



Appeal Decision

Site visit made on 25 July 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/P4605/C/23/3319179

186 Swanshurst Lane, Birmingham B13 0AW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Shasta Erim Majid against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 28 February 2023.
- The breach of planning control as alleged in the notice is the installation of an unauthorised footway crossing.
- The requirements of the notice are to:
 - (i) Restore the Land to its original condition prior to the installation of the unauthorised footway crossing; and
 - (ii) Remove all building materials and rubble from the Land arising from compliance with the requirements of (i) above.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (a) appeal and the deemed planning application

Main Issue

1. The main issue is the effect of the development on the character and appearance of the area.

Reasons

2. Swanshurst Lane is a residential road comprising two-storey, semi-detached and terraced dwellings. The set back position of the dwellings, the wide pavements and grass verges, and, the tree lined road create a pleasant, open, suburban residential character.
3. The subject appeal development comprises a vehicular crossing that provides access to 186 Swanshurst Lane. Adjacent to the crossing is a large Beech tree. The tree is particularly large and has a high visual amenity value and therefore makes a significant positive contribution to the character and appearance of the area.
4. Due to its proximity to the tree, the crossing will be directly over the roots of the tree. Many of these roots will be very close to the surface. The crossing consists of dropped kerbs and the laying of tarmac with edging stones. The installation of the tarmac, kerbs and edging stones would have required excavation works and given the proximity of the tree it is reasonable

to conclude that these works would have resulted in the severance of/damage to the tree roots, some of which may well have been major structural roots. The damage to these roots will likely have had a significantly harmful effect on the health of the tree. I note the appellant's argument that there are no signs of damage to the tree since the work was done. However, signs of damage to the tree may take much longer to notice.

5. Not only would damage have been caused to the tree as a direct result of the installation of the crossing but it would also occur through its continued use. Vehicles passing over the crossing would compact the soil and roots beneath, resulting in their continued damage.
6. I acknowledge that prior to the installation of the crossing cars would mount the kerb and park partly on the grass verge, which would also have likely caused damage to the roots through soil compaction. However, the damage would not have been to the same extent as the current situation. The crossing is over the full width of the grass verge rather than a narrower section adjacent to the road, which was previously parked on.
7. Given the above, the damage caused through the installation of the crossing and its continued use will have a significantly damaging effect on the tree. This will likely result in the visual amenity value of the tree being diminished over time, which would have an unacceptable harmful effect on the character and appearance of the area.
8. During my site visit, I observed other vehicular crossings within proximity to trees. However, there is no evidence before me of whether these benefit from planning permission or how long they have been in situ. Accordingly, I cannot attribute them any weight in favour of the development. I have also had regard to the prospect of cars being parked on the grass verge were I to dismiss the appeal and the crossing is removed. However, I do not consider that this would have a greater effect on the tree than the crossing does. Furthermore, the works required to remove the crossing may result in some minor damage to the roots. However, this harm would be offset through the restoration of the land to its condition prior to the crossing being installed, which could result in some root regrowth.
9. I find therefore that the damage to the tree as a result of the development will have a significantly harmful effect on the character and appearance of the area. As such, it is contrary to Policies PG3 and TP7 of the Birmingham Development Plan 2031 and saved Policy 3.14 of the Birmingham Unitary Development Plan 2005, which, amongst other things, seeks to ensure development is of a high standard of design, reinforces local distinctiveness and protects trees. It would also fail to accord with the design objectives of the National Planning Policy Framework.

Other Matters

10. I note the previous appeal decision¹ for a similar development at the appeal property and that my findings are similar to the previous Inspector's findings.

¹ Appeal reference: APP/P4605/D/18/3207874

Conclusion on the ground (a) appeal and the deemed planning application

11. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to either the ground (a) appeal against the enforcement notice and deemed application, or to the Section 78 appeal against the Council's failure to determine the planning application. Therefore, the ground (a) appeal fails.

Formal Decision

12. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Alexander Walker

INSPECTOR