estates synonymous with the wealthy middle class in Bromsgrove at the time of its construction. Accordingly, its significance derives from its age and architectural interest.
6. Rigby Hall was recently converted into six flats. The surrounding estate has been reduced in size and eroded through modern development around its sides and rear. As a result, the original estate now stands within curtailed and relatively limited grounds. The effect of contemporary development to its side has been to crowd Rigby Hall. This has had a negative affect on its setting. Furthermore, the parking for occupiers of the flats and an access drive to the dwellings behind the main building, has further intruded into the setting of the Hall. Nonetheless, the frontage of Rigby Hall forms a pleasant sense of arrival and places it within a relatively spacious and open setting. Key views within the building's frontage are experienced from the main entrance to the site, when passing through its gateway, and from the front elevation of the hall looking southwest toward the appeal site.
7. The proposed dwelling, in front of the Hall, would consist of a relatively simple material palette. Its design would be a combination of traditional forms with some interesting design features, including a curved tower wall. This more striking element would be partially aligned away from the main views from Rigby Hall. The proposal would therefore present relatively subdued elevations towards views of the frontage of the Hall. Furthermore, the design of the proposal would complement the character of existing built form within the wider area. As such, there is no compelling justification for the building to reflect a coach-house design as the access to the Hall is not in its original position. Moreover, due to its position and alignment, views of the Hall from the entrance to the site would not be obstructed by the proposal.
8. Views from Rigby Hall toward the highway would be partially obscured by the proposal. Nevertheless, the proposed dwelling would be a substantial distance from the Hall's frontage. It would be within a landscaped area where mature trees would be retained. Consequently, this view would be read within the context of the existing planting, car park, access driveway and the boundary fence. These features would soften this view. This would enable the proposal to integrate well with its surroundings.
9. Furthermore, landscaping proposed within the appeal site and along its boundary would further soften and partially screen the proposal. The proposed dwelling and its associated boundary landscaping would also strengthen and channel the more important views of Rigby Hall from the entrance. Accordingly, although the site contributes to the Hall's open frontage, this sense of spaciousness would be largely retained by the proposed dwelling and its large rear garden. As a result, the proposal would have a limited visual impact on the setting of Rigby Hall and would accord with the local pattern of development.

¹ Built Heritage Statement, April 2021 by iceni

10. Accordingly, taking a balanced judgement, the limited effect of the proposal on the setting of the NDHA would not result in material harm to its significance.
11. Consequently, the proposed dwelling would complement the character and appearance of the surrounding area. The proposal would therefore accord with policies BDP19 and BDP20 of the Bromsgrove District Plan which seek, among other matters, for development to fully integrate with the residential area and to sustain and enhance the significance of non-designated heritage assets.

Other Matters

12. The Government seeks to significantly boost the supply of housing. The scheme would result in the provision of a large family dwelling within the built-up limits of the town providing its future occupiers with suitable access to goods and services. These merits weigh in favour of the proposal.
13. The Council cannot currently demonstrate a five-year housing land supply, at 3.18 years. This shortfall is substantial. Paragraph 11 of the Framework states that when a Council cannot demonstrate a five-year housing land supply the policies most important for determining the application should be considered as out of date. In such circumstances, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework when taken as a whole. The provision of one additional dwelling would make only a limited contribution towards this shortfall. Nonetheless, as no harm has been found to the significance of the NDHA, the 5 year supply position conveys significant further weight in favour of the proposal.
14. The appellant describes the scheme as a self-build dwelling. However, the appeal has not been supported by a legal mechanism to secure the dwelling for self-build purposes. As such, this weighs neither for nor against the proposal.
15. Traffic movements associated with one dwelling would be minimal in comparison to the existing traffic levels associated with the access. The proposal would therefore have a negligible impact on the intensity of the use of the access and local roads. This view is also in accordance with the comments of the Highway Authority.
16. The appellant's ecological survey² found that the trees on site formed areas of ecological importance and could be suitable for roosting bats and hedgehog foraging. Subject to the adherence to its recommendations, the survey concluded that ecological interests would not be harmed by the proposed development. As a result, the proposal would not result in an adverse impact on local wildlife subject to safeguarding conditions.
17. The proposed dwelling would be a substantial distance from nearby residential properties. As a consequence, it would offer limited overlooking towards neighbouring gardens and the windows of adjacent dwellings, resulting in no material harm to the living conditions of neighbouring occupiers.
18. I have had regard to the recent appeal decision for the erection of two dwellings, dismissed³ on the same site in 2019. That proposal was dismissed due to its impact on the NDHA, future occupier's living conditions and impact

² Ecological Survey, 14 March 2019, by Middlemarch Environmental

³ Appeal Decision Reference: APP/P1805/W/19/3231619

on trees subject to a Tree Preservation Order (TPO). The previous scheme was materially different to the proposal the subject of this appeal in scale and effect on its surroundings. Furthermore, the relationship of the proposed dwelling with the Hall would be less dominant than the previous scheme due to its reduced mass. Therefore, whilst the site would still sever the grounds from the Hall the overall effect of development would be greatly diminished, resulting in a complementary relationship. Given that each case must be considered on its own merits, and the difference between both schemes, I have afforded only limited weight to the previous decision.

