



Appeal Decision

Site visit made on 3 May 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2023

Appeal Ref: APP/V4250/W/22/3311008

Land to rear of 17-23 Walkden Avenue, Wigan WN1 2JJ

- 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 Mrs Steff Millar against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/22/93805/FULL, dated 25 May 2022, was refused by notice dated 13 September 2022.
 - The development proposed is erection of 10 garages.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Steff Millar against the Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area having regard to protected trees on the site.

Reasons

4. The appeal site comprises a largely overgrown small woodland located to the rear of terraced housing on Walkden Avenue which, along with adjacent garage blocks and other properties, share the same unmade private access track. The site is marginally lower than the access track but is generally level across its width and depth. Land comprising the gardens of 39 Heeley Street and the grounds of the flats at Chelmsford Mews slopes steeply upwards beyond the northern boundaries of the site.
5. Notwithstanding comments concerning a previous use of the site, any structures that once occupied the site are no longer evident. I also saw little evidence of garden waste on the land, and I note the evidence indicates that this matter has been addressed separately by the appellant.
6. A Tree Preservation Order (the TPO) covering trees on the appeal site and on adjoining land has been in place since 2006. The TPO identifies 13 individual trees and one group of trees on the appeal site to which protection is afforded. In addition, several other trees and groups of trees within the site not covered by the TPO have been surveyed and the Tree Survey Report (February 2021) (the TSR) provides commentary on the condition and life expectancy of all

- mature trees and groups of trees within the site and identifies a 'retention category' for each.
7. The protected trees within the site are visible from public highways close to the site, most notably from Heeley Street and Walkden Avenue, and from the access track at the rear of that terrace. They are also visible from adjacent and nearby dwellings and their gardens. The protected trees provide a valuable verdant backdrop for much of the year in views from the nearby streets, thereby creating a pleasant softening effect above the otherwise hard roofscapes in this built-up urban area. Accordingly, notwithstanding there being no public access to the appeal site, the protected trees make a positive contribution to visual amenity in the area. This benefits residents and visitors alike, and, although the appellant challenges it, I have no reason to consider the TPO is inappropriate.
 8. The National Planning Policy Framework (the Framework) recognises that trees make an important contribution to the character and quality of urban environments, and, at paragraph 131, which applies to all development proposals, requires that existing trees are retained wherever possible. Although this expectation does not preclude the removal of trees, it would not be appropriate to allow felling, particularly of protected trees, without some reasonable justification.
 9. The scheme before me would retain more of the protected trees than that previously proposed in a scheme for 15 garages. However, it would still result in the removal of several trees protected by the TPO. Of those trees the TSR identifies only one, a Willow referenced as 23T, that is unsuitable for retention. The remaining protected trees appear to be in fair to good physiological condition, fair structural condition and have life expectancies of between 20+ and 40+ years. Due to the positive contribution they currently make to the visual amenity of the area, their removal would be harmful to that amenity.
 10. I recognise that trees may be damaged and may fall as a result of strong winds and this may cause harm to people and property, and that this is a matter requiring serious consideration. However, other than the recommendation that one of the protected trees is unsuitable for retention as noted above, from the evidence available to me, and my site visit, it appears that the remaining protected trees are in fair or good condition. The TSR does not provide a compelling justification necessary to support felling protected trees in order to remove the potential for harm to people or property. The appellant is pursuing permission to fell a large tree at the front of the site and that matter will be determined separately from the appeal before me.
 11. Management of protected trees through pruning or other works is normally appropriate. However, previous consent for works involving the removal of branches overhanging the boundaries of the appeal site would not justify the felling of protected trees since this would have a substantially different, permanent and harmful effect on visual amenity.
 12. The presence of a nearby public park offers a valuable resource for residents and visitors, but this does not weigh in favour of the proposal and does not justify development harmful to visual amenity.
 13. The proposed 10 garages would be a benefit given the wide-ranging parking restrictions evident on highways in the vicinity of the appeal site, and the

limited off-street parking facilities at some of the nearby dwellings. I have not been provided with evidence to suggest there would not be a demand for the proposed garages and, while the appellant expresses concern about advice provided by the Council in respect of the protected trees, it is evident that the Council consider the erection of garages on the site would be acceptable in principle.

14. The Council's Traffic Group express concerns about the internal width of the proposed garages, and I recognise that the size of vehicles that could be accommodated may be limited. However, this was not a determinative matter identified in the Council's reasons for refusal. I also note the supposition that the proposed garages may be used for storage rather than parking cars due to their size. However, no further evidence is given to support this claim, and, in any event, future use could be controlled through an appropriately worded condition.
15. I attribute moderate weight to the benefit that would arise to local residents or other members of the public seeking secure off-street car parking facilities. However, this benefit would not outweigh the significant harm to the character and appearance of the area that would arise from the loss of protected trees on the appeal site.
16. The proposed development would be unacceptably harmful to the character and appearance of the area having regard to protected trees on the site. It would therefore be contrary to Policy CP9 of the Wigan Local Plan Core Strategy (September 2013) which seeks to help make the borough a better place to live and visit by safeguarding the network of green infrastructure from development that would compromise its integrity by, amongst other measures, protecting trees and woodlands of value to amenity. The proposed development also conflicts with the Framework which requires decisions taken on development proposals to ensure existing trees are retained wherever possible.

Other Matters

17. Paragraph 180 provides national policy on the approach to be taken where proposals involve the deterioration or loss of irreplaceable habitats, giving the example of ancient woodland and veteran trees. However, while some trees on the appeal site are protected by the TPO, the evidence does not suggest that the appeal site is, or is part of, an irreplaceable habitat in the context of the examples provided in the Framework. Accordingly, paragraph 180 of the Framework is of limited relevance and not a determinative factor in the main issue in this case.
18. The Council's reason for refusal refers to harm arising to the micro-climate effects which are provided by the protected trees. However, I have found little further explanation on this matter in the evidence and, given that I have dismissed the appeal for the reasons set out above, I do not need to consider this matter further.
19. A large number of representations made by local residents raise various concerns about the proposed development in addition to the matters set out in the Council's reasons for refusal. However, given that I have dismissed the appeal for the reasons set out above I have not considered those concerns any further.

20. The need for approval under the Building Regulations is governed by separate legislation and is not a matter to which I can give any consideration in respect of the main issue in this case.
21. The appellant seeks advice from me in respect of the form of development that may be acceptable on the site. However, my remit is limited to the determination of the appeal before me.

Conclusion

22. For the reasons given above, having had regard to the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

David English

INSPECTOR