



Appeal Decision

Site visit made on 17 October 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

Appeal Ref: APP/Q4625/W/23/3317649

71 St Bernards Road, Olton, Solihull B92 7DF

- 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 Karamat Hussain against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2021/02081/PPFL, dated 23 July 2021, was refused by notice dated 28 October 2022.
 - The development proposed is Demolish the existing bungalow and replace it with a new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The applicant is Mr Karamat Hussain, but on the appeal form the appellant is Mr *Kamarat* Hussain, although the appellant's appeal statement refers to the appellant as per the application. This may well be a typographical error. However the right of appeal is given only to the original applicant, as confirmed by section 78 of the Town and Country Planning Act 1990 (as amended). Therefore, the appeal will proceed only in the name of Mr Karamat Hussain, as set out above.
3. During the course of the appeal a revised National Planning Policy Framework (the Framework) was published on 5 September 2023 and replaces the previous version published in July 2021. However, as any policies in the Framework that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version in reaching my decision.
4. I am advised that a review of the Solihull Local Plan is underway. However, based on its early stage of preparation the Council considers its policies have limited weight and do not alter the Council's reasons for refusal. I have no reason to take a different view.

Main Issues

5. The main issues in this appeal are:
 - The effect of the proposed development on the living conditions of the existing occupants of neighbouring properties 69 and 73 St Bernards Road (Nos.69 and 73) with particular regard to light and outlook, and
 - The likely long-term effect upon protected trees intended to be retained.

Reasons

Living conditions

6. The appeal site comprises a single storey dwelling to eaves with accommodation in the upper floor. It is set back from the road with a good sized rear garden. There are trees on site as well as in the grounds of both neighbouring properties close to the site boundaries.
7. The appeal site sits between two large period properties (Nos. 69 and 73). I am led to understand that these period properties were once corner properties to a road that connected St Bernards Road to Chestnut Close. Hence both properties in effect have two front elevations – one facing St Bernards Road and the other facing what is now the side elevations of the host property (71 St Bernards Road). Regardless of whether they are 'front' elevations or not, the matter of substance for the purpose of this appeal is whether any windows serving habitable rooms at Nos. 69 and 73 would be adversely affected by the proposal.
8. The Council refers to the 45-Degree Code from its House Extension Guidelines Supplementary Planning Document (the 'Extension SPD') to assess the resulting impact of light and outlook on the amenity of neighbouring occupiers. It is a common guideline often used by local planning authorities. Whilst the Council uses it primarily for house extensions, the general principles still offer, in my view, common-sense guidance that can still apply to development and its relationship with adjacent properties.

Effect on No.69

9. No.69 has been converted into apartments and there are ground and upper floor windows to habitable rooms on what is now the side elevation that faces directly towards both the existing single storey dwelling and the proposed 2.5 storey dwelling. I have seen comments from third parties living in some of the flats at No.69 attesting to the fact that first floor kitchens and bedroom windows would face towards the proposed dwelling and would be in close proximity to, and overshadowed by, it.
10. During my visit I saw that the side elevation of No.69 was in close proximity to the boundary and existing dwelling. I also saw that the sun was shining through the trees and onto a number of windows of No.69, in a similar way to that shown in the appellant's submitted photographs.
11. I also saw that some windows were already affected to some extent by shading from the existing dwelling and from trees in the garden of No.69 as well as from other neighbouring trees. I accept there would be some seasonal variations to sunlight and shadow as the sun moves higher or lower in the sky throughout the year and leaves fall in the winter. From the submitted annotated plans and what I saw on site, the existing dwelling already breaches the 45-degree guidelines and affects light and outlook to some windows.
12. To assess the impact further, the appellant has submitted a BRE Daylight Assessment¹. The BRE guide is not mandatory and is intended to be used

¹ Prepared by Planning for Sustainability dated April 2022 and which that uses the Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice' (2nd edition).

flexibly as natural lighting is only one of many factors in site layout design. The Daylight Assessment focuses mainly on the windows on the side elevation of No.69 that face towards the appeal site. It considers various factors such as light from the sky, calculated as a Vertical Sky Component (VSC) as a way of safeguarding daylight. Rooms with more than one window would use an average weighted VSC. It also calculates sunlight availability to windows, gardens and open spaces.

