



Appeal Decision

Site visit made on 27 April 2022

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Appeal Ref: APP/V4250/W/21/3285301

Land at the rear of 17-23 Walkden Ave, Wigan, Lancashire, WN1 2JJ

- 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 Mrs Stephanie Millar against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/21/91799/FULL, dated 7 June 2021, was refused by notice dated 6 October 2021.
 - The development proposed is described on the application form as the erection of 15 garages on vacant land.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs Stephanie Millar against Wigan Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area, including protected trees; and
 - Whether sufficient information has been provided to demonstrate that the proposed development would be, or could be made, stable and safe, having regard to historic coal mining activity in the area.

Reasons

Character and appearance, including protected trees

4. The appeal site is a small, enclosed wooded area to the rear of houses on Walkden Avenue and Heeley Street. The site is bounded on one side by an area of private garages associated with the adjacent Chelmsford Mews development, and to the other by an area of privately owned land, which also contains a number of garages. The site is accessed via a track which provides rear access to the adjacent terrace of houses.
5. Differing accounts as to the previous use of the appeal site have been expressed, but any former garages or other built structures are no longer evident. The site is now overgrown with vegetation, with saplings and bushes

- growing up amongst the mature trees. The site is the subject of a Tree Preservation Order (TPO), and the schedule provided by the Council lists 13 individually protected trees on the site, along with a group of 7 hawthorn trees along the boundary. The appellant has indicated that one of the protected trees has been removed since he purchased the site in 2018 for safety reasons.
6. Not all of the trees on the site are covered by the TPO, and the Tree Survey Report submitted with the application identified 23 trees and groups of trees, of which 6 were found to be category B trees, and a further 15 were category C. The Tree Survey suggests that the category B and C trees have a life expectancy of at least 20 years.
 7. The trees are visible from surrounding houses, and from the adjacent access track. From Walkden Avenue and Heeley Street, the tops of the trees can be seen above the houses and between buildings, and provide a green backdrop in this otherwise densely built up area, which has few other trees or areas of green space nearby. In this way, the trees contribute positively to the visual amenity of the area.
 8. Although it is small and has no public access, it was clear to me at my site visit that the site is a tranquil area of green space within a busy urban area. I note the appellant's comments about use of the site for dumping garden waste, but it is evident from the many objections to the scheme, which are not limited to the occupiers of Chelmsford Mews, that the site in its existing condition is valued by people living nearby. In addition to the visual amenity afforded by the trees, local residents have made reference to wildlife, health and other benefits that the site currently provides.
 9. This wider value of trees is recognised in paragraph 131 of the National Planning Policy Framework (the Framework), which identifies the important contribution which trees make to the character and quality of urban environments. Framework paragraph 131 goes on to require that existing trees are retained wherever possible. However, the proposed erection of 15 garages and associated access would involve clearing the site and removing most of the vegetation, including all but one of the protected trees.
 10. Car parking is limited in the surrounding streets, and many of the nearby terraced properties have no off-street parking. In order to manage demand for parking by residents and customers of local businesses, parking restrictions are in place in the area, and a permit system for residents operates in the streets around the appeal site.
 11. Given the lack of off-street parking in the area, the proposed use of the site for domestic garages could provide a useful facility for the local community. I note the appellant's assertion that, based on his experience of renting out other garages nearby, there would be great demand for such provision. Whilst no further evidence has been provided to back this up, one letter of support for the scheme had been submitted by a local resident, and it is reasonable to suppose that others may well be interested in renting a garage.
 12. However, the size of the proposed garages means that they would be too small to accommodate all but the smallest cars, so it is unlikely that they would be used for parking. Indeed, vehicular access to the garages at the rear of the site would be restricted by the presence of the proposed site cabin and storage unit, the purpose of which is unclear.