Conditions

19. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). I shall take the Council's suggested conditions into consideration and impose most of these with some amendments and adjustments for clarity.
20. I have imposed the standard conditions with respect to timeframe and approved plans as advised by the PPG for clarity and certainty [1 and 2]. Conditions are necessary with respect to the provision of planting, boundaries and materials in the interests of the character and appearance of the area [3, 4, 5, 6 and 7]. It is also necessary to ensure the required wildlife would be protected during construction to satisfy paragraph 174 of the Framework to protect the natural environment [10]. Furthermore, I have imposed conditions in accordance with paragraph 112 of the Framework, which requires development to give priority to cycle movements and be designed to enable car charging points [8 and 9]. It is also required for conditions to be imposed to ensure that the trees subject to a Tree Preservation Order are not harmed during construction in accordance with advice from the Council's Tree Officer [11-15].
21. The Council has suggested two conditions relating to the requirement for self-build and a personal consent. However, the proposal has not been secured by a legal mechanism as a self-build project. This has not therefore been determinative to the decision and as such these conditions are not required.
22. The Council has also suggested that Permitted Development (PD) rights, conveyed by Schedule 2, Part 1, Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015, are removed. The Framework advises that conditions should not be used to restrict PD rights unless there is clear justification to do so. Development associated with PD would be of insufficient scale to have a material impact on the setting of the NDHA. As such this condition would be unnecessary.

Conclusion

23. The proposal would accord with the development plan, when taken as a whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission granted subject to conditions.

B Plenty

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL01 Location Plan, PL02 Proposed site plan and PL03 Proposed drawings.
- 3) Prior to their first installation, details and samples of the materials, and all plumbing and ventilation goods to be used externally on the building, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details. Furthermore, prior to the first occupation of the approved dwelling all rainwater goods shall be painted black.
- 4) Prior to their installation, sections, plans and elevations of the proposed windows and doors at a scale of 1:5 and 1:20 shall be submitted to and approved in writing by the local planning authority.
- 5) Prior to the occupation of the dwelling details of a landscaping scheme, including a planting schedule, showing details of new landscape planting shall be submitted to and approved in writing by the Local Planning Authority. Such approved planting shall be completed prior to the first occupation of the dwelling. The planting schedule shall include written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme. All such planting shall be maintained to encourage its establishment for a minimum of five years following contractual practical completion of the development. Any trees or significant areas of planting which are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective within this period, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.
- 6) Prior to their first installation details of the proposed hard landscaping scheme, including all boundary treatments, pathways, driveways, services areas, parking areas, shall be submitted to and approved by the Local Planning Authority. These details must then be implemented in accordance with the approved scheme before the development is first occupied.
- 7) The Development hereby approved shall not be occupied until an area has been laid out within the curtilage of the dwelling for the parking of 3 cars. This area shall thereafter be retained for the purpose of parking a vehicle only.
- 8) The Development hereby permitted shall not be first occupied until the proposed dwelling has been fitted with an electric vehicle charging point in accordance with details that shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the charging point shall be kept available for the charging of electric vehicles.
- 9) The Development hereby permitted shall not be first occupied until sheltered and secure cycle parking for 2 cycles has been provided in accordance with details, which shall first be submitted to and approved in

writing by the Local Planning Authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.

- 10) All site clearance or tree/shrub/undergrowth removal shall take place outside the bird nesting season - (March - August inclusive) - or otherwise under the direction of a suitably qualified ecologist or ecological clerk of works.
- 11) Prior to the commencement of any works on site including any site clearance, demolition, excavations or import of machinery or materials, the trees or hedgerows which are shown as retained on the approved plans both on or adjacent to the application site shall be protected with fencing around the root protection areas as shown within the Marlow Arboricultural report. This fencing shall be constructed in accordance with the guidance in the British Standard BS5837:2012 and shall remain as erected until the development has been completed.
- 12) No development shall take place within or through the Root Protection Areas of trees or hedgerows on and adjacent to the application site without the prior specific written permission of the Local Planning Authority. This specifically includes any works such as changes in ground levels, installation of equipment or utility services, the passage or use of machinery, the storage, burning or disposal of materials or waste or the washing out of concrete mixing plants or fuel tanks. Any excavations within the root protection areas must be carried out by hand and in accordance with BS5837:2012.
- 13) Any section of the driveway, parking area and patio area as shown on Proposed Site Plan drawing number PL02 that falls within the root protection area of any tree or hedgerow shall be installed using a suitable grade of No Dig method construction over the existing ground levels and be porous in nature. Prior to the installation of the driveway, parking area or patio a specification of the No Dig method of construction should be submitted to and approved by the Local Planning Authority.
- 14) Any areas of the BS5837:2012 Root Protection Area on the trees labelled T7 and T9 within the Marlow Arboricultural Report that is shown to fall outside of the proposed position of tree protection fence should be covered with a suitable grade of ground boarding protection throughout all ground and development work on the site.
- 15) The areas of the recommended BS5837:2012 Root Protection Area on trees T9 and T10 of the Marlow Arboricultural Report shall receive surface ground decompaction and fertilization as recommended within section 5.8 of the Arboricultural report prior to the occupation of the dwelling.

End of conditions