13. The Daylight Assessment calculations show that some windows would see their daylight or VSC reduced. One segment of the ground floor bay window was not compliant, but when considering the bay windows as a single entity and averaging out the VSC values, the window as a whole generally complied with the guidelines. The only window that was not compliant was a ground floor kitchen window. However, this room also had a second window and a large, glazed door which can be regarded as being the main window. The Daylight Assessment found that the effect on sunlight on the main windows to living rooms and amenity space was considered to be not noticeable and therefore in compliance with the BRE guidelines.
14. Drawing these points together, whilst there would be some overshadowing and loss of light to some habitable rooms of flats at No.69, the Daylight Assessment found overall the development would be within the BRE guidelines. The Council makes no comment on the appellant's Daylight Assessment in its officer delegated report and has not submitted an appeal statement. In the absence of substantive evidence to the contrary, the adverse effects have been shown to not be material. This leads me to conclude there would be no harm to the living conditions of occupiers of No.69 with regard to light.
15. I now turn to the issue of outlook. On my visit I was able to stand at an upper floor window of the host property and look directly at the windows in what is now the side elevation of No.69. Occupiers of these rooms already look at the boundary fence, dormer window and across the sloping roof towards the trees along the boundary with No.73. However, the property is currently single storey and the sloping roof takes built form away from the neighbouring windows, despite the close proximity of the existing dwelling to the boundary.
16. The proposal would involve the erection of a two-storey blank elevation plus a steeply pitched gable directly in front of these windows. The proposed projecting gables on the front and rear roof slopes would also extend the overall bulk and massing of built development. This would amount to a significant increase in built development that would be sited in front of these windows that occupiers of No.69 would directly look at. The plans show the proposed dwelling would be located a little further away from the boundary than the existing dwelling. However, the distance is nominal and would have no material effect on reducing the outlook for occupiers of these rooms.
17. As a result, when viewed from the windows of habitable rooms the proposed dwelling would dominate the outlook for occupiers due to its close proximity, which would be significantly accentuated by its height. This would have an unneighbourly, oppressive and overbearing effect that would create an unsatisfactory outlook for the occupiers of No.69 and result in an adverse effect on their living conditions.
18. I accept that the front elevation of the proposed dwelling would not project beyond the elevation of No.69 that faces St Bernards Road – indeed the

proposal broadly follows the prevailing building line with other properties. At the rear a two-storey curved extension would project beyond the rear elevation but would curve away from the shared boundary with No.69. At this point the footprint of No.69 is also set back further from the boundary such that views of the dwelling from any rear elevation windows would be more oblique. Furthermore, uninterrupted views from these rear windows over their own garden (No.69) would remain.

19. I conclude that whilst there would be some increased overshadowing and some loss of light to some windows at No.69, there would be no material adverse effect, as evidenced by the Daylight Assessment. However, there would be an adverse effect on living conditions of occupiers of No.69 with regard to poor outlook.

Effect on No.73

20. No.73 is positioned south of the appeal site. Hence the side elevation of No.73 that faces the appeal site is north facing and would not receive direct sunlight and so the proposed dwelling would not cause overshadowing.
21. The tall existing trees along the boundary already reduce light levels to any windows and the garden of No.73, although there would be seasonal variations as the leaves fall in winter.
22. The proposed dwelling would be sited closer to the boundary than the existing dwelling. The plans show No.73 is set a substantial distance away from the shared boundary (approximately the width of a house) even with the proposed dwelling moved closer to the boundary. I am satisfied that this separation distance coupled with the existing tall mature trees along the boundary in the grounds of No.73, would ensure the proposed dwelling would not be unduly visible or overbearing. Hence the proposal would not have a material adverse effect on the living conditions of occupiers of No.73 with regard to light or outlook.

Conclusion on living conditions

23. With regard to occupiers of No.73 there would be no material adverse effect on light levels or outlook and hence no harm to their living conditions.
24. For occupiers of No.69 there would be some overshadowing and loss of light, but this would not have a material adverse effect and hence there would be no harm to the living conditions in this regard.
25. However, the proposal would have an overbearing effect and result in a poor and oppressive outlook for occupiers of No.69 and harm their living conditions. Accordingly, the proposal would be contrary to Policy P14 of the Solihull Local Plan (the Local Plan) which seeks, amongst other things, to ensure that new development respects the amenity of existing occupiers. It would also be contrary to the Framework that promotes a high standard of amenity for existing and future users.

Trees

26. I saw that mature trees were a prominent and distinctive feature of St Bernards Road contributing to its character and appearance as a leafy suburb. This is reinforced by the CA appraisal that describes the landscaping and

spacious front gardens and landscaped boundary treatments as being an important part of the character and appearance of the CA.

27. There are a number of mature trees on the site and in adjacent gardens along shared boundaries with the appeal site. They are afforded protection by reason of being located within the CA. Of particular note are mature lime trees in the garden of No.73 that are close to the boundary of the appeal site such that their canopies overhang it. One lime tree located mid-way along the boundary is further protected by a Tree Preservation Order (TPO). The other lime tree along the boundary is located closer to the front of the site and St Bernards Road, and there is a yew tree in the front garden. These trees are visually prominent from St Bernards Road and positively contribute to the character and appearance of the CA, even if the property itself does not.
28. The Council's refusal reason refers to there being two TPO trees, but I have no evidence before me that indicates which this is and there is no further mention of it in the various tree surveys, although third parties refer to it.
29. The appellant submitted a Design and Access Statement with the application that gave cursory mention to 'Landscape and Trees' in two lines, stating that the site contains a number of trees, which will be retained and untouched, and that proposals are clear of the root protection areas (RPAs) of the retained trees. When looking at the plans and from my observations on site, this is clearly not the case.
30. The appellant submitted a total of four tree reports² with the application, none of which, according to the Council's Landscape Officer, adequately dealt with the retention and protection of the trees. Nonetheless, they confirm that the existing dwelling, built circa late 1960s, already encroaches on the RPAs of some of the existing trees and that the existing dwelling is also built beneath the canopy of the TPO lime tree. Indeed, I saw that there was crown contact with the roof of the existing dwelling from overhanging branches from the lime trees along the boundary with No.73, and which I could reach up and touch as I walked the path alongside the house.
31. The appellant's various tree reports are largely general in nature. In brief, the first Bodnar report was generic as it referred to there being no plans of the proposed development and dealt only with the principle of development and general advice about protecting trees. The second Bodnar report included a layout of the proposed dwelling indicating RPAs and indicating a 'raft and pile' foundation across parts of the site. The third Bodnar report gave its first mention of the TPO lime tree. The Council's Landscape Officer found all three Bodnar reports contained insufficient information and were unconvincing with regard to tree retention and protection, with no assessment of incursion into the RPAs of any of the trees and the implications of a proposed 'raft and pile' foundation design and on finished floor levels. The Council requested further details.
32. A fourth tree report was then submitted by a different company (Indigo Surveys Ltd), and this identified and labelled the trees differently to the previous Bodnar reports. This report also lacked basic information, such as an Arboricultural Impact Assessment; no reference to a detailed development

² 3 reports prepared by Dr Stefan Bodnar dated March 2020, March 2022 and June 2022 (the 'Bodnar Reports') and 1 report prepared by Indigo Surveys Ltd dated September 2022.

proposal and so only principles of development; no assessment of the impact of the proposed building on the above and below tree constraints, and still no details of the percentage incursions into the RPAs. The Council still required more information.

33. As part of the appeal the appellant has submitted a fifth tree report³ (a second by Indigo Surveys). This includes an Arboricultural Impact Assessment and Method Statement. The Council has not submitted an appeal statement and therefore has not commented on this latest report.
34. The second Indigo report does provide more information. However, early on in paragraph 2.2 it refers to the proposal involving the "construction of an extension to the existing residential property on site". This is clearly not the case. This leads me to conclude that the latest tree report is based on the wrong starting premise and a fundamental misunderstanding of the proposal. This casts doubt in my mind as to the accuracy of the report.
35. Consequently, I cannot be certain that the full impacts of the proposal - which include demolition of the entire existing dwelling and the digging of new foundations for a much larger footprint to withstand a much taller dwelling with new ground interventions involving a greater encroachment and incursions into existing RPAs - have been fully understood and assessed and that appropriate mitigation measures have been put forward that would ensure the long-term retention of the protected trees. Therefore, I am not satisfied that it has been adequately and convincingly demonstrated that the construction of a proposed 2.5 storey dwelling would not damage the retained trees and would not endanger their long-term protection.
36. Accordingly, the proposal would be contrary to Policies P10, P14 and P15 of the Local Plan. Collectively these seek to protect green infrastructure assets, including safeguarding important trees and conserve and enhance landscape quality and local streetscape quality.

Other Matters

37. I have had regard to the site's location within the CA and am mindful that there may be an effect on the setting of a designated heritage asset. However, the Council is satisfied that the design of the dwelling would not cause harm to the character or appearance of the CA. Whether it would or wouldn't, because of my finding on the main issues, this is not a matter I need to consider any further.
38. My attention has been drawn to a number of planning applications for other replacement dwellings in the area. As there is no issue with the principle of replacing the bungalow with a contemporary designed dwelling, they are not of relevance to the main issues in this appeal. Nor do the examples demonstrate the Council has been inconsistent in its approach and decision-making with regard to safeguarding neighbouring residential amenity. From the limited details presented to me, none would appear to share the same relationship of proposed dwellings facing former 'front' elevations of existing dwellings. Each decision needs to be considered on the design characteristics of the proposal and its specific site context and relationship to other buildings. In any event, I must consider the appeal proposal on its own merits.

³ Prepared by Indigo Surveys Ltd dated February 2023

39. I acknowledge the appellant's concerns with the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.

Conclusion

40. Even if the Council cannot demonstrate a 5 year supply of housing, there is no objection to the principle of housing for a replacement dwelling and the relevant policies for this appeal, namely Local Plan Policies P10, P14 and P15 relate to amenity, design and the natural environment are not out of date.

41. I have no reason to doubt the building would be of a high quality and of an environmentally progressive, sustainable design that will use recycled materials, minimise waste during construction and incorporate sustainable drainage. The proposal would provide the appellant with a larger home and improve the accommodation for his family and there would be some benefit to the local economy during construction. The Framework seeks to make effective use of land, but this is not at all costs.

42. Even if I were to apply paragraph 11d) of the Framework, the benefits would be limited and there would be no net gain to the housing supply. The proposal would materially harm the living conditions of neighbouring occupiers with regard to outlook, contrary to the advice in the Framework of ensuring development promotes high standards of amenity for existing and future occupiers. It would also fail to secure the long-term retention of existing protected trees, contrary to the Framework of seeking to ensure that existing trees are retained wherever possible. These adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits I outline above when assessed against the policies in the Framework taken as a whole.

43. I have found that the proposal would conflict with local policies relating to amenity, design and the natural environment and therefore it would conflict with the development plan as a whole. There are no material considerations which outweigh this finding. The absence of harm for other matters carries neutral weight in the planning balance.

44. For the reasons given above I conclude that the appeal should be dismissed.

K. Stephens
INSPECTOR