



Appeal Decision

Site visit made on 29 June 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/M2270/W/22/3299852

**Land Between Blackthorn Avenue and Aspen Way, Southborough,
Tunbridge Wells, Kent TN4 9YB**

- 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 Ini against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/02595/FULL, dated 9 July 2021, was refused by notice dated 3 March 2022.
 - The development proposed is erection of two residential dwellings (Use Class C3), associated hard and soft landscaping works and two car parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council refer to policies of the Submission Local Plan, which is under examination and undergoing further work. The Council accept that there may be some variations to individual policies and that current timetables are provisional. As such, I afford limited weight to those policies and have, in any event, determined the appeal having regard to the adopted development plan.

Main Issues

3. The main issues are:
 - the effects of the proposal on the character and appearance of the area, with particular regard to the loss of open space and effects on nearby trees;
 - effects on accessibility and highway safety, and;
 - whether the proposal would provide an acceptable standard of accommodation for its future occupiers in terms of overshadowing.

Reasons

Character and Appearance

4. The appeal site sits in an area of residential development which adjoins woodland and a nature reserve to the north. Properties in the surrounding area comprise predominately short terraces of two storey properties set around a series of cul-de-sacs that extend from Blackthorn Avenue. The gaps between the terraces on the northern side of the cul de sacs allow views from the roads to the woodland beyond, and together with the mature trees in the area, integrate the residential development into the edge of the woodland and

provide a verdant character. As such, these features contribute positively to the character and appearance of the area.

5. The site is not formally designated as open space by the local plan, and has been enclosed with construction hoarding. However, the absence of development on the appeal site nonetheless contributes positively to the character and appearance of the area through adding to the feeling of spaciousness between the groups of properties, and allowing views to the woodland behind to varying degrees from surrounding public view points. The proposal would result in this particular gap being reduced to the width of a footpath, and due to its narrow width and enclosure by two flank ends of properties, the spacious character of the site and views towards the woodland would be substantially reduced, causing harm to the character of the area.
6. The front elevations of the proposal would be close to a number of existing trees which sit on grassed areas to the south of the appeal site. Those closest to the appeal site are two oak trees numbered T16 and T18 by the appellant's Arboricultural Impact Assessment and Method Statement (the AIA) and are protected by a Tree Preservation Order (TPO)¹.
7. While the appellant identifies T16 and T18 as being category C trees, with an expected life span of 20 to 40 years in the case of T18, I observed both trees had full canopies and made a significant and positive contribution to the visual amenity of the area. The AIA demonstrates that the front garden areas of the proposal would extend into the root protection areas (RPAs) of T16, T17 and T18, as well as under the canopy of T18.
8. The encroachment into the RPAs would arise from the front garden areas including steps and bin storage areas. While the proposed sections show the ground levels would be raised to create the steps, rather than excavated, there is not substantive evidence to demonstrate the effects of the remaining front garden areas, or any retaining walls or excavations in this area which may be required. Nor is there evidence relating to the presence of existing roots within these areas or the extent or effects of soil placed on the site during the neighbouring construction works. While the extent of intrusion into the RPAs may be limited and hand tools would provide a more gentle approach to excavations, this does not suggest that tree roots would not need to be cut or that damage to those trees would not occur. Overall, based on the evidence before me and given the proposed ground works are close to the upper layers of the soil, I cannot be certain that damage to those nearest protected trees would not arise.
9. The proposal would also increase pressure to prune the protected trees in the future, particularly given their proximity to proposed habitable room windows and given T17 is reported as not having reached its mature crown spread. There is also uncertainty regarding the extent of hard surfacing required within the RPAs, which adds further to my concerns.
10. The proposal would incorporate additional planting within the garden areas. However, this would inevitably take some time to establish, and based on the evidence, would not mitigate for the potentially harmful effects on those nearby protected trees.

¹ Ref 0006/2021/TPO dated 11 May 2021

11. In conclusion on this main issue, the proposal would cause harm to the character and appearance of the area through the loss of the existing open space and through the potential to cause harm to, and reduce, the visual amenity value of the closest protected trees. The proposal would conflict with policy EN1 of the Tunbridge Wells Borough Local Plan 2006 (the LP) and Core Policy 4 of the Core Strategy 2010 (the CS) insofar as they require development to respect the context of the site and conserve and enhance locally distinctive sense of place and character. Policy EN13 of the LP seeks to resist development which would damage or destroy protected trees, unless one of two criteria apply. From the evidence neither would apply and there is therefore conflict with EN13. There would also be conflict with the National Planning Policy Framework (the Framework), paragraphs 130 and 131, which state among other things, that developments should be sympathetic to local character including the surrounding built environment and landscape setting, and ensure that existing trees are retained wherever possible.
12. I do not find conflict with policy H5 of the LP, which relates to the principle of infilling in Royal Tunbridge Wells and Southborough. However, this would not outweigh nor provide justification for the conflict with the above mentioned policies.

