



Appeal Decision

Site visit made on 14 September 2022

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2022

Appeal Ref: APP/N4720/W/22/3299484

Land adjacent 14 Belle Vue Avenue, Roundhay, Leeds LS8 2NN

- 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 Ingenious Property Refurbishment against Leeds City Council.
 - The application, Ref 22/01022/FU, is dated 10 February 2022.
 - The development proposed is demolition of existing garages and the erection of 2 no. residential properties with associated access and infrastructure.
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Decision

1. The appeal is dismissed and planning permission for the demolition of existing garages and the erection of 2 residential properties with associated access and infrastructure is refused.

Procedural Matters

2. The appeal is against the Council's failure to determine the planning application within the relevant statutory timeframe. However, I have had regard to the Council's appeal statement, which provides clarity in terms of the reasons why the Council would have refused planning permission for the proposed dwelling, had it been able to do so. This has informed the main issues below.

Main Issues

3. The main issues are the effect of the proposed development upon;
 - i) the character and appearance of the area, including the impact on trees;
 - ii) biodiversity, air quality and climate change; and
 - iii) the living conditions of the occupiers of 383 and 385 Easterly Road, with particular regard to the privacy of the rear gardens, and the future occupiers of Plot 1, with particular regard to outlook and light.

Reasons

Character and Appearance

4. Belle Vue Avenue is a predominantly residential street consisting of stone, rendered and timber Edwardian style 2 and 3 storey terraced dwellings to the north, and more modern detached brick dwellings to the south, adjacent the appeal site. The street scene has a mixed character and sylvan appearance due to the presence of mature trees located prominently on either side of the avenue that contribute positively to the verdant character of the area. The trees located at the eastern end of the avenue due to their height and canopy spread, provide a sense of enclosure to the street scene. The appeal site forms a largely vacant plot of land, with the exception of 2 single garages.

5. Existing dwellings to the west of the appeal site have a simple rectangular footprint, aligned along a north/south axis with forward facing gables, that provide a vertical emphasis to their form. Frontages are generally flat with the exception of a ground floor single storey projection, set back consistently from the road. In contrast, the proposed dwellings would be staggered with Plot 1 set forward, and plot 2 set behind the established building line. The existing garages whilst closer to the road than the neighbouring dwelling at 14 Belle Vue Avenue are of a reduced height and scale to the proposed dwellings and regardless, are to be removed. Although render is found within the street scene, its use on the set back section of the front elevation, would accentuate the stepped shape of the proposed dwellings, and emphasise their horizontal form. Even with the mixed character of the street scene, the proposed dwellings due to their position, form and materials would appear discordant and visually harmful, rather than improving the street scene.
6. The proposed dwellings would be close to trees T1 to T6, of which trees T1 to T3 that border the appeal site to the north, are protected by the City of Leeds Tree Preservation Order (No.3) 2021: [TPO2021_03] (TPO). The TPO confirmation is before me, such that the validity of the TPO is not in doubt.
7. The proposed dwellings would be 10m or less from these existing TPO trees, an increased distance from a previous iteration, but nevertheless still substantially below the 16m advocated within the Leeds City Council's Guideline Distances from Development to Trees; Securing Space for Existing and New Trees 2020 (Development to Trees Guidance). Whilst not the subject of consultation, weight can be attached to this document as a material consideration. Such closeness is likely to result in pressure for the trees to be removed or lopped, as they would reduce daylight to the living spaces at the front of the proposed dwellings. Whether or not there are existing dwellings that are closer to existing trees, this does not justify new development that would impact negatively on trees identified as contributing positively to the area.
8. I am mindful that T1 may be showing signs of ash dieback and as such it may have a limited long-term contribution to the character of the street scene. However, as the presence of dieback has not been confirmed through further survey, I give this only limited weight.
9. The proposed driveway to plot 1 would impact on the TPO tree T1 with 25% of the root protection area (RPA) affected by new surfacing, which I am advised is 5% above the standard set out in BS5837 Trees in relation to Design, Demolition and Construction. The removal of the concrete slab from within the RPA and the no-dig permeable cellweb construction, would be an advantage such that the RPA of the tree would not be unduly harmed. This would not however, alleviate the pressure to prune or remove T1 due to its proximity to the proposed dwelling.
10. Trees T4 to T6 along the western boundary of the site also contribute to the sylvan appearance of the area. Plot 1 would be between 6m and 8m from these adjacent trees. Again, considerably below the recommended 16m distance within the Development to Trees Guidance. T5 would be particularly affected by plot 1 as the canopy spread would overhang the position of the proposed dwelling. Although the Arboricultural Survey Report (ASR) recommends that minor pruning to the lower limbs be undertaken, this is to avoid damage from construction. It would not reduce the uppermost crown of the tree, which would remain overhanging the proposed dwelling. Due to its size and

proximity, the proposal is likely to lead to future pressure for the tree to be lopped, topped or felled, given the potential for the shading of rooms and the rear garden. The proposed development would therefore increase the risk of works to the tree that would substantially reduce its contribution to the character of the area.

11. The proposal would result in discordant development that would further impact negatively on existing trees, namely T1, T2 and T5 and would have a significantly detrimental effect on the character and appearance of the area. As such, it would fail to accord with Policies G2, P10 and P12 of the Leeds City Council amended Core Strategy (2019) which seek to ensure that high quality development reflects the character and distinctiveness of the area, and that harm to or loss of veteran trees is resisted, an objective shared with the Development to Trees Guidance. It would further be contrary to saved policies GP5 and BD5 of the Leeds Unitary Development Plan Review (2006) which seek amongst other things, that new development resolves detailed planning considerations including landscaping and design. The proposal is also contrary to the National Planning Policy Framework (the Framework) which requires developments to be of a high-quality design and sympathetic to local character.

Biodiversity, Air Quality and Climate Change

12. The parties agree that climate change is an important issue and that trees within the city environment are a key natural resource that can help to improve air quality. Given the urban setting of the appeal site close to a dual carriageway, trees in this area have an important contribution to make to carbon capture. However, there is no evidence before me that air quality is a significant issue in this location. One tree (T7) would be removed, with the potential for future loss and/or pruning of several more. Once developed the appeal site would be constrained such that equivalent compensatory tree planting is unlikely to be achievable. Nevertheless, the overall impact on climate change and air quality would be relatively modest.
13. The appellant suggests that details of biodiversity net gain could be secured by condition through the submission of a biodiversity enhancement and management plan, including measures such as bat and bird boxes and hedgehog highways. Even taking account of the removal of the existing garages and the creation of gardens, the proposed development would lead to an overall increase in built form. Whilst the suggested measures would contribute towards biodiversity, there is no evidence before me that they would achieve a net gain. As such, I cannot be sure that a condition could adequately deal with this matter.
14. Although I find that the impact of the proposed development would not be significantly harmful in terms of air quality or climate change, the proposal does not make provision for biodiversity net gain. It would therefore be contrary to Policies P10, P12, G2 and G9 of the Core Strategy, and Land2 of the Leeds Local Development Framework, Natural Resources and Waste publication document, development plan document (2010) which seek amongst other things, to provide an overall net gain of biodiversity commensurate with the scale of development and to conserve trees, an objective shared with the Development to Trees Guidance. It would also fail to comply with paragraph 174 of the Framework which seeks in part, to minimise impacts on, and provide net gains for biodiversity. I have not applied Policies GP5 and LD1 of the UDP,

as a landscaping scheme has not been submitted for the proposed development.

Living Conditions

Existing Occupants of 383 and 385 Easterly Road

15. The rear elevation of plot 1 which includes windows to main living and bedrooms, would be located approximately 5.5m (as cited by the Council) from the rear boundary. This is substantially below the 10.5m standard set out in the Council's Neighbourhoods for Living Supplementary Planning Guidance (SPG).
16. Whilst ground floor windows could be screened by a fence along the shared boundary, the first floor windows would provide a direct view into the rear garden of 383 Easterly Road. Such overlooking would be exacerbated by the removal of tree T7. Despite the relatively long rear garden of No 383, there would be nowhere within it, that the neighbouring occupants could obtain privacy from such direct views. Although an urban context with relatively high densities of housing, the proposed dwelling would introduce overlooking of the rear garden of 383 from a position where currently there is none. The perception of being overlooked would also be enhanced due to the proximity of the proposed dwelling to the shared boundary.
17. A loss of privacy to the rear garden of 385 Easterly Road is unlikely to occur, given the offset position of the proposed dwelling at plot 1 and the presence of mature trees along the shared boundary between No 383 and No 385.
18. Notwithstanding my findings in respect of the impact of the proposal on the occupiers of No 385, the proposal would have an adverse effect on the living conditions of the occupiers of No 383 in regard to the privacy of the rear garden. The proposal would fail to accord with Policies P10 of the Core Strategy, saved Policies GP5 and BD5 of the UDP and the guidance within the SPG, all of which seek to ensure that new development protects and enhances privacy and avoids a loss of amenity. It would also fail to comply with paragraph 130 of the Framework, which requires new development to have a high standard of amenity for existing users.

Future Occupiers of Plot 1

19. The proximity of the proposed dwelling at plot 1 to the rear boundary would result in a relatively narrow rear garden. However, this would be offset to some extent by the relatively wide plot, which would prevent a severely restricted outlook from the rear ground floor windows from occurring.
20. Notwithstanding the shading diagrams within Appendix D of the ASR, I saw during my site visit that the height and maturity of the existing trees already restrict daylight and sunlight into the appeal site, particularly the area to be taken up by plot 1. Tall trees would effectively border this proposed dwelling on 3 sides, even with the removal of tree T7. Although, the rear elevation would face due south, the proximity of the trees would cause heavy shading, mainly but not exclusively, when in leaf. Besides overshadowing from trees T4 to T7, the set back of plot 2 deeper into the appeal site will cause a limited degree of shading from the south-east, along with the trees between the gardens of No 383 and 385. The rear living rooms and garden of the proposed dwelling are likely to be unduly gloomy as a result of a lack of daylight and sunlight. Even with a dual aspect, the window to the front would face north and would be

shaded by the TPO trees, such that it would not contribute significantly to internal light levels.

21. Whilst I have found that the outlook afforded to the future occupants of plot 1 would be acceptable, the siting of the proposed dwelling in proximity to existing trees would result in an adverse effect on the living conditions of the future occupiers, in terms of daylight and sunlight to both habitable rooms and the rear garden. Consequently, conflict is found with Policy P10 of the Core Strategy and Policies GP5 and BD5 of the UDP, which seek to achieve a satisfactory penetration of daylight and sunlight and avoid a loss of amenity. It would also fail to comply with paragraph 130 of the Framework, which requires new development to have a high standard of amenity for future users.

Other Matters

22. It is suggested that the principle of development is accepted due to the granting of a previous outline consent (reference 16/05727/OT) in 2017. Reference is also made to permissions granted for housing nearby. However, there is no evidence before me of the context of the nearby approvals such that I can make a comparison, nor is there evidence that the previous permission is extant. These matters do not affect my overall findings.
23. The scheme has evolved with a view to finding a solution since the refusal of the previous application (reference 21/01522/FU). However, this does not outweigh my concerns regarding the proposal before me. Compliance with parking standards and provision of electric charging points are to be expected of all development, and so are neutral factors that weigh neither for nor against allowing the appeal, as is the lack of objections from local residents.
24. The appellant considers the proposal to be sustainable development as it would provide residential development on a partly brownfield site in a location with good road links. The economic and social benefits from 2 dwellings would nevertheless be modest and would not outweigh the harm identified above. There is no evidence before me that the policies which are most important for determining the application are out of date. Paragraph 12 of the Framework indicates that development which conflicts with an adopted development plan should usually be refused. Accordingly, I find the policies of the Framework, taken as a whole, not to weigh in favour of allowing the appeal.

Conclusion

25. I have found the proposed development would be acceptable in terms of the effect of the development on climate change and air quality, the outlook afforded to plot 1 and the privacy of No 385. Nonetheless, this does not outweigh my overall findings in respect of the effect upon the character and appearance of the area, including the impact on existing trees, the living conditions of the future occupiers of plot 1 in terms of light, and the privacy of the existing occupants of No 383, with which I have found harm. There are no material considerations in this instance that lead me to find other than in accordance with the development plan. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR