



Appeal Decision

Site visit made on 3 January 2024

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2024

Appeal Ref: APP/V4630/W/23/3322850

200 Thornhill Road, Streetly B74 2EP

- 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 Sanjay Furtado against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 21/0561.
 - The development proposed is the demolition of existing bungalow and the erection of 3 detached dwellings (comprising 1 x 5 bedroom dwelling and 2 x 4 bedroom dwellings).
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing bungalow and the erection of 3 detached dwellings (comprising 1 x 5 bedroom dwelling and 2 x 4 bedroom dwellings) at 200 Thornhill Road, Streetly B74 2EP in accordance with the terms of the application, Ref 21/0561, dated 1 April 2021, subject to the conditions set out in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by Mr Sanjay Furtado against Walsall Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description in the header above has been taken from the Council's decision notice and the appellant's appeal form. Whilst this is different to that set out in the planning application form, it more accurately sets out the proposed works and has been used by both parties.

Main Issues

4. The main issues are the effect of the proposal on:
 - The character and appearance of the surrounding area
 - Trees on, and near, the site; and,
 - The living conditions of neighbouring occupiers.

Reasons

Character and Appearance

5. The appeal site is a long, rectangular plot accessed from Thornhill Road. It contains a detached single-storey dwelling, with accommodation in the roof,

and a separate garage building. These are set back from the road by a deep front garden and driveway, to the rear of the plot is a long garden laid out to grass. Thornhill Road forms a visual and physical edge between Sutton Park and the built-up environment surrounding the appeal site. With mature trees and hedgerows to both sides of the road, it takes on a rather green and verdant character which softens the built character and provides somewhat of a transition to Sutton Park. The dwellings along Thornhill Road, including the appeal building, are varied in their appearance with very few being similar.

6. From the information before me and my observations on site it was clear that there are a number of roads extending off Thornhill Road and that they serve dwellings to the rear of properties fronting this road. In particular, the properties along Tintern Close extend up to the side boundary of the appeal site, these are visible behind the properties along Thornhill Close. Therefore, whilst development along Thornhill Road is predominantly linear, it is clear that there is a sense of development behind this row. As such, I find that the siting of the two proposed dwellings at the rear of the site would not be incongruous with the pattern of development. Also, I note that none of the policies available to me restrict the use of tandem or back land development.
7. Although, I note a number of properties along Thornhill Road with long plots, I am also aware of a number of properties, between the appeal site and Oakmount Road, that have much smaller plots. The proposed plots resulting from the scheme would be of a comparable size to these and to those properties along Tintern Close. I also find that the plots would be commensurate to the size of the proposed dwellings and that they would not, either on their own or cumulatively as a whole, appear cramped.
8. The garage projection to the front of the proposed dwelling at Plot 1 would extend beyond the fairly strong building line along this part of Thornhill Road. However, this breach would be fairly modest and, moreover, given the stepped alignment of the buildings, it is fairly typical. The overall footprint of the building would also protect this stepped pattern.
9. As noted above, the street scene is, in part, characterised by the variety between the appearance of the dwellings along this part of Thornhill Road. I find that the design of the proposed properties, whilst not reflective of the surrounding properties, would not be an incongruous or otherwise harmful feature within the street scene. Similarly, given its siting within a built-up area and separated from Sutton Park by Thornhill Road, the proposal would not adversely affect the open and rural landscape beyond.
10. The siting and layout of the proposed scheme would not be out of keeping with, or harmful to, the character and appearance of the surrounding area. The proposal would therefore comply with Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan (March 2005, the WUDP) and Policies CSP4 and ENV2 of the Black Country Core Strategy (February 2011, the BCCS). It would also comply with the Guidance set out in the Designing Walsall Supplementary Planning Document (the DWSPD), including the section on Streetly, and the National Planning Policy Framework (the Framework), including Paragraph 135. These collectively, and amongst other matters, seek for developments to be influenced by, and reflect, the local character, distinctiveness and context of their surroundings.