13. The garages would therefore be more likely to be used for storage than parking. As such, the suggested benefits of the scheme for the local community appear to be exaggerated. The proposed use does not, therefore, justify the loss of trees on the site, for which no mitigation or compensation is proposed.
14. I note the appellant's comments that, should any of the large trees fall, very significant harm could result. I acknowledge that the risk of trees being blown over in strong winds cannot be ruled out, but trees also provide a range of benefits, as recognised in Framework paragraph 131 and highlighted by the Council and local residents. The submitted tree report identified one tree which was in poor condition and should be felled, but the structural condition of most of the trees was identified as being fair or good. Of course, safety issues need to be treated seriously and any trees in a dangerous condition should be promptly removed. However, the evidence before me does not provide a justification for felling healthy trees on a precautionary basis.
15. I conclude that the proposal, with the associated loss of protected trees, would cause harm to the character and appearance of the area. It would conflict with Policy CP9 of the Wigan Local Plan Core Strategy 2013 (Local Plan), which seeks to protect trees and woodlands of value to amenity. It would also conflict with Policy CP17, which seeks to maintain and protect the environment for the benefit of people and wildlife. In addition, the proposal would fail to comply with Policy CP10, which requires development to incorporate high quality landscaping.

Whether the development would be stable and safe

16. The Coal Authority (CA) has confirmed that the site is within a Development High Risk Area, where historic unrecorded coal mining activity is likely to have taken place at shallow depth. Voids and broken ground associated with this past activity may pose a risk of ground instability.
17. In their response to consultation on the planning application, the CA concluded that the Coal Mining Risk Assessment (CMRA) submitted with the application was inadequate and needed to be revised. As the requested information was not provided, the Council refused the application on the basis of the CA's objection.
18. As part of his application for costs, the appellant has provided details of subsequent correspondence with the CA. Based on the contents of an email from the CA dated 7 April 2022, it appears that minor revisions to the scheme could have satisfied its concerns regarding the adequacy of the CMRA. Specifically, this would include confirmation that the groundworks to form the new permeable driveway would be minimal, and a revised plan showing that the access road would not be widened.
19. It appears from the above that, with plans revised, the CA's objection could be overcome. However, the email from 7 April also suggests conditions that the CA would recommend be imposed on any grant of planning permission, to ensure that the site was, or could be made, safe.
20. The suggested pre-commencement condition reflects the recommended mitigation strategy contained in the submitted CMRA. This involves drilling rotary boreholes to a depth of around 30m to investigate for evidence of

former workings and determine the ground stability risk to the proposed development. In addition, the installation of gas wells is recommended to determine the risk from mine gas emissions.

21. The CA and appellant have suggested these requirements could be secured by a condition, but in the absence of such information up front, we do not know what, if any, mitigation measures would be necessary to enable the development to go ahead, or whether such measures would be feasible. To grant planning permission without such information would be contrary to Framework paragraph 183. This requires that planning decisions should ensure that a site is suitable for its proposed use, and that adequate site investigation information is available to inform these assessments.
22. The appellant has commented that that such drilling works could damage the roots, and that carrying out such investigations prior to any grant of planning permission would risk causing unnecessary harm to the trees. I acknowledge that this could be a concern, but as I am dismissing the appeal anyway due to its effect on the protected trees, which act as a significant constraint to development of the site, it is rather a moot point.
23. I conclude on that insufficient information has been provided to demonstrate that the site is, or can be made, safe. The proposal therefore conflicts with paragraph 183 of the Framework. Information about any appropriate remediation is unknown, so the proposal does not fully meet the requirements of Policy CP17 either.
24. The decision notice also refers to Policy CP10, but this relates to design and is not directly applicable to this main issue.

Other Matters

25. Local residents have raised a number of other concerns regarding the proposal, but as I have dismissed the scheme, I have not considered these matters any further.

Conclusion

26. The proposal conflicts with the development plan and the Framework, and there are no considerations which outweigh this finding. For the reasons given, the appeal is therefore dismissed.

R Morgan

INSPECTOR