



Appeal Decision

Site visit made on 27 March 2023

by **John Felgate BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 24th April 2023

Appeal Ref: APP/C4615/W/22/3311463

Land at Culverhouse Drive, Brierley Hill, Dudley

- 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 Masterfreight Limited against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P21/0006, dated 24 December 2020, was refused by notice dated 25 May 2022.
 - The development proposed is the erection of 3 No. dwellings and garage.
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Decision

1. The appeal is dismissed.

The proposed scheme

2. The appeal site comprises about 0.15ha of land on the north-east corner of the junction between Culverhouse Drive and Perrott Gardens.
3. The description of the proposed development set out in the headings above is that used in the Council's refusal notice. The application was originally for "four number detached four-bedroomed houses", but prior to the Council's decision this was reduced, by agreement, to three dwellings. In the amended scheme, Units 2 and 3 would have integral garages fronting onto Culverhouse Drive, and Unit 1 would have a detached garage accessed from Perrott Gardens. In addition, Units 1 and 2 would each still have four bedrooms, and Unit 3 would now have five.

Main issues

4. The main issues in the appeal are: firstly, the effects of the proposed development on the area's network of green spaces; and secondly, the effects on the area's character and appearance.

Reasons for decision

Effects on the greenspace network

5. In the Dudley Borough Development Strategy (the DBDS), adopted in March 2017, the components of the Borough's Green Network are defined in Policy S19. One of these is Sites of Local Importance for Nature Conservation (SLINCs), together with various other types of green space and other open space. The same policy sets out the Green Network's multi-functional role, which includes, amongst other things, as a wildlife corridor providing coherent ecological networks. Development proposals falling within or adjoining it are

- required to complement and enhance the Network's functions, and should include a Green Network Impact Statement, specifying how the proposal would enhance or add value to the Network.
6. In addition, DBDS Policy S21 requires designated nature conservation sites to be safeguarded and enhanced, and any damage or loss resulting from development to be offset by nature conservation improvements, either on or off site.
 7. In the Black Country Core Strategy (the BCCS), adopted in February 2011, Policy ENV1 gives further protection to SLINCs, and also seeks to ensure that development does not impede the movement of wildlife, through wildlife corridors and linear habitats, within the wider urban matrix.
 8. In the present case, the appeal site is included in a larger area which is designated as a SLINC. This designation does not appear to be disputed, and indeed the appellants' own Wildlife Site Assessment report confirms that the SLINC as a whole is considered to be of intrinsic ecological value and provides valuable habitats for a diversity of fauna, including invertebrates, bird species and small mammals, scoring 'high' for position and connectivity, and 'medium' on six other criteria, out of the total of 12. The report also notes that the SLINC is connected to other natural habitats, including the nearby Stourbridge Canal and wooded railway corridors, and is identified as a 'linking area' in the local Nature Improvement Area Strategy.
 9. In policy terms therefore, the appeal site is part of a designated nature conservation site, within a recognised wildlife corridor, and forming part of the Green Network. As such, the site is subject to the above three policies. The development now proposed would result in the loss of part of the SLINC, and part of the Green Network, resulting in a loss of biodiversity. The loss would be relatively small in relation to the SLINC as a whole, but that does not change the fact that the site and wider Network would be eroded, contrary to the aims of these three policies.
 10. The appellants argue that the loss could be offset by implementing an ecological management plan for the remainder of the SLINC. Such a plan could include controlling scrub encroachment onto retained grassland areas to maintain their floristic diversity, and thinning the retained woodland to improve its structural diversity, as well as enhancing the existing habitats for protected and notable species, particularly those associated with residential areas. In principle, I agree that such an approach could have the potential to mitigate and compensate for the development's adverse impacts.
 11. However, no such management plan is before me. I note the appellants' suggestion that a plan could be secured by condition, but again no such condition has been drafted, by either the appellants or the Council. Nor has any legal undertaking or obligation been entered into in this regard. In my view this is a significant obstacle to any permission.
 12. To my mind it is evident that the terms of any management plan would need to include, as a minimum, details of the boundaries of the land to which it would apply, the precise actions to be taken, the dates or frequency of such actions, the duration of the plan, and the financial arrangements under which its implementation would be guaranteed. Furthermore, these details would need to be known in advance of the grant of any permission, as without these it

would not be possible to judge whether the development's adverse impacts would be adequately compensated for. And such details would in any event be needed for the preparation of a Green Network Impact Statement, as envisaged by Policy S19.

