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## Appeal Decision

Site visit made on 22 June 2022

**by Tamsin Law BSc MSc MRTPI**

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

**Decision date: 02 February 2023**

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**Appeal Ref: APP/C4615/W/21/3289276**

**Vacant Land Rear of 100 to 110 Meriden Avenue, Wollaston, DY8 4QR**

- 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 S Brown against the decision of Dudley Metropolitan Borough Council.
  - The application Ref P21/1215, dated 18 June 2021, was refused by notice dated 5 November 2021.
  - The development proposed is the erection of a new dwellinghouse.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. During the course of the appeal a Tree Preservation Order (TPO) was served on four trees on the boundary of the appeal site. I have sought comments from both main parties with regards to the impact of the TPO on the proposed development.

### Main Issues

3. The main issue are;
  - the effect of the proposed development on the character and appearance of the area;
  - the effect of the proposed development on protected species, namely badgers;
  - whether the proposed development would provide acceptable living conditions for future reference, with particular reference to light, outlook and ventilation; and
  - the effect of the proposed development on trees.

### Reasons

#### *Character and Appearance*

4. The appeal site is an area of undeveloped land to the rear of dwellings along Meriden Avenue and Bridle Road. Currently the appeal site is overgrown with a number of mature trees and has suffered from localised dumping of material. Whilst existing properties vary in their size and design, there is consistency in that they are predominantly semi-detached dwellings located within narrow

plots that follow established building lines and generally have a presence within the street scene, which creates a strong pattern and grain of development.

5. The appeal site sits behind the existing dwellings 100 – 110 Meriden Avenue. As a consequence, the proposal would introduce a dwelling within the back land area between the properties to the east and those to the west, which, with the exception of small, ancillary domestic buildings, is currently free from built form. This would be in marked contrast with the existing pattern of development.
6. Furthermore, the lack of street frontage that the dwelling would have, being largely screened from the public realm by existing dwellings, would be out of character and incongruous with the form of the existing development.
7. I find therefore that the proposal represents an unacceptable form of development that fails to respect the existing pattern and grain of development.
8. As such, it would harm the character and appearance of the area, contrary to Policy ENV2 of the Black Country Core Strategy (2011) (CS), Policy S8 of the Dudley Borough Development Strategy (2017) (DS) and the guidance contained within the New Housing Supplementary Planning Document (2013), which seek, amongst other things, to ensure that development promotes the special qualities of an area and takes account of the locally distinctive character of the area. It would also fail to accord with the paragraph 130 of the National Planning Policy Framework (the Framework) that seeks good design sympathetic to local character.

### *Protected Species*

9. The submission is supported by a Phase 1 Preliminary Ecological Appraisal (PEA) which identifies features which indicate that badgers are present on site and nearby and that there are used and unused badger setts on site along with evidence of badger foraging, trackways, snuffle holes and latrines. Analysis of the setts and associated activity has only been informed by visual observations made during a site walkover. The PEA states that further surveys regarding badgers would be required to inform the closure of setts and the migration of badgers.
10. Standing advice by Natural England<sup>1</sup> explains that where it is not possible to avoid effects on badgers, mitigation or compensation measures will need to be included in the proposal. Given the extent of features of badger activity on site and nearby, I consider that the additional surveys including mitigation and compensation measures is necessary in order to establish the likely effects of the proposal on badgers.
11. Circular 06/2005<sup>2</sup> states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted. On the basis of the evidence before me, I do not consider that it would be appropriate to condition the undertaking of further survey work. A condition to require mitigation in the absence of further surveying would also not be appropriate as there can be no certainty that the mitigation would acceptably address any harm to badgers.

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<sup>1</sup> Badgers: advice for making planning decisions (2022)

<sup>2</sup> Biodiversity and geological conservation: circular 06/2005

12. In addition, regarding the potential to displace badgers on to adjoining land, I am mindful that there is clearly badger activity in the surrounding area. Nevertheless, I do not have the information regarding mitigation to demonstrate whether there would be conflict between any mitigation and adjoining land including neighbouring gardens.
13. Consequently, I am not satisfied that sufficient evidence has been provided in order to ascertain the effects of the proposed development on badgers or that survey work can be secured by a condition.
14. Therefore, I conclude that the proposal fails to demonstrate that its effects on the biodiversity of the site and the surrounding area would be acceptable. The proposed development is contrary to Policy ENV1 of the CS, Policies S21, L1 and D2 of the DS, or the guidance contained within the Nature Conservation Supplementary Planning Document (2016) which seek, amongst other things, to ensure that developments safeguard and enhance mature conservation sites, habitats and features. The proposal would also be contrary to Paragraph 180 of the Framework which seek to ensure that proposals conserve and enhance biodiversity.

#### *Living Conditions*

15. The proposed development would introduce a dwelling with ground floor level and basement to the site. The ground floor level would benefit from a number of windows, including roof lights, into each room. The basement level would house a snug lounge, games room, master bedroom, wardrobe and bathroom.
16. Natural light to the basement level would only be provided by a bi-folding door into the master bedroom. The remaining rooms in the basement level would not have any windows, and as such no outlook or access to natural light. The appellant has suggested that the layout demonstrates that these rooms would be used for activities that do not require daylight, such as a snug, games room and wardrobe. However, this would still a number of rooms, that could be used for additional living accommodation in the future. This would result in the rooms they serve being unduly gloomy that would harm the living conditions of future users.
17. By association the limited number of windows and doors at basement level would restrict any natural ventilation. I have had regard to the appellants submission that due to rooms not benefitting from windows a mechanical ventilation system would be required by Building Regulations and details could be conditioned as part of any permission. Should a mechanical ventilation be provided, and conditioned, this would overcome the concerns raised regarding a lack of ventilation.
18. Therefore, the proposal would be contrary to Policies S1 and L1 of the DS which seek, amongst other things, to ensure that appropriate levels of amenity are provided for future occupants. The appeal scheme would also be contrary to Paragraph 130 of the Framework and the National Design Guide (2019) which seek high standards of amenity for existing and future users and a high quality of internal space providing sunlight and daylight.

#### *Trees*

19. A number of mature trees lie within the site boundaries. The majority of the appeal site is covered by an Area TPO, and on the boundary of the site, four

trees covered by a TPO are present. The submission is supported by a Pre-Development Tree Survey.

20. The Council have raised inaccuracies in the submitted survey due to the incorrect labelling of a tree. However, from my site visit the tree appeared to be correctly located and appropriate Root Protection Measures (RPAs) appeared to be drawn on the plans.
21. In order to facilitate the development itself there would be the loss of a number of trees on the site. As an Area TPO covers the site all the trees are subject to a TPO. The tree survey categorises the trees, and indicates that only those categorised as C (low quality) and U (unsuitable for retention) would be removed. It seems to me that sufficient justification has been provided to support the tree's removal in the context of the housing development.
22. The layout plan indicates that the dwelling would lie just outside the RPAs. Careful controls in terms of construction methods, level changes and protective measures, which could be secured by condition, would safeguard the trees. Additionally, the tree survey appears to cover boundary trees, which are now covered by a TPO, thus ensuring that the development could be undertaken without harmfully impacting on them.
23. The spread of the trees is a significant feature of the area. The development would result in the loss of some tree cover but that change would be perceived as being less harmful as a number of mature trees would be retained. Additionally, further landscaping and planting could be conditioned. As such, for the reasons set out above I consider that the proposed development would not be detrimental to the protected trees on the site.
24. I have had regard to the appeal decision<sup>3</sup> referenced by the Council, although I do not have full details of this. However, this appeared to relate to trees in a prominent location that broke up built form along the street. This differs from the appeal site where the trees are behind the housing development. As such, a direct comparison cannot be drawn.
25. Accordingly, I respect of trees the proposal accord with the relevant section of Policies S1, S8, S21 and S22 of the DS, Policies ENV1, ENV2, ENV3, HOU1 and CSP4 of the CS, or the guidance contained within the Nature Conservation Supplementary Planning Document which seek, amongst other things, to ensure that existing trees are retained and replacement trees are provided where trees are lost. The proposal also complies with paragraph 131 of the Framework which seeks to ensure that existing trees are retained.

## **Conclusion**

26. For the above reasons, there are no relevant material considerations, including the approach of the Framework, that would indicate a decision otherwise in accordance with the development plan. It is for this reason that the appeal should be dismissed.

*Tamsin Law*

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<sup>3</sup> APP/C4615/W/21/3276185

INSPECTOR