Accessibility and Highway Safety

13. The proposal would include two on street parking spaces within the turning head of the cul de sac of Blackthorn Avenue to the south. These are shown to be perpendicular to the other existing parking spaces shown on the plan and tracking shows that access to the most southern existing space would remain possible.
14. Despite this, the proposed spaces would be set centrally on the turning head and, in the absence of evidence to the contrary, would obstruct the movements of other larger vehicles using the turning area such as delivery, refuse or emergency vehicles. As a consequence, those vehicles would need to reverse back along the cul de sac or carry out multiple smaller manoeuvres, to the detriment of highway safety. It is suggested that bins could be moved by residents to the southern end of the cul de sac, however this would rely on actions of other residents of the cul de sac which lie outside the scope of this appeal and which could not reasonably be controlled by a planning condition.
15. During my site visit I also observed that the turning head was already heavily used for the parking of cars, with several vehicles double or tandem parked. Regardless of the issue of ownership and maintenance of that land, the proposal would exacerbate this issue by adding additional pressure for parking in that area. The acceptability of the adjoining development² does not satisfy me that the additional impacts created by the appeal scheme would be acceptable.
16. At the time of my site visit there were opportunities for parking in the surrounding area, including along the main route of Blackthorn Avenue which has no parking restrictions. However, this was a snap shot of time in the middle of the day and I cannot be certain that this is reflective of local parking conditions at other times of day. As such it cannot be established that

² Ref 18/01494/OUT

increasing local parking pressure in the surrounding area would not similarly prejudice highway safety.

17. For the reasons given, the proposal would cause harm to highway safety and would conflict with the Framework, paragraph 111, which states that development can be prevented or refused if there would be an unacceptable impact on highway safety.
18. In the absence of evidence to the contrary, I do not find conflict with Policy TP4 of the LP or Core Policy 3 of the CS, which relate to transport infrastructure more widely and matters including traffic generation.

Living Conditions

19. The appellant has provided a Daylight and Sunlight Assessment (DSA). This identifies that the two south facing kitchen/ dining rooms at the ground floor level of both proposed houses would receive a level of daylight less than recommended by BRE Guidance³, including in winter when the nearest trees would not be in leaf. It also finds that the levels of sunlight received by those same windows would be below the recommended level in summer months when the trees were in full leaf.
20. I do not find the extent of the transgression to be marginal and, as those rooms provide one of the two main shared spaces for families of those homes, there is a reasonable expectation of good natural lighting in those rooms. While the BRE Guidance is only good practice, the results of the tests contained in the DSA heavily suggest that the conditions in those kitchen/ dining rooms would be gloomy and heavily shaded, and would provide oppressive living conditions for the future occupiers. These effects could be exacerbated in the future as a result of the future growth of those trees.
21. The outlook from the kitchen/ dining rooms would be of the canopy of those nearest trees, and could provide a pleasant outlook. However, this would not mitigate for the effects arising from poor natural lighting, neither would the compliance of other rooms with BRE Guidance.
22. For the reasons given, the proposal would not provide a suitable standard of accommodation for future occupiers, in terms of natural lighting. The proposal would conflict with Policy EN1 of the LP, which requires development to provide adequate residential amenities for future occupiers, and paragraph 119 of the Framework relating to healthy living conditions. I do not find conflict with Core Policy 5 of the CS, which appears not to relate to this main issue.

Other Matters

23. The appellant has highlighted other infill developments in the vicinity of the site. In respect of the neighbouring development of three new homes⁴, while I do not have details of the circumstances under which this scheme was considered acceptable, I do not find its effects to be comparable to the appeal scheme, particularly as it retained a degree of green open space to its western side. Similarly, there is insufficient evidence before me relating to the development between no.7 and no.9 Blackthorn Avenue⁵ to establish that the

³ Based on the British Research Establishment Report 209 Site Planning for Daylight and Sunlight: A Guide to Good Practice, Second Edition 2011

⁴ 18/01494/OUT

⁵ 20/03344/FULL

circumstances were comparable to the appeal before me. As such these other developments do not weigh in favour of the appeal scheme.

Planning Balance

24. The Council cannot demonstrate a 5 year supply of land for housing. As such the provisions of paragraph 11d) of the Framework are relevant to the appeal. The most important policies are deemed to be out of date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
25. In terms of the main issues above, the proposal would cause harm to the character and appearance of the area and highway safety, and would fail to provide an acceptable standard of accommodation for future occupiers. The result of these harms would be significant and long lasting and would result in conflict with the Framework. I ascribe these harms substantial weight.
26. The proposed development would contribute to the Council's housing stock and the new houses would be in an established residential area and within the Limits of Built Development, as defined by the development plan. However, as two dwellings, the extent of that contribution would be limited. The proposal would incorporate green credentials, including green roofs, solar powered external lighting and a range of ecological enhancements as well as soft landscaping. It would also introduce an active frontage to the open space to the south. Taken together I attach moderate weight to these benefits, given the scale of the proposal.
27. The proposed houses may be acceptable in terms of their size, outdoor space and design approach. They would preserve the living conditions of the neighbouring occupiers and would not have adverse impacts on the ancient woodland or existing biodiversity. Notwithstanding the concerns in respect of highway safety, the quantum of parking proposed is accepted. However, these matters are neutral, and do not amount to benefits which weigh in favour of the development.
28. Consequently, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The appeal scheme would not therefore benefit from the presumption in favour of sustainable development.

Conclusion

29. With the above in mind, there are no material considerations, including the approach of the Framework, that are worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

C Shearing

INSPECTOR