13. In my view, a condition deferring the requirement for a management plan to a later date would clearly not provide the necessary degree of certainty on any of these matters. Indeed, in the absence of any other evidence, I consider there is significant doubt as to whether any condition could be effective in these circumstances, in securing the lasting improvement to the retained part of the SLINC, that would appear to be needed, to attain compliance with Policies S19, S21 and ENV1.
14. I fully appreciate that the appeal site is in private ownership, and could be fenced to exclude the public, subject to permitted development limits. But even if that were to occur, it seems to me that the site would still perform some form of role as part of the Green Network and wildlife corridor. This possibility does not alter my view of the merits of the present appeal proposal.
15. I conclude that the development now proposed would result in the loss of part of a designated Site of Local Importance for Nature Conservation, forming an integral part of the local Green Network. In the absence of any clear proposals or commitment to any form of mitigation or compensatory actions, the scheme would cause harm to the aims of the DBDS and BCCS in respect of greenspace provision for the area. As such, it is in conflict with DBDS Policies S19 and S21, and BCCS Policy ENV1.

Effects on the area's character and appearance

16. The appeal site is located within a modern residential estate. At the centre of the estate is the Culverhouse Open Space, a large, attractive area of well-tended, landscaped public open space, with mown grassland and ornamental trees and shrubs. Arranged around this are the residential streets of Culverhouse Drive, Clockfields Drive and Ashtree Close, with the houses facing inwards towards the open space, creating a pleasing sense of focus and enclosure
17. The appeal site lies just beyond this formal open space, separated from it by the carriageway of Culverhouse Drive. The site is largely unmanaged, and mainly comprises a mixture of longer grass and developing scrub, with some young woodland trees. Although the site is green and open, it is not especially attractive. Visually, it contributes little to the area's character, in contrast to the managed open space onto which it looks. The loss of the appeal site in its existing condition would therefore not detract from the surroundings.
18. The three new houses that are proposed would front onto Culverhouse Drive, facing the central public open space. In this position, they would continue the line of the existing houses in that road, and complete the enclosure of the open space on its northern side. The proposed house designs are reasonably attractive, and compatible with other existing properties in the area. The proposed scheme would therefore fit well with the existing development pattern, and appear as a logical rounding-off of this part of the estate.
19. On balance, it seems to me that the effect of the development on the area's character and appearance would be a modest enhancement. As such, it would

respond to its local context, and reinforce the area's local distinctiveness, in accordance with DBDS Policies S8 and L1, and BCCS Policies ENV2 and ENV3.

Other matters

20. The appeal site falls within an area defined as a Development High Risk Area, due to a history of mining. A buried quarry highwall runs under part of the area. Several years ago, it appears that some nearby houses suffered a partial collapse and had to be demolished. Ground gases may also be present, and there are fears that disturbance of the land could lead to the release of such gases. Concerns regarding these matters are raised by a number of local residents, with regard to the safety of future occupiers, and also any consequential effects on existing properties. I fully appreciate the seriousness of all these matters. But nevertheless, it is evident that the land stability issues have been investigated in some detail, and potential solutions identified, in consultation with The Coal Authority. In the light of that work, the Authority's formal response to the present proposal is that, whilst it is acknowledged that the ground conditions are challenging, it is considered that robust mitigatory measures can be devised. The Authority therefore raises no objection, subject to conditions requiring such further works to be carried out and properly certificated. From this response, I am satisfied that the issues relating to mining risks and stability could be overcome by condition.
21. I note the comments from several residents regarding past undertakings and assurances that the appeal site was not to be built on; and that trees on part of the SLINC area are said to have been planted with the benefit of money from the national Millennium Fund; and also that planning permission was granted in 2000 for the use of land as private open space. However, in the light of my earlier conclusions, none of these matters directly affects the outcome of the appeal.

Conclusion

22. As set out above, the proposed development would result in the loss of part of a Site of Local Importance for Nature Conservation, and thus the loss of part of the local green spaces network. In the absence of any clearly defined mitigation or compensation measures, or any means of ensuring that those measures would be secured, the damage to the Green Network, and to nature conservation, would be in conflict with DBDS Policies S19 and S21, and BCCS Policy ENV1.
23. Although the development would bring a minor enhancement to the area's character and appearance, this would not outweigh the harm that I have identified. No other matters weigh either for or against.
24. Consequently, having taken account of all the relevant matters raised, I find that the conflict with the development plan is not outweighed by other material considerations. The appeal is therefore dismissed.

J Felgate

INSPECTOR