



Appeal Decision

Site visit made on 2 October 2023

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/N4720/W/23/3324038

Land former 2 St Martins Road, Potternewton, Leeds, LS7 3LX

- 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 Ben Machekanyanga, MacLeeds (St Martins) LLP against the decision of Leeds City Council.
 - The application Ref 22/05658/FU, dated 12 August 2022, was refused by notice dated 16 May 2023.
 - The development proposed is erection of 4 no residential units [Use Class C3] with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. An appeal¹ for residential development of a detached three-storey block of 5 two-bedroom apartments on the site was dismissed 15 August 2022.

Main Issues

3. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area, the setting of the adjacent Chapeltown Conservation Area, and the Council's climate change, air pollution and biodiversity objectives with specific reference to protected trees.
 - The effect of the proposal on the living conditions of future occupiers with specific reference to outlook and daylight.

Reasons

Trees

4. The appeal site is situated on a corner plot which fronts Chapeltown Road to the east and St Martins Road to the south within a mixed commercial and residential area. The previous building which occupied the site has been demolished and the site is overgrown with shrubs. An area of hardstanding remains in the north-west corner of the site. Two mature trees which are covered by a Tree Preservation Order are located to the south-eastern edge of the site. The site sits just outside the Chapeltown Conservation Area (CA) which lies to the south and east.
5. The Chapeltown Conservation Area Appraisal (CAA) defines the special character of the CA as being an early example of 19th Century suburban housing for the middle

¹ Appeal reference: APP/N4720/W/22/3298352

classes ranging from the mid-19th Century to the early 20th century. It identifies, that *'trees in private gardens and the verge of the highway dominate the scene and are one of the area's main attractions'*.

6. The trees comprise of T1 (Lime) and T2 (Horse Chestnut) which are both prominent along Chapeltown Road, St Martin's Road and St Martin's Avenue. Due to their size and prominence in views from the south within the CA, they make a positive contribution to the setting of the CA.
7. The Arboricultural Impact Assessment (AIA) Revision H (March 2023) assesses the health of the trees. T1, a mature Lime is identified as a Category B tree which is in good physiological condition. T2, a Horse Chestnut is identified as a Category C tree in fair physiological condition. The AIA identifies that T2 has sections of dark staining, cracking and splitting in the bark which are a potential indicator of Horse Chestnut bleeding canker disease. Despite this, there is no suggestion that the trees would need to be removed for health reasons or that they won't continue to make a positive contribution for many years to come.
8. The proposal would involve the construction of four residential units to the north-west of the site. The access and parking area to serve the development would be situated to the south-west of the site. The plans accompanying the AIA show that the scheme would encroach upon a significant proportion of the Root Protection Area (RPA) of the trees, in particular the parking area, access drive and drainage.
9. Paragraph 5.3.1 of BS 5837:2012 states that *"the default position should be that structures are located outside the RPAs of trees to be retained. However, where there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the tree"*. For the reasons set out in the planning balance, I do not consider that there is an overriding justification for construction within the RPA.
10. Paragraph 7.4.1 of BS 5837:2012 states that where permanent hard surfacing within the RPA is considered unavoidable, site specific and specialist arboricultural and construction design advice should be sought to determine whether it is achievable without significant adverse impact on trees to be retained. Paragraph 7.4.2.3 goes onto say that new permanent hard surfacing should not exceed 20% of any existing unsurfaced ground within the RPA.
11. The footprint of the proposed development would not encroach directly into the RPAs of either T1 or T2. However, around 1m of soil disturbance beyond the footprint may occur during excavation for the strip footing foundations, resulting in a potential minor encroachment of around 0.6 of the total RPA. The AIA considers that the use of an air tool to excavate soil using compressed air would lessen the potential impact to the roots, although there is no evidence before me as to the extent of roots in this location or the degree to which any disturbance would be minimised.
12. The AIA summarises that around 35% of the RPA of T1 and 28.8% of the RPA of T2 would be encroached upon by the proposed permanent driveway, car parking and pedestrian path. By way of mitigation, the AIA proposes the use of a no-dig, load bearing cellular confinement system to prevent excavation for constructing the new hard surface and minimise the compaction of the soil. The system is load bearing and porous which it is said would allow water and oxygen transfer to continue between the soil, tree roots and air. Soil decompaction using an air tool

and incorporating mulch into the backfill, will also be undertaken. It is suggested that the system would allow tree roots to remain viable.

13. The manufacturer of the cellular confinement system has produced technical site-specific specifications and an engineering build up for the no-dig ground protection system for the site. Paragraph 2.10 of the AIA states, this demonstrates that the system is workable with the level change present on the site. Section 5 of the AIA states that no level changes would occur within the RPAs of T1 and T2 that are not protected by a cellular confinement system. However, the cross-section provided by the manufacturer of the car park and driveway after construction shows that up to 405mm would be added above existing ground levels. Contrary to paragraph 2.10 of the AIA and Figure 21, there would inevitably be a change in levels at the access point to 'ramp up' from the roadway which is at a fixed level to the increased levels (+405mm). Negotiating this change in site levels would involve standard excavation which could have a significant harmful effect on the trees. Indeed, the Arboricultural Association Guidance (AAG) Note 12 'The use of cellular confinement systems near trees: A Guide to Good Practice' 2020 notes the difficulty of ramping up from an existing road to a new geocell surface.
14. Paragraph 5.5 of the AIA states that it is unlikely there are significant woody roots or fine fibrous routes in the area of the existing pavement where the new access way into the site is proposed. However, the access would be partially within the RPA of both trees and so there is a possibility that roots would be adversely affected. The areas where a permeable no-dig cellular confinement system is to be used are shown with the current level changes on the tree protection plan; however, there are no plans which show finished site levels. The cross sections provided may show the proposed structure of the footpath/driveway/parking areas in terms of materials; however, these are shown in isolation. There are no plans showing finished site levels or cross sections across the site which cover the access/driveway/parking areas or the RPAs. Consequently, it is not clear how the changes in site level would be accommodated. Standard excavation would be required at the access point to create a ramp up to the increased levels (+405mm) as the roadway is at a fixed level. This could have a significantly harmful effect on the trees.
15. Examples are provided in the AIA of case studies illustrating the use of Cellweb within the RPAs of trees. However, these examples do not specify the extent of the RPA which is affected, the degree of existing and proposed site levels, types of soil and other such site specific factors. I cannot, therefore, be certain that they are directly comparable to the appeal proposal which limits the weight I can attach to them in my Decision.
16. Information is also provided of a study which tested a cellular confinement systems carried out by an independent party (Report on trial pavement construction using Cellweb Pavement reinforcement, May 2007 EPG) which the appellant contends demonstrates that the method is successful at minimising compaction within RPAs allowing trees to remain viable. However, these were undertaken in trial beds and as acknowledged by the report it was only a short-term test. The test does not demonstrate how site-specific issues such the type of soil and any changes in site levels would be addressed.
17. Paragraph 5.3.1 of BS 5837:2012 states that where operations within the RPA are proposed the arboriculturist should demonstrate that the tree(s) can remain viable and that the area lost to encroachment can be compensated for elsewhere, contiguous with its RPA and propose a series of mitigation measures to improve

the soil environment that is used by the tree for growth. On the evidence before me, it has not been satisfactorily demonstrated that the trees would remain viable. Whilst I note that it is proposed to extend the use of the system beyond the theoretical advised RPA to further protect the soil, there is no evidence before me that this would be sufficient to compensate the area lost to encroachment or fully allow for future growth. This is a particular concern given the location of roads to the south and east.

18. Furthermore, the drainage strategy includes attenuation by oversized pipes which would run through the outer edges of the RPAs of T1 and T2. In terms of mitigation, the AIA states that the pipes have been routed around the RPAs of T1 and T2 as much as possible and that air excavation shall be used to excavate the soil to lay the pipes within the RPA of T1 and T2. However, this would result in some disturbance to the RPA of the trees, and I am not persuaded that a 'no -dig' solution would sufficiently compensate for this.
19. Even if it were feasible to increase site levels to the degree suggested, the percentage of this type of surface would significantly exceed the 20% indicated in paragraph 7.4.2.3 of BS 5837:2012. I acknowledge that this is not a fixed limit; however, I am mindful that there would only be a small area around the trees which would be exposed as future root growth is restricted on the south and east side due to the presence of the roads. Furthermore, even with the use of the proposed method, there would be changes to the soil environment below the trees.
20. I note the reference in the AAG which states that in some circumstances the installation of a cellular confinement system covering a higher proportion than 20% of the root zone may be acceptable, provided that it is sufficiently justified. However, I do not consider that it has been justified in this case. In addition, the AAG notes the difficulty of ramping up from an existing road to a new geocell surface and highlights that the installation of geocells inevitably involves working on top of tree root systems and that there will be an elevated risk of damaging tree roots and the structure of the soil.
21. T1 is a mature tree and its ability to adapt to changing circumstances may be limited. In addition, T2 potentially has Horse Chestnut disease. In this regard, sufficient justification has not been provided to demonstrate the potential long-term effect the proposed works will have on the health of these trees which may be at particular risk, or which may be less resilient to even a minor degree of impact from potential reduced oxygen and biological activity in the soil below the system. In reaching this conclusion, I am mindful of paragraph 6.1.1 of BS 5837:2012 which states that a precautionary approach should be adopted.
22. The site previously contained a residential dwelling which has been demolished. But its former garden land does not constitute previously developed land, having regard to the definition in the National Planning Policy Framework (the Framework). I acknowledge the benefit of redeveloping the site and the potential for new tree planting; however, this would take some time to establish, and it has not been demonstrated that the proposal before me is the only means of developing the site.
23. As mature trees, they have some biodiversity value and make a very small contribution to tackling air pollution and climate change. Furthermore, there is no firm evidence that a biodiversity net gain would be achieved by the proposed development, particularly if the long-term health of the trees is compromised. This limits the weight I can afford these matters in this Decision.

24. I acknowledge that the scheme has been reduced in size from the previous proposal and that some additional arboricultural information has been provided for the current scheme. However, as can be seen from my reasoning, I do not consider that this is sufficient to overcome the concerns of the previous Inspector. In any event, I have considered the proposal on its merits based on the evidence before me in this specific case.
25. Drawing the above together, there is no overriding justification before me for the proposed construction within the RPA. Moreover, with the precautionary principle in mind, the cumulative effects from the works and the design, would risk the long-term health and survival of the trees. This risk to trees would subsequently harm the character and appearance of the area, including the setting of the CA and would be at odds with the Council's climate change, air pollution and diversity objectives.
26. I, therefore, find conflict with the requirements of Policies G9, H2, P10, P11 and P12 of the Council's Core Strategy (CS), Policies GP5, N19 and LD1 of the Council's Unitary Development Plan (UDP), Policy LAND2 of the Council's Natural Resources and Waste Development Plan, and in so far as it relates to these matters, the Framework. These, amongst other things, stipulate that development should conserve trees wherever possible and seek landscape schemes that protect existing vegetation, including trees. Moreover, proposals should seek to avoid loss of amenity.
27. The Council refer to the Chapeltown CA Appraisal in its decision notice, which provides useful guidance to the special character of the CA. As the proposal falls outside of the CA, the Appraisal has not been determinative in my assessment. The Council have also referred to the guidance within the Council's Guideline Distances from Development to Trees document. However, there are no details of how specifically the proposal would conflict with this document. It has not, therefore, been determinative in my assessment.

Living conditions – future occupiers

28. Neighbourhoods for Living 'A Guide for Residential Design in Leeds' Supplementary Planning Guidance 13 (2003) (SPG13) sets out guidance for separation distances which requires main habitable room windows to be located 10.5m away from boundaries and secondary bedroom windows to be located 7.5m away.
29. The main habitable room windows of unit 1 would be located 5.3m away from the garden hedges that are proposed to be planted to create private garden space and defensible spaces for the windows. Furthermore, the bedroom window of unit 1 would be located only 1m away from a parking area where a fence is proposed to ensure the window is not overlooked by people using the space. Whilst the parking space closest to the bedroom window could be required by condition to be allocated to the occupier of Unit 1 itself, this would not prevent overlooking from users of the adjacent space. Unit 1 would not, therefore, meet the separation distances in SPG13. Consequently, future occupiers of Unit 1 would have unacceptable levels of outlook from their windows. Furthermore, due to the proximity of the hedge and fence to the windows of Unit 1, and in the absence of a daylight/sunlight assessment, I cannot be certain that it would receive satisfactory levels of daylight and sunlight.
30. The main habitable room window and bedroom windows of Unit 2 would be located around 4m away from the garden boundary hedge that is proposed to provide

private garden space. Whilst the kitchen window would be served by an enclosed light-well. The proposed separation distance would not meet the SPG13 guidance in this regard. Future occupiers would look out onto the hedge and wall enclosing the lightwell in close proximity to their windows resulting in unacceptable levels of outlook.

31. Whilst the proposed combined living room, kitchen and dining of room of unit 2 would have three aspects, the kitchen window would look out onto the enclosed light-well. Two doors would also serve the room, however, although the rear door may have glazing it would back onto the retaining wall with the adjacent site. Consequently, I am not persuaded that occupiers would have a satisfactory outlook from Unit 2. Furthermore, in the absence of a daylight/sunlight assessment, I am not persuaded that the combined living room, kitchen and dining room would receive sufficient light. I acknowledge that the SPG states that it is inappropriate to apply these distances without further consideration, especially of local character. However, there is nothing to suggest that these separation distances should be relaxed in this case. Whilst a flatted development, future occupiers are, nonetheless, entitled to satisfactory levels of outlook and daylight/sunlight.
32. In conclusion, the proposal would harm the living conditions of future occupiers with specific reference to outlook and daylight/sunlight. It would, therefore, conflict with the requirements of saved policies GP5 and BD5 of the UDP, Policy P10 of the CS, the objectives of the SPG and the provisions of the Framework, insofar as they relate to the main issue. These, amongst other things, seek to secure good standards of living conditions for residents.

Planning balance

33. The proposal would make effective use of the land and would provide a contribution to housing supply and mix, including from a small residential site in a sustainable location, objectives which resonate with the Framework. The proposal would also contribute to the local economy during the construction phase and as future occupiers would support local shops and services. Due to the small scale of the proposal, I can only attribute modest weight to these benefits. Furthermore, the Council has confirmed that it has more than a five-year land supply. Under these circumstances, I do not consider that there is an overriding justification for construction within the RPA. The absence of harm in relation to any other matters is a neutral factor in this case.
34. However, my concerns do not relate to the principle of developing the site, but the detailed aspects of the scheme and it has not been demonstrated that the appeal scheme as designed, and with the harm to protected trees and living conditions of future occupiers, is the only way of delivering such benefits. I am not persuaded that any other matters outweigh the harm and policy conflicts I have identified.

Conclusion

35. For the reasons stated, the proposal would conflict with the development plan and there are no material considerations that outweigh this conflict. The appeal is, therefore, dismissed.

Caroline Mulloy

Inspector