



Appeal Decision

Site visit made on 4 December 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/V4630/W/23/3320751

293 Lichfield Road, WILLENHALL WV12 5BQ

- 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 Keith Hastings against the decision of Walsall Metropolitan Borough Council.
- The application Ref 22/0366, dated 14 March 2022, was refused by notice dated 17 January 2023.
- The development proposed is the erection of a three-bedroom detached house and detached garage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has not been able to assess the Appellant's Air Quality Assessment¹ or Tree Survey². Nonetheless, I am satisfied that it had sufficient time, within the duration of the appeal process, to consider its findings and come to a view and has therefore not been prejudiced by my acceptance of this new evidence.

Main Issues

3. The main issues are:
 - Whether the proposed development would affect the integrity of the Cannock Chase Special Area of Conservation (SAC),
 - The effect of the proposed dwelling on the character and appearance of the area, including on trees,
 - The effect of the proposal on the future living conditions of occupiers and general public safety due to the stability of the site from the effects of coal mining, and
 - The effect of the proposal on the living conditions of existing adjacent and future occupiers of the site, with respect to air quality.

Reasons

Cannock Chase SAC

4. Policy CPS3 of the Black Country Core Strategy [2011] (CS) states the Council will resist development that compromises the integrity and quality of

¹ Air Quality Assessment, by Viridian Air, 23 March 2023

² Tree Survey Report, by Sdb architecture, April 2023

environmental infrastructure. Furthermore, CS policy EQ2 states that development will only be permitted where it can be demonstrated that it will not be likely to lead to an adverse impact on the integrity of the Cannock Chase SAC. It states that housing development, within the Zone of Influence (ZOI), should mitigate the anticipated adverse effects in the form of habitat management, access management and visitor infrastructure.

5. The appeal site is located within the ZOI of the SAC, which is primarily allocated due to its dry heathland. It is incumbent upon me, in accordance with the Conservation of Habitats and Species Regulations 2017 (The Habitat Regulations) as competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC through an Appropriate Assessment.
6. The Council has formed a partnership with other Council's within the vicinity of the SAC, known as the Cannock Chase Partnership, to assess the impact of development upon the SAC. The evidence suggests, through the Council's visitor survey, that development within the ZOI would increase visitors to the SAC having a deleterious effect on its integrity. Recreational pressure, path creation and widening, erosion and nutrient enrichment create increasing detrimental effect on the heathland. Natural England has confirmed, in standing advice, that any development within 15kms of the SAC would be likely to cause significant harm through increasing visitor numbers.
7. Based on the submitted evidence I find that the proposal, individually and in combination with other development, would be likely to have an adverse effect on the integrity of the SAC. Under the Habitat Regulations, such impact would need to be avoided and mitigated through a package of suitable measures. The Council has produced 'Guidance to mitigate the impact for new residential development' (2022) for development within the ZOI. It identifies that on-site mitigation measures should be secured through planning contributions to mitigate the harmful impacts of increased visitors. These measures are defined as the Strategic Access Management and Monitoring Measures (SAMMM).
8. The Habitat Regulations require me to consider whether compliance with conditions or other restrictions, such as a planning obligation, would enable it to be ascertained that the proposal would not adversely affect the integrity of the SAC. As no legal mechanism has been provided to secure the Council's required SAMMM contribution, the proposal would be likely to result in an adverse impact on the integrity of the SAC. There is therefore no acceptable mechanism before me that I can take account of to secure the necessary and appropriate contributions and I have concluded that it would not be appropriate to secure such through a condition. The Appellant disputes that the integrity of the SAC would be harmed without mitigation measures. However, no substantive evidence has been submitted to justify this assertion and this therefore carries limited weight.
9. For the reason given above, in the absence of suitable mitigation, I conclude that the proposed development would be likely to have a significant effect, either alone or in combination with other development, upon the integrity of the Cannock Chase SAC. Accordingly, with respect to the impact on the SAC the proposal would conflict with CS policies CSP3, CSP4 and ENV1, saved policy ENV23 of the Walsall Unitary Development Plan [2005] (UDP), policy EN1 of the Walsall Site Allocation Document [2019] (SAD) and the National Planning

Policy Framework (the Framework). These seek, among other matters, for development to demonstrate that the district's strategic network of environmental infrastructure will be protected at every opportunity and for development to be resisted if it would lead to an adverse effect upon the integrity of the SAC.