Trees

11. The appeal site contains a number of trees and hedgerows, and further trees are also present in close proximity to the site. I understand that some examples would be removed and replaced as part of the proposed scheme. I also understand that the hedgerow along the boundary with Tintern Close would be cut back. A Horse Chestnut tree, identified as T3 on the submitted plans, overhangs the front of the site from the neighbouring property at No 202 Thornhill Road, this is a significant and prominent tree that is covered by a Tree Preservation Order (TPO).
12. The appellant has submitted an Arboricultural Implication Study (the AIS) which identifies the relationship of the proposal to the retained trees and their root protection areas (RPA). It is clear that the proposal would introduce new development closer to the retained trees than is existing, and that the use of the site would be intensified. Consequently, I find that there would be a short and long term risk to the retained trees.
13. It is clear from the AIS that the RPA for Tree T16 would be at particular risk as it extends under the footprint of the proposed building. Trees T14 and T15 are also identified as potentially being affected by the removal of the garage building. These trees are considered to be Category C.
14. Although the AIS sets out how works could be carried out without adversely affecting the retained trees, the details are generic and not site specific. Additional details would need to be provided to demonstrate how, specific to this scheme, any adverse impacts during the proposed works could be mitigated. I note that the Council have suggested a number of conditions which would seek further information and secure protection of the trees on and around the site.
15. In this case, I find that the level of detail submitted as to the way in which the development works, including the formation of the driveway and the erection of the dwelling, are completed is sufficient to demonstrate that a suitable method of works would be possible. To ensure that the short-term health of the retained trees is protected, conditions would be necessary to seek additional, site specific details.
16. I note concerns regarding the proposed works to the hedgerow between the existing rear garden and the properties along Tintern Close. I understand that this hedgerow is not protected and as such could be cut back or otherwise removed. It has not been demonstrated that any significant thinning of the hedgerow would prevent it from growing back, or at least regrowing leaves on the cut side. Whilst this may take time, I do not find that it would necessarily compromise the long-term health of the hedge. Given the above, I find the risk to the hedgerow would not significantly, or unacceptably increase, as a result of the proposal.
17. Although the trees contribute to the verdant character of the area the hedgerow to the rear, and the smaller trees to the front are not so integral that their loss would be irreplaceable. Subject to the provision of suitably sized specimens, the four proposed replacement trees would mitigate this loss. I find similarly in this regard to the contribution they make to the biodiversity in the wider area. Moreover, controls could be imposed through suitably worded

conditions requiring that the replacement trees be maintained so that they would be provided with greater protections than those to be removed.

18. During my site visit I viewed the appeal site from the garden of the neighbouring property at No 202 Thornhill Road. It appeared that tree T19 is growing from this garden and not the appeal site. However, irrespective of its ownership, I find that the appellant would still have a responsibility to ensure that the short and long term health of the tree was protected.
19. In light of the above, I find that the proposal would, subject to conditions, suitably protect trees on and around the site in compliance with WUDP Policies GP2, ENV18 and ENV32, BCCS Policy ENV1, and Policy EN1 of the Walsall Sites Allocation Document (January 2019, the WSAD) These policies require that developments do not unacceptably affect trees and hedgerows on and near the site, especially where these are protected by a TPO. They also seek commensurate replacements where trees or hedgerows are lost. The proposal would also comply with the guidance on trees and their retention as set out in the Conserving Walsall's Natural Environment Supplementary Planning Document (NESPd) as well as the policies set out under Sections 12 and 15 of the Framework which similarly set out the importance of trees and seek their retention and replacement.

Living Conditions

20. During my visit I viewed the appeal site from the properties either side of the site on Thornhill Road and from a number of properties on Tintern Close. Number 198 Thornhill Road is the closest dwelling to the existing bungalow. To the rear of the dwelling the windows closest to the appeal site are those serving an open-plan living room on the ground floor and a bedroom on the first floor. The outlook from these windows is directed towards the rear of the garden. The outlook forward and to the right is open across the garden whilst the boundary treatment to the left, and the bungalow beyond it, restricts the outlook in this direction. The living room also has a window to the front and a second further from the appeal site.
21. While there would be a breach of the 45° test on the ground floor, this breach already exists. Moreover, the other windows would be unaffected. Therefore, a good level of outlook and light to the room would be maintained, providing a pleasant space for occupiers. The upper floor is not affected currently by a breach of the 45° test. Given the form of the proposed replacement dwelling at Plot 1, the 45° line would only be breached at a significant distance. Given this, and the openness generally afforded to the bedroom, there would also be no unacceptable impact in this regard. Collectively, I find that the living conditions of the occupiers at No 198 Thornhill Road would not be unacceptably affected by the proposal.
22. The proposal would afford some opportunity for overlooking towards No 198 Thornhill Road should the side windows of the Sun Room be clear glazed. I note the appellant has suggested opaque glazing on the side windows facing No 198, and I find that this would be sufficient to prevent any overlooking to the detriment of the privacy of the neighbouring occupiers. The other windows highlighted as of concern to the occupiers of No 198 are rooflights which, by way of their height and nature, would direct views over the neighbouring dwelling. As such it would not be necessary to require obscure glazing for these windows.

23. Given the length of the gardens serving the properties on Tintern Close, the views from the rear ground floors are relatively open up to the rear boundary fences. The upper floor rear windows have a more open outlook over the boundary fence towards the appeal site. The tall boundary hedgerow between the end of the gardens and the appeal site does somewhat restrict the open outlook. However, as it could easily be reduced or removed, I have given this obstruction only modest weight. Generally, therefore, I find the outlook to be open and pleasant.
24. The proposal would introduce a two-storey dwelling close to the rear boundary of, and visible from, numbers 15, 17 and 19 Tintern Close. However, given the tall rear boundary fence and the proposal's distance from boundary, I find that the ground floor and garden outlooks would not be significantly impacted by the scheme. In particular, views around the proposed dwelling, and to both sides of the gardens would be provided, protecting an open outlook. The proposed dwelling would be a more prominent feature in views from the upper floor windows, but again, I find that views to either side of the dwelling would be retained. As such, I find that the proposal would not unacceptably affect the living conditions of the occupiers at the abovementioned dwellings.
25. I find that the appeal site's relationship to the other properties on Tintern Close, including Number 11, and to No 202 Thornhill Road, would be such that the proposal would not have any unacceptable adverse impacts on the living conditions of occupiers or their enjoyment of their properties.
26. Although some increase in noise and air pollution is likely to stem from the additional two dwellings, this would be of a type typical for residential areas. Moreover, any increase would be modest in relation to the surrounding residential area and would not unacceptably affect the living conditions of the neighbouring occupiers.
27. The proposal would not unacceptably affect the living conditions of neighbouring occupiers with regard to outlook from, or light to, their properties, or a loss of privacy through overlooking. The proposal would therefore comply with WUDP Policy GP2 which seeks to protect the surrounding environment, including with regard to privacy and sunlight. The proposal would also comply with the guidance contained within the DWSPD regarding appropriate living environments. It would also comply with the Framework, including Paragraph 135 which seeks for developments to promote well-being and a high standard of amenity that does not undermine the quality of life in the area.

Other Matters

28. Thornhill Road is a thoroughfare which, at the time of my visit, served a fairly high level of traffic in both directions. Vehicular accesses and junctions are typical on the appeal site side of the road and the proposal would largely retain the existing access, although its use would be intensified. I consider the road network would be able to accommodate the likely small increase in vehicular movements associated with the development and that the intensified use of the access would not be unacceptable. Moreover, beyond the construction phase the likelihood of larger vehicles, such as HGVs, using the site is limited. Any issues related to the use of the site by such vehicles would be short-lived and could be accommodated by the highway. Overall, I find that the proposal would not unacceptably affect highway safety around the site.

29. The proposal would provide two new dwellings suitable of accommodating families. Relative to the wider area as a whole, this would cause only a very small increase in population. I have not been provided with any substantive evidence to demonstrate that there is an identified under provision of services in the area. Consequently, I do not find that there would be any unacceptable impact on the provision of local services and facilities.
30. Whilst I note the concerns of interested parties as to the proposal setting a precedent for similar development should the appeal be allowed; all decisions turn on their own particular circumstances. These circumstances are based on the facts and evidence before those decision-makers or Inspectors at the time. Therefore, I do not find that the decision here would bind the Council to find similarly in future applications, or preclude them from making a full assessment of proposals.
31. The proposal would result in the reduction in the size of the existing garden area at the appeal site and this may have some impact on the environment. However, any loss would be minimal given the nature and scale of the site. Moreover, I note that Natural England were consulted as part of the planning application and that they found the proposal would have no significant adverse impacts on protected sites. From the information available to me I have no reason to find differently. Similarly, given the nature of the site and proposal I find that there would be no unacceptable impact on bats or birds using the site.
32. The Planning Practice Guidance makes it clear that private interests such as the alleged impact of a development on the value of a neighbouring property is not a material consideration.

Conditions

33. I have had regard to the conditions suggested by the Council and the advice on planning conditions set out by the Framework and the Planning Practice Guidance. In the interests of clarity and enforceability, I have made some changes to the wording.
34. For certainty, I have set out the timescale for the commencement of development. A condition is also necessary, for certainty and enforceability, requiring that the development is carried out in accordance with the approved plans.
35. In the interests of protecting the surrounding environment and highway safety I have required the submission of a construction methodology statement. As there is only a low potential for bats to be using the site, I have attached a precautionary condition should bats be found on site in the interests of their protection. To ensure the provision of proper waste and recycling collection, I have required the submission of additional bin collection details to be submitted. In order to protect highway safety and minimise flood risk, I have imposed conditions requiring the provision of a suitably draining driveway and a dropped kerb prior to occupation. In the interests of protecting the living conditions of the neighbouring occupiers at 198 Thornhill Road, I have included a condition requiring that the side windows serving Sun Room and facing that property be obscurely glazed permanently.
36. Given my findings set out above under the Trees section, I have included conditions requiring the submission of a landscaping plan and associated details

and a detailed Arboricultural Method Statement to ensure that the retained trees on site are protected and that any replacements are appropriately maintained.

37. Given that the appeal site is already in a built-up area where lighting is present, I have not found it necessary to impose a condition requiring bat boxes and restricted lighting to be provided. As they are matters covered by other legislation, I have not found it necessary to impose conditions restricting solid fuel burners, or requiring an Air Quality Low Emissions Scheme. Similarly, I find it is not necessary to require a construction management plan as the matters raised are covered by other legislation.

Conclusion

38. Representations were made to the effect that the rights of adjoining occupiers, at No 198 Thornhill Road, under Articles 1 and 8 as set out in the Human Rights Act 1998 would be violated if the appeal were allowed. However, I have found that the proposed development would not result in the neighbouring property being overlooked, or that there would a loss of outlook or light so that the occupiers would suffer unacceptable harm to their living conditions. The development would not conflict with Local Plan or guidance in the DWSPD. I am satisfied that a grant of planning permission would not unacceptably interfere with the right to a private and family life and home for the occupiers of No 198. It is proportionate in the circumstances to allow the appeal.
39. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Samuel Watson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan PL01, Proposed Drawing – Plot 1 PL01, Existing and Proposed Street Scenes PL10, Proposed Drawings – Plot 2 & 3 Mirrored PL04, Proposed Site Plan PL30 rev B.
- 3) Prior to the commencement of the development, a Construction Methodology Statement shall be submitted to and approved by the Local Planning Authority detailing where the parking and turning facilities for the site operatives and construction deliveries will be located and including full details of the wheel cleaning arrangements to prevent mud from being deposited on the highway during the construction period. The provision shall be retained during construction in accordance with the approved details.
- 4) If bats(s), or evidence of bats, are found during the development works hereby permitted:
 - a. The works should halt until Natural England or the ecologist for this project is consulted.
 - b. The bat(s) should not be handled or touched and the vicinity of the roost shall be immediately reinstated.

- c. No further destructive works shall be carried out to the building until the need for a Natural England Licence has been established.
 - d. Within one week of finding bat(s) or evidence of bats, a written report by the ecologist shall be submitted for the approval in writing of the Local Planning Authority, recording what was found and proposing appropriate mitigation measures, including a timetable for their implementation.
 - e. Work on the building shall only continue in accordance with the approved mitigation measures and/or any Natural England Licence issues.
- 5) Prior to the first occupation of any of the dwellings hereby permitted, a layout plan shall be submitted to, and approved in writing by, the Local Planning Authority showing a refuse bin collection point(s) serving the dwellings. The collection point(s) shall be no more than 25m from the main road and shall be retained for the lifetime of the development.
- 6) Prior to the first occupation of any of the dwellings hereby permitted, the access road, parking areas and vehicle manoeuvring areas shall be fully consolidated, hard surfaced and drained so that surface water run-off from these areas does not discharge onto the highway or into any highway drain. These areas shall thereafter be retained and used for no other purpose.
- 7) Prior to the first occupation of any of the dwellings hereby permitted, the existing dropped kerb footway crossing on Thornhill Road shall be suitably modified and adjusted to align with the new access point in line with statutory requirements.
- 8) Prior to the first occupation of the dwelling at Plot 1, the windows that serve the Sun Room and face No 198 Thornhill Road shall be obscure glazed. The obscure glazing shall be retained thereafter for the lifetime of the development.
- 9) Prior to the first occupation of the dwellings hereby permitted, a detailed scheme of soft landscaping shall first be submitted to and approved in writing by the Local Planning Authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection through the course of the development.
- 10) Prior to the first occupation of the dwellings hereby permitted, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.
- 11) No operations shall commence on site in connection with the development hereby approved (including demolition works, tree works, fires, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement (AMS) in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations has been submitted to and approved in writing by the Local Planning Authority and the protective fencing is erected as required by the AMS. The AMS shall include full details of the following:
 - a. Timing and phasing of the arboricultural works in relation to the development hereby permitted.
 - b. Detailed tree felling and pruning specifications in accordance with BS3998:2010 Recommendations for Tree Works.
 - c. Details of a tree protection scheme in accordance with BS5837:2012: which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site which are shown to be retained on the approved plan and trees which are the subject of any Tree Preservation Order.

- d. Details of any construction works required within the root protection area as defined by BS5837:2012 or otherwise protected in the approved Tree Protection Scheme
- e. Details of the location of any underground services and methods of installation which make provision for protection and the long-term retention of the trees. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order, 1995 (as amended by The Town and Country Planning (General Permitted Development) Order 2015), no services shall be dug or laid into the ground other than in accordance with the approved details.
- f. Details of any changes in ground level, including existing and proposed spot levels required within the root protection area as defined by BS5837:2012 or otherwise protected in the approved Tree Protection Scheme.
- g. Details of the arrangements for the implementation, supervision and monitoring of works required to comply with the arboricultural method statement.