



## Appeal Decision

Site visit made on 2 August 2022

**by Mr R Walker BA HONS DIPTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15<sup>th</sup> August 2022**

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**Appeal Ref: APP/N4720/W/22/3298352**

**Land Former 2 St Martins Road, Potternewton, Leeds LS7 3LX**

- 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 MacLeeds (St Martins) LLP against the decision of Leeds City Council.
  - The application Ref 21/03774/FU, dated 24 April 2021, was refused by notice dated 11 March 2022.
  - The development proposed was originally described as resubmission of previously approved scheme with minor alterations of detached three-storey block of 5 two-bedroom apartments.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description in the banner heading above, refers to a resubmission of a previously approved scheme from 2010. However, given the expiry of the consent and the passage of time I have assessed the proposal on its own merits.
3. The appellant has submitted further evidence in relation to the trees on the site following root investigation work. The Council has had the opportunity to comment on this as part of the normal appeal procedure and has subsequently not been prejudiced by my consideration of it in the appeal.

### Main Issues

4. The main issues are:
  - The effects of the proposal on the character and appearance of the surrounding area and the Council's climate change, air pollution and biodiversity objectives with particular reference to trees;
  - Whether the proposal would provide adequate living conditions for future occupiers of the proposed development with particular reference to external amenity space and, with regards to proposed Flats 1, 2 and 4, with particular reference to daylight and outlook; and
  - The effects of the proposal on the living conditions of the occupiers of No 4 St Martins Road with particular reference to overlooking of the external amenity space.

## Reasons

### Trees

5. The appeal site contains two tall trees which are protected by a Tree Preservation Order and are located close together in the southern corner of the site near the road junction. The trees comprise of T1 (Lime) and T2 (Horse Chestnut) and are both prominent along Chapeltown Road, St Martins Road and St Martins Avenue.
6. The Chapeltown Conservation Area (CA) is located close to the appeal site, with its boundaries on the opposite side of Chapeltown Road and extending to the south. There are several other mature trees prevalent, giving this area an attractive spacious leafy character that contributes positively to the character of the CA.
7. There is a gap between the appeal site's trees and other trees on the western side of Chapeltown Road. This gap, their size and prominence results in both trees having a high amenity value. Moreover, given their prominence to the south from within the CA, they also make a positive contribution to the setting of the CA.
8. The trees have been categorised by the appellant as Category B trees, with T1 in good physical condition, and T2 in fair physical condition. T2 has small sections of dark staining, cracking, and splitting in the bark, which are a potential indicator of Horse chestnut bleeding canker disease. Despite this, there is no suggestion that they need to be removed for health reasons or that they won't continue to make a positive contribution for many years to come.
9. Paragraph 5.3.1 of BS 5837:2012 states that "*the default position should be that structures are located outside the Root Protection Areas (RPAs) of trees to be retained. However, where there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the tree*". There is no clear overriding justification before me for the need for the size and positioning of the building encroaching, even to a small degree, within the RPA of T1. Nonetheless, the appellant has detailed how the development could be carried out with the aim of not causing harm to the trees.
10. The appellant's Arboricultural Impact Assessment (AIA) indicates that the extent of encroachment would amount to approximately 0.93m<sup>2</sup> of the total RPA of 215.4m<sup>2</sup>. Moreover, the root investigation undertaken by the appellant indicates that whilst there were roots present in the location of the proposed building, these were likely to be from brambles and not significant tree roots.
11. However, the appellant acknowledges that some minor tree roots maybe located approximately 1m further south of the proposed building. The photographic evidence from the root investigation shows many roots in this location, including woody roots, which are likely to be associated with the trees, particularly T1. All roots observed were less than 25mm in diameter. However, it is possible that the trees could see some minor decline in health and condition due to root severance and disturbance, even if the stability of the trees is unlikely to be impacted.

12. In this regard, there is a potential that the strip foundations associated with the proposals could cause long term harm to the tree's health. The appellant took samples of the roots, but no DNA testing results are before me. The appellants indicate a sensitive approach and supervision could minimise root severance. However, there is no detailed construction methodology before me.
13. The proposal would also result in a new access with a dropped kerb within the RPA and a large expanse of surfacing, amounting to approximately 75% of the RPA.
14. To install the dropped kerb for the access, the appellants propose to use hand tools to excavate and minimise any root disturbance that maybe present under the pavement. This access point is very close to T1 and there is an acknowledgement in the AIA that roots maybe present, but if carried out carefully, significant root damage may be avoided. However, there is no substantive evidence of the extent of roots in this location that maybe affected by the change in ground levels or what mitigation would be available if roots were present.
15. Surfacing for the parking and access within the site would be undertaken using a "no-dig" construction method and the use of Cellweb. This is a cellular confinement system, to ensure a porous surface within the RPAs. It would also extend beyond the RPA to protect the soil from compaction and excavation to allow for future growth. This would be installed first as part of the phasing of the development before other machinery and materials are brought on to the site.
16. The appellant has provided two case studies as part of the AIA, illustrating the use of the Cellweb within the RPAs of trees. However, from the evidence before me, the extent of its use within the Keats Way case study is less than the amount illustrated at the appeal site. Moreover, the case study for Parkside School does not provide firm details of the RPAs in that instance. As such, I cannot be satisfied that the circumstances are directly comparable.
17. Both parties refer to the Arboricultural Association Guidance Note 12 and the recommendation in BS5837:2012 that new permanent hard surfacing should not exceed 20% of any existing unsurfaced ground within an RPA. I accept that this is not a limit. Moreover, the case studies provided suggest that the Cellweb system can be effective within the RPAs of trees. However, the proposal would cover a significantly greater proportion than the 20% figure.
18. There would only be a very small area of land around the trees that would be exposed, due to the trees location near the junction and the amount of surfacing proposed. I am also mindful that T2 potentially has Horse chestnut bleeding canker disease and has been identified as being in fair physical condition. In this regard, it has not been demonstrated what long-term effects this may have on the health of the trees from reduced oxygen and biological activity in the soil below the system.
19. I am mindful that the proposed trees that form part of the application would take years to establish to the extent of the existing trees. I accept that if the site remains vacant this may have consequences for the long-term management of the site and future planting may not occur. However, it has not been demonstrated that the proposal before me is the only means of developing the site. This limits the weight I afford this matter.

20. The site previously contained a residential dwelling which has been demolished. But its former garden land does not constitute previously developed land, having regard to the definition in the National Planning Policy Framework (the Framework). As mature trees, they have some biodiversity value and make a very small contribution to tackling air pollution and climate change. Moreover, there is no firm evidence that a biodiversity net gain would be achieved by the proposed development, particularly if the long-term health of the trees is compromised.
21. Drawing the above together, there is no overriding justification before me for the proposed construction within the RPA. Moreover, with the precautionary principle in mind, the cumulative effects from the works and the design, would risk the long-term health and survival of the trees. This risk to trees would subsequently harm the character and appearance of the area, including the setting of the CA and would be at odds with the Council's climate change, air pollution and biodiversity objectives.
22. I therefore find conflict with the requirements of Policies G9, H2, P10, P11 and P12 of the Council's Core Strategy (CS), Policies GP5, N19 and LD1 of the Council's Unitary Development Plan (UDP), Policy LAND 2 of the Council's Natural Resources and Waste Development Plan and, insofar as it relates to these matters, the Framework. These, amongst other things, stipulate that development should conserve trees wherever possible and seek landscape schemes that protect existing vegetation, including trees. Moreover, proposals should seek to avoid loss of amenity.
23. The Council refer to the Chapeltown CA Appraisal in its decision notice, which provides useful guidance to the special character of the CA. As the proposal falls outside of the CA, the Appraisal has not been determinative in my assessment. The Council have also referred to the guidance within the Council's Guideline Distances from Development to Trees document. However, I have no firm details of how specifically the proposal would conflict with this document. It has not therefore been determinative in my assessment.

*Living conditions – future occupiers*

24. The Council refer to concerns with the relationship of some of the windows of proposed Flats 1, 2 and 4 to the boundaries of the site. I accept that the nature and use of bedrooms place less expectations on outlook and light. However, Flats 1 and 2 are located on the ground floor and have both bedroom and living room windows facing the extension on the boundary at No 4 in close proximity. Moreover, there is no substantive quantification of the expected light levels within the flats before me.
25. The extension at No 4 is single storey with a pitched roof, so not significantly high. However, in such close proximity it would still be an unduly dominant and stark feature. This would be particularly the case for Flat 1, which would be in the north western corner of the site with windows facing the wall and near the high boundary at the adjacent flats along Chapeltown Road.
26. The design for proposed Flat 2 benefits from two windows facing broadly south west toward two car parking spaces. This dual aspect would improve both the access to light and outlook within this room. The use of privacy glass in the bedroom at this property would limit its outlook, but conversely ensure its

occupiers had privacy. That bedroom would be served by three windows providing adequate natural light.

27. Overall, the combination of the privacy glazing and the poor outlook from the bedroom and living room facing the wall would mean that Flat 2 would benefit from little positive outlook. Even its windows on the south western elevation would not have an overly positive outlook, given the footpath running immediately past it serving the bin and cycle store. Moreover, the bedroom with the attached ensuite would not benefit from adequate natural light. Taken together, future occupiers of this property would not have acceptable living conditions.
28. Proposed Flat 4 is on the first floor and would face toward No 4. However, its outlook would be toward the roof slope of the side extension at No 4, before its two-storey side elevation. This would enable angled views to the sky either side of No 4. In this regard, it would benefit from improved natural light and outlook compared with Flats 1 and 2. Overall, for these reasons future occupiers of Flat 4 would have acceptable living conditions.
29. With regards to external space, the Planning Officers Report refers to the SPG's guidance that private garden space should amount to one fourth of the total gross floor area of the building. However, the proposal seeks two-bedroom apartments and so is unlikely to be suitable for family occupation. Moreover, there would be some useable external amenity space provided in the form of individually allocated areas, balconies and communal space.
30. The privately allocated spaces are small and the space for Flats 1 and 2 would not be a particularly pleasant external space given the presence of the wall at No 4 and boundary to the north. But the occupiers would also have alternative communal space. The balconies to Flats 3 and 4 would face Chapeltown Road and would not be private, but it would still be a pleasant environment to sit. On balance, given the combination of allocated external space for Flats 1-4 and the communal external space to the east, future occupiers would have adequate access to external space.
31. Overall, for the reasons set out above, I find that future occupiers of Flats 1 and 2 would have unacceptable living conditions with particular reference to outlook and daylight. I therefore find conflict with the requirements of Policy P10 of the CS, Policies GP5 and BD5 of the UDP and the provisions of the Framework. These, amongst other things, seek to secure good standards of living conditions for future residents.

*Living conditions - No 4 St Martins Road*

32. The proposed apartment building would be located close to the boundary of No 4 St Martins Road (No 4). The Council's Neighbourhoods for Living a Guide for Residential Design in Leeds Supplementary Planning Guidance (SPG) recommends 7.5m between secondary windows and boundaries. The proposal would not accord with this distance. However, page 56 of this SPG illustrates circumstances how overlooking could be mitigated. This includes the position of intervening buildings that limit downward views of a neighbouring garden. Such a situation is very similar to the appeal site where a single storey extension at No 4 runs along the boundary.

33. The head height of someone standing on the first floor at the proposed building would not be significantly higher than the roof pitch of the extension. In this regard, it would limit the extent of overlooking from the first-floor windows.
34. This is a residential area and a certain degree of overlooking of gardens from upper floor windows is not unusual. Indeed, this currently exists in this area where the orientation of buildings and change in ground levels on Chapeltown Road, St Martins Road and Granton Road mean properties have a close relationship to each other.
35. I therefore find that in this instance the proposal would not result in significant effects on the living conditions of the occupiers of No 4, with particular reference to overlooking of the external amenity space. I therefore find no conflict with the requirements of Policy GP5 of the UDP, Policy P10 of the CS, the objectives of the SPG and the provisions of the Framework, insofar as they relate to this main issue. These, amongst other things, seek to secure good standards of living conditions for existing residents.

### **Other Matters**

36. The proposal would make an effective use of the land, would contribute to the overall objective to boost housing supply within the local area, including from a small residential site in a sustainable location. These are all objectives supported by the Framework. The absence of harm in relation to any other matters weighs neither for nor against the proposed development.
37. However, my concerns do not relate to the principle of developing the site, but the detailed aspects of the scheme and it has not been demonstrated that the appeal scheme as designed, and with the harm I have identified, is the only way of delivering such benefits. I am therefore not persuaded that any other matters outweigh the harm and policy conflicts that I have identified.

### **Conclusion**

38. For the reasons given above, the proposals would conflict with the development plan and there are no material considerations that outweigh this conflict. Therefore, the appeal is dismissed.

*Mr R Walker*

INSPECTOR