Character and appearance

10. The appeal site is a corner plot at the junction of Lichfield Road and Crab Lane. Lichfield Road consists of housing of various styles and scales, mostly set close to the highway which is itself a busy thoroughfare. Whereas Crab Lane is more suburban in style. It comprises two storey housing set away from the road providing deep landscaped frontages in a largely open setting. The appeal plot is therefore at a transition point between different character areas. The site consists of a wide side garden enclosed by hedging and large trees. Therefore, whilst devoid of built form, the site being enclosed makes only a limited contribution to the open frontage character of housing along Crab Lane. Consequently, the site makes a neutral contribution to the area's character.
11. The proposed dwelling would occupy most of the width of the site, with a footprint that would be close to the footway of Crab Lane. It would be patently evident within the street due to its corner position. The proposal would extend forward of the front building line of existing houses along the west side of Crab Lane. Nevertheless, the building is already broken by the host dwelling. Furthermore, views of the site looking south from Crab Lane would be partially diffused by landscaping along frontages and could be further softened by new on-site planting.
12. Moreover, whilst the proposed dwelling would be overt in views along Crab Lane, it would complement the existing row of housing alongside Lichfield Road. The proposal would be dual aspect with fenestrated elevations on its front and side. It would stand comfortably within the site in terms of orientation, height and position and would include external amenity space that would be similar in size and location as neighbouring plots. It would not therefore appear cramped within the plot. Furthermore, the contemporary design of the dwelling would add interest and variety to the street making a positive contribution to the character and appearance of the area and the prominent corner plot.
13. The site contains a variety of trees and hedges that make a positive contribution to the planted frontages of local housing, especially those along Crab Lane. These are all proposed to be removed. However, the Appellant's Tree Survey demonstrates that these five trees (being a lilac and four cypress trees) are rated as category 'C' trees. These are therefore low-quality and should not be regarded of sufficient quality to prevent development taking place.
14. The proposed driveway and garage are shown to be within the root protection area (RPA) of an off-site category 'A' mature Oak tree. The Survey shows that the proposal would affect less than 5% of its RPA. In accordance with BS 5837:2012, such an incursion would be unlikely to affect the tree. As a consequence, a 'no-dig' solution would not be required. There is no compelling reason, within the submitted evidence, to disagree with the recommendations of the Tree Survey. As a result, the trees proposed to be removed have limited value and make only a limited contribution the character and appearance of the

area. Consequently, suitable replacement planting could be secured by planning condition to outweigh this loss, had I been minded to allow the appeal.

15. Accordingly, the proposal would complement the existing pattern of development and make a positive contribution to the character and appearance of the area. Consequently, with regard to effect of character and appearance, the proposal would comply with UDP saved policies GP2, ENV18 and ENV32, CS policies ENV1, ENV3 and CSP4, SAD policy HC2, the 'Designing Walsall' SPD [2013], 'Conserving Walsall's Natural Environment' SPD [2013] and the Framework. These seek, among other matters, for development to make a positive contribution to the quality of an environment and a positive contribution to place making.

Future living conditions and public safety – Coal

16. The site is within an area defined as a Coal Development High Risk Area. In such areas historic shallow coal mine working could be a risk to development which would be vulnerable to surface stability, affecting public safety. UDP saved policy GP2, with respect to environmental protection, includes the requirement for development to account for potential problems of land stability and contamination. Furthermore, UDP saved policy ENV14, relates to previously developed sites. This states that where a site is underlain by uses or activities which may have affected its stability, a site investigation report should be provided which identifies the hazards, assesses the risk and sets out a mitigation strategy.
17. The Appellant's Coal Mining Risk Assessment³ identifies that the site is within an area where shallow unrecorded mining may have taken place. It finds that there is a potential risk posed to the proposed development by past coal mining activity. It therefore concludes that intrusive site investigations should be carried out to establish the exact situation in respect of coal mining features and the risks posed.
18. The Coal Authority has been consulted as a Statutory Consultee, as part of the appeal process, and has reviewed the submitted Assessment. The Authority has noted⁴ that the Appellant has been unable to discount the risks posed by past coal mining activity and note its recommendation for the need for intrusive site investigations and subsequent mitigation works. The Coal Authority is satisfied that this requirement can be addressed through the imposition of a suitably worded pre-commencement condition and has removed its objection to the scheme. As a result, I am satisfied that the proposal would not present a risk to the living conditions of future occupiers or wider public safety.
19. Consequently, the proposal would accord with UDP saved policies GP2 and ENV14 and the Framework which seek to ensure that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability.

Existing and future living conditions – Air Quality

20. The Environment Act 1995 requires local authorities to review air quality in their area and designate air quality management areas (AQMAs) if

³ Coal Mining Risk Assessment, Spilman Associates, February 2023

⁴ The Coal Authority, Melanie Lindsley, 17 November 2023

improvements are necessary. Where an AQMA is designated, local authorities are also required to work towards the Strategy's objectives prescribed in regulations for that purpose. An air quality action plan describing the pollution reduction measures must then be put in place.

21. The Land-Use Planning and Development Control: Planning for Air Quality (2017) Protection UK has been developed for professionals operating within the planning system. It provides them with a means of reaching sound decisions, having regard to the air quality implications of development proposals. It also is anticipated that developers will be better able to understand what will make a proposal more likely to succeed. This establishes Air Quality Objectives (AQO) where a member of the public could be exposed to a level of pollution concentration for the specific averaging periods for that pollutant. It identifies, based on legislative requirements, that NO₂ and PM₁₀ should not exceed 40µg/m³ and PM_{2.5} should not exceed 25µg/m³ as an annual mean measure.
22. CS Policy ENV8 states that if an Air Quality Assessment indicates that a proposal will result in exposure to pollutant concentrations that exceed national air quality objectives, adequate and satisfactory mitigation measures must be secured before planning permission is granted. Also, the Framework requires development in AQMAs to be consistent with the local air quality action plan and for decision makers to preventing development from contributing to, or being adversely affected by, unacceptable levels of air pollution.
23. The site is within the Walsall AQMA. Walsall is declared as an AQMA which is principally designated to reduce NO₂ levels, largely caused by traffic. The AQMA is supported by an Air Quality Action Plan which requires the Council to detail air pollution reduction measures to achieve objectives of the Plan. The Black Country Air Quality SPD (2016) aims to provide transparency and consistency to developers and presents a method for identifying development proposals where an air quality assessment is required. This includes a four-stage process for assessment including pre-submission discussion, classification of the development, assessment and mitigation.
24. The proposal has the potential to increase contamination levels from new road transport emissions. The site is alongside the A4124 (Lichfield Road) and the M6 to the east. Main pollutants from road traffic consist of nitrogen dioxide (NO₂) and particulate matter (PM₁₀ and PM_{2.5}). The Appellant's Air Quality Assessment identifies that baseline data, from DEFRA for the study area, finds NO₂ and PM₁₀ concentrations as being 14.43µg/m³ and 14.07µg/m³ respectively and PM₂₅ concentrations of 9.37µg/m³ in 2023. The nearest air quality Automatic Monitoring Station (AMS) is at Woodlands School around 965 metres away. This identified an NO₂ reading of 12.8µg/m³ in 2021 (latest figures), substantially below the 40µg/m³ objective, although substantially further from the M6 than the appeal site. However, the site is a similar distance from the M6 as the Bloxwich Lane AMS site, which recorded a NO₂ reading of 33.8µg/m³ and a PM_{2.5} reading of 8.3µg/m³ in 2021.
25. In terms of potential impacts, the Assessment finds that dust and PM₁₀ created during construction would be small in magnitude, with a 'medium' sensitivity of dust soling and 'low' sensitivity to human health, resulting in 'low' to 'negligible' risk impacts. With respect to the operational phase of the development, the Assessment demonstrates that the new dwelling would be energy efficient and would not generate substantial new pollutants. The Council's ADMS air quality

modelling illustrates that the development site would not exceed the annual mean AQO for NO₂. Furthermore, DEFRA's Pollution Climate Mapping demonstrates that Lichfield Road has a predicted annual mean NO₂ concentration of 25µg/m³ and the M6 a concentration of 30µg/m³ in 2020, which would be substantially lower than the AQO.

26. Accordingly, based on the monitored and modelled air quality data and the expected number of trips, the proposal would be substantially below the threshold for traffic and air quality dispersion modelling, the Assessment concludes that the development will have a negligible impact on concentrations of NO₂, PM₁₀ and PM_{2.5} at the site. As a result, based on the evidence before me, I am satisfied that the proposal would not result in future occupiers or the public's exposure to pollutant concentrations that exceed national air quality objectives.
27. Accordingly, the proposal would not undermine the Council's air quality objectives or materially harm the living conditions of future or existing occupiers with regard to air quality considerations. As such, the proposed dwelling would accord with CS policy ENV8, the Council's 'Air Quality' SPD and the Framework. These seek, *inter alia*, for decisions to sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account AQMAs and Clean Air Zones.

Planning balance and conclusion

28. The Framework seeks to boost the supply of housing. The proposal is within a large settlement, enabling good access to good and services. The proposed scheme would make efficient use of land and would complement the character and appearance of the area. Moreover, the scheme would comply with the Council's policies that seek to ensure development would not be at risk to historic coal mining or contribute to adverse air quality. This could be delivered relatively quickly, making a rapid positive contribution to the local supply of housing in the area.
29. Weighed against these benefits is the fact that the appeal scheme would have a significant adverse effect on the integrity of the Cannock Chase SAC. The conflict found with the policies of the development plan would outweigh the benefits in the planning balance, when assessed against the development plan.
30. For the reasons given above, the proposal would conflict with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed.

Ben Plenty

INSPECTOR