



Appeal Decision

Site visit made on 20 July 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal Ref: APP/V4630/W/21/3285867

**Corner of Lichfield Road and Coppice Road, Walsall Wood, Walsall
WS9 9QX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by RH Development (Midlands) Limited against Walsall Metropolitan Borough Council.
 - The application Ref 21/0048, is un-dated but it is stated as being received by the Council on 13 January 2021.
 - The development proposed is 4 new 2 bedroom dwellings.
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Decision

1. The appeal is dismissed and planning permission for 4 new 2 bedroom dwellings is refused.

Preliminary Matters and Main Issues

2. As part of its submissions, the Council has raised concern that the development would affect the integrity of the Cannock Chase Special Area of Conservation (the SAC). I understand that the appellant was unaware that this would be raised as an issue. However, in light of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) it is a matter that I need to consider. Natural England (NE) has been consulted as the relevant statutory nature conservation body and the main parties have had the opportunity to respond to NE's comments.
3. As such, the main issues are (i) the effect of the development on the integrity of the SAC, (ii) whether sufficient parking would be provided, (iii) whether the development would provide acceptable living condition for occupants in terms of privacy and the amount of internal and external space, (iv) the effect on the living conditions of occupiers of 2 Church View (No 2) in respect of privacy, and (v) whether the proposal would preserve the setting and significance of the nearby grade II listed war memorial (the LB) and its effect on the significance of St John's Church (the Church).

Reasons

Cannock Chase SAC

4. The SAC has been designated for its nature value, primarily because of its extensive lowland heathland habitat with important populations of butterflies, beetles and European nightjar. The appeal site is not very close to the SAC but it lies within its 15km zone of influence. The latest evidence referred to by NE

indicates that any development which increases human population within this zone of influence would lead to an increase in visits and associated disturbance to the protected habitat.

5. The proposal would result in only a small addition to the number of dwellings. Nonetheless, on adopting a precautionary approach, I consider it likely that visitor trips associated with the proposal either on its own or in combination with other projects or proposals would cause significant adverse impacts to the integrity of the SAC. In such circumstances, it is necessary for me to conduct an appropriate assessment under the terms of the Regulations.
6. NE refer to a strategic solution for the SAC that looks to mitigate recreational pressures associated with development through financial contributions. However, the Council has not signed up to this strategic solution and no alternative measures are referred to which would address the potential effects of the proposal. In any event, there is no planning obligation in place that would secure a financial contribution towards the SAC's strategic solution. Therefore, I share the same view as NE that the proposal would harm the protected habitats in the SAC.
7. The appellant suggests that this matter could be addressed through the imposition of a planning condition. However, it is unclear how this would be worded and what measures it would secure to ensure no harm would be caused to the SAC, particularly as there is no evidence that indicates the Council is to soon sign up to the aforementioned strategic solution. Therefore, I am unconvinced that a planning condition would be a satisfactory way of addressing the issue.
8. Any improvement to the biodiversity value of the appeal site itself through the provision of gardens would not address or override the identified detriment to the SAC. Reference is made to other nearby larger housing schemes that have been carried out and which would also have a significant impact on the SAC. However, there is no information before me to show whether these sites fell within the SAC's zone of influence at the time the developments were permitted. In any event, the presence of nearby houses does not justify the harm that would be caused by the proposal.
9. For the above reasons, I conclude the development would cause detriment to the integrity of the SAC. In these circumstances, Regulation 63(5) precludes the proposal from proceeding unless there are no alternative solutions or imperative reasons of overriding public interest and compensatory measures. No case is made that such circumstances apply.

Parking

10. The appeal site is currently a car park associated with the adjacent library building. The library is now vacant and falls outside the defined appeal site, although the submissions indicate it is in the appellant's ownership.
11. The development would include 8 car parking spaces, in accordance with the standard of 2 spaces per house as set out in saved policy T13 of the Walsall Unitary Development Plan 2005 (UDP). However, the scheme would leave the library building with no associated parking. As it is disused, the library currently generates no significant parking demand but I am unaware of any restrictions that would prevent it from re-opening or the building being used for another

- purpose as allowed under the Town and Country Planning (Use Classes) Order 1987 (as amended). As such, it is likely that the loss of the parking spaces for users of the library building would increase demand for local on-street parking.
12. There is a significant degree of uncertainty whether the appellant's plans to redevelop the library site for residential purposes would come forward as planning permission has not been granted for any such proposal. In any event, a residential development would also generate a need for parking and there is no information before me that shows this could be incorporated as part of any redevelopment scheme. As such, I am unconvinced that the appellant's plans would avoid extra roadside parking.
 13. In the vicinity of the appeal site, Lichfield Road and a small stretch of Coppice Road are subject to parking restrictions. However, parking is allowed on other nearby parts of Coppice Road as well as on significant stretches of Beech Tree Road. Also, there is a free, long stay car park on the opposite side of the road. As such, there are significant levels of convenient and safe parking alternatives to the car park that would be lost. Moreover, while the former library building is close to a road junction, there is little evidence to demonstrate any displaced parking caused by the appeal scheme would prejudice highway safety.
 14. For the above reasons, I conclude the development would not accord with UDP policies T7 and T13 as the loss of existing facilities that serve the library building would mean insufficient parking would be provided. However, I attach only limited weight to this conflict in the absence of any clear detriment that would be caused to highway safety. Also, I find the development would accord with policy TRAN2 of the Black Country Core Strategy 2011 (CS) as no significant transport implications have been identified.

Living conditions of future occupants

15. The upper floor windows in the side and rear elevations of No 2 would provide potential elevated vantage points of the proposed gardens and rear windows. However, the first floor window in No 2's side elevation is obscured glazed and the outlook onto the site is screened by a mature tree which is shown to be retained. Also, No 2's rear first floor windows do not face directly towards the appeal site and views are currently obstructed by a hedge. It would be reasonable to attach a condition to any planning permission in respect of landscaping and the provision of boundary treatments so as to prevent overlooking from No 2 onto the rear of the proposed houses.
16. The appellant has not sought to dispute the Council's claim that the dwellings would fail to provide the minimum 24m separation from No 2 as referred to in Appendix D of the Designing Walsall Supplementary Planning Document revised 2013 (SPD). However, in this instance, the potential for views onto the proposed development would be limited, particularly given the orientation and position of No 2's first floor windows relative to the site. As such, the proposal would not be the subject of intrusive overlooking.
17. The internal floor space of the proposed dwellings is shown on the drawings as being larger than 79m² and so more than the minimum area as required under the nationally described space standards. Each of the units would have a rear garden that would enable outdoor residential activities such as gardening, sitting out, external storage and limited play. The gardens would be below the minimum size of 68m² referred to in Appendix D of the SPD. However, no clear

explanation for the SPD figure is provided and I note that it is only a guideline which is not reflected in any development plan policy. I find no reason from the evidence why a shortfall against the SPD minimum figure would lead to unacceptable outdoor private facilities.

18. Therefore, I conclude the development would provide acceptable living conditions for occupants in terms of privacy and the amount of internal and external space. In these regards, it would accord with saved UDP policy GP2 which, amongst other things, looks to ensure development does not have an adverse impact in terms of overlooking. Saved UDP policy ENV32 and CS policies CSP4 and ENV3 are also referred to but these contain no provisions relevant to this particular issue.

Effect on living conditions of occupants of No 2

19. The rear first floor windows of the proposed 2 storey dwellings would provide potential elevated viewpoints towards the rear and side of No 2. However, the rear plane of the dwellings would be at an angle rather than face directly towards No 2. As such, the outlook from the proposed rear windows would not cause intrusive overlooking into No 2's windows, despite the separation distance being below that advocated in Appendix D of the SPD.
20. Consequently, I conclude the development would avoid unacceptable harm to the living conditions of occupiers of No 2 by reason of loss of privacy. In these regards, the development would accord with saved UDP policy GP2.

Heritage assets

21. The LB lies to the front of the Church. Little information on the LB has been provided but from my observations its significance lies with its historic ties to World War I and its function as a memorial to historic events. Its position on an open grassed area allows clear visibility of the LB from Lichfield Road. The Church itself is described by the Council as a non-designated heritage asset. However, it is unclear from the submissions whether it has been formally defined as such and if so, what heritage interest the Church has that merits consideration in the determination of this appeal.
22. In any event, the proposed development would be set away from the Church and the LB with the former library and mature trees in between. The proposed houses would obstruct views from Coppice Road across the site of the LB and the Church, although these are already highly restricted by existing vegetation. Also, from a limited stretch of Lichfield Road, the dwellings would be partly seen behind trees in the background to the LB and the Church. However, the clearest and the main views of the heritage assets would be largely unaffected by the proposed development due to the lack of any significant intervisibility.
23. As such, I conclude the development would preserve the setting and significance of the LB and would cause no harm to the significance of the Church through any impact on its setting. In these respects, the proposal would accord with CS policy ENV2 which, amongst other things, seeks to ensure development protects historic character.

Other issues and planning balance

24. The Council accepts that it is currently unable to demonstrate a 5 year supply of housing land as required under the terms of the National Planning Policy

Framework (the Framework). In such circumstances, paragraph 11 d) of the Framework states that relevant development plan policies should be deemed out-of-date. However, as explained at paragraph 182 of the Framework, the presumption in favour of sustainable development as set out under paragraph 11 does not apply where an appropriate assessment has shown a proposal would adversely affect the integrity of a habitats site. In light of my conclusion on the first main issue, there is a clear reason to refuse granting planning permission and so the presumption in favour of sustainable development does not apply.

25. The acceptability of the scheme in terms of the third, fourth and fifth main issues is a neutral factor rather than a benefit to which I attach positive weight. The development would add to the local housing stock and it would provide new residences close to facilities where residents would be able to support local businesses. It would make a more efficient use of land and it would be of a sympathetic design. The benefits in these regards would outweigh the limited harm identified in respect of parking provision.
26. However, the overriding factor is the adverse effect that would be caused to the integrity of the SAC. The Regulations preclude me as the competent authority from allowing the development, despite my findings on the other main issues and the benefits of the scheme.

Conclusion

27. For the reasons given above, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR