



Appeal Decision

Site visit made on 28 September 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/H1840/W/22/3300136

8 Wych Elm Close, Worcester WR5 2EN

- 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 D Spry against the decision of Worcester City Council.
 - The application Ref 21/00918/FUL, dated 9 October 2021, was refused by notice dated 22 February 2022.
 - The development proposed is a three-storey dwelling, including new access and retaining walls.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's Appeal Questionnaire refers to the Council as Wychavon District Council. However, based on the evidence before me, such as the Council Questionnaire, the development plan references and Decision Notice, the relevant Council is Worcester City Council. This has been reflected in the banner heading above.

Main Issues

3. In view of the above, the main issues are
 - the effect of the proposed development on green space.
 - the effect of the proposal on the character and appearance of the area, including the loss of trees and whether it would preserve or enhance the character or appearance of Lark Conservation Area.
 - the effect of the proposed development on ecology and biodiversity.
 - whether the proposed development would provide adequate accommodation for future occupants, with regard to privacy and light to private outdoor space.

Reasons

Green Space

4. The appeal site forms part of an allocated green space, which includes a linear strip along this part of London Road between the appeal site and Yew Tree Close to the east. The proposed scheme would result in the loss of part of this green space.

5. The Council cite Policy SWDP38 of the DP, which seeks to protect green space from development other than if certain exceptional circumstances are demonstrated. The exceptional circumstances include recreational, or community uses that does not unacceptably impact upon the quality and character of the green space, an assessment of need that demonstrates the green space is not required, or alternative or replacement green space, which is of equivalent value has been secured in a suitable location.
6. As the proposal would amount to a market dwelling, it would not comply with any of the uses set out within exceptional circumstances criteria of the policy. Although landscaping has been proposed, it is not detailed as an alternative or replacement green space, which is determined to be of equivalent value. Whilst I appreciate that the appellant does not agree that the green space was properly allocated, I have limited evidence before me to demonstrate that the allocation is not applicable.
7. Applications for planning permission must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. The South Worcestershire Development Plan 2016 (DP) remains to be the adopted plan for the area, which contains policies that were soundly based on an assessment of the green spaces, which contribute to biodiversity, the character of the area and providing a sense of openness and space. To allow new build housing in this location would be contrary to the aims of this policy, which do not permit development on areas of identified green space, other than in the listed exceptional circumstances.
8. As such, the proposed development would undermine the Council's development strategy to protect them. Accordingly, the proposal would adversely impact upon this green space, contrary to SWDP38 of the DP, which seeks to retain designated green spaces other than in exceptional circumstances listed. This would also be contrary to the policies set out in paragraph 99 of the National Planning Policy Framework (The Framework).

Character and Appearance

Street Scene

9. The appeal site is located along London Road, within the Lark Conservation Area (Conservation Area) and adjacent to a Grade II Listed dwelling at 163, London Road. The site is bound on one side by London Road and Wych Elm Close to the north. On this section of London Road, the built form is more sporadic with large, detached buildings sitting within spacious grounds, either set back or with their side onto London Road. There are large spaces in between, interspersed with mature trees and generous landscaping. The density of the development together with the trees and vegetation give the area a pleasant and verdant character.
10. The appeal site slopes steeply and is located between 163, London Road and Yew Tree Close to the east, albeit the gap between these is substantial and forms an area of protected green space, which is covered by trees. The site is, therefore, undeveloped and the trees, together with the stretch of green space to the east adds value to the pleasant and verdant character and appearance of the area.
11. The proposed dwelling would be of a contemporary design with the emphasis on its width. It would be flat roofed with cedar cladding, large windows and a full

width front balcony. It would also include an area of hardstanding for parking to the front of the site.

12. Given the topography of the site, significant engineering works and retaining walls would be required to form the proposed dwelling over three levels. The formation of dwelling would erode the undeveloped character of the site, which makes a positive contribution to the wider green space. The parking area in combination with the retaining walls would also significantly harden the appearance of the site from London Road.
13. As indicated, the nearest built form is mostly large, two to three storey detached buildings, which are either set back from or side onto London Road with large gaps in between. Although the principle of contemporary design is not objectionable, the orientation and width of the proposed dwelling would result in a proposal with a considerable scale, massing and height that would be at odds with the nearest properties. Whilst I accept the dwelling would be set back from the Road and some trees would be retained, the proposed dwelling would still be appreciable from London Road, exacerbating the adverse visual impact of the proposed development on the site and wider area.
14. Consequently, the orientation, width, massing, height and prominence of the dwelling, together with significant loss of green space and trees is such that it would have a harmful effect on the character and appearance of the site and its surroundings.

‘ Effect on Heritage Asset

15. London Road is adjacent to Wych Elm Close, situated to the north, which denotes the southern boundary of Lark Hill Conservation Area (Conservation Area). The green spaces and large mature trees of the Conservation Area provide historical evidence of the earlier planned landscape associated with the historic Lark Hill properties. Despite the addition of modern suburban dwellings of Wych Elm Close, the mixture of mature trees and green spaces reflect the original landscaped grounds and orchards, whilst also screening views of modern development. The trees and green space on the appeal site were part of the orchard, contributing to the historical significance, and adding value to the verdant character and appearance of the Conservation Area.
16. As already indicated the position of the dwelling on the sloping bank would result in significant engineering works to accommodate the proposed development. These works would contrast with the undeveloped banking, resulting in the loss of a number of mature trees and vegetation that would have formed part of the historical planned landscape and orchard. The loss of the green space and trees, together with the screening they provide of modern additions, would erode the remnants of the planned landscape in this area and detract from the verdant character and appearance of the Conservation Area.
17. Paragraph 199 of the National Planning Policy Framework (the Framework) sets out that great weight should be given to the conservation of heritage assets. The harm I have identified would be moderate but ‘less than substantial’ to the Conservation Area. Paragraph 202 of the Framework is applicable in these instances and indicates that less than substantial harm to heritage assets should be weighed against the public benefits of the proposal.

18. The proposed development would be considered a windfall site that would contribute a dwelling to the local housing stock. There would also be social and economic benefits from the construction of a dwelling, in terms of additional expenditure in the local economy and the creation of construction jobs. However, due to the small scale of the proposal these benefits would be limited. I consider that the public benefits would not be sufficient to outweigh the less than substantial harm that I have identified, giving considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the Lark Hill Conservation Area.
19. I have had regard to the statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 when making my decision. However, the Council outlines that when considering the position of the proposed dwelling to the rear of 163, London Road (Listed Building), and the proposed retention of trees and landscaping on the same side, the setting of the Listed Building would be preserved. Based on the evidence before me, I have no reason to disagree with this conclusion.

Trees

20. A number of trees, shrubs and vegetation would need to be removed in order to facilitate the development. All of the trees on the site would be protected by their location within the Conservation Area. There are also 4 Yew Trees (G4) and a single Yew Tree (T19) protected by a Tree Preservation Order ¹(TPO) on land adjacent to the site.
21. Although I appreciate that a number of the trees may be self-seeded and of low quality, the trees are of significance in visual amenity terms, not least due to their number, position, size, and prominence. Furthermore, some individual trees and as a group they have an amenity value that is significant along this section of London Road. In this regard, the trees contribute to the character and appearance of the area, the green space as well as the designated heritage asset identified above.
22. No Arboricultural Impact Assessment has been submitted with the appeal. As such, the evidence before me does not provide sufficient detail on the category, age, size and health of all of the trees that would be affected, how many would be retained and how many would have to be removed. Neither is it clear how the trees that would need to be retained would be protected through the construction of the proposed development.
23. In view of this, the evidence before me does not provide sufficient detail to fully ascertain the impact of the proposal on trees on the site and on adjacent land. The loss of any of the adjacent TPO trees or a large number of trees in this group would be harmful to the character and appearance of the area and the designated heritage asset. Furthermore, given the potential effect on the acceptability of the scheme, it would not be appropriate to require an Arboricultural Impact Assessment via condition.

Overall findings on character and appearance

24. Accordingly, having regard to the loss of green space and trees, together with the orientation, scale, height, massing and prominent position, the proposed development would be an incongruous feature, which would adversely affect the

¹ TPO reference TPO036

character and appearance of the street scene, and fails to preserve character and appearance of the Conservation Area. The public benefit of the scheme would not outweigh the harm to the heritage asset.

25. As such, the proposed development would be contrary to the objectives of Policies SWDP 6, SWDP 21, SWDP 24 and the Council's Design Guide 2018 Supplementary Planning Document (SPD). In summary, these policies and guidance, seek to ensure that all development will be of a high design quality and should respond to and reflect the local character. The proposed development would need to integrate effectively with its surroundings, in terms of form and function, reinforce local distinctiveness and conserve, and where appropriate, enhance cultural and heritage assets and their settings. It would also be contrary to the objectives of Section 16 of the National Planning Policy Framework (the Framework).
26. The Council also cite Policy SWDP2, which sets a development strategy for employment, housing and retail supply. However, I have no evidence before me that indicates why the proposal would be contrary to this policy, particularly with respect to character and appearance, heritage assets and green space.

Ecology and Biodiversity

27. Where there is a reasonable likelihood of a protected species being present, it is essential that the presence of protected species, and the extent to which they would be affected by the development, is established prior to planning permission being granted. Based on the evidence before me, and my site visit, I am of the view that due to the level of scrub, vegetation and number of mature trees within and adjoining the site, there is a reasonable likelihood of a protected species being present.
28. No Ecological Survey has been submitted with the appeal. This survey would have demonstrated if there are any protected habitats and species on the site, or if there are appropriate conditions for protected species to use the site. A preliminary ecology survey would determine whether there is a need for any further surveys. Whilst ecological surveys can be carried out under conditions attached to a planning permission, this should only be carried out in exceptional circumstances. Although I appreciate the matter may have been complicated by advice the appellant received during the application process, there is no evidence before me to suggest that there are exceptional circumstances in this instance.
29. Accordingly, in the absence of an ecological assessment of the appeal site, it is not possible to ascertain the effect the proposed development would have on protected species or habitats. Furthermore, in the absence of the ecological information, no biodiversity enhancements have been proposed. Therefore, the application would be contrary to Policy SWDP 22 of the DP, which seeks to ensure that development does not result in the loss, or deterioration of protected habitats sites, or protected species unless the need and benefits outweighs the harm, as well as the necessary mitigation, compensation and biodiversity enhancements being agreed.
30. The proposal would also fail to comply with paragraph 180 of the Framework, which states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Living Accommodation

31. There is no specific policy that deals with private outdoor space, but the Design Guide SPD does include guidance to follow to successfully integrate private amenity space. The most relevant principles in the case of a single dwelling would be that they should have access to at least one area of usable private amenity space; including front or back gardens, roof gardens, decks or balconies. The spaces should not be overshadowed, directly overlooked, steeply sloping or awkwardly spaced. They should be safe and sufficiently sized to allow for seating and play. In the case of balconies, they must be wide enough for seating. I have assessed the provision of the outdoor space on this guidance.
32. In my judgement, the balcony would be at first floor, and in combination with the elevated position of the dwelling, and the need for a balustrade, a sufficient level of privacy would be maintained. With respect to the separate outdoor space to the side, an enclosure would be needed to the southern boundary to protect privacy, but this would not need to be tall. As such, even though the proposed dwelling would cause some shadowing to this space, it would still receive ample levels of light throughout much of the day. Both spaces are also flat, accessible and a functional shape, with the flexibility to provide seating and play.
33. Accordingly, the proposed development would not result in substandard living conditions for the future occupants, with respect to the privacy and light afforded to the private outdoor space. As such, with respect to outdoor space, the proposed development complies with Policy SWDP21 of the DP, and the Councils Design Guide SPD. This policy, and guidance, seek to ensure all development is of a high design quality, which requires outdoor space to be private, flat and a functional shape. It should receive sufficient light and be large enough for sitting and play. The proposal would also comply with the Framework, which in summary, seeks to ensure safe and healthy living conditions.

Other Matters

34. I have had regard to the appellant's concerns with how the Council handled his planning application, including matters relating to a previously withdrawn application, the dealing with a complaint, staff turnover and general miscommunication on main issues. However, how the planning application was handled is outside my remit and there are separate procedures, which can consider procedural matters relating to the process. This would not, however, affect my conclusions on the main issues.
35. I also note that the appellant indicated that the proposed development was validated without an ecological or an Arboricultural impact assessment. Although I appreciate the appellant's position, tree and ecology surveys are not a matter that would delay validation of a planning application, even if it was critical to the assessment of its acceptability. As such, the validation of the application without these documents would not alter my view on the main issues relating to trees and ecology.
36. The appellant has made references to two dwellings approved by the Council, one at 67 London Road, and a dwelling near Cromwell Crescent Lane. Also, a group of contemporary dwellings approved on Lark Hill Road, which he asserts set a precedent for the proposed development.

37. While the proposals are within relatively close proximity, I have not been provided with the full details that would have been available to the previous decision makers when determining these cases. As such, it is difficult to make a comparison when I am not aware of the full facts of the cases and if the same policies were applied. However, from what I saw, the London Road and Cromwell Crescent Lane examples are not located within an allocated green space or the Lark Hill Conservation Area. Both also appear as more natural infill developments within a continuous built form. With respect to the proposals on Lark Hill Road, this is a different context, and the development would appear to comprise five dwellings, not one. Based on the evidence before me, these examples are not comparable and do not set a precedent for the proposed development.

Planning Balance and Conclusion

38. Due to the timing of the decision, the appellant has indicated that the lack of housing land supply would have been relevant at the time his application was determined. The Council has indicated that at this time a 5.22-year housing land supply can be demonstrated. However, it is acknowledged that appeal decisions² (prior to a more recent assessment) determined that the Council could not demonstrate a five-year supply of deliverable housing land.
39. Even if a five-year supply of deliverable housing land cannot be demonstrated, Paragraph 11 of the Framework informs that the presumption in favour of sustainable development is not engaged where the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 of the Framework advises that such policies include those relating to heritage assets. Therefore, given the harm identified to the Lark Conservation Area, the provisions of paragraph 11d of the Framework are not engaged.
40. The proposed development was considered acceptable in terms of access, drainage and flooding by the Council, but this would be neutral effect, and would not be deemed a benefit. Regardless of whether or not there is a shortfall in housing supply, the proposal is for a single dwelling, which would provide only a limited uplift in housing supply. The construction benefits would be short term and the social and economic benefits to the area would be small. However, these benefits do not outweigh the harm I have identified, which results in a significant conflict with development plan policies that protect the character and appearance of an area, the preservation of Conservation Areas, green spaces as well as trees, ecology and biodiversity.
41. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

M. P. Howell

INSPECTOR

² APP/H1840/W/21/3289569 and APP/J1860/W/21